

DE LA RAMA STEAMSHIP CO., PLAINTIFF-APPELLEE, VS. NATIONAL DEVELOPMENT CO., DEFENDANT-APPELLANT.*G.R. No. L-26966. October 30, 1970*

Ponente: ZALDIVAR, J.

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This case originated in the Court of First Instance of Manila as Civil Case No. 25161, entitled "De la Rama Steamship Co. Inc., plaintiff, versus National Development Company, defendant". This is the third time that this case has come up to this Court.

This case is the outcome of an agreement entered into on October 26, 1949 between the De la Rama Steamship Co. Inc. (hereinafter referred to as De la Rama) and the National Development Company (hereinafter referred to as NDC), whereby De la Rama undertook the management of the three vessels known as "Doña Aurora", "Doña Nati" and "Doña Alicia" which had been purchased by the Philippine Government from Japan with the advice and technical supervision of De la Rama. In the management contract it was provided that De la Rama had the option to buy the vessels at the fifth year following the purchase and delivery of each of the vessels, at a price which is to consist of the cost price of each vessel, plus such expenses as De la Rama may have incurred in connection with the construction, outfitting, provisioning and operation thereof; but should De la Rama fail to exercise the right of option it should be reimbursed of the expenses it incurred in manning, equipping, fueling, overhauling and repairing the vessels, and the payment of loading commission, discharging commission, overriding commission, sub-agent's commission etc.

The first time that this case came up to this Court was in G. R. No. L-8784, decided on May 21, 1956, which involved the principal question regarding the right granted by the management contract to NDC to cancel upon one year's notice the general agency granted De la Rama. The NDC decided to cancel the contract but was opposed by De la Rama, which alleged that it had been granted the option to purchase the vessels and that in 1952 it exercised that right of option. In the decision in G.R. No.L-8784 this Court upheld the right of NDC to cancel the management contract, and the option of De la Rama to purchase the vessels was declared ineffective.

The right of NDC to cancel the management contract having been upheld by this Court and De la Rama's right to exercise the option to purchase the vessels could not thereby be exercised, De la Rama filed on August 21, 1956 a "Supplemental Pleading" in Civil Case No. 25161 then pending in the Court of First Instance of Manila. This supplemental pleading, in the nature of a supplemental complaint, gave rise to the proceeding which later brought Civil Case No. 25161 to this Court for the second time in G.R. No. L-25659.[1] Under the first cause of action of the "Supplemental Pleading", De la Rama demanded that NDC refrain from using the names "Doña Aurora", "Doña Nati" and "Doña Alicia" on the three vessels subject of the original action, claiming that it had acquired exclusive pro-perty right to the use of said names of the three vessels as trade names; under the second cause of action, De la Rama sought the payment to it by the NDC of P1,505,603.82 as reimbursement for various advances and expenses it had made in behalf of, and commissions earned as agent of, NDC; and under the third cause of action, De la Rama sought the payment of P1,000,000 as damages on account of NDC's continued use of the

names "Doña Aurora", "Dona Nati" and "Doña Alicia", on the vessels that De la Rama had turned over to it (NDC), and P100,000 as expenses and attorney's fees.[2]

Over the opposition of NDC to the admission of the "Supplemental Pleading", upon the grounds that De la Rama could not file a supplemental pleading because it had already been held in G. R. No. L-8784 that it had no right of action and a party may not file a supplemental pleading if it had no valid and subsisting cause of action, and that all the causes pleaded were only remotely connected with, and not material to, the original action in Civil Case No. 25161, the lower court, in an order dated October 18, 1956, granted De la Rama's motion to file the "Supplemental Pleading".[3]

