

**WESTERN EQUIPMENT AND SUPPLY COMPANY, WESTERN
ELECTRIC COMPANY, INC., W. Z. SMITH AND FELIX C. REYES,
PLAINTIFFS AND APPELLEES, VS. FIDEL A. REYES, AS DIRECTOR OF
THE BUREAU OF ...**

G.R. No. 27897. December 02, 1927

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STATEMENT

October 23, 1926, in the Court of First Instance of Manila, plaintiffs filed the following complaint against the defendants:

"Now come the plaintiffs in the above entitled case, by the undersigned their attorneys, and to this Honorable Court respectfully show:

"I. That the Western Equipment and Supply Company is a foreign corporation organized under the laws of the State of Nevada, United States of America; that the Western Electric Company, Inc., is likewise a foreign corporation organized under the laws of the State of New York, United States of America; and that the plaintiffs W. Z. Smith and Felix C. Reyes are both of lawful age and residents of the City of Manila, Philippine Islands.

"II. That the defendant Fidel A. Reyes is the duly appointed and qualified Director of the Bureau of Commerce and Industry and as such Director is charged with the duty of issuing and denying the issuance of certificates of incorporation to persons filing articles of incorporation with the Bureau of Commerce and Industry.

"III. That the defendants Henry Herman, Peter O'Brien, Manuel B. Diaz, Felipe Mapoy and Artemio Zamora are all of lawful age and are residents of the City of Manila, Philippine Islands.

"IV. That on or about May 4, 1925, the plaintiff the Western Equipment and Supply Company applied to the defendant Director of the Bureau of Commerce and Industry for the issuance of a license to engage in business in the Philippine Islands and, accordingly, on May 20, 1926, a provisional license was by said defendant issued in its favor, which license was made permanent on August 23, 1926.

"V. That from and since the issuance of said provisional license of May 20, 1926, said plaintiff Western Equipment and Supply Company has been and still is engaged in importing and selling in the Philippine Islands the electrical and telephone apparatus and supplies manufactured by the plaintiff Western Electric Company, Inc., its offices in the City of Manila being at No. 600 Rizal Avenue, in the charge and management of the plaintiff Felix C. Reyes, its resident agent in the Philippine Islands.

"VI. That the electric and telephone apparatus and supplies manufactured by the plaintiff Western Electric Company, Inc., have been sold in foreign and interstate commerce and have become well and thoroughly known to the trade in all countries of the world for the past fifty years; that at the present time the greater part of all telephone equipment used in Manila and elsewhere in the Philippine Islands was manufactured by the said Western Electric Company, Inc., and sold by it in commerce between the United States and the Philippine Islands; that about three fourths of such equipment in use throughout the world are of the manufacture of said

'Western Electric Company, Inc.,' and bear its corporate name; and that these facts are well known to the defendant Henry Herman who for many years up to May 20, 1926, has himself been buying said products from the plaintiff Western Electric Company, Inc., and selling them in the Philippine Islands.

"VII. That the name 'Western Electric Company, Inc., has been registered as a trademark under the provisions of the Act of Congress of February 20, 1905, in the office of the Commissioner of Patents, at Washington, District of Columbia, and said trademark remains in force to this date.

"VIII. That on or about * * *, the defendants Henry Herman, Peter O'Brien, Manuel B. Diaz, Felipe Mapoy and Artemio Zamora filed articles of incorporation with the defendant Director of the Bureau of Commerce and Industry with the intention of organizing a domestic corporation to be known as the 'Western Electric Company, Inc.', for the purpose principally of manufacturing, buying, selling and generally dealing in electrical and telephone apparatus and supplies.

"IX. That the purpose of said defendant in attempting to incorporate under the corporate name of plaintiff Western Electric Company, Inc., is to profit and trade upon the plaintiff's business and reputation, by misleading and deceiving the public into purchasing the goods manufactured or sold by them as those of plaintiff Western Electric Company, Inc., in violation of the provisions of Act No. 666 of the Philippine Commission, particularly section 4 thereof.

