

THE CUDAHY PACKING COMPANY, PETITIONER, VS. THE DIRECTOR OF PATENTS AND VEGETABLE OIL INDUSTRIES CORPORATION, RESPONDENTS.

G.R. No. L-22647. July 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

At issue in this petition to review the decision of the Director of Patents in Inter Partes Cases Nos. 226 and 227 is the scope of Rule 19, in relation to Rule 187, of the Revised Rules of Practice before the Philippine Patent Office in trademark cases.

The background facts are undisputed. On September 21, 1960 private respondent Vegetable Oil Industries Corporation (henceforth referred to as VOIC) filed two applications with the Philippine Patent Office for separate registrations of the trademarks "EL REY" (words only) and "VOIC EL REY & crown device," which said corporation had allegedly been using since June 1, 1960 as trademarks on its vegetable oil products used for cooking, frying and baking. The applications were published in the June 5, 1961 issue of the Official Gazette, which was officially released on June 29, 1961.

On July 28, 1961 the law firm of Lichauco, Picazo, Agcaoili received a cablegram which reads:

"LT

MARLICH MANILA

FOR THE CUDAHY PACKING COMPANY OPPOSE BEFORE JULY 31 TRADEMARK APPLICATIONS
8008 and 8010 EL REY BASIS CLIENTS PRIOR REGISTRATION 3591 EL REY

LAWLAN CHICAGO"

The above cablegram came from Messrs. Langner, Parry, Card & Langner of Chicago, Illinois, U.S.A., the international trademark agents of the Cudahy Packing Company (herein petitioner), a foreign corporation duly organized and existing under the laws of the State of Maine, U.S.A. Apparently pressed for time, the law firm filed a petition with the Patent Office on July 31, 1961[1] asking for an extension of thirty (30) days from said date within which to file a notice of opposition to VOIC'S applications. The reason given was that "x x x the above trademark whose registration will be the subject of opposition has just been published in a recent issue of the Official Gazette and it will take sometime to prepare the opposition papers in the United States and to have them properly authenticated by the Philippine Consul." Finding the petition meritorious, the Director of Patents gave the law firm up to August 29, 1961 within which to submit the opposition.

On August 25, 1961 the law firm filed an unverified notice of opposition to VOIC'S applications. Within sixty days thereafter, or on September 25, 1961, the duly verified notice of opposition was filed in accordance with rule 187(c) of the Revised Rules of Practice before the Philippines Patent Office in trademark cases.[2]

Meanwhile, on August 28, 1961 the law firm filed a duly authenticated power of attorney executed by the Cudahy Packing Company, appointing the former as its attorney, with full power of substitution and revocation, particularly to prosecute the opposition against VOIC'S trademark applications Nos. 8008 and 8010 before the Philippines Patent Office.

In its answer to the opposition VOIC prayed for its dismissal on the ground that when the law firm of Lichauchco, Picazo & Agcaoili moved for extension of time to file the notice of opposition on July 31, 1961, it did not yet have a written power of attorney or authorization to intervene in the case, as required by Rule 19 of the Revised Rules of Practice before the Philippines Patent Office, which provides:

"19. Power of attorney or authorization. - Before any attorney-at-law or other recognized person will be allowed to take action in any case or proceeding, ex parte or inter partes, a written power of attorney or authorization must be filed in the particular case or proceeding.

x x x"

The requisite power of attorney given the law firm by the Cudahy Packing Company was executed on August 7, 1961, a week after the law firm filed the motion for extension. VOIC contended in its answer that since the authority embodied therein had not yet been given when the said motion was filed on July 31, 1961, the grant of the extension, as well as the filing of the notice of opposition itself within the period allowed therefor, did not cure the fatal defect in the law firm's initial intervention in the inter-partes case, i.e. the absence of the requisite authority to file the motion for extension of time in the first place.

Finding the arguments of VOIC well-founded, the Director of Patents dismissed the opposition by resolution dated November 29, 1962, the pertinent portion of which reads:

"The second issue (i.e. whether herein petitioner has the authority to file the petition for extension of time to file the notice of opposition) should, however be resolved in the negative. The records of these cases also show that when it filed the petition for extension of time to file the notices of opposition on July 31, 1961, the law firm Lichauchco, Picazo and Agcaoili was not then duly appointed and authorized to act as attorneys in these cases. Their appointment as such was made and executed by the opposer only on August 7, 1961."

