

**MANUEL C. ESPIRITU, JR., AUDIE LLONA, FREIDA F. ESPIRITU,
CARLO F. ESPIRITU, RAFAEL F. ESPIRITU, ROLANDO M. MIRABUNA,
HERMILYN A. MIRABUNA, KIM ROLAND A. MIRABUNA, KAYE ANN A.
M...**

G.R. No. 170891. November 24, 2009

Ponente: ABAD, J.

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ABAD, J.:

This case is about the offense or offenses that arise from the reloading of the liquefied petroleum gas cylinder container of one brand with the liquefied petroleum gas of another brand.

The Facts and the Case

Respondent Petron Corporation (Petron) sold and distributed liquefied petroleum gas (LPG) in cylinder tanks that carried its trademark "Gasul." [1] Respondent Carmen J. Doloiras owned and operated Kristina Patricia Enterprises (KPE), the exclusive distributor of Gasul LPGs in the whole of Sorsogon. [2] Jose Nelson Doloiras (Jose) served as KPE's manager.

Bicol Gas Refilling Plant Corporation (Bicol Gas) was also in the business of selling and distributing LPGs in Sorsogon but theirs carried the trademark "Bicol Savers Gas." Petitioner Audie Llona managed Bicol Gas.

In the course of trade and competition, any given distributor of LPGs at times acquired possession of LPG cylinder tanks belonging to other distributors operating in the same area. They called these "captured cylinders." According to Jose, KPE's manager, in April 2001 Bicol Gas agreed with KPE for the swapping of "captured cylinders" since one distributor could not refill captured cylinders with its own brand of LPG. At one time, in the course of implementing this arrangement, KPE's Jose visited the Bicol Gas refilling plant. While there, he noticed several Gasul tanks in Bicol Gas' possession. He requested a swap but Audie Llona of Bicol Gas replied that he first needed to ask the permission of the Bicol Gas owners. That permission was given and they had a swap involving around 30 Gasul tanks held by Bicol Gas in exchange for assorted tanks held by KPE.

KPE's Jose noticed, however, that Bicol Gas still had a number of Gasul tanks in its yard. He offered to make a swap for these but Llona declined, saying the Bicol Gas owners wanted to send those tanks to Batangas. Later Bicol Gas told Jose that it had no more Gasul tanks left in its possession. Jose observed on almost a daily basis, however, that Bicol Gas' trucks which plied the streets of the province carried a load of Gasul tanks. He noted that KPE's volume of sales dropped significantly from June to July 2001.

On August 4, 2001 KPE's Jose saw a particular Bicol Gas truck on the Maharlika Highway. While the truck carried mostly Bicol Savers LPG tanks, it had on it one unsealed 50-kg Gasul tank and one 50-kg Shellane tank. Jose followed the truck and when it stopped at a store, he asked the driver, Jun Leorena, and the Bicol Gas sales representative, Jerome Misal, about the Gasul tank in their truck. They said it was empty but, when Jose turned

open its valve, he noted that it was not. Misal and Leorena then admitted that the Gasul and Shellane tanks on their truck belonged to a customer who had them filled up by Bicol Gas. Misal then mentioned that his manager was a certain Rolly Mirabena.

Because of the above incident, KPE filed a complaint[3] for violations of Republic Act (R.A.) 623 (illegally filling up registered cylinder tanks), as amended, and Sections 155 (infringement of trade marks) and 169.1 (unfair competition) of the Intellectual Property Code (R.A. 8293). The complaint charged the following: Jerome Misal, Jun Leorena, Rolly Mirabena, Audie Llona, and several John and Jane Does, described as the directors, officers, and stockholders of Bicol Gas. These directors, officers, and stockholders were eventually identified during the preliminary investigation.

Subsequently, the provincial prosecutor ruled that there was probable cause only for violation of R.A. 623 (unlawfully filling up registered tanks) and that only the four Bicol Gas employees, Mirabena, Misal, Leorena, and petitioner Llona, could be charged. The charge against the other petitioners who were the stockholders and directors of the company was dismissed.

Dissatisfied, Petron and KPE filed a petition for review with the Office of the Regional State Prosecutor, Region V, which initially denied the petition but partially granted it on motion for reconsideration. The Office of the Regional State Prosecutor ordered the filing of additional informations against the four employees of Bicol Gas for unfair competition. It ruled, however, that no case for trademark infringement was present. The Secretary of Justice denied the appeal of Petron and KPE and their motion for reconsideration.

