

GREGORIA PALANCA, PETITIONER-APPELLANT VS. THE AMERICAN FOOD MANUFACTURING COMPANY AND TIBURCIO EVALLE, IN HIS CAPACITY AS DIRECTOR OF PATENTS, RESPONDENTS-APPELLEES.

G.R. No. L-22822. August 30, 1968

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

On May 14, 1958, petitioner-appellant Gregoria Palanca filed with the Philippine Patent Office, Department of Commerce and Industry, an application to register the trademark, "LION and the representation of a lion's head," alleging that she had been using the trademark since January 5, 1958 on bechin (food seasoning). The application was opposed by herein respondent-appellee, The American Food Manufacturing Company, on the ground that petitioner's trademark was similar to its (respondent's) trademark "LION and representation of a lion" previously adopted and used by it on the same type of product since August 3, 1953.

After hearing, the Director of Patents, on June 14, 1961, rendered a decision, the pertinent portion of which reads as follows:

"The record of the case consisting of respondent-appellant's [1] application, the testimonies on behalf of the parties with accompanying exhibits and the opposer's [2] memorandum have been given careful consideration. There is no memorandum for respondent-applicant.

"There can be no question but that the trademarks and the goods of the parties are similar. Accordingly the only issue presented is that of priority of use.

"Opposer's record establishes that it has at least since 1957, prior to January 5, 1958, the earliest date of use asserted by respondent-applicant, continuously use LION and representation thereof, as a trademark for bechin (food seasoning). The opposer is therefore the prior user while the respondent-applicant is the later user of substantially the same trademark.

"IN VIEW OF THE ABOVE CONSIDERATIONS, the opposition is hereby sustained and application Serial No. 6321 of Gregoria Palanca is rejected."

The record shows the petitioner's counsel was furnished with copy of the decision on June 16, 1961.[3] No appeal was taken from the decision of the Director of Patents within the reglementary period from June 16, 1961.

On December 14, 1961, however, herein petitioner-appellant filed with the Patent Office a petition to set aside the aforementioned judgment of June 14, 1961, invoking section 2 of Rule 38 of the Rules of Court, alleging fraud and/or negligence committed by her former counsel, Atty. Bienvenido Medel, in that the latter failed to file a memorandum before the case was submitted for decision; that she had been fraudulently kept in total ignorance of the proceedings in the case; that her counsel had not informed her of the decision, thus preventing her from resorting to all the legal remedies available to her; that she came to know of the decision only about the latter part of October, 1961, through her friend, Mr. Domingo Adevosio; that she had evidence to disprove the claim of

opposer The American Food Manufacturing Company that it had been using the same trademark even before 1958; and that she had evidence to show that the bechin that the opposer sold prior to 1958 were not of the "Lion" brand but of the "Lion-Tiger" brand, another trademark of opposer.

In its answer to the petition to set aside the judgment, the opposer, herein respondent-appellee American Food Manufacturing Company, denied the allegations of the petition and put up special and affirmative defenses, to wit: that the petition was filed out of time; that the evidence proposed to be presented was not new but was already existing and available at the time of the hearing of the case; and that the decision was not rendered through fraud, accident, mistake, or excusable negligence, as is contemplated in Section 2 of Rule 38 of the Rules of Court.

The petition to set aside the judgment was set for hearing, wherein petitioner-appellant and a witness, Ricardo Monfero, testified. Witness Monfero testified that he was the owner of a grocery store in San Pablo City, that the receipts issued to him by the American Food Manufacturing Company on October 16, 1957 showing that Lion blue bechin had been sold to his store really referred to Lion-Tiger brand bechin. After this hearing, herein respondent-appellee Director of Patents issued resolution No. 20, dated October 14, 1963, denying the petition to set aside judgment, pertinent portions of which resolution reads:

"Therefore, from the facts established, no extrinsic or collateral fraud would warrant the setting aside of the judgment herein already rendered.

"This office has also carefully considered the possible value of the evidence purportedly showing the Opposer falsified its receipt to be proven through the testimony of Ricardo Monfero. His testimony is of course, immaterial to the issue because what should have been proven was alleged fraud but, inasmuch as the purpose for his presentation as witness and the nature of his testimony has been revealed, this Office might as well rule how that such character of evidence cannot be considered as a new evidence which would alter the result of the proceedings."