"X. That on October 20, 1926, plaintiff W. Z. Smith was authorized by the Board of Directors of the Western Electric Company, Inc., to take all necessary steps for the issuance of a license to said company to engage in business in the Philippine Islands and to accept service of summons and process in all legal proceedings against said company, and on October 21, 1926, said plaintiff W. Z. Smith filed a written application for the issuance of such license with the defendant Director of the Bureau of Commerce and Industry, which application, however, has not yet been acted upon by said defendant.

"XI. That on October 18, 1926, the plaintiff W. Z. Smith formally lodged with the defendant Director of the Bureau of Commerce and Industry his protest, and opposed said attempted incorporation, by the defendants Henry Herman, Peter O'Brien, Manuel B. Diaz, Felipe Mapoy and Artemio Zamora, of the 'Western Electric Company, Inc.,' as a domestic corporation, upon the ground among others, that the corporate name by which said defendants desire to be known, being identical with that of the plaintiff Western Equipment and Supply Company, will deceive and mislead the public purchasing electrical and telephone apparatus and supplies. A copy of said protest is hereunto annexed, and hereby made a part hereof, marked Exhibit A.

"XII. That the defendant Fidel A. Reyes, Director of the Bureau of Commerce and Industry has announced to these plaintiffs his intention to overrule the protest of plaintiffs, and to issue to the other defendants a certificate of incorporation constituting said defendants a body politic and corporate under the name 'Western Electric Company, Inc., unless restrained by this Honorable Court.

"XIII. That the issuance of a certificate of incorporation in favor of said defendants under said name of 'Western Electric Company, Inc.,' would, under the circumstances herein before stated, constitute a gross abuse of the discretionary powers conferred by law upon the defendant Director of the Bureau of Commerce and Industry.

"XIV. That the issuance of said certificate of incorporation would, if carried out, be in violation of plaintiffs' rights and would cause them irreparable injury which could not be compensated in damages, and from which petitioner would have no appeal or any plain, speedy and adequate remedy at law, other than that herein prayed for."

They prayed for a temporary injunction, pending the final decision of the court when it should be made, permanent, restraining the issuance of the certificate of incorporation in favor of the defendants under the name of Western Electric Company, Inc., or the use of that name for any purpose in the exploitation and sale of

electric apparatus and supplies. The preliminary writ was issued. For answer the defendant Fidel A. Reyes, as Director of the Bureau of Commerce and Industry, admits the allegations of paragraphs 1, 2, 3 and 4 of the complaint, and as to paragraphs 5, 6 and 7, he alleges that he has no information upon which to form a belief, and therefore denies them. He admits the allegations of paragraph 8, and denies paragraph 9. He denies the first part of paragraph 10, but admits that an application for a license to do business was filed by the Western Electric Company, Inc., as alleged. He admits paragraphs 11 and 12, and denies paragraphs 13 and 14, and further alleges that the present action is prematurely brought, in that it is an attempt to coerce his discretion, and that the mere registration of the articles of incorporation of the locally organized Western Electric Company, Inc., cannot in any way injure the plaintiffs, and prays that the complaint be dismissed.

For answer the defendants Herman, O'Brien, Diaz, Mapoy and Zamora admit the allegations of paragraphs 1, 2, 3, 4 and 5 of the complaint, and deny paragraph 7, but allege that on October 15, 1926, the articles of incorporation in question were presented to the Director of the Bureau of Commerce and Industry for registration. They deny paragraphs 9 and 10, except as to the filing of the application. They admit the allegations made in paragraph 11, but allege that W. Z. Smith was without any right or authority. Admit the allegations of paragraph 12, but deny the allegations of paragraphs 13 and 14, and allege that the Western Electric Company, Inc., has never transacted business in the Philippine Islands; that its foreign business has been turned over to the International Standard Electric Corporation; that the action is prematurely brought; and that the registration of the articles of incorporation in question cannot in any way injure plaintiffs.

Wherefore, such defendants pray that the preliminary injunction be dissolved, and plaintiffs' cause of action be dismissed, with costs.

