

DISTILLERIA WASHINGTON, INC. OR WASHINGTON DISTILLERY, INC., PETITIONER VS LA TONDEÑA DISTILLERS, INC. AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 120961. October 02, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On October 17, 1996, this court rendered a decision in the above-entitled case, the dispositive portion of which reads, as follows:

WHEREFORE, the decision of the appellate court is MODIFIED by ordering LTDI to pay petitioner just compensation for the seized bottles. Instead, however, of remanding the case to the Court of Appeals to receive evidence on, and thereafter resolve, the assessment thereof, this Court accepts and accordingly adopts the quantification of P18,157.00 made the the trial court. No costs.

With the denial of the Motion for Reconsideration, petitioner sought a second reconsideration with leave of court of our decision raising new issues, to wit:

1.01.d. The Supreme Court, in its Decision of October 17, 1996, modified the decision of the Court of Appeals. It held that ownership of the bottles has passed to the consumer, ultimately, to Washington Distillery, Inc., thereby upholding the finding of the Regional Trial Court and reversing the ruling of the Court of Appeals; nonetheless, while ruling that the ownership over the bottles had passed to Washington Distillery, Inc., it held that Washington Distillery, Inc. may not use the bottles because of the ‘trademark protection to the registrant’ (La Tondeña Distillers, Inc.). Instead of directing the return of the bottles to Washington Distillery, Inc., the Court ordered La Tondeña Distillers, Inc. to pay Washington Distillery, Inc. the amount of P18,157.00.

2.00. The decision of the Supreme Court itself therefore raises new issues. As owner of the bottles, should not Washington Distillery, Inc. be given possession of the bottles? Would its use of the bottles violate the ‘trademark protection of the registrant,’ La Tondeña Distillers, Inc. afforded by R.A. 623, as amended?

3.00. The ‘Motion for Reconsideration’ of the petitioner Washington Distillery, Inc. is addressed to these new issues. They had not been previously addressed by the parties. They could not have been previously passed upon. It could hardly be said ‘that no substantial argument,’ not previously raised, is made in the ‘Motion for Reconsideration’ to warrant a modification of the Court’s decision.

On May 21, 1997, the Court resolved to set for hearing the motion for reconsideration on May 28, 1997 for its judicious disposition. Thereafter, the parties as required by the Court filed their simultaneous memoranda “to expound and lay particular emphasis on the provision of Section 5 of R.A. 623 which proscribes the filing of an action against any person to whom registered manufacturer, bottler or seller has transferred by way of sale, any to the containers.” The parties complied.

A reexamination of the arguments raised by petitioner in its Second Motion for Reconsideration filed on February 13, 1997, in the hearing on May 28, 1997 and in the subsequent memorandum filed thereafter, convinces us the

merits of its position.

To recall, La Tondeña Distillers, Inc. (La Tondeña, for short) filed before the Regional Trial Court for the recovery, under its claim of ownership, of possession or replevin against Distilleria Washington, Inc. or Washington Distillery, Inc. (Distilleria Washington) of 18,157 empty “350 c.c. white flint bottles” bearing the blown-in marks of “La Tondeña Inc.” and “Ginebra San Miguel,” averring that Distilleria Washington was using the bottles for its own “Gin Seven” products without the consent of Distilleria Washington in violation of Republic Act 623.

The trial court in its decision dismissed the complaint, upholding Distilleria Washington’s contention that a purchaser of liquor pays only a single price for the liquor and the bottle and is not required to return the bottle at any time.

The Court of Appeals reversed the trial court’s decision, ruling that under Republic Act 623, the use of marked bottles by any person other than the manufacturer, bottler or seller, without the latter’s written consent, is unlawful. It emphasized that the marks of La Tondeña’s ownership stamped or blown-in to the bottles are sufficient notice to the public that the bottles are La Tondeña’s property; hence, Distilleria Washington cannot be considered a purchaser on good faith.

While our decision of October 17, 1996 affirmed with modification the Court of Appeals’ decision, we at least implicitly acknowledge that there was a valid transfer of the bottles to Distilleria Washington, except that its possession of the bottles without the written consent of La Tondeña gives rise to a prima facie presumption of illegal use under R.A. 623.

