

SPECIAL FOURTH DIVISION

[CA-G.R. SP NO. 119704, November 28, 2014]

THE DEPARTMENT OF HEALTH, REPRESENTED BY SECRETARY ENRIQUE T. ONA, M.D., PETITIONER, VS. CHAMBER OF HERBAL INDUSTRIES OF THE PHILIPPINES AND HONORABLE LUCIA P. PURUGGANAN, IN HER CAPACITY AS PRESIDING JUDGE OF RTC BRANCH 30, MANILA, RESPONDENTS.

DECISION

SORONGON, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court seeks to nullify and set aside the Orders of the Regional Trial Court (RTC) of Manila, Branch 30 in Civil Case No. 10-123429 entitled "*Chamber of Herbal Industries of the Philippines vs. The Department of Health (DOH), represented by Secretary Enrique T. Ona, M.D.*" The first assailed Order dated *May 28, 2010*^[1] pertains to the issuance of the Writ of Preliminary Injunction prayed for by herein private respondent and the second assailed Order dated *September 30, 2010*^[2] refers to the denial of herein petitioner's Motion to Dismiss and Urgent Motion to Dissolve the Preliminary Injunction.

The antecedent facts:

Private respondent, Chamber of Herbal Industries of the Philippines, is an association of over sixty five (65) companies in the Philippines engaged in the business of manufacture, development, research and distribution of herbal products. Under Section 10 of R.A. No. 3720, the Food and Drugs and Cosmetic Act, as amended by R.A. No. 9711, otherwise known as the Food and Drugs Administration Act of 2009, private respondents' herbal products are categorized and regulated as "food/dietary supplements" the distribution, marketing and labeling of which are subject to certain restrictions pursuant to the rules and regulations issued by the Food and Drug Administration as well as BFAD Circulars and Memorandum.

On March 18, 2010, petitioner Department of Health (DOH) under the then Secretary Esperanza I. Cabral issued *Administrative Order No. 2010-008*^[3] (AO) setting forth directives specific to the change in the use of the message or phrase "*No Approved Therapeutic Claim*" in all advertisement, promotion and/or sponsorship activities or materials concerning Food/Dietary Supplements with the end view of promoting and protecting the consumers' health and welfare and fostering their right to proper information and education to facilitate sound choice^[4]. The AO likewise mandates the change of the use of the message or phrase "*No Approved Therapeutic Claim*" in all advertisement, promotion and/or sponsorship activities or materials concerning Food/Dietary Supplements, as well as, owners, manufacturers, distributors, advertisers and/or their agents of such products, and the Advertising Standards Council, Television Networks, Radio

Stations and other concerned offices, establishments, or persons^[5]. The AO was published on March 21, 2010 in the Philippine Star and the Philippine Daily Inquirer, two newspapers of general circulation.

On March 31, 2010 private respondent sent a letter^[6] to DOH requesting it to consider as substantial compliance to the AO the phrase: ***Mahalagang Paalala (Name of Product) Ay Hindi Gamot***", insisting that the phrase would be more consistent with the registration of food supplements which is basically based on its supplementary or established health benefits^[7]. A follow-up letter dated April 19, 2010^[8] was made by private respondent reiterating their previous request and insisting that it has suffered and will continue to suffer great irreparable damage should the implementation of the AO be strictly enforced. On April 23, 2010 petitioner denied the said request^[9].

Displeased, private respondent filed a Complaint for Injunction with prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI) on May 5, 2010 before the RTC of Manila. As earlier mentioned, the sought WPI was granted^[10] by the RTC.

Subsequently, petitioner moved to dismiss the case^[11] for lack of cause of action and further prayed that the WPI be dissolved^[12]. However, by Order^[13] dated September 30, 2010 the RTC also denied it in this wise:

"In view of the foregoing, the dismissal of the case and the dissolution of the preliminary injunction are not in order. As for plaintiff's motion for the admission of its Amended Complaint, the same can, as it is hereby, granted for having been made before a responsive pleading by the defendant has been served to the former. The right granted to plaintiff under procedural law to amend the complaint before an answer has been served is not precluded by the filing of a motion to dismiss or any other proceeding contesting its sufficiency.

WHEREFORE, premises considered, defendant's Motion to Dismiss and the Urgent Motion to Dissolve Preliminary Injunction are hereby DENIED. Plaintiff's Motion to Admit Amended Complaint is GRANTED. Defendant is given 15 days from receipt of this Order to file its Answer top the amended complaint.

SO ORDERED."

Hence, this special civil action for certiorari based on the grounds as follow:

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE WRIT OF PRELIMINARY INJUNCTION.

NO CAUSE OF ACTION EXISTS AGAINST PETITIONER, CONSIDERING THAT ADMINISTRATIVE ORDER NO. 2010-0008 WAS ISSUED AS A VALID

EXERCISE OF THE STATE'S POLICE POWER FOR THE PROTECTION OF HEALTH OF THE PUBLIC;

PRIVATE RESPONDENT HAS NOT ESTABLISHED ANY CLEAR AND UNMISTAKABLE RIGHT THAT MUST BE URGENTLY PROTECTED FROM ADMINISTRATIVE ORDER NO. 2010-0008;

RESPONDENT JUDGE COMMITTED AN ERROR IN PRESERVING THE STATUS QUO, DESPITE THE ABSENCE OF CONFLICT BETWEEN REPUBLIC ACT NO. 9711 AND REPUBLIC ACT NO. 8243.

The foregoing submissions can be simplified into two vital issues, to wit: ***(a) whether or not private respondent has a cause of action against petitioner; and (b) whether or not public respondent was correct in granting the injunctive relief prayed for by private respondent.***

It is an oft-cited rule that to determine the sufficiency of a cause of action, the facts alleged in the complaint should be considered, thus, the test of sufficiency of the facts alleged in a petition or complaint to constitute a cause of action is whether, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition or complaint^[14]. *"A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right, and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages."*^[15]

We agree with petitioner's contention that private respondent has no cause of action against it because the assailed AO was issued as a valid exercise of the police power of the State for the prevention and protection of the general public who has the right to be informed of the nature and established curative effects of food supplements they buy. The purpose of the AO is to educate consumers that food supplements are not medicines that can cure illness and that food supplements are not substitute for prescribed medicines. As cogently pointed out by the petitioner, the AO is reasonably necessary for the public to be informed about what dietary supplements are.

The AO was issued by the DOH pursuant to Section 5/(O) of R.A. NO. 9711, thus, the Food and Drug Administration which is under the DOH has the power to prescribe standards, guidelines and regulations on marketing activities of health products. Thus:

Section 5. Section 4 of Republic Act No. 3720, as amended, is hereby further amended to read as follow:

"SEC. 4. To carry out the provisions of this Act, there is hereby created an office to be called the Food and Drug Administration (FDA) in the Department of Health (DOH). Said Administration shall be under the Office of the Secretary and shall have the following functions, powers and