The case was tried and submitted upon the following stipulated facts:

"Now come the parties plaintiff and defendants in the above entitled cause, by their respective undersigned attorneys, and for the purpose of this action, agree that the following facts are true:

"I. That the Western Equipment and Supply Company is a foreign corporation, organized under the laws of the State of Nevada, United States of America; that the Western Electric Company, Inc., is likewise a foreign corporation organized under the laws of the State of New York, United States of America; and that the plaintiffs W. Z. Smith and Felix C. Reyes, are both of lawful age and residents of the City of Manila, Philippine Islands.

"II. That the defendant Fidel A. Reyes is the duly appointed and qualified Director of the Bureau of Commerce and Industry and as such Director is charge with the duty of issuing and/or denying the issuance of certificates of incorporation to persons filing articles of incorporation with the Bureau of Commerce and Industry.

"III. That the defendants, Henry Herman, Peter O'Brien, Manuel B. Diaz, Felipe Mapoy and Artemio Zamora, are all of lawful age and are all residents of the City of Manila, Philippine Islands.

"IV. That on or about May 4, 1925, the plaintiff, the Western Equipment and Supply Company, through its duly authorized agent, the plaintiff, Felix C. Reyes, applied to the defendant Director of the Bureau of Commerce and Industry for the issuance of a license to engage in business in the Philippine Islands and on May 20, 1926, said defendant issued in favor of said plaintiff a provisional license for that purpose which was made permanent on August 23, 1926.

"V. That the plaintiff, Western Electric Company, Inc., has never been licensed to engage in business in the Philippine Islands, and, has never engaged in business therein.

"VI. That from and since the issuance of said provisional license of May 20, 1926, to the plaintiff, Western Equipment and Supply Company, said plaintiff has been and still is engaged in importing and selling in the

Philippine Islands electrical and telephone apparatus and supplies manufactured by the plaintiff, Western Electric Company, Inc. (as well as those manufactured by other factories), said Western Equipment and Supply Company's offices in the City of Manila being at No. 600 Rizal Avenue, and at the time of the filing of the complaint herein was under the charge and management of the plaintiff, Felix C. Reyes, its then resident agent in the Philippine Islands.

"VII. That the electrical and telephone apparatus and supplies manufactured by the plaintiff, Western Electric Company, Inc., have been sold in foreign and interstate commerce for the past fifty years, and have acquired high trade reputation throughout the world; that at the present time the greater part of all telephone equipment used in Manila, and elsewhere in the Philippine Islands, was manufactured by the said plaintiff, Western Electric Company, Inc., and sold by it for exportation to the Philippine Islands; that such equipment, manufactured by the said Western Electric Company, Inc., and bearing its trademark 'Western Electric' or its corporate name is generally sold and used throughout the world; that a Philippine Corporation known as the 'Electric Supply Company, Inc., has been importing the manufactures of the plaintiff, Western Electric Company, Inc., into the Philippine Islands for the purpose of selling the same therein, and that the defendant Henry Herman, is the President and General Manager of said corporation.

"VIII. That the words 'Western Electric' have been registered by the plaintiff, Electric Company, Inc., as a trademark under the provisions of the Act of Congress of February 20, 1905, in the office of the Commissioner of Patents at Washington, District of Columbia, and said trade-mark remains in force as the property of said plaintiff to this date.

"IX. That the plaintiff, Western Electric Company, Inc., is advertising its manufactures in its own name by means of advertisements inserted in periodicals which circulate generally throughout the English and Spanish speaking portions of the world, and has never abandoned its corporate name or trademark, but, on the contrary, all of its output bears said corporate name and trademark, either directly upon the manufactured article or upon its container, including that sold and used in the Philippine Islands.

