



Republic of the Philippines
COURT OF APPEALS
MANILA

FIFTH DIVISION

SANYO SEIKI STEEL CORP., CA- G.R. SP No. 135924
herein represented by
CLARISSA M. ROSALES,
Petitioner,

Members:

-versus-

HON. ANTONIO C. REYES, in
his capacity as Presiding Judge
of the Regional Trial Court of
Malolos City, Bulacan, Branch
07 and Chalie E. Angustia,
Respondents.

TIJAM, N.G.,
Chairperson
LOPEZ, and
GARCIA-FERNANDEZ, JJ.

Promulgated:

May 25, 2015

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DECISION

LOPEZ, J.:

Assailed in this petition for *certiorari* is the April 10, 2014 Order¹ of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 7, denying the motion for reconsideration filed by petitioner, praying for the reversal of its December 19, 2013 Order.²

The facts are of record.

Petitioner Sanyo Seiki Steel Corporation (petitioner) is the registered owner of the trade name and mark ALLEGENI STAINLESS STEEL (Allegeni) which is exclusively used in the manufacture, distribution and sale of its stainless steel sheet. On October 19, 2011, Jenny Chan, the Executive Vice President of Sanyo Seiki, requested the National Bureau of Investigation (NBI) to investigate the persons

¹ Rollo, pp. 24-25.

² Id., p. 135.

engaged in the illegal sale and distribution of counterfeit Allegeni products.

Upon verification of the information, the NBI Intellectual Property Rights Department applied for the issuance of a search warrant against private respondent DCA Junkshop and General Merchandise owned by Chalie Angustia (Angustia).

On November 21, 2011, the RTC of Manila, Branch 24, issued a search warrant against Angustia. The warrant was served on November 24, 2011. The NBI raided the shop of Angustia at Brgy. Iba, Meycauayan, Bulacan and confiscated the following items: (1) Three (3) pieces of box gutter; (2) One (1) piece Spanish gutter; and (3) Eleven (11) pieces 4 x 8 plain sheets.³ All the seized items, bearing petitioner's registered trademark, "ALLEGENI STAINLESS STEEL", were held in *custodia legis*.

Consequently, a criminal complaint⁴ was filed against Angustia for violation of Section 155 and 168, in relation to Section 170, of R.A. 8293.⁵ The Department of Justice resolved⁶ that probable cause exists; hence, corresponding Information⁷ was filed against Angustia, to wit:

That on or about November 24, 2011, and dates prior thereto, in Meycauayan City, Bulacan, and within the jurisdiction of this Honorable Court, above-named accused, as registered owner of DCA Junkshop and General Merchandise with business address at No. 63 B. Libis, Iba, Meycauayan City, Bulacan, with criminal intent to defraud Sanyo Seiki Stainless Steel Corporation ("Sanyo Seiki"), to deceive and cause confusion to the general consuming public, did then and there, knowingly, willfully, unlawfully and feloniously pass off counterfeit stainless steel sheet products manufactured by her or in which she deals, with registered mark Allegeni Stainless Steel, for those of Sanyo Seiki in the sale, offer for sale and distribution of counterfeit stainless steel sheet products bearing the registered mark Allegeni Stainless Steel without the consent, permit and authority of Sanyo Seiki, the owner of the registered mark Allegeni Stainless Steel, to the damage of the same and the general consuming public.

³ Id., Receipt/Inventory of Property Seized, p. 54.

⁴ Id., Complaint-Affidavit, pp. 34-36.

⁵ Otherwise known as The Intellectual Property Code of the Philippines.

⁶ Id., Department of Justice Resolution dated May 16, 2012, pp. 56-58. The dispositive portion of which reads:

"WHEREFORE, premises considered, it is respectfully recommended that corresponding Informations for violation of Sections 155 and 168 in relation to Section 170, of R.A. 8293 be filed against respondent CHALIE E. ANGUSTIA."

