



TRANQUILINO L. MANGILIMAN
and ELEAZAR A. LOBETANIA,
Complainant,

-versus-

ERLINDA Y. LICUDINE, BEVERLY
GARUPA and NATIONAL
BOOKSTORE, INC. (represented by
GM Ma. Socorro Concio Ramos),
Respondents.

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IPV No. 10-2010-00001

For: Copy Violations, 2
Counts Each Respondent,
pursuant to Republic Act No.
8293, Intellectual Property
Code, with P11.5 Million
Damage Claims and Prayer
to Issue Writ of Preliminary
Attachment

X-----X

NOTICE OF DECISION

Atty. LAZARO S. GALINDEZ, JR.
Counsel for Complainants
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140 Kalayaan Avenue corner Mayaman Street
Diliman, Quezon City

**ERLINDA Y. LICUDINE
BEVERLY GARUPA**
Respondents
Teotisto Street, Saint Micheal Village
Taon II, Las Pinas City

NATIONAL BOOKSTORE
(represented by GM Socorro Concio Ramos)
Respondent
4/F Quad Alpha Centrum, 125 Pioneer Street
Mandaluyong City

GREETINGS:

Please be informed that Decision No. 2012 – 06 dated October 12, 2012 (copy enclosed)
was promulgated in the above entitled case.

Taguig City, October 12, 2012.

For the Director:

Edwin A. Dating
Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



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Decision No. 2012 - 86

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DECISION

TRANQUILINO L. MANGILIMAN¹ and ELEAZAR A. LOBETANIA² (“Complainants”) filed on 18 January 2010 a Joint Administrative Complaint against ERLINDA Y. LICUDINE³, BEVERLY GARUPA⁴ and NATIONAL BOOKSTORE, INC.⁵, represented by its Chairman, General Manager, Owner and Founder MA. SOCORRO CANCIO RAMOS (“Respondents”), for Copyright Violations pursuant to Republic Act No. 8293, Intellectual Property Code, with P11.5 Million Damage Claims and Prayer to Issue Writ of Preliminary Attachment.

The Complainants allege the following:

“5. Complainants and Respondent Melchor A. Garupa are authors of 197-page technical and vocational book, “HOW TO REPAIR REFS & FREEZERS, BASIC, VOLUME ONE” with International Standard Book Number 971-593-000-X issued by The National Library (TNL, for brevity) on September 28, 1990;

“6. Mangiliman and Garupa have their unique and respective indivisible participation in writing this book: Garupa, the expert refrigeration mechanic, explained verbally in Pilipino to Mangiliman the operations and technical matters involved in REPAIR OF REFS & FREEZERS; Mangiliman, the writer, composed these Pilipino explanations into English; further, the latter designed, worked on and, using a crude IBM electric typewriter, typed what turned up the final manuscript of the English text of these dual efforts;

“7. On August 27, 1990, the authors published the first 5,000 copies of this book, each copy bearing at the copyright page the hand-written signatures of authors Garupa and Mangiliman; only 4 copies of

1 Residing at 991-A Int. 1 Dagupan Street, Tondo, Manila.
2 Resident of 1323-B San Perfecto, Sampaloc, Manila.
3 Resident of 152 Teotisto Street, Saint Michael Village, Talon II, Las Piñas City.
4 Residing at No. 1 Sierra Vista, Barangay Cupang, Antipolo City. She represents her deceased husband MELCHOR A. GARUPA, who is the real respondent in this instant complaint.
5 A duly registered domestic corporation dealing in wholesale and retail of books and other related products, with address at 4/F Quad Alpha Centrum, 125 Pioneer Street, Mandaluyong City, 1550 Metro Manila.

this book are now available 2 of which still with the original signatures of the late Garupa and Mangiliman hand-written 19 years ago;

