# FIRST DIVISION

# [ G.R. No. 153835, February 27, 2008 ]

## GMA NETWORK, INC., Petitioner, vs. VIVA TELEVISION CORPORATION, Respondent.

## DECISION

**AZCUNA, J.:**

This is a petition for review on *certiorari*[1] seeking the nullification of the Decision rendered by the Court of Appeals (CA) on May 29, 2002 in CA-G.R. SP No. 67981, entitled "*Viva Television Corporation vs. Hon. Vivencio S. Baclig, et al.*"

Petitioner claims that this involves a conflict on broadcast rights to "The Weakest Link," a gameshow of British origin.

The CA allegedly recognized the contract of petitioner GMA Network, Inc. (GMA) dated June 14, 2001 to air and produce "The Weakest Link." It also recognized the later contract of respondent Viva Television Corporation (VIVA), perfected on July 17, 2001, to air the same gameshow. The CA then concluded that since the GMA contract covers only 52 episodes while the VIVA contract covers 130 episodes, the GMA contract had become stale and GMA's request for an injunction was rendered moot and academic when VIVA showed its 55th episode. Furthermore, the CA ruled that VIVA was not aware of the prior and existing contract of GMA when it signed its July 17, 2001 contract with the same format owners.

Petitioner contends that the CA ruling is not in accord with law and jurisprudence; that the two contracts cannot co-exist; and that by its very nature a broadcast contract is exclusive. Thus, the CA, petitioner argues, should have enforced its prior and exclusive rights to the airing of "The Weakest Link."

Furthermore, petitioner questions the CA Decision for contradicting the findings of fact of the trial court. It alleges that its contract has not become mooted after VIVA aired its 55th episode, thus:

> Neither is there any legal and factual basis for the Court of Appeals to hold that GMA contract become mooted when Viva had aired its 55th episode. To begin with, Viva was able to air because of the unfortunate TRO issued by the Court of Appeals for 6o days restraining the implementation of the writ of preliminary injunction issued by the trial court enjoining Viva from airing "The Weakest Link." And more importantly, the meat and bone of the contract is the format of "The Weakest Link." The number of the episodes is but the consequence of the format. And a format is different from the episode as there can be several episodes using one format. Further, an episode differs in style and presentation, timing, and frequency. GMA may adopt a style of

presentation different from that used by Viva.

> It likewise spawns reversible for the Court of Appeals to hold that Viva was not aware of the prior and existing contract of GMA when it (Viva) entered into its July 17, 2001 contract with the format owners because the findings of fact of the trial court, both testimonial and documentary, luminously show that Viva was fully aware of the GMA contract when it signed its contract. Jurisprudence teaches that the factual findings of the trial court in cases of applications for issuance of preliminary injunction are well-nigh conclusive (*Lopez v. Court of Appeals*, G.R. No. 110929, 322 SCRA 686, January 20, 2000). Even so, the contrariety of the factual findings between the trial court and the Court of Appeals on the matter deserve the review of the Court of Appeals' decision by this Honorable Court (*Sering v. Court of Appeals*, G.R. No. 137815, November 29, 2001).[2]

Respondent VIVA, on the other hand, counters that what the CA decided is not the merits of the controversy between GMA and VIVA over broadcast rights to "The Weakest Link," but only the right of GMA to a preliminary injunction to stop VIVA from further airing the gameshow:

> As the record shows, what the Court of Appeals had decided upon in its assailed Decision was the issue of whether or not the writ of preliminary injunction that was issued by the Trial Court against VIVA in Civil Case No. Q-01-45049 is valid. The said writ enjoined VIVA from further airing TWL over IBC Channel 13. The Court of Appeals Decision in effect upheld the contention of VIVA that the aforesaid writ of preliminary injunction was improperly issued for the simple reason that petitioner had failed to establish the essential requisites for a valid issuance of such a writ, namely, (1) that it has a valid cause of action against VIVA (Section 3 and 4, Rule 58, 1997 Rules of Civil Procedure) and (2) that it will suffer irreparable damage if further airing TWL by VIVA is not enjoined. (Del Rosario vs. C.A., 255 SCRA 152; Union Bank vs. C.A., 311 SCRA 759).[3]

The real issue being controverted is whether or not GMA can stop VIVA from airing episodes 56 through 130 of "The Weakest Link," given that its contract covers only 52 episodes.

The resolution of the controversy depends on the exclusivity of the right to broadcast given under the contracts involved.

Petitioner contends that "by its very nature" a broadcast right is exclusive. It argues, thus:

> It bears to stress that the airing of "The Weakest Link" is exclusive in character, meaning, that since the contract to produce and air was first made and entered into with GMA by the owners ECM Asia and ECM Europe, **GMA has the prior and exclusive right to air "The Weakest Link."**
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> Certainly, Viva cannot air "The Weakest Link" by virtue of its July 17, 2001 contract while GMA is airing the same program by virtue of its June 24, 2001 contract. In other words, in recognizing the two contracts, the