

CO SAN, PETITIONER, VS. DIRECTOR OF PATENTS, ET AL., RESPONDENTS.

G.R. No. 10563. February 23, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Respondent Jose Ong Lian Bio filed with the Philippine Patent Office two applications for the issuance of letters patent on two designs for luggages. Subsequently, the Director of Patents issued letters Patent Nos. 6 and 7 in his favor. Petitioner Co San, however, filed with the Patent Office a petition for cancellation of said letters patent on the ground provided for in sub-sections (a) and (b) of section 28 of Republic Act No. 165, to wit:

"(a) The design allegedly invented by Mr. Ong Lian Bio is not new or patentable in accordance with sections 7, 8, and 9 of Chapter II of Republic Act No. 165.

"(b) The specification submitted by said party does not comply with the requirements of Section 14, Chapter III of said Act."

The petition for cancellation was dismissed by the Director of Patents without hearing and reception of evidence because of his lack of statutory authority to consider the cancellation of design patents. Upon review, however, by this Court, the Director of Patents was ordered to hear the petition for cancellation. At the hearing, petitioner adduced only documentary evidence and relied heavily on the decision of the Court of Appeals in *G. R. No. 11277-R, People vs. Co San*, in which he was acquitted of the crime of unfair competition and in which said court made the following observation:

"It may be argued that all the foregoing reasons might be tenable either to prevent the issuance of a patent or to cancel, annul or revoke the same after it was issued, but inasmuch as Letters Patent Design No. 7 issued in favor of the complainant is still in full force and effect, the rights attached to it and granted to the complainant must be respected until the patent is annulled or set aside."

The Director of Patents, after analyzing the decision of the Court of Appeals, dismissed the petition for cancellation for insufficiency of evidence.

Petitioner-appellant contends that the Director of Patents erred in not accepting as final and conclusive the findings of fact of the Court of Appeals, namely, that the petitioner was the prior user of the design in question, and that designs in Letters Patent Nos. 6 and 7 are not new and original. The director of Patents held that these findings are not "clear", "satisfactory" and "free from doubt".

The pivotal issue that arises is whether or not the Director of Patents is bound in the cancellation proceedings by the findings arrived at by the Court of Appeals in the criminal case against petitioner. The answer is in the negative. In the cancellation proceedings the question refers to the validity of the design patents issued to respondent Jose Ong Lian Bio, while in the criminal case the inquiry is whether Co San unfairly competed against the luggage of said respondent protected by design patent No. 7. The first is within the cognizance of the Patent

Office (Section 28, Republic Act No. 165, as amended); the second under the jurisdiction of the court of first instance (Article 189, Revised Penal Code, as amended by Republic Act 172). The acquittal of the petitioner by the Court of Appeals was not based on the cancellation of a patent, but on the opinion that the accused (petitioner) had not deceived or defrauded the complainant (respondent).

"The failure of the trial court, in a civil suit, to admit in evidence a former judgment of acquittal in a criminal action against the defendant is not error. The fact that the evidence in the criminal prosecution was insufficient to show that the defendant was guilty of a crime does not bar the right of the offended party to maintain a civil action for damages," (Worcester vs. Ocampo, 22 Phil., 42)

"A judgment of acquittal in a criminal action for fraudulent registration of a trademark in violation of Section 18 of Act No. 666, cannot be invoked as res judicata in a civil action based on unfair and malicious competition on the ground that the facts of the latter are different and have not been passed upon in the judgment rendered in the former case." (Ogura vs. Chua and Confessor 59 Phil., 471)

We agree with the Director of Patents that the petition for cancellation should be dismissed for lack of sufficient evidence.

Wherefore, the present petition for review is dismissed with costs against the petitioner appellant. So ordered.

Bengzon, Acting C. J., Padilla, Labrador, Concepcion, Paredes, and Dizon, JJ., concur.

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