In its answer to De la Rama's supplemental pleading, NDC denied De la Rama's exclusive right to use the names "Doña Aurora", "Dona Nati", and "Doña Alicia" on the vessels upon the ground that said names (except Doña Nati) represented names of wives of former Presidents of the Philippines and could not be appropriated by a private individual; NDC averred that the alleged advances and commissions claimed in the second cause of action were never alleged and claimed in the original complaint and should be deemed barred and dismissed together with the original principal action; NDC also averred that the demands in the third cause of action were unreasonable, and that De la Rama had tried to retain all the benefits arising from the operation of the vessels and shifted to NDC the liabilities and obligations. NDC also set forth special defenses and a counterclaim, alleging that De la Rama was under obligation to submit a true and correct accounting of the operation of the three vessels, and to remit to NDC the amounts due to the latter from January 1, 1954 to the dates the vessels were separately returned; and that plaintiff had charged excessive commissions of 17-1/2% when the reasonable rate should only be 9.45% after the notice of cancellation, and should account for and deliver to NDC the excess commissions actually received.[4]

In its reply to NDC's answer, and in its answer to NDC's counterclaim, De la Rama alleged that the names "Doña Aurora", "Doña Nati" and "Doña Alicia" were its property, having used the name "Doña" on its vessels in its shipping business even before the last war and had acquired a vested right on that trade name, that the claims for reimbursement and/or payment of advances and/or expenses made, and commissions earned by virtue and pursuant to the management contract matured after the filing of the amended complaint[5]; that true and correct accounting of the operations of the vessels had always been submitted to NDC. De la Rama denied, for lack of knowledge or information sufficient to form a belief, the allegations in defendant's counterclaim.[6]

On March 20, 1957, the trial court, in consonance with its order given in open court on March 8, 1957, considering that the case involved mainly accounting, issued an order appointing a Board of Accountants to make an examination of the accounts submitted by De la Rama to determine what amount is due De la Rama and what amount is due NDC, and to make such recommendations as, in its opinion, are proper. The Court appointed Mr. Gregorio Lecaros, then President of the Philippine Institute of Accountants, to represent the court and to act as chairman of the Board; Mr. Miguel Calíngasan, comptroller of De la Rama, recommended by counsel for De la Rama, to represent De la Rama; and Delfin Diangco, accountant and manager of the shipping department of NDC, recommended by counsel for NDC, to represent the NDC. The deputy clerk of court of the branch of the Court of First Instance of Manila where the case was pending was appointed secretary of the Board. The order of the court provided for the compensation of the members of the Board of Accountants and its Secretary. The court gave the Board thirty days from the date of qualification by its members within which to receive the evidence and thereafter another thirty days within which to submit its report.[7]

The Chairman of the Board of Accountants, on April 13, 1959, submitted his report and recommendations to the court. Based on said report and recommendations the trial court rendered its decision, dated April 29, 1959, the dispositive portion of which reads as follows:

"IN VIEW OF ALL THE FOREGOING CONSI-DERATION, the Court hereby renders judgment:

"(a) Approving the report and recommendations of Mr. Gregorio S. Licaros, Chairman, Board of Governors, Development Bank of the Philippines, dated April 13, 1959, and ordering defendant National Development Company to pay to plaintiff the sum of P244,277.81, representing the balance of the advances made by plaintiff's operation of the Doña Nati, Doña Alicia and Doña Aurora, with legal interest thereof from January 24, 1955.

"(b) Enjoining and restraining defendant perpetually from using the 'Doña' name or title on any of its vessels; and

"(c) Ordering defendant to pay plaintiff, nominal or temperate damages in the sum of P20,000.00, and attorney's fees in the amount of P20,000.00.

"With costs against the defendant." [8]

From the above-mentioned decision NDC interposed an appeal to this Court, docketed herein as G.R. No. L-15659. This is the second time that Civil Case No. 25161 of the Court of First Instance of Manila came up to this Court.

In its decision in G.R. No. L-15659 this Court upheld NDC's contention that the causes of action in the "Supplemental Pleading" were not in any way relevant and material to the original action of De la Rama to compel the NDC to sell the three "Doña" vessels to it, and that, therefore, the "Supplemental Pleading" was improperly admitted. This Court also sustained the contention of the NDC that the lower court did not follow the suggestion of the Chairman of the Board of Account-ants to give opportunity to the NDC to submit its objections to the amounts stated in the report of the chairman of the board. This Court therefore, set aside the decision appealed from. However, in the interest of a prompt termination of the suit, this Court ordered the remand of the case to the court below "with instructions to enroll the pleadings and papers starting with the 'supplemental pleading', registering the complaint, collecting the corresponding fee based on the amounts demanded in the complaint and entering the complaint and all the papers in the dockets of the court." This Court also gave instructions "to give the defendant NDC the opportunity to submit its objections to the report of the board of accountants and to have a hearing on this report in accordance with the rules as above pointed out", and "thereafter the action shall proceed or continue in accordance with this decision". [9]