⁷ Id., dated May 16, 2012, pp. 60-61.

CONTRARY TO LAW.

Eventually, a warrant of arrest was served against Angustia. On November 5, 2013, petitioner filed a Motion for Consolidation and a Motion for Destruction. However, on November 11, 2013, petitioner amended the motions to include the verification.

On December 19, 2013, the trial court issued an Order,⁸ the pertinent portion of which reads:

Acting on the “Motion for the Destruction of Seized Items,” and the Opposition thereto, this Court is constrained to deny said motion for destruction on the ground that there is need to establish the violation first before any order for destruction may be issued.

While the seized items sought for destruction have the markings “Allegeni Stainless Steel,” there is yet no evidence which establishes that they are not genuine except for the claim of the complaint Sanyo Seiki, the owner of the said trademark “Allegeni,” not to mention the fact that the alleged seized are now in *custodial egis*. (sic)

WHEREFORE, the “Motion for Destruction...” is denied for lack of merit.

SO ORDERED.

Petitioner filed a Motion for Reconsideration⁹ but was likewise denied, thus:

Wherefore, as there is nothing in the instant motion that could warrant or justify a modification or reversal of the order dated December 19, 2013, the motion for reconsideration is *denied*.

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SO ORDERED.¹⁰

Hence, this petition. Petitioner contends that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion for destruction filed by the prosecution. Petitioner argues that:

I. The Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled

⁸ Id., p.135.

⁹ Id., dated January 9, 2014, pp. 136-143.

¹⁰ Id., Order dated April 10, 2014, pp.24-25.

that the counterfeit nature of the seized evidence has not been established.

II. Inventory further bolsters the counterfeit nature of the seized items.

III. The rules of procedure of violation of Intellectual Property Rights only call for a summary hearing in a motion for destruction of seized items.

IV. Public Respondent has the sole authority to order for (sic) the destruction of the infringing items as he latter are now in *custodial legis* (sic).

V. The Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the motion for reconsideration dated 09 January 2014 filed by the Petitioner.

The petition lacks merit.

Section 157 of the Intellectual Property Code states:

Section 157. *Power of Court to Order Infringing Material Destroyed.*

157.1 In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court **may** order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same shall be delivered up and destroyed. (*Emphasis supplied*)

Also, under Section 1, Rule 20 of the Rules of Procedure for Intellectual Property Rights Cases, it is provided that:

Section 1. *Order of Destruction.* - At any time after the filing of the complaint or information, the court, upon motion and after due notice and hearing where the violation of the intellectual property rights of the owner is established, **may** order the destruction of the seized infringing goods, objects and devices, including but not limited to, sales invoices, other documents evidencing sales, labels, signs, prints, packages, wrappers, receptacles, and advertisements and the like used in the infringing act.

Such hearing shall be summary in nature with notice of hearing to the defendant or accused of his last known address to afford the defendant or accused the opportunity to oppose the motion. (*Emphasis supplied*)

Both Section 157.1 of the Intellectual Property Code and Section 1, Rule 20 of the Rules of Procedure for Intellectual Property Rights Cases, contain the word “may”. The use of the word “may” is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word “may,” when used in a statute, does not generally suggest compulsion.¹¹ Verily, the RTC has the discretion whether to grant or not the Motion for Destruction¹² filed by petitioner depending on the evidence presented.

The applicable laws¹³ require that the violation of the intellectual property rights of the owner must have been established, before the disposition or destruction of the seized items. In petitioner's Motion for Destruction dated November 5, 2013, the appended documents in support of the Motion for Destruction are:

- a. Annex “A” - Private Complainant's IPO Certificate of Registration.¹⁴
- b. Annex “B” - Inventory of Property Seized dated 24 November 2011.¹⁵

In its Motion for Reconsideration dated January 9, 2014, petitioner re-submitted its IPO Certificate of Registration as Annex “A”, and introduced a new document marked as Annex “B” denominated as Certification¹⁶ signed by Michelle Parnicio, Quality Control Supervisor of petitioner, certifying that the items seized in the premises of Angustia were counterfeit.

