

**PARKE, DAVIS & COMPANY, PLAINTIFF-APPELLANT, VS.
DOCTORS' PHARMACEUTICALS, INC. AND V-LAB DRUGHOUSE
CORPORATION, DEFENDANTS-APPELLEES.**

G.R. No. L-27361. May 29, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the order of the Court of First Instance of Rizal dated August 22, 1966, in Civil Case No. C-712, dismissing, on the ground of lack of cause of action, the complaint for damages for infringement of patent and unfair competition, with preliminary injunction, filed by the herein appellant against the herein appellees.

On May 5, 1966, Parke, Davis & Company filed with the Court of First Instance of Rizal, Caloocan City Branch, the said Complaint with Preliminary Injunction against Doctors' Pharmaceuticals, Inc., otherwise referred to as defendant No. 1, and V-Lab Drughouse Corporation, otherwise referred to as defendant No. 2, alleging, among others, that plaintiff is a foreign corporation organized and existing under the laws of the State of Michigan, U.S.A., with principal office situated in Detroit, Michigan, U.S.A.; that the laws of the United States of America allow corporate or juristic citizens of the Philippines to file in said country, actions for in-fringement of patents and for unfair competition; that defendants 1 and 2 are corporations organized and existing under the laws of the Philippines with offices respectively located at 354-B San Diego Street, Grace Park, Caloocan City and 126 Gen. Evangelista Street, Caloocan City; that on March 21, 1957, Letters Patent No. 279 was legally issued to plaintiff by the Patent Office of the Republic of the Philippines for an invention entitled "Therapeutically Valuable Esters and Method for Obtaining the Same"; that since that date, plaintiff has been and still is, the owner of said Letters Patent No. 279 which is still in force in the Philippines; that defendant No. 1 has knowingly infringed and is still knowingly infringing Claim 4 of said Letters Patent No. 279 of plaintiff by selling, causing to be sold, using or causing to be used, "Chloramphenicol Palmitate", the substance covered by said Claim 4 of said plaintiff's Letters Patent No. 279, under the name "Venimicetin Suspension", willfully and without the consent or authorization of plaintiff; that defendant No. 2 has, likewise, knowingly infringed and is still knowingly infringing Claim 4 of said Letters Patent No. 279 by acting as distributor of defendant No. 1 of the latter's medicine called "Venimicetin Suspension" which contains "Chloramphenicol Palmitate"; that plaintiff, through its wholly-owned local subsidiary, Parke, Davis & Company, Inc., a domestic corporation with main office at Mandaluyong, Rizal, has at great expense, established a market and a continuing demand for "Chloramphenicol Palmitate" in the Philippines and has for many years sold and is still selling this product in the Philippines; that defendants have derived unlawful gains and profits from the aforesaid in-fringement to the great and irreparable injury, damage and prejudice of plaintiff, and have deprived plaintiff of legitimate returns which plaintiff would have otherwise received had it not been for defendants' infringing acts; that defendants, in advertising and selling the medicine of defendant No. 1 called "Venimicetin Suspension" have falsely and deceptively concealed that the same contains "Chloramphenicol Palmitate" and falsely and deceptively represented the same to contain "Chloramphenicol"; that "Chloramphenicol" and "Chloramphenicol Palmitate" are entirely different substances;

that defendants, in advertising and selling "Venimicetin Suspension", have falsely and deceptively used plaintiff's name and represented that defendant No. 1 holds a license from plaintiff for said medicine with, inter alia, the following words:

"First Compulsory Licensee in the Philippines by Parke-Davis Company Detroit, Michigan, U.S.A.";

that plaintiff has never granted defendant No. 1 any kind of license for any product; that defendant No. 1 has not even applied for a compulsory license under plaintiff's Letters Patent No. 279, the only patent which covers "Chloramphenicol Palmitate"; that the compulsory licensing case between plaintiff and defendant No. 1 in the Philippine Patent Office (Inter Partes Case No. 181) dealt with plaintiff's Letters Patent No. 50 (which covers "Chloramphenicol") and not with plaintiff's Letters Patent No. 279 (which covers "Chloramphenicol Palmitate"); that the resolution of the Director of Patents fixing the terms and conditions of the compulsory license for "Chloramphenicol" has not yet become final as the same is still subject to a pending motion for re-consideration; that even if said resolution does become final, the compulsory license will not cover defendants' "Venimicetin Suspension" which actually contains "Chloramphenicol Palmitate" and, therefore, defendants' statement will still be false and misleading; and that defendants' use of the aforesaid false statement is designed to induce persons to purchase and physicians to prescribe the use of "Venimicetin Suspension" in the mistaken belief that it is identical with the "Chloramphenicol Palmitate" product manufactured and sold in the Philippines by plaintiff's subsidiary or that the active ingredient in said product has been obtained from plaintiff and/or that said product has been made under the supervision or control of plaintiff - thereby causing damage or loss to plaintiff. On the basis of the foregoing allegations, the plaintiff prayed, among others, that defendants be enjoined from performing the acts complained of as infringement of patent and unfair competition and to pay the plaintiff all damages due thereto by reason of said acts.

