

**AH NAM, PLAINTIFF AND APPELLEE, CITY OF MANILA,
THIRD-PARTY PLAINTIFF AND APPELLANT, VS. CITY OF MANILA, ET
AL., DEFENDANTS AND APPELLANTS, MUTUAL SECURITY
INSURANCE CORPORATION...**

G.R. No. L-15502. October 25, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

In a complaint filed in the Court of First Instance of Manila (Civil Case No. 36329), Ah Nam, owner of two bakery-establishments, prayed for a judgment declaring illegal the imposition upon him, allegedly as a second-hand dealer, of municipal license and permit fees amounting to P2,066.25, and ordering defendants City Mayor and City Treasurer to desist from collecting the same. After defendants had filed an answer sustaining the legality of the imposition, and a third party complaint against the Mutual Security & Insurance Corporation, which undertook the two bonds securing payment of the said amount of P2,066.25,[1] the parties submitted a stipulation of facts, the pertinent parts of which read:

"1. That the plaintiff is the owner and proprietor of two bakeries, namely, the Liberty Bakery and the Panaderia Blumentritt situated at 1401 Sande St., Tondo, Manila, and 312 Pavia St., Tondo, Manila respectively;

"2. That both bakeries are duly licensed and permitted to operate as such and for this purpose, the plaintiff has paid the corresponding municipal license and permit fees;

"3. That in the operation of said bakeries, the plaintiff makes periodic importation and purchases of flour contained in cloth-bags for which the plaintiff pays no additional amount apart from the price of the flour;

"4. That the empty flour bags are not used by the plaintiff as an ingredient or material in the making of bread and other bakery products;

"5. That after the consumption of the flour, the empty flour bags left with the plaintiff were sold by him inside said establishments under invoices separate from those for the bread and other bakery products sold thereat;

"6. That the plaintiff sold empty flour bags in his bakery at No. 1401 Sande St., Tondo, Manila during the period from the 2nd quarter of 1952 to the 3rd quarter of 1957, inclusive, and also in his bakery, at No. 312 Pavia St., Tondo, Manila, from the 3rd quarter of 1951 to the 3rd quarter of 1957, inclusive, for which the defendants are demanding from him payment of the sums of P967.50 and P1,098.75, respectively, or a total of P2,066.25, as municipal license and permit fees, including penalties, for doing business as a dealer in second-hand goods under Ordinances Nos. 2699 and 3000;

"7. That the plaintiff has refused to make payments of the amounts demanded by defendants on the ground that his acts of disposing of the empty flour bags do not make him a dealer in second-hand goods within the purview of said city ordinances;

"8. That on April 28, 1958, the third-party defendant Mutual Security Insurance Corporation and the plaintiff

Ah Nam executed in favor of the third-party plaintiff two (2) surety bonds, one for P1,098.75 and the other for P967.50, whereby they bound themselves in each, jointly and severally, to pay the third-party plaintiff the said amounts, representing the license and permit fees, including penalties, assessed and demanded by defendant City Treasurer from the plaintiff for the latter's business of second-hand dealer of empty flour bags, the same being due upon judgment having been rendered herein holding plaintiff Ah Nam liable for said, municipal license and permit fees, including penalties, * * *;

* * * * *

"11. That plaintiff paid the 7% percentage tax on manufacturers imposed by the Internal Revenue Code and the municipal license fees on each of plaintiff's two bakeries, based on the gross sales inclusive of the sales of money flour bags;

"12. That defendant City Treasurer assessed and collected from plaintiff the municipal license fees prescribed by Ordinance New 3364 on plaintiff's two bakeries on the basis of the sworn statement of sales submitted by him to defendant City Treasurer, wherein plaintiff declared all his gross sales as sales- of bakery products only without mentioning his sales of empty flour bags, and, as shown on the face of each of the following receipts, * * * the license fees were computed on the basis of the said declared gross sales of bakery products; and

"13. That the amounts of license fees that the plaintiff had to pay in accordance with Ordinance No- 3364 for operating his two bakeries are the same, whether or not the sales of empty flour bags were added to the sales of the bakery products. * * *."

