

DOCTORS ROSA P. ALFAFARA, VIVIAN DYHONGPO, MARIA TORRES, EMMA YBAÑEZ, ELSA CABARDO, REBECCA SANTIAGO, PRISCILLA NARVASA, SUSIE CHAN, CLARO CINCO, FELIPE CINCO, CARMEN MODESTO, F...*G.R. No. 148384. April 17, 2002*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision,[1] dated January 20, 2000, of the Court of Appeals, setting aside the decision,[2] dated September 3, 1993, of the Regional Trial Court, Branch 9, Cebu City, which enjoined respondent Acebedo Optical Co., Inc., its agents, representatives, and/or employees from practicing optometry, as defined in §1(a) of Republic Act No. 1998, in the province and cities of Cebu, and the resolution, dated May 10, 2001, of the appeals court denying petitioners' motion for reconsideration.

Petitioners are optometrists. They brought, in their own behalf and in behalf of 80 other optometrists, who are members of the Samahan ng Optometrists sa Pilipinas-Cebu Chapter, an injunctive suit in the Regional Trial Court, Branch 9, Cebu City to enjoin respondent Acebedo Optical Co., Inc. and its agents, representatives, and/or employees from practicing optometry in the province of Cebu. In their complaint, they alleged that respondent opened several optical shops in Cebu and announced to the public, through leaflets, newspapers, and other forms of advertisement, the availability of "ready-to-wear" eyeglasses for sale at P60.00 each and free services by optometrists in such outlets. They claimed that, through the licensed optometrists under its employ, respondent had been engaging in the practice of optometry by examining the human eye, analyzing the ocular functions, prescribing ophthalmic lenses, prisms, and contact lenses; and conducting ocular exercises, visual trainings, orthoptics, prosthetics, and other preventive or corrective measures for the aid, correction, or relief of the human eye. They contended that such acts of respondent were done in violation of the Optometry Law (R.A. No. 1998)[3] and the Code of Ethics for Optometrists, promulgated by the Board of Examiners in Optometry on July 11, 1983. They sought payment to them of attorney's fees, litigation expenses, and the costs of the suit.[4]

The trial court at first dismissed the suit but, on motion of petitioners, reinstated the action and granted their prayer for a writ of preliminary injunction and/or restraining order. Petitioners argued that the case involved a pure question of law, i.e., whether or not respondent's hiring of optometrists was violative of the applicable laws, and that, as such, the case was an exception to the rule requiring exhaustion of administrative remedies as a condition for the filing of an injunctive suit. They further alleged that the Board of Optometry held itself to be without jurisdiction over the president of respondent Acebedo Company as he was not duly registered with the Professional Regulation Commission.

In its answer, respondent averred that the advertisements referred to by petitioner were part of its promotion to make known to the public the opening of its new branches in Cebu; that incidental to its business of selling optical products, it hired duly licensed optometrists who conducted eye examination, prescribed ophthalmic lenses, and

rendered other services; that it exercised neither control nor supervision over the optometrists under its employ; and that the hired optometrists exercised neither control nor supervision in the sale of optical products and accessories by respondent. By way of special and affirmative defense, respondent stated that the optometrists should be impleaded as party-defendants because they were indispensable parties; that the trial court had no jurisdiction over the case; that the filing of the complaint was barred by *res judicata* as similar suits had been previously dismissed by the Court of First instance of Lucena City and the Securities and Exchange Commission; and that the petitioners were guilty of forum-shopping. Respondent sought the recovery of P100,000.00 as moral damages, P500,000.00 as exemplary damages, and P100,000.00 as attorney's fees.[5]

During the pre-trial conference, the parties entered into the following stipulation of facts: that the petitioners were duly licensed optometrists; that the petitioners were all members of the Samahan ng Optometrists ng Pilipinas (SOP)-Cebu Chapter; that SOP-Cebu Chapter was a chapter of SOP Incorporated, a national organization; that the SOP-Cebu Chapter had a program called "Sight Saving Month"; that the "Sight Saving Month" program was also a program of the SOP nationwide; that petitioners' SOP "Sight Saving Month" program provided free consultations; that respondent was a corporation with several outlets in Cebu; that respondent was selling optical products and "ready-to-wear" eyeglasses of limited grades; that during the opening of its new branches in Cebu, the respondent advertised its products through leaflets, newspapers, and other similar means, such as streamers and loudspeakers on board a vehicle; that respondent hired optometrists who conducted eye examinations, prescribed ophthalmic lenses, and rendered other optometry services; and that while the hired optometrists received their salary from respondent, they are not precluded from seeking other sources of income.[6]

The evidence for the petitioners showed that respondent advertised its "ready-to-wear" eyeglasses in newspapers, posters pasted on the walls, and announcements made in roving jeeps. A witness testified that he purchased a pair of eyeglasses for P66.00 (P60.00 plus P6.00 for VAT) without any prior eye examination by an optometrist. A week later, he had vision difficulty and consulted an optometrist who advised him to buy a pair of eyeglasses with the correct grade. Petitioners thus sought to prove that the selling of "ready-to-wear" eyeglasses by respondent was detrimental to the public.

