COMMENT:

EXAMINING THE BOTTOM LINE: HOW INSTRUCTIVE ARE THE STANDARDS SET IN *DUNCAN VS. GLAXO*?

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INTRODUCTION

The law is civilization's attempt at bridging the perpetual chasm between conflicting interests. Neutralizing positions and interests is not a simple task, and it becomes all the more arduous when these positions are located in different planks, stirred by divergent logical frameworks. Such is the resulting conundrum from the frequent interplay of legitimate business interests and the inherent liberties of individuals.

Positioned at extreme ends, the conflict between these two valid concerns becomes more irreconcilable. For instance, although some individual rights are pervasive enough to elude the assertions by corporate entities, it remains difficult to determine which between the two takes precedence because both interests seem equally legitimate and reasonable. The challenge, albeit seemingly irreconcilable, necessitates serious consideration, if issues were at all to be truly resolved.

The case *Duncan Association of Detailman-PTGWO and Pedro A. Tecson v. Glaxo Wellcome Philippines, INC.*[1] magnifies the need to meticulously decide one position over another one that is diametrically opposed to it. The decision was promulgated on September 17, 2004, and reinforced by the subsequent denial of a motion for reconsideration on September 19, 2005. Since then, many a piece has been written on the decision, with differing emphases and nuances.[2] Yet, the chasm and many open-ended questions remain. The decision continues to be controversial, and consequently prone to academic scrutiny.

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[1] G.R. No. 162994, September 17, 2004, together with the Court's Resolution of September 19, 2005, denying the petitioner's motion for reconsideration [henceforth "Duncan v. Glaxo (2004)" & "Duncan v. Glaxo (2005)" respectively].

[2] See, for instance, Raul Pangalangan, *High court frowns upon Romeo and Juliet romances*, available at <http://news.inq7.net/opinion/index.php?index=2&story_id=12736> September 23, 2004.

This case comment is an attempt at examining the legal framework employed by the Court, with special emphasis on the Court's resolution of the Motion for Reconsideration. This paper shall explore how instructive the decision and the resolution are for future cases, in an attempt to see how much of the controversy the Court was actually able to resolve. This examination shall begin with a recapitulation of the facts (part I) and the *ratio decidendi* (parts II and III) of the case, before proceeding to consider the sufficiency of the legal framework employed, and the standards set (IV). This article ends with some remarks as to why the Court should have decided more concretely and with much more certainty.

To be certain, the need to balance individual rights vis-à-vis corporate interests is urgent, and the task itself is laden with much complexity. This article recognizes the difficult terrain upon which it attempts to tread, and is likewise conscious of the contributions of the numerous legal studies made on this case, as well as on covenants-not-to-compete, in general. In analyzing the case apart from the rich scholastic mound that precedes it, this case report aims only to look at the instructive value of the decisions rendered by the Court. This paper is a humble attempt at evaluating; and on the basis of its evaluation, it proffers only what seems most logical after.

I. RECAPITULATION OF PERTINENT FACTS

Pedro Tecson was hired by Glaxo Wellcome Philippines, Inc., as a medical representative in 1995. He signed a contract of employment which signified his acquiescence to several company policies. Two of the more pertinent of these were the following: "(1) the need to disclose to management any existing or future relationship by consanguinity or affinity with co-employees or employees of competing drug companies and (2) in the event that management finds that such relationship poses a possible conflict of interest, the right of management to have him resign from the company."[3] Glaxo's Employee Code of Conduct echoes these stipulations, except that it proceeds to say that a perceived conflict of interest or a potential conflict in the relationship between the employee and the company, will impel management and employee "to explore the possibility of transfer to another department in a non-counterchecking position" or preparation for employment outside the company after six months.[4]

Tecson entered into a romantic relationship with Bettsy of Astra Pharmaceuticals, a known competitor of Glaxo. They were married in September 1998, notwithstanding the reminders from Tecson's District Manager as to the potential conflict of interest that might arise from the relationship. A little more than a year after the marriage, Tecson was once more informed by his superiors that in fact, the marriage did give rise to a potential conflict of interest. Tecson asked twice for more time to comply with the company policy. The first was based on the impending merger between Astra and Zeneca, which would effectively eliminate the conflict of interests between Astra and Glaxo, while the second was an altogether different request to be

[3] Duncan v. Glaxo (2004).