"8. On September 12, 1990, Mangiliman and Garupa registered the book in their names with The Philippine Copyright, a division of TNL; earlier, on December 29, 1989, they executed a Contract of Industrial Partnership with Lobetania, through which they contracted the services of Lobetania on profit sharing basis, to design the book's front cover yellow artworks and more than 300 illustrations, thus making Lobetania copyright co-owner and co-author of this book through this Contract and pursuant to the provisions of the Code;

"9. The authors sold the book from 1990 to 1992 to NBS proven by hundreds of Purchase Orders issued by NBS to GM Refco (acronym of the name of authors' company, Garupa and Mangiliman Refrigeration Company) and Hertz Electronics Service, Inc. a sister company; GM Refco was put up as a partnership business by Mangiliman on June 29, 1990 and registered with the DTI, the SEC, the BIR and the Quezon City License Office to undertake the business of publishing and marketing book and other future books by the authors;

"10. In May 1994, Mangiliman revised the book due to some errors in the electrical system and published 5,000 copies of this revised version, both books A and B, with the same title and same 3 authors, are exactly similar with each other except these corrections and rearrangement and reformatting of some chapters; book B was sold wholesale by complainants to respondent Licudine who in turn sold the book wholesale to NBS in 1994 to 1996;

"11. This copyrighted book Annex A was copied verbatim by respondent Licudine with the connivance of co-author Garupa himself, on July 31, 1999; they published and sold the pirated copy to NBS without the prior written consent and without the knowledge of complainants;

"12. On August 6, 2001, Mangiliman bought a book which he found exactly similar with book Annex A from pages 1 to 197 word for word including punctuation marks and illustrations, certainly an infringing and spurious copy of the original book; he bought this bogus book in 2001 from NBS Tutuban, Recto Avenue Manila Branch, coincidentally, located just a stone's throw from his residence;

"13. Respondent's tried to cover the track of their copyright crime by changing the appearance and color (now red) of the front cover of the book, printing Melchor A. Garupa as lone author with names of co-authors Mangiliman and Lobetania completely removed from book Annex C, altering the title and printing a new ISBN 971-8790-78-9; the spurious book was publised by unauthorized company, M & L Licudine Enterprises of which respondent Licudine admitted she was the proprietor and manager;

"14. Mangiliman bought 22 copies of the spurious book Annex C from NBS during the 6 year period 2001 to 2006, with respective NBS Invoices and Official Receipts for the yearly purchase of the book from all Metro Manila and provincial NBS branches; this illicit commerce

involving the original book was without the knowledge and without the prior written consent of complainants who learned about this piracy on August 6, 2001;

"15. The bogus book Annex C, as information revealed, was published on July 31, 1999 but the infringing activities about it did start earlier on March 15, 1999, when spouses Garupa executed an unlawful Contract of Sale in favor of respondent Licudine who, for the sum of P80,000 paid to spouses Garupa, bought the rights to publish and sell the original book Annex A in its spurious version, book Annex C;

"16. When Mangiliman learned about this copyright piracy on August 6, 2001, he caused his attorney send a letter on August 30, 2001 to respondent Licudine through which he condemned these misappropriations, demanded P3M damage claims and warned Licudine of legal action/s to be filed against her; this was followed up with 2 more letters, March 1, 2002 and March 5, 2002, by complainant Mangiliman himself, all 3 letters acknowledged receipt by Licudine's legal counsel from Davao City who sent acknowledgment letters to Mangiliman;

"17. Due to respondents' continuing violations even after receipt of these 2001 and 2002 demand letters, complainants filed the first copyright infringement complaint (I.S. No. LP-03-0418) against respondent Licudine on February 14, 2003 with the Las Piñas City Prosecutor Office; and due to respondents' continuing violations even after th filing of this 2003 complaint, complainants filed the second piracy complaint (I.S. No. 07F-09629) with the Manila City Prosecutor on June 27, 2007, indicting Licudine and NBS GM Ms. Ramos as respondents; both cases are still pending up to now;