On the other hand, respondent maintained that before the customers purchased the "ready-to-wear" eyeglasses on display, they either have a prior prescription from an optometrist or had to be examined first by the branch optometrist. Customers thus had the option either to buy the "ready-to-wear" eyeglasses on display or to order a new pair of eyeglasses.

After hearing, judgment was rendered in favor of petitioners. The trial court found that the hiring of licensed optometrists by the respondent was unlawful because it resulted in the practice of the optometry profession by respondent, a juridical person. It ruled that respondent could not raise the issue of *res judicata* as there was no decision on the merits of the case rendered by any court of competent jurisdiction and, consequently, petitioners could not be guilty of forum-shopping. As to petitioners' failure to implead the optometrists in the employ of respondent, the trial court explained that since the issue involved the propriety of respondent's hiring of optometrists to perform optometry services, the optometrists did not have to be impleaded as defendants. As to whether respondent's selling of "ready-to-wear" eyeglasses to customers without prior eye examination violated the applicable laws and was detrimental to the public, the trial court ruled that petitioners failed to substantiate such claim.

Respondent appealed to the Court of Appeals contending that the trial court erred in holding that respondent was illegally engaged in the practice of Optometry; that being indispensable parties, the licensed optometrists employed by respondent should have been impleaded as defendants; and that the trial court erred in not holding that petitioners, by filing several harassment suits before various fora, were guilty of forum-shopping.

The Court of Appeals reversed the decision of the trial court and dismissed the complaint of petitioners. Citing the case of *Samahan ng Optometrists sa Pilipinas, Ilocos Sur-Abra Chapter v. Acebedo International Corporation*,^[7] the appeals court ruled that respondent's hiring of licensed optometrists did not constitute practice of optometry nor violate any law. As to the second issue raised, the Court of Appeals stated that since the complaint was lodged solely against respondent for its hiring of optometrists, whatever decision the trial court would render would solely affect respondent since what was sought to be restrained was the employment of licensed optometrists; hence, the optometrists were not indispensable parties. Anent the issue of forum-shopping, the appeals court found no cogent reason to reverse the findings of the trial court that the administrative case before the Professional Regulation Commission was not decided on the merits while the letters of petitioners sent to government officials did not constitute judicial proceedings.

Petitioners filed a motion for reconsideration but their motion was denied. Hence, this petition alleging that the Court of Appeals erred in holding that respondent Acebedo was not engaged in the practice of optometry.

The petition has no merit.

First. Petitioners contend that the ruling in *Samahan ng Optometrists sa Pilipinas, Ilocos Sur-Abra Chapter v. Acebedo International Corporation*^[8] is no longer controlling because of the later case of *Apacionado v. Professional Regulation Commission*.^[9] In *Apacionado*, petitioners Ma. Cristina Apacionado and Zenaida Robil, who were employed by Acebedo as optometrists, were suspended from the practice of optometry for two (2) years by the Board of Optometry for violation of R.A. No. 1998 and Art. III, §6 of the Code of Ethics for Optometrists for having participated in the promotional advertisement of Acebedo, entitled "Libreng Konsulta sa Mata: Reading Glasses P60.00," held from July 5-14, 1989 in Tuguegarao, Cagayan. In affirming the suspension of the optometrists, the Professional Regulation Commission found that by rendering professional services to Acebedo's clientele (free eye consultations and refractions), petitioners were guilty of unprofessional conduct. Consequently, their professional licenses as optometrists were suspended for two (2) years. This was because the services of the two optometrists were the ones being offered to the public for free. The decision of the Professional Regulation Commission was affirmed by the Court of Appeals and later by this Court. As our resolution, dated July 12, 1999,^[10] stated in pertinent parts:

Thus, the instant petition which must likewise fail.

