

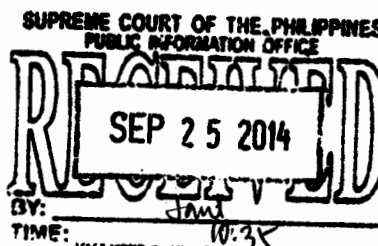


Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 8, 2014**, which reads as follows:

“G.R. No. 202785 (Spouses Robert Cheng and Jo Ann Cheng, doing business under the name and style “Ilaya Market” v. Nestle Philippines, Inc.) – Sometime in July, 2002, respondent Nestle Philippines, Inc. engaged the services of R. V. Domingo & Associates (the “Firm”) to investigate reports on the proliferation of counterfeit Nestle products nationwide.¹ On January 9, 2005, the Firm’s private investigator, Rene C. Baltazar, together with the special investigator of NBI’s Intellectual Property Rights Division (NBI-IPRD), Christopher Hernandez, conducted a *test-buy* on several establishments in Lucena City, including Ilaya Market (the “Market”), a retail establishment owned by petitioner Spouses Cheng, and purchased several samples of what appeared to be genuine Nescafe Coffee products. Respondent’s experts, however, found the same to be counterfeit.²

On January 11, 2005, the Regional Trial Court (RTC) of Manila issued a search warrant on the basis of which Hernandez, Baltazar, and a team of NBI-IPRD operatives searched the Market on January 12, 2005, in the presence of Nena Capisonda, the assistant manager thereof, and seized 51 boxes and 1 loose box purportedly of counterfeit *Nescafe Classic Sticks* worth around ₱74,000.00, Official Receipts and Invoices dated October 2, 2004, December 6, 2004, and January 6, 2005.³ The operatives marked the seized boxes and issued an inventory thereof to petitioner Robert Cheng.

On February 16, 2005, respondent filed criminal complaints with the Department of Justice (DOJ) for unfair competition against petitioners Jo Ann Cheng and Robert Cheng docketed as DOJ-I.S. Nos. 2005-127 and 2006-283, respectively.⁴ Respondent alleged that the products seized were fake as its Quality Department found no lot code or expiry date thereon and that the contents thereof were dark, coarse, and showed the presence of fish

¹ Rollo, p. 94.

² *Id.* at 95.

³ *Id.* at 95-96.

⁴ *Id.* at 97.

eyes in the powder. It further asserted that the seized items could not have been the same ones petitioners purchased on October 2, 2004 and December 6, 2004, the dates on the confiscated receipts, because on a normal basis, retail industry stocks in quantities of 30 or even 50 boxes of *Nescafe Classic Sticks* last only for one week or at the most, 10 business days.

On June 6, 2005, petitioners filed a complaint for damages before the RTC of Lucena City against respondent, together with its regional manager, Manuel Calubaquib, and sales agent, Fernando Santos, claiming that the products seized from the Market were genuine, having been delivered by respondent's agents themselves, as evidenced by the confiscated receipts and invoices. Petitioners likewise criticize respondent's laboratory tests on the seized items for being erroneously conducted without the presence of petitioners.

On December 5, 2008, the RTC ruled in favor of petitioners finding that respondent failed to prove that the seized Nestle products were counterfeit and that respondent's confiscation of the sealed boxes, without first opening the same for verification, was tainted with bad faith. As a result, the trial court ordered respondent to pay petitioners (1) the sum of ₱74,000.00 representing the value of the seized *Nescafe Classic Sticks*, plus interest; (2) the sum of ₱5,000,000.00 as moral damages; (3) the sum of ₱1,000,000.00 as exemplary damages; and (4) the sum of ₱200,000.00 as attorney's fees.⁵

On appeal, the Court of Appeals (CA), on February 9, 2012, modified the RTC's Decision by deleting the awards of moral and exemplary damages as well as the attorney's fees.⁶ It ratiocinated that while respondent was not able to prove that the confiscated products were indeed fake, petitioners also failed to prove that respondent's actuations were attended with bad faith, hence, the deletion of the award of damages.

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari* asserting its entitlement to damages and attorney's fees for respondent's alleged bad faith.

The Petition lacks merit.

This Court has consistently held that bad faith, under the law, does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the

⁵ *Id.* at 111.

⁶ *Id.* at 129.

nature of fraud.⁷ Considering that good faith is always presumed, it is the one who alleges bad faith who has the burden to prove the same, who, in this case, are the petitioners.⁸

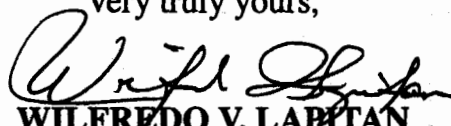
We agree with the CA's findings that petitioners failed to prove bad faith in respondent's procurement and enforcement of the search warrant. As can be drawn from the records, respondent's institution of criminal complaints against petitioners were not unfounded and baseless but were, in fact, grounded on an initial determination by its private investigator and the special investigator of the NBI-IPRD that counterfeit products were being sold at the Market. The search and seizure conducted by the raiding team were authorized by a validly issued search warrant from an RTC Judge finding probable cause. In addition, the confiscation of the 52 boxes of Nestle products was performed in the presence of petitioners' assistant manager. Thereafter, the raiding team appropriately marked the seized boxes and issued an inventory thereof to petitioner Robert Cheng. Thus, as the CA expressed, respondent cannot be faulted for taking legal steps to protect the integrity of its products as well as the interests of the buying public.⁹ Failure to prove the counterfeit nature of the confiscated products does not necessarily equate to bad faith.

In the absence of any clear and convincing proof, therefore, that respondent was driven by ill-motives and a dishonest purpose, We find no fault in the CA's decision deleting the award of moral and exemplary damages as well as the attorney's fees.

WHEREFORE, premises considered, the petition is **DENIED** for failure of petitioners to show any reversible error in the assailed CA decision.

SO ORDERED."

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court *9/17/14*

⁷ *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454, May 28, 2004, citing *Northwest Orient Airlines v. Court of Appeals*, 186 SCRA 440, 444, June 8, 1990 and *Cathay Pacific Airways, Ltd. v. Vazquez*, 399 SCRA 207, 220, March 14, 2003.

⁸ *Gomez v. Gomez-Samson, et al. al.*, G.R. No. 156284, February 6, 2007, citing *Mama, Jr. v. Court of Appeals*, G.R. No. 86517, 30 April 1991, 196 SCRA 489, 496.

⁹ *Rollo*, p. 124.

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202785



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