



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

ROBERTO CO,

Petitioner,

G.R. No. 212705

Present:

- versus -

VELASCO, JR.,<sup>\*</sup>  
LEONARDO-DE CASTRO,  
Acting Chairperson,<sup>\*\*</sup>  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

KENG HUAN JERRY YEUNG  
and EMMA YEUNG,

Respondents.

Promulgated:

SEP 10 2014

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RESOLUTION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated September 16, 2013 and the Resolution<sup>3</sup> dated May 29, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 93679 which affirmed the Decision<sup>4</sup> dated October 27, 2008 of the Regional Trial Court of Quezon City, Branch 90 (RTC), finding petitioner Roberto Co (Co), among others, guilty of unfair competition and, thus, liable for damages to respondents Keng Huan Jerry Yeung and Emma Yeung (Sps. Yeung).

<sup>\*</sup> Designated Acting Member per Special Order No. 1772 dated August 28, 2014.

<sup>\*\*</sup> Per Special Order No. 1771 dated August 28, 2014.

<sup>1</sup> *Rollo*, pp. 8-33.

<sup>2</sup> Id. at 36-55. Penned by Associate Justice Ramon A. Cruz with Associate Justices Noel G. Tijam and Romeo F. Barza, concurring.

<sup>3</sup> Id. at 57-58. Penned by Associate Justice Ramon A. Cruz with Associate Justices Noel G. Tijam and Socorro B. Inting, concurring.

<sup>4</sup> Id. at 75-78. Penned by Presiding Judge Reynaldo B. Daway.

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### **The Facts**

At the core of the controversy is the product Greenstone Medicated Oil Item No. 16 (Greenstone) which is manufactured by Greenstone Pharmaceutical, a traditional Chinese medicine manufacturing firm based in Hong Kong and owned by Keng Huan Jerry Yeung (Yeung), and is exclusively imported and distributed in the Philippines by Taka Trading owned by Yeung's wife, Emma Yeung (Emma).<sup>5</sup>

On July 27, 2000, Sps. Yeung filed a civil complaint for trademark infringement and unfair competition before the RTC against Ling Na Lau, her sister Pinky Lau (the Laus), and Co for allegedly conspiring in the sale of counterfeit Greenstone products to the public. In the complaint, Sps. Yeung averred that on April 24, 2000, Emma's brother, Jose Ruivivar III (Ruivivar), bought a bottle of Greenstone from Royal Chinese Drug Store (Royal) in Binondo, Manila, owned by Ling Na Lau. However, when he used the product, Ruivivar doubted its authenticity considering that it had a different smell, and the heat it produced was not as strong as the original Greenstone he frequently used. Having been informed by Ruivivar of the same, Yeung, together with his son, John Philip, went to Royal on May 4, 2000 to investigate the matter, and, there, found seven (7) bottles of counterfeit Greenstone on display for sale. He was then told by Pinky Lau (Pinky) – the store's proprietor – that the items came from Co of Kiao An Chinese Drug Store. According to Pinky, Co offered the products on April 28, 2000 as "Tienchi Fong Sap Oil Greenstone" (Tienchi) which she eventually availed from him. Upon Yeung's prodding, Pinky wrote a note stating these events.<sup>6</sup>

In defense, Co denied having supplied counterfeit items to Royal and maintained that the stocks of Greenstone came only from Taka Trading. Meanwhile, the Laus denied selling Greenstone and claimed that the seven (7) items of Tienchi were left by an unidentified male person at the counter of their drug store and that when Yeung came and threatened to report the matter to the authorities, the items were surrendered to him. As to Pinky's note, it was claimed that she was merely forced by Yeung to sign the same.<sup>7</sup>

### **The RTC Ruling**

In a Decision<sup>8</sup> dated October 27, 2008, the RTC ruled in favor of Sps. Yeung, and accordingly ordered Co and the Laus to pay Sps. Yeung: (a) ₱300,000.00 as temperate damages; (b) ₱200,000.00 as moral damages; (c)

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<sup>5</sup> Id. at 37.

<sup>6</sup> See id. at 37-38.

<sup>7</sup> See id. at 38-39.

<sup>8</sup> Id. at 75-78.

□100,000.00 as exemplary damages; (d) □100,000.00 as attorney's fees; and (e) costs of suit.<sup>9</sup>

It found that the Sps. Yeung had proven by preponderance of evidence that the Laus and Co committed unfair competition through their conspiracy to sell counterfeit Greenstone products that resulted in confusion and deception not only to the ordinary purchaser, like Ruivivar, but also to the public.<sup>10</sup> It, however, did not find the Laus and Co liable for trademark infringement as there was no showing that the trademark "Greenstone" was registered at the time the acts complained of occurred, *i.e.*, in May 2000.<sup>11</sup> Dissatisfied, the Laus and Co appealed to the CA.