So the case was before the trial court for the third proceedings. The trial court complied with the instructions of this Court, as stated in the decision in G.R. No. L-15659. After the trial court had repeatedly given the NDC the opportunity to file its objections, if any, to the report submitted by the Chairman of the Board of Accountants, and the NDC failed so to do, the trial court rendered its decision dated February 23, 1966, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered approving the conclusions and recommendations contained in the aforesaid Report of April 13, 1959, and ordering defendant National Development Company to pay to the plaintiff De la Rama Steamship Co., Inc., the sum of P244,227.81 with legal interest thereon from January 24, 1955 until fully paid.

"With costs against the defendant." [10]

On February 24, 1966 De la Rama filed a motion for the partial execution of the decision dated April 29, 1959 regarding the damages in the sum of P20,000.00 and attorney's fees in the sum of P20,000 on the ground that those portions of the decision had not been appealed from and had therefore become the "law of the case" as far as the parties were concerned. [11] NDC filed its opposition to the motion on the ground that the decision of April

29, 1959 was "set aside" by the Supreme Court, and consequently there was no legal basis for execution.

On March 18, 1966 the lower court issued an "order and/or amendatory decision", the concluding portion of which reads as follows:

"PREMISES CONSIDERED, plaintiff's motion of February 23, 1966 for partial execution is hereby denied. Instead, in the interest of justice, and the decision of this Court of February 7, 1966 not having yet become final, the same is hereby amended by adding thereto the findings of fact and conclusion of law made above, and by amending its dispositive part to read as follows:

"WHEREFORE, judgment is hereby rendered:

"(a) Enjoining and restraining the defendant perpetually from using the "Doña" name or title on any of its vessels;

"(b) Approving the conclusions and recommendations contained in the aforesaid Report of April 13, 1959, and ordering the defendant National Development Company to pay to the plaintiff De la Rama Steamship Co., Inc., the sum of P244,222.81 with legal interest thereon from January 24, 1955 until fully paid; and

"(c) Ordering the defendant to pay to the plaintiff by way of damages, as and/or attorney's fee, the amount of P20,000.00. Said decision of February 7, 1966 is maintained in all other respects.

"With costs against the defendant." [12]

From both the decision dated February 7, 1966 and the amendatory decision dated March 18, 1966 NDC ap-pealed directly to this Court, because of the amount involved, stating that it would raise questions both of fact and of law [13]. The present appeal is the third time that this case [14] has come up to this Court.

NDC in its brief, assigns six errors which, it claims, were committed by the lower court in deciding the case.

The first four errors refer to the lower court's having adopted in toto the findings and recommendations of the Board of Accountants, as contained in the Report submitted to the court dated April 13, 1959, regarding:

1. "the net results of the operational expenses of the 'Doña' vessels;"
2. "the inventory of equipment, supplies, materials, provisions, fuel, etc. on board the vessels upon the delivery thereof;"
3. "the commission on cargos booked and loaded after delivery of the vessels; " and
4. "the additional charges to NDC;"

The fifth error assigned is that

5. "The lower court erred in holding that the plaintiff is entitled to the preferential right to the use of the 'Doña' names and enjoining and restraining the defendant-appellant perpetually from using the 'Doña' names or title on any of its vessels."

The sixth error assigned is that

6. "The lower court, finally, erred in condemning defendant-appellant to pay to the plaintiff-appellee the sum of P244,227.81 with legal interest thereon from Jan. 24, 1955 until fully paid and also the sum of P20,000.00 by way of damages and attorney's fees."

