

THE CLOROX COMPANY, PETITIONER, VS. THE DIRECTOR OF PATENTS AND GO SIU GIAN, RESPONDENTS.

G. R. No. 19531. August 10, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

We have before Us a petition to review the order of the Director of Patents in "Inter Partes Case No. 204." dated January 6, 1961. dismissing the opposition of the Clorox Company to the registration of the trademark "OLDROX" in the name of Go Siu Gian, and the resolution of said Official, dated February 12, 1962, denying the Clorox Company's motion and petition for relief from said order.

The facts of the case, either appearing in the record or admitted by the parties in their pleadings, are as follows:

On April 7, 1959, respondent Go Siu Gian filed with the Patent Office an application for registration of the trademark "OLDROX," with an accompanying statement that he is a citizen of China, residing and doing business in the Philippines at 838 Folgueras St., Manila: that he has adopted the trademark "OLDROX" for his goods (whitening agent for bleaching) in trade and commerce in the country; and that said trademark, shown on printed labels affixed to the goods, or to the containers thereof, has been used by Mm since February 1, 1959. The application was allowed and published in the issue of the Official Gazette dated April 25, 1960, which was released for circulation on August 22, 1960.

On September 21 of the same year, or within 30 days from the date of its publication in the Official Gazette, an unverified opposition to the application was filed by the law firm Lichauco, Picazo and Agcaoili in behalf of the Clorox Company, herein petitioner.

On January 6, 1961, respondent Director of Patents issued the order appealed from, dismissing the petitioner's opposition to the application upon the ground, which is stated in said order, that the Clorox Company failed to file the required verified notice of opposition within the period allowed by law. Upon notice of the said order, petitioner's counsel filed a motion with the Patent Office, dated January 10, 1961, advising that it has filed the verified notice of opposition on time, i.e., on November 16, 1960: although it also admitted that the covering letter of said verified opposition was given another case number (Inter Partes Case No. 200, entitled "The Shell Company of the Philippines vs. Faustino Co") which is also handled by the same counsel in the Patent Office. Petitioner requested in that motion that the verified opposition be detached from the record of Inter Partes Case No. 200 and to transfer the same in the corresponding file of this case. The motion was opposed by herein respondent Go Siu Gian.

Before the motion could be acted upon by the Director of Patents, petitioner filed on January 26, 1961, a petition for relief from the order dismissing its opposition, alleging circumstances constituting mistake or excusable negligence of its counsel and his employee which led to the misfiling of its verified opposition, and praying that said order of January 6, 1961, be set aside.

After due consideration of the arguments of both parties relative to the aforesaid motion and petition for relief from the order of January 6, 1961, the Director of Patents issued the resolution of February 12, 1962, also appealed from, denying both the motion and the petition for relief, and ordering the issuance of the Certificate of Registration of the trademark "OLDROX" in the name of Go Siu Gian. The Clorox Company has come to Us on appeal.

In a nutshell, the various errors pointed out in the petitioner's brief which were allegedly committed by the respondent Director of Patents in issuing the order and resolution appealed from, really boil down to two main propositions, namely: (1) that the Director of Patents erred in dismissing its opposition to the registration of the trademark in question, on the ground of failure to file the required "verified" opposition on time; and (2) that said Official erred in denying altogether its motion and petition for relief from said order.

Under the first proposition, the petitioner argues that it was error for the respondent official to have dismissed the opposition, it appearing in an indubitable manner that a verified opposition was timely filed. The "Director of Patents, on the other hand, maintains that the verified opposition cannot be considered as having been filed on time, for the reason that it was misfiled in the record of another opposition case through the negligence of its own counsel. Section 8 of Republic Act No. 166 requires that an opposition to an application for registration of a trademark should be filed within 30 days from the publication of the application in the Official Gazette. This requirement is relaxed under Rule 187(c) of the Revised Rules of Practice in Trademark Cases which provide as follows:

"Rule 187(c), Notice filed by attorney.— An unverified notice of opposition may be filed by a duly authorized attorney, but such opposition will be null and void unless verified by the opposer in person within sixty days after such filing. . . ."

