

SHEN DAR ELECTRICITY
MACHINERY CO. LTD.,
Plaintiff-Appellant,

APPEAL NO. 10-05-02

IPV Case No. 10-2004-0007

-versus-

For: Unfair competition &
Damages, False and
Fraudulent Declaration

E. Y. Industrial Sales, Inc.,
ENGRACIO YAP,
Respondents-Appellees.

x-----x

ORDER

On 07 June 2005, SHEN DAR ELECTRICITY MACHINERY CO. LTD. (Appellant) filed an APPEAL MEMORANDUM praying that its Appeal Memorandum be given due course and that Resolution No. 2005-06 be reversed. Appellant is the plaintiff in IPV Case No. 10-2004-0007 pending in the Bureau of Legal Affairs.

The Appeal must be dismissed outright.

Records show that the Bureau of Legal Affairs issued Order No. 2004-109 dated 26 July 2004 the dispositive portion of which reads:

“In view of the foregoing, this Bureau finds the reasons adduced in the Manifestation/Compliance to be meritorious. Hence, the failure of Wilfredo Pulmano and Evelyn Yap to comply with the Subpoena Duces Tecum and Ad Testificandum is deemed justified and their attendance and the bringing of the file wrapper of application for registration of the trademark VESPA filed by E.Y. Industrial Sales, Inc. in the scheduled hearing on July 21, 2004 or at any later date are hereby excused.”

On 03 August 2004, Appellant filed Motion and Reconsideration of the aforementioned order. The BLA defied the motion per Resolution No. 2005-06 issued on 09 May 2005.

On this score, Sections 1 and 2 of the IPO Uniform Rules on Appeal provided that:

“Section 1. Tittle and Coverage. - These Rules shall be known as the ‘IPO 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 Trademarks (BOT).

“Section 2. Appeal to the Director General.- The decisions or final orders of the Bureau Director shall become final and executor thirty (30) days after receipt of a copy thereof by the appellant or appellants unless, within the same period, a motion for reconsideration is filed with the Bureau Director or an appeal to the Director General has been perfected; Provided, that only one (1) motion for reconsideration of the decision or order of the Bureau Director shall be allowed; and, in case the motion for reconsideration is denied, the appellant or appellants has/have the balance of the period prescribed above within which to file the appeal.”

Accordingly, only decisions or final orders issued by a 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 to 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.

In this instance, neither Order No. 2004-109 or Resolution No. 2005-06 is a decision or final order contemplated by the IPO Uniform Rules on Appeal. The said Order and Resolution were promulgated in connection with the subpoena issued by the Bureau of Legal Affairs (BLA) and do not finally disposes of the case. The said Order and Resolution only excused certain persons from complying with the subpoena previously issued by the BLA and leaves more to be done by the said Bureau and the parties concerning the proceedings and merits of the case.

WHEREFORE, the instant appeal is dismissed for the reasons discussed above.

SO ORDERED.

JUNE 25 2005, Makati City

ADRIANS S. CRISTOBAL, JR.
Director General

FOOTNOTES:

¹ See *Banares II vs. Balising*, 328 SCRA 36 (2000)

² SUBPOENA DUCES TECUM AND AD TESTIFICANDUM dated 21 July 2004