In support of its first assignment of error, that the lower court erred in adopting in toto the findings and recommendations of the Board of Accountants regarding the net results of the operational expenses of the "Doña"

vessels, as contained in the Board's Report submitted to the Court, dated April 13, 1959, NDC contends that De la Rama had overcharged NDC as per NDC Report dated April 10, 1959 in the amount of P53,393.94 before the cancellation of the contract and P12,705.59 after the cancellation of the contract as 17-1/2% commissions on "arbitraries" which cannot be included in the terms "cargo freight" or "freight revenue" on the basis of which alone De la Rama should receive the agency commissions as per paragraph 4 of the management contract; that De la Rama had also charged excess commissions in the amount of P803,973.94, as shown in the NDC audit verification report dated April 10, 1959, on freight revenues and passage revenues after the cancellation of the management contract effective July 11, 1955, because the 17-1/2% commission on "freight revenue" and the 10% commission on "passage revenue" under the management contract were applicable only while said contract was in force, such that after the rescission of said contract, until the vessels were returned, De la Rama operated the vessels at its own risk and should be entitled only to 7-1/2% commission on freight revenues and 7-1/2% commission on passage revenues which rates were those agreed upon by NDC and A. V. Rocha and Company; that De la Rama overcharged NDC P46,627.83 as expenses for advertising, which should have been borne by De la Rama pursuant to stipulation No. 4 of the management contract which in part reads:

"x x x in consideration of said overriding commission, De la Rama shall assume all expenses of the service with respect to sub-agents' commissions, advertising, entertaining, documentation of cargo office rent and expenses, telephone costs and general travelling expenses. Cable and telegram expenses, however, shall be directly chargeable to the respective vessels's voyage accounts."

but which De la Rama charged directly to the miscellaneous expense accounts of the respective voyage account of the vessels; that De la Rama also overcharged NDC, without specifying the amount, for expenses for entertainment, telephone costs, general traveling expenses, sub-agents' commission of cargo, all of which NDC must assume pursuant to paragraph 4 of the management contract; that NDC was overcharged P4,710.94 for subsistence, which amount was spent not for the meals of the passengers, officers, and crew, but for various parties and, which, not having been previously authorized by NDC, should be chargeable to De la Rama; that De la Rama overcharged operational expenses in the amount of P192,376.35 which were without supporting vouchers; that there was an understatement of the operational income of NDC vessels in the amount of P27,418.56; that the operational expenses of the NDC vessels was overcharged for various expenses in the amount of P5,462.09.[15]

In support of its second assignment of error, that the lower court erred in adopting in toto the findings and recommendations of the Board of Accountants regarding the inventory of equipment, supplies, materials, provisions, fuels, etc. on board the vessels upon the delivery thereof to NDC as contained in the report dated April 13, 1959, NDC contends that De la Rama's claim on this matter was only P626,304.70, but Schedule B (Exh. PP), purporting to be the final inventory, showed only a total of P573,979.53 as against NDC audit report dated March 31, 1958 in the amount of only P496,637.10.[16]

In support of the third assignment of error, that the lower court erred in adopting in toto the findings and recommendations of the Board of Accountants regarding the commission on cargos booked and loaded after delivery of the vessels as contained in the Board's Report dated April 13, 1959, NDC avers that when the "Doña Alicia" was delivered to NDC the latter honored the De la Rama commitments on cargo and passengers without however stipulating the commissions to be earned by De la Rama; that the claim of De la Rama for P16,927.72, or 9-1/2% of P178,186.56, freight revenues was 7% higher than those charged for the same service and should be reduced to 2-1/2% only; that De la Rama also overcharged NDC in the amount of P113.75 passage commission, because De la Rama should not be allowed to charge more than 7-1/2% which NDC pays to its present agent.[17]

In its fourth assignment of error, that the lower court erred in adopting in toto the recommendations of the Board

of Accountants regarding the additional charges to NDC as contained in the Board's Report dated April 13, 1959, NDC avers that of the P21,998.11 claimed by De la Rama, the bills for general averages in the amount of P20,478.52 for "Doña Alicia" and "Doña Aurora" were for services that were normal duties of the relationship between NDC and De la Rama, and were therefore without basis, more so because all of De la Rama's expenses including travel, hotel and entertainment expenses of its officials incident thereto in the amount of P51,583.33 had been included in the casualty account claimed by De la Rama and the designated adjuster, Funch, Edye, and Co., already collected their fees of P6,000; so that said amount of P20,478.52 should have been disallowed.[18]

