

UNILEVER PHILIPPINES, INC., PETITIONER, VS. MICHAEL TAN A.K.A. PAUL D. TAN, RESPONDENT.*G.R. No. 179367. January 29, 2014*

Ponente: BRION, J.

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Before us is a petition for review on certiorari[1] filed by Unilever Philippines, Inc. (petitioner), assailing the decision[2] dated June 18, 2007 and the resolution[3] dated August 16, 2007 of the Court of Appeals (CA) in CA G.R. SP No. 87000. These CA rulings dismissed the petitioner's petition for certiorari and mandamus for lack of merit.

The Factual Antecedents

The records show that on January 17, 2002, agents of the National Bureau of Investigation (NBI) applied for the issuance of search warrants for the search of a warehouse located on Camia Street, Marikina City, and of an office located on the 3rd floor of Probest International Trading Building, Katipunan Street, Concepcion, Marikina City, allegedly owned by Michael Tan a.k.a. Paul D. Tan (respondent). The application alleged that the respondent had in his possession counterfeit shampoo products which were being sold, retailed, distributed, dealt with or intended to be disposed of, in violation of Section 168, in relation with Section 170, of Republic Act (R.A.) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On the same date, Judge Antonio M. Eugenio, Jr. of the Regional Trial Court of Manila, Branch 1, granted the application and issued Search Warrant Nos. 02-2606 and 02-2607. Armed with the search warrants, the NBI searched the premises and, in the course of the search, seized the following items:

(A) From [the respondent's] office:

- (a) 192 sachets of Creamsilk Hair Conditioner (White);
- (b) 156 sachets of Creamsilk Hair Conditioner (Blue);
- (c) 158 sachets of Creamsilk Hair Conditioner (Green);
- (d) 204 sachets of Creamsilk Hair Conditioner (Black);
- (e) 192 sachets of Vaseline Amino Collagen Shampoo;
- (f) 192 sachets of Sunsilk Nutrient Shampoo (Pink);
- (g) 144 sachets of Sunsilk Nutrient Shampoo (Blue);
- (h) 136 sachets of Sunsilk Nutrient Shampoo (Orange);
- (i) 144 sachets of Sunsilk Nutrient Shampoo (Green); and
- (j) 1 box of assorted commercial documents.

(B) From [the respondent's] warehouse[.]:

- (a) 372 boxes each containing six (6) cases of Sunsilk Nutrient Shampoo; and
- (b) 481 boxes each containing six (6) cases Creamsilk Hair Conditioner.[4]

The NBI thereafter filed with the Department of Justice (DOJ) a complaint against the respondent for violation of

R.A. No. 8293, specifically Section 168 (unfair competition), in relation with Section 170, docketed as I.S. No. 2002-667.

In his counter-affidavit, the respondent claimed that he is "Paul D. Tan," and not "Michael Tan" as alluded in the complaint; he is engaged in the business of selling leather goods and raw materials for making leather products, and he conducts his business under the name "Probest International Trading," registered with the Department of Trade and Industry; he is not engaged in the sale of counterfeit Unilever shampoo products; the sachets of Unilever shampoos seized from his office in Probest International Trading Building are genuine shampoo products which they use for personal consumption; he does not own and does not operate the warehouse located on Camia Street, Marikina City, where a substantial number of alleged counterfeit Unilever shampoo products were found; and he did not violate R.A. No. 8293 because there is no prima facie evidence that he committed the offense charged.

Rulings of the DOJ

On December 18, 2002, State Prosecutor Melvin J. Abad issued a resolution[5] dismissing the criminal complaint on the ground of insufficiency of evidence. To quote:

After a thorough evaluation of the evidence, we find no sufficient evidence so as to warrant a finding of probable cause to indict respondent Paul D. Tan (not Michael Tan) for violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293.

xxxx

WHEREFORE, it is respectfully recommended that the instant complaint for Violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293 be DISMISSED for insufficiency of evidence.[6]

The State Prosecutor found that the petitioner failed to show the respondent's actual and direct participation in the offense charged. While the Certificate of Registration of Probest International Trading shows that a certain "Paul D. Tan" is the registered owner and proprietor of the office, there is no showing that he is also the registered owner of the warehouse where the alleged counterfeit Unilever shampoo products were found. There is also no evidence to support the claim that the respondent was engaged in the sale of counterfeit products other than the self-serving claim of the petitioner's representatives. Lastly, the State Prosecutor found that the pieces of evidence adduced against the respondent, e.g. alleged counterfeit Unilever shampoo products, by themselves, are not sufficient to support a finding of probable cause that he is engaged in unfair competition.

The motion for reconsideration that followed was denied in a resolution[7] dated June 5, 2003.

On September 9, 2003, the petitioner filed a petition for review with the DOJ,[8] which the Acting Secretary of Justice, Merceditas N. Gutierrez, dismissed in her March 16, 2004 resolution. In the resolution, the Acting Secretary of Justice affirmed the State Prosecutor's finding of lack of probable cause.

The petitioner thereafter sought, but failed, to secure a reconsideration.

