



Republic of the Philippines
Court of Appeals
Manila

EIGHTH DIVISION

PEOPLE OF THE PHILIPPINES CA-G.R. SP. NO. 128253
and EVER ELECTRICAL
MANUFACTURING INC.,

Petitioner, Members:

-versus-

DE LEON, M.M., *Chairperson*
LANTION, J.A.C., *and*
ANTONIO-VALENZUELA, N.G., *JJ.*

HON. JUDGE ARNIEL A.
DATING, in his capacity as Presiding
Judge, RTC, Branch 40, Daet
Camarines Norte, **and VICTOR C.**
VARIN, as registered owner of
Emerald Hardware and General
Merchandising- Main,

Promulgated:

02 June 2015

Respondents.

DECISION

ANTONIO-VALENZUELA, J.:

This is the Amended Petition for Certiorari¹ filed by Ever Electrical Manufacturing, Inc., (“petitioner Ever”), imputing grave abuse of discretion on the part of the Presiding Judge Arniel A. Dating (“public respondent Judge”) of the Regional Trial Court, Branch 40, Daet, Camarines Norte (“RTC”), in issuing: (1) the Order dated 15 November 2012² (“first assailed

1 C.A. Rollo, p. 304.

2 C.A. Rollo, p. 405.

Order”); (2) the Order dated 3 December 2012³ (“second assailed Order”); and (3) the Order dated 14 December 2012⁴ (“third assailed Order”).

THE FACTS

Petitioner Ever, through its Manager, Victorio C. Balgos, filed the Affidavit of Criminal Complaint⁵ and the Amended Affidavit of Criminal Complaint,⁶ charging Victor C. Varin (“respondent Victor”) for violation of Section 155 of the Intellectual Property Code, or Infringement of Trademark, before the Department of Justice (DOJ).

In the Affidavit-Complaint, petitioner Ever averred that: it manufactures and distributes electrical products, and it owns the trademark “Ever Electrical Mfg. Inc” with Registration Number 34113 and “Ever E” with Registration Number 52449; in March 2006, petitioner Ever discovered that the Emerald Hardware and General Merchandising (“Emerald Hardware”), owned by respondent Victor, distributes safety switches similar to the genuine 30A 2P 250V safety switches manufactured by petitioner Ever; petitioner Ever, through its employee, purchased a safety switch from the Emerald Hardware; petitioner Ever's Production and Quality Control Department examined the safety switch purchased from the Emerald Hardware, and determined that the purchased safety switch was counterfeit of the genuine 30A 2P 250V safety switches manufactured by petitioner Ever (*i.e.*: the technical examination showed that while the safety switch purchased from the Emerald Hardware appeared to be similar in appearance with the genuine 30A 2P 250V safety switches manufactured by petitioner Ever, the materials used in the assembly of the counterfeit Ever safety switch were of inferior quality, and not in accordance with petitioner Ever's standard specifications).

Respondent Victor filed the Amended Counter-Affidavit (To the amended Affidavit Complaint)⁷, and countered: respondent Victor was

3 C.A. Rollo, p. 408.

4 C.A. Rollo, p. 429.

5 C.A. Rollo, p. 333.

6 C.A. Rollo, p. 351.

7 C.A. Rollo, p. 365.

merely a buyer in good faith of the safety switches from his usual suppliers, and respondent Victor had no knowledge on the actual condition of the safety switches; the alleged defects in the counterfeit Ever safety switches were not easily identifiable; it was only petitioner Ever who examined the counterfeit safety switch, and petitioner Ever did not consult any government agency to certify on the genuineness of the counterfeit Ever safety switch, thus the results of the examination were biased and self-serving.

The DOJ Task Force on Anti-Intellectual Property Piracy issued the Resolution dated 29 January 2010,⁸ recommending that the appropriate Information for infringement of trademark be filed against respondent Victor. Thus, the Information was filed in the RTC.