In seeking reconsideration of the decision of this Court, petitioner advances, among others, the following arguments:

- (1) If, as the Court found in its decision of October 17, 1996, Distilleria Washington had acquired ownership of the bottles, La Tondeña’s suit for replevin, where the sole issue is possession, should be denied.
- (2) Since the right of ownership over the bottles gives rise, according to the Court’s own language, to its own elements of *jus possidendi*, *jus utendi*, *jus fruendi*, *jus disponendi*, and *jus abutendi*, along with the applicable *jus lex*, to allow La Tondeña to keep the bottles is to deny Distilleria Washington, the very attributes or elements of its ownership.
- (3) There is no showing--and it cannot be assumed--that if Distilleria Washington would have possession of the bottles, it will exercise the other attributes of ownership, along with the applicable *jus lex*, over the “marks of ownership stamped or marked” on the bottles.
- (4) The provision in Sec. 3 of Republic Act 623 to the effect that the use by any person other than the registered manufacturer, bottler or seller without the written permission of the latter of any such bottle, etc. shall give rise to a prima facie presumption that such use or possession is unlawful, does not arise in the instant case because the Court has itself found Section 5 of the same law applicable.

Additionally, petitioner argues with persuasion the following points in its memorandum:

- (5) It is absurd to hold the buyer such as Distilleria Washington, liable for the possession and use of its own bottles without the written consent of La Tondeña who is no longer the owner thereof and for which it has received payment in full.
- (6) To hold the buyer liable under Sections 2 and 3 would grant La Tondeña the extraordinary right not only of possession and use of the bottles which it has sold and no longer owns, but also to sell said bottles *ad infinitum*, thus enriching itself unjustly.

(7) It is manifestly unjust and unconscionable that millions of buyers of Ginebra San Miguel, who pay not only for gin but also for the bottles containing it should run the risk of criminal prosecution by the mere fact of possession of the empty bottles after consuming the liquor.

Distilleria Washington's motion raises the novel issue that if, as we ruled in our decision of October 17, 1996, petitioner became the owner over the bottles seized from it by replevin, then it has the right to their possession and use as attributes of ownership, unless their use violates the trademark or incorporeal rights accorded private respondent by R.A 623 which has not really been established in this case.

As pointed out in our decision,

Parenthetically, petitioner is not here being charged with violation of Sec. 2 of R.A. 623 or the Trademark Law. The instant case is one for replevin (manual delivery) where the claimant must be able to show convincingly that he is either the owner or clearly entitled to the possession of the object sought to be recovered. Replevin is a possessory action. The gist of which focuses on the right of possession that in turn, is dependent on a legal basis that, not infrequently, looks to the ownership of the object sought to be replevied."

Since replevin as a possessory action is dependent upon ownership, it is relevant to ask: Did La Tondeña Distillers, Inc. transfer ownership of its marked bottles or containers when it sold its products in the market? Were the marked bottles or containers part of the products sold to the public?

In our decision sought to be reconsidered, we categorically answered the question in the affirmative in this wise:

R.A. No. 623 does not disallow the sale or transfer of ownership of the marked bottles or containers. In fact, the contrary is implicit in the law thus:

SEC. 5. x x x.

SEC. 6. x x x

Scarcely disputed are certain and specific industry practices in the sale of gin. The manufacturer sells the product in marked containers, through dealers, to the public in supermarkets, grocery shops, retail stores and other sales outlets. The buyer takes the item; he is neither required to return the bottle nor required to make a deposit to assure its return to the seller. He could return the bottle and get a refund. A number of bottles at times find their way to commercial users. It cannot be gainsaid that ownership of the containers does pass on the consumer albeit subject to the statutory limitations on the use of the registered containers and to the trademark rights of the registrant. The statement in Section 5 of R.A. 623 to the effect that the 'sale of beverage contained the said containers shall not include the sale of the containers unless specifically so provided' is not a rule of proscription. It is a rule of construction that, in keeping with the spirit and intent of the law, establishes at best a presumption (of non-conveyance of the container) and which by no means can be taken to be either interdictive or conclusive in character. Upon the other hand, LTDI's sales invoice, stipulating that the 'sale does not include the bottles with the blown-in marks of ownership of La Tondeña Distillers,' cannot affect those who are not privies thereto.