Undaunted, Petron and KPE filed a special civil action for certiorari with the Court of Appeals[4] but the Bicol Gas employees and stockholders concerned opposed it, assailing the inadequacy in its certificate of non-forum shopping, given that only Atty. Joel Angelo C. Cruz signed it on behalf of Petron. In its Decision[5] dated October 17, 2005, the Court of Appeals ruled, however, that Atty. Cruz's certification constituted sufficient compliance. As to the substantive aspect of the case, the Court of Appeals reversed the Secretary of Justice's ruling. It held that unfair competition does not necessarily absorb trademark infringement. Consequently, the court ordered the filing of additional charges of trademark infringement against the concerned Bicol Gas employees as well.

Since the Bicol Gas employees presumably acted under the direct order and control of its owners, the Court of Appeals also ordered the inclusion of the stockholders of Bicol Gas in the various charges, bringing to 16 the number of persons to be charged, now including petitioners Manuel C. Espiritu, Jr., Freida F. Espiritu, Carlo F. Espiritu, Rafael F. Espiritu, Rolando M. Mirabuna, Hermilyn A. Mirabuna, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, Ken Ryan A. Mirabuna, Juanito P. de Castro, Geronima A. Almonite, and Manuel C. Dee (together with Audie Llona), collectively, petitioners Espiritu, et al. The court denied the motion for reconsideration of these employees and stockholders in its Resolution dated January 6, 2006, hence, the present petition for review[6] before this Court.

The Issues Presented

The petition presents the following issues:

1. Whether or not the certificate of non-forum shopping that accompanied the petition filed with the Court of Appeals, signed only by Atty. Cruz on behalf of Petron, complied with what the rules require;
2. Whether or not the facts of the case warranted the filing of charges against the Bicol Gas people for:
 - a) Filling up the LPG tanks registered to another manufacturer without the latter's consent in violation of R.A. 623, as amended;

- b) Trademark infringement consisting in Bicol Gas' use of a trademark that is confusingly similar to Petron's registered "Gasul" trademark in violation of section 155 also of R.A. 8293; and
- c) Unfair competition consisting in passing off Bicol Gas-produced LPGs for Petron-produced Gasul LPG in violation of Section 168.3 of R.A. 8293.

The Court's Rulings

First. Petitioners Espiritu, et al. point out that the certificate of non-forum shopping that respondents KPE and Petron attached to the petition they filed with the Court of Appeals was inadequate, having been signed only by Petron, through Atty. Cruz.

But, while procedural requirements such as that of submittal of a certificate of non-forum shopping cannot be totally disregarded, they may be deemed substantially complied with under justifiable circumstances.[7] One of these circumstances is where the petitioners filed a collective action in which they share a common interest in its subject matter or raise a common cause of action. In such a case, the certification by one of the petitioners may be deemed sufficient.[8]

Here, KPE and Petron shared a common cause of action against petitioners Espiritu, et al., namely, the violation of their proprietary rights with respect to the use of Gasul tanks and trademark. Furthermore, Atty. Cruz said in his certification that he was executing it "for and on behalf of the Corporation, and co-petitioner Carmen J. Doloiras." [9] Thus, the object of the requirement - to ensure that a party takes no recourse to multiple forums - was substantially achieved. Besides, the failure of KPE to sign the certificate of non-forum shopping does not render the petition defective with respect to Petron which signed it through Atty. Cruz. [10] The Court of Appeals, therefore, acted correctly in giving due course to the petition before it.

Second. The Court of Appeals held that under the facts of the case, there is probable cause that petitioners Espiritu, et al. committed all three crimes: (a) illegally filling up an LPG tank registered to Petron without the latter's consent in violation of R.A. 623, as amended; (b) trademark infringement which consists in Bicol Gas' use of a trademark that is confusingly similar to Petron's registered "Gasul" trademark in violation of Section 155 of R.A. 8293; and (c) unfair competition which consists in petitioners Espiritu, et al. passing off Bicol Gas-produced LPGs for Petron-produced Gasul LPG in violation of Section 168.3 of R.A. 8293.

Here, the complaint adduced at the preliminary investigation shows that the one 50-kg Petron Gasul LPG tank found on the Bicol Gas' truck "belonged to [a Bicol Gas] customer who had the same filled up by BICOL GAS." [11] In other words, the customer had that one Gasul LPG tank brought to Bicol Gas for refilling and the latter obliged.

