

(With Resolution of June 16, 1965)

G.R. No. L-19118. January 30, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

No less than three times have the parties here appealed to this Court.

In *Albert vs. University Publishing Co., Inc.*, G.R. No. L—9300, April 18, 1958, we found plaintiff entitled to damages (for breach of contract but reduced the amount from P23,000.00 to P15,000.00.

Then in *Albert vs. University Publishing Co., Inc.*, G.R. No. L-15275, October 24, 1960, we held that the judgment for P15,000.00 which had become final and executory, should be executed to its full amount, since in fixing it, payment already made had been considered.

Now we are asked whether the judgment may be executed against Jose M. Aruego, supposed President of University Publishing Co., Inc., as the real defendant.

Fifteen years ago, on September 24, 1949, Mariano A. Albert sued University Publishing Co., Inc. Plaintiff alleged inter alia that defendant was a corporation duly organized and existing under the laws of the Philippines; that on July 19, 1948, defendant, through Jose M. Aruego, its President, entered into a contract with plaintiff; that defendant had thereby agreed to pay plaintiff P30,000.00 for the exclusive right to publish his revised Commentaries on the Revised Penal Code and for his share in previous sales of the book's first edition; that defendant had undertaken to pay in eight quarterly installments of P3,750.00 starting July 15, 1948; that per contract failure to pay one installment would render the rest due; and that defendant had failed to pay the second installment.

Defendant admitted plaintiff's allegation of defendant's corporate existence; admitted the execution and terms of the contract dated July 19, 1948; but alleged that it was plaintiff who breached their contract by failing to deliver his manuscript. Furthermore, defendant counterclaimed for damages.

Plaintiff died before trial and Justo R. Albert, his estate's administrator, was substituted for him.

The Court of First Instance of Manila, after trial, rendered decision on April 26, 1954, stating in the dispositive portion-

"In view of all the foregoing, the Court renders judgment in favor of the plaintiff and against the defendant the University Publishing Co., Inc., ordering the defendant to pay the administrator Justo R. Albert, the sum of P23,000.00 with legal [rate] of interest from the date of the filing of this complaint until the whole amount shall have been fully paid. The defendant shall also pay the costs. The counterclaim of the defendant is hereby dismissed for lack of evidence."

As aforesaid, we reduced the amount of damages to P15,000.00, to be executed in full. Thereafter, on July 22, 1961, the court a quo ordered issuance of an execution writ against University Publishing Co., Inc. Plaintiff however, on August 10, 1961, petitioned for a writ of execution against Jose M. Aruego, as the real defendant,

stating, "plaintiff's counsel and the Sheriff of Manila discovered that there is no such entity as University Publishing Co., Inc." Plaintiff annexed to his petition a certification from the Security and Exchange Commission dated July 31, 1961, attesting; "The records of this Commission do not show the registration of UNIVERSITY PUBLISHING CO., INC., either as a corporation or partnership." "University Publishing Co., Inc." countered by filing, through counsel (Jose M. Aruego's own law firm), a "manifestation" stating that "Jose M. Aruego is not a party to this case," and that, therefore, plaintiff's petition should be denied.

Parenthetically, it is not hard to decipher why "University Publishing' Co., Inc.," through counsel, would not want Jose M. Aruego to be considered a party to the present case: should a separate action be now instituted against Jose M. Aruego, the plaintiff will have to reckon with the statute of limitations.

The court a quo denied the petition by order of September 9, 1961, and from this, plaintiff has appealed.

The fact of non-registration of University Publishing Co., Inc. in the Securities and Exchange Commission has not been disputed. Defendant would only raise the point that "University Publishing Co., Inc.," and not Jose M. Aruego, is the party defendant; thereby assuming that "University Publishing Co., Inc." is an existing corporation with an independent juridical personality. Precisely, however, on account of the non-registration it cannot be considered a corporation, not even a corporation de facto (*Hall vs. Piccio*, 86 Phil. 603). It has therefore no personality separate from Jose M. Aruego; it cannot be sued independently.

The corporation by estoppel doctrine has not been invoked. At any rate, the same is inapplicable here. Aruego represented a non-existent entity and induced not only the plaintiff but even the court to believe in such representation. He signed the contract as "President" of "University Publishing Co., Inc.," stating that this was "a corporation duly organized and existing under the laws of the Philippines," and obviously misled plaintiff (Mariano A. Albert) into believing the same. One who has induced another to act upon his wilful misrepresentation that a corporation was duly organized and existing under the law, cannot thereafter set up against his victim the principle of corporation by estoppel (*Salvatiera vs. Garlitos*, 56 Off. Gaz. 3069).

