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FIRST DIVISION

[G.R. No. 188225, November 28, 2012]

SHIRLEY F. TORRES, PETITIONER, VS. IMELDA PEREZ AND RODRIGO PEREZ, RESPONDENTS.

[G.R. NO. 198728]

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D E C I S I O N

SERENO, J.:

These are Petitions for Review on Certiorari under Rule 45 of the Rules of Court. The petition docketed as G.R. No. 188225 assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 103846 dated 11 March 2009. The CA Decision nullified the Orders dated 12 February 2008[2] and 11 April 2008[3] of the Regional Trial Court (RTC) of Makati, Branch 149. The RTC Orders had denied the Motion to Dismiss and/or Withdraw Information filed against respondents for unfair competition (violation of Section 168 in relation to Section 170)[4] under Republic Act No. (R.A.) 8293 (Intellectual Property Code of the Philippines).

On the other hand, the petition docketed as G.R. No. 198728 assails the Decision[5] in CA-G.R. SP No. 111903 dated 29 September 2011, which affirmed the RTC Orders dated 29 July 2009[6] and 19 October 2009,[7] this time quashing the Information against respondents.

Respondents Imelda and Rodrigo are spouses who own RGP Footwear Manufacturing (RGP), which supplies ladies' shoes to Shoe Mart (SM).[8] They met petitioner when she sold them business-class plane tickets to the United States in 2002.[9] She was also interested in doing business with SM, and they suggested that she form a partnership with their daughter Sunshine, nicknamed Sasay.[10]

Petitioner and Sunshine formed Sasay's Closet Co. (SCC), a partnership registered with the Securities and Exchange Commission on 17 October 2002. SCC was engaged in the supply, trading, retailing of garments such as underwear, children's wear, women's and men's wear, and other incidental activities related thereto.[11]

For its products, SCC used the trademark "Naturals with Design," which it filed with the Intellectual Property Office on 24 August 2005 and registered on 26 February 2007.[12] These products were primarily supplied to SM,[13] which assigned to them the vendor code "190501" for purposes of identification.[14]

SCC used the facilities and equipment owned by RGP, as well as the latter's business address (No. 72 Victoria Subdivision, *Barangay* Dela Paz, Biñan, Laguna), which was also the residential address of respondents.[15]

In August 2003, Sunshine pulled out of the partnership, because she was hired to work in an international school.[16] Respondent Imelda took over Sunshine's responsibilities in the partnership.[17]

On 14 December 2005, petitioner sent an email to respondent Imelda asking to be reimbursed for expenses incurred in the former's travel to China.[18] Respondent Imelda replied the following day, stating that the partnership could not reimburse petitioner, because the trip was personal and not business-related.[19] In the same email, respondent Imelda vented her frustration over the fact that she, together with respondent Rodrigo, had been doing all the work for SCC and incurring expenses that they did not charge to the partnership.[20] Respondent Imelda then informed petitioner of the former's decision to dissolve the partnership.[21] Despite the objections of petitioner to the dissolution of SCC, various amounts were paid to her by respondents from January to April 2006 representing her share in the partnership assets.[22]

Meanwhile, on 27 March 2006, petitioner established Tezares Enterprise, a sole proprietorship engaged in supplying and trading of clothing and accessories except footwear.[23] Also in March 2006, she discovered that underwear products bearing the brand "Naturals" were being sold in SM with vendor code "180195."[24] This code was registered to RGP,[25] a fact confirmed by test buys conducted by her lawyers on 13 and 14 May 2006.[26]

On 5 June 2006, a search warrant for unfair competition under Section 168 in relation to Section 170 of R.A. 8293 was issued by the RTC of Manila, Branch 24, against respondents at their address.[27] The search warrant called for the seizure of women's undergarments bearing the brand "Naturals," as well as equipment and papers having the vendor code "180195" or the inscription "RGP." The search warrant was implemented on the same day. However, it was quashed by the same court on 20 October 2006 upon motion of respondents. The trial court ruled that respondents did not pass off "Naturals" as the brand of another manufacturer. On the contrary, they used the brand in the honest belief that they owned SCC, the owner of the brand.

