

## SECOND DIVISION

[ G.R. No. 118708, February 02, 1998 ]

**CRESER PRECISION SYSTEMS, INC., PETITIONER, VS. COURT OF APPEALS AND FLORO INTERNATIONAL CORP., RESPONDENTS.**

### DECISION

**MARTINEZ, J.:**

This petition for review on *certiorari* assails the decision<sup>[1]</sup>. The decision of the Court of Appeals was penned by Justice Gloria C. Paras and concurred in by Justice Salome A. Montoya and Justice Hector L. Hofileña.

1 of the Court of Appeals dated November 9, 1994 in C.A.-G.R. SP. No. 34425 entitled “Floro International Corp. vs. Hon. Tirso D.C Cruz and Creser Precision System, Inc.”, the dispositive portion of which reads:

“WHEREFORE, THE PETITION IS HEREBY GRANTED. THE COMPLAINT FOR INJUNCTION AND DAMAGES, CIVIL CASE NO. 93-1856 BEFORE THE RESPONDENT JUDGE IS HEREBY ORDERED DISMISSED AND HIS ORDERS THEREIN OF DECEMBER 29, 1993 AND MAY 11, 1994 ARE ORDERED SET ASIDE.”

Private respondent is a domestic corporation engaged in the manufacture, production, distribution and sale of military armaments, munitions, airmunitions and other similar materials.<sup>[2]</sup>

On January 23, 1990, private respondent was granted by the Bureau of Patents, Trademarks and Technology Transfer (BPTTT), a Letters Patent No. UM-6938<sup>[3]</sup> covering an aerial fuze which was published in the September-October 1990, Vol. III, No. 5 issue of the Bureau of Patent’s Official Gazette.<sup>[4]</sup>

Sometime in November 1993, private respondent, through its president, Mr. Gregory Floro, Jr., discovered that petitioner submitted samples of its patented *aerial fuze* to the Armed Forces of the Philippines (AFP) for testing. He learned that petitioner was claiming the aforesaid *aerial fuze* as its own and planning to bid and manufacture the same commercially without license or authority from private respondent. To protect its right, private respondent on December 3, 1993, sent a letter<sup>[5]</sup> to petitioner advising it fro its existing patent and its rights thereunder, warning petitioner of a possible court action and/or application for injunction, should it proceed with the scheduled testing by the military on December 7, 1993.

In response to private respondent’s demand, petitioner filed on December 8, 1993 a complaint<sup>[6]</sup> for injunction and damages arising from the alleged infringement before the Regional Trial Court of Quezon City, Branch 88. The complaint alleged, among others: that petitioner is the first, true and actual inventor of an aerial fuze denominated as “Fuze, PDR 77 CB4” which is developed as early as December 1981 under the

Self-Reliance Defense Posture Program (SRDP) of the AFP; that sometime in 1986, petitioner began supplying the AFP with the said aerial fuze; that private respondent's aerial fuze is identical in every respect to the petitioner's fuze; and that the only difference between the two fuzes are miniscule and merely cosmetic in nature. Petitioner prayed that a temporary restraining order and/or writ of preliminary injunction be issued enjoining private respondent including any and all persons acting on its behalf from manufacturing, marketing and/or profiting therefrom, and/or from performing any other act in connection therewith or tending to prejudice and deprive it of any rights, privileges and benefits to which it is duly entitled as the first, true and actual inventor of the *aerial fuze*.

On December 10, 1993, the trial court issued a temporary restraining order. Thereafter, hearings were held on the application of petitioner for the issuance of a writ of preliminary injunction, with both parties presenting their evidence. After the hearings, the trial court directed the parties to submit their respective memoranda in support of their positions.

On December 27, 1993, private respondent submitted its memorandum<sup>[7]</sup> alleging that petitioner has no cause of action to file a complaint of infringement against it since it has no patent for the *aerial fuze* which it claims to have invented; that petitioner's available remedy is to file a petition for cancellation of patent before the Bureau of Patents; that private respondent as the patent holder cannot be stripped of its property right over the patented *aerial fuze* consisting of the exclusive right to manufacture, use and sell the same and that it stands to suffer irreparable damage and injury if it is enjoined from the exercise of its property right over its patent.