"University Publishing Co., Inc." purported to come to court, answering the complaint and litigating upon the merits. But as stated, "University Publishing Co., Inc." has no independent personality; it is just a name. Jose M. Aruego was, in reality, the one who answered and litigated, through his own law firm as counsel. He was in fact, if not in name, the defendant.

Even with regard to corporations duly organized and existing under the law, we have in many a case pierced the veil of corporate fiction to administer the ends of justice.[*] And in *Salvatiera vs. Garlitos*, supra, p. 3073, we ruled: "A person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent". Had Jose M. Aruego been named as party defendant instead of, or together with, "University Publishing Co., Inc.," there would be no room for debate as to his personal liability. Since he was not so named, the matters of "day in court" and "due process" have arisen.

In this connection, it must be realized that parties to a suit are "persons who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from a decision" (67 C.J.S. 887) —and Aruego was, in reality, the person who had and exercised these rights. Clearly, then, Aruego had his day in court as the real defendant; and due process of law has been substantially observed.

"By due process of law' we mean 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. * * *' (4 *Wheaton*, U.S. 518, 581.); or, as this Court has said, "Due process of law" contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property' (*Lopez vs. Director of Lands*, 47 Phil., 23, 32)." *Sicate vs. Reyes*, 100 Phil. 504.) And it may not be

amiss to mention here also that the "due process" clause of the Constitution is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. For substance must prevail over form. It may now be trite, but none the less apt, to quote what long ago we said in *Alonso vs. Villamor*, 16 Phil. 315, 321-322:

"A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."

The evidence is patently clear that Jose M. Aruego, acting as representative of a non-existent principal, was the real party to the contract sued upon; that he was the one who reaped the benefits resulting from it, so much so that partial payments of the consideration were made by him; that he Violated its terms, thereby precipitating the suit in question; and that in the litigation he was the real defendant. Perforce, in line with the ends of justice, Responsibility under the judgment falls on him.

We need hardly state that should there be persons who under the law are liable to Aruego for reimbursement or contribution with respect to the payment he makes under the judgment in question, he may, of course, proceed against them through proper remedial measures.

Premises considered, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego. So ordered.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

[*] *Arnold vs. Willits & Patterson, Ltd.*, 44 Phil. 634; *Koppel (Phil.), Inc. vs. Yatco*, 77 Phil. 496; *La Campana Coffee Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana*, 93 Phil. 160; *Marvel Building Corporation vs. David*, 94 Phil. 376; *Madrigal Shipping Co., Inc. vs. Ogilvie* 104,748; *Laguna Transportation Co., Inc., vs. S.S.S. VJG Phil.*, 833; *Nc-Connel vs. C.A.*, G.R. No. L-10510, Mar. 17, 1961; *Liddell & Co., Inc. vs. Collector of Internal Revenue*, G.R. No. L-9687, June 30, 1961; *Palacio vs. Fely Transportation Co.*, G.R. No. L-15121, August 31, 1962.

RESOLUTION

Bengzon, J. P., J.:

Defendant-appellee University Publishing Co., Inc. has two prayers before us: First, that said defendant-appellee be granted leave to present original papers not included in the records of this case because they were never presented in the trial of the case; and second, that the decision promulgated by this Court on January 30, 1965 be reconsidered.

For a proper appraisal of all the facts and circumstances of this case it becomes necessary and convenient to trace the origin of the same.

Plaintiff Albert, almost sixteen (16) years ago, sued University Publishing Co., Inc. for breach of contract. On

April 18, 1958, in L-9300, this Court awarded the sum of P115,000.00 as damages. On October 24, 1960, in G.R. No. L-15275, to clarify whether the P7,000.00 paid on account should be deducted therefrom, this Court decided that the amount should be paid in full because said partial payment was already taken into consideration when it fixed P15,000.00 as damages.

