

PHILIP S. YU, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE PRESIDING JUDGE, RTC OF MANILA, BRANCH XXXIV (34) AND UNISIA MERCHANDISING CO., INC., RESPONDENTS.

G.R. No. 86683. January 21, 1993

Ponente: MELO, J.

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MELO, J.:

Petitioner, the exclusive distributor of the House of Mayfair wallcovering products in the Philippines, cried foul when his former dealer of the same goods, herein private respondent, purchased the merchandise from the House of Mayfair in England through FNF Trading in West Germany and sold said merchandise in the Philippines. Both the court of origin and the appellate court rejected petitioner's thesis that private respondent was engaged in a sinister form of unfair competition within the context of Article 28 of the New Civil Code (pp. 23 and 64, Rollo). Hence, the petition at bar.

There is no dispute that petitioner has had an exclusive sales agency agreement with the House of Mayfair since 1987 to promote and procure orders for Mayfair wallcovering products from customers in the Philippines (Annex "B". Petition; p. 30. Rollo). Even as petitioner was such exclusive distributor, private respondent, which was then petitioner's dealer imported the same goods via the FNF Trading which eventually sold the merchandise in the domestic market (TSN, September 20, 1988, p. 9; p. 117, Rollo). In the suit for injunction which petitioner filed before the Regional Trial Court of the National Capital Judicial Region stationed at Manila, petitioner pressed the idea that he was practically by-passed and that private respondent acted in concert with the FNF Trading in misleading Mayfair into believing that the goods ordered by the trading firm were intended for shipment to Nigeria although they were actually shipped to and sold in the Philippines (Paragraph 5. Complaint; p. 34, Rollo). Private respondent professed ignorance of the exclusive contract in favor of petitioner. Even then, private respondent responded by asserting that petitioner's understanding with Mayfair is binding only between the parties thereto (Paragraph 5. Answer; p. 50, Rollo).

In the course of hearing the arguments for and against the issuance of the requested writ of preliminary injunction, petitioner impressed before the lower court that he is seeking to enjoin the sale and distribution by private respondent of the same goods in the market (TSN, September 20, 1988, p. 35; p. 142, Rollo) but the Honorable Cesar V. Alejandria, Presiding Judge of Branch 34 was unperturbed, thusly:

"Resolving plaintiff's motion embodied in the complaint for the issuance of a writ of preliminary injunction after hearing but without prejudging the merits of the case, and finding from the evidences adduced by the plaintiff, that the terms and conditions of the agency agreement, Exhibit "A-inj." between the plaintiff and The House of Mayfair of England for the exclusive distributorship by the plaintiff of the latter's goods appertain to them; that there is no privity of contract between the plaintiff and the defendant; that the controversy in this case arose from a breach of contract by the FNF Trading of Germany, for having shipped goods it had purchased from The House of Mayfair to the Philippines; that as shown in Exh. "J-inj." the House

of Mayfair was demanding payment of 4,500.00 from the FNF Trading for restitution of plaintiff's alleged loss on account of the shipment of the goods in question here in the Philippines and now in the possession of the defendant; it appears to the Court that to restrain the defendant from selling the goods it has ordered from the FNF Trading of Germany, would be without legal justification.

WHEREFORE, the motion for the issuance of a writ of preliminary injunction to restrain the defendant from selling the goods it has ordered from the FNF Trading of Germany is hereby DENIED." (p. 64, Rollo.)

The indifference of the trial court towards petitioner's supplication occasioned the filing of a petition for review on certiorari with the Court of Appeals but Justice Ordoñez-Benitez, with whom Justices Bellosillo and Kalalo concurred, reacted in the same nonchalant fashion. According to the appellate court, petitioner was not able to demonstrate the unequivocal right which he sought to protect and that private respondent is a complete stranger vis-a-vis the covenant between petitioner and Mayfair. Apart from these considerations, the reviewing authority noted that petitioner could be fully compensated for the prejudice he suffered judging from the tenor of Mayfair's correspondence to FNF Trading wherein Mayfair took the cudgels for petitioner in seeking compensation for the latter's loss as a consequence of private respondent's scheme (p. 79, Rollo; pp. 23-29, Rollo).

In the petition at hand, petitioner anchors his plea for redress on his perception that private respondent has distributed and continues to sell Mayfair covering products in contravention of petitioner's exclusive right conferred by the covenant with the House of Mayfair.