Her motion for reconsideration of the resolution denying the petition to set aside judgment having been denied, petitioner-appellant filed a notice of appeal "from the decision of the Director of Patents to the Supreme Court on the ground that said decision is not supported by the evidence presented and is contrary to law."

In her brief, petitioner-appellant contends that respondent Director of Patents committed the following errors:

- In denying the petition to set aside judgment and resolving that there was no fraud perpetrated against petitioner-appellant, as contemplated under section 2 of Rule 38 of the Rules of Court;
- In holding that a client is bound even by fraudulent and deliberate lapses of his counsel;
- In holding that the testimony of the petitioner-appellant's witness, Ricardo Monfero, is immaterial and that it cannot be considered as a newly discovered evidence which would alter the result of the proceedings;
- In holding that the prior user of the trademark in question is the respondent-appellee, American Food Manufacturing Company;
- In giving more credence to the invoices of the respondent company than on the testimony of the respondent company's customers denying the genuineness and the truth of the facts contained in said invoices;
- In not considering the failure of the respondent company to register the trademark in question earlier than 1958 as negating its claim of its prior use as early as 1953; and
- In rejecting the application for registration of trademark Lion and Representation in the vetsin food products of petitioner-appellant and in sustaining the opposition of the respondent company.

We have noted, upon a reading of herein appellant's notice of appeal and appeal brief, that she does not only

question the correctness of the resolution of appellee Director of Patents denying the petition to set aside the decision of June 14, 1961 but at the same time prays for the reversal of the said decision. We believe that in this appeal the most that appellant can ask this Court is to pass upon the correctness of the resolution denying the petition to set aside the decision.

The record shows that the decision proper, which was rendered on June 14, 1961, had already become final, because counsel for the appellant had been furnished with copy of said decision on June 16, 1961 and no appeal had been taken from said decision within the reglementary period. Appellant admits that she had lost completely her right to appeal from the decision.[4] It is a settled rule that notice of any decision or order of a court to counsel is also notice to the client.[5] Appellant claims that she became aware of the decision only during the last week of October, 1961.⁶ Indeed she took the proper step when on December 14, 1961 she filed a petition to set aside the decision upon the alleged ground of fraud pursuant to Section 2 of Rule 38 of the Rules of Court. That petition to set aside the decision, however, was denied by the respondent-appellee Director of Patents on October 14, 1963. It is only from this order denying the petition to set aside the decision that herein appellant can now appeal to this Court, and not from the decision proper which was rendered on June 14, 1961. We are, therefore, concerned only in determining whether the respondent-appellee Director of Patents had correctly denied the petition to set aside the decision of June 14, 1961. In this connection, we shall dwell only on the first three errors that have been assigned by the petitioner-appellant.

Petitioner-appellant, in support of the first three assigned errors which she discussed jointly, argues that the acts committed by her former counsel, Atty. Bienvenido Medel, constitute fraud that would warrant the setting aside of the decision denying her application to register the controverted trademark. Those acts, allegedly, are: his having kept her ignorant of the proceedings of the case; his having failed to file a memorandum after the hearing of the evidence before the Patent Office; his having failed to notify her of the adverse decision after receiving notice of it, of which decision she came to know only after five months from the time it was rendered; his having intentionally kept himself entirely out of her reach, thereby causing her to lose the right to appeal in due time and preventing her from informing counsel of the newly discovered evidence which might have changed the decision had it been timely presented. Petitioner-appellant also claims that the acts of her counsel also prevented her from presenting all her case before the Patent Office and deprived her of other available legal remedies. She claims, furthermore, that the acts and/or behavior of her counsel cannot be considered honest mistakes, but are fraudulent and deliberate lapses or omissions on his part, which cannot bind her as a client. She also claims that the Director of Patents erred in finding that the testimony of Ricardo Monfero during the hearing on the petition to set aside the decision was immaterial, because this witness precisely testified that the invoices relied upon by the Director of Patents in finding that respondent The American Food Manufacturing Company had been using the trademark at least since 1957 referred to the trademark "Lion-Tiger" of said respondent and not to the trademark in question, and so this testimony had directly refuted the basis of the findings of facts of the respondent Director.