[4] *Ibid.*

transferred to Glaxo's milk division. As to the second, Tecson argued that the absence of the same in Astra would likewise eliminate the conflict of interest Glaxo was intent on avoiding. His request to be transferred to the milk division was denied; instead, Tecson was transferred to the Butuan sales area. His request for reconsideration was denied twice, once by the Glaxo, and once by the Grievance Committee. Glaxo defied the transfer order and continued to report to the Camarines Sur / Camarines Norte sales area. Throughout the resolution of the issue at the grievance machinery level, Tecson's work was compensated. However, he was not issued Glaxo product samples which were in competition with Astra.

Voluntary arbitration proved inutile in the face of this dispute as Tecson refused to receive the settlement offered him. The National Conciliation and Mediation Board ("NCMB") likewise decided against Tecson in holding the contract valid, and upholding the right of Glaxo to transfer Tecson to another sales territory. Faced with the same questions, the Court of Appeals upheld the NCMB.

II. THE SUPREME COURT IN THE MAIN DECISION

Before the Supreme Court, Tecson and his labor union argued that the company policy was violative of the equal protection clause, as it created an invalid distinction among the employees. They said that it effectively restricted the rights of the employees to marry. Likewise, they proffered the argument that Tecson was constructively dismissed. Glaxo countered that they had a genuine interest in avoiding activity that may conflict with their interests as a legitimate business entity. They denied that there was constructive dismissal, and said that there was no prohibition on marriage *per se*. What existed was a proscription on existing or future relationships that may potentially pose a threat to their interests.

The Court rejected Tecson's argument that the equal protection clause applies, because as per previous jurisprudence, the requisite State involvement was not present in the case. It ruled for Glaxo, saying (1) that the policy was a valid exercise of Glaxo's right to protect its interest, and (2) that there was no absolute prohibition against such. "Its employees are free to cultivate relationships with and marry persons of their own choosing. What the company merely seeks to avoid is a conflict of interest between the employee and the company that may arise out of such relationships."[6] The Supreme Court went on to quote the Court of Appeals saying, "The policy is not aimed at restricting a personal prerogative that belongs only to the individual. However, an employee's personal decision does not detract the employer from exercising management prerogatives to ensure maximum profit and business success...."[7]

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[6] *Ibid.*
[7] *Ibid.*

III. THE SUPREME COURT'S RESOLUTION OF THE MOTION FOR RECONSIDERATION[8]

The petitioners raised more refined arguments in their Motion for Reconsideration. They questioned the Court's reliance on "the conjectural presumption that Tecson's relationship might compromise the interest of the company or allow a competitor to gain access to Glaxo's secrets and procedures,"[9] and said (1) that the policy was contrary to public policy, morals and good customs, (2) that it was violative of Glaxo's own company policy, and (3) that Glaxo's transfer of Tecson amounted to constructive dismissal.

The Court first resolved the question of constructive dismissal. It said that this was a matter that was determinative of the case, regardless of the stipulation in question. The Court ruled that there was no constructive dismissal, but nonetheless went ahead to discuss the validity of the policy against marriage.

The Court first presented the two prohibitions pertinent to the policy that Glaxo issued: article 136 of the Labor Code,[10] which the Court explained is only useful against gender discrimination, and article 282 of the same code,[11] which stands as the overarching prohibition against wrongful termination. Although the first article did not have much bearing on the case, the Court admitted that the second one did. It said that the validity of a company policy prohibiting or limiting the right of an employee to marry cannot alone justify the dismissal. The dismissal should at all times, be anchored on article 282. That is why the Court resolved the question of whether or not there was constructive dismissal in the first place. Effectively, the Court said that regardless of the validity of the company policy prohibiting marriage, a company may only terminate an employee if the termination is grounded on article 282. However, the Court went on to acknowledge that the validity of a company policy alone can also be a decisive factor. Therefore, an employer may legitimately terminate an employee even if it is not because

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[8] *Ibid.*

[9] Duncan v. Glaxo (2005).

[10] LABOR CODE, art. 136, which provides:

> Art. 36. Stipulation against marriage. — It shall be unlawful for an employer to require as a condition of employment or of continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

[11] LABOR CODE, art. 282, which provides:

> Art. 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representatives;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate members of his family or his duly authorized representative;
>
> (e) Other causes analogous to the foregoing.

of an infraction of article 282. The Court said that this is availing in instances where a certain relationship can become a ground for the loss of confidence.

