

FIFTH DIVISION

[CA-G.R. SP NO. 93221, July 27, 2006]

**NOVARTIS HEALTHCARE PHILIPPINES, INC., PETITIONER VS.
HON. REINATO QUILALA, IN HIS CAPACITY AS PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 57,
AND BROADCHEM CORPORATION, RESPONDENTS.**

DECISION

BARRIOS, J.:

The respondent Broadchem Corporation (or hereafter Broadchem) sued the petitioner Novartis Healthcare Philippines, Inc. (or Novaphil), Novartis Animal Vaccines, Inc. (or NAVI) and the Bureau of Animal Industry (or BAI) principally for damages and injunctive relief before the Regional Trial Court of Makati City (or RTC). This was docketed as Civil Case No. 03-1333 and raffled to Branch 57 presided by the respondent Hon. Reinato Quilala.

This petition is an offshoot of said case in the course of which the Order dated January 9, 2006 was issued denying Novaphil's *Motion to Dissolve the Writ of Preliminary Injunction*. Asserting that this was issued with grave abuse of discretion, Novaphil asks that this be nullified and set aside.

Broadchem is a corporation engaged in the business of marketing and distributing various drugs and vaccines, including animal vaccines. Broadchem had entered into a Distribution Agreement with Grand Laboratories, Inc. (or GLI) for the distribution here in the Philippines of certain vaccines that it produced. This agreement was to run for three (3) years from October 11, 1993 to October 1996, Broadchem however continued to be the exclusive distributor of GLI's vaccine even after October 1996.

In 2002 NAVI acquired GLI and it became one of its divisions, and so in the distribution of the vaccines Broadchem dealt and placed its orders with NAVI. But in its letter dated June 26, 2002 NAVI informed Broadchem of its decision to terminate the Distribution Agreement effective January 1, 2003. Broadchem protested the unilateral termination and demanded for compensation the sum of P250,000,000.00 or approximately US\$5,000,000.00 as damages, but which NAVI refused to heed.

On December 11, 2002 NAVI refused to fill in Broadchem's order. NAVI also appointed Novaphil as the exclusive distributor of its vaccines in the Philippines. NAVI further sought the cancellation of the certificates of registration issued by the BAI for its products which are in the name of Broadchem and requested for their registration in the name of Novaphil. This prompted Broadchem to file the said suit for damages and to enjoin the BAI from canceling the certificates of registration in its name, Broadchem prayed for the issuance of temporary restraining order and/or preliminary injunction.

After conducting a hearing, Hon. Quilala granted the prayer of Broadchem for the issuance of writ of injunction on December 30, 2003:

WHEREFORE, without necessarily touching on the merits of the case and upon plaintiff's filing of a bond in the amount of Php 500,000.00 duly approved by this Court, let a writ of preliminary injunction issue enjoining the defendants, their agents, successors and assigns from causing the registration with defendant BAI of the NAVI animal vaccines in the name of NOVAPHI(L).

SO ORDERED. (p. 93, rollo)

Novaphil filed a motion for its reconsideration. In addition, it filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action. Hon. Quilala however denied these motions on September 16, 2004 stating:

WHEREFORE, the afore-stated motions are hereby DENIED for lack of merit. The defendant Novaphil is hereby given ten (10) days to file answer.

SO ORDERED. (p. 205, rollo)

Novaphil thereafter filed its Answer *Ad Cautelam*, while Broadchem filed its Reply.

Alleging that Broadchem ceased to have any right for a writ of injunction effective October 2005 as the Distribution Agreement which was the basis for the injunction became ineffective as of October 11, 2005, Novaphil filed an Urgent Motion to Dissolve Injunction on October 18, 2005. But like its previous motions, Hon. Quilala struck it down on January 9, 2006 providing that:

Acting on the URGENT MOTION (To Dissolve Injunction) filed by defendant "Novaphil" dated October 17, 2005, together with the OPPOSITION interposed thereto by the plaintiff dated November 25, 2005, as well as the REPLY, etc. filed by defendant Novaphil dated December 21, 2005, and well considering the arguments advanced by the parties, the Court finds the plaintiff's Opposition to be impressed with merit, the Court therefore, has no recourse but to DENY the said motion.

SO ORDERED. (p. 40, rollo)

As recourse against the said set back, Novaphil has come before this Court via this *Petition for Certiorari* theorizing that:

THE PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN REFUSING TO DISSOLVE THE WRIT OF PRELIMINARY INJUNCTION. (p. 11, rollo)

Novaphil posits that Broadchem's contractual right has already expired on October 2005. Accordingly, the writ of injunction issued on December 30, 2003 should also be deemed as having become ineffective since there is no longer any contract to speak of.

It frequently happens that, pending suits for injunctive relief changes take place in