

## SECOND DIVISION

[ G.R. No. 128632, August 05, 1999 ]

### MSF TIRE AND RUBBER, INC., PETITIONER, VS. COURT OF APPEALS AND PHILTREAD TIRE WORKERS' UNION, RESPONDENTS.

#### DECISION

##### MENDOZA, J.:

Petitioner seeks a review of the decision<sup>[1]</sup> of the Court of Appeals, dated March 20, 1997, which set aside the order of the Regional Trial Court of Makati, dated July 2, 1996, in Civil Case No. 95-770, granting petitioner's application for a writ of preliminary injunction.

The facts are as follows:

A labor dispute arose between Philtread Tire and Rubber Corporation (Philtread) and private respondent, Philtread Tire Workers' Union (Union), as a result of which the Union filed on May 27, 1994 a notice of strike in the National Conciliation and Mediation Board-National Capital Region charging Philtread with unfair labor practices for allegedly engaging in union-busting for violation of the provisions of the collective bargaining agreement. This was followed by picketing and the holding of assemblies by the Union outside the gate of Philtread's plant at Km. 21, East Service Road, South Superhighway, Muntinlupa, Metro Manila. Philtread, on the other hand, filed a notice of lock-out on May 30, 1994 which it carried out on June 15, 1994.

In an order, dated September 4, 1994,<sup>[2]</sup> then Secretary of Labor Nieves Confesor assumed jurisdiction over the labor dispute and certified it for compulsory arbitration. She enjoined the Union from striking and Philtread from locking out members of the Union.

On December 9, 1994, during the pendency of the labor dispute, Philtread entered into a Memorandum of Agreement with Siam Tyre Public Company Limited (Siam Tyre), a subsidiary of Siam Cement. Under the Memorandum of Agreement, Philtread's plant and equipment would be sold to a new company (petitioner MSF Tire and Rubber, Inc.), 80% of which would be owned by Siam Tyre and 20% by Philtread, while the land on which the plant was located would be sold to another company (Sucat Land Corporation), 60% of which would be owned by Philtread and 40% by Siam Tyre.

This was done and the Union was informed of the purchase of the plant by petitioner. Petitioner then asked the Union to desist from picketing outside its plant and to remove the banners, streamers, and tent which it had placed outside the plant's fence.

As the Union refused petitioner's request, petitioner filed on May 25, 1995 a complaint for injunction with damages against the Union and the latter's officers and directors before the Regional Trial Court of Makati, Branch 59 where the case was docketed as Civil Case No. 95-770.

On June 13, 1995, the Union moved to dismiss the complaint alleging lack of jurisdiction on the part of the trial court. It insisted that the parties were involved in a labor dispute and that petitioner, being a mere "alter ego" of Philtread, was not an "innocent bystander."

After petitioner made its offer of evidence as well as the submission of the parties' respective memoranda, the trial court, in an order, dated March 25, 1996, denied petitioner's application for injunction and dismissed the complaint. However, on petitioner's motion, the trial court, on July 2, 1996, reconsidered its order, and granted an injunction. Its order read:[3]

Considering all that has been stated, the motion for reconsideration is granted. The Order dated March 25, 1996 is reconsidered and set aside. Plaintiff's complaint is reinstated and defendant's motion to dismiss is **DENIED**.

As regards plaintiff's application for the issuance of a writ of preliminary injunction, the Court finds that the plaintiff has established a clear and subsisting right to the injunctive relief, hence, the same is **GRANTED**. Upon posting by the plaintiff and approval by the Court of a bond in the amount of One Million (P1,000,000.00) Pesos which shall answer for any damage that the defendants may suffer by reason of the injunction in the event that the Court may finally adjudge that the plaintiff is not entitled thereto, let a writ of preliminary injunction issue ordering the defendants and any other persons acting with them and/or on their behalf to desist immediately from conducting their assembly in the area immediately outside the plaintiff's plant at Km. 21 East Service Road, South Superhighway, Muntinlupa, Metro Manila, and from placing and/or constructing banners, streamers, posters and placards, and/or tents/shanties or any other structure, on the fence of, and/or along the sidewalk outside, the said plant premises until further orders from this Court.

SO ORDERED.[4]

Without filing a motion for reconsideration, the Union filed on August 5, 1996 a petition for *certiorari* and prohibition before the Court of Appeals.

On March 20, 1997, the appellate court rendered a decision granting the Union's petition and ordering the trial court to dismiss the civil case for lack of jurisdiction. Hence, this petition for review. Petitioner makes the following arguments in support of its petition:

- a. The Court of Appeals erred in not summarily dismissing the Union's petition for its false certification of non-forum shopping and the Union's failure to file a motion for reconsideration before going up

to the Court of Appeals on a petition for *certiorari*.

- b. The Court of Appeals gravely erred in dismissing Civil Case No. 95-770 for lack of jurisdiction and merit on the alleged ground that MSF did not have a clear and unmistakable right to entitle it to a writ of preliminary injunction.
- c. The Court of Appeals' pronouncement that it has not touched upon the issue of whether or not private respondent is a mere innocent bystander to the labor dispute between Philtread and the Union or upon the issue of whether or not private respondent is a mere dummy or continuity of Philtread is contrary to its own conclusions in the body of the decision, which conclusions are erroneous.
- d. The Court of Appeals gravely abused its discretion when it disallowed the injunction based on Philtread's remaining operations in the country and allowed the Union to exercise its right to communicate the facts of its labor dispute within MSF's premises, given the percentage of interest Philtread has in both MSF and the corporation which owns the land bearing said plant.

The issues are (1) whether the Union's failure to disclose the pendency of NCMB-NCR-NS-05-167-96 in its certification of non-forum shopping and its failure to file a motion for reconsideration of the order, dated July 2, 1996, of the trial court were fatal to its petition for review before the Court of Appeals; and (2) whether petitioner has shown a clear legal right to the issuance of a writ of injunction under the "innocent bystander" rule.

**First.** Forum shopping is the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.<sup>[5]</sup> It is an act of malpractice and is prohibited and condemned as trifling with courts and abusing their processes.<sup>[6]</sup> As held in *Executive Secretary v. Gordon*:<sup>[7]</sup>

Forum-shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, it has been held that there is forum-shopping -

(1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or certiorari) in another, or

(2) if, after he has filed a petition before the Supreme Court, a party files another before the Court of Appeals since in such case he deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open, or

(3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.