On May 6, 1966, the Court of First Instance issued an order which, among others, temporarily restrained the defendants "from directly or indirectly selling, using, causing to be sold or causing to be used any 'Chloramphenicol Palmitate' not manufactured by plaintiff or plaintiff's wholly-owned subsidiary, Parke, Davis & Company, Inc." Alleging that the defendants have not complied with such order, the plaintiff filed on May 24, 1966, a motion to punish defendants for contempt.

Before the court could act on the plaintiff's motion for contempt, the defendants filed a Motion to Dismiss, dated May 25, 1966, alleging, among others, that the complaint states no cause of action against them since defendant No. 1 "was granted a compulsory license to manufacture, use and sell its own brands of medicinal preparation containing 'chloramphenicol'."

On June 17, 1966, the plaintiff filed its Opposition to Motion to Dismiss controverting, among others, defendants' contention that the complaint states no cause of action. Plaintiff pointed out that the defendants have confused the substance which is the subject matter of the complaint, namely, "Chloramphenicol Palmitate", with the substance covered by the compulsory licensing case, namely, "Chloramphenicol", and the Letters Patent subject of the complaint, namely, Letters Patent No. 279, with the Letters Patent subject of the compulsory licensing case, namely, Letters Patent No. 50.

On June 27, 1966, the defendants filed their Reply to Opposition alleging, among others, that in advertising and selling their product "Venimicetin Suspension," never do they state that the same contains "Chloramphenicol Palmitate". They pointed out that even in the annexes of plaintiff's complaint (consisting of the packages and labels allegedly used by the defendants in said product), only the substance "Chloramphenicol" is stated-showing that the substance involved is "Chloramphenicol and not "Chloramphenicol Palmitate".

On July 5, 1966, the plaintiff filed its Rejoinder to Reply to Opposition stating, among others, that while the

packages and labels of defendants' "Venimicetin Suspension" indicate that the same contains "Chloramphenicol", the truth of the matter is that said product does not contain said substance but the substance covered by Letters Patent No. 279, namely, "Chloramphenicol Palmitate". This, plaintiff pointed out, is expressly alleged in the complaint; thus, applying the rule that a motion to dismiss hypothetically admits the truth of the allegations of the complaint, defendants are guilty of (1) infringement of patent, by selling, causing to be sold, using or causing to be used "Chloramphenicol Palmitate" in their medicine called "Venimicetin Suspension", and (2) unfair competition, by concealing that said medicine contains "Chlor-amphenicol", and, by deceiving and misleading the purchasers who are made to believe that "Venimicetin Suspension" is covered by a compulsory license from the plaintiff.

On the basis of the foregoing pleadings, the Court of First Instance of Rizal issued the order dated August 22, 1966, which dismissed the complaint on the ground of lack of cause of action, to wit:

"x x x x x.

"After a careful consideration of the arguments for and against the motion to dismiss, and in view of the fact that the substance covered by Letters Patent No. 50 and Letters Patent No. 279 is the same and that is, the substance known as 'Chloramphenicol', because while under Letters Patent No. 50, the substance is referred to as 'Chloramphenicol', in Letters Patent No. 279, the substance has been denominated as 'Chloramphenicol Palmitate' yet it is the opinion of the Court that 'Chloramphenicol' and 'Chloramphenicol Palmitate' are the same, the difference being merely in the taste, and this Court to state that there was in-fringement of Patent with respect to Letters Patent No. 279 would be tantamount to preventing the defendant, Doctors' Pharmaceuticals, Inc., from exercising the right granted it by Letters Patent No. 50. It would further render nugatory the decision of the Director of Patents, affirmed by the Supreme Court, granting the defendant, Doctors' Pharmaceuticals, Inc., the right to use and import 'Chloramphenicol'.

"The defendant, V-Lab Drughouse Corporation being merely a sales representative of the defendant, Doctors' Pharmaceuticals, Inc., and the Court being of the opinion that there is no cause of action with respect to the principal defendant, is likewise of the opinion that there is no cause of action with respect to the defendant, V-Lab Drughouse Corporation.