The Court went on to stress the importance of marriage, as recognized by the Civil Code,[12] but said, in the same breath, that marriage must succumb to the interests of third persons, and should not bar the latter from enforcing their own rights.

> Still it would be injudicious, if not irresponsible, to judicially enforce a universal position that disencumbers marriage from adverse consequences, if the encumbrance stands to protect third persons inevitably affected by an act of marital union. For much as we may want to see and regard marriage in a vestal state, it may be a source of negativity for third persons, and not just the jilted.[13]

In reference to the case, the Court said that because of the competitive nature of Glaxo, the company had a right to act the way it did, as well as to issue the policies it did. The Court went on to affirm its earlier ruling by saying that there was no automatic termination citing the opportunities Glaxo provided Tecson to resolve the problem, and the adherence by the employer to the process provided by the Employee Handbook.[14] The Court also said that Glaxo "does not impose an absolute prohibition against relationships.... Its employees are free to cultivate relationships with and marry persons of their own choosing. It recognizes the concern arising from possible conflict of interest, yet dissuades the enforcement of a hasty and unilateral decision."[15]

IV. EXAMINING THE FIRST AND SECOND DECISIONS

A. HOW MUCH WAS REALLY SAID: INTERESTS, DISTINCTIONS AND STANDARDS

1. Perpetually Pitting Two Interests against Each Other

The original decision raised many a controversy because it merely upheld the right of Glaxo to protect its interest as a business entity, without effectively explaining why it should be given higher regard than an individual's right to marry. Certainly it discussed how an employer has a right to protect its interests. But arguing that there exist certain rights due to one party does not exclude or make less important rights due to another, unless there are ample arguments which have the net effect of upholding one party's rights at the expense of another's.

The Court's line of argumentation seems to be incomplete in that it fails to establish a clear standard to seal the controversy. Thus, in the same way that the legitimate interest of a business entity can rise above that of an individual's right, the

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[12] CIVIL CODE, art. 1409

[13] Duncan v. Glaxo (2005).

[14] "Every effort shall be made, together by management and the employee, to arrive at a solution within 6 months, either by transfer to another department in a non-counter checking position, or by a career preparation toward outside employment after Glaxo Wellcome. Employees must be prepared for possible resignation within 6 months, if not other solution is feasible." Glaxo v. Duncan (2005).

[15] Glaxo v. Duncan (2005).

latter can likewise assert that absent any measure or standard of validity, his or her own right can rise above that of a business entity.

2. Hairsplitting Distinctions between Prohibitions against Marriage and Prohibitions against Courting Sources of Conflict

In both the original decision and the Resolution of the Motion for Reconsideration, the Court insists that there was no absolute prohibition *per se* because the employees were not expressly prohibited from getting married. They were merely prohibited from courting any possible source of conflict of interest.

However, using the same logical framework in the first subsection, it can likewise be argued that the assertion that what was being prohibited was anything that might lead to a possible source of conflict of interest, does not effectively cancel out the assertion that the employees are being prohibited from getting married. It cannot be conclusively presumed that just because one stipulation prohibits the violation of legitimate business interests, then it can no longer serve as a prohibition against marrying. By operation of logic, they are not mutually exclusive. The claim that it is one (i.e., a prohibition against entering into relationships that might cause a conflict of interest) does not therefore, effectively render the other (i.e., a prohibition against marriage *per se*) impossible.

Of course, it could be argued that the respective intentions of the two assertions are different. It can be said that the general assertion of prohibiting anything that might lead to a conflict of interest subsumes the more particular assertion that what is being prohibited is an employee's marriage to another. The question can then become one of whether in subsuming the particular assertion, the general assertion effectively cancels it out. Phrased this way, it would seem that the particular pales beside the general. However, this might be an oversimplification of the issue. The prohibition against entering into relationships that might cause a conflict of interest is only general in so far as it is more far-reaching in scope than the prohibition against marriage. But viewing it in this light eradicates the importance of the individual's right to marry, again without much substantiation as to why that should matter.

3. Why no Standards were set, in spite of the General Rules and Exceptions

The Resolution of the Motion for Reconsideration seems to be more instructive than the original decision, insofar as it is able to provide a set of guidelines with general rules and exceptions.

