

THE MENTHOLATUM CO., INC., ET AL., PETITIONERS, VS. ANACLETO MANGALIMAN ET AL., RESPONDENTS.*G.R. No. 47701. June 27, 1941*

Ponente: LAUREL, J.

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This is a petition for a writ of certiorari to review the decision of the Court of Appeals dated June 29, 1940, reversing the judgment of the Court of First Instance of Manila and dismissing petitioners' complaint.

On October 1, 1935, the Mentholum Co., Inc., and the Philippine-American Drug Co., Inc. instituted an action in the Court of First Instance of Manila, civil case No. 48855, against Anacleto Mangaliman, Florencio Mangaliman and the Director of the Bureau of Commerce for infringement of trade mark and unfair competition. Plaintiffs prayed for the issuance of an order restraining Anacleto and Florencio Mangaliman from selling their product "Mentholiman," and directing them to render an accounting of their sales and profits and to pay damages. The complaint stated, among other particulars, that the Mentholum Co., Inc., is a Kansas corporation which manufactures "Mentholiman," a medicament and salve adapted for the treatment of colds, nasal irritations, chapped skin, insect bites, rectal irritation and other external ailments of the body; that the Philippine-American Drug Co., Inc., is its exclusive distributing agent in the Philippines authorized by it to look after and protect its interests; that, on June 26, 1919 and on January 21, 1921, the Mentholum Co., Inc., registered with the Bureau of Commerce and Industry the word, "Mentholum," as trade mark for its products; that the Mangaliman brothers prepared a medicament and salve named "Mentholiman" which they sold to the public packed in a container of the same size, color and shape as "Mentholum"; and that, as a consequence of these acts of the defendants, plaintiffs suffered damages from the diminution of their sales and the loss of goodwill and reputation of their product in the market.

After a protracted trial, featured by the dismissal of the case on March 9, 1936 for failure of plaintiffs' counsel to attend, and its subsequent reinstatement on April 4, 1936, the Court of First Instance of Manila, on October 29, 1937, rendered judgment in favor of the complainants, the dispositive part of its decision reading thus:

"En meritos de todo lo expuesto, este Juzgado dicta sentencia:

"(a) Haciendo que sea perpetuo y permanente el interdicto prohibitorio preliminar expedido contra Anacleto Mangaliman, sus agentes y empleados, prohibiendoles vender su producto en la forma en que se vendia al incoarse la demanda de autos, o de alguna otra manera competir injustamente contra el producto de las demandantes, y de usar la marca industrial "MENTHOLIMAN" en sus productos;

"(b) Ordenando al demandado Anacleto Mangaliman, que rinda exacta cuenta de sus ganancias por la venta de su producto desde el dia 1.º de marzo de 1934, hasta la fecha de esta decision, y que pague a las demandantes, en concepto de danos y perjuicios, lo que resulte ser la ganancia de dicho demandado;

"(c) Condenando a dicho demandado, Anacleto Mangaliman, a pagar una multa de cincuenta pesos (P50) por desacato al Juzgado, y las costas del juicio; y

"(d) Sobreseyendo la contra-reclamacion del demandado, Anacleto Mangaliman, contra las demandantes." In the Court of Appeals, where the cause was docketed as CA-G. R. No. 46067, the decision of the trial court was, on June 29, 1940, reversed, said tribunal holding that the activities of the Mentholatum Co., Inc., were business transactions in the Philippines, and that, by section 69 of the Corporation Law, it may not maintain the present suit. Hence, this petition for certiorari.

In seeking a reversal of the decision appealed from, petitioners assign the following errors:

"1. The Court of Appeals erred in declaring that the transactions of the Mentholatum Co., Inc., in the Philippines constitute 'transacting business' in this country as this term is used in section 69 of 'the Corporation Law.

The aforesaid conclusion of the Court of Appeals is a conclusion of law and not of fact.

"2. The Court of Appeals erred in not holding that whether or not the Mentholatum Co., Inc., has transacted business in the Philippines is an issue foreign to the case at bar.

"3. The Court of Appeals erred in not considering the fact that the complaint was filed not only by the Mentholatum Co., Inc., but also by the Philippine-American Drug Co., Inc., and that even if the Mentholatum Co., Inc., has no legal standing in this jurisdiction, the complaint filed should be decided on its merits since the Philippine-American Drug Co., Inc., has sufficient interest and standing to maintain the complaint."

Categorically stated, this appeal simmers down to an interpretation of section 69 of the Corporation Law, and incidentally turns upon a substantial consideration of two fundamental propositions, to wit: (1) whether or not the petitioners could prosecute the instant action without having secured the license required in section 69 of the Corporation Law; and (2) whether or not the Philippine-American Drug Co., Inc., could by itself maintain this pro- ceeding.

