

MARK EDWARD P. ESCUETA
MICHAEL MAXIMO C. ELGAR
JOHN PAUL R. SERGIO
and JAYSON FERNANDEZ,
Opposers-Appellees,

Appeal No. 14-2010-0030

Inter Partes Case No. 14-2008-00254
Opposition to:
Application No. 14-2008-008018
Date Filed: 07 July 2008

-versus-

Trademark: RIVERMAYA

LIZZA G. NAKPIL,
Respondent-Applicant-Appellant,
x-----x

ORDER

LIZZA G. NAKPIL ("Appellant") filed on 10 March 2010 an "APPEAL MEMORANDUM" seeking the setting aside of Order No. 2010-214, dated 05 February 2010, issued by the Assistant Director of the Bureau of Legal Affairs ("Assistant Director"), the dispositive portion of which reads:

Considering that this Bureau has ahead), docketed Opposer's re-filed Opposition as IPC Case No. 14-2009-00247 and that Respondent-Applicant has already filed her Verified Answer thereto on 04 January 2010; and further, that the issues raised in the instant Motion are the same issues involved in IPC Case No. 14-2009-00247, the merits of Respondent-Applicant's arguments shall be taken into consideration in the final adjudication of IPC Case No. 14-2009-00247.

SO ORDERED.

Records show that on 18 August 2009, the Director of the Bureau of Legal Affairs ("Director") promulgated Decision No. 2009-103 in Inter Partes Case No. 142008-00254 which dismissed without prejudice the opposition of MARK EDWARD P. ESCUETA, MICHAEL MAXIMO C. ELGAR, JOHN PAUL R. SERGIO and JAYSON FERNANDEZ ("Appellees") to the registration of the mark "RIVERMAYA" in favor of the Appellant. Consequently, the Appellant filed on 10 November 2009 a "MOTION FOR DECLARATION OF FINALITY AND ENTRY OF JUDGMENT".

On 08 December 2009, the Bureau of Legal Affairs ("BLA") issued a letter signed by the Records Officer IV of the BLA and noted by the Director which states that the declaration of finality and entry of judgment cannot be issued because of a subsequent opposition filed by the Appellees against the registration of RIVERMAYA. The Appellant filed on 22 December 2009 an "URGENT MOTION FOR RECONSIDERATION" seeking the reversal of the "letter-resolution" issued by the BLA. On 05 February 2010, the Assistant Director issued the assailed Order No. 2010-214.

Pursuant to Office Order No. 197, Series of 2010, Mechanics for IPO-Mediation and Settlement Period, this case was referred to mediation. The parties were ordered to appear in the IPOPHL Mediation Office on 21 February 2011 to consider the possibility of settling the dispute.¹ On 06 June 2011, this Office received from the IPOPHL Arbitration and Mediation Center a copy of the "MEDIATOR'S REPORT" stating that the "parties refused mediation" and referring this case back to the Office of the Director General for further proceedings.

In this regard, Sections 1 and 5 (b) of the Uniform Rules on Appeal, as amended,² provide that:

Section 1. Title and Coverage. - These Rules shall be known as the "Uniform Rules on Appeal." These Rules shall cover decisions or final orders rendered by the

Director of the Documentation, Information and Technology Transfer Bureau (DITTB), the Director of the Bureau of Legal Affairs (BLA), the Director of the Bureau of Patents (BOP) and the Director of the Bureau of Trademarks (B01). Interlocutory orders, however, shall not be appealable to the Director General.

Section 5. Action on the Appeal Memorandum. - x x x

x x x

b) The appeal shall be dismissed outright on any3, of the following grounds:

1. the appeal is filed out of time;
2. the subject of the appeal is an interlocutory order, or is not a
3. decision or final order;
4. the appeal fee and other applicable fees are not paid within the reglementary period.

Thus, only the decision or a final order rendered by the Bureau Director may be appealed to the Director General. A final order has been defined as one, which disposes of the subject matter in its entirety or terminates a particular proceeding or action and leaves nothing else to be done but enforce by execution what has been determined by the court. On the other hand, an interlocutory order is one, which does not dispose of a case completely, but leaves something more to be adjudicated upon.³

In this instance, the assailed order of the Assistant Director is not a final order or a decision. The Assistant Director's order did not finally dispose the case nor adjudicates the rights of the parties. In fact, a scrutiny of this Order would show that the Assistant Director neither granted nor denied the Urgent Motion for Reconsideration filed by the Appellant but merely stated that "the merits of Respondent-Applicant's arguments shall be taken into consideration in the final adjudication of IPC No. 14-2009-00247". In one case, the Supreme Court of the Philippines ruled that:

Interlocutory orders are those that determine incidental matters which do not touch on the merits of the case or put an end to the proceedings. It is well-settled that a petition for certiorari under Rule 65, not Rule 45, is the proper remedy to question an improvident order granting execution pending appeal and thereby relieve the adverse party from the immediate effects thereof. The same principle applies to a stay of such execution.⁴

Accordingly, the Appellant's filing of the appeal from the Order of the Assistant Director is not the proper remedy.

Wherefore, premises considered, the appeal is hereby DISMISSED for the reasons discussed above.

SO ORDERED

November 10, 2011, Taguig City.

RICARDO R. BLANCAFLOR
Director General

FOOTNOTES:

1 Order dated 01 February, 2011.

2 Office Order No. 12, Series of 2009.

3 See Bañares II, et al vs. Balising, et al, G. R. No. 132624, 13 March 2000.

4 Diesel Construction Compare, Inc., vs. Jollibee Foods Corporation, G.R. No. 136805, 28 January, 2000.