



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REPUBLIC GAS
CORPORATION, ARNEL U. TY,
MARI ANTONETTE N. TY,
ORLANDO REYES, FERRER
SUAZO and ALVIN U. TY,
Petitioners,

G.R. No. 194062

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

PETRON CORPORATION,
PILIPINAS SHELL
PETROLEUM CORPORATION,
and SHELL INTERNATIONAL
PETROLEUM COMPANY
LIMITED,

Promulgated:

Respondents.

JUN 17 2013

McGregor

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DECISION

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners seeking the reversal of the Decision¹ dated July 2, 2010, and Resolution² dated October 11, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106385.

Stripped of non-essentials, the facts of the case, as summarized by the CA, are as follows:

¹ Penned by Associate Justice Isaias Dicdican, with Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Stephen Cruz, concurring; *rollo*, pp. 7-24.

² *Id.* at 26-27.

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Petitioners Petron Corporation (“Petron” for brevity) and Pilipinas Shell Petroleum Corporation (“Shell” for brevity) are two of the largest bulk suppliers and producers of LPG in the Philippines. Petron is the registered owner in the Philippines of the trademarks GASUL and GASUL cylinders used for its LGP products. It is the sole entity in the Philippines authorized to allow refillers and distributors to refill, use, sell, and distribute GASUL LPG containers, products and its trademarks. Pilipinas Shell, on the other hand, is the authorized user in the Philippines of the tradename, trademarks, symbols or designs of its principal, Shell International Petroleum Company Limited, including the marks SHELLANE and SHELL device in connection with the production, sale and distribution of SHELLANE LPGs. It is the only corporation in the Philippines authorized to allow refillers and distributors to refill, use, sell and distribute SHELLANE LGP containers and products. Private respondents, on the other hand, are the directors and officers of Republic Gas Corporation (“REGASCO” for brevity), an entity duly licensed to engage in, conduct and carry on, the business of refilling, buying, selling, distributing and marketing at wholesale and retail of Liquefied Petroleum Gas (“LPG”).

LPG Dealers Associations, such as the Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc. and Totalgaz Dealers Association, received reports that certain entities were engaged in the unauthorized refilling, sale and distribution of LPG cylinders bearing the registered tradenames and trademarks of the petitioners. As a consequence, on February 5, 2004, Genesis Adarlo (hereinafter referred to as Adarlo), on behalf of the aforementioned dealers associations, filed a letter-complaint in the National Bureau of Investigation (“NBI”) regarding the alleged illegal trading of petroleum products and/or underdelivery or underfilling in the sale of LPG products.

Acting on the said letter-complaint, NBI Senior Agent Marvin E. De Jemil (hereinafter referred to as “De Jemil”) was assigned to verify and confirm the allegations contained in the letter-complaint. An investigation was thereafter conducted, particularly within the areas of Caloocan, Malabon, Novaliches and Valenzuela, which showed that several persons and/or establishments, including REGASCO, were suspected of having violated provisions of Batas Pambansa Blg. 33 (B.P. 33). The surveillance revealed that REGASCO LPG Refilling Plant in Malabon was engaged in the refilling and sale of LPG cylinders bearing the registered marks of the petitioners without authority from the latter. Based on its General Information Sheet filed in the Securities and Exchange Commission, REGASCO’s members of its Board of Directors are: (1) Arnel U. Ty – President, (2) Marie Antoinette Ty – Treasurer, (3) Orlando Reyes – Corporate Secretary, (4) Ferrer Suazo and (5) Alvin Ty (hereinafter referred to collectively as private respondents).

De Jemil, with other NBI operatives, then conducted a test-buy operation on February 19, 2004 with the former and a confidential asset going undercover. They brought with them four (4) empty LPG cylinders bearing the trademarks of SHELLANE and GASUL and included the same with the purchase of J&S, a REGASCO’s regular customer. Inside REGASCO’s refilling plant, they witnessed that REGASCO’s employees carried the empty LPG cylinders to a refilling station and refilled the LPG empty cylinders. Money was then given as payment for the refilling of the

J&S's empty cylinders which included the four LPG cylinders brought in by De Jemil and his companion. Cash Invoice No. 191391 dated February 19, 2004 was issued as evidence for the consideration paid.