R.A. 623, as amended, [12] punishes any person who, without the written consent of the manufacturer or seller of gases contained in duly registered steel cylinders or tanks, fills the steel cylinder or tank, for the purpose of sale, disposal or trafficking, other than the purpose for which the manufacturer or seller registered the same. This was what happened in this case, assuming the allegations of KPE's manager to be true. Bicol Gas employees filled up with their firm's gas the tank registered to Petron and bearing its mark without the latter's written authority. Consequently, they may be prosecuted for that offense.

But, as for the crime of trademark infringement, Section 155 of R.A. 8293 (in relation to Section 170 [13]) provides that it is committed by any person who shall, without the consent of the owner of the registered mark:

1. Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or

services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

KPE and Petron have to show that the alleged infringer, the responsible officers and staff of Bicol Gas, used Petron's Gasul trademark or a confusingly similar trademark on Bicol Gas tanks with intent to deceive the public and defraud its competitor as to what it is selling.[14] Examples of this would be the acts of an underground shoe manufacturer in Malabon producing "Nike" branded rubber shoes or the acts of a local shirt company with no connection to La Coste, producing and selling shirts that bear the stitched logos of an open-jawed alligator.

Here, however, the allegations in the complaint do not show that Bicol Gas painted on its own tanks Petron's Gasul trademark or a confusingly similar version of the same to deceive its customers and cheat Petron. Indeed, in this case, the one tank bearing the mark of Petron Gasul found in a truck full of Bicol Gas tanks was a genuine Petron Gasul tank, more of a captured cylinder belonging to competition. No proof has been shown that Bicol Gas has gone into the business of distributing imitation Petron Gasul LPGs.

As to the charge of unfair competition, Section 168.3 (a) of R.A. 8293 (also in relation to Section 170) describes the acts constituting the offense as follows:

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

Essentially, what the law punishes is the act of giving one's goods the general appearance of the goods of another, which would likely mislead the buyer into believing that such goods belong to the latter. Examples of this would be the act of manufacturing or selling shirts bearing the logo of an alligator, similar in design to the open-jawed alligator in La Coste shirts, except that the jaw of the alligator in the former is closed, or the act of a producer or seller of tea bags with red tags showing the shadow of a black dog when his competitor is producing or selling popular tea bags with red tags showing the shadow of a black cat.

Here, there is no showing that Bicol Gas has been giving its LPG tanks the general appearance of the tanks of Petron's Gasul. As already stated, the truckfull of Bicol Gas tanks that the KPE manager arrested on a road in Sorsogon just happened to have mixed up with them one authentic Gasul tank that belonged to Petron.

The only point left is the question of the liability of the stockholders and members of the board of directors of Bicol Gas with respect to the charge of unlawfully filling up a steel cylinder or tank that belonged to Petron. The Court of Appeals ruled that they should be charged along with the Bicol Gas employees who were pointed to as directly involved in overt acts constituting the offense.

Bicol Gas is a corporation. As such, it is an entity separate and distinct from the persons of its officers, directors,

and stockholders. It has been held, however, that corporate officers or employees, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.[15]

Jose claimed in his affidavit that, when he negotiated the swapping of captured cylinders with Bicol Gas, its manager, petitioner Audie Llona, claimed that he would be consulting with the owners of Bicol Gas about it. Subsequently, Bicol Gas declined the offer to swap cylinders for the reason that the owners wanted to send their captured cylinders to Batangas. The Court of Appeals seized on this as evidence that the employees of Bicol Gas acted under the direct orders of its owners and that "the owners of Bicol Gas have full control of the operations of the business." [16]

The "owners" of a corporate organization are its stockholders and they are to be distinguished from its directors and officers. The petitioners here, with the exception of Audie Llona, are being charged in their capacities as stockholders of Bicol Gas. But the Court of Appeals forgets that in a corporation, the management of its business is generally vested in its board of directors, not its stockholders.[17] Stockholders are basically investors in a corporation. They do not have a hand in running the day-to-day business operations of the corporation unless they are at the same time directors or officers of the corporation. Before a stockholder may be held criminally liable for acts committed by the corporation, therefore, it must be shown that he had knowledge of the criminal act committed in the name of the corporation and that he took part in the same or gave his consent to its commission, whether by action or inaction.

The finding of the Court of Appeals that the employees "could not have committed the crimes without the consent, [abetment], permission, or participation of the owners of Bicol Gas" [18] is a sweeping speculation especially since, as demonstrated above, what was involved was just one Petron Gasul tank found in a truck filled with Bicol Gas tanks. Although the KPE manager heard petitioner Llona say that he was going to consult the owners of Bicol Gas regarding the offer to swap additional captured cylinders, no indication was given as to which Bicol Gas stockholders Llona consulted. It would be unfair to charge all the stockholders involved, some of whom were proved to be minors.[19] No evidence was presented establishing the names of the stockholders who were charged with running the operations of Bicol Gas. The complaint even failed to allege who among the stockholders sat in the board of directors of the company or served as its officers.

