

## SECOND DIVISION

[ G.R. No. 130360, August 15, 2001 ]

**WILSON ONG CHING KIAN CHUAN, PETITIONER, VS. HON.  
COURT OF APPEALS AND LORENZO TAN, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for review<sup>[1]</sup> seeks to annul the decision<sup>[2]</sup> dated August 27, 1997 of the Court of Appeals which set aside the resolutions<sup>[3]</sup> dated October 13 and December 15, 1993 as well as the order dated March 1, 1994 of the Regional Trial Court of Quezon City, Branch 94.<sup>[4]</sup>

Petitioner Wilson Ong Ching Kian Chuan ("Ong"), imports *vermicelli* from China National Cereals Oils and Foodstuffs Import and Export Corporation, based in Beijing, China, under the firm name C.K.C. Trading. He repacks it in cellophane wrappers with a design of two-dragons and the TOWER trademark on the uppermost portion. Ong acquired a Certificate of Copyright Registration from the National Library on June 9, 1993 on the said design.

Ong discovered that private respondent Lorenzo Tan repacked his *vermicelli* he imports from the same company but based in Qingdao, China in a "nearly" identical wrapper. On September 16, 1993, Ong filed against Tan a verified complaint for infringement of copyright with damages and prayer for temporary restraining order or writ of preliminary injunction with the Regional Trial Court in Quezon City. Ong alleged that he was the holder of a Certificate of Copyright Registration over the cellophane wrapper with the two-dragon design, and that Tan used an identical wrapper in his business. In his prayer for a preliminary injunction in addition to damages, he asked that Tan be restrained from using the wrapper. He said he would post a bond to guarantee the payment of damages resulting from the issuance of the writ of preliminary injunction.

The trial court issued a temporary restraining order on the same date the complaint was filed. Tan filed an opposition to Ong's application for a writ of preliminary injunction with counter-application for the issuance of a similar writ against Ong. Tan alleged that Ong was not entitled to an injunction. According to Tan, Ong did not have a clear right over the use of the trademark Pagoda and Lungkow *vermicelli* as these were registered in the name of CHINA NATIONAL CEREALS OIL AND FOODSTUFFS IMPORT AND EXPORT CORPORATION, SHANDONG CEREALS AND OILS BRANCH (hereafter Ceroilfood Shandong), based in Qingdao, China. Further, Tan averred that he was the exclusive distributor in the Philippines of the Pagoda and Lungkow *vermicelli* and was solely authorized to use said trademark. He added that Ong merely copied the two-dragon design from Ceroilfood Shandong which had the Certificates of Registration issued by different countries. He concluded that Ong's Certificate of Copyright Registration was not valid for lack of originality.

On September 30, 1993, Ong countered Tan's opposition to the issuance of the writ of preliminary injunction.

On October 13, 1993, the court issued the writ in Ong's favor upon his filing of a P100,000.00 bond.<sup>[5]</sup>

Tan filed a motion to dissolve the writ of preliminary injunction, but the trial court denied it on December 15, 1993.<sup>[6]</sup> The motion for reconsideration was also denied on March 1, 1994.

Tan elevated the case to the Court of Appeals via a special civil action for certiorari with a prayer for the issuance of a TRO and/or writ of preliminary injunction. Ong filed an opposition to Tan's prayer for an issuance of TRO and/or writ of preliminary injunction on the ground that the trial court did not commit a grave abuse of discretion in issuing the writ in his favor.

After oral argument, the Court of Appeals rendered a decision on August 8, 1994, setting aside the trial court's order. It decreed:

**WHEREFORE**, the petition is GIVEN DUE COURSE, and GRANTED. The order dated October 13, 1993 and related orders, as well as the writ of preliminary injunction issued by the respondent court, are SET ASIDE as issued with grave abuse of discretion. No costs.

SO ORDERED.<sup>[7]</sup>

Ong filed a motion for reconsideration and on January 3, 1995, the Court of Appeals modified its August 8, 1994 order as follows:

**WHEREFORE** the phrase "the order dated October 13, 1993 and related orders, as well as the writ of preliminary injunction issued by the respondent court, are SET ASIDE as issued with grave abuse of discretion" is hereby deleted in our resolution dated 08 August 1994. In all other respects, said resolution must be maintained.

However, let a writ of preliminary injunction be issued enjoining the herein respondents and any and all persons acting for and in their behalf from enforcing and/or implementing the Writ of Preliminary Injunction issued on October 15, 1993 pursuant to the Resolution dated October 13, 1993 of the PUBLIC RESPONDENT in Civil Case No. Q-93-17628 entitled "WILSON ONG CHING KIAN CHUAN, ETC. vs. LORENZO TAN, ETC." upon petitioner's filing of a bond of P200,000.00.

The Branch Clerk of Court of the RTC, Branch 94, Quezon City is directed to elevate the records of Civil Case No. 293-17128 within TEN (10) DAYS from notice.

The parties are given THIRTY (30) DAYS from notice to file their

memorandum or any pertinent manifestation on the matter, after which the case shall be considered submitted for decision.

SO ORDERED.<sup>[8]</sup>

Pursuant to the Court of Appeals' resolution on January 16, 1996, the parties submitted their memoranda. On August 27, 1997, the appellate court promulgated its decision, decreeing as follows:

**WHEREFORE**, the resolutions dated October 13, 1993 and December 15, 1993 as well as the order dated March 1, 1994 - all in Civil Case No. Q-93-17628 are hereby SET ASIDE and our injunction heretofore issued made permanent.

**IT IS SO ORDERED.**<sup>[9]</sup>

On October 17, 1997, Ong filed the instant petition for review, claiming that the Court of Appeals committed grave and serious errors tantamount to acting with grave abuse of discretion and/or acting without or in excess of its jurisdiction:

- I. ...WHEN IT ISSUED A PERMANENT PRELIMINARY INJUNCTION IN FAVOR OF THE PRIVATE RESPONDENT WHEN THE LATTER'S RIGHT TO SUCH A RELIEF IS NOT CLEAR, DOUBTFUL AND HAS NO LEGAL OR FACTUAL BASIS.
  - A. CERTIFICATE OF COPYRIGHT REGISTRATION JUSTIFY ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION UNDER P.D. NO. 49.
  - B. ISSUANCE OF PRELIMINARY INJUNCTION MUST BE BASED ON CLEAR AND UNMISTAKABLE RIGHT WHICH PETITIONER HAD AND WHICH RIGHT WAS INVADED BY THE PRIVATE RESPONDENT.
  - C. COURT OF APPEALS' DECISION OF AUGUST 8, 1994 AND ITS RESOLUTION OF JANUARY 3, 1995 RESULTS IN CONFUSION.
- II. ...BY 'INTERFERING' WITH THE JUDICIAL DISCRETION OF THE TRIAL COURT.
  - A. RESPONDENT COURT OF APPEALS' INTERFERENCE WITH THE DISCRETION OF TRIAL COURT CONSTITUTES GRAVE ABUSE OF DISCRETION.
- III. ...BY ISSUING A WRIT OF PRELIMINARY INJUNCTION IN FAVOR OF THE PRIVATE RESPONDENT AND DISREGARDING THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT WHOM (SIC), UNDER THE JANUARY 13, 1995 RESOLUTION OF RESPONDENT COURT OF APPEALS, WAS JUDICIALLY HELD NOT TO HAVE COMMITTED ANY GRAVE ABUSE OF DISCRETION IN THE ISSUANCE OF THE OCTOBER 13, 1993 AND 'RELATED ORDERS'.