The Court finds the decision of the Court of Appeals to be in accordance with the law. The Rules and Regulation[s] of the Board of Examiners for [O]ptomety are quite explicit, and Rule 56 provides:

Rule 56. Acts Constituting Unprofessional Conduct.— It shall be considered unprofessional for any registered optometrist:

(1)

To make optometric examinations outside of his regular clinic, unless he shall have received an unsolicited written request by the person or persons to be examined;

(2)

To advertise a price or prices [of] spectacle frames, mountings, or ophthalmic lenses and other ophthalmic devices used in the practice of Optometry and to be associated with, or remain in the employ of, any person who does such advertising;

....

(4)

To advertise “free examination,” “examination included,” “discounts,” “installments,” “wholesale and retail,” or similar words and phrases which would tend to remove the spirit of professionalism;

....

(11)

To use Mobile Units for conducting refraction in any area within ten (10) kilometers of a Municipality.

Likewise, Section 6 of the Code of Ethics for optometrists states:

SEC. 6. The following are deemed, among others, to be unethical and are deemed to constitute unprofessional conduct:

....

c. Performing optometric examination outside of the regular office, unless he shall have received unsolicited request to make such an examination.

....

u. To use Mobile Units for conducting refraction in any area within ten (10) kilometers of a Municipality.

These provisions petitioners, through Acebedo, were found to have violated.

Petitioners cannot deny that it was their skills as optometrists as well as their licenses which Acebedo used in order to enable itself to render optometric services to its clientele. Under such arrangement, petitioners acted as tools of Acebedo so that the latter can offer the whole package of services to its clientele.

Corollarily, Republic Act No. 1998 pertinently provides:

SEC. 20. Revocation or suspension of certificate. — The Board may, after giving proper notice and hearing to the party concerned, revoke or suspend a certificate of registration for the causes mentioned in the next preceding section, or for unprofessional conduct....

Having knowingly allowed themselves to be used as tools in furtherance of [the] unauthorized practice of optometry, petitioners are clearly liable for unethical and unprofessional practice of their profession. The Court, thus finds no error committed by the Court of Appeals.

WHEREFORE, petition is denied due course.

Petitioners cite the Tennessee Supreme Court statement in *Lens Crafter, Inc. v. Sunquist*,^[11] stating that:

The logical result would be that corporations and business partnerships might practice law, medicine, dentistry or any other profession by the simple expedient of employing licensed agents. And, if this were permitted, professional standards would be practically destroyed and professions requiring special training would be commercialized, to the public detriment....The ethics of any profession is based upon personal or individual responsibility.

The contention has no merit. An “optometrist” is a person who has been certified by the Board of Optometry and

registered with the Professional Regulation Commission as qualified to practice optometry in the Philippines.[12] Thus, only natural persons can engage in the practice of optometry and not corporations. Respondent, which is not a natural person, cannot take the licensure examinations for optometrist and, therefore, it cannot be registered as an optometrist under R.A. No. 1998. It is noteworthy that, in *Apacionado*, the Court did not find Acebedo to be engaged in the practice of optometry. The optometrists in that case were found guilty of unprofessional conduct and their licenses were suspended for two (2) years for having participated, in their capacities as optometrists, in the implementation of the promotional advertisement of Acebedo. In contrast, in the case at bar, respondent is merely engaged in the business of selling optical products, not in the practice of optometry, whether directly or indirectly, through its hired optometrists.

In *Samahan ng Optometrists sa Pilipinas, Ilocos Sur-Abra Chapter v. Acebedo International Corporation*,[13] petitioners opposed respondent Acebedo's application for a municipal permit to operate a branch in Candon, Ilocos Sur. They brought suit to enjoin respondent Acebedo from employing optometrists as this allegedly constituted an indirect violation of R.A. No. 1998, which prohibits corporations from exercising professions reserved only to natural persons. The committee created by the Mayor of Candon to pass on Acebedo's application denied the same and ordered the closure of Acebedo optical shops. Acebedo appealed but its appeal was dismissed by the trial court on the ground that it was practicing optometry. On appeal, the Court of Appeals held that Acebedo was not operating as an optical clinic nor engaged in the practice of optometry, although it employed licensed optometrists. Acebedo simply dispensed optical and ophthalmic instruments and supplies. It was pointed out that R.A. No. 1998 does not prohibit corporations from employing licensed optometrists. What it prohibits is the practice of optometry by individuals who do not have a license to practice. The prohibition is addressed to natural persons who are required to have "a valid certificate of registration as optometrist" and who must be of "good moral character." This Court affirmed the ruling of the appeals court and explained that even under R.A. No. 8050 (Revised Optometry Law) there is no prohibition against the hiring by corporations of optometrists. The fact that Acebedo hired optometrists who practiced their profession in the course of their employment in Acebedo's optical shops did not mean that it was itself engaged in the practice of optometry.