From the inception until the time when the decision in G.R. No. L-15275 was to be executed, corporate existence on the part of University Publishing Co., Inc. seems to have been taken for granted, for it was not put in issue in either of the cases abovementioned. However, when the Court of First Instance of Manila issued on July 22, 1961 an order of execution against University Publishing Co., Inc., plaintiff, speaking also for the Sheriff of Manila, reported to the court by petition of August 10, 1961 that there is no such entity as University Publishing Co., Inc., thereupon praying that, Jose M. Aruego being the real defendant, the writ of execution be issued against him. Attached to said petition was a certification from the Securities and Exchange Commission dated July 31, 1961 attesting: "The records of this Commission do not show the registration of UNIVERSITY PUBLISHING CO., INC., either as a corporation or partnership". The issue of its corporate existence was then clearly and squarely presented before the court.

University Publishing Co., Inc., instead of informing the lower court that it had in its possession copies of its certificate of registration, its by laws, and all other pertinent papers material to the point in dispute—corporate existence—chose to remain silent thereon. It merely countered the aforesaid petition by filing through counsel (Jose M. Aruego's own law firm) a manifestation stating that Jose M. Aruego is not a party to this case and therefore plaintiff's petition should be denied. After the court a quo denied the request that a writ of execution be issued against Jose M. Aruego, plaintiff brought this present appeal on the issue of the corporate existence of University Publishing Co., Inc., as determinative of the responsibility of Jose M. Aruego, the person or official who had always moved and acted for and in behalf of University Publishing Co., Inc.

It may be worth noting again that Jose M. Aruego started the negotiation which culminated in the contract between the parties, signing said contract as president of University Publishing Co., Inc. Likewise he was the one who made partial payments up to the amount of P7,000.00 and in behalf of University Publishing Co., Inc. He appeared not only as a witness but as lawyer, signing some pleadings or motions in defense of University Publishing Co., Inc., although in other instances it is one of his associates or member of his law firm who did so. Known is the fact that even a duly existing corporation can only move and act through natural persons. In this case it was Jose M. Aruego who moved and acted as or for University Publishing Co., Inc.

It is elemental that the courts can only decide the merits of a given suit according to the records that are in the case. It is true that in the two previous cases decided by this Court, the first, awarding damages (L-9300), the second, clarifying the amount of P15,000.00 awarded as such (L-15275), the corporate existence of University Publishing Co., Inc., as a legal entity was merely taken for granted.

However, when the said issue was squarely presented before the court, and University Publishing Co., Inc. chose to keep the courts in the dark by withholding pertinent documents and papers in its possession and control, perforce this Court had to decide the points raised according to the records of the case and whatever related matters necessarily included therein. Hence, as a consequence of the certification of the Securities and Exchange Commission that its records "do not show the registration of University Publishing Co., Inc., either as a corporation or partnership" this Court concluded that by virtue of its non-registration it cannot be considered a corporation. We further said that it has therefore no personality separate from Jose M. Aruego and that Aruego was in reality the one who answered and litigated through his own law firm as counsel. Stated otherwise, we found that Aruego was in fact, if not in name, the defendant.^[1] Indeed, the judge of the court of first instance wrote in his decision, thus: "Defendant Aruego (all along the judge who pens this decision considered that the

defendant here is the president of the University Publishing Co., Inc. since it was he who really made the contract with Justice Albert)". And this portion of the decision made by the court a quo was never questioned by the defendant.

The above statement made by the court a quo in its decision compelled this Court to carefully examine the facts surrounding the dispute starting from the time of the negotiation of the business preposition, followed by the signing of the contract; considered the benefits received; took into account the partial payments made, the litigation conducted, the decisions rendered and the appeals undertaken. After thus considering the facts and circumstances, keeping in mind that even with regard, to corporations shown as duly registered and existing, we have in many a case pierced the veil of corporate fiction to administer the ends of justice, we held Aruego, personally responsible for his acts on behalf of University Publishing Co., Inc.

Defendant would reply that in all those cases where the Court pierced the veil of corporate fiction the officials held liable were made party defendants. As stated, defendant-appellee could not even pretend to possess corporate fiction—in view of its non-registration per the evidence—so that from the start Aruego was the real-defendant. Since the purpose of formally impleading a is to assure him a day in court, once the protective of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held liable as a party. Jose M. Aruego definitely had his day in court, and due process of law was enjoyed by him as a matter of fact as revealed by the records of the case.

The dispositive portion of the decision the reconsideration of which is being sought is the following: "Premises considered, the order appealed from is hereby set aside and the case remanded ordering the lower court to hold supplementary proceedings for the purpose of carrying the judgment into effect against University Publishing Co., Inc. and/or Jose M. Aruego".