On 9 June 2006, petitioner filed a criminal complaint for unfair competition against respondents and Sunshine before the City Prosecution Office of Makati City.[28] Assistant City Prosecutor Imelda P. Saulog found probable cause to indict respondents for unfair competition.[29] She ruled that they had clearly passed off the "Naturals" brand as RGP's even if the brand was owned by SCC. According to the prosecutor, SCC was indeed dissolved when respondent Imelda manifested her intention to cease from the partnership in an email sent to petitioner on 15 December 2005.[30] The prosecutor said, however, that it remained operational, since the process of winding up its business had not been completed. Thus, SCC remained the owner of the "Naturals" brand, and petitioner – being a legitimate partner thereof – had a right to file the complaint against respondents. The

prosecutor found no probable cause against Sunshine, as it was established that she had withdrawn from SCC as of August 2003.

The indictment was raffled to RTC Makati City, Branch 149. On 23 October 2006, it issued an Order finding probable cause for the issuance of a warrant of arrest against respondents.[31]

Respondents filed a petition for review of the prosecutor's resolution before the Department of Justice (DOJ), which on 13 December 2006 issued its own Resolution[32] reversing the finding of existence of probable cause against them. Contrary to the prosecutor's finding, the DOJ found that SCC had effectively wound up the latter's partnership affairs on 24 April 2006 when petitioner was reimbursed for her trip to China. That was the last of the payments made to her to cover her share in the partnership affairs, which started after respondent Imelda manifested her intention to cease from the partnership business on 15 December 2005. Thus, when the criminal complaint for unfair competition was filed on 9 June 2006, there was "no longer any competition, unfair or otherwise, involving the partnership."[33]

Furthermore, the DOJ ruled that even if SCC had not yet terminated its business and therefore still existed, respondents had the right to use the "Naturals" brand, as they were already the exclusive owners of SCC following the completion of payments of petitioner's share in the partnership affairs. Also, the establishment by petitioner of Tezares Enterprise – which directly competed with SCC in terms of products – and its subsequent accreditation as supplier of intimate apparel for SM in April 2006 were regarded by the DOJ as apparent indications that she no longer had any share in SCC. Thus, the petition for review was granted, and the city prosecutor of Makati was ordered to withdraw the Information against respondents for unfair competition.

The DOJ denied the motion for reconsideration filed by petitioner on 28 March 2007.[34] Hence, she filed a petition for certiorari before the CA, where it was docketed as CA-G.R. SP No. 98861. In her petition, she questioned the DOJ Resolution, but later withdrew the same on 6 December 2007 for an unknown reason.[35]

Following the directive of the DOJ, the prosecutor filed before the RTC of Makati City, Branch 149, a Motion to Dismiss and/or Withdraw Information on 3 April 2007.[36] The trial court denied the motion in an Order[37] dated 12 February 2008. It maintained the correctness of its finding of existence of probable cause in the case and ruled that the findings of the DOJ would be better appreciated and evaluated in the course of the trial.

Respondents moved for reconsideration,[38] but their motion was denied[39] by the RTC. Aggrieved, they filed a Petition for Certiorari (with Prayer for the Issuance of a Temporary Restraining Order and thereafter a Preliminary Injunction)[40] before the CA. They argued that probable cause for the issuance of a warrant of arrest is different from probable cause for holding a person for trial. The first is the function of the judge, while the second is the prosecutor's.[41] Thus, respondents claimed that it was wrong for Presiding Judge Cesar O. Untalan to deny the prosecutor's motion to dismiss for lack of probable cause on the basis of the judge's own finding that there was probable cause to issue a warrant of arrest against respondents.

Furthermore, the Judge Untalan based his finding solely on the evidence submitted by petitioner without evaluating the evidence of respondents.

In the first assailed Decision in CA-G.R. SP No. 103846[42] dated 11 March 2009, the CA granted the petition. It found that the trial judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he denied the prosecutor's motion to dismiss for lack of probable cause. The CA sustained the position of respondents that the finding of probable cause for the filing of an information is an executive function lodged with the prosecutor. It also found that the trial judge did not make an independent assessment of the evidence on record in determining the existence of probable cause for the offense of unfair competition, as opposed to the exhaustive study made by the DOJ before arriving at its finding of lack of probable cause.