The Information read:

“That on or about October 2, 2006, in Daet, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, as registered owner of EMERALD HARDWARE and GENERAL MERCHANDISING-MAIN with business address at F. Pimentel Avenue corner Mercedes Road, Daet, Camarines Norte, did then and there willfully, unlawfully and feloniously and without the consent of EVER ELECTRICAL MANUFACTURING, INC., use in commerce counterfeit/colorable imitation of “EVER E” products and engage in the sale, offering for sale, distribution and advertising of such “EVER E” products and pass it off as those of “EVER E,” such use is likely to cause confusion or to cause mistake and deception to the consuming public, to the damage and prejudice of EVER ELECTRICAL MANUFACTURING, INC., and the general consuming public.

CONTRARY TO LAW.”

At the arraignment, respondent Victor pleaded not guilty.

The RTC conducted the pre-trial and trial.

⁸ C.A. Rollo, p. 370.

The prosecution presented the following persons as witnesses: Reuel T. Cachuela (“Reuel”); Randy Tomines (“Randy”); and Victorio C. Balgos (“Victorio”).

The evidence for the prosecution is summarized thus: petitioner Ever is the owner of “Ever Electrical Mfg. Inc.” and “Ever E” trademarks; Reuel, Junior Auditor at petitioner Ever, received a report on the counterfeiting of petitioner Ever's safety switches; upon investigation, Reuel discovered that the Emerald Hardware, owned by respondent Victor, sells counterfeit Ever safety switches, and Reuel bought a safety switch similar to the genuine 30A 2P 250V safety switches manufactured by petitioner Ever; Reuel presented the Ever safety switch he purchased from the Emerald Hardware to petitioner Ever's Quality Control Department to determine its genuineness; Randy, the Production and Quality Control Supervisor of petitioner Ever, made a report which found that the Ever safety switch that Reuel bought from the Emerald Hardware was a counterfeit (*i.e.*: although the safety switch purchased from the Emerald Hardware had a similar appearance with the genuine safety switches manufactured by petitioner Ever, it was made of inferior quality materials); due to the unlawful acts of respondent Victor in infringing petitioner Ever's trademarks, petitioner Ever incurred business losses.

The private prosecution filed the Formal Offer of Documentary and/or Object Evidence (For the Prosecution).⁹

On 15 November 2012, the RTC issued the first assailed Order which read:

“This case is one for infringement of trademark under Section 155 of RA 8293, otherwise known as the Intellectual Property Code of the Philippines wherein the prosecution has already rested its case as per Order dated November 5, 2012 after presenting the testimonies of Reuel T. Cachuela, Randy P. Tomines and Victorio C. Balgos together with the documentary and object evidence.

In one case, the Supreme Court had occasioned to state that there

⁹ C.A. Rollo, p. 380.

are cases in which because of insufficiency of evidence, the presentation of evidence by the defense will only entail a waste of time (People vs Mamacol, 81 Phil 543).

Can the Court utilize the aforesaid ruling in the present case?

Second paragraph of Section 3, Rule 1 of the Rules of Procedure for Intellectual Property Rights Cases (A.M. No. 10-3-10-SC dated October 18, 2011) tells us that where applicable, the Rules of Court shall apply suppletorily the proceedings under the said Rules. Thus, the suppletory application of the Rules of Court cannot anymore be an issue.

The Revised Rules of Court, as amended, specifically Section 23 of Rule 119 thereof states that the court on its own initiative may dismiss the action after the prosecution had rested its case on the ground of insufficiency of evidence after giving the prosecution the opportunity to be heard.

Likewise, with the Manual for the Investigation and Prosecution of Intellectual Property Rights cases issued by Department of Justice (DOJ, for brevity) this year which provides for the enumeration of the elements and evidence necessary for violation of RA 8293, among others, the Court is then constrained to evaluate the evidence presented by the prosecution.

From the testimony of the prosecution witness Reuel T. Cachuela, it appears that he was the one who conducted the test buy from the establishment owned by the accused for the purchase of the alleged counterfeited safety switch (Exh G-4) and said exhibit is the sole object of evidence presented by the prosecution to prove violation of Section 155 of RA 8293.

