

## THIRD DIVISION

[ G.R. No. 194062, June 17, 2013 ]

**REPUBLIC GAS CORPORATION, ARNEL U. TY, MARI ANTONETTE N. TY, ORLANDO REYES, FERRER SUAZO AND ALVIN U. TY, PETITIONERS, VS. PETRON CORPORATION, PILIPINAS SHELL PETROLEUM CORPORATION, AND SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners seeking the reversal of the Decision<sup>[1]</sup> dated July 2, 2010, and Resolution<sup>[2]</sup> dated October 11, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106385.

Stripped of non-essentials, the facts of the case, as summarized by the CA, are as follows:

Petitioners Petron Corporation ("Petron" for brevity) and Pilipinas Shell Petroleum Corporation ("Shell" for brevity) are two of the largest bulk suppliers and producers of LPG in the Philippines. Petron is the registered owner in the Philippines of the trademarks GASUL and GASUL cylinders used for its LGP products. It is the sole entity in the Philippines authorized to allow refillers and distributors to refill, use, sell, and distribute GASUL LPG containers, products and its trademarks. Pilipinas Shell, on the other hand, is the authorized user in the Philippines of the tradename, trademarks, symbols or designs of its principal, Shell International Petroleum Company Limited, including the marks SHELLANE and SHELL device in connection with the production, sale and distribution of SHELLANE LPGs. It is the only corporation in the Philippines authorized to allow refillers and distributors to refill, use, sell and distribute SHELLANE LGP containers and products. Private respondents, on the other hand, are the directors and officers of Republic Gas Corporation ("REGASCO" for brevity), an entity duly licensed to engage in, conduct and carry on, the business of refilling, buying, selling, distributing and marketing at wholesale and retail of Liquefied Petroleum Gas ("LPG").

LPG Dealers Associations, such as the Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc. and Totalgaz Dealers Association, received reports that certain entities were engaged in the unauthorized refilling, sale and distribution of LPG cylinders bearing the registered tradenames and trademarks of the petitioners. As a consequence, on February 5, 2004, Genesis Adarlo (hereinafter referred to as Adarlo), on

behalf of the aforementioned dealers associations, filed a letter-complaint in the National Bureau of Investigation ("NBI") regarding the alleged illegal trading of petroleum products and/or underdelivery or underfilling in the sale of LPG products.

Acting on the said letter-complaint, NBI Senior Agent Marvin E. De Jemil (hereinafter referred to as "De Jemil") was assigned to verify and confirm the allegations contained in the letter-complaint. An investigation was thereafter conducted, particularly within the areas of Caloocan, Malabon, Novaliches and Valenzuela, which showed that several persons and/or establishments, including REGASCO, were suspected of having violated provisions of Batas Pambansa Blg. 33 (B.P. 33). The surveillance revealed that REGASCO LPG Refilling Plant in Malabon was engaged in the refilling and sale of LPG cylinders bearing the registered marks of the petitioners without authority from the latter. Based on its General Information Sheet filed in the Securities and Exchange Commission, REGASCO's members of its Board of Directors are: (1) Arnel U. Ty – President, (2) Marie Antoinette Ty – Treasurer, (3) Orlando Reyes – Corporate Secretary, (4) Ferrer Suazo and (5) Alvin Ty (hereinafter referred to collectively as private respondents).

De Jemil, with other NBI operatives, then conducted a test-buy operation on February 19, 2004 with the former and a confidential asset going undercover. They brought with them four (4) empty LPG cylinders bearing the trademarks of SHELLANE and GASUL and included the same with the purchase of J&S, a REGASCO's regular customer. Inside REGASCO's refilling plant, they witnessed that REGASCO's employees carried the empty LPG cylinders to a refilling station and refilled the LPG empty cylinders. Money was then given as payment for the refilling of the J&S's empty cylinders which included the four LPG cylinders brought in by De Jemil and his companion. Cash Invoice No. 191391 dated February 19, 2004 was issued as evidence for the consideration paid.

After leaving the premises of REGASCO LPG Refilling Plant in Malabon, De Jemil and the other NBI operatives proceeded to the NBI headquarters for the proper marking of the LPG cylinders. The LPG cylinders refilled by REGASCO were likewise found later to be underrefilled.

Thus, on March 5, 2004, De Jemil applied for the issuance of search warrants in the Regional Trial Court, Branch 24, in the City of Manila against the private respondents and/or occupants of REGASCO LPG Refilling Plant located at Asucena Street, Longos, Malabon, Metro Manila for alleged violation of Section 2 (c), in relation to Section 4, of B.P. 33, as amended by PD 1865. In his sworn affidavit attached to the applications for search warrants, Agent De Jemil alleged as follows:

"x x x.

"4. Respondent's REGASCO LPG Refilling Plant-Malabon is not one of those entities authorized to refill LPG cylinders bearing the marks of PSPC, Petron and Total Philippines Corporation. A Certification dated February 6, 2004 confirming such fact,

together with its supporting documents, are attached as Annex "E" hereof.

6. For several days in the month of February 2004, the other NBI operatives and I conducted surveillance and investigation on respondents' REGASCO LPG refilling Plant-Malabon. Our surveillance and investigation revealed that respondents' REGASCO LPG Refilling Plant-Malabon is engaged in the refilling and sale of LPG cylinders bearing the marks of Shell International, PSPC and Petron.

x x x.

8. The confidential asset and I, together with the other operatives of [the] NBI, put together a test-buy operation. On February 19, 2004, I, together with the confidential asset, went undercover and executed our test-buy operation. Both the confidential assets and I brought with us four (4) empty LPG cylinders branded as Shellane and Gasul. x x x in order to have a successful test buy, we decided to "ride-on" our purchases with the purchase of Gasul and Shellane LPG by J & S, one of REGASCO's regular customers.