In plain terms, therefore, La Tondeña not only sold its gin products but also the marked bottles or containers, as well. And when these products were transferred by way of sale, then ownership over the bottles and all its attributes (jus utendi, jus abutendi, just fruendi, jus disponendi) passed to the buyer. It necessarily follows that the transferee has the right to possession of the bottles unless he uses them in violation of the original owner's registered or incorporeal rights.

After practically saying that La Tondeña has surrendered ownership and consequently, possession of the marked bottles or container, it is incongruous and, certainly, it does not seem fair and just to still allow La Tondeña, citing the prima facie presumption of illegal use under Sec. 3 of R.A. 623., to retain possession of the seized bottles by

simply requiring payment of just compensation to petitioner.

The pertinent provisions of R.A. 623 are as follows:

SEC. 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller (underscoring supplied) who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators, or other similar containers so marked or stamped, for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not to use the same for drinking vessels or glasses or drain pipes, foundation pipers, for any other purpose than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of not more than one thousand pesos or imprisonment of not more than one year or both.

SEC. 3. The use by any person other than the registered manufacturer, bottler or seller, without written permission of the latter (underscoring supplied) of any such bottle, cask, barrel, keg, box, steel cylinders, tanks, flask, accumulators, or other similar containers, or the possession thereof without written permission of the manufacturer, by any junk dealer or dealer in casks, barrels, keg, boxes, steel cylinders, tanks, flask, accumulators or other similar containers, the same being duly marked or stamped and registered as herein provided, shall give rise to a prima facie presumption that such use or possession is unlawful.

x x x

SEC. 5. No action shall be brought under this Act (underscoring supplied) against any person to whom the registered manufacturer, bottler or seller, has transferred by way of sale, (underscoring supplied) any of the containers herein referred to, but the sale of the beverage contained in the said containers shall not include the sale of the containers unless specifically so provided.

In resolving that petitioner is the owner of the bottles, this Court applied Section 5 of R.A. 623; and in withholding possession of the bottles from the petitioner and in concluding that use or possession thereof without the written permission of the registered owner would constitute prima facie presumption of illegal use, this Court invoked Sections 2 and 3 of the same law.

A careful reading of Sections 2, 3 and 5 of R.A. 623 would lead to the conclusion that they contemplate situations separate and distinct from each other. Section 2 prohibits any person from using, selling or otherwise disposing of registered containers without the written consent of the registrant. Such rights belong exclusively to the registrant. Under Section 3, mere possession of such registered containers without the written consent of the registrant is prima facie presumed unlawful.

It appears - and this is the critical point - that Sections 2 and 3 apply only when the “filling” up of the bottle or the “use” of the bottle is “without the written permission” of the “registered manufacturer, bottler, or seller,” who has registered the marks of “ownership” of the bottles. It is thus implicit that Sections 2 and 3 apply only when the “registered manufacturer, bottler, or seller” retain ownership of the bottles.

Upon the other hand, when the bottles have been “transferred by way of sale,” Section 5 applies, thereby precluding the institution of any action “under this Act,” meaning to say, including any action under Sections 2 and 3.

The general rule on ownership, therefore, must apply and petitioner be allowed to enjoy all the rights of an owner in regard the bottles in question, to wit: the jus utendi or the right to receive from the thing what it produces; the jus abutendi or the right to consume the thing by its use; the jus disponendi or the power of the owner to alienate, encumber, transform and even destroy the thing owned; and the jus vindicandi or the right to exclude from the possession of the thing owned any other person to whom the owner has not transmitted such thing. What is

proscribed is the use of the bottles in infringement of another's trademark or incorporeal rights.

Since the Court has found that the bottles have been transferred by way of sale then, La Tondeña has relinquished all its proprietary rights over the bottles in favor of Distilleria Washington who has obtained them in due course. Now as owner, it can exercise all attributes of ownership over the bottles. This is the import of the decision that La Tondeña had transferred ownership over its marked bottles or containers when it sold its gin products to the public. While others may argue that Section 5 is applicable only to the immediate transferee of the marked bottles or container, this matter is best discussed where the applicability of Sec. 5, R.A. 623 is squarely raised. It must be recalled, however, that this is a case of replevin, not a violation of the "trademark protection of the registrant" under R.A. 623 or of the Trademark Law.