"18. In the Counter-Affidavits of respondents Licudine and Ramos to these complaints, they admitted under oath that they did respectively publish and sell book Annex C with respondent Licudine revealing that she did so by authority of spouses Garupa on March 15, 1999; respondent Ramos, on the other hand, tried to mitigate her violation by stating under oath that "the only role of NBS was limited to distribution, not the printing, nor the publication," unaware that she was already admitting guilt to the charge of piracy even by just distributing it;

"19. This unlawful contract executed by spouses Garupa and subsequent publication and sale of book Annex C for 6 and half years made Garupa a plagiarist although he was a co-author of the book because at the expense of his co-authors and co-owners, Mangiliman and Lobetania, he made money out of this copyrighted book with another person, Licudine, who in turn unlawfully authorized NBS to sell and make profits out of this spurious book without any of respondents paying complainants royalties or anything for their copyrighted works;

"20. These evidences and others to be submitted during the hearing on the merit would prove that all 3 respondents, before they infringed book Annex A during the years 1999 to 2006, sold the same original books A and B with prior written consent of complainants during the years 1990 to 1996, definitely clear cases of aggravating circumstances;

"21. The truth of these violations were confirmed by no less than The Philippine Copyright and The Bibliographic Office, both divisions of TNL, the government agency involved on matter of copyright and issuance of ISBN, through their letters to Mangiliman, informing him that the 1999 book Annex C was not protected by copyright and that its new ISBN 971-8970-78-9 was issued in 1999 merely for the purpose of easy identification, not copyright protection;

"22. Respondents, as indicated in the title caption of this instant complaint, infringed 2 copyrights each: (1) the English literary works of Mangiliman and (2) the more than 300 illustrations of Lobetania; and

"23. These two copyrights of complainants are detailed into ten (10) economic rights, moral rights and other rights of complainants under the Code; respondent Garupa violated 9 of these rights, Licudine 8 and NBS 4, hence their relative percentage of participation for purposes of paying their administrative liability; on page 3 of computation of P11.5 million damage claims these 10 rights were detailed."

The Complainants attached to their complaint a Joint Affidavit of Indigent Litigants requesting for exemption from payment of filing and docket fees pursuant to Section 19, Rule 141 of the Revised Rules of Court.

After a judicious evaluation of the records, this Bureau finds the complaint dismissible on the ground of prescription.

The law and jurisprudence has recognized the authority of the court to dismiss complaint *motu proprio* when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter, when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by prescription.⁶

Section 1, Rule 2 of the *Rules and Regulations on Administrative Complaints for Violation of Law Involving Intellectual Property Rights*, provides that:

Section 1. *Complaint, When and to Whom Filed.* - All administrative complaints for violation of the IP Code or IP Laws shall be commenced by filing a verified complaint with the Bureau within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation. A complaint is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

In this regard, the Complainants allege in paragraph 16 of their Joint Administrative Complaint that:

"16. When Mangiliman learned about this copyright piracy on August 6, 2001, he caused his attorney send a letter on August 30, 2001 to respondent Licudine through which he condemned these

6 *Katon v. Palanca Jr., et. al.*, G. R. No. 151149, September 7, 2004.

misappropriations, demanded P3M damage claims and warned Licudine of legal action/s to be filed against her; this was followed up with 2 more letters, March 1, 2002 and March 5, 2002, by complainant Mangiliman himself, all 3 letters acknowledged receipt by Licudine's legal counsel from Davao City who sent acknowledgment letters to Mangiliman."

Based on the Complainants' own admission, the alleged copyright violation was discovered in 2001. The complaint, however, was filed with this Bureau on 18 January 2010, or within nine (9) years from the time of discovery of the infringing act. Therefore, the filing of the complaint was clearly beyond the prescriptive period of four (4) years hence, barred by prescription.

With that, this Bureau finds no necessity in resolving the issue of Complainants claim of indigent litigants as the same has already been rendered moot and academic.

WHEREFORE, premises considered, the instant Joint Administrative Complaint is hereby **DISMISSED**.

SO ORDERED.

Taguig City, 12 October 2012.



Atty. NATHANIEL S. AREVALO
Director IV
Bureau of Legal Affairs