

THE CITY OF BACOLOD, ETC., PLAINTIFF AND APPELLEE, VS. LEANDRO GRUET, ETC., DEFENDANT AND APPELLANT.

G.R. No. L-18290. November 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Negros Occidental (in Civil Case No. 5693) ordering San Miguel Brewery, Inc. (as employer and principal of defendant Leandro Gruet) to pay to plaintiff City of Bacolod the sum of P26,306.54, plus the tax at P0.03 per case, levied on it by Ordinances Nos. 66 and 150 of its Council, from March 1, 1960 and thereafter, with costs.

Defendant-appellant in his fourth assignment of error claims that "the trial court erred in ordering the San Miguel Brewery, Inc. to pay to the City of Bacolod the sum of P26,306.54 and the tax at the rate of three centavos per case levied in said Ordinances Nos. 66 and 150 from March, 1960, and the costs of suit when it should have ordered the dismissal of this action."

This brings to the fore a procedural question which, because of the facts herein present, is decisive of this appeal.

The only defendant in this case is Leandro Gruet who, according to the first paragraph of the complaint, "is the Manager of the San Miguel Brewery, Bacolod Coca Cola Plant, Bacolod Branch, a business establishment engaged in the bottling and selling of coca cola and true orange with its office in the City of Bacolod, Philippines, and where it may be served with summons." Note that no reference is made to the San Miguel Brewery, Inc., with office in the City of Manila, and consequently no summons was served on this corporation. There is nothing in the complaint that connects this corporation to the cause of action alleged therein.

In the answer of Gruet, the first affirmative defense reads:

"1. That the defendant, as manager of the Coca Cola Plant in Bacolod City, is not the proper party defendant in this case, the said plant being owned and operated by the San Miguel Brewery, Inc., a domestic corporation organized under the laws of the Philippines and having its office and principal place of business at 1112 Aviles, Manila."

Notwithstanding this, the complaint was never amended and San Miguel Brewery, Inc. was never impleaded.

The case went to trial and was decided on the merits upon the following stipulation of facts:

COME NOW the parties plaintiff and defendant in the above-entitled case and, in addition to the facts stated or admitted in their respective pleadings, hereby agree and stipulate as follows:

"1. That the defendant paid the tax of P.01 per case of coca cola as required in Section 1, Ordinance No. 66, Series of 1949, of the City of Bacolod;

"2. That when the said Ordinance No. 66, Series of 1949, was amended by Ordinance No. 150, Series of 1959, which took effect on July 1, 1959, defendant refused to pay the levy made in the latter Ordinance or an

additional amount of P.02, and wrote a letter of protest addressed to the City Mayor of Bacolod, furnishing copy thereof to the City Treasurer. The said letter, dated July 24, 1959, is hereby submitted as Exhibit '1' for the defendant.

"3. That the Coca Cola Plant managed by the defendant Leandro Gruet in this case is already paying a tax on its business to the City of Baeolod in the amount of P100.00 per annum as 'manufacturer of aerated water' under Ordinance No. 48, Series of 1949, which we hereby submit as Exhibit '2' Gruet. Page 23 thereof showing the tax of P100.00 on 'manufacturer of aerated water' is hereby submitted as Exhibit '2-A' Gruet.

"4. The parties hereby further stipulate that defendant Gruet, for and in behalf of the Coca Cola Plant managed by him, has been paying the tax of P100.00 under Ordinance No. 48, since the beginning of its operation in 1948. Defendant Gruet hereby submits as Exhibit '3' a tabulated statement of payments made by him of the P100.00 per annum under Ordinance No. 48, Series of 1949, as manufacturer of aerated water from 1955 up to 1960, or a period of five years, the reason therefore being that the record of previous payments has already been disposed of in accordance with law.

"5. Plaintiff admits the fact of receipt by the Mayor and the City Treasurer of Bacolod of the letter Exhibit '1', but does not admit the facts stated herein.

"6. Plaintiff admits that neither City Mayor nor the City Treasurer made a reply to the letter Exhibit T; and

"7. That the parties propose to submit memorandum in support of their respective contentions within 15 days from the date hereof. "Bacolod City, July 26, 1960."

Note again that no mention of the San Miguel Brewery, Inc., was made in this stipulation. And yet the decision of the trial court declared and ruled:

"The real party defendant herein is San Miguel Brewery, Inc. which, as admitted in the answer, owns and operates the Bacolod Coca Cola Plant, of which the defendant is only the manager. The defect being purely one of form, not affecting the merits of the case, the Court will, as it hereby does, treat San Miguel Brewery, Inc. as the defendant and consider the pleadings correspondingly amended.

"WHEREFORE, San Miguel Brewery, Inc. is ordered to pay to the plaintiff the sum of P26,306.54 and the tax at the rate of three centavos per case levied in Ordinances Nos. 66 and 150 from March, 1960, and thereafter. Costs against the defendant.

"SO ORDERED."

It would seem clear that the action in this case was prosecuted, not in the name of the real party in interest which, admittedly, is the San Miguel Brewery, Inc., but in the name of Gruet as manager of its Coca Cola Plant at Bacolod City. This defect is fatal to the action, as it is violative of the express and mandatory provision of Section 2, Rule 3, of the Rules of Court, to the effect that "Every action must be prosecuted in the name of the real party in interest."

In the case of *Salmon and Pacific Commercial Co. vs. Tan Cuevo* (36 Phil. 556), it was held that a judgment obtained in the court below against a company, which was neither served with summons, nor named in the process or pleadings as a party to the action (only its attorney-in-fact was summoned and named), is null and void, violating as it did Section 114[1] of the Code of Civil Procedure which requires an action to be brought in the name of the real party in interest. It was there stated:

"As to the applicant the Pacific Commercial Company, there can be no question that the judgment obtained below is void. According to the record, not only was the Pacific Commercial Company not served with summons, but it was not even named in the process or pleadings as a party to the action. This title of the case shows that the company was not a party. The making of Agapito E. Garcia, attorney-in-fact of the Pacific

Commercial Company, a party defendant, does not make the company a party defendant. Section 114 of the Code of Civil Procedure requires an action to be brought in the name of the real party in interest; and a corollary proposition requires that an action shall be brought against the persons or entities which are to be bound by the judgment obtained therein. * * *."

Conformably with the above-quoted provision of the Rules of Court and the cited decision of this Court, we hold that the judgment of the court a quo is of no effect against San Miguel Brewery, Inc.

We have taken this step in order to avoid any useless judgment and throw at naught all these proceedings to the ultimate prejudice of all parties concerned.

Wherefore, the decision appealed from is hereby set aside, and the case is remanded to the court a quo for further proceedings, giving San Miguel Brewery, Inc., the real party in interest, found by the court, an opportunity to be heard by making it a party defendant. Without costs. It is so ordered.

Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Practically the same as Sec. 2, Rule 3, Rules of Court.

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