After leaving the premises of REGASCO LPG Refilling Plant in Malabon, De Jemil and the other NBI operatives proceeded to the NBI headquarters for the proper marking of the LPG cylinders. The LPG cylinders refilled by REGASCO were likewise found later to be underrefilled.

Thus, on March 5, 2004, De Jemil applied for the issuance of search warrants in the Regional Trial Court, Branch 24, in the City of Manila against the private respondents and/or occupants of REGASCO LPG Refilling Plant located at Asucena Street, Longos, Malabon, Metro Manila for alleged violation of Section 2 (c), in relation to Section 4, of B.P. 33, as amended by PD 1865. In his sworn affidavit attached to the applications for search warrants, Agent De Jemil alleged as follows:

“x x x.

“4. Respondent's REGASCO LPG Refilling Plant-Malabon is not one of those entities authorized to refill LPG cylinders bearing the marks of PSPC, Petron and Total Philippines Corporation. A Certification dated February 6, 2004 confirming such fact, together with its supporting documents, are attached as Annex “E” hereof.

6. For several days in the month of February 2004, the other NBI operatives and I conducted surveillance and investigation on respondents' REGASCO LPG refilling Plant-Malabon. Our surveillance and investigation revealed that respondents' REGASCO LPG Refilling Plant-Malabon is engaged in the refilling and sale of LPG cylinders bearing the marks of Shell International, PSPC and Petron.

x x x.

8. The confidential asset and I, together with the other operatives of [the] NBI, put together a test-buy operation. On February 19, 2004, I, together with the confidential asset, went undercover and executed our test-buy operation. Both the confidential assets and I brought with us four (4) empty LPG cylinders branded as Shellane and Gasul. x x x in order to have a successful test buy, we decided to “ride-on” our purchases with the purchase of Gasul and Shellane LPG by J & S, one of REGASCO's regular customers.

9. We proceeded to the location of respondents' REGASCO LPG Refilling Plant-Malabon and asked from an employee of REGASCO inside the refilling plant for refill of the empty LPG cylinders that we have brought along, together with the LPG cylinders brought by J & S. The REGASCO employee, with some assistance from other employees, carried the empty LPG cylinders to a refilling

station and we witnessed the actual refilling of our empty LPG cylinders.

10. Since the REGASCO employees were under the impression that we were together with J & S, they made the necessary refilling of our empty LPG cylinders alongside the LPG cylinders brought by J & S. When we requested for a receipt, the REGASCO employees naturally counted our LPG cylinders together with the LPG cylinders brought by J & S for refilling. Hence, the amount stated in Cash Invoice No. 191391 dated February 19, 2004, equivalent to Sixteen Thousand Two Hundred Eighty-Six and 40/100 (Php16,286.40), necessarily included the amount for the refilling of our four (4) empty LPG cylinders. x x x.

11. After we accomplished the purchase of the illegally refilled LPG cylinders from respondents' REGASCO LPG Refilling Plant-Malabon, we left its premises bringing with us the said LPG cylinders. Immediately, we proceeded to our headquarters and made the proper markings of the illegally refilled LPG cylinders purchased from respondents' REGASCO LPG Refilling Plant-Malabon by indicating therein where and when they were purchased. Since REGASCO is not an authorized refiller, the four (4) LPG cylinders illegally refilled by respondents' REGASCO LPG Refilling Plant-Malabon, were without any seals, and when [weighed], were under-refilled. Photographs of the LPG cylinders illegally refilled from respondents' REGASCO LPG Refilling Plant-Malabon are attached as Annex "G" hereof. x x x."

After conducting a personal examination under oath of Agent De Jemil and his witness, Joel Cruz, and upon reviewing their sworn affidavits and other attached documents, Judge Antonio M. Eugenio, Presiding Judge of the RTC, Branch 24, in the City of Manila found probable cause and correspondingly issued Search Warrants Nos. 04-5049 and 04-5050.

Upon the issuance of the said search warrants, Special Investigator Edgardo C. Kawada and other NBI operatives immediately proceeded to the REGASCO LPG Refilling Station in Malabon and served the search warrants on the private respondents. After searching the premises of REGASCO, they were able to seize several empty and filled Shellane and Gasul cylinders as well as other allied paraphernalia.

