

Republic of the Philippines
Regional Trial Court
Fourth Judicial Region
Branch 60
Lucena City

MARK EDWARD P. ESCUETA,
MICHAEL MAXIMINO C. ELGAR,
JOHN PAUL R. SERGIO, and
JAYSON S. HERNANDEZ,

Plaintiffs,

CIVIL CASE No. 2009-81

- versus -

- for -

LIZZA G. NAKPIL,

Defendant.

x ----- x

Damages with Extremely
Urgent Application for Issuance
Ex-parte of a Temporary Restraining
Order/Writ of Preliminary
Prohibitory and Mandatory Injunction

ORDER

For Resolution is the Application for the Issuance of Preliminary Injunction prayed for by the plaintiffs in this Complaint dated October 20, 2009 and filed in Court on even date.

The Honorable Executive Judge of the Regional Trial Court, Lucena City, acting on the urgent request for Special Raffle and plaintiffs' Application for a 72-Hour Temporary Restraining Order dated October 20, 2009; and considering the extreme urgency and that great and irreparable injury would result to plaintiffs Rivermaya before the matter can be heard on notice, on October 21, 2009 granted the issuance of Ex-parte Temporary Restraining Order, enjoining the defendant the further commission of the acts complained of. The Temporary Restraining Order (TRO) issued was effective for a period of three (3) days from date of issuance.

In a special raffle on October 22, 2009, the case was assigned to this Branch and thereafter, the record of the case was transferred to this Court. A Motion for the Extension of the 72-Hour Temporary Restraining Order was filed by the plaintiffs on October 22, 2009, the hearing of which was set on October 23, 2009 at 2:00 o'clock in the afternoon.

During the scheduled hearing, the plaintiffs, represented by their counsel presented evidence, both testimonial and documentary which paved the way for the issuance of RESOLUTION dated October 24, 2009 granting the extension of the Temporary Restraining Order to TWENTY DAYS enjoining the defendant Lizza G. Nakpil, her employees, representatives and all persons acting for and in her behalf:

1. to cease and desist from publicly claiming that she is the registered owner of the service mark "Rivermaya" unless declared as such in a final judgment;
2. to cease and desist from threatening plaintiffs Rivermaya's

producers, sponsors, promoters, online networking websites and supporters with civil and/or criminal suits in case they deal with or transact business with plaintiffs Rivermaya or utilize the service mark "Rivermaya" without authorization;

3. to cease and desist from inducing third parties to violate their contractual obligations to plaintiffs Rivermaya.

In the same Order, the defendant was ordered to show cause why the Preliminary Injunction prayed for by the plaintiffs should not be granted and likewise setting the hearing on the Injunction issue on November 6, 2009 at 9:00 A.M.

On the scheduled hearing on November 6, 2009, the plaintiffs together with their counsel appeared and manifested their readiness to proceed to the presentation of evidence in support of the prayer for Preliminary Injunction. On the said scheduled hearing, one Atty. Alfredo M. Duran made a special appearance in behalf of defendant Lizza G. Nakpil and informed the Court that he is not ready to proceed with the hearing because his engagement was only to inform the Court that defendant is still in the process of engaging her regular counsel for purposes of this case. The plaintiffs reiterated thru counsel their desire to present evidence in support of their prayer for Preliminary Injunction.

In the interest of justice, the presentation of evidence in support of the prayer for Preliminary Injunction was ordered reset to November 9, 2009 to give the defendant ample opportunity to secure the services of counsel to represent her in the proceedings, over the objection of the plaintiffs.

On November 9, 2009, the plaintiffs appeared and their counsels, Atty. Amparo and Atty. Flores. The defendant was not around, neither Atty. Duran nor any representative of counsel for defendant Lizza G. Nakpil. The plaintiffs manifested that considering that the Temporary Restraining Order will already expire on November 11, 2009, then they requested that the hearing be held even in the absence of the defendant and her counsel.

The Officer-in-Charge of this Court informed the Court that at 8:45 this morning a certain Ajie Dacanay, who represented to be a representative of the defendant, informed him that Lizza G. Nakpil has not as yet secured the services of a counsel, and therefore, cannot attend the hearing.

Due to the failure of the defendant to appear despite notice during the reception of plaintiffs' evidence for purposes of the Preliminary Injunction she was deemed to have waived her right to cross-examine the plaintiffs Mark Edward P. Escuteta and Michael Maximino Elgar. The documentary exhibits offered by the plaintiffs were admitted by the Court.

From the records of the case, it also appears that the defendant did not file any opposition to the Motion for Issuance of Preliminary Injunction as embodied in the Complaint and as of this date, has not filed any Answer or responsive pleading to the case at bar.

It is noteworthy, that in the hearing of this case on November 6, 2009 counsel for the defendant, Atty. Duran manifested in open Court that he does not object to the extension of the Temporary Restraining Order for another fifteen

(15) days from the expiration of the 20th day effectivity period of the Temporary Restraining Order.

For this incident in particular, submitted in evidence by the plaintiffs were Exhibits "A" to "X", inclusive which included the judicial affidavits of Mark Edward P. Escueta and Michael Maximino Elgar which also constituted as their direct testimony and based thereon, it was established that the acts complained of were committed by the defendant and inflicted damage and injury to the plaintiffs and if will be allowed to go on unrestrained, will further cause damage and irreparable injury to the plaintiffs which included among others, the pull out of the plaintiffs' music albums from the record bars, cancellation of their personal appearances, concerts, corporate promotions, project endorsements and such other activities related to the exercise of their rights and profession as musical artists.

Finding the facts established and shown by the testimonies of plaintiffs Mark Edward P. Escueta and Michael Maximino Elgar supported by their Judicial Affidavits and other documentary evidence to be meritorious and finding the verified application to be sufficient in form and substance and that the malicious misrepresentation of defendant Lizza G. Nakpil in publicly claiming ownership of the service mark "Rivermaya" if not enjoined would cause serious and irreparable damage and injury to the plaintiffs, the Court resolves to grant the Motion for Issuance of Writ of Preliminary Injunction and enjoins the defendant Lizza G. Nakpil to:

- a. to cease and desist from publicly claiming that she is the registered owner of the service mark "Rivermaya" unless declared as such in a final judgment;
- b. to cease and desist from threatening plaintiffs Rivermaya's producers, sponsors, promoters, online networking websites and supporters with civil and/or criminal suits in case they deal with or transact business with plaintiffs Rivermaya or utilize the service mark "Rivermaya" without authorization;
- c. to cease and desist from inducing third parties to violate their contractual obligations to plaintiffs Rivermaya; and
- d. to rectify, correct, or recall all letters and communications announcing that she is the registered owner of the service mark "RIVERMAYA".

The Plaintiffs are ordered to post an injunction bond in the amount of One Hundred Thousand Pesos (Php 100,000.00) in favor of the defendant to answer for whatever damages that maybe caused the defendant in the event that it is proved that the plaintiffs are not entitled to the injunction or relief herein prayed for in the Complaint.

SO ORDERED.

Lucena City, November 19, 2009.

ROMEO L. VILLANUEVA
Presiding Judge

/mj