

## THIRD DIVISION

**[ G.R. No. 172835, December 13, 2007 ]**

**AIR PHILIPPINES CORPORATION, PETITIONER, VS.  
PENNSWELL, INC. RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Petitioner Air Philippines Corporation seeks, *via* the instant Petition for Review under Rule 45 of the Rules of Court, the nullification of the 16 February 2006 Decision<sup>[1]</sup> and the 25 May 2006 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 86329, which affirmed the Order<sup>[3]</sup> dated 30 June 2004 of the Regional Trial Court (RTC), Makati City, Branch 64, in Civil Case No. 00-561.

Petitioner Air Philippines Corporation is a domestic corporation engaged in the business of air transportation services. On the other hand, respondent Pennswell, Inc. was organized to engage in the business of manufacturing and selling industrial chemicals, solvents, and special lubricants.

On various dates, respondent delivered and sold to petitioner sundry goods in trade, covered by Sales Invoices No. 8846,<sup>[4]</sup> 9105,<sup>[5]</sup> 8962,<sup>[6]</sup> and 8963,<sup>[7]</sup> which correspond to Purchase Orders No. 6433, 6684, 6634 and 6633, respectively. Under the contracts, petitioner's total outstanding obligation amounted to P449,864.98 with interest at 14% per annum until the amount would be fully paid. For failure of the petitioner to comply with its obligation under said contracts, respondent filed a Complaint<sup>[8]</sup> for a Sum of Money on 28 April 2000 with the RTC.

In its Answer,<sup>[9]</sup> petitioner contended that its refusal to pay was not without valid and justifiable reasons. In particular, petitioner alleged that it was defrauded in the amount of P592,000.00 by respondent for its previous sale of four items, covered by Purchase Order No. 6626. Said items were misrepresented by respondent as belonging to a new line, but were in truth and in fact, identical with products petitioner had previously purchased from respondent. Petitioner asserted that it was deceived by respondent which merely altered the names and labels of such goods. Petitioner specifically identified the items in question, as follows:

Label/Description	Item No.	Amount	P.O.	Date
1. a. Anti-Friction Fluid	MPL-800	153,941.40	5714	05/20/99
b. Excellent Rust Corrosion (fake)	MPL-008	155,496.00	5888	06/20/99

2. a. Contact Grease	COG #2	115,236.00	5540	04/26/99
b. Connector Grease (fake)	CG	230,519.52	6327	08/05/99
3. a. Trixohotropic Grease	EPC	81,876.96	4582	01/29/99
b. Di-Electric Strength Protective Coating (fake)	EPC#2	81,876.96	5446	04/21/99
4. a. Dry Lubricant	ASC-EP	87,346.52	5712	05/20/99
b. Anti-Seize Compound (fake)	ASC-EP 2000	124,108.10	4763 & 5890	02/16/99 & 06/24/99

According to petitioner, respondent's products, namely Excellent Rust Corrosion, Connector Grease, Electric Strength Protective Coating, and Anti-Seize Compound, are identical with its Anti-Friction Fluid, Contact Grease, Thixohotropic Grease, and Dry Lubricant, respectively. Petitioner asseverated that had respondent been forthright about the identical character of the products, it would not have purchased the items complained of. Moreover, petitioner alleged that when the purported fraud was discovered, a conference was held between petitioner and respondent on 13 January 2000, whereby the parties agreed that respondent would return to petitioner the amount it previously paid. However, petitioner was surprised when it received a letter from the respondent, demanding payment of the amount of P449,864.94, which later became the subject of respondent's Complaint for Collection of a Sum of Money against petitioner.

During the pendency of the trial, petitioner filed a Motion to Compel <sup>[10]</sup> respondent to give a detailed list of the ingredients and chemical components of the following products, to wit: (a) Contact Grease and Connector Grease; (b) Thixohotropic Grease and Di-Electric Strength Protective Coating; and (c) Dry Lubricant and Anti-Seize Compound.<sup>[11]</sup> It appears that petitioner had earlier requested the Philippine Institute of Pure and Applied Chemistry (PIPAC) for the latter to conduct a comparison of respondent's goods.

On 15 March 2004, the RTC rendered an Order granting the petitioner's motion. It disposed, thus:

The Court directs [herein respondent] Pennswell, Inc. to give [herein petitioner] Air Philippines Corporation[,] a detailed list of the ingredients or chemical components of the following chemical products:

- a. Contact Grease to be compared with Connector Grease;
- b. Thixohotropic Grease to be compared with Di-Electric Strength Protective Coating; and
- c. Dry Lubricant to be compared with Anti-Seize Compound[.]

[Respondent] Pennswell, Inc. is given fifteen (15) days from receipt of this Order to submit to [petitioner] Air Philippines Corporation the chemical components of all the above-mentioned products for chemical comparison/analysis.<sup>[12]</sup>

Respondent sought reconsideration of the foregoing Order, contending that it cannot be compelled to disclose the chemical components sought because the matter is confidential. It argued that what petitioner endeavored to inquire upon constituted a trade secret which respondent cannot be forced to divulge. Respondent maintained that its products are specialized lubricants, and if their components were revealed, its business competitors may easily imitate and market the same types of products, in violation of its proprietary rights and to its serious damage and prejudice.

