

WILLIAM OLLENDORFF, PLAINTIFF AND APPELLEE, VS. IRA ABRAHAMSON, DEFENDANT AND APPELLANT.

G.R. No. 13228. September 13, 1918

Ponente: FISHER, J.

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FISHER, J.:

This is an appeal by defendant from a judgment of the Court of First Instance of Manila by which he was enjoined for a term of five years, from September 10, 1915, from engaging in the Philippine Islands in any business similar to or competitive with that of plaintiff.

The record discloses that plaintiff is and for a long time past has been engaged in the city of Manila and elsewhere in the Philippine Islands in the business of manufacturing ladies' embroidered underwear for export. Plaintiff imports the material from which this underwear is made and adopts decorative designs which are embroidered upon it by Filipino needle workers from patterns selected and supplied by him. Most of the embroidery work is done in the homes of the workers. The embroidered material is then returned to plaintiff's factory in Manila where it is made into finished garments and prepared for export. The embroiderers employed by plaintiff are under contract to work for plaintiff exclusively. Some fifteen thousand home workers and eight hundred factory workers are engaged in this work for plaintiff, and some two and a half million pesos are invested in his business.

On September 10, 1915, plaintiff and defendant entered into a contract in the following terms:

"Contract of agreement made and entered into this date by and between William Ollendorff, of Manila, Philippine Islands, party of the first part, and Ira Abrahamson, of Manila, Philippine Islands, party of the second part:

"The party of the first part hereby agrees to employ the party of the second part, and the party of the second part hereby obligates and binds himself to work for the party of the first part for a term of two years from date commencing from the sixth day of September, one thousand nine hundred and fifteen and ending on the fifth day of September, one thousand nine hundred seventeen, at a salary of fifty pesos (P50) per week payable at the end of each week.

"The party of the second part hereby obligates and binds himself to devote his entire time, attention, energies and industry to the promotion and the furtherance of the business and interests of the party of the first part and to perform during the term of this contract such duties as may be assigned to him by the party of the first part, and failure by said party of the second part to comply with these conditions to the satisfaction of the party of the first part shall entitle the party of the first part to forthwith terminate this contract without notice and to discharge and dismiss the said party of the second part from the employ of the party of the first part.

"It is mutually understood and agreed by the parties hereto that this contract, upon its termination, may be extended for a like, a longer or a shorter period by the mutual consent of both contracting parties.

"The said party of the second part hereby further binds and obligates himself, his heirs, successors and assigns, that he will not enter into or engage himself directly or indirectly, nor permit any other person under his control to

enter in or engage in a similar or competitive business to that of the said party of the first part anywhere within the Philippine Islands for a period of five years from this date."

Under the terms of this, agreement defendant entered the employ of plaintiff and worked for him until April, 1916, when defendant, on account of ill health, left plaintiff's employ and went to the United States. While in plaintiff's employ defendant had access to all parts of plaintiff's establishment, and had full opportunity to acquaint himself with plaintiff's business methods and business connections. The duties performed by him were such as to make it necessary that he should have this knowledge of plaintiff's business. Defendant had a general knowledge of the Philippine embroidery business before his employment by plaintiff, having been engaged in similar work for several years.

Some months after his departure for the United States, defendant returned to Manila as the manager of the Philippine Underwear Company, a corporation. This corporation does not maintain a factory in the Philippine Islands, but sends material and embroidery designs from New York to its local representative here who employs Filipino needle workers to embroider the designs and make up the garments in their homes. The only difference between plaintiff's business and that of the firm by which the defendant is employed, is the method of doing the finishing work—the manufacture of the embroidered material into finished garments. Defendant admits that both firms turn out the same class of goods and that they are exported to the same market. It also clearly appears from the evidence that defendant has employed to work for his firm some of the same workers employed by the plaintiff.

Shortly after defendant's return to Manila and the commencement by him of the discharge of the duties of his position as local manager of the Philippine Embroidery Company, plaintiff commenced this action, the principal purpose of which is to prevent, by injunction, any further breach of that part of defendant's contract of employment by plaintiff, by which he agreed that he would not "enter into or engage himself directly or indirectly * * * in a similar or competitive business to that of (plaintiff) anywhere within the Philippine Islands for a period of five years * * *" from the date of the agreement. The lower court granted a preliminary injunction, and upon trial the injunction was made perpetual.