A reading of the aforementioned Manual issued by the DOJ the same would tell us that the investigation and prosecution of intellectual property rights is akin to that one for violation of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, wherein the so-called test buy should then be followed by the application for the issuance of search warrant (SW, for brevity), or in the absence of a test-buy, a buy-bust operation for the counterfeited/faked item would then be conducted. Otherwise stated, Test-buy alone cannot possibly result to a successful prosecution of the case due to insufficiency of evidence. This is not to mention the issue on the chain of custody of the subject item that could be raised in the process of proving that Exhibit G-4 herein is the same item purchased by Mr. Reuel T. Cachuela from the establishment owned by the herein accused. The case of Gemma Ong versus People,

G.R. No. 169440 decided by the Supreme Court, First Division on November 23, 2011 illustrates how the infringement of trademark should be successfully prosecuted starting from a test-buy. The case involved counterfeited/faked Marlboro cigarettes. Test buy alone as basis for prosecution of violation of Section 155 of RA 8293 would at least be considered as premature filing of the case.

Notwithstanding the foregoing evaluation and/or analysis of the Court, the prosecution is then given a ten-day period to file comment to such judicial assessment. Thereafter, appropriate order shall then be issued.

SO ORDERED.”

The prosecution filed the Prosecution's Comment.¹⁰

On 3 December 2012, the RTC issued the second assailed Order which dismissed the case for insufficiency of the prosecution's evidence.

The private prosecution filed the Motion for Reconsideration.¹¹ The RTC denied the Motion for Reconsideration *via* the third assailed Order.

Aggrieved, petitioner Ever filed the Amended Petition for Certiorari, imputing grave abuse of discretion on the part of the public respondent Judge, and raising the following matters:

ASSIGNMENT OF ERRORS

I. THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE EVIDENCE PRESENTED BY THE PROSECUTION IS INSUFFICIENT, NOTWITHSTANDING THE PRESENTATION OF DOCUMENTARY EVIDENCE PROVING THE ELEMENTS OF THE CRIME COMPLAINED OFF (*SIC*).

¹⁰ C.A. Rollo, p. 409.

¹¹ C.A. Rollo, p. 280.

II. THE TRIAL COURT COMMITTED GRAVE ABUSE IN THE EXERCISE OF ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE TEST BUY MADE BY REUEL T. CACHUELA SHOULD BE FOLLOWED BY SECURING SEARCH WARRANT FROM THE COURT TO OBTAIN THE ITEM INFRINGED FROM THE INFRINGER.

The issue is whether the public respondent Judge committed grave abuse of discretion in *motu proprio* dismissing the criminal case against respondent Victor after receiving the prosecution's evidence.

THE PETITIONER'S ARGUMENTS

Petitioner Ever answers in the affirmative. The public respondent Judge committed grave abuse of discretion in *motu proprio* dismissing the criminal case against respondent Victor after receiving the prosecution's evidence.

The Amended Petition for Certiorari thrusts: the prosecution had shown by sufficient evidence the elements of the crime for violation of Section 155.1 of R.A. No. 8293 (*i.e.*: petitioner Ever owned the registered trademarks “Ever E”/“Ever Electrical Mfg. Inc;” respondent Victor copied, reproduced, and used in commerce petitioner Ever's registered trademarks; respondent Victor's act of infringement caused confusion to the mind of the public which was the gravamen of trademark infringement); the public respondent Judge committed grave abuse of discretion in relying on the provisions of the DOJ Manual for Investigation of Intellectual Property Rights Cases, which Manual had not yet been released; there is no law or rule requiring an offended party to procure a search warrant prior to the institution of a criminal case for trademark infringement.

Petitioner Ever filed the Reply to Private Respondent's Comment,¹² and added: public respondent Judge issued the assailed orders with grave

¹² C.A. Rollo, p. 441.

abuse of discretion, thus the dismissal of the case was void, and did not result in respondent Victor's acquittal.

THE PRIVATE RESPONDENT'S ARGUMENTS

Respondent Victor answers in the negative. The public respondent Judge did not commit grave abuse of discretion in *motu proprio* dismissing the criminal case against respondent Victor after receiving the prosecution's evidence.

The Private Respondent's Comment¹³ parries: the dismissal of the case based on demurrer or on insufficiency of evidence was an adjudication on the merits, thus the dismissal resulted in respondent Victor's acquittal, and the case could no longer be remanded to the RTC because such remand would constitute double jeopardy.

Both parties filed their respective memoranda reiterating their arguments.