Respondent-appellee Director of Patents, on the other hand, contends that the basic issue in the petition to set aside the decision of June 14, 1961 is whether there was fraud, as contemplated in section 2 of Rule 38 of the Rules of Court, to justify the setting aside of the decision. This respondent-appellee maintains that the acts or omissions of her counsel, cited by petitioner-appellant as constituting fraud, had not prevented her from presenting fully her case, such that it could not be said that there had never been a real contest before the Patent Office regarding the subject matter of the suit. He further maintains that the acts of petitioner-appellant's counsel complained of, including the failure to file the memorandum, refer to procedural matters, and were binding on her. Regarding the merits of the testimony of Monfero, respondent-appellee Director of Patents contends that there is no use in discussing the same because fraud as would warrant the setting aside of the judgment had not been shown.

We uphold the stand of respondent-appellee Director of Patents.

Section 2 of Rule 38 of the Rules of Court provides that a judgment or order entered against a party through fraud, accident, mistake or excusable negligence may be set aside upon proper petition to that effect. Not every kind of fraud, however, is sufficient ground to set aside a judgment. This Court has held that only extrinsic or collateral, as distinguished from intrinsic, fraud is a ground for annulling a judgment.[7] Extrinsic fraud refers to any fraudulent act of the successful party in a litigation which is committed outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully, and fairly his side of the case. On the other hand, intrinsic fraud refers to acts of a party in a litigation during the trial, such as the use of forged instruments on perjured testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case.[8] The distinctions are pointed out in the case of *United States v. Throckmorton*, 98 U.S. 61, 25 L. Ed. 93,—the very case cited by petitioner-appellant—where the court said:

"Where the unsuccessful party had been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing.

"On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed."

In this connection, this Court, in the case of *Varela vs. Villanueva, etc. et al.*, 95 Phil. 248, 258, said:

"The rule is that an action to annul a judgment, upon the ground of fraud, will not lie unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered, and that false testimony or perjury is not a ground for assailing said judgment, unless the fraud refers to jurisdiction (*Labayen vs. Talisay-Silay Milling Co.*, 68 Phil., 376); that fraud has been regarded as extrinsic or collateral, where it has prevented a party from having a trial or from presenting all of his case to the court (33 Am. Jur. pp. 230-232). The reason for this rule has been aptly stated in *Almeda et al. vs. Cruz*, 47 Off. Gaz., 1179:

'Fraud to be ground for nullity of a judgment must be extrinsic to the litigation. Were not this the rule there would be no end to litigations, perjury being of such common occurrence in trials. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehood to his adversary's proofs. But the settled law is that judicial determination however erroneous of matters brought within the court's jurisdiction cannot be invalidated in another proceeding. It is the business of a party to meet and repel his opponent's perjured evidence.' "

The acts complained of by petitioner-appellant, even if assumed to be true and fraudulent, were all committed by her own counsel, and not by the successful party or opponent in the case. Hence, petitioner-appellant had not shown extrinsic fraud that would warrant the setting aside of the decision.

"Negligence, mistake or fraud of one's own attorney is not ground for granting a new trial." (*O'Quinn v. Tate*, (Tex.) Civ. App. 187 S.W. 2d 241).

"Fraud, such as would authorize the setting aside of the verdict at the instance of the movant, is fraud of

respondent or his counsel. She is not at liberty to avail herself of the misconduct of her own counsel, for the purpose of annulling the verdict obtained by respondent." (Ketchem v. Ketchem, 11 S.E. 2d 788)

"In order to obtain relief on this ground it must appear that the fraud was practiced or participated in by the judgment creditor, or his agent or attorney. The fraud must have been practiced upon the opposite party." (Amuran vs. Aquino, 38 Phil. 29; Velayo vs. Shell Company of the Philippines, Ltd., G.R. No. L-8883, July 4, 1959.)

The record shows that petitioner-appellant had all the opportunity to present fully her side of the case before the decision was rendered, because she and her witnesses, Estrellita Concepcion and Adela Palmario, testified in the case. The decision in question itself states that "The record of the case consisting of respondent-applicant's application, the testimonies on behalf of the parties with accompanying exhibits and the opposer's memorandum have been given careful consideration." [9] The failure to submit a memorandum was also the negligence of her counsel and could not in any manner be attributed to any fraud or deception practiced by her opponent.

This Court has held that mistakes of counsel as to the competency of witnesses, the sufficiency and relevancy of evidence, the proper defense, or the burden of proof, his failure to introduce certain evidence, or to summon witnesses and to argue the case, are not proper grounds for a new trial, unless the incompetence of counsel be so great that his client is prejudiced and prevented from fairly presenting his case. [10]

Anent appellant's not having been informed of the adverse decision, this Court has held that:

"The failure of counsel to notify her on time of the adverse judgment to enable her to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face." (Duran v. Pagarigan, L-12573, Jan. 29, 1960)

"Relief under Rule 28 will not be granted to a party who seeks relief from the effects of a judgment on the ground of fraud, where the loss of the remedy is due to his own fault or negligence or that of his counsel." (Echevari v. Velasco, 55 Phil. 570.)