Defendant, as appellant, argues that plaintiff failed to substantiate the averments of his complaint to the effect that the business in which the defendant is employed is competitive with that of plaintiff. The court below found from the evidence that the business was "very similar." We have examined the evidence and are of the opinion that the business in which defendant is engaged is not only "very similar" to that of plaintiff, but that it is conducted in open competition with that business within the meaning of the contract in question. Defendant himself expressly admitted, on cross-examination, that the firm by which he is now employed "puts out the same class of goods" as that which plaintiff is engaged in producing. When two concerns operate in the same field, produce the same class of goods and dispose of them in the same market, their businesses are of necessity competitive. Defendant having engaged in the Philippine Islands in a business directly competitive with that of plaintiff, within five years from the date of his contract of employment by plaintiff, under the terms of which he expressly agreed that he would refrain from doing that very thing, his conduct constitutes a breach of that agreement.

Defendant argues that even assuming that there has been a breach of the agreement, the judgment of the court below is nevertheless erroneous, contending that (1) the contract is void for lack of mutuality; (2) that the contract is void as constituting an unreasonable restraint of trade; (3) that plaintiff has failed to show that he has suffered any estimable pecuniary damage; and (4) that even assuming that such damage has been caused, the injury is not of such a character as to warrant the court in restraining by injunction its continuance.

The contention that the contract is void for lack of mutuality is based upon that part of the agreement which

authorizes plaintiff to discharge the defendant before the expiration of the stipulated term, should defendant fail to comply with its conditions to plaintiff's satisfaction. It is argued that by this contract it was sought to impose upon defendant the absolute obligation of rendering service, while reserving to plaintiff the right to rescind it at will. We are of the opinion that this question is largely academic. It is admitted that defendant left plaintiff's employ at his own request before the expiration of the stipulated term of the contract. Had plaintiff sought to discharge defendant without just cause, before the expiration of the term of the employment, it might have been a serious question whether he could lawfully do so, notwithstanding the terms in which the contract was drawn. (Civil Code, art. 1256.) But even assuming this particular clause of the contract to be invalid, this would not necessarily affect the rest of the agreement. The inclusion in an agreement of one or more pacts which are invalid does not of necessity invalidate the whole contract.

We are of the opinion that the contract was not void as constituting an unreasonable restraint of trade. We have been cited to no statutory expression of the legislative will to which such an agreement is directly obnoxious. The rule in this jurisdiction is that the obligations created by contracts have the force of law between the contracting parties and must be enforced in accordance with their tenor. (Civil Code, art. 1091.) The only limitation upon the freedom of contractual agreement is that the pacts established shall not be contrary to "law, morals or public order." (Civil Code, art. 1255.) The industry of counsel has failed to discover any direct expression of the legislative will which prohibits such a contract as that before us. It certainly is not contrary to any recognized moral precept, and it therefore only remains to consider whether it is contrary to "public order." This term, as correctly stated by Manresa (Commentaries, vol. 8, p. 606) "does not mean, as here used, the actual keeping of the public peace, but signifies the public weal * * * that which is permanent and essential in institutions * * *." It is the equivalent, as here used and as defined by Manresa, of the term "public policy" as used in the law of the United States. Public policy has been defined as being that principle under which freedom of contract or private dealing is restricted for the good of the community. (People's Bank vs. Dalton, 2 Okla., 476.) It is upon this theory that contracts between private individuals which result in an unreasonable restraint of trade have frequently been declared void by the American courts. The same principle being recognized by article 1255 of our Civil Code, the courts of these Islands are vested with like authority.