"X. That on October 15, 1926, the defendants, Henry Herman, Peter O'Brien, Manuel B. Diaz, Felipe Mapoy and Artemio Zamora signed and filed articles of incorporation with the defendant, Fidel A. Reyes, as Director of the Bureau of Commerce and Industry, with the intention of organizing a domestic corporation under the Philippine Corporation Law to be known as the 'Western Electric Company, Inc.,' for the purpose, among other things, of manufacturing, buying, selling and dealing generally in electrical and telephone apparatus and supplies; that said defendants Peter O'Brien, Felipe Mapoy and Artemio Zamora are employees of the said Electrical Supply Company, of which said defendant, Henry Herman, is and has been, during the period covered by this stipulation, the president and principal stockholder; and that they, together with the said defendant Herman, signed said articles of incorporation for the incorporation of a domestic company to be known as the 'Western Electric Company, Inc., with full knowledge of the existence of the plaintiff, Western Electric Company, Inc., of its corporate name, of its trademark, 'Western Electric,' and of the fact that the manufactures of said plaintiff bearing its trademark or corporate name are in general use in the Philippine Islands and in the United States.

"XI. That on October 20, 1926, the plaintiff, W. Z. Smith, was authorized by the Board of Directors of the plaintiff, Western Electric Company, Inc., to take all necessary steps for the issuance of a license to said company to engage in business in the Philippine Islands, and to accept service of summons and process in all legal proceedings against said company, and on October 21, 1926, said plaintiff, W. Z. Smith, filed a written application for the issuance of such license with the defendant Director of the Bureau of Commerce and Industry, which application, however, has not yet been acted upon by said defendant.

"XII. That on October 18, 1926, the Philippine Telephone and Telegraph Co., by its general manager, the plaintiff W. Z. Smith, lodged with the defendant Director of the Bureau of Commerce and Industry its protest against the registration of the proposed corporation by the defendants Henry Herman, Peter O'Brien, Manuel B.

Diaz, Felipe Mapoy and Artemio Zamora, to be known as the Western Electric Company, Inc., as a domestic corporation under the Philippine Corporation Law. A copy of said protest, marked Exhibit A, is hereunto attached and is hereby made a part of this stipulation.

"XIII. That the defendant, Fidel A. Reyes, Director of the Bureau of Commerce and Industry, announced his intention to overrule said protest and will, unless judicially restrained therefrom, issue to the other defendants herein a certificate of incorporation, constituting said defendants a Philippine body politic and corporate under the name of 'Western Electric Company, Inc.'

"XIV. That the defendant, Henry Herman, acting in behalf of said corporation, Electrical Supply Company, Inc., has written letters to Messrs. Fisher, DeWitt, Perkins & Brady, acting as attorneys for the plaintiff, Western Electric Company, Inc., copies of which are hereunto annexed and hereby made a part hereof, marked Exhibits B, C and D.

"XV. That the defendants, while admitting the facts set out in paragraphs VII and IX regarding the business done, merchandise sold and advertisements made throughout the world by the plaintiff Western Electric Company, Inc., insist and maintain that said allegations of fact are immaterial and irrelevant to the issues in the present case, contending that such issues should be determined upon the facts as they exist in the Philippine Islands alone."

To which were attached Exhibits A, B, C and D.

The lower court rendered judgment for the plaintiffs as prayed for in their complaint, and made the temporary injunction permanent, from which the defendants appeal and assign the following errors:

"The lower court erred:

"(1) When it granted the writ of preliminary injunction (pages 9 and 10, record; 12 to 14, B. of E.).

"(2) When it held that the Western Electric Co., Inc., a foreign corporation, had a right to bring the present suit in the courts of the Philippine Islands, wherein it is unregistered and unlicensed, as was done in the decision upon the petition for a preliminary injunction (pages 97 to 115 record), and in repeating such holding in the final decision herein (pages 51 and 52, B. of E.), as well as in basing such holding upon the decision of this Honorable Supreme Court in *Marshall-Wells Co. vs. Henry W. Elser & Co.* (46 Phil., 70.)

"(3) When it found that the plaintiff, the Western Electric Co., Inc., has any such standing in the Philippine Islands or before the courts thereof as to authorize it to maintain an action therein under the facts existing in the present case.

"(4) When it found that the other plaintiffs herein have any rights in the present controversy or any legal standing therein.

"(5) In ordering the issuance of a permanent injunction restraining the defendant Fidel A. Reyes, as Director of the Bureau of Commerce and Industry, from issuing a certificate of incorporation in favor of the other defendants under the name of 'Western Electric Co., Inc., or any similar name, and restraining the other defendants from using the name 'Western Electric Co., Inc., or any like name, in the manufacture or sale of electrical and telephone apparatus and supplies or as a business name or style in the Philippine Islands.