We see no reason to deviate from the ruling that a duly licensed optometrist is not prohibited from being employed by respondent and that respondent cannot be said to be exercising the optometry profession by reason of such employment.

Second. Petitioners argue that an optometrist, who is employed by a corporation, such as Acebedo, is not acting on his own capacity but as an employee or agent of the corporation. They contend that, as a mere employee or agent, such optometrist cannot be held personally liable for his acts done in the course of his employment as an optometrist under the following provisions of the Civil Code. Thus,

Art. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

This contention likewise has no merit. While the optometrists are employees of respondent, their practice of optometry is separate and distinct from the business of respondent of selling optical products. They are personally liable for acts done in the course of their practice in the same way that if respondent is sued in court in connection

with its business of selling optical products, the optometrists need not be impleaded as party defendants. In that regard, the Board of Optometry and the Professional Regulation Commission regulate their practice and have exclusive original jurisdiction over them.

In the later case of *Acebedo Optical Company, Inc. v. Court of Appeals*,^[14] petitioner Acebedo was granted by the City Mayor of Iligan a business permit subject to certain conditions, to wit:

- Since it is a corporation, Acebedo cannot put up an optical clinic but only a commercial store;
- Acebedo cannot examine and/or prescribe reading and similar optical glasses for patients, because these are functions of optical clinics;
- Acebedo cannot sell reading and similar eyeglasses without a prescription having first been made by an independent optometrist (not its employee) or independent optical clinic. Acebedo can only sell directly to the public, without need of a prescription, Ray-Ban and similar eyeglasses;
- Acebedo cannot advertise optical lenses and eyeglasses, but can advertise Ray-Ban and similar glasses and frames;
- Acebedo is allowed to grind lenses but only upon the prescription of an independent optometrist.

The Samahang Optometrist sa Pilipinas-Iligan Chapter sought the cancellation and/or revocation of Acebedo's permit on the ground that it had violated the conditions for its business permit. After due investigation, Acebedo was found guilty of violating the conditions of its permit and, as a consequence, its permit was cancelled. Acebedo was advised that its permit would not be renewed. Acebedo filed a petition for certiorari, prohibition, and mandamus in the Regional Trial Court, but its petition was dismissed for non-exhaustion of administrative remedies. Acebedo then filed a petition for certiorari, prohibition, and mandamus with the Court of Appeals. At first, its petition was dismissed. On appeal, however, the decision of the Court of Appeals was reversed. This Court held that a business permit is issued primarily to regulate the conduct of a business and, therefore, the City Mayor cannot, through the issuance of such permit, regulate the practice of a profession, like optometry. This Court held Acebedo to be entitled to a permit to do business as an optical shop because, although it had duly licensed optometrists in its employ, it did not apply for a license to engage in the practice of optometry as a corporate body or entity.

WHEREFORE, the petition is DENIED for lack of showing that the Court of Appeals committed a reversible error.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and De Leon, Jr., JJ., concur.
Corona, J., took no part in the deliberation of this case.

[1] Per Justice Teodoro P. Regino and concurred in by Justices Ruben T Reyes (Chairman) and Eriberto U. Rosario, Jr., all of the Sixteenth Division.

[2] Per Judge Benigno G. Gaviola.

[3] An Act to Regulate the Practice of Optometry in the Philippines, approved June 22, 1957.

[4] RTC Decision, pp. 1 -2; Rollo, pp. 66-67.

[5] Id., p. 4; id., p. 69.

[6] Pre-trial Order dated August 6, 1991, pp. 2-3; Rollo, pp. 63-64.

[7] 270 SCRA 298 (1997).

[8] Id.

[9] (Minute Res.), G.R. No. 135941, July 12, 1999.

[10] See fn 9; Rollo, pp. 42-44 of G.R. No. 135941.

[11] 33 S.W. 3d. 772.

[12] §1(b) of R.A. No. 1998; §3(b) of R.A. No. 8050 (“An Act Regulating the Practice of Optometry, Upgrading Optometric Education, Integrating Optometrists, and For Other Purposes,”), otherwise known as the “Revised Optometry Law of 1995”; §2(i), Rule 1 of PRC/BO Resolution No. 03, Series of 1997 (“Rules and Regulations Governing the Examination and Registration of Optometrists and the Regulation of the Practice of Optometry”).

[13] 270 SCRA 298 (1997).

[14] 329 SCRA 314 (2000).

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