The CA also ruled that in determining probable cause, the essential elements of the crime charged must be considered, for their absence would mean that there is no criminal offense. In determining probable cause for unfair competition, the question is "whether or not the offenders by the use of deceit or any other means contrary to good faith passes off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result."[43] The CA affirmed the findings of the DOJ and the RTC of Manila, Branch 24 that respondents used the "Naturals" brand because they believed that they were the owners of SCC, which owned the brand. Furthermore, the partnership had been terminated as of April 2006; hence, the filing of the criminal complaint on 9 June 2006 could no longer prosper. Even if SCC had not yet terminated its business, respondents, having bought petitioner out of SCC, were already its exclusive owners and, as such, had the right to use the "Naturals" brand.

According to the CA, the filing of the criminal complaint for unfair competition was nothing but an offshoot of the misunderstanding and quarrel that arose when respondents initially refused to reimburse the expenses incurred by petitioner in her trip to China and further escalated when respondent Imelda decided to dissolve SCC.

Petitioner moved for reconsideration[44] of the CA Decision, but the motion was denied on 1 June 2009.[45] She then brought the matter before this Court via a Petition for Review on Certiorari filed under Rule 45 of the Rules of Court and docketed as G.R. No. 188225.[46] Without giving due course to the petition, the Court required[47] respondents to comment thereon. Upon their compliance,[48] petitioner was required[49] to file a reply,[50] which was later received on 11 December 2009. On 19 May 2011, she filed her Memorandum.[51]

Meanwhile, following the promulgation of the Decision in CA-G.R. SP No. 103846, respondents filed an Urgent Motion to Dismiss the criminal complaint for unfair competition before the RTC on 1 April 2009.[52] The motion was duly opposed by petitioner, arguing that the CA Decision had not yet attained finality in view of her pending petition before this Court; thus, the motion was premature.[53] The RTC denied the motion to dismiss for lack of merit.[54] However, upon motion for

reconsideration[55] filed by respondents, it issued the Order dated 29 July 2009[56] ordering the quashal of the Information against them. The trial court issued another Order on 19 October 2009[57] denying petitioner's Motion for Reconsideration.[58]

Petitioner filed a Petition for Certiorari[59] before the CA on the ground that the trial judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he quashed the Information against respondents based on a CA Decision that was not yet final and executory, being the subject of a petition still pending before this Court.

On 29 September 2011, the CA issued the second assailed Decision in CA-G.R. SP No. 111903 affirming the RTC Orders dated 29 July 2009 and 19 October 2009. The appellate court ruled that while its Decision in CA-G.R. SP No. 103846 was still under review before this Court, neither court had issued a restraining order or injunction that would prevent the RTC from implementing the said Decision ordering the dismissal of the information against respondents. Furthermore, the CA ruled that since petitioner had withdrawn her petition in CA-G.R. SP No. 98861 questioning the DOJ Resolution, the issue of whether there was probable cause had "already been resolved with finality in the negative."[60] Thus, the trial court cannot be faulted for following the CA directive to dismiss the Information against respondents.

Opting not to file a motion for reconsideration,[61] petitioner again comes before us on a Petition for Review on Certiorari questioning the Decision in CA-G.R. SP No. 111903.[62] In her petition docketed as G.R. No. 198728, she argues that Presiding Judge Cesar O. Untalan committed grave abuse of discretion amounting to lack or excess of jurisdiction when he dismissed the criminal case against respondents for unfair competition based on CA findings that were not yet final. The trial judge was fully aware that those findings were still subject to a pending petition before this Court.

On 23 November 2011, the Court consolidated G.R. Nos. 198728 and 188225.[63]

ISSUE

Despite the extensive legal battle that petitioner and respondents have waged heretofore, these petitions will be settled simply through a ruling on whether there exists probable cause to indict respondents for unfair competition (violation of Section 168 in relation to Section 170) under R.A. 8293.

OUR RULING

No probable cause to indict respondents

At the outset, it is worth noting that Judge Untalan acted well within the exercise of his judicial discretion when he denied the Motion to Dismiss and/or Withdraw Information filed by the prosecution. His finding that there was probable cause to indict respondents for unfair competition, and that the findings of the DOJ would be better appreciated in the course of a trial, was based on his own evaluation of the evidence brought before him. It was an evaluation that was required of him as a judge.