The Court of Appeals of course specifically mentioned petitioner stockholder Manuel C. Espiritu, Jr. as the registered owner of the truck that the KPE manager brought to the police for investigation because that truck carried a tank of Petron Gasul. But the act that R.A. 623 punishes is the unlawful filling up of registered tanks of another. It does not punish the act of transporting such tanks. And the complaint did not allege that the truck owner connived with those responsible for filling up that Gasul tank with Bicol Gas LPG.

WHEREFORE, the Court REVERSES and SETS ASIDE the Decision of the Court of Appeals in CA-G.R. SP 87711 dated October 17, 2005 as well as its Resolution dated January 6, 2006, the Resolutions of the Secretary of Justice dated March 11, 2004 and August 31, 2004, and the Order of the Office of the Regional State Prosecutor, Region V, dated February 19, 2003. The Court REINSTATES the Resolution of the Office of the Provincial Prosecutor of Sorsogon in I.S. 2001-9231 (inadvertently referred in the Resolution itself as I.S. 2001-9234), dated February 26, 2002. The names of petitioners Manuel C. Espiritu, Jr., Freida F. Espiritu, Carlo F. Espiritu, Rafael F. Espiritu, Rolando M. Mirabuna, Hermilyn A. Mirabuna, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, Ken Ryan A. Mirabuna, Juanito P. De Castro, Geronima A. Almonite and Manuel C. Dee are ORDERED excluded from the charge.

SO ORDERED.

Carpio, Leonardo-De Castro, Brion, and Del Castillo, JJ., concur.

[1] The LPG cylinders and the trademark "Gasul" are registered under the name of Petron in the Intellectual Property Office under Registration Nos. 142, 147, 57945 and 61920. CA rollo, pp. 52-57.

[2] As shown by a dealership agreement. Id. at 60-71.

[3] Docketed as I.S. 2001-9231 but was inadvertently referred to in subsequent documents and proceedings as I.S. 2001-9234.

[4] Docketed as CA-G.R. SP 87711.

[5] CA rollo, pp. 371-399. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin (now a member of this Court).

[6] Under Rule 45 of the Rules of Court.

[7] Cavile v. Heirs of Cavile, 448 Phil. 302, 311 (2003); MC Engineering, Inc. v. National Labor Relations Commission, 412 Phil. 614, 622-623 (2001).

[8] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 412.

[9] CA rollo, p. 43.

[10] See Toyota Motor Phils. Corp. Workers Association v. National Labor Relations Commission, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 199.

[11] Rollo, p. 54.

[12] Sec. 1. Persons engaged or licensed to engage in the manufacture, bottling, or selling of soda water, mineral or aerated waters, cider, milk, cream or other lawful beverages in bottles, boxes, casks, kegs, or barrels, and other similar containers, or in the manufacture, compressing or selling of gases such as oxygen, acetylene, nitrogen, carbon dioxide, ammonia, hydrogen, chloride, helium, sulphur dioxide, butane, propane, freon, methyl chloride or similar gases contained in steel cylinders, tanks, flasks, accumulators or similar containers, with their names or the names of their principals of products, or other marks of ownership stamped or marked thereon, may register with the Philippines Patent Office a description of the names or marks, and the purpose for which the containers so marked are used by them, under the same conditions, rules, and regulations, made applicable by law or regulation to the issuance of trademarks.

Sec. 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller, who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators, or other similar containers so marked or stamped, for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not to use the same for drinking vessels or glasses or drain pipes, foundation pipes, for any other purpose than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of not more than one thousand pesos or imprisonment of not more than one year or both.

[13] Sec. 170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos

(P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

[14] McDonald's Corporation v. L.C. Big Mak Burger, Inc., 480 Phil. 402, 439 (2004).

[15] Ching v. Secretary of Justice, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 635-636.

[16] CA rollo, pp. 396-397.

[17] Section 23, P.D. 902-A.

[18] CA rollo, p. 397.

[19] As shown by certified true copies of birth certificates of Carlo F. Espiritu, Rafael F. Espiritu, Kim Roland A. Mirabuna, Kaye Ann A. Mirabuna, and Ken Ryan A. Mirabuna. Rollo, pp. 492-496.

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