On March 13, 1989, a temporary restraining order was issued to last until further notice from this Court directed against private respondent (p. 188, Rollo). Notwithstanding such proscription, private respondent persisted in the distribution and sale (p. 208; 228-229, Rollo), triggering petitioner's motion to cite private respondent's manager in contempt of court (p. 223, Rollo). Considering that private respondent's manager, Frank Sia, admitted the acts complained of, a fine of P500.00 was imposed on him but he failed to pay the same within the five-day period provided in Our Resolution of June 21, 1989 (p. 236, Rollo).

Did respondent appellate court correctly agree with the lower court in disallowing the writ solicited by herein petitioner?

That the exclusive sales contract which links petitioner and the House of Mayfair is solely the concern of the privies thereto and cannot thus extend its chain as to bind private respondent herein is. We believe, beside the point. Verily, injunction is the appropriate remedy to prevent a wrongful interference with contracts by strangers to such contracts where the legal remedy is insufficient and the resulting injury is irreparable (*Gilchrist vs. Cuddy*, 29 Phil. 542 [1915]; 4-A Padilla, Civil Code Annotated, 1988 Ed. p. 90). The liability of private respondent, if any, does not emanate from the four corners of the contract for undoubtedly. *Unisia Merchandising Co., Inc.* is not a party thereto but its accountability is "an independent act generative of civil liability" (*Daywalt vs. Corporacion de PP. Agustinos Recoletos*, 39 Phil. 587 [1919]; 4 Paras, Civil Code of the Philippines Annotated, 1981 10th Ed., p. 439; 4 Tolentino, Commentaries and Jurisprudence on the Civil Code, 1986 Ed., p. 439). These observations, however, do not in the least convey the message that We have placed the cart ahead of the horse, so to speak, by pronouncing private respondent's liability at this stage in view of the pendency of the main suit for injunction below. We are simply rectifying certain misperceptions entertained by the appellate court as regards the feasibility of requesting a preliminary injunction to enjoin a stranger to an agreement.

To Our mind, the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect (30 Am. Jur. Section 19, pp. 71-72; *Jurado*, Comments and Jurisprudence on Obligations and Contracts, 1983 8th Rev. Ed., p. 336) which may otherwise not be diminished, nay, rendered illusory by the expedient act of utilizing or interposing a person or firm to obtain

goods from the supplier to defeat the very purpose for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor (43 C.J.S. 597).

Another circumstance which respondent court overlooked was petitioner's suggestion, which was not disputed by herein private respondent in its comment, that the House of Mayfair in England was duped into believing that the goods ordered through the FNF Trading were to be shipped to Nigeria only, but the goods were actually sent to and sold in the Philip-pines. A ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other contracting party to relief therefrom (Article 1314, New Civil Code). The breach caused by private respondent was even aggravated by the consequent diversion of trade from the business of petitioner to that of private respondent caused by the latter's species of unfair competition as demonstrated no less by the sales effected inspite of this Court's restraining order. This brings Us to the irreparable mischief which respondent court misappreciated when it refused to grant the relief simply because of the observation that peti-tioner can be fully compensated for the damage. A contrario, the injury is irreparable where it is continuous and repeated since from its constant and frequent recurrence, no fair and reasonable redress can be had therefor by petitioner insofar as his goodwill and business reputation as sole distributor are concerned. Withal, to expect petitioner to file a complaint for every sale effected by private respondent will certainly court multiplicity of suits (3 Francisco, Revised Rules of Court ,1985 Edition, p. 261).

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals dated January 13, 1989 in CA-G.R. SP No. 16019 and the Order dated October 16, 1988 issued by the magistrate at the court of origin are hereby REVERSED and SET ASIDE. Let this case be remanded to the court of origin for issuance of a writ of preliminary injunction upon petitioner's posting of a bond in the sum of Fifty Thousand (P50,000.00) Pesos to be approved by said court, to remain effective during the trial on the merits, until final determination of the case. The manager of private respondent, Frank Sia, is hereby ordered to pay to the Clerk of Court within five (5) days from notice hereof the fine of P500.00 as previously imposed on him, with a warning that failure to do so will be dealt with more severely.

Upon issuance of the writ of preliminary injunction the restraining order issued on March 13, 1989 by this Court shall be deemed automatically lifted.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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