On October 19, 2004, the petitioner filed with the CA a petition for certiorari under Rule 65 of the Rules of Court, imputing grave abuse of discretion on the Acting Secretary of Justice, et al., in deciding the case in the respondent's favor.

The Rulings of the CA

The CA, in a decision dated June 18, 2007, dismissed the petition on the ground that the petitioner failed to establish facts and circumstances that would constitute acts of unfair competition under R.A. No. 8293. The CA took into account the insufficiency of evidence that would link the respondent to the offense charged. It also ruled

that the Acting Secretary of Justice did not gravely abuse her discretion when she affirmed the State Prosecutor's resolution dismissing the petitioner's complaint for insufficiency of evidence to establish probable cause.

The petitioner sought reconsideration of the aforementioned decision rendered by the CA but its motion was denied in a resolution dated August 16, 2007.

The present Rule 45 petition questions the CA's June 18, 2007 decision and August 16, 2007 resolution.

The Petition

The petitioner contends that the CA erred in dismissing its petition for certiorari and in affirming the DOJ's rulings. It argues that while it may be possible that the respondent is not the owner of the warehouse, the overwhelming pieces of evidence nonetheless prove that he is the owner of the counterfeit shampoo products found therein. The petitioner also maintains that the voluminous counterfeit shampoo products seized from the respondent are more than sufficient evidence to indict him for unfair competition.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in upholding the Acting Secretary of Justice's decision dismissing the information against the respondent. The resolution of this issue requires a determination of the existence of probable cause in order to indict the respondent of unfair competition.

The Court's Ruling

We find merit in the petition.

Determination of Probable Cause

Lies Within the Competence of the
Public Prosecutor

The determination of probable cause for purposes of filing of information in court is essentially an executive function that is lodged, at the first instance, with the public prosecutor and, ultimately, to the Secretary of Justice.[9] The prosecutor and the Secretary of Justice have wide latitude of discretion in the conduct of preliminary investigation;[10] and their findings with respect to the existence or non-existence of probable cause are generally not subject to review by the Court.

Consistent with this rule, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause.[11] Courts can neither override their determination nor substitute their own judgment for that of the latter. They cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.[12]

Nevertheless, this policy of non-interference is not without exception.

The Constitution itself allows (and even directs) court action where executive discretion has been gravely abused.[13] In other words, the court may intervene in the executive determination of probable cause, review the findings and conclusions, and ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[14]

Courts Cannot Reverse the Secretary
of Justice's Findings Except in
Clear Cases of Grave Abuse of Discretion

The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and

gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[15] In *Elma v. Jacobi*,^[16] we said that:

This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. [emphasis supplied]

An examination of the decisions of the State Prosecutor and of the DOJ shows that the complaint's dismissal was anchored on the insufficiency of evidence to establish the respondent's direct, personal or actual participation in the offense charged. As the State Prosecutor found (and affirmed by the DOJ), the petitioner failed to prove the ownership of the warehouse where counterfeit shampoo products were found. This finding led to the conclusion that there was insufficient basis for an indictment for unfair competition as the petitioner failed to sufficiently prove that the respondent was the owner or manufacturer of the counterfeit shampoo products found in the warehouse.

A careful analysis of the lower courts' rulings and the records, however, reveals that substantial facts and circumstances that could affect the result of the case have been overlooked. While the ownership of the warehouse on Camia Street, Marikina City, was not proven, sufficient evidence to prove the existence of probable cause nevertheless exists. These pieces of evidence consist of: (1) the result of the NBI agents' search of the office and of the warehouse; (2) Elmer Cadano's complaint-affidavit; (3) Rene Baltazar's affidavit; (4) Unilever's representatives' claim that all the laborers present at the warehouse confirmed that it was operated by Probest International Trading; (5) other object evidence found and seized at the respondent's office and warehouse; (6) the NBI operatives' Joint Affidavit; (7) the subsequent seizure of counterfeit Unilever products from the respondent's warehouse in Antipolo City; and (8) other photographs and documents relative to the counterfeit products.

These pieces of evidence, to our mind, are sufficient to form a reasonable ground to believe that the crime of unfair competition was committed and that the respondent was its author.

First, a total of 1,238 assorted counterfeit Unilever products were found at, and seized from, the respondent's office located on the 3rd floor of Probest International Trading Building, Katipunan Street, Concepcion, Marikina City. The huge volume and the location where these shampoos were found (inside a box under a pile of other boxes located inside the respondent's office) belie the respondent's claim of personal consumption. Human experience and common sense dictate that shampoo products (intended for personal consumption) will ordinarily and logically be found inside the house, specifically, inside the bathroom or in a private room, not in the consumer's office.

Second, the failure to prove that the respondent is the owner of the warehouse located on Camia St., Marikina City, does not automatically free him from liability. Proof of the warehouse's ownership is not crucial to the finding of probable cause. In fact, ownership of the establishment where the counterfeit products were found is not even an element of unfair competition. While the respondent may not be its owner, this does not foreclose the possibility that he was the manufacturer or distributor of the counterfeit shampoo products. Needless to say, what is material to a finding of probable cause is the commission of acts constituting unfair competition, the presence

of all its elements and the reasonable belief, based on evidence, that the respondent had committed it.

