

FIRST DIVISION

[G.R. NO. 160703, September 23, 2005]

**GMA NETWORK, INC., PETITIONER, VS. ABS-CBN
BROADCASTING CORPORATION, CENTRAL CATV, INC., PILIPINO
CABLE CORPORATION AND PHILIPPINE HOME CABLE
HOLDINGS, INC., RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Petitioner GMA Network, Inc. ("GMA") filed on May 6, 2003 before the Regional Trial Court of Quezon City a complaint for damages^[1] against respondents ABS-CBN Broadcasting Corporation ("ABS-CBN"), Central CATV, Inc. ("SkyCable"), Philippine Home Cable Holdings, Inc. ("Home Cable") and Pilipino Cable Corporation ("Sun Cable"), which was raffled to Branch 97^[2] and docketed as Civil Case No. Q03-49500.

In its complaint, GMA alleged that respondents engaged in unfair competition when the cable companies arbitrarily re-channeled petitioner's cable television broadcast on February 1, 2003, in order to arrest and destroy its upswing performance in the television industry.

GMA argued that respondents were able to perpetrate such unfair business practice through a common ownership and interlocking businesses. SkyCable and Sun Cable are wholly-owned subsidiaries of Sky Vision Corporation ("Sky Vision") which is allegedly controlled by Lopez, Inc. On the other hand, Home Cable is a wholly-owned subsidiary of Unilink Communications Corporation ("Unilink"), which is owned by Mediaquest Holdings, Inc., a company controlled by the Pension Trust Fund of the PLDT Employees ("PLDT Group").

Pursuant to a *Master Consolidation Agreement*, the ownership, rights and interests in Sky Vision and Unilink were purportedly placed under a holding company known as "Beyond Cable", 66.5 % of which is owned by the Benpres Group, composed of Lopez Inc., Benpres Holdings and ABS-CBN, while 33.5% thereof is owned by the PLDT Group. As a result of this business combination, respondents have cornered at least 71% of the total cable television market in Mega Manila. They are thus able to dictate the signal transmission, channel position, and the airing of shows, programs, and broadcast of non-cable companies like ABS-CBN and GMA, which the law requires them to carry.

GMA alleged that the re-channeling of its cable television broadcast resulted in damage to its business operations, thus:

...

17. Following their arbitrary act of re-channeling the cable position of plaintiff GMA from "Channel 12" to "Channel 14", the defendants "SkyCable" and Pilipino Cable (or "Sun Cable") deliberately failed to transmit the signal of plaintiff GMA to their channels in clear audio transmission resulting in noticeable dropouts and spillover of extraneous sound and in clear visual transmission resulting in distorted and/or degraded visual presentation;

18. Soon thereafter, numerous complaints of distortions, degradations and disorders of GMA's shows on the cable channels were received by plaintiff GMA from subscribers of the defendant cable companies "SkyCable", "Home Cable" and "Sun Cable", such as "snowy reception", "no signal", and "no audio". These complaints escalated to alarming proportions when plaintiff GMA made public the audio and visual distortions of its TV shows on the cable channels;

19. The audio disorder and the visual distortion and/or degradation of plaintiff GMA's signal transmission happened mostly during the showing of plaintiff GMA's top rating programs;

19.1. These distortions did not occur in the cable TV shows of defendant ABS-CBN on the channels of the co-defendant cable companies;

20. It is a matter of common knowledge, and defendants are fully aware, that the quality of signal and audio transmission and established channel position in cable TV of a non-cable television network, like plaintiff GMA, are crucial factors in arriving at the ratings of the network and its programs and which ratings are, in turn, determinative of the business judgment of commercial advertisers, producers and blocktimers to sign broadcast contracts with the network, which contracts are the lifeblood of TV networks and stations like plaintiff GMA;

20.1. Defendants are also aware that 50% of so-called "people meter" which is a device used by the ratings suppliers (AGB Philippines and AC Nielsen) to determine the ratings and audience shares of TV programs are placed in cable TV.

20.2. These unjust, high-handed and unlawful acts of the defendants adversely affected the viewership, quality of the programs, and ratings of plaintiff GMA for which defendants are liable;

...

