

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

SANRIO COMPANY
LIMITED,

Petitioner,

- v e r s u s -

EDGAR C. LIM, doing
business as ORIGNAMURA
TRADING,

Respondent.

G.R. No. 168662

Promulgated: February 19, 2008

CORONA, J.:

This petition for review on certiorari^[1] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. CV No. 74660^[2] and its resolution^[3] denying reconsideration.

Petitioner Sanrio Company Limited, a Japanese corporation, owns the copyright of various animated characters such as "Hello Kitty," "Little Twin Stars," "My Melody," "Tuxedo Sam" and "Zashikibuta" among others.^[4] While it is not engaged in business in the Philippines, its products are sold locally by its exclusive distributor, Gift Gate Incorporated (GGI).^[5]

As such exclusive distributor, GGI entered into licensing agreements with JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation.^[6] These local entities were allowed to manufacture certain products (bearing petitioner's copyrighted animated characters) for the local market.

Sometime in 2001, due to the deluge of counterfeit Sanrio products, GGI asked IP Manila Associates (IPMA) to conduct a market research. The research's objective was to identify those factories, department stores and retail outlets manufacturing and/or selling fake Sanrio items.^[7] After conducting several test-buys in various commercial areas, IPMA confirmed that respondent's Orignamura Trading in Tutuban Center, Manila was selling imitations of petitioner's products.^[8]

Consequently, on May 29, 2000, IPMA agents Lea A. Carmona and Arnel P. Dausan executed a joint affidavit attesting to the aforementioned facts.^[9] IPMA forwarded the said affidavit to the National Bureau of Investigation (NBI) which thereafter filed an application for the issuance of a search warrant in the office of the Executive Judge of the Regional Trial Court of Manila.^[10]

After conducting the requisite searching inquiry, the executive judge issued a search warrant on May 30, 2000.^[11] On the same day, agents of the NBI searched the premises of Orignamura Trading. As a result thereof, they were able to seize various Sanrio products.^[12]

On April 4, 2002, petitioner, through its attorney-in-fact Teodoro Y. Kalaw IV of the Quisumbing Torres law firm, filed a complaint-affidavit^[13] with the Task-Force on Anti-Intellectual Property Piracy (TAPP) of the Department of Justice (DOJ) against respondent for violation of Section 217 (in relation to Sections 177^[14] and 178^[15]) of the Intellectual Property Code (IPC) which states:

Section 217. Criminal Penalties. — 217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

(a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (₱50,000) to One hundred fifty thousand pesos (₱150,000) for the first offense.

(b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (₱150,000) to Five hundred thousand pesos (₱500,000) for the second offense.

(c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (₱500,000) to One million five hundred thousand pesos (₱1,500,000) for the third and subsequent offenses.

(d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of infringement.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

(a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;

(b) Distributing the article for purpose of trade or any other purpose to an extent that will prejudice the rights of the copyright of the owner in the work; or

(c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (emphasis supplied)

Respondent asserted in his counter-affidavit^[16] that he committed no violation of the provisions of the IPC because he was only a retailer.^[17] Respondent neither reproduced nor manufactured any of petitioner's copyrighted item; thus, he did not transgress the economic rights of petitioner.^[18] Moreover, he obtained his merchandise from authorized manufacturers of petitioner's products.^[19]

On September 25, 2002, the TAPP found that:

Evidence on record would show that respondent bought his merchandise from legitimate sources, as shown by official receipts issued by JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation. In fact, in her letter dated May 23, 2002, Ms. Ma. Angela S. Garcia certified that JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation are authorized to produce certain Sanrio products. While it appears that some of the items seized during the search are not among those products which[GGI] authorized these establishments to produce, the fact remains that respondent bought these from the abovesited legitimate sources. At this juncture, it bears stressing that respondent relied on the representations of these manufacturers and distributors that the items they sold were genuine. As such, it is not incumbent

upon respondent to verify from these sources what items [GGI] only authorized them to produce. Thus, as far as respondent is concerned, the items in his possession are not infringing copies of the original [petitioner's] products. (emphasis supplied)^[20]