There is no question that petitioner's counsel filed an unverified notice of opposition to the application for registration of the trademark "OLDROX" within 30 days from the date of its publication in the Official Gazette. There is no disagreement also that the record of the case shows that an unverified opposition was filed, and it was for this reason that the order of January 8, 1961, was issued, because the law requires that for an opposition to be valid, it must be verified. It is not disputed, however, that immediately after it received the notice of dismissal of its opposition, petitioner, in due time, filed a motion dated January 10, 1961, advising the Director of Patents that its verified opposition was filed on time, although it admitted its error in submitting it under a covering letter designating another opposition case. Under the circumstances, it is our considered opinion that the verified opposition mentioned was filed on time, although it was submitted under an erroneous covering letter. That fact alone is no argument to the proposition that a pleading "misfiled" is a pleading "not filed." A covering letter is not part of the pleading. What is important is the fact that the pleading reached the official designated by law to receive it within the prescribed time, regardless of the mistake in the indorsement or covering letter which is not a necessary element of filing. It is the duty of the clerk of court to receive and file the necessary papers of a case in their corresponding files. It is gross negligence on the part of a clerk of court to receive and file pleadings in the record of a case by relying upon a letter of submittal or covering letter without bothering to examine whether or not the pleading or document submitted corresponds to the enclosure mentioned in the letter. And when, as in this case, the pleading is misfiled in the record of another case through the fault of its clerk, it can not be said that the papers were not filed. It is admitted in this case that the verified opposition of herein petitioner was lodged with the proper official authorized to receive. Under the circumstances, we hold, that there was substantial compliance with the requirement of the law.

As a second proposition, petitioner contends that the Director of Patents erred in denying its motion and petition for relief from the order of January 6, 1961, dismissing its opposition to the registration of the trademark in

question. It holds the view that said Official should have set aside the order and given due course to its opposition.

The respondents, on the other hand, argue that the petition for relief filed by petitioner before the order dismissing the opposition became final was premature and may not be legally considered for purposes of setting aside said order. This is being too technical about it. The rule is always in favor of liberality in construction so that the real matter in dispute may be submitted to the judgment of the court. Imperfections of form and technicalities of procedure should be disregarded unless substantial rights would otherwise be prejudiced (*Gaspar vs. Dorado, et al.*, G.R. No. L-17884, November 29, 1965). It should be noted that the grounds of fraud, accident, mistake or excusable negligence for new trial are substantially similar to the grounds of a petition for relief under the Rules; the only difference being that a motion for new trial or for reconsideration is filed before the order or judgment becomes final, while a petition for relief should be filed after the finality of the judgment or order, but within the periods prescribed in

Section 3 of Rule 38. Had herein respondents so minded, the petition for relief filed by the petitioner in this case, having been filed before the finality of the order dismissing its opposition, could have been treated as a motion for reconsideration of the order of January 6, 1961, and having been previously apprised of the fact that the verified opposition in this case was misfiled in the record of another case, should have set aside said order. The rule is well settled that courts may vacate judgments and grant new trials or enter new judgments on the grounds of error in fact or in law. They have no power, of course, to vacate judgments after they have become final, in the sense that the party in whose favor they are rendered is entitled as of right, to have execution thereon, but prior thereto, the courts have plenary control over the proceedings including the judgment, and in the exercise of a sound judicial discretion, may take such proper action in this regard as truth and justice may require (*Arnedo vs. Llorente and Liongson*, 18 Phil. 257). The order of herein respondent dismissing the opposition of petitioner to the registration of the trademark in question may amount to considerable injustice to the opposer Clorox Company, the order having been entered not upon the merits of the controversy; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which it requests that the order be set aside. It must be remembered that the only discretion conferred upon officers is a legal discretion, and when anything is left to any officer to be done according to his discretion, the law intends it to be done with a sound discretion and according to law (*Coombs vs. Santos*, 24 Phil. 446). And when, as in this case, the allegation of the pleading clearly show circumstances constituting mistake and excusable negligence which are grounds for a motion for reconsideration of the order in question, a dismissal of the motion and a denial of the relief sought upon the flimsy excuse that the same was filed as a petition for relief, will amount to an abuse of that discretion. Neither may we consider the argument of herein respondent that

the petitioner is not totally deprived of its right to question the registration of the trademark in question because it may still pursue a cancellation proceeding under Sections 17 to 19 of Republic Act No. 166, and Rules 191 to 197 of the Rules of Practice in Trademark Cases. The opposition to a registration and the petition for cancellation are alternative proceedings which a party may avail of according to his purposes, needs, and predicaments (*Anchor Trading Company vs. Director of Patents*, G.R. No. L-8004, May 30, 1956), and herein petitioner has the right to choose which remedy it deems best for the protection of its rights.

Wherefore and considering all the foregoing, the order and resolution of the Director of Patents appealed from are hereby set aside, and the case remanded to the Patent Office for further proceedings. Costs against the private respondent.

Reyes, J.B.L., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Fernando, JJ., concur.

Concepcion, C.J., and Dizon, J., are on official leave of absence.

Order and resolution set aside. Case remanded.

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