According to several cases a litigant is not allowed to speculate on the decision the court may render in the case. The University Publishing Co., Inc. speculated on a favorable decision based on the issue that Jose M. Aruego not being a formal party defendant in this case a writ of execution against him was not in order. It therefore preferred to suppress vital documents under its possession and control rather than to rebut the certification issued by the Securities and Exchange Commission that according to its records University Publishing Co., Inc. was not registered. If the lower court's order is sustained, collection of damages becomes problematical. If a new suit is filed against Aruego, prescription might be considered as effective defense, aside from the prospect of another ten years of pending litigation. Such are the possible reasons for adopting the position of speculation of our decision. Our ruling appeared to be unfavorable to such speculation. It was only after the receipt of the adverse decision promulgated by this Court that University Publishing Co., Inc. disclosed its registration papers. For purposes of this case only and according to its particular facts and circumstances, we rule that in view of the late disclosure of said papers by the University Publishing Co., Inc., the same can no longer be considered at this stage of the proceedings.

Specifically said original papers are:

1. Original Certificate of Registration of the University Publishing Co., Inc., signed by then Director of Commerce, Cornelio Balmaceda, showing that said company was duly registered as a corporation with the Mercantile Registry of the then Bureau of Commerce (predecessor of the Securities and Exchange Commission) as early as August 7, 1936;
2. Original copy of the Articles of Incorporation of the University Publishing Co., Inc. consisting of five (6) pages, showing that said corporation was incorporated as early as August 1, 1936, in Manila, Philippines, with an authorized capital stock of ten

THOUSAND PESOS (P10,000.00), TWO THOUSAND PESOS (P2,000.00)

of which was fully subscribed and five hundred pesos (P500.00), fully paid up; that it had a corporate existence of fifty (50) years and the original incorporators of the same are: Jose M. Aruego, Jose A. Adeva, Delfin T. Bruno, Enrique Rimando and Federico Mangahas;

3. The original copy of the By-Laws of the University Publishing Co., Inc., consisting of eleven (11) pages, showing that it exercised its franchise as early as September 4, 1936;

4. A certificate of Reconstitution of Records issued by the Securities and Exchange Commission recognizes the corporate existence of the University Publishing Co., Inc. as early as August 7, 1936.

Defendant-appellee could have presented the foregoing Papers before the lower court to counter the evidence of non-registration, but defendant-appellee did not do so. It could have reconstituted its records at that stage of the proceedings, instead of only on April 1, 1965, after decision herein was promulgated.

It follows, therefore, that defendant-appellee may not now be allowed to submit the abovementioned papers to form part of the record. Sec. 7 of Rule 48, Rules of Court (in relation to Sec. 1, Rule 42), invoked by movant, states:

"Sec. 7. Original papers may be required.—Whenever it is necessary or proper in the opinion of the court that original papers of any kind should be inspected in the court on appeal, it may make such order for the transmission, safekeeping, and return of such original papers as may seem proper, and the court may receive and consider such original papers in connection with the record." The provision obviously refers to papers the originals of which are of record in the lower court, which the appellate court may require to be transmitted for inspection. The original papers in question not having been presented before the lower court as part of its record, the same cannot be transmitted on appeal under the aforesaid section. In contrast, the certification as to University Publishing Co., Inc.'s non-registration forms part of the record in the lower court.

For original papers not part of the lower court's record, the applicable rule is Sec. 1 of Rule 533 on New Trial. Under said Rule, the papers in question cannot be admitted, because they are not "newly discovered evidence", for with due diligence movant could have presented them in the lower court, since they were in its possession and control.

As far as this case is concerned, therefore, University Publishing Co., Inc., must be deemed as unregistered, since by defendant-appellee's choice the record shows it to be so. Defendant-appellee apparently sought to delay the execution by remaining unregistered per the certification of the Securities and Exchange Commission. It was only when execution was to be carried out, anyway, against it and/or its president— and almost 19 years after the approval of the law authorizing reconstitution—that it reconstituted its records to show its registration, thereby once more attempting to delay the payment of plaintiff's claim, long since adjudged meritorious. Deciding, therefore, as we must, this particular case on its record as submitted by the parties, defendant-appellee's proffered evidence of its corporate existence cannot at this stage be considered to alter the decision reached herein. This is not to preclude in future cases the consideration of properly submitted evidence as to defendant-appellee's corporate existence.

Wherefore, the motion for reconsideration and for leave to file original papers not in the record, is hereby denied. It is so ordered.

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

[1] Decision, p.6

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