Third, the result of the NBI's search conducted on January 17, 2002 (yielding to several boxes of counterfeit shampoo sachets) and the NBI's Joint Affidavits in support of the application for search warrants serve as corroborating evidence. The striking similarities[17] between the genuine Unilever shampoo sachets and the counterfeit sachets seized by the NBI support the belief that the respondent had been engaged in dealing, manufacturing, selling and distributing counterfeit Unilever shampoo products.

Fourth, there were also allegations that the respondent's laborers and warehousemen who were present during the search had confirmed that the warehouse was being maintained and operated by Probest International Trading. The NBI investigators who served the search warrant also claimed that several persons, introducing themselves as the respondent's relatives and friends, had requested them to seize only a portion of the counterfeit shampoo products. Whether these claims are admissible in evidence or whether they should be excluded as hearsay are matters that should be determined not in a preliminary investigation, but in a full-blown trial.

In *Lee v. KBC Bank N.V.*, [18] citing *Andres v. Justice Secretary Cuevas*, [19] we held that:

[A preliminary investigation] is not the occasion for the full and exhaustive display of [the prosecution's] evidence. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.

We also emphasized in that case that:

In fine, the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[20]

Finally, the subsequent events that occurred – after the filing of the petitioner's complaint and the institution of its appeal to the CA – are too significant to be ignored.

In its motion to reconsider the CA's decision, [21] the petitioner pointed to the reports it received sometime in October 2005 that the respondent had resumed its operations involving counterfeit Unilever products. Notably, these significant reports, albeit supported by the subsequent seizure of large quantity of counterfeit Unilever shampoos [22] in the respondent's warehouse [23] (located at No. 13 First Street Corner Sevilla Avenue, Virginia Summerville Subdivision, Barangay Mambagan, Antipolo City), were ignored by the CA. We, however, find that this development is significant, although they were not part of the mass of evidence considered below. Even without them and based solely on the evidentiary materials available below, we conclude that sufficient grounds exist to indict the respondent for unfair competition.

Determination of Probable Cause
Merely Requires Probability of Guilt
or Reasonable Ground for Belief

The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. [24] It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. [25] What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. [26] Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.

It is also important to stress that the determination of probable cause does not depend on the validity or merits of a

party's accusation or defense, or on the admissibility or veracity of testimonies presented. As previously discussed, these matters are better ventilated during the trial proper of the case.[27] As held in *Metropolitan Bank & Trust Company v. Gonzales*:[28]

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. xxx The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Guided by this ruling, we find that the CA gravely erred in sustaining the Acting Secretary of Justice's finding that there was no probable cause to indict the respondent for unfair competition. The dismissal of the complaint, despite ample evidence to support a finding of probable cause, clearly constitutes grave error that warrants judicial intervention and correction.

WHEREFORE, in view of the foregoing, judgment is hereby rendered GRANTING the petition filed by Unilever Philippines, Inc. The appealed decision dated June 18, 2007 and the resolution dated August 16, 2007 of the Court of Appeals are ANNULLED AND SET ASIDE.

The State Prosecutor is hereby ORDERED to file the appropriate Information against Michael Tan a.k.a. Paul D. Tan.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Under Rule 45 of the Rules of Court; rollo, pp. 3-44.

[2] Id. at 49-58; penned by Associate Justice Sesonando E. Villon, and concurred in by Associate Justices Renato C. Dacudao and Noel G. Tijam.

[3] Id. at 59.

[4] Id. at 50-51.

[5] Id. at 174-179.

[6] Id. at 176-178.

[7] Id. at 180-181.

[8] Id. at 140-173.

[9] *Baron A. Villanueva, et al. v. Edna R. Caparas*, G.R. No. 190969, January 30, 2013, 689 SCRA 679, 685.

[10] *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 199.

[11] *Ibid.*

[12] *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 56-57.

[13] Section 1, Article VIII of the Constitution states:

"Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

[14] Callo-Claridad v. Esteban, *supra* note 10, at 200.

[15] First Women's Credit Corp. v. Hon. Perez, 524 Phil. 305, 309 (2006).

[16] *Supra* note 12, at 57.

[17] Rollo, pp. 76-78.

[18] G.R. No. 164673, January 15, 2010, 610 SCRA 117, 129; *emphasis supplied*.

[19] 499 Phil. 36 (2005).

[20] *Ibid*; *emphasis ours*.

[21] CA rollo, pp. 439-458.

[22] *Id.* at 466-467.

[23] Rollo, p. 280.

[24] Galario v. Office of the Ombudsman (Mindanao), 554 Phil. 86, 101 (2007).

[25] Casing v. Ombudsman, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 509.

[26] Ricaforte v. Jurado, 559 Phil. 97, 109 (2007).

[27] Lee v. KBC Bank N.V., *supra* note 18, at 129.

[28] G.R. No. 180165, April 7, 2009, 584 SCRA 631, 640-641; *emphasis ours*.

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