The RTC gave credence to respondent's reasoning, and reversed itself. It issued an Order dated 30 June 2004, finding that the chemical components are respondent's trade secrets and are privileged in character. *A priori*, it rationalized:

The Supreme Court held in the case of *Chavez vs. Presidential Commission on Good Government*, 299 SCRA 744, p. 764, that "the drafters of the Constitution also unequivocally affirmed that aside from national security matters and intelligence information, trade or industrial secrets (pursuant to the Intellectual Property Code and other related laws) as well as banking transactions (pursuant to the Secrecy of Bank Deposit Act) are also exempted from compulsory disclosure."

Trade secrets may not be the subject of compulsory disclosure. By reason of [their] confidential and privileged character, ingredients or chemical components of the products ordered by this Court to be disclosed constitute trade secrets lest [herein respondent] would eventually be exposed to unwarranted business competition with others who may imitate and market the same kinds of products in violation of [respondent's] proprietary rights. Being privileged, the detailed list of ingredients or chemical components may not be the subject of mode of discovery under Rule 27, Section 1 of the Rules of Court, which expressly makes privileged information an exception from its coverage.<sup>[13]</sup>

Alleging grave abuse of discretion on the part of the RTC, petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the Court of Appeals, which denied the Petition and affirmed the Order dated 30 June 2004 of the RTC.

The Court of Appeals ruled that to compel respondent to reveal in detail the list of ingredients of its lubricants is to disregard respondent's rights over its trade secrets. It was categorical in declaring that the chemical formulation of respondent's products and their ingredients are embraced within the meaning of "trade secrets." In disallowing the disclosure, the Court of Appeals expounded, thus:

The Supreme Court in *Garcia v. Board of Investments* (177 SCRA 374 [1989]) held that trade secrets and confidential, commercial and financial information are exempt from public scrutiny. This is reiterated in *Chavez v. Presidential Commission on Good Government* (299 SCRA 744 [1998]) where the Supreme Court enumerated the kinds of information and transactions that are recognized as restrictions on or privileges against

compulsory disclosure. There, the Supreme Court explicitly stated that:

"The drafters of the Constitution also unequivocally affirmed that, aside from national security matters and intelligence information, trade or industrial secrets (pursuant to the Intellectual Property Code and other related laws) as well as banking transactions (pursuant to the Secrecy of Bank Deposits Act) re also exempt from compulsory disclosure."

It is thus clear from the foregoing that a party cannot be compelled to produce, release or disclose documents, papers, or any object which are considered trade secrets.

In the instant case, petitioner [Air Philippines Corporation] would have [respondent] Pennswell produce a detailed list of ingredients or composition of the latter's lubricant products so that a chemical comparison and analysis thereof can be obtained. On this note, We believe and so hold that the ingredients or composition of [respondent] Pennswell's lubricants are trade secrets which it cannot be compelled to disclose.

[Respondent] Pennswell has a proprietary or economic right over the ingredients or components of its lubricant products. The formulation thereof is not known to the general public and is peculiar only to [respondent] Pennswell. The legitimate and economic interests of business enterprises in protecting their manufacturing and business secrets are well-recognized in our system.

[Respondent] Pennswell has a right to guard its trade secrets, manufacturing formulas, marketing strategies and other confidential programs and information against the public. Otherwise, such information can be illegally and unfairly utilized by business competitors who, through their access to [respondent] Pennswell's business secrets, may use the same for their own private gain and to the irreparable prejudice of the latter.

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In the case before Us, the alleged trade secrets have a factual basis, i.e., it comprises of the ingredients and formulation of [respondent] Pennswell's lubricant products which are unknown to the public and peculiar only to Pennswell.

All told, We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Judge in finding that the detailed list of ingredients or composition of the subject lubricant products which petitioner [Air Philippines Corporation] seeks to be disclosed are trade secrets of [respondent] Pennswell; hence, privileged against compulsory disclosure.<sup>[14]</sup>

Petitioner's Motion for Reconsideration was denied.

Unyielding, petitioner brought the instant Petition before us, on the sole issue of:

WHETHER THE COURT OF APPEALS RULED IN ACCORDANCE WITH PREVAILING LAWS AND JURISPRUDENCE WHEN IT UPHELD THE RULING OF THE TRIAL COURT THAT THE CHEMICAL COMPONENTS OR INGREDIENTS OF RESPONDENT'S PRODUCTS ARE TRADE SECRETS OR INDUSTRIAL SECRETS THAT ARE NOT SUBJECT TO COMPULSORY DISCLOSURE.<sup>[15]</sup>

Petitioner seeks to convince this Court that it has a right to obtain the chemical composition and ingredients of respondent's products to conduct a comparative analysis of its products. Petitioner assails the conclusion reached by the Court of Appeals that the matters are trade secrets which are protected by law and beyond public scrutiny. Relying on Section 1, Rule 27 of the Rules of Court, petitioner argues that the use of modes of discovery operates with desirable flexibility under the discretionary control of the trial court. Furthermore, petitioner posits that its request is not done in bad faith or in any manner as to annoy, embarrass, or oppress respondent.

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.

<sup>[16]</sup> The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.<sup>[17]</sup> A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.<sup>[18]</sup> Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list.

<sup>[19]</sup> It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." <sup>[20]</sup> American jurisprudence has utilized the following factors <sup>[21]</sup> to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily