



ANHUI DELI HOUSEHOLD	}	IPC No. 14-2015-00402
GLASS CO., LTD.,	}	Petition for Cancellation:
Petitioner,	}	
	}	Registration No. 4-2011-007415
-versus-	}	Date Issued: 06 October 2011
	}	
DANNY SY,	}	Trademark: GREEN APPLE QING
Respondent-Registrant.	}	PING GUO AND DEVICE
x-----x	}	Order No. 2015 - <u>208</u> (D)

ORDER

ANHUI DELI HOUSEHOLD GLASS CO., LTD. ("Petitioner") filed on 21 October 2015 a Notice to Withdraw Petition for Cancellation requesting that the Petition for Cancellation of Trademark Registration No. 4-2011-007415 filed on 26 August 2015 be withdrawn as allowed by the Rules of Court.

By way of comment/opposition, the Respondent-Registrant argued that the notice to withdraw petition for cancellation should be denied for being clearly bereft of merit. According to the Respondent-Registrant, the Petitioner has yet to comply with the Order dated 09 October 2015 such that the issue of the existence of sufficient authority to file and/or withdraw the petition remains undetermined. The Respondent-Registrant also averred that it already incurred substantial costs and suffered serious anxiety by the filing of the petition and that no provision on withdrawal appears as part of the Intellectual Property Rules of Procedure.

In this regard, the Petitioner's voluntary withdrawal of the petition for cancellation renders the petition moot as there is no more factual or legal basis to proceed with the case. Also, the withdrawal of the Petition is tantamount to lack of intention or interest to or failure to comply with Order No. 2015-1474 dated 09 October 2015. The Order directed the Petitioner to submit within ten (10) days from receipt thereof the original legalized and authenticated Power of Attorney and/or Secretary's Certificate. Such failure of the Petitioner to comply with the Order is sanctioned by Rule 2, Section 8 (c) of the amended Rules and Regulations on Inter Partes Proceedings (*promulgated through Office Order No. 99, as amended by Office Order No. 14-068, s. 2014*), which provides, to wit:

Section 8. Action on the Notice of Opposition or Motion for Extension to File Notice of Opposition and Petition. - x x x (c) The opposer, including those who file a motion for extension of time to file notice of opposition, or the petitioner shall be given a period of ten (10) days from receipt of the order to complete or to cure any of the following defects:

(2) Failure to attach the originals of the following documents: x x x

(iii) Special Power of Attorney of representative(s) who signed the pleadings, the verification, and the certification of non-forum shopping; the proof of authority to issue or execute the Special Power of Attorney; and

(iv) Proof of authentication by the appropriate Philippine diplomatic or consular office, of the foregoing documents, if executed abroad.

Failure to complete or cure the defect shall cause the dismissal of the case. [Emphasis Supplied]

Assuming that the provisions of the Rules of Court apply suppletorily, the Petitioner's notice to withdraw petition for cancellation is *akin* or may be treated as a dismissal upon notice by plaintiff¹. In which case, the petition may be dismissed by the Petitioner by simply filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. The dismissal in this instance is ordained as a dismissal as a matter of right without the necessity of alleging in the notice of dismissal any ground nor of making any reservation.² Thus, the Supreme Court categorically ruled that:


"On the contrary, the trial court has no discretion or option to deny the motion, since dismissal by the plaintiff under Section 1, Rule 17 is guaranteed as a matter of right to the plaintiffs. Even if the motion cites the most ridiculous of grounds for dismissal, the trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of ground."

In this regard, a dismissal or voluntary abandonment by the plaintiff of an action operates to annul all proceedings had in connection therewith and renders all pleadings ineffective. A dismissal or nonsuit leaves the situation as though no suit had ever been brought. Further proceedings in the action are arrested and what has been done therein is also annulled, so that the action is as if it had never been.³

WHEREFORE, premises considered, the instant case is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2011-007415 be returned, together with a copy of this Order and the Petitioner's Notice to Withdraw Petition for Cancellation, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 04 November 2015.


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

1 *Dismissal upon notice by plaintiff.* A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. [Section 1, Rule 17, Rules of Court]

2 *O. B. Jovenir Construction and Development Corp. v. Macamir Realty and Development Corp., et. al.*, G. R. No. 135803, 28 March 2006.

3 *Landcenter Construction and Development Corp. v. V. C. Ponce Co., Inc.*, G. R. No. 160409, 02 October 2009.

Copy furnished:

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