It discusses whether or not there was constructive dismissal, before anything else, because this issue is said to subsume any arguments pertaining to the company's policy. Despite having decided that there was no constructive dismissal, the Court does proceed to discuss, perhaps for future reference, what seems to be the general rule and the exceptions in resolving issues between management and the individual employees.

Rule 1. The first general rule states that the company-issued policy alone cannot justify the dismissal, and that the reason for termination still needs to be anchored in article 282 of the Labor Code. The exception to this rule, according to the Court is that this shall not prosper if the policy becomes a decisive factor.

Rule 2. The second general rule states that when the two interests are pitted against each other, there should be a recognition of the individual's right to marry, and the command and relevance of the policy to the enterprise issuing the same.[16] Although there are exceptions to the preference of the right to marry over business interests, the Court seems to speak of them as almost rare, if not exceptional occurrences, *viz*:

> Both the Constitution and our body of statutory laws accord special status and protection to the contract of marriage.... Still it would be injudicious, if not irresponsible, to judicially enforce a universal position that disencumbers marriage from adverse consequences, if the encumbrance stands to protect third persons inevitably affected by an act of the marital union.[17]

Although it seems that in providing the two general rules and the corresponding exceptions, the Court was able to give a clear set of guidelines for future reference, it is noteworthy that the general rule and the exceptions are not mutually exclusive, leaving in effect, no concrete guidelines and quite a number of open-ended questions. For instance, the exception to rule 1 is just the opposite of the rule. The exception to rule 2 on the other hand, is clear but rather incomplete. How one can determine whether third persons have become substantially affected, the Court does not say. Much is still left to the discretion of the Court in future cases. Certainly this is not in itself wrong. If the matter was not one that involved the opposing rights, this would not have any bearing, but because what is involved is precisely that, then the uncertainty of the decision does matter.

Strictly speaking, no standards were really set. In the end, the decision was made on the basis of weighing substantive rights rather than because of compliance with a particular set of standards. The Court did admit this, and said that each case should be decided on based upon its own merits. Although in various instances, this has been recognized as a valid exercise of judicial prerogative, this likewise necessitates further inquiry. Certainly, the present case has been resolved and put to rest. But precisely because the standards were empty to the extent that they provided few (if any) bounds to speak of, the same cannot be said to be instructive for future cases, even if the circumstances be the same.

Instead of issuing open ended pronouncements, a definite statement would have better addressed the issue, and consequently, would have been more instructive for future use. Leaving issues similar to this to be resolved on a case-to-case basis will end up failing to protect any set of rights against other. Maybe the reason why the standards

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[16] *Ibid.*
[17] *Ibid.*

were not really set is that the nature of this conflict does not really call for the formulation of guidelines. Maybe what is necessary is a definitive statement as to what set of rights should take precedence over what. It seems that the Court was inclined towards the preservation of individual rights, but the same was not sufficiently sustained or even explained, even if it should have, with much reason.

B. WHY THE COURT SHOULD HAVE TAKEN SIDES

This article stands to assert that it would have been better for the Court to have decided with certainty whether or not a company policy of the nature thus discussed should be vested with validity. Instead of giving vague standards, which serve no real purpose for future cases, the Court should not have wavered in deciding on the basis of the substantial merits of the right to marry above the rights and interests and business entities.

1. On the General Right to Contract

Article 1306 of the Civil Code of the Philippines provides for a person's right to contract. A very important aspect of this right is the freedom of the parties to stipulate the terms of their contract. It is through this freedom to stipulate that the parties are able to embody their intentions in a contract. Thus, under article 1306, "contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient." This freedom is considered to be very important that several legal protections, such as the presumption of validity[18] and the principle non-impairment of contracts,[19] have been institutionalized to prevent this freedom from being obstructed or subsequently impaired.

While there exists a very broad freedom to stipulate, this freedom is not absolute. The same article 1306 provides the limitations to the same by further stating that such stipulations should not be "contrary to law, morals, good customs, public order, or public policy." This is reiterated in article 1409 of the same code which includes amongst the enumeration of the contracts that are void and inexistent from the beginning, those "whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy." Upon these limitations, the validity of stipulations against marriage can be effectively tested.