9. We proceeded to the location of respondents' REGASCO LPG Refilling Plant-Malabon and asked from an employee of REGASCO inside the refilling plant for refill of the empty LPG cylinders that we have brought along, together with the LPG cylinders brought by J & S. The REGASCO employee, with some assistance from other employees, carried the empty LPG cylinders to a refilling station and we witnessed the actual refilling of our empty LPG cylinders.

10. Since the REGASCO employees were under the impression that we were together with J & S, they made the necessary refilling of our empty LPG cylinders alongside the LPG cylinders brought by J & S. When we requested for a receipt, the REGASCO employees naturally counted our LPG cylinders together with the LPG cylinders brought by J & S for refilling. Hence, the amount stated in Cash Invoice No. 191391 dated February 19, 2004, equivalent to Sixteen Thousand Two Hundred Eighty-Six and 40/100 (Php16,286.40), necessarily included the amount for the refilling of our four (4) empty LPG cylinders. x x x.

11. After we accomplished the purchase of the illegally refilled LPG cylinders from respondents' REGASCO LPG Refilling Plant-Malabon, we left its premises bringing with us the said LPG cylinders. Immediately, we proceeded to our headquarters and made the proper markings of the illegally refilled LPG cylinders purchased from respondents' REGASCO LPG Refilling Plant-Malabon by indicating therein where and when they were purchased. Since REGASCO is not an authorized refiller, the

four (4) LPG cylinders illegally refilled by respondents' REGASCO LPG Refilling Plant-Malabon, were without any seals, and when [weighed], were under-refilled. Photographs of the LPG cylinders illegally refilled from respondents' REGASCO LPG Refilling Plant-Malabon are attached as Annex "G" hereof.  
x x x."

After conducting a personal examination under oath of Agent De Jemil and his witness, Joel Cruz, and upon reviewing their sworn affidavits and other attached documents, Judge Antonio M. Eugenio, Presiding Judge of the RTC, Branch 24, in the City of Manila found probable cause and correspondingly issued Search Warrants Nos. 04-5049 and 04-5050.

Upon the issuance of the said search warrants, Special Investigator Edgardo C. Kawada and other NBI operatives immediately proceeded to the REGASCO LPG Refilling Station in Malabon and served the search warrants on the private respondents. After searching the premises of REGASCO, they were able to seize several empty and filled Shellane and Gasul cylinders as well as other allied paraphernalia.

Subsequently, on January 28, 2005, the NBI lodged a complaint in the Department of Justice against the private respondents for alleged violations of Sections 155 and 168 of Republic Act (RA) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On January 15, 2006, Assistant City Prosecutor Armando C. Velasco recommended the dismissal of the complaint. The prosecutor found that there was no proof introduced by the petitioners that would show that private respondent REGASCO was engaged in selling petitioner's products or that it imitated and reproduced the registered trademarks of the petitioners. He further held that he saw no deception on the part of REGASCO in the conduct of its business of refilling and marketing LPG. The Resolution issued by Assistant City Prosecutor Velasco reads as follows in its dispositive portion:

"WHEREFORE, foregoing considered, the undersigned finds the evidence against the respondents to be insufficient to form a well-founded belief that they have probably committed violations of Republic Act No. 9293. The DISMISSAL of this case is hereby respectfully recommended for insufficiency of evidence."

On appeal, the Secretary of the Department of Justice affirmed the prosecutor's dismissal of the complaint in a Resolution dated September 18, 2008, reasoning therein that:

"x x x, the empty Shellane and Gasul LPG cylinders were brought by the NBI agent specifically for refilling. Refilling the same empty cylinders is by no means an offense in itself – it being the legitimate business of Regasco to engage in the refilling and marketing of liquefied petroleum gas. In other words, the empty cylinders were merely filled by the

employees of Regasco because they were brought precisely for that purpose. They did not pass off the goods as those of complainants' as no other act was done other than to refill them in the normal course of its business.

"In some instances, the empty cylinders were merely swapped by customers for those which are already filled. In this case, the end-users know fully well that the contents of their cylinders are not those produced by complainants. And the reason is quite simple – it is an independent refilling station.

"At any rate, it is settled doctrine that a corporation has a personality separate and distinct from its stockholders as in the case of herein respondents. To sustain the present allegations, the acts complained of must be shown to have been committed by respondents in their individual capacity by clear and convincing evidence. There being none, the complaint must necessarily fail. As it were, some of the respondents are even gainfully employed in other business pursuits. x x x."<sup>[3]</sup>

Dispensing with the filing of a motion for reconsideration, respondents sought recourse to the CA through a petition for *certiorari*.

In a Decision dated July 2, 2010, the CA granted respondents' *certiorari* petition. The *fallo* states:

**WHEREFORE**, in view of the foregoing premises, the petition filed in this case is hereby **GRANTED**. The assailed Resolution dated September 18, 2008 of the Department of Justice in I.S. No. 2005-055 is hereby **REVERSED** and **SET ASIDE**.

**SO ORDERED.**<sup>[4]</sup>

Petitioners then filed a motion for reconsideration. However, the same was denied by the CA in a Resolution dated October 11, 2010.

Accordingly, petitioners filed the instant Petition for Review on *Certiorari* raising the following issues for our resolution:

Whether the Petition for Certiorari filed by RESPONDENTS should have been denied outright.

Whether sufficient evidence was presented to prove that the crimes of Trademark Infringement and Unfair Competition as defined and penalized in Section 155 and Section 168 in relation to Section 170 of Republic Act No. 8293 (The Intellectual Property Code of the Philippines) had been committed.