Based on the foregoing, the court below rendered judgment holding that the sale by plaintiff of the flour bags, after they were emptied of the contents, was merely incidental to his bakery business, and did not make him a dealer of used bags. Plaintiff was, therefore, declared not liable to pay any license and permit fees in connection with the sale of such empty flour bags. From this decision, defendants interpose the instant appeal, involving only a question of law.

Assailing the ruling of the lower court, appellants contend that as appellee made profit from the sales of the bags different from and in addition to the proceeds of his bakery products, the sale of the bags is not merely incidental to but separate and distinct from his bakery business. Furthermore as the price of the flour that appellee buys for use in his bakeries naturally includes the cost of the bags, and as such bags, once emptied, are in turn sold, appellants claim that appellee is actually "dealing" in used flour bags.

Section 752 of Ordinance No. 2699 relied upon by appellants, subjects to licensing "any person who shall engage in, exercise or carry on the trade or business of a dealer in second-hand furniture, household goods, used automobiles, spare parts and other parts thereof, or other articles," while Section 1 of Ordinance No. 3000, also invoked by appellants, requires that before a person may conduct or engage in any business, trade or occupation, he must secure a permit from the City Mayor and the necessary license from the City Treasurer.

The only question to be determined in this case is whether, under the circumstances, appellee may be considered as engaged in the business or trade of a dealer and, therefore, subject to the requirements of Ordinances Nos. 2699 and 3000. 1

On this point, the trial judge correctly held-

"Under said Sec. 752 of Ordinance No. 2699, in order that a person can be legally required to pay the corresponding license, it should be made to appear that he is a dealer. 'A dealer in the popular, and therefore in the statutory sense of the word is not one who buys to keep or makes to sell, but one who buys to sell again.' (Norries vs. Com., 27 Pa. 494; Com. vs. Campbell, 33 Pa. 385; Bouvier's Law Dictionary, p. 775.) This definition has been adopted by the Supreme Court in the case of City of Manila vs. Bugsuk Lumber Co., 53

Off. Gazette, 6111. Inasmuch as from the stipulation of facts, it clearly appears that the plaintiff was selling only empty flour bags in his bakery at No, 1401 Sande, Tondo, Manila, which contained the flour used by him in connection with his bakery business, plaintiff can not be considered as a dealer and, therefore, he is not liable to pay a license under Ordinance No. 2699 as a dealer in second-hand goods. It has not been shown that the plaintiff has been engaged in the business of buying- and selling- of empty flour bags for it is admitted that the empty flour bags sold by him are limited to those which contained the flour used by him in his bakery business. Consequently, the sale of empty flour bags was merely incidental to the business of bakery in which the plaintiff is principally engaged. * * * ."

Neither may appellee be obliged to pay the permit and license fees required under Ordinance No. 3000 because, as heretofore stated, the sale of the empty bags is not being carried as a separate or distinct trade or enterprise, but merely as incident to the bakery business. As a matter of fact, the sale of the flour bags depends- on the volume of consumption or use by appellee's bakery business. Appellee does not buy empty flour bags, independently of the flour he uses, for the purpose of re-selling them, nor does he buy flour in order to get the empty bags for sale, the main reason for the purchase being the utility of the flour to the bakery business. That after attaining his purpose, appellee finds some use for the empty bags, is certainly incidental only to his bakery business. As under the ordinance the fees are imposed on persons engaged in the trade or business of dealer, and as appellee is not, in the real sense of the term, engaged in the business of buying and selling used flour bags, the lower court committed no error in exempting appellee from payment of the license and permit fees in connection with the sale of such empty flour bags.

Wherefore, the decision appealed from is hereby affirmed, without pronouncement as to costs. So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

[1] The third party defendant duly filed an answer thereto.

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