Subsequently, on January 28, 2005, the NBI lodged a complaint in the Department of Justice against the private respondents for alleged violations of Sections 155 and 168 of Republic Act (RA) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On January 15, 2006, Assistant City Prosecutor Armando C. Velasco recommended the dismissal of the complaint. The prosecutor found that there was no proof introduced by the petitioners that would show that private respondent REGASCO was engaged in selling petitioner's products or that it imitated and reproduced the registered

trademarks of the petitioners. He further held that he saw no deception on the part of REGASCO in the conduct of its business of refilling and marketing LPG. The Resolution issued by Assistant City Prosecutor Velasco reads as follows in its dispositive portion:

“WHEREFORE, foregoing considered, the undersigned finds the evidence against the respondents to be insufficient to form a well-founded belief that they have probably committed violations of Republic Act No. 9293. The DISMISSAL of this case is hereby respectfully recommended for insufficiency of evidence.”

On appeal, the Secretary of the Department of Justice affirmed the prosecutor’s dismissal of the complaint in a Resolution dated September 18, 2008, reasoning therein that:

“x x x, the empty Shellane and Gasul LPG cylinders were brought by the NBI agent specifically for refilling. Refilling the same empty cylinders is by no means an offense in itself – it being the legitimate business of Regasco to engage in the refilling and marketing of liquefied petroleum gas. In other words, the empty cylinders were merely filled by the employees of Regasco because they were brought precisely for that purpose. They did not pass off the goods as those of complainants’ as no other act was done other than to refill them in the normal course of its business.

“In some instances, the empty cylinders were merely swapped by customers for those which are already filled. In this case, the end-users know fully well that the contents of their cylinders are not those produced by complainants. And the reason is quite simple – it is an independent refilling station.

“At any rate, it is settled doctrine that a corporation has a personality separate and distinct from its stockholders as in the case of herein respondents. To sustain the present allegations, the acts complained of must be shown to have been committed by respondents in their individual capacity by clear and convincing evidence. There being none, the complaint must necessarily fail. As it were, some of the respondents are even gainfully employed in other business pursuits. x x x.”³

Dispensing with the filing of a motion for reconsideration, respondents sought recourse to the CA through a petition for *certiorari*.

In a Decision dated July 2, 2010, the CA granted respondents’ *certiorari* petition. The *fallo* states:

³ *Id.* at 8-13.

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **GRANTED**. The assailed Resolution dated September 18, 2008 of the Department of Justice in I.S. No. 2005-055 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.⁴

Petitioners then filed a motion for reconsideration. However, the same was denied by the CA in a Resolution dated October 11, 2010.

Accordingly, petitioners filed the instant Petition for Review on *Certiorari* raising the following issues for our resolution:

Whether the Petition for *Certiorari* filed by RESPONDENTS should have been denied outright.

Whether sufficient evidence was presented to prove that the crimes of Trademark Infringement and Unfair Competition as defined and penalized in Section 155 and Section 168 in relation to Section 170 of Republic Act No. 8293 (The Intellectual Property Code of the Philippines) had been committed.

Whether probable cause exists to hold INDIVIDUAL PETITIONERS liable for the offense charged.⁵

Let us discuss the issues *in seriatim*.

Anent the first issue, the general rule is that a motion for reconsideration is a condition *sine qua non* before a *certiorari* petition may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by re-examination of the legal and factual circumstances of the case.⁶

However, this rule is not absolute as jurisprudence has laid down several recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration, *viz.*:

- (a) Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) **Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court.**

⁴ *Id.* at 24. (Emphasis in the original.)

⁵ *Id.* at 38.

⁶ *Medado v. Heirs of the Late Antonio Consing*, G.R. No. 186720, February 8, 2012, 665 SCRA 534, 547.

- (c) Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
- (d) Where, under the circumstances, a motion for reconsideration would be useless;
- (e) Where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) Where the proceedings in the lower court are a nullity for lack of due process;
- (h) Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
- (i) Where the issue raised is one purely of law or public interest is involved.⁷

In the present case, the filing of a motion for reconsideration may already be dispensed with considering that the questions raised in this petition are the same as those that have already been squarely argued and passed upon by the Secretary of Justice in her assailed resolution.