In refutation of the reasons adduced by NDC in support of its four assignments of error, De la Rama contends that the alleged errors involve principally factual matters which had been twice resolved by the lower court - first in the decision of April 29, 1959 and again in the decisions of February 7 and March 18, 1966, and those alleged errors relate to matters that NDC had been given many opportunities to object to in the lower court, but which it did not do; that for having failed to object, NDC is bound by the findings embodied in the report.[19]

We sustain the stand of De la Rama. NDC complains against the adoption in toto by the trial court of the findings and recommendations of the Board of Accountants. We find the actuation of the trial court to be in accordance with Rule 33, Section 11, of the Rules of Court -? which authorizes the trial court to render judgment, after the report of the commissioner has been set for hearing, by adopting, modifying, or rejecting the report in whole or in part. The report of the Board of Accountants in the case at bar is similar to the report of the commissioner, or referee, as provided in Rule 33 of the Rules of Court. This Court, in the case of *Apurillo v. Greciano*,[20] held that the trial Judge's adoption in toto of the findings of the Commissioner is allowed under Rule 33 of the Rules of Court. In the case at bar, NDC's repeated failures to file its objections, if any, to the report, left the trial court no other choice but to render judgment based on the report. Section 11 of Rule 33 of the Rules of Court was taken from Section 140 of the former Code of Civil Procedure (Act 190). Interpreting Section 140 of the said Code of Civil Procedure, this Court, in the case of *Kreidt vs. E. C. McCullough & Co.*[21], held:

"... Section 140 of the Code of Civil Procedure must be interpreted as placing upon the litigant parties the duty of discovering and exhibiting to the court the reasons, if any there be, why the report should not be confirmed; and it is not ordinarily incumbent upon the court to discover the errors that may lurk therein. The duty which the law imposes upon the court is to render judgment in accordance with the report; and this will ordinarily be done unless the party aggrieved shall, in a manner conformable with proper practice, demonstrate the existence of error in the report. It is an elementary rule of procedure that the exceptions to the referee's report should specifically point out the error, or errors relied upon by the party excepting, when the report comes up for confirmation the court can not be expected to rehear the case upon the entire record, but will review only so much as may be drawn in question by proper exceptions...

"When a referee is appointed he becomes for the time being an accredited agent and an officer of the court, and the reference is clearly a judicial proceeding. What the referee does while acting within the scope of his authority is, therefore, in the contemplation of law, done by the court itself. Hence his conclusions must be assumed to be correct until error is properly shown It follows that when the referee has examined the evidence and reached his conclusions of fact and law, those conclusions have a presumption in their favor both of law and of reason. It would be impossible to administer justice on any other theory than that as facts are found and determined in accordance with the proper procedure of the court they must be assumed to be true until the contrary is shown."

In the case at bar, NDC neglected to perform the duty of pointing and demonstrating the alleged errors in the report of the Board of Accountants, in spite of the fact that this Court in G.R. No. L-15659 had ordered the case to be remanded to the lower court precisely in order that NDC might be given the opportunity, which it claimed it had previously been deprived of by the trial court, to submit its objections to the report, and to have a hearing on

the report, notwithstanding the repeated opportunities given to it by the trial court for a period of three years to submit its objections. On this matter, the following is what the trial court said in its decision which is now appealed to this Court:

