

SECOND DIVISION

[G.R. No. 166358, September 08, 2010]

**CHANG IK JIN, REPRESENTED BY HIS ATTORNEY-IN-FACT
KIMAN CHANG, AND KOREAN CHRISTIAN BUSINESSMEN
ASSOCIATION, INC., PETITIONERS, VS. CHOI SUNG BONG,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Assailed in this *petition for review on certiorari* are the November 27, 2003 Decision^[1] and the November 30, 2004 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78809.

The antecedent facts are as follows:

Petitioner Korean Christian Businessmen Association, Inc. is the publisher of *Korea Post*, a Korean language newspaper printing current events and business news about Korea and the Philippines which are of general interest to the Korean community in Metro Manila. *Korea Post* is published weekly and distributed free of charge at selected restaurants, offices and areas frequented by Korean nationals in Metro Manila. Petitioner Chang Ik Jin is one of the incorporators of the said association, while respondent Choi Sung Bong is a Pastor of Caraan Church based in Parañaque City whose members are mostly Korean residents of Metro Manila.

On July 12, 2003, the Korean Union Church of Manila, Inc., represented by Chung Geun Park, filed before the Regional Trial Court (RTC) of Parañaque City, a complaint for damages and injunction with prayer for a temporary restraining order (TRO) against petitioners, docketed as CV-03-0346, raffled off to Branch 196. The complaint alleged among others that petitioners have been publishing the *Korea Post* in violation of the constitutional provisions barring foreigners from engaging in mass media; that it was prohibited by its Articles of Incorporation from engaging in mass media; that on May 3, 2003, the *Korea Post* published a defamatory article against the Korean Union Church of Manila causing besmirched reputation on its entire membership, thus, it sought the issuance of a TRO and a writ of preliminary injunction to stop the publication of the *Korea Post*. A TRO was issued effective for seventy-two hours. Later, the RTC issued an Order^[3] dated July 22, 2003 denying the application for the writ of preliminary injunction. Subsequently, the Korean Union Church of Manila filed on August 1, 2003 a notice of dismissal, which the RTC granted in its Order dated August 5, 2003.

On July 23, 2003, herein respondent Choi Sung Bong filed with the RTC of Pasay City, a complaint for injunction and damages against petitioners, docketed as Civil Case No. 03-0347-CFM and was raffled off to Branch 118. The complaint sought the issuance of a TRO and a Writ of Preliminary Injunction and alleged that: (1)

petitioners have been publishing the *Korea Post* in violation of the constitutional provisions barring foreigners from engaging in mass media; and (2) the *Korea Post* published defamatory articles against respondent Choi in its April 25 and May 9, 1998 issues, thus respondent Choi sought to stop the publication of the *Korea Post*.

On July 28, 2003, the RTC issued^[4] a TRO directing petitioners to refrain, cease and desist from further publishing, distributing locally the *Korea Post*; and set the hearing on respondent's application for a writ of preliminary injunction on August 12, 2003.

On August 1, 2003, petitioners filed a Motion to Dismiss on the following grounds: (1) respondent Choi had validly waived his right to file action; (2) respondent Choi was guilty of laches; (3) the action had prescribed; and (4) respondent Choi had no cause of action. On August 6, 2003, petitioners filed a Supplement to the Motion to Dismiss on the ground of improper venue as respondent was not a resident of Pasay City.

During the August 12, 2003 hearing for the application of the Writ of Preliminary Injunction, respondent presented his evidence and after which the RTC ordered the parties to submit their Position Papers.

On August 15, 2003, respondent filed his Position Paper in support of his prayer for the issuance of a writ of preliminary injunction and petitioners filed a Position Paper (with Omnibus Motion to Dismiss and To Cite for Direct Contempt For Forum Shopping).

On August 18, 2003, the RTC issued an Order^[5] granting the issuance of a Writ of Preliminary Injunction as follows:

WHEREFORE, let a Writ of Preliminary Injunction be forthwith issued enjoining the defendants, their employees, or agents, and/or any individual, partnership or corporation acting for and in their behalf, to refrain, cease and desist from publishing, printing, [distributing] and circulating locally the *Korea Post*.

Let the Branch Sheriff of RTC, Branch 119, and the Sheriff[,] Virgilio Villar[,] of the Office of the Clerk of Court, RTC, Pasay City, as they are hereby designated as Custodians of the equipments and machines located at 2750 South Avenue, Barangay Sta. Cruz, Makati City, used in the publication of the *Korea Post*, including but not limited to the computers, scanners, cameras, photocopying machines, typewriters, and or similar paraphernalia, such Custodians' authority being to see to it that the equipment so placed under their custody be not used for the purpose of publishing the *Korea Post* while the Preliminary Injunction is in force and effect. In this connection, plaintiff is hereby ordered to post injunction bond in the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00) in favor of the defendants to answer for damages that may be sustained by the latter should it be found that plaintiff is not entitled to the relief prayed for.^[6]

A writ of preliminary injunction was subsequently issued on the same day.^[7]

On August 20, 2003, petitioners filed an Urgent *Ex-Parte* Motion to Resolve their Motion to Dismiss, Supplement to the Motion to Dismiss and the Omnibus Motion to Dismiss dated August 15, 2003. At the hearing held on August 21, 2003, the RTC ordered the parties to submit the appropriate pleadings, after which the Motion to Dismiss, shall be deemed submitted for resolution.