### **The CA Ruling**

In a Decision<sup>12</sup> dated September 16, 2013, the CA affirmed the RTC Decision, pointing out that in the matter of credibility of witnesses, the findings of the trial court are given great weight and the highest degree of respect.<sup>13</sup> Accordingly, it sustained the RTC's finding of unfair competition, considering that Sps. Yeung's evidence preponderated over that of the Laus and Co which was observed to be shifty and contradictory. Resultantly, all awards of damages in favor of Sps. Yeung were upheld.<sup>14</sup>

The Laus and Co respectively moved for reconsideration but were, however, denied in a Resolution<sup>15</sup> dated May 29, 2014, hence, Co filed the instant petition. On the other hand, records are bereft of any showing that the Laus instituted any appeal before this Court.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA correctly upheld Co's liability for unfair competition.

### **The Court's Ruling**

The petition is without merit.

The Court's review of the present case is via a petition for review under Rule 45 of the Rules of Court, which generally bars any question

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<sup>9</sup> Id. at 78.

<sup>10</sup> Id. at 77.

<sup>11</sup> Id.

<sup>12</sup> Id. at 36-55.

<sup>13</sup> Id. at 47.

<sup>14</sup> See *id.* at 45-53.

<sup>15</sup> Id. at 57-58.

pertaining to the factual issues raised. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions, among them, the lack of sufficient support in evidence of the trial court's judgment or the appellate court's misapprehension of the adduced facts.<sup>16</sup>

Co, who mainly interposes a denial of the acts imputed against him, fails to convince the Court that any of the exceptions exists so as to warrant a review of the findings of facts in this case. Factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by the Court and are deemed final and conclusive when supported by the evidence on record.<sup>17</sup> The Court finds that both the RTC and the CA fully considered the evidence presented by the parties, and have adequately explained the legal and evidentiary reasons in concluding that Co committed acts of unfair competition.

Unfair competition is defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. This takes place where the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.<sup>18</sup>

Here, it has been established that Co conspired with the Laus in the sale/distribution of counterfeit Greenstone products to the public, which were even packaged in bottles identical to that of the original, thereby giving rise to the presumption of fraudulent intent.<sup>19</sup> In light of the foregoing definition, it is thus clear that Co, together with the Laus, committed unfair competition, and should, consequently, be held liable therefor. To this end, the Court finds the award of ₱300,000.00 as temperate damages to be appropriate in recognition of the pecuniary loss suffered by Sps. Yeung, albeit its actual amount cannot, from the nature of the case, as it involves damage to goodwill, be proved with certainty.<sup>20</sup> The awards of moral and

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<sup>16</sup> See *Guevarra v. People*, G.R. No. 170462, February 5, 2014.

<sup>17</sup> See *id.*

<sup>18</sup> *Republic Gas Corporation v. Petron Corporation*, G.R. No. 194062, June 17, 2013, 698 SCRA 666, 680-681; citations omitted.

<sup>19</sup> Section 6, Rule 18 of A.M. No. 10-3-10-SC, or the "Rules of Procedure for Intellectual Property Rights Cases," provides:

SEC. 6. *Intent to defraud or deceive.* – In an action for unfair competition, the intent to defraud or deceive the public shall be presumed:

- a) when the defendant passes off a product as his by using imitative devices, signs or marks on the general appearance of the goods, which misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors;
- b) when the defendant makes any false statement in the course of trade to discredit the goods and business of another; or
- c) where the similarity in the appearance of the goods as packed and offered for sale is so striking.


<sup>20</sup> Article 2224 of the Civil Code provides:

exemplary damages, attorney's fees, and costs of suit are equally sustained for the reasons already fully-explained by the courts *a quo* in their decisions.


Although liable for unfair competition, the Court deems it apt to clarify that Co was properly exculpated from the charge of trademark infringement considering that the registration of the trademark "Greenstone"—essential as it is in a trademark infringement case—was not proven to have existed during the time the acts complained of were committed, *i.e.*, in May 2000. In this relation, the distinctions between suits for trademark infringement and unfair competition prove useful: (a) the former is the unauthorized use of a trademark, whereas the latter is the passing off of one's goods as those of another; (b) fraudulent intent is unnecessary in the former, while it is essential in the latter; and (c) in the former, prior registration of the trademark is a pre-requisite to the action, while it is not necessary in the latter.<sup>21</sup>

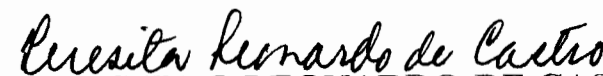
**WHEREFORE**, the petition is **DENIED**. The Decision dated September 16, 2013 and the Resolution dated May 29, 2014 of the Court of Appeals in CA-G.R. CV No. 93679 are hereby **AFFIRMED**.

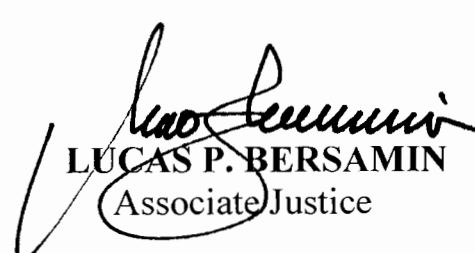
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

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Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

<sup>21</sup> *Del Monte Corporation v. Court of Appeals*, 260 Phil. 435, 439-440 (1990).

**ATTESTATION**


I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**TERESITA J. LEONARDO-DE CASTRO**

Associate Justice  
Acting Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Acting Chief Justice