Thus, in a resolution dated September 25, 2002, it dismissed the complaint due to insufficiency of evidence.^[21]

Petitioner moved for reconsideration but it was denied.^[22] Hence, it filed a petition for review in the Office of the Chief State Prosecutor of the DOJ.^[23] In a resolution dated August 29, 2003,^[24] the Office of the Chief State Prosecutor affirmed the TAPP resolution. The petition was dismissed for lack of reversible error.

Aggrieved, petitioner filed a petition for certiorari in the CA. On May 3, 2005, the appellate court dismissed the petition on the ground of prescription. It based its action on Act 3326 which states:

Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years; *Provided, however,* That all offenses against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months.

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same may not be known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (emphasis supplied)

According to the CA, because no complaint was filed in court within two years after the commission of the alleged violation, the offense had already prescribed.^[25]

On the merits of the case, the CA concluded that the DOJ did not commit grave abuse of discretion in dismissing the petition for review.^[26] To be criminally liable for violation of Section 217.3 of the IPC, the following requisites must be present:

1. possession of the infringing copy and
2. knowledge or suspicion that the copy is an infringement of the genuine article.

The CA agreed with the DOJ that petitioner failed to prove that respondent knew that the merchandise he sold was counterfeit. Respondent, on the other hand, was able to show that he obtained these goods from legitimate sources.^[27]

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner now essentially avers that the CA erred in concluding that the alleged violations of the IPC had prescribed. Recent jurisprudence holds that the pendency of a preliminary investigation suspends the running of the prescriptive period.^[28] Moreover, the CA erred in finding that the DOJ did not commit grave abuse of discretion in dismissing the complaint. Respondent is liable for copyright infringement (even if he obtained his merchandise from legitimate sources) because he sold counterfeit goods.^[29]

Although we do not agree wholly with the CA, we deny the petition.

FILING OF THE COMPLAINT IN THE DOJ TOLLED THE PRESCRIPTIVE PERIOD

Section 2 of Act 3326 provides that the prescriptive period for violation of special laws starts on the day such offense was committed and is interrupted by the institution of proceedings against respondent (*i.e.*, the accused).

Petitioner in this instance filed its complaint-affidavit on April 4, 2002 or one year, ten months and four days after the NBI searched respondent's premises and seized Sanrio merchandise therefrom. Although no information was immediately filed in court, respondent's alleged violation had not yet prescribed.^[30]

In the recent case of *Brillantes v. Court of Appeals*,^[31] we affirmed that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility.^[32] Thus, the prescriptive period for the prosecution of the alleged violation of the IPC was tolled by petitioner's timely filing of the complaint-affidavit before the TAPP.

IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION, THE FACTUAL FINDINGS OF THE DOJ IN PRELIMINARY INVESTIGATIONS WILL NOT BE DISTURBED

In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof.^[33] Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.^[34] Because a public prosecutor is the one conducting a preliminary investigation, he determines the existence of probable cause.^[35] Consequently, the decision to file a criminal information in court or to dismiss a complaint depends on his sound discretion.^[36]

As a general rule, a public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. For this reason, courts generally do not interfere with the results of such proceedings. A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of a criminal information against the respondent.^[37] By way of exception, however, judicial review is allowed where respondent has clearly established that the prosecutor committed grave abuse of discretion.^[38] Otherwise stated, such review is appropriate only when the prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.^[39]

The prosecutors in this case consistently found that no probable cause existed against respondent for violation of the IPC. They were in the best position to determine whether or not there was probable cause. We find that they arrived at their findings after carefully evaluating the respective evidence of petitioner and respondent. Their conclusion was not tainted with grave abuse of discretion.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

RENATO C. CORONA
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice
Chairperson