"(6) In finding that the purpose of the defendants, other than the defendant Fidel A. Reyes, in seeking to secure the registration of a local corporation under the name of 'Western Electric Co., Inc./ was 'certainly not an innocent one/ thereby imputing to said defendants a fraudulent and wrongful intent.

"(7) In failing to dismiss plaintiffs' complaint with costs against the plaintiffs.

"(8) In overruling and denying defendants' motion for a new trial."

JOHNS, J.:

The appellants say that the two questions presented are: "Has a foreign corporation, which has never done business in the Philippine Islands, and which is unlicensed and unregistered therein, any right to maintain an action to restrain residents and inhabitants of the Philippine Islands from organizing a corporation therein bearing the same name as such foreign corporation?"

"Has such foreign corporation a legal right to restrain an officer of the Government of the Philippine Islands, i. e., the Director of the Bureau of Commerce and Industry from exercising his discretion, and from registering a corporation so organized by residents and inhabitants of the Philippine Islands?"

As to the first question, the appellees say that it should be revised, so as to read as follows:

"Has a foreign corporation which has never done business in the Philippine Islands, and which is unlicensed and unregistered therein, any right to maintain an action to restrain residents and inhabitants of the Philippine Islands from organizing a corporation therein bearing the same name as such foreign corporation, when said residents and inhabitants have knowledge of the existence of such foreign corporation, having dealt with it, and sold its manufactures, and when said foreign corporation is widely and favorably known in the Philippine Islands through the use therein of its products bearing its corporate and trade name, and when the purpose of the proposed domestic corporation is to deal in precisely the same goods as those of the foreign corporation?"

As to the second, the appellees say that the question as propounded by the appellants is not fully and fairly stated, in that it overlooks and disregards paragraphs 12 and 13 of the stipulation of facts, and that the second question should be revised to read as follows:

"Has an unregistered corporation which has not transacted business in the Philippine Islands, but which has acquired a valuable goodwill and high reputation therein, through the sale, by importers, and the extensive use within the Islands of its products bearing either its corporate name, or trade-mark consisting of its corporate name, a legal right to restrain an officer of the Government of the Philippine Islands, i. e., the Director of Commerce and Industry, with knowledge of those facts, from issuing a certificate of incorporation to residents of the Philippine Islands who attempt to organize a corporation for the purpose of pirating the corporate name of such foreign corporation, of engaging in the same business as such foreign corporation, and of defrauding the public into thinking that its goods are those of such foreign corporation, and of defrauding such foreign corporation and its local dealers of their legitimate trade?"

We agree with the revisions of both questions as made by the appellees, for the reason that they are more in accord with the stipulated facts. First, it is stipulated that the Western Electric Company, Inc., "has never engaged in business in the Philippine Islands."

In the case of *Marshall-Wells Co. vs. Henry W. Elser & Co.* (46 Phil., 70, 76), this court held:

"The noncompliance of a foreign corporation with the statute may be pleaded as an affirmative defense. There-after, it must appear from the evidence, first, that the plaintiff is a foreign corporation, second, that it is doing business in the Philippines, and third, that it has not obtained the proper license as provided by the statute."

If it had been stipulated that the plaintiff, Western¹ Electric Company, Inc., had been doing business in the Philippine Islands without first obtaining a license, another and a very different question would be presented. That company is not here seeking to enforce any legal or contract rights arising from, "or growing out of, any business which it has transacted in the Philippine Islands. The sole purpose of the action:

"Is to protect its reputation, its corporate name, its goodwill, whenever that reputation, corporate name or goodwill have, through the natural development of its trade, established themselves." And it contends that its

rights to the use of its corporate and trade name:

"Is a property right, a right in rem, which it may assert and protect against all the world, in any of the courts of the world—even in jurisdictions where it does not transact business—just the same as it may protect its tangible property, real or personal, against trespass, or conversion. Citing sec. 10, Nims on Unfair Competition and Trade-Marks and cases cited; sees. 21-22, Hopkins on Trade-Marks, Trade Names and Unfair Competition and cases cited." That point is sustained by the authorities, and is well stated in *Hanover Star Milling Co. vs. Allen and Wheeler Co.* (208 Fed., 513), in which the syllabus says:

"Since it is the trade and not the mark that is to be protected, a trade-mark acknowledges no territorial boundaries of municipalities or states or nations, but extends to every market where the trader's goods have become known and identified by the use of the mark."

