

**LEONOR A. OLALIA AND HER HUSBAND JESUS G. OLALIA,
PETITIONERS, VS. LOLITA O. HIZON, REPRESENTED BY HER
ATTY.-IN-FACT, ATTY. ABRAHAM P. GOROSPE, RESPONDENTS.**

G.R. No. 87913, May 06, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

This case involves a conflict between two sisters-in-law who are competitors in the meat business. Both sell tocino, longaniza, chicharon and corned beef, one under the name of Pampanga's Best and the other under the name of Pampanga's Pride.

On September 19, 1988, private respondent Lolita O. Hizon filed a complaint for unfair competition with damages and prayer for preliminary injunction against her brother's wife, petitioner Leonor A. Olalia. Hizon claimed that she had been using the business name Pampanga's Best since 1974 and that her goodwill had been impaired because of the petitioner's use of the name Pampanga's Pride for her own products.

After issuing a temporary restraining order, which he extended twice, Judge Eli G. C. Natividad of the Regional Trial Court of Pampanga, following several hearings, granted the application for the issuance of a preliminary injunction. His order dated November 28, 1988, reads as follows:

A verified complaint having been filed by plaintiff Lolita O. Hizon, thru her Attorney-in-Fact, Atty. Abraham P. Gorospe, in the above-entitled case, stating among other things, that the defendants sometime in June 1988, engaged in the business of manufacturing and processing of meat products and used as tradename/trademark "PAMPANGA'S PRIDE-TOCINO, LONGANIZA, CHITCHARON AND CORNED BEEF," which tradename/trademark almost similar to that of plaintiff, in violation of the rights of plaintiff who has been using a registered name "PAMPANGA'S BEST - TOCINO, LONGANIZA AND CHITCHARON" long before the year 1974; and despite the objection of plaintiff, defendants continued and still continue to commit the acts complained of and during the present litigation would work injustice to plaintiff, this Court, after notifying defendants and hearings conducted, and after a bond in the amount of P50,000.00, as fixed by this Court, have been duly filed by the plaintiff, this Court hereby orders defendants Leonor A. Olalia and her husband Jesus G. Olalia and/or any other persons acting under their command, and/or for in their behalves, to desist and refrain from using the billboards, wrappers, and other promotional paraphernalias with the tradename/trademark "PAMPANGA'S PRIDE – TOCINO, LONGANIZA, CHITCHARON AND CORNED BEEF," pending the termination of this litigation, and/or unless a contrary Order is issued by this Court.

On December 6, 1988, the petitioner, without filing a motion for reconsideration, immediately went to the Court of Appeals on certiorari and asked that the order be set aside. The respondent court issued a temporary restraining order, then a preliminary injunction. Ultimately, the petition was denied on the principal ground that the trial court had not committed grave abuse of discretion in issuing the questioned order.

The appellate court[1] declared that the conclusions reached by the trial court were, if at all, only errors of

judgment that were not correctible in a petition for certiorari. Moreover, the conclusions were reached by the trial judge according to his own perceptions based on a study of the evidence submitted to him at the hearings on the motion, including the testimony of witnesses on the alleged similarity of the trade names and its effect on the private respondent's business. There was no arbitrariness.

The decision of the respondent court is now before us in this petition for certiorari, where it is contended that -

- The Honorable Court of Appeals erred in ruling that respondent judge did not commit a grave abuse of discretion amounting to lack of jurisdiction in issuing the writ of preliminary injunction x x x considering that:
 - The elements of trademark infringement and unfair competition are clearly absent in this case.
 - Private respondent wholly failed to demonstrate any irreparable damage to justify issuance of the writ of preliminary injunction considering that her sales had even increased.
 - Private respondent came to court with "unclean hands" since it was she who changed her billboards to simulate or copy the professionally-designed features of petitioners' billboards in order to lay the basis for her baseless suit.
 - Balancing of hardships favors the denial of the writ of preliminary injunction applied for by private respondent as she does not, in contrast to petitioners, stand to suffer damages so grave and irreparable as to justify the issuance of a writ of preliminary injunction.
- The Court of Appeals erred in noting that petitioners should have filed a motion for reconsideration of the decision of the lower court.

On May 15, 1989, we issued a temporary restraining order against the implementation of the challenged decision.

A preliminary injunction is an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act.[2] As the term itself suggests, it is merely temporary, subject to the final disposition of the principal action. The justification for the preliminary injunction is urgency. It is based on evidence tending to show that the action complained of must be stayed lest the movant suffer irreparable injury or the final judgment granting the relief sought become ineffectual. Necessarily, that evidence need only be a "sampling," as it were, and intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. The evidence submitted at the hearing on the motion for the preliminary injunction is not conclusive of the principal action, which has yet to be decided.

The only issue we need decide now is whether, on the basis of the evidence submitted at the hearings on the motion for preliminary injunction, the Order of November 28, 1988, was correctly issued. We deal here only with the propriety of the preliminary injunction, not with the merits of the case still pending with the trial court.

A careful reading of that order suggests that it was issued only on the strength of the allegations in the complaint and the P50,000.00 bond filed by the plaintiff. That is not enough, of course. We note, however, that it is also indicated therein that it was issued "after notifying defendants and hearings conducted." We may therefore presume that the trial judge regularly performed his functions and actually considered the evidence presented at the hearings before issuing his order.

We agree with the respondent court that in a petition for certiorari, the only allowable ground is grave abuse of discretion amounting to lack of jurisdiction. Alleged errors of fact or law committed by the court a quo do not involve its jurisdiction and may therefore be corrected only in an ordinary appeal. The only exception is where such errors are shown to have been made with grave abuse of discretion or with such a capricious or whimsical exercise of its judgment "so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal

to perform the duty enjoined, or to act at all in contemplation of law." [3] In such a situation, the questioned judgment of the court a quo may be validly reviewed and reversed on certiorari as tainted with grave abuse of discretion resulting in loss of jurisdiction.