In the nature of things, it is impossible to frame a general rule by which to determine in advance the precise point at which the right of freedom of contract must yield to the superior interest of the community in keeping trade and commerce free from unreasonable restrictions. Originally the English courts adopted the view that any agreement which imposed restrictions upon a man's right to exercise his trade or calling was void as against public policy. (Cyc. vol. 9, p. 525.) In the course of time this opinion was abandoned and the American and English courts adopted the doctrine that where the restraint was unlimited as to both time and space it was void, but that agreements limited as to time but unlimited as to space, or limited as to space but unlimited as to time were valid. In recent years there has been a tendency on the part of the courts of England and America to discard these fixed rules and to decide each case according to its peculiar circumstances, and make the validity of the restraint depend upon its reasonableness. If the restraint is no greater than is reasonably necessary for the protection of the party in whose favor it is imposed it is upheld, but if it goes beyond this it is declared void. This is the principle followed in such cases by the Supreme Court of the United States. In the case of Gibbs vs. Consolidated Gas Co. of Baltimore (130 U. S., 396) the court said:

"The decision in Mitchel vs. Reynolds (1 P. Wms., 181 [Smith's Leading Cases, Vol. 1, Pt. II, 508]), is the foundation of the rule in relation to the invalidity of contracts in restraint of trade; but as it was made under a condition of things, and a state of society, different from those which now prevail, the rule laid down is not regarded as inflexible, and has been considerably modified. Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, the contract

may be sustained. The question is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable. (Rousillon vs. Rousillon, L. R. 14 Ch. Div., 351; Leather Cloth Co. vs. Lorisont, L. R. 9 Eq., 345.)"

Following this opinion, we adopt the modern rule that the validity of restraints upon trade or employment is to be determined by the intrinsic reasonableness of the restriction in each case, rather than by any fixed rule, and that such restrictions may be upheld when not contrary to the public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed.

Examining the contract here in question from this standpoint, it does not seem to us to be obnoxious to the rule of reasonableness. While such a restraint, if imposed as a condition of the employment of a day laborer, would at once be rejected as merely arbitrary and wholly unnecessary to the protection of the employer, it does not seem so with respect to an employee whose duties are such as of necessity to give him an insight into the general scope and details of his employer's business. A business enterprise may and often does depend for its success upon the owner's relations with other dealers, his skill in establishing favorable connections, his methods of buying and selling—a multitude of details, none vital if considered alone, but which in the aggregate constitute the sum total of the advantages which are the result of the experience or individual aptitude and ability of the man or men by whom the business has been built up. Failure or success may depend upon the possession of these intangible but all-important assets, and it is natural that their possessor should seek to keep them from falling into the hands of his competitors. It is with this object in view that such restrictions as that now under consideration are written into contracts of employment. Their purpose is the protection of the employer, and if they do not go beyond what is reasonably necessary to effectuate this purpose they should be upheld. We are of the opinion, and so hold, that in the light of the established facts the restraint imposed upon defendant by his contract is not unreasonable. As was well said in the case of *Underwood vs. Barker* (68 Law J. Ch., 201). "If there is one thing more than another which is essential to the trade and commerce of this country, it is the inviolability of contracts deliberately entered into; and to allow a person of mature age, and not imposed upon, to enter into a contract, to obtain the benefit of it, and then to repudiate it and the obligation which he has undertaken, is *prima facie*, at all events, contrary to the interests of any and every country * * *. The public policy which allows a person to obtain employment on certain terms understood by and agreed to by him, and to repudiate his contract, conflicts with, and must, to avail the defendant, for some sufficient reason, prevail over, the manifest public policy, which, as a rule holds him to his bond * * *."

Having held that the contract is valid, we pass to a consideration of defendant's objections to its enforcement by injunction.

It is contended that plaintiff has not proved that he has suffered any estimable pecuniary damage by reason of defendant's breach of the contract, and that for that reason his action must fail. It is further contended that in no event is it proper to enforce such a contract as this by injunction, because it has not been alleged and proved that the continuance of the acts complained of will cause plaintiff "irreparable damage." These objections can conveniently be considered together.