"...and, as directed by the Supreme Court, the defendant was given repeated opportunities to submit its objections to the Report of the Chairman of the Board. Unfortunately, however, the defendant's conduct for the last three years amounts to waiver of its right to be heard on the subject report, to paraphrase the language of the Supreme Court in this regard in its decision quoted above. Thus, defendant NDC requested and was granted on October 10, 1963 a first extension of time to submit its objections to the Report (p. 1342, Re-cords). As late as October 30, 1963 (p. 1390, Records), that is, after several extensions of time totalling more than one (1) year, this Court granted NDC a final and last extension of three weeks within which to submit NDC's objections, if any, to said Report. This period expired without the filing by defendant NDC of objections, if any, to said Report; but this Court, notwithstanding the absence of any objection to said Report, and with a view to giving the defendant a last chance to assail any part of said Report, exercised its discretion to, as it did, set said Report for hearing on May 3, 1965 (p. 1395, Records), and thereafter on May 6, May 28, July 9, August 5, September 16, October 22 and November 12, 1965, which hearings were cancelled at the instance and request of the defendant. At the hearing on November 12, 1965 the parties agreed that defendant be granted two weeks within which to file its objections, if any, to said Report; that plaintiff shall submit its reply to the objections within a similar period and that if the defendant failed to file the objections within said stipulated period it shall be deemed to have waived its right to do so. The defendant again failed to file its objections to said Report, and instead filed an urgent motion, dated November 26, 1965, to extend the period, but said urgent motion was filed after several days after the expiration of the period granted for the purpose in this Court's Order of November 12, 1965, and as the defendant actually failed to file the intended objections within the extension of time prayed for in said urgent motion (see Order of this Court of December 7, 1965), on motion of the plaintiff this Court found no other alternative proper under the circumstances mentioned above than to issue its Order of December 13, 1965 to the effect that said Report was deemed submitted for decision and/or approval as of the last mentioned date." [22]

The appellant having failed to file its objections to the report, it was the duty imposed by the law upon the court, to quote again Kriedt vs. E. C. McCullough & Co. supra, "to render judgment in accordance with the report", as though the facts had been found by the judge himself.

If a party fails to file opportunely his objections to the report of the commissioner or referee, such that the record does not disclose the objections thereto, as in the instant case, questions relating to the report cannot be reviewed and he cannot dispute the finding in the report or escape the legal consequences flowing therefrom. Thus, in the case of Santos v. de Guzman and Martinez, [23] this Court ruled:

"By way of emphasis, we now desire to add that if a party desires to challenge the findings of a referee, he must do so by timely and specific exceptions to the referee's report. If he fails to make such exceptions and the report is confirmed by the trial judge, he is bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom. Questions relating to the report of a referee can be reviewed only where the record discloses the exceptions taken thereto."

Another reason why NDC's first four assignments of errors should no longer be considered is that, as appears in the trial court's decision, NDC agreed that should it fail to file its objections within two weeks from November 12, 1965, "it shall be deemed to have waived its right to do so." Furthermore, it has been repeated time and again by this Court, that issues not raised in the lower court cannot be raised for the first time on appeal. [24] In the recent case of Kalalo v. Luz [25] this Court refused to consider on appeal the correctness of the amount due from appellant to appellee as found by the Commissioner, it being too late to question on appeal its correctness, the same not having been submitted to the trial court for resolution.

It has also been held, in this connection, that when the findings of the Commissioner are approved by the trial court, they will not generally be disturbed by the reviewing court, unless the findings are unsupported by the evidence.[26] The trial court adopted the findings and recommendations embodied in the Report in the instant case "after a careful consideration of said report and after a careful evaluation of the pertinent data and figures taken from authentic records as to which the members of the Board of Accountants are in agreement." [27]

In support of the fifth assignment of error, that the lower court erred in holding that De la Rama is entitled to the preferential right to the use of the "Doña" names and enjoining and restraining NDC perpetually from using the "Doña" names on any of its vessels, NDC argues that as owner of the vessels it had registered the "Doña" names in the Bureau of Customs with full knowledge and consent of De la Rama which, therefore, is now estopped from questioning the right, or from denying the ownership, of NDC over the "Doña" names (Art. 1431 Civil Code).[28] De la Rama, on the other hand, maintains that the findings and conclusion of the lower court on this matter, quoting the pertinent portion of the lower court's decision, are well founded.