22. As a result of defendants' acts of unfair competition, corporate combinations and manipulations as well as unjust, oppressive, high-handed and unlawful business practices, plaintiff suffered business interruptions and injury in its operations for which it should be compensated in the amount of P10Million by way of actual and compensatory damages[.]^[3]

On July 15, 2003, SkyCable and Sun Cable moved for dismissal of the complaint on the grounds of *litis pendentia* and forum-shopping since there was a similar case pending before the National Telecommunications Commission (NTC) entitled "*GMA Network, Inc. v. Central CATV, Inc., Philippine Home Cable Holdings, Inc., and Pilipino Cable Corporation*". The case, docketed as NTC ADM Case No. 2003-085, allegedly involved the same cause of action and the same parties, except for ABS-CBN. SkyCable and Sun Cable also asserted that it is the NTC that has primary jurisdiction over the issues raised in the complaint. Moreover, GMA had no cause of action against the two entities and failed to exhaust administrative remedies.^[4]

On July 17, 2003, Home Cable filed an *Answer with Compulsory Counterclaims*^[5] pleading, as affirmative defenses, the same matters alleged in the motion to dismiss of SkyCable and Sun Cable. ABS-CBN also filed an *Answer with Compulsory Counterclaims*^[6] contending that GMA had no cause of action against it and that the complaint failed to state any.

GMA opposed the motion to dismiss^[7] and filed a Reply to the answer of Home Cable^[8] and ABS-CBN.^[9] A preliminary hearing was held on the motion to dismiss as well as the affirmative defenses.

In due course, the trial court issued the assailed resolution^[10] dismissing the complaint. The trial court held that the resolution of the legal issues raised in the complaint required the determination of highly technical, factual issues over which the NTC had primary jurisdiction. Additionally, it held that GMA had no cause of action against ABS-CBN because:

... It is evident that plaintiff's cause of action is against the cable companies and not against ABS-CBN since it does not establish that defendant ABS-CBN had a hand in the re-channeling of plaintiff's cable transmission because essentially defendant ABS-CBN is similarly situated as plaintiff. The mere fact that the people behind ABS-CBN is allegedly the same people who are at the helm of these cable companies, and thus were "engaged in unfair competition and/or unfair trade practices" is a conclusion of law and does not satisfy the requirement that the plaintiff state "ultimate facts" in asserting its cause of action. ...^[11]

Hence, this petition filed by GMA under Section 2(c), Rule 41 in relation to Rule 45 of the Rules of Court, asserting that:

A

THE TRIAL COURT ERRED IN RULING THAT THE NTC HAS PRIMARY JURISDICTION OVER PETITIONER'S COMPLAINT FOR DAMAGES AND IN DISMISSING THE CASE FOR LACK OF JURISDICTION.

B

THE TRIAL COURT ERRED IN RULING THAT PETITIONER'S COMPLAINT STATES NO CAUSE OF ACTION AGAINST RESPONDENT ABS-CBN.^[12]

GMA asserts that the resolution of the issues raised in the complaint does not entail highly technical matters requiring the expertise of the NTC. Petitioner insists that the subject matter of the complaint merely involves respondents' wrongful acts of unfair competition and/or unfair trade practices resulting to damages, jurisdiction over which lies with the regular courts and not the NTC.

We disagree.

GMA's complaint for damages is based on the alleged arbitrary re-channeling of its broadcast over the cable companies' television systems, thereby resulting in the distortion and degradation of its video and audio signals. The re-channeling was allegedly made possible through the common ownership and interlocking businesses of respondent corporations and was designed to thwart petitioner's upswing performance in the television ratings game. In other words, the wrongful acts complained of and upon which the damages prayed for are based, have to do with the operations and ownership of the cable companies. These factual matters undoubtedly pertain to the NTC and not the regular courts.

That the matters complained of by GMA are within the NTC's exclusive domain can be discerned from the statutes governing the broadcasting and cable television industry. Section 15 of Executive Order No. 546,^[13] by which the NTC was created, provides for its general functions as follows:

- a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph system, radio and television broadcasting system and other similar public utilities;
- b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

...

- g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible[.]

In 1987, Executive Order No. 205^[14] was issued which empowers the NTC to grant certificates of authority for the operation of cable antenna television system subject to the limitation that the authority to operate shall not infringe on the television and broadcast markets. Executive Order No. 436^[15] issued in 1997, specifically vests the NTC with the **sole** power of regulation and supervision over the cable television industry.