On August 27, 2003, petitioners filed with the CA a petition for *certiorari* and prohibition with urgent application for issuance of a TRO and or writ of preliminary injunction seeking to nullify and set aside for having been issued with grave abuse of discretion the following: (1) Order dated July 28, 2003, issuing the TRO directing petitioners to refrain from further publishing and circulating locally the *Korea Post*; (2) Order dated August 18, 2003, granting the issuance of the writ of preliminary injunction enjoining petitioners from publishing and circulating locally the *Korea Post*; and (3) the writ of preliminary injunction issued.

In a Resolution^[8] dated September 4, 2003, the CA issued a TRO enjoining the RTC from implementing its Order dated August 18, 2003 as well as the issuance of the Writ of Preliminary Injunction.

On September 3, 2003, respondent filed before the CA a Manifestation that per sheriff's return dated August 29, 2003, the subject writ of preliminary injunction had already been served and implemented on August 19, 2003. On the same date, private respondent filed an Urgent Motion to Lift the TRO. The CA set the hearing of these incidents together with petitioners' prayer for the issuance of a writ of preliminary injunction. A hearing was conducted on September 23, 2003.

On November 27, 2003, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the assailed Orders dated July 28, 2003 and August 18, 2003 are hereby REVERSED and SET ASIDE. The Writ of Preliminary Injunction in Civil Case No.03-0347-CM is hereby dissolved. Let this case be remanded to the Regional Trial Court of Pasay City, Branch 118, for further proceedings.^[9]

The CA said that the issue to be resolved was whether the RTC properly issued the writ of preliminary injunction and found that it did not. The CA found that the RTC's action in deferring the resolution of petitioners' Motion to Dismiss and the subsequent pleadings relative thereto after the filing of the parties' Reply and Rejoinder but in the meantime granted respondent's application for a writ of preliminary injunction was not sanctioned by Section 3, Rule 16 of the Rules of Court; that under the Rules, the court, upon hearing a Motion to Dismiss, may dismiss the action or claim, deny the motion or order the amendment of the pleading but it is prohibited from deferring the resolution of the Motion to Dismiss for the reason that the ground relied upon is not indubitable; that the RTC was mandated to have first resolved the Motion to Dismiss before it issued the assailed writ of preliminary injunction, since the Motion to Dismiss raised the grounds of

forum shopping and prescription among others, which, if found to be meritorious, would have resulted in the dismissal of the complaint and the preliminary injunction could not have been issued.

The CA found that the requisites for the issuance of injunction, to wit: (1) the complainant has a clear legal right; (2) that his right has been violated and the invasion is material and substantial; and (3) that there is an urgent and permanent necessity for the writ to prevent serious damage, were wanting in respondent's case. The CA said that the alleged articles being complained of by respondent were published on the April 25 and May 9, 1998 issues of *Korea Post*, thus, respondent failed to show that he was in imminent danger of sustaining an injury by reason of the continued publication of the *Korea Post*, as the articles being complained of were published in 1998; and there was no urgency or any irreparable injury which necessitated the issuance of a TRO/preliminary injunction, since there was no damage to prevent anymore as the alleged defamatory story was published in 1998. Thus, the RTC concluded that the issuance of the preliminary injunction was without basis and was tainted with grave abuse of discretion.

The CA did not rule on the other issues raised by petitioners in their petition, *i.e.*, whether the RTC committed grave abuse of discretion by not dismissing the complaint based on its failure to state a cause of action, prescription of action for oral defamation and improper venue, as the CA believed that it would result in the pre-judgment of the main case when the question raised before the CA was the question of the propriety of the issuance of the writ of preliminary injunction.

The CA found no forum shopping as there was no identity of parties in the Parañaque case and the instant case; that the rights asserted in the two cases were different although the reliefs prayed for against petitioners were the same, since both cases prayed to permanently stop the publication and circulation of the *Korea Post* newspaper and to pay damages; that the judgment in one case would not amount to *res judicata* in the other case since the plaintiffs in both cases are different.

Petitioners filed a Motion for Partial Reconsideration and/or Supplemental Petition insofar as the CA did not order the dismissal of the case before the RTC but instead ordered the remand of the case for further proceedings. Petitioners alleged that while the Motion to Dismiss remained unresolved at the time of the filing of the petition for *certiorari* and prohibition with the CA, however, the RTC subsequently issued its Order on September 11, 2003 already denying petitioners' Motion to Dismiss; hence the filing of the Supplemental Petition with the CA.

On November 30, 2004, the CA issued a Resolution denying the Motion for Partial Reconsideration and/or Supplemental Petition.

Hence, petitioners filed this petition for review on *certiorari* raising the issue of:

WHETHER OR NOT THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT BY DENYING PETITIONERS' MOTION FOR PARTIAL RECONSIDERATION AND/OR SUPPLEMENTAL PETITION AND HOLDING