We find the appended documents in support of the Motion for Destruction and the Motion for Reconsideration insufficient to establish that there is a violation of the intellectual property rights of Sanyo Seiki to warrant the destruction or disposition of the seized items. As correctly

¹¹ Office of the Ombudsman v. Court of Appeals and Dr. Mercedita J. Macabulos, G.R. No. 159395, May 07, 2008.

¹² Rollo, pp. 92-98.

¹³ Section 157.1 of the Intellectual Property Code and Section 1, Rule 20 of the Rules of Procedure for Intellectual Property Rights Cases.

¹⁴ Rollo, p. 109.

¹⁵ Id., p. 110.

¹⁶ Id., pp.159-160.

pointed out in Angustia's Comment:¹⁷

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1. There is nothing in the Motion for Destruction/Motion for Reconsideration to substantiate the fact that the seized items are contraband or counterfeit, other than the self-serving and unverified Certification contained in petitioner's Annex "B". This Certification is a mere piece of paper, not even notarized. It is not enough to show that "the violation of the intellectual property rights of the owner is established."

2. There is no available competent proof with which to distinguish or compare the "original" products of private complainant (petitioner herein) Sanyo Seiki Stainless Steel Corporation, with the seized items, in order to positively prove that said seized items are counterfeit.¹⁸

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We do not agree with petitioner's contention that violation of its intellectual property rights has been established by the mere finding of probable cause for trademark infringement contained in the Information.¹⁹ It bears stressing that the rules for the destruction of the confiscated items requires that a separate hearing be conducted. This hearing shall be summary in nature. This connotes the reception of evidence that has reference to substantial matters subject of the inquiry. Such proceedings is comparable with the procedures in bail hearing. In one case,²⁰ the nature of summary hearing was elucidated as follows:

"By 'summary hearing,' this Court added, "we mean such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted." The course of the inquiry may be left **to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters**, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses

¹⁷ Id., pp. 164-169.

¹⁸ Id., pp. 167-168.

¹⁹ Id., Petition for Certiorari, p.13.

²⁰ Alejandro C. Siazon v. Hon. Presiding Judge of the Circuit Criminal Court, 16th Judicial District Davao City, Jose Escribano, Renan Padilla, Timoteo Supen alias "Timot" alias, "Emot" and Alfredo Supen alias "Pedong," G.R. No. L-34154 and L-34158, October 29, 1971.

and reducing to a reasonable minimum at the amount of corroboration particularly on details that are not essential to the purposes of the hearing.”

Petitioner claims that the danger of loss, pilferage, or theft of the seized items are possibilities that cannot be discounted given the value and use of the seized items and that costs are also being incurred in the storage thereof. Thus, petitioner prays for the destruction of the confiscated goods and to just retain a representative sample.

There is no compelling reason to destroy the seized items as the harm sought to be avoided are speculative and lacks evidentiary weight. Besides, the number (just 15) of the seized items are few and the costs for their storage are not shown to be a huge amount to warrant destruction. Moreover, the items themselves are the very evidence against the accused and their preservation are essential for the determination of the guilt of the accused.

All told, We find that the RTC did not abuse its discretion. Be it noted that *certiorari* is not available to correct errors of procedure or mistakes in the judge’s findings and conclusions of law and fact. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for *certiorari* is proper.²¹ There is none in this case.

FOR THESE REASONS, the petition is DISMISSED.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

WE CONCUR:

NOEL G. TIJAM
Associate Justice

MYRA V. GARCIA-FERNANDEZ
Associate Justice

²¹ Judy Anne L. Santos vs. People of the Philippines and Bureau of Internal Revenue, G.R. No. 173176, August 26, 2008.

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.

NOEL G. TIJAM
Chairperson, Fifth Division