On December 29, 1993, the trial court issued an Order<sup>[8]</sup> granting the issuance of a writ of preliminary injunction against private respondent the dispositive portion of which reads:

"WHEREFORE, plaintiff's application for the issuance of a writ of preliminary injunction is granted and, upon posting of the corresponding bond by plaintiff in the amount of PHP 200,000.00, let the writ of preliminary injunction be issued by the branch Clerk of this Court enjoining the defendant and any and all persons acting on its behalf or by and under its authority, from manufacturing, marketing and/or selling aerial fuzes identical, to those of plaintiff, and from profiting therefrom, and/or from performing any other act in connection therewith until further orders from this Court."

Private respondent moved for reconsideration but this was denied by the trial courts in its Order<sup>[9]</sup> of May 11, 1994, pertinent portions of which read:

"For resolution before this Court is the Motion for Reconsideration filed by the defendant and the plaintiff's Opposition thereto. The Court finds no sufficient cause to reconsider its order dated December 29, 1993. During the hearing for the issuance of the preliminary injunction, the plaintiff has amply proven its entitlement to the relief prayed for. It is undisputed that the plaintiff has developed its aerial fuze way back in 1981 while the defendant began manufacturing the same only in 1987. Thus, it is only logical to conclude that it was the plaintiff's aerial fuze that was copied or imitated which gives the plaintiff the right to have the defendant enjoined "from manufacturing, marketing and/or selling aerial fuzes identical to

those of the plaintiff, and from profiting therefrom and/or performing any other act in connection therewith until further orders from this Court.” With regards to the defendant’s assertion that an action for infringement may only be brought by “anyone possessing right, title or interest to the patented invention,” (Section 42, RA 165) qualified by Section 10, RA 165 to include only “the first true and actual inventor, his heirs, legal representatives to assignees,” this court finds the foregoing to be untenable. Sec. 10 merely enumerates the persons who may have an invention patented which does not necessarily limit to these persons the right to institute an action for infringement. Defendant further contends that the order in issue is disruptive of the *status quo*. On the contrary, the order issued by the Court in effect maintained the *status quo*. The last actual , peaceable uncontested status existing prior to this controversy was the plaintiff manufacturing and selling its own aerial fuzes PDR 77 CB4 which was ordered stopped through the defendant’s letter. With issuance of the order, the operations of the plaintiff continue. Lastly, this court believes that the defendant will not suffer irreparable injury by virtue of said order. The defendant’s claim is primarily hinged on its patent (Letters Patent No. UM-6983) the validity of which is being questioned in this case.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby denied for lack of merit.

SO ORDERED.”

Aggrieved, private respondent on June 27, 1994, filed a petition for *certiorari*, mandamus and prohibition<sup>[10]</sup> before respondent Court of Appeals raising as grounds the following:

- a. Petitioner has no cause of action for infringement against private respondent, the latter not having any patent for the aerial fuze which it claims to have invented and developed and allegedly infringed by private respondent;
- b. The case being an action for cancellation or invalidation of private respondent’s Letters Patent over its own aerial fuze, the proper venue is the Office of the Director of Patents;
- c. The trial court acted in grave abuse of discretion and or in excess of jurisdiction in finding that petitioner has fully established its clear title or right to preliminary injunction;
- d. The trial court acted in grave abuse of discretion and/or in excess of jurisdiction in granting the preliminary injunction, it being disruptive of the status quo; and
- e. The trial court acted in grave abuse of discretion and/or in excess of jurisdiction in granting the preliminary injunction thereby depriving private respondent of its property rights over the patented aerial fuze and cause it irreparable damages.

On November 9, 1994, the respondent court rendered the now assailed decision reversing the trial court’s Order of December 29, 1993 and dismissing the complaint