THE COURT'S RULING

We rule in the negative. The public respondent Judge did not commit grave abuse of discretion in *motu proprio* dismissing the criminal case against respondent Victor after receiving the prosecution's evidence.

Applicable is Rule 119, Section 23 of the Rules of Court. It states:

Section 23. Demurrer to Evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

13 C.A. Rollo, p. 438.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)

As above-quoted, after the prosecution rests its case, the court may dismiss the action of the ground of insufficiency of evidence, *motu proprio*, after giving the prosecution the opportunity to be heard.

A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the court finds that the evidence is not sufficient and grants the demurrer to evidence, such dismissal of the case is one on the merits, which is equivalent to the acquittal of the accused.¹⁴ Well-established is the rule that the Court cannot review an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence because to do so will place the accused in double jeopardy.¹⁵

14 *Bangayan v. Bangayan*, G.R. No. 172777, 19 October 2011 *citing* *Dayap v. Sendiong*, G.R. No. 177960, 29 January 2009, 577 SCRA 134, 147.

15 *Ibid.*, *citing* *People v. Bans*, G.R. No. 104147, 8 December 1994, 239 SCRA 48, 55.

In this case, the public respondent Judge, *motu proprio*, dismissed the action on the ground of insufficiency of evidence after giving the prosecution the opportunity to be heard. Notably, in the first assailed Order, the public respondent Judge evaluated the prosecution's evidence, and ordered the prosecution to file comment. In compliance, the prosecution filed its comment. Then, in the second assailed Order, the public respondent Judge dismissed the case.

The RTC's dismissal of the case against respondent Victor was an acquittal by virtue of a demurrer to evidence, and was not appealable because it would place respondent Victor in double jeopardy.

While the rule against double jeopardy is not without exceptions (*i.e.*: where there has been deprivation of due process and where there is a finding of a mistrial; or where there has been a grave abuse of discretion under exceptional circumstances),¹⁶ none of the exceptions are present here.

First, the public respondent Judge gave the prosecution due process (*i.e.*: the public respondent Judge received the prosecution's evidence, and the public respondent Judge allowed the prosecution to file comment to the public respondent Judge's finding of insufficiency of the prosecution's evidence).

Second, no grave abuse of discretion could be attributed to the public respondent Judge.

Nothing is more settled than the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at

¹⁶ Villareal v. Aliga, G.R. No. 166995, 13 January 2014 *citing* People v. Court of Appeals (Fifth Division, 545 Phil. 278 (2007)).

all in contemplation of law."¹⁷ Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.¹⁸

The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice.¹⁹

An examination of the assailed orders shows that the public respondent Judge did not commit grave abuse of discretion in dismissing the case.

In *Espiritu et al., v. Petron Corporation et al.*,²⁰ the Supreme Court noted that the offended party would have to show that the alleged infringer used the trademarks of the offended party with intent to deceive the public and defraud its competitor as to what it is selling.

Perusal of the prosecution's evidence shows that its evidence was insufficient to hold respondent Victor guilty of the charges against him. Apart from this singular transaction, there was no proof that respondent Victor had gone into the business of manufacturing counterfeit Ever safety switches. Petitioner Ever did not prove that respondent Victor had the intent to pass off petitioner Ever's trademarks as his own, or to deceive the public, resulting to the prejudice of petitioner Ever.

We **DISMISS** the Amended Petition for Certiorari.

IT IS SO ORDERED.

Original Signed
NINA G. ANTONIO-VALENZUELA
Associate Justice

17 *Novateknika Land Corporation v. PNB et al.*, G.R. No. 194104, 13 March 2013 *citing* *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

18 *Ibid.*, *citing* *Republic of the Philippines v. Sandiganbayan*, 499 Phil. 138, 152 (2005).

19 *Bangayan v. Bangayan*, *supra*, note 14 *citing* *Sanvicente v. People*, 441 Phil. 139, 148 (2002).

20 G.R. No. 170891, 24 November 2009 *citing* *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, 480 Phil. 402, 439 (2004).

WE CONCUR:

Original Signed
MAGDANGAL M. DE LEON
Associate Justice

Original Signed
JANE AURORA C. LANTION
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Original Signed
MAGDANGAL M. DE LEON
Associate Justice
Chairperson, Eighth Division