A query may be posed: Would use of the bottles constitute a violation of the incorporeal rights of La Tondeña Distillers, Inc. over its "marks of ownership" embossed on the bottles? While apparently relevant, it would be improper and premature for this Court to rule on the point because:

First, because violation of the "marks of ownership" of La Tondeña Distillers, Inc. on the bottles has not been put in issue, the parties did not have the opportunity to ventilate their respective positions on the matter. Thus, a ruling would be violative of due process.

Second, the question calls for a factual investigation which this Court has generally not taken upon itself to undertake because it is not a trier of facts; and

Third, disregarding the above, the facts before this Court do not provide a sufficient basis for a fair and intelligent resolution of the question.

Moreover, our decision added that "the Court sees no other insistence to keep the bottles, except for such continued use." This, to our mind, is rather speculative at this point; something which was never touched upon in the proceedings below.

We cannot also be oblivious of the fact that if La Tondeña's thesis that every possession of the bottles without the requisite written consent is illegal, thousands upon thousands of buyers of Ginebra San Miguel would be exposed to criminal prosecution by the mere fact of possession of the empty bottles after consuming the content.

One last point. It may not be amiss to state that La Tondeña is a big and established distillery which already has captured a big share of the gin market, estimated to be 90%. Distilleria Washington, on the other hand, together with other small distillers - around 40 in number; admittedly concedes that it cannot fight this giant but only asks a share of the market. It cannot afford to manufacture its own bottles and just have to rely on recycled bottles to sell its products. To disallow the use of these recycled products would necessarily deprive it a share of the market which La Tondeña seeks to monopolize.

We recognize the role of large industry in the growth of our nascent economy. However, small industries likewise play a vital role in economic growth, playing a significant part in the success of such tiger economies as Korea, Taiwan and Thailand. Industries, big and small, should adopt symbiotic relationship, not the animosity of Goliath and David. Our holding today merely recognizes that in the country's march toward economic development and independence, it is essential that a balance protecting small industries and large scale businesses be maintained.

IN VIEW OF THE FOREGOING, the Court RESOLVED to RECONSIDER its Decision promulgated on October 17, 1996 and render another judgment REVERSING in toto the Decision of the Court of Appeals promulgated on January 11, 1995 and its Resolution of June 23, 1995. The decision of the Regional Trial Court of December 3, 1991 is REINSTATED.SO ORDERED.

Bellosillo, and Hermosisima, Jr., JJ, concur.

Vitug, J., see dissenting opinion (upholding the Court's decision of 17 Oct. '96).

Davide, Jr., C.J., (Chairman), no part.

Dissenting Opinion

VITUG, J.:

I regret that I am unable to join my colleagues in the modification of the decision under reconsideration. The Court's ruling did say that the ownership of the "marked bottles" passed on to the consumer but it was understood to be subject to the "statutory limitations on the use of registered containers and to the trademark rights of the registrant." Republic Act No. 623, which is the law applicable, prohibits the use of registered bottles or containers without the written consent of the manufacturer.[1] This enactment has heretofore been upheld by the Court in *Cagayan Valley Enterprise, Inc. vs. Court of Appeals*. [2]

The marked bottles in the instant case were evidently being used by petitioner for its own "Gin Seven" products without the consent of La Tondeña Distillers, Inc. ("LTDI"). The Court of Appeals itself made such a finding of unauthorized commercial use by petitioner. Our ponencia did not thus rely merely, albeit not at all unwarranted had it been otherwise, on the statutory prima facie presumption of illegal use. The matter is on record, and it cannot just be ignored. For how else would petitioner insist on keeping the marked bottles if it were not for its own continued use.

Given the circumstances, the unavoidable alternative would be, such as arrived at in the ponencia sought to be reconsidered, for LTDI (the registrant of the trademark) to simply pay petitioner just compensation for the seized marked bottles.

WHEREFORE, I am constrained to vote, most respectfully, for the denial of the second motion for reconsideration.

[1] Section 2, Republic Act No. 623.

[2] 170 SCRA 218.

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