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ADOLFO S. AZCUNA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

FOOTNOTES:

- [1] Under Rule 45 of the Rules of Court.
[2] Penned by Associate Justice Perlita J. Tria-Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Jose C. Reyes, Jr. of the Fourth Division of the Court of Appeals. Dated May 3, 2005. *Rollo*, pp. 51-63.
[3] Dated June 22, 2005. *Id.*, pp. 65-66.
[4] *Id.*, p. 15.
[5] *Id.*, p. 132.
[6] *Id.*, p. 155.
[7] *Id.*
[8] *Id.*
[9] Annex "J," *id.*, pp. 132-133.
[10] *Id.*, p. 134.
[11] Search warrant no. 00-1616 issued by Manila executive judge Rebecca G. Salvador. Dated May 30, 2000. Annex "K," *id.*, pp. 134-135.
[12] Annexes "L," and "L-1," *id.*, pp. 136-137.
[13] Docketed as IS No. 2002-205. Annex "M," *id.*, pp. 138-144.
[14] INTELLECTUAL PROPERTY CODE, Sec. 177 provides:

Section 177. Copy or Economic Rights.-- Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

xxx xxx xxx

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

xxx xxx xxx

- [15] INTELLECTUAL PROPERTY CODE, Sec. 178 provides:

Section 178. Rules on Copyright Ownership. Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in the case of original literary or artistic works, copyright shall belong to the author of the work;

xxx xxx xxx

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

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[16] Annex "N," id., pp. 145-172.

[17] Id., p. 112.

[18] Id.

[19] Id. To support his claim, respondent submitted photocopies of the receipts issued to him by JC Lucas Creative Products, Inc. and Melawares Manufacturing Corporation as evidence.

[20] Id., pp. 113-114.

[21] Penned by state prosecutor Aileen Marie S. Gutierrez and approved by chief state prosecutor Jovencito R. Zuno.

[22] Dated September 25, 2002. Annex "A," id., pp. 110-115.

[23] Dated January 27, 2003. Annex "B," id., pp. 116-117.

[24] Annex "T," id., pp. 207-233. Under Department of Justice Circular No. 70 (2000 NPS Rules on Appeal), 3 July 2000.

Signed by undersecretary Ma. Merceditas N. Gutierrez of the Department of Justice. Dated August 29, 2003. Annex "C," id., pp. 119-120.

Petitioner again moved for reconsideration but it was denied in a resolution dated March 24, 2004. Annex "D," id., pp. 121-122.

[25] Id., p. 57.

[26] Id., p. 58.

[27] Id., pp. 60-61.

[28] Id., pp. 23-29.

[29] Id., pp. 29-40.

[30] See Act 3326, Sec. 1.

[31] G.R. Nos. 118757 & 121571, 19 October 2004, 440 SCRA 541.

[32] Id., p. 563 *citing* *People v. Olarte*, 125 Phil. 895 (1967).

[33] RULES OF COURT, Rule 112, Sec. 1. The section provides:

Section 1. *Preliminary investigation defined; when required.* Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in section 6 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed is at least four (4) years, two (2) months and one (1) day without regard to the fine. (emphasis supplied)

[34] *Baviera v. Paglinawan*, G.R. No. 170602, 8 February 2007, 515 SCRA 170, 184 *citing* *Pontejos v. Office of the Ombudsman*, G.R. Nos. 158613-14, 22 February 2006, 483 SCRA 83, 92.

[35] Id., at 184.

[36] Id.

[37] *GlaxoSmithkline Philippines, Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, 17 August 2006, 499 SCRA 268, 272-273 *citing* *Punzalan v. de la Pena*, G.R. No. 158543, 21 July 2004, 434 SCRA 601.

[38] Id. at 273 *citing* *Cabahug v. People*, 426 Phil. 490 (2002).

[39] Id., *citing* *Baylon v. Office of the Ombudsman and the Sandiganbayan*, 423 Phil. 705 (2001).