A subsequent motion for reconsideration having been denied by order dated February 28, 1964, petitioner interposed the instant petition for review.

It should be noted that the action taken by petitioner's counsel and subsequently held null and void by the Director of Patents was merely to ask for an extension of time for filing a notice of opposition to private respondent's applications, on the ground that it would take some time to prepare the opposition papers in the United States and to have them properly authenticated by the Philippine Consul. The petition was on the face of it quite reasonable; and the Director of Patents so found it and ruled that it was "based on meritorious grounds." True it is that Rule 19 requires a written power of attorney or authorization to be filed "before any attorney-at-law or other recognized person will be allowed to take action in any case or proceeding." But the fact is that in this case the Director of Patents did allow petitioner's counsel to file the petition for extension, and granted it by giving said counsel up to August 29, 1961 within which to submit the notice of opposition. And within the period granted the opposition was duly filed.

The requirement of Rule 19 is not jurisdictional in nature, especially in regard to a mere motion for extension such as that here in question. There is nothing so important or so decisive in such a motion, insofar as the merits of the case are concerned, as to render it valueless unless accompanied by a power-of-attorney or written authorization. Indeed it may happen that the extension is sought precisely because the requisite written authority of counsel to act in behalf of the client may not arrive on time. In such a case, to say that counsel cannot even file a motion for

extension would pose a dilemma beyond solution.

In any event, whether or not failure to comply strictly with Rule 19 may, under certain circumstances, justify the Director of Patents in denying the extension prayed for, the fact is that in this case he granted the petition, and his action cannot be considered necessarily null and void because of such non-compliance nor on the ground of lack of jurisdiction. This is especially so where, as in this case, the law firm, when it filed the petition for extension, was already armed with an authorization by cablegram received from the agents of its client, followed by a formal power of attorney executed by said client on August 7, 1961 and submitted to the Bureau of Patents on August 28, within the period of extension given for filing the notice of opposition.

The suggestion that the cabled authorization was not sufficient for purposes of the requirement in Rule 19 because it did not come directly from petitioner gives greater importance to form than to substance and reads into the said rule a more restrictive meaning than its words justify. It does not provide that the authorization must be given by the party him-self, that is, petitioner in this case. The record shows that the firm of Langner, Parry, Card & Langner, Foreign Patent & Trademark Solicitors and Agents, of the City of Chicago, had been duly instructed by petitioner, in a letter dated July 25, 1961, to oppose private respondent's applications, and it was pursuant to said instruction that the cablegram of July 28, 1961, was sent to the local law firm. The latter, in turn, asked for the needed extension of time to file the opposition; and we hold that it did so in substantial conformity with Section 187(b) of the Re-vised Rules of Practice in the Patent office, which provides:

"Rule 187(b). Extension of time. - For good cause shown, and upon payment of the required fee, the time for filing a notice of opposition may be extended by the Director for an additional thirty days, upon written request of the opposer..."

Respondents would give the term "opposer" a literal interpretation and thereby rule out any request for extension filed by counsel. This interpretation is not borne out by the realities of law practice, whether before the courts or before administrative tribunals, where the litigants are invariably represented by lawyers, who actually sign the necessary pleadings, provided of course they are duly authorized. And here we find that there was sufficient authorization, at least as far as the filing of the petition for extension was concerned.

WHEREFORE, the resolution of November 29, 1962 and the order of February 28, 1964, issued by respondent Director of Patents, are hereby set aside; and he is ordered to give due course to petitioner's notices of opposition to the trademark applications of private respondent. Costs against the latter.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., on leave.

[1] Since VOIC's application was published in the issue of the Official Gazette officially released only on June 29, 1961, the 30-day period allowed by the Rules of the Patent Office for the filing of the opposition should ordinarily expire on July 29, 1961. But inasmuch as the last-mentioned date fell on a Saturday, which was a non-business day at the Patent Office, the Director of Patents ruled that the July 31 (Monday) petition for extension was timely.

[2] Notice filed by attorney. - An unverified notice of opposition may be filed by a duly authorized attorney, but such opposition will be null and void unless verified by the opposer in person within sixty days after such filing. This period for verification may be extended by the Director for an additional thirty days, if the opposer is out of the country, upon written request made by the attorney and upon payment of a surcharge fee of P25. The Director shall cause the applicant to be notified of the filing of any unverified notice of opposition and of any extension granted of the period for verifying the opposition, if any has been granted.

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