Examining the records, we find that the arguments of the parties concerning the nature of the action before the trial court are at best debatable at this point and require further discussion before a definite conclusion can be reached. This question is for the trial court to resolve in the first instance. Likewise, the submission that the private respondent has come to court with "unclean hands" requires an examination of the facts that do not appear to have been sufficiently ventilated at the hearing on the motion for preliminary injunction. The matter must therefore also be investigated further, again in the first instance, at the trial stage.

It is observed that in sustaining the trial judge, the respondent court assumed that the former had exercised his best judgment in concluding that there were "confusing similarities" between the two trade names. This conclusion was not pulled out of thin air. It was influenced, according to the respondent court, by such factors as "the sameness of the goods offered for sale under the two competing trademarks/tradenames (meat products like tocino, longanisa and chicharon), the close similarities in the respective sizes of the said goods, the group or class of the usual buyers of said goods, the use of the word "PAMPANGA" in both tradenames, the short distance between the vicinities of the business of petitioners and private respondent, the use by both of the same attractive color combination/scheme of red, green and yellow."

We note, however, that this finding was based on incomplete evidence. The appellate court was not being asked to rule finally on the claimed "confusing similarities" but only tentatively, to determine if the preliminary injunction had been properly issued. Its finding on the supposed infringement was therefore premature. Right or wrong, that finding is yet to be examined more fully when the principal action is set for trial on the merits and the parties complete their evidence in support of their respective positions.

The Court is not in a position at the present time to rule on such evidence, which is not yet at hand, and so will not pre-empt the trial court in the resolution of that question.

There is one important matter, however, that both the trial court and the respondent court have disregarded. This is the submission of the petitioner that the private respondent had not suffered business losses but in fact had even increased her sales during the period of the alleged unfair competition. Such profits were not denied at all by the private respondent; on the contrary, she expressly admitted them on cross-examination. Worse, the private respondent also could not give an idea of the reasonable profit she would have made were it not for the petitioner's supposed infringement and was unable to even only approximate her losses. In short, there was not enough evidence presented at the hearings to substantiate her claims of injury as a justification for the issuance of the preliminary injunction.

We believe we can rule on this question at this time without requiring further hearing.

While, to reiterate, the evidence to be submitted at the hearing on the motion for preliminary injunction need not be conclusive and complete, we find that the private respondent has not shown, at least tentatively, that she has been irreparably injured during the five-month period the petitioner was operating under the trade name of Pampanga's Pride. On this ground alone, we find that the preliminary injunction should not have been issued by the trial court. It bears repeating that as a preliminary injunction is intended to prevent irreparable injury to the plaintiff, that possibility should be clearly established, if only provisionally, to justify the restraint of the act complained against. No such injury has been shown by the private respondent. Consequently, we must conclude that the issuance of the preliminary injunction in this case, being utterly without basis, was tainted with grave abuse of discretion that we can correct on certiorari.

The following observation of this Court in *Golding v. Balatbat*[4] is applicable to the case before us:

The very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.[5]

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.

Maintenance of the preliminary injunction issued by the trial court would prevent the petitioner from using her accustomed business name and require her to operate in the market under a different name unfamiliar to her customers. This would be unfair under the circumstances. As we have held that the private respondent has not sufficiently shown that she is entitled to this remedy, it is just and equitable that it be lifted until the dispute between the parties is thoroughly threshed out and finally resolved after trial on the merits.

Two more points must be made before we conclude.

Strictly speaking, the petitioners should have first filed a motion for reconsideration with the trial court before filing their petition for certiorari with the respondent court, as that court correctly held. Curiously, the petitioner did not argue this in her memorandum or her other pleadings although she raised it as an error in her petition. It would have been in vain in any case. Her apprehensions of the "futility" of a reconsideration because of the "partiality" of the trial judge are not acceptable and do not excuse her deviation from the prescribed procedure. Only the importance of the issues did.

We also note with disapproval the extension by Judge Natividad of the temporary restraining order dated September 22, 1988, for no less than two times, to cover a total of 60 days. This was a clear violation of B.P. Blg. 224 limiting such order to twenty days only and of the decisions of this Court annulling such extensions.[6] Judge Natividad is hereby reprimanded for violating these strictures. Whether he did so out of ignorance of the law or out of willful disobedience, neither of which can be condoned, he is warned that repetition of this irregularity will be dealt with more severely.

We find that the Order dated November 28, 1988, was invalidly issued by the Regional Trial Court and that it should not have been sustained by the Court of Appeals.

WHEREFORE, the challenged decision of the Court of Appeals is MODIFIED and the preliminary injunction issued by the trial court is LIFTED. The Regional Trial Court of San Fernando, Pampanga, is DIRECTED to proceed to the trial on the merits of Civil Case No. 8243 and to decide the same with proper dispatch.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Lorna Lombos-De La Fuente, J., ponente, Martinez and Pe, JJ., concurring.

[2] Rule 58, Section 1, Revised Rules of Court; 43 C.J.S. 408.

[3] Filinvest Credit Corp. v. IAC, 166 SCRA 155; Litton Mills v. Galleon Trader, Inc., 163 SCRA 489; Producers Bank of the Phil. v. NLRC, 165 SCRA 281.

[4] 36 Phil. 941.

[5] Sales v. Securities & Exchange Commission, 169 SCRA 109; Buayan Cattle Co., Inc. v. Quintillan, 128 SCRA 276.

[6] Aquino v. Luntok, 184 SCRA 177; Golden Gate Realty Corp. v. IAC, 152 SCRA 684; Associated Labor Union v. Borromeo, 164 SCRA 99.

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