"It is likewise the opinion of this Court that there is no cause of action for unfair competition because a perusal of the records of this case will show that under paragraph 7 of the Resolution of the Director of Patents, Annex "C" of the Motion to Dismiss, the petitioner (Doctors' Pharmaceuticals, Inc.) shall adopt and use its own trademarks or labels on all its products containing Chloramphenicol under license from Parke, Davis, & Co., Inc., of Michigan, U.S.A.

"The claim of the plaintiff that the representation:

'First Compulsory Licensee in the Philippines by Parke Davis Company, Detroit, Michigan, U.S.A.'

is false and has a definite tendency to deceive possible purchasers and distort the facts is not well-taken in view of the above-mentioned (Par. 7) of the Resolution of the Director of Patents.

"WHEREFORE, finding the ground of lack of cause of action to be well-taken, this case is ordered DISMISSED, without pronouncement as to costs. The restraining order heretofore issued is hereby lifted and set aside. Having reached the above conclusion, the Court will no longer pass upon the issue of contempt.

"SO ORDERED."

Hence, the present appeal.

We are thus tasked with the resolution of the issue of whether or not the lower court correctly dismissed the

complaint for damages for infringement of patent and unfair competition on the ground of failure to state a cause of action.

It is axiomatic that in resolving a motion to dismiss a complaint on the ground of failure to state a cause of action, the court should hypothetically assume the truth of the factual allegations of the complaint (except allegations of facts the falsity of which the court may take judicial notice of) and determine whether on the basis thereof, the complainant is entitled to the relief demanded. Had the lower court applied the foregoing formula, it would not have dismissed, on the ground of failure to state a cause of action, the complaint for damages for infringement of patent and unfair competition. For, instead of hypothetically assuming the truth of the factual allegations of the complaint, the lower court had ruled against their veracity and consequently concluded that the complaint states no cause of action.

As can be gleaned from the appealed order, the pertinent portions of which We have heretofore quoted, the lower court premised its ruling that there is no cause of action for infringement of patent on the assumption that "Chloramphenicol" (the substance covered by Letters Patent No. 50) and "Chloramphenicol Palmitate" (the substance covered by Letters Patent No. 279) are the same. Thus, instead of hypothetically assuming the truth of the plaintiff's allegation that "Chloramphenicol" and "Chloramphenicol Palmitate" are two different substances, the lower court had ruled against its veracity. This is clearly an error considering that the said assumed fact cannot qualify as something which the court could take judicial notice of nor was it competent to so find in the absence of evidence formally presented to that effect. The existence of two patents separately covering said substances simply militates against said factual assumption and requires the presentation of evidence sufficient to convince the court that said substances are indeed the same.

Had the lower court hypothetically assumed as true, for the purpose of the motion to dismiss, the allegations in the complaint that "Chloramphenicol" and "Chloramphenicol Palmitate" are entirely different substances and that "Venimicetin Suspension" actually contains "Chloramphenicol Palmitate" and not "Chloramphenicol" as indicated in its package and label, it necessarily would have to conclude that the complaint states causes of action for infringement of patent and for unfair competition. For defendants would then be guilty of infringement of patent by selling, causing to be sold, using and causing to be used "Chloramphenicol Palmitate", without the consent or authority of the plaintiff as the holder of Letters Patent No. 279, Claim 4 of which allegedly covers said substance. Sections 37 and 42 of R.A. No. 165 provide:

"SEC. 37. RIGHTS OF PATENTEES. - A patentee shall have the exclusive right to make, use and sell the patented machine, article or product, and to use the patented process for the purpose of industry or commerce, throughout the territory of the Philippines for the term of the patent; and such making, using, or selling by any person without the authorization of the patentee, constitutes infringement of the patent." (Underscoring supplied.)

"SEC. 42. CIVIL ACTION FOR INFRINGEMENT. -Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before the proper Court of First Instance, to recover from the infringer damages sustained by reason of the infringement and to secure an injunction for the protection of his rights."

Likewise, the defendants would be guilty of unfair competition by falsely stating that defendant No. 1's medicine called "Venimicetin Suspension" contains "Chloramphenicol" when in fact it actually contains "Chloramphenicol Palmitate", and that it is covered by a compulsory license from the plaintiff. Section 29 of R.A. No. 166 provides, *inter alia*:

"In particular, and without in any way limiting the scope of unfair competition, the following shall be deemed guilty of unfair competition:

x x x x x

"(c) Any person who shall make any false statement in the course of trade x x x."

Clearly, the lower court erred in dismissing, on the ground of failure to state a cause of action, the complaint for damages for infringement of patent and unfair competition.

WHEREFORE, the appealed order of dismissal is hereby set aside and the complaint for damages for infringement of patent and unfair competition is hereby reinstated. Without pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Guerrero, and De Castro, JJ., concur.

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