

AIR PHILIPPINES CORPORATION v. PENNSWELL, INC
G.R. No. 172835, 13 December 2007, Chico-Nazario, J.(Third Division)

Trade secrets are considered privileged matters, which the Rules of Court do not permit disclosure. The privilege is not absolute and the trial court may compel disclosure where it is indispensable for doing justice.

On a number of occasions, Pennswell, Inc delivered and sold to Air Philippines Corporation sundry goods in trade leading to an outstanding obligation by Air Philippines Corporation. Air Philippines, on the other hand, failed to pay obligation which prompted Pennswell, Inc to file a complaint for a sum of money. Air Philippines contends that it was defrauded by Pennswell's misrepresentation of the goods in trade as belonging to a new line, but identical with the products previously purchased by Air Philippines which eventually resulted to their non-payment. During the course of the trial, Air Philippines filed a motion to compel Pennswell to give a detailed list of the ingredients and chemical components to some of their sundry goods.

The trial court ordered Pennswell to give the detailed list but upon reconsideration, it reversed itself contending that Pennswell cannot be compelled to disclose the chemical components sought because the matter was confidential and what was inquired upon constituted a trade secret which Pennswell cannot be forced to divulge. The Court of Appeals affirmed the decision of the trial court. Hence, this petition.

ISSUE:

Whether or not the chemical components or ingredients of Pennswell's products are trade secrets or industrial secrets that are not subject to compulsory disclosure

HELD:

Petition DENIED.

Rule 27 of the Rules of Court permits parties to inspect documents or things upon a showing of good cause before the court in which an action is pending. It sets an unequivocal proviso that the documents, papers, books, accounts, letters, photographs, objects or tangible things that may be produced and inspected should **not be privileged**. The documents must not be privileged against disclosure. On the ground of public policy, the rules providing for production and inspection of books and papers do not authorize the production or inspection of privileged matter; that is, books and papers which, because of their confidential and privileged character, could not be received in evidence. Such a condition is in addition to the requisite that the items be specifically described, and must constitute or contain evidence material to any matter involved in the action and which are in the party's possession, custody or control.

Section 24 of Rule 130 draws the types of disqualification by reason of privileged communication, to wit: (a) communication between husband and wife; (b) communication between attorney and client; (c) communication between physician and patient; (d) communication between priest and penitent; and (e) public officers and public interest.

There are, however, other privileged matters that are not mentioned by Rule 130. Among them are the following: (a) editors may not be compelled to disclose the source of published news; (b) voters may not be compelled to disclose for whom they voted; (c) **trade secrets**; (d) information contained in tax census returns; and (d) bank deposits.

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship."

Indeed, the privilege is not absolute; the trial court may compel disclosure where it is indispensable for doing justice. The Court does not, however, find reason to except Penswell's trade secrets from the application of the rule on privilege. The revelation of Penswell's trade secrets serves no better purpose for the disposition of the main case pending with the RTC. As can be gleaned from the facts, Air Philippines received Penswell's goods in trade in the normal course of business. To be sure, there are defenses under the laws of contracts and sales available to Air Philippines. On the other hand, the greater interest of justice ought to favor Penswell as the holder of trade secrets. **Trade secrets should receive greater protection from discovery, because they derive economic value from being generally unknown and not readily ascertainable by the public.** To the mind of this Court, Air Philippines was not able to show a compelling reason for us to lift the veil of confidentiality which shields Penswell's trade secrets.

Air Philippines' invocation of the provisions of Republic Act No. 8203 or the Special Law on Counterfeit Drugs, requiring the disclosure of the active ingredients of a drug is also on faulty ground. Penswell's products are outside the scope of the cited law. They do not come within the purview of a drug which, as defined therein, refers to any chemical compound or biological substance, other than food, that is intended for use in the treatment, prevention or diagnosis of disease in man or animals. What is clear is that the chemical formulation of Penswell's products is not known to the general public and is unique only to it.