Apropos the second and third issues, the same may be simplified to one core issue: whether probable cause exists to hold petitioners liable for the crimes of trademark infringement and unfair competition as defined and penalized under Sections 155 and 168, in relation to Section 170 of Republic Act (R.A.) No. 8293.

Section 155 of R.A. No. 8293 identifies the acts constituting trademark infringement as follows:

Section 155. Remedies; Infringement. – Any person who shall, without the consent of the owner of the registered mark:

155.1 Use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark of the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2 Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation

⁷ *HPS Software and Communication Corporation, et al. v. Philippine Long Distance Telephone Company (PLDT), et. al.*, G.R. Nos. 170217 & 170694, December 10, 2012. (Emphasis supplied.)

to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.⁸

From the foregoing provision, the Court in a very similar case, made it categorically clear that the mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers or consumers can be considered as trademark infringement.⁹

Here, petitioners have actually committed trademark infringement when they refilled, without the respondents' consent, the LPG containers bearing the registered marks of the respondents. As noted by respondents, petitioners' acts will inevitably confuse the consuming public, since they have no way of knowing that the gas contained in the LPG tanks bearing respondents' marks is in reality not the latter's LPG product after the same had been illegally refilled. The public will then be led to believe that petitioners are authorized refillers and distributors of respondents' LPG products, considering that they are accepting empty containers of respondents and refilling them for resale.

As to the charge of unfair competition, Section 168.3, in relation to Section 170, of R.A. No. 8293 describes the acts constituting unfair competition as follows:

Section 168. *Unfair Competition, Rights, Regulations and Remedies.* x x x.

168.3 In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

- (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or

⁸ (Emphasis and underscoring supplied.)

⁹ *Ty v. De Jemil*, G.R. No. 182147, December 15, 2010, 638 SCRA 671, 689.

in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

X X X X

Section 170. Penalties. Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public.¹⁰

Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. Thus, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.¹¹

In the present case, respondents pertinently observed that by refilling and selling LPG cylinders bearing their registered marks, petitioners are selling goods by giving them the general appearance of goods of another manufacturer.

What's more, the CA correctly pointed out that there is a showing that the consumers may be misled into believing that the LPGs contained in the cylinders bearing the marks "GASUL" and "SHELLANE" are those goods or products of the petitioners when, in fact, they are not. Obviously, the mere use of those LPG cylinders bearing the trademarks "GASUL" and "SHELLANE" will give the LPGs sold by REGASCO the general appearance of the products of the petitioners.

¹⁰ *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd. and Sports Concept & Distributor, Inc.*, G.R. No. 169974, April 20, 2010, 618 SCRA 531, 555.

¹¹ *McDonald's Corporation and McGeorge Food Industries, Inc. v. L.C. Big Mak Burger, Inc., et al.*, 480 Phil. 402, 440 (2004).

In sum, this Court finds that there is sufficient evidence to warrant the prosecution of petitioners for trademark infringement and unfair competition, considering that petitioner Republic Gas Corporation, being a corporation, possesses a personality separate and distinct from the person of its officers, directors and stockholders.¹² Petitioners, being corporate officers and/or directors, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.¹³ Veritably, the CA appropriately pointed out that petitioners, being in direct control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime. Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. A corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.¹⁴

WHEREFORE, premises considered, the petition is hereby **DENIED** and the Decision dated July 2, 2010 and Resolution dated October 11, 2010 of the Court of Appeals in CA-G.R. SP No. 106385 are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

¹² *Kukan International Corporation v. Hon. Amor Reyes, et. al.*, G.R. No. 182729, September 29, 2010, 631 SCRA 596, 617-618.

¹³ *Ching v. Secretary of Justice*, 517 Phil. 151, 178 (2006).

¹⁴ *Rollo*, p. 23.



ROBERTO A. ABAD
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

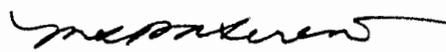
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



MARIA LOURDES P. A. SERENO
Chief Justice