The obligation imposed upon defendant by the particular clause of his contract now under consideration is negative in character. Unless defendant voluntarily complies with his undertaking there is no way by which the contract can be enforced except by the injunctive power of judicial process. Such negative obligations have long been enforced by the courts in this manner. As stated by High in his well known work on Injunctions (vol. 2, pp. 877-878):

"The remedy by injunction to prevent the violation of negative agreements, or contracts not to do a particular

thing, is closely akin to the remedy by way of specific performance of agreements of an affirmative nature. In both cases the object sought is substantially one and the same, and by enjoining the violation of a negative agreement the court of equity in effect decrees its specific performance. (Lumley vs. Wagner, 1 DeGex, M. & G., 604.)"

Where by the terms of a contract imposing a positive obligation the obligor is entitled to a specific performance, it will not avail the defendant to show that plaintiff will suffer nor pecuniary damage if the contract is not performed. Upon like reason, when the undertaking is negative in character and defendant is violating the obligation imposed upon him the court may interfere without requiring proof of actual damage. (High on Injunctions, par. 1135, citing Dickenson vs. Grand Junction Canal Co., 15 Beav., 270.)

The admitted fact that plaintiff has failed to establish proof of pecuniary damage by reason of the breach of the contract by defendant by the acts committed prior to the issuance of the preliminary injunction is, of course, a bar to any money judgment for damages for the breach of the contract, but will not justify us in permitting defendant to continue to break his contract over plaintiff's objection. The injury is a continuous one. The fact that the court may not be able to give damages for that part of the breach of the contract which had already taken place when its aid was invoked is no reason why it should countenance a continuance of such disregard of plaintiff's rights.

With respect to the contention that an injunction may only be granted to prevent irreparable injury, the answer is that any continuing breach of a valid negative covenant is irreparable by the ordinary process of courts of law. As stated by High, (vol. 2, p. 906) injunctive relief is granted in cases like this "upon the ground that the parties cannot be placed in statu quo, and that damages at law can afford no adequate compensation, the injury being a continuous one irreparable by the ordinary process of courts of law."

In the case of Gilchrist vs. Cuddy (29 Phil. Rep., 542), at page 552, this court said, citing with approval the case of Wahle vs. Reinbach (76 111., 322) :

"By 'irreparable injury' is not meant such injury as is beyond the possibility of repair, or beyond possible compensation in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other; and, because it is so large on the one hand, or so small on the other, is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law."

This definition was quoted with approval by the Supreme Court of the United States in the case of Donovan vs. Pennsylvania Co., (199 U. S., 279), in which the injury complained of was continuous in its nature.

It is true, as held in the case of Liongson vs. Martinez (36 Phil. Rep., 948) that "an injunction should never issue when an action for damages would adequately compensate the injuries caused" but it frequently happens that the acts of the defendant, while constituting a very substantial invasion of plaintiff's rights are of such a character that the damages which result therefrom "cannot be measured by any certain pecuniary standard." (Eau Claire Water Co. vs. City of Eau Claire, 127 Wis., 154.) The Civil Code (art. 1908) casts upon real estate owners liability in damages for the emission, upon their premises, of "excessive smoke, which may be noxious to person or property." The injury caused by such a nuisance might bring about a depreciation in the value of adjoining properties, but there is no "certain pecuniary standard" by which such damages can be measured, and in that sense the threatened injury is "irreparable" and may appropriately be restrained by injunction.

"* * * If the nuisance is a continuing one, invading substantial rights of the complainant in such a manner that he would thereby lose such rights entirely but for the assistance of a court of equity he will be entitled to an injunction upon a proper showing, notwithstanding the fact that he might recover some damages in an action at

law." (Tise vs. Whitaker-Harvey Co., 144 N. C. 507.)

The injury done the business of a merchant by illegal or unfair competition is exceedingly difficult to measure. A diminution of the volume of a business may be due to so many different causes that it is often impossible to demonstrate that it has in fact been caused by the illegal competition of the defendant. This is frequently the case in suit for the infringement of trademark rights, in which the courts may enjoin the continued use of the infringing mark, although unable to assess damages for the past injury.

The judgment of the trial court is affirmed with costs. So ordered.

Arellano, C. J., Torres, Johnson, Street, and Avanceña, JJ., concur.

Malcolm, J., concurs in the result.

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