2. Void for being against Morals and Public Policy

Marriage in the Philippines is a lifetime commitment.[20] It is an inviolable social institution and is considered the foundation of the family,[21] which is another very

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[18] See Loyola vs. CA, G.R No. 115734, February 23, 2000 and GSIS vs. Province of Tarlac, G.R. No. 157860, December 1, 2003, citing Gabriel vs. Monte de Piedad, 71 Phil. 497, 500 (1941) & Ramos vs. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002.

[19] CONST. art. III, sec. 10.

[20] Marriage is defined as a "special contract of permanent union." See FAMILY CODE, art. 1.

[21] CONST. art. XV, sec. 2.

important social institution. The sanctity and inviolability of marriage are not principles that are merely created by law. They are values that are widely accepted by and deeply ingrained in society. Marriage is "one of the 'basic civil rights of man,' fundamental to our very existence and survival."[22]

The right to marry and whom to marry have always been regarded as one of the most important rights of an individual. The choice of who to marry is a decision that is very sacred, intimate and personal to a person. Thus, "man must have freedom of decision"[23] with respect to marriage. Thus, a person's discretion on choosing whom to marry should not be hampered. Any stipulation which seeks to impair or "limit it in an excessive manner"[24] should not be given legal effect. The questioned stipulation in Glaxo's employment contract is an excessive limitation to the right to marry because it places a bar against marrying a particular kind of person.

Stipulations against marriage in exchange for employment erode other important societal values. When the court gave primacy to business interest vis-à-vis the right to marry, it placed what was supposedly an important social value on the same level as material interests. In effect, by transforming it into something that can be contracted away, the sanctity of marriage was violated.

This should not be allowed. Marriage is a "basic social institution which public policy cherishes and protects."[25] It is perceived to be imbued with social interest as a foundation of the family and the basic unit of society."[26] The state and the public have an interest in protecting its sanctity during the marriage and before its inception. The questioned stipulation should, therefore, be held void for being in contravention with such established interests of society and for being inconsistent with good morals[27] and public policy.[28]

The court upheld Glaxo's policy against marriage by saying that the policy is not aimed at placing an absolute prohibition against marriage or other relationships between its employees and employees of competitor companies. All that it allegedly seeks to prevent is the conflict of interest that may arise from the existence of such relationships.[29] However, while, in the words of the Court of Appeals, "the policy is not aimed at restricting a right that belongs only to the individual,"[30] the corporation's goal

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[22] Loving v. Commonwealth of Virginia, 388 U.S. 1, 12 (1967), cited in Central Bank Employees Association v. Bangko Sentral ng Pilipinas, G.R. No. 14208, December 15, 2004.

[23] IV ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES418 (2002).

[24] *Ibid.*

[25] Pomperada v. Jochico, B.M. No. 68, November 21, 1984.

[26] Estrada v. Escritor, A.M. No. P-02-1651, August 4, 2003.

[27] Morals has been defined as "generally accepted principles of morality which have received some kind of social and practical confirmation." Torcuator v. Bernabe G.R. No. 134219, June 8, 2005. See also Cui v. Arellano University, No. L-15127, 112 Phil. 135 citing Manresa.

[28] Gabriel vs. Monte de Piedad, 71 Phil. 497, 500-501 (1941).

[29] Duncan v. Glaxo (2004).

[30] *Ibid.*

of preventing a conflict of interest may only be attained if such restriction of right is made. Thus, while the regulation of the right to marry and the right to enter into relationships is not the purpose of the policy, it is still the means chosen. The right of the individual to marry is still substantially impaired.

CONCLUSION

The difficulty in recognizing which among two competing rights or interests (commercial and individual, in particular) should take precedence lies in the need to compare abstracts lodged in different regions. Almost always, these rights are substantially supported. Hence, to effectively cancel out the arguments in favor of one, the arguments in favor of another should serve to prove that one interest or right is simply more important.

This paper asserts that for the reasons mentioned in Part IV, an individual's right to marry, which transcends tangible and corporeal matters, rises above the rights of business entities. Certainly, the law serves to manage concrete and material interests. However, the law is likewise an instrument that must remain reflective of human values, and the hierarchy civilization attaches to it. As such, the law should give significance to interests, which are in fact, valued by civilization. Doing otherwise would be nothing short of treasonous.

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