Petitioners maintain that the Mentholatum Co., Inc., has not sold personally any of its products in the Philippines; that the Philippine-American Drug Co., Inc., like fifteen or twenty other local entities, was merely an importer of the products of the Mentholatum Co., Inc.; and that the sales of the Philippine-American Drug Co., Inc., were its own and not for the account of the Mentholatum Co., Inc. Upon the other hand, the defendants contend that the Philippine-American Drug Co., Inc., is the exclusive distributing agent in the Philippines of the Mentholatum Co., Inc., in the sale and distribution of its product known as "Mentholatum"; that, because of this arrangement, the acts of the former become the acts of the latter; and that the Mentholatum Co., Inc., being thus engaged in business in the Philippines, and not having acquired the license required by section 68 of the Corporation Law, neither it nor the Philippine-American Drug Co., Inc., could prosecute the present action.

Section 69 of Act No. 1459 reads:

"Sec. 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court."

In the present case, no dispute exists as to facts: (1) that the plaintiff, the Mentholatum Co., Inc., is a foreign corporation; and (2) that it is not licensed to do business in the Philippines. The controversy, in reality, hinges on the question of whether the said corporation is or is not transacting business in the Philippines.

No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or

"transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue* [C. C. A. Ohio], 223 F. 984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.] (*Griffin v. Implement Dealers' Mut. Fire Ins. Co.*, 241 N. W. 75, 77; *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P. 851, 852, 118 Okl. 111; *Automotive Material Co. v. American Standard Metal Products Corp.*, 158 N. E. 638, 703, 327 Ill. 367.)

In its decision of June 29, 1940, the Court of Appeals concluded that "it is undeniable that the Mentholatum Co., through its agent, the Philippine-American Drug Co., Inc., has been doing business in the Philippines by selling its products here since the year 1929, at least." This is assailed by petitioners as a pure conclusion of law. This finding is predicated upon the testimony of Mr. Roy Springer of the Philippine-American Drug Co., Inc., and the pleadings filed by petitioners. The complaint filed in the Court of First Instance of Manila on October 1, 1935, clearly stated that the Philippine-American Drug Co., Inc., is the exclusive distributing agent in the Philippine Islands of the Mentholatum Co., Inc., in the sale and distribution of its product known as the Mentholatum." The object of the pleadings being to draw the lines of battle between litigants and to indicate fairly the nature of the claims or defenses of both parties (1 *Sutherland's Code Pleading, Practice & Forms*, sec. 83; *Milliken v. Western Union Tel. Co.*, 110 N. Y. 403, 18 N. E. 251; *Eckrom v. Swenseld*, 4G N. D. 561, 563, 179 N. W. 920), a party cannot subsequently take a position contradictory to, or inconsistent with, his pleadings, as the facts therein admitted are to be taken as true for the purpose of the action. (46 C. J., sec. 121, pp. 122-124.) It follows that whatever transactions the Philippine-American Drug Co., Inc., had executed in view of the law, the Mentholatum Co., Inc., did it itself. And, the Mentholatum Co., Inc., being a foreign corporation doing business in the Philippines without the license required by section 68 of the Corporation Law, it may not prosecute this action for violation of trade mark and unfair competition. Neither may the Philippine-American Drug Co., Inc., maintain the action here for the reason that the distinguishing features of the agent being his representative character and derivative authority (*Mechem on Agency*, sec. 1; *Story on Agency*, sec. 3; *Sternaman v. Metropolitan Life Ins. Co.*, 170 N. Y. 21), it cannot now, to the advantage of its principal, claim an independent standing in court.

The appellees below, petitioners here, invoke the case of *Western Equipment and Supply Co. vs. Reyes* (51 Phil., 115). The Court of Appeals, however, properly distinguished that case from the one at bar in that in the former "the decision expressly says that the Western Equipment and Supply Co. was not engaged in business in the Philippines, and significantly added that if the plaintiff had been doing business in the Philippine Islands without first obtaining a license, 'another and a very different question would be presented'." It is almost unnecessary to remark in this connection that the recognition of the legal status of a foreign corporation is a matter affecting the policy of the forum, and the distinction drawn in our Corporation Law is an expression of that policy. The general statement made in *Western Equipment and Supply Co. vs. Reyes* regarding the character of the right involved should not be construed in derogation of the policy-determining authority of the State.

The right of the petitioner conditioned upon compliance with the requirement of section 69 of the Corporation Law to protect its rights, is hereby reserved.

The writ prayed for should be, as it hereby is, denied, with costs against the petitioners.

So ordered.

Avanceña, C. J., Diaz, and Horrilleno, JJ., concur.

DISSENTING

MORAN, J.:

Section 69 of the Corporation Law provides that, without license no foreign corporation may maintain by itself or assignee any suit in the Philippine courts for the recovery of any debt, claim or demand whatever. But this provision, as we have held in *Western Equipment & Supply Company vs. Reyes* (51 Phil., 115), does not apply to suits for infringement of trade marks and unfair competition, the theory being that "the right to the use of the corporate and trade name of a foreign co'rporation is a property right, a right in rem, which it may assert and protect in any of the courts of the world even in countries where it does not personally transact any business," and that "trade mark does not acknowledge any territorial boundaries but ex- tends to every mark where the traders' goods have become known and identified by the use of the mark."

For this reason, I dissent from the majority opinion.

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