In the amendatory decision, dated March 18, 1966, the lower court found that De la Rama had been in the shipping business since 1933 and had adopted, prior to the war in 1941, the word "Doña" in designating its vessels; that the three ocean-going vessels that it operated under the management contract were named "Dona Nati" after the wife of the late Don Esteban de la Rama, who was founder of the steamship company; "Doña Alicia" after the late wife of former President Elpidio Quirino; and "Dona Aurora" after the late widow of President Manuel Quezon; that there is un rebutted testimony that in the shipping business, goodwill and reputation are inevitably acquired by the names given to a vessel.[29]

NDC's contention, in its answer, that De la Rama, a private firm, could not appropriate said names (except "Doña Nati") on the ground that those are names of wives of former Presidents, does not have a legal basis. Under Section 4 (c) of Rep. Act No. 166 as amended, which apparently is the basis of the contention of NDC, what is prohibited from being appropriated and being registered are trade-names consisting of, or comprising, a name identifying a particular living individual, or the name of a deceased President of the Philippines. The names of deceased wives of Presidents are not included in the prohibition. Moreover, Section 4 (f) of said Act does not prohibit the registration, and hence appropriation, of a trade-name that has become distinctive; and the substantial and exclusive use of a trade-name for five years is accepted as prima facie proof that the trade-name has become distinctive. And this Court has said, in *Ang vs. Teodoro*[30], that even a name or phrase not capable of appropriation as a trade name may, by long and exclusive use by a business with reference thereto or to its products, acquire a proprietary connotation, such that, to the purchasing public, the name or phrase becomes associated with the service or the products of the business, and so it is entitled to protection against unfair competition.

Neither is the claim of estoppel, allegedly based on acquiescence, in that NDC had registered with full knowledge and/or consent of De la Rama the "Doña" names in the Bureau of Customs, tenable. A reading of Sections 1166 to 1176 of the Revised Administrative Code, under which the "Doña" vessels were presumably registered, would show that the primary purpose of the registration is to determine the ownership of the vessels, although for registration it is necessary that the vessel should have a name as a prerequisite under the provision of Section 1170. De la Rama certainly could not, and had no right, to oppose the registration of the vessels by NDC because the vessels were in fact owned by NDC. Neither could De la Rama then oppose the registration of the "Doña" names of the vessels for it was De la Rama itself that gave those names when it operated the vessels, and it had also an expectant right to become owners of said vessels. De la Rama's consent to the registration of the vessels as owned by NDC did not necessarily imply that it also consented to NDC's appropriation of the "Doña" names, for almost immediately after the right of NDC to cancel the management contract had been upheld by this Court in *G.*

R. No. L-8784, decided on May 21, 1956, De la Rama formally notified, on August 10, 1956 NDC or its agent to "refrain from using, announcing or in any manner referring to the three vessels here in question as the 'Doña Aurora,' 'Doña Nati' or 'Doña Alicia'." [31] From these facts it cannot reasonably be urged that De la Rama is estopped from preventing NDC to use the "Doña" names on its vessels. Anent this matter, it has been held that:

"x x x an estoppel will not ordinarily arise from a consent given under an excusable misapprehension of facts. x x x. likewise, the estoppel will not be given effect beyond the precise thing consented to and matters which are necessarily, or at least, reasonably, to be implied therefrom." (28 Am Jur 2d, pp. 662-663.)

And even if it be assumed, *gratia argumenti*, that De la Rama acquiesced to the registration of the "Dona" names of the vessels, as NDC contends, that acquiescence could not necessarily estop De la Rama to claim its right to said names, after the conditions had changed, that is, when the management contract had been cancelled by NDC. Regarding this matter it has been held that:

"Acquiescence in the past does not necessarily estop a party from changing his course of conduct as to the future, especially where there has been a change in conditions." (28 Am Jur 2d, p. 675.)

NDC does not dispute the fact that the "Dona" names had been originally used by De la Rama [32], and according to the lower court De la Rama had been using the "Doña" names even before the war, and that said names have acquired goodwill and reputation. Goodwill is protected by the law on unfair competition. Goodwill is easily damaged, and is easily vulnerable to assault, through the brand which symbolizes it. When a person has established a trade or business in which he has used a name or device to designate his goods, he will be protected in the use of the name or device. "Such person has a right to complain when another adopts this symbol or manner of making of his goods so as to mis-lead the public into purchasing the same as and for the goods of the complainant." [33]

"The good will in business is a valuable asset, and in modern commercial life it is frequently built upon a trade-name. Any trade-mark or name ...which has become of a pecuniary value or a business advantage, becomes a property right, and, as such, is entitled to the protection afforded by the courts" (American Agricultural Chemical Co. v. Moore, 17 F (2d) 196, 199.)