In *Walter E. Olsen & Co. vs. Lambert* (42 Phil, 633, 640), this court said:

"In order that competition in business should be unfair in the sense necessary to justify the granting of an injunction to restrain such competition it must appear that there has been, or is likely to be, a diversion of trade from the business of the complainant to that of the wrongdoer, as a consequence of the adoption by the latter of means or methods generally recognized as unfair; * * * In most, if not all, of the cases in which relief has hitherto been granted against unfair competition the means and methods adopted by the wrongdoer in order to divert the coveted trade from his rival have been such as were calculated to deceive and mislead the public into thinking that the goods or business of the wrongdoer are the goods or business of the rival. Diversion of trade is really the fundamental thing here, and if diversion of trade be accomplished by any means which according to accepted legal canons are unfair, the aggrieved party is entitled to relief,"

In *Shaver vs. Heller & Merz Co.* (48 C. C. A., 48; 108 Fed., 821; 65 L. R. A., 878, 881), it is said:

"The contention of counsel for the appellants here is a confusion of the bases of two classes of suits,—those for infringements of trade-marks, and those for unfair competition in trade. * * * In the former, title to the trade-marks is indispensable to a good cause of action; in the latter, no proprietary interest in the words, names, or means by which the fraud is perpetrated is requisite to maintain a suit to enjoin it. It is sufficient that the complainant is entitled to the custom—the goodwill—of a business, and that this goodwill is injured, or is about to be injured, by the palming off of the goods of another as his."

The remaining question as to the jurisdiction of the courts over the defendant Reyes, as Director of the Bureau of Commerce and Industry, has been adversely decided to his contention in the case of *Asuncion vs. De Yriarte* (28 Phil., 67), in which, among other things, it is said:

"If, therefore, the defendant erred in determining the question presented when the articles were offered for registration, then that error will be corrected by this court in this action and he will be compelled to register the articles as offered. If, however, he did not commit an error, but decided that question correctly, then, of course, his action will be affirmed to the extent that we will deny the relief prayed for"

It is very apparent that the purpose and intent of Herman and his associates in seeking to incorporate under the name of Western Electric Company, Inc., was to unfairly and unjustly compete in the Philippine Islands with the Western Electric Company, Inc., in articles which are manufactured by, and bear the name of, that company, all of which is prohibited by Act No. 666, and was made known to the defendant Reyes by the letter known in the record as Exhibit A.

As appellees say:

"These defendants, Herman and his associates, are actually asking the Government of the Philippine Islands to permit them to pirate the name of the Western Electric Company, Inc., by incorporating thereunder, so that

they may deceive the people of the Philippine Islands into thinking that the goods they propose to sell are goods of the manufacture of the real Western Electric Company. It would be a gross prostitution of the powers of government to utilize those powers in such a way as to authorize such a fraud upon the people governed. It would be the grossest abuse of discretion to permit these defendants to usurp the corporate name of the plaintiff, and to trade thereupon in these Islands, in fraud of the Philippine public and of the true owners of the name and the goodwill incidental thereto."

The plaintiff, Western Electric Company, Inc., has been in existence as a corporation for over fifty years, during which time it has established a reputation all over the world including the Philippine Islands, for the kind and quality of its manufactured articles, and it is very apparent that the whole purpose and intent of Herman and his associates in seeking to incorporate another corporation under the identical name of Western Electric Company, Inc., and for the same identical purpose as that of the plaintiff, is to trespass upon and profit by its good name and business reputation. The very fact that Herman and his associates have sought the use of that particular name for that identical purpose is conclusive evidence of the fraudulent intent with which it is done.

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

Avanceña, C.J., Johnson, Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

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