The claim of petitioner-appellant that she had evidence, to disprove the claim of opposer (herein appellee The American Food Manufacturing Company) that it was the prior user of the trademark in question, and to show that the receipts issued by opposer purporting to be in connection with the sale of Lion brand bechin were falsified, is tantamount to saying that her adversary in this case had presented false evidence consisting of perjured testimonies and falsified documents. But even assuming that the evidence presented by respondent-appellee The American Food Manufacturing Company was false, this circumstance would not constitute extrinsic fraud, but only intrinsic fraud. This Court, in a number of cases, held:

"Assuming that there were falsities on the aspect of the case, they make out merely intrinsic fraud which, as already noted, is not sufficient to annul a judgment." (Varela vs. Villanueva, etc. et al., supra)

"And we have recently ruled that presentation of false testimony or the concealment of evidentiary fact does not per se constitute extrinsic fraud, the only kind of fraud sufficient to annul a court decision." (Cortes vs. Brownelljr., etc., et al., 97 Phil. 542, 548).

"That the testimony upon which a judgment has been based was false or perjured is no ground to assail said judgment, unless the fraud refers to jurisdiction" (Labayen et al. vs. Talisay-Silay Milling Co., 68 Phil. 376, 383, quoting Scotten vs. Rosenblum, 231 Fed. 357; U.S. vs. Chung Shee, 71 Fed. 277; Giffen vs. Christ's Church, 48 Cal. A. 151; 191 P. 718; Pratt vs. Griffin, 223, 111., 349; 79 N.E., 102).

"As a general rule, extrinsic or collateral fraud would warrant a court of justice to set aside or annul a

judgment, based on fraud (Labayen, et al. v. Talisay-Milling Co., G.R. No. 45843, June 30, 1939, L.J. Aug. 15, 1939). In seeking the annulment of the decision of Civil Case No. 833 (CA-G.R. No. 8085-R), the alleged fraud does not refer to jurisdiction, but to the admission by the trial court in said case, of supposedly false or forged documents, which is intrinsic in character." (Velasco et al., vs. Velasco, G.R. No. L-152129, June 30, 1961).

We find that respondent-appellee Director of Patents correctly ruled that the testimony of Ricardo Monfero,—a witness presented by the petitioner-appellant during the hearing on the petition to set aside the decision—is immaterial to the issue of whether or not the decision should be set aside. This witness did not testify on any matter which would establish fraud that would warrant the setting aside of the decision.

As we have adverted to at the early part of this opinion, this appeal must be treated only as an appeal from the resolution of respondent-appellee Director of Patents, dated October 14, 1963, denying the petition to set aside the decision rendered on June 14, 1961. Having found that respondent Director of Patents committed no error in denying the petition to set aside the decision, we do not consider it necessary to discuss the other errors assigned by petitioner-appellant because those other errors are not pertinent to the appeal now before this Court.

WHEREFORE, the instant appeal is dismissed. The resolution of the Director of Patents, dated October 14, 1963, denying petitioner-appellant's petition to set aside the decision, dated June 14, 1961, in Inter Partes Case No. 130 before the Philippine Patent Office, is affirmed. Costs against petitioner-appellant.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Appeal dismissed.

[1] Now petitioner-appellant Gregoria Palanca in the case at bar.

[2] Now respondent-appellee The American Food Manufacturing Company in the case at bar.

[3] Petitioner-appellant's brief, p. 8.

[4] See page 17 of appellant's brief.

[5] Duran vs. Pagarigan, G.R. No. L-12573, January 29, 1960; Section 23, Rule 138, Rules of Court.

[6] See page 8 of appellant's brief.

[7] Varela vs. Villanueva etc. et al., 95 Phil. 248.

[8] Philips Petroleum Co. et al. v. Jenkins, 91 F (2d) 183. See also Ohlinger's Federal Practice, revised edition, Vol. 3-A, p. 448.

[9] Page 44, Appellant's brief.

[10] People vs. Manzanilla et al., 43 Phil. 167; Montes v. CFI of Tayabas, 48 Phil. 640.

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