In *Ang v. Teodoro* [34] this Court said:

"The owner of a trade-mark or trade-name has a property right in which he is entitled to protection, since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as confusion of goods. The modern trend is to give emphasis to the unfairness of the acts and to treat the issue as a fraud."

To permit NDC to continue using the "Dona" names would be to countenance the unlawful appropriation of the benefit of a goodwill which De la Rama has acquired as a result of continued usage and large expense; it would be tantamount to permitting NDC to grab the reputation or goodwill of the business of another. [35] We find that the decision of the trial court on this matter is in accordance with the law on unfair competition.

Regarding NDC's sixth assignment of error, that the lower court erred in condemning defendant-appellant to pay to the plaintiff-appellee the sum of P244,227.81 with legal interest thereon from January 24, 1955 until fully paid and also the sum of P20,000 by way of damages and attorney's fees, We believe that no such error was committed by the lower court. The view We have expressed regarding the first four errors assigned by NDC fully supports the correctness of the lower court's holding that NDC should pay De la Rama the sum of P244,227.81 with legal interest, as stated in the decision. The facts and circumstances extant in the record, likewise, amply warrant the award to De la Rama of the sum of P20,000.00 by way of damages and attorney's fees.

WHEREFORE, the decision appealed from is affirmed, with costs against the defendant-appellant National

Development Company.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Ruiz Castro, Fernando, and Barredo, JJ., concur.
Teehankee and Villamor, JJ., did not take part.
Makasias, J., on leave.

[1] Decided on November 30, 1962.

[2] Record on Appeal, pages 2-12.

[3] Record on Appeal, pages 15-22.

[4] Record on Appeal, pages 23-37.

[5] The amended complaint was filed on February 22, 1955, while the supplemental pleading was filed on August 21, 1956.

[6] Record on Appeal, pages 37-40.

[7] Record on Appeal, pages 41-43.

[8] Record on Appeal, pages 81-121.

[9] Words between quotation marks are as quoted from the decision in G.R. No. L-15659.

[10] Record on Appeal, page 138.

[11] Record on Appeal, pages 139-142.

[12] Record on Appeal, pages 156-157.

[13] Record on Appeal, pages 158-159.

[14] Civil Case No. 25161 of the Court of First Instance of Manila.

[15] Appellant's Brief, pages 12-29. In its brief erroneously refers to the report of the Board of Accountants as dated April 29, 1959. The correct date of the report is April 13, 1959.

[16] Appellant's Brief, pages 30-34.

[17] Appellant's Brief, pages 34-37.

[18] Appellant's Brief, pages 37-40.

[19] Appellee's Brief, pages 10-13.

[20] G.R. No. L-23683, July 30, 1969; 28 SCRA 1054, 1059-1060.

[21] 37 Phil. 474, 482.

[22] Record on Appeal, pages 135-137; underscoring supplied.

[23] 45 Phil. 646, 649.

[24] *Tan Machan vs. Gan Aya de la Trinidad*, 3 Phil. 684; *Soriano vs. Ramirez*, 44 Phil. 519.

[25] G. R. No. L-27782, July 31, 1970.

[26] Masmussen vs. Gresley, 8 Cir., 77 F (2d) 252; Dickinson vs. Riley, 8 Cir. 86 F (2d) 385; Small v. Kiel 101 F (2d) 444.

[27] Record on Appeal, page 137.

[28] Appellant's Brief, pages 40-43.

[29] Record on Appeal, pages 153-154.

[30] 74 Phil. 50.

[31] Record on Appeal, pages 5, 28-29.

[32] Appellant's Brief, page 42.

[33] Harry D. Nims, Unfair Competition and Trade Marks, Vol. I, page 49.

[34] 74 Phil. 50, 55.

[35] Ang Si Heng vs. Wellington Dept. Store, Inc., 92 Phil. 448.

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