

CAGAYAN VALLEY ENTERPRISES, INC., REPRESENTED BY ITS PRESIDENT, ROGELIO Q. LIM, PETITIONER, VS. THE HON. COURT OF APPEALS AND LA TONDENA, INC., RESPONDENTS.

G.R. No. 78413. November 08, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review on certiorari seeks the nullification of the decision of the Court of Appeals of December 5, 1986 in CA-G.R. CV No. 06685 which reversed the decision of the trial court, and its resolution dated May 5, 1987 denying petitioner's motion for reconsideration.

The following antecedent facts generative of the present controversy are not in dispute.

Sometime in 1953, LaTondena, Inc. (hereafter, LTI for short) registered with the Philippine Patent Office pursuant to Republic Act No. 623[1] the 350 c.c. white flint bottles it has been using for its gin popularly known as "Ginebra San Miguel." This registration was subsequently renewed on December 4, 1974.[2]

On November 10, 1981, LTI filed Civil Case No 2668 for injunction and damages in the then Branch I, Court of First Instance of Isabela against Cagayan Valley Enterprises, Inc. (Cagayan, for brevity) for using the 350 ex. white flint bottles with the mark "La Tondena, Inc." and "Ginebra San Miguel" stamped or blown-in therein by filling the same with Cagayan's liquor product bearing the label "Sonny Boy" for commercial sale and distribution, without LTI's written consent and in violation of Section 2 of Republic Act No. 623, as amended by Republic Act No. 5700. On the same date, LTI further filed an ex parte petition for the issuance of a writ of preliminary injunction against the defendant therein.[3] On November 16, 1981, the court a quo issued a temporary restraining order against Cagayan and its officers and employees from using the 3 50 c.c. bottles with the marks "La Tondena" and "Ginebra San Miguel." [4]

Cagayan, in its answer,[5] alleged the following defenses:

- LTI has no cause of action due to its failure to comply with Section 21 of Republic Act No. 166 which, requires the giving of notice that its aforesaid marks are registered by displaying and printing the words "Registered in the Phil. Patent Office" or "Reg. Phil. Pat. Off.," hence no suit, civil or criminal, can be filed against Cagayan;
- LTI is not entitled to any protection under Republic Act No. 623, as amended by Republic Act No. 5700, because its products, consisting of hard liquor, are not among those contemplated therein. What is protected under said law are beverages like Coca-cola, Royal Tru-Orange, Lem-O-Lime and similar beverages the bottles whereof bear the words "Reg. Phil. Pat. Off.";
- No reservation of ownership on its bottles was made by LTI in its sales invoices nor does it require any deposit for the retention of said bottles; and

- There was no infringement of the goods or products of LTI since Cagayan uses its own labels and trade-mark on its product.

In its subsequent pleadings, Cagayan contended that the bottles they are using are not the registered bottles of LTI since the former was using the bottles marked with "La Tondena, Inc." and "Ginebra San Miguel" but without the words "property of indicated in said bottles as stated in the sworn statement attached to the certificate of registration of LTI for said bottles.

On December 18, 1981, the lower court issued a writ of preliminary injunction, upon the filing of a bond by LTI in the sum of P50,000.00, enjoining Cagayan, its officers and agents from using the aforesaid registered bottles of LTI.[6]

After a protracted trial, which entailed five (5) motions for contempt filed by LTI against Cagayan, the trial court rendered judgment[7] in favor of Cagayan, ruling that the complaint does not state a cause of action and that Cagayan was not guilty of contempt. Furthermore, it awarded damages in favor of Cagayan.

LTI appealed to the Court of Appeals which, on December 5, 1986 rendered a decision in favor of said appellant, the dispositive portion whereof reads:

"WHEREFORE, the decision appealed from is hereby SET ASIDE and judgment is rendered permanently enjoining the defendant, its officers and agents from using the 350 c.c. white flint bottles with the marks of ownership 'La Tondeña, Inc.' and 'Ginebra San Miguel,' blown-in or stamped on said bottles as containers for defendant's products.

"The writ of preliminary injunction issued by the trial court is therefore made permanent.

"Defendant is ordered to pay the amounts of:

- (1) P15,000.00 as nominal or temperate damages;
- (2) P50,000.00 as exemplary damages;
- (3) P10,000.00 as attorney's fees; and
- (4) Costs of suit."

On December 23, 1986, Cagayan filed a motion for reconsideration which was denied by the respondent court in its resolution dated May 5, 1987, hence the present petition, with the following assignment of errors:

"I. The Court of Appeals gravely erred in the decision granting that 'there is, therefore, no need for plaintiff to display the words "Reg. Phil. Pat. Off." in order for it to succeed in bringing any injunction suit against defendant for the illegal use of its bottles. Rep. Act No. 623, as amended by Rep. Act No. 5700 simply provides and requires that the marks or names shall be stamped or marked on the containers.'

"II. The Court of Appeals gravely erred in deciding that 'neither is there a reason to distinguish between the two (2) sets of marked bottles — those which contain the marks 'Property of La Tondeña, Inc., Ginebra San Miguel,' and those simply marked 'La Tondeña, Inc., Ginebra San Miguel.' By omitting the words "property of," plaintiff did not open itself to violation of Republic Act No. 623, as amended, as having registered its marks or names it is protected under the law.'

"III. The Honorable Court of Appeals gravely erred in deciding that the words 'La Tondeña, Inc. and Ginebra San Miguel' are sufficient notice to the defendant which should have inquired from the plaintiff or the Philippine Patent Office, if it was lawful for it to re-use the empty bottles of the plaintiff.

"IV. The Honorable Court of Appeals gravely erred in deciding that defendant-appellee cannot claim good

faith from using the bottles of plaintiff with marks 'La Tondeña, Inc.' alone, short of the description contained in the sworn statement of Mr. Carlos Palanca, Jr., which was a requisite of its original and renewal registrations.

"V. The Honorable Court of Appeals gravely erred in accommodating the appeal on the dismissals of the five (5) contempt charges.

"VI. The Honorable Court of Appeals gravely erred in deciding that the award of damages in favor of the defendant-appellee, petitioner herein, is not in order. Instead it awarded nominal or temperate,- exemplary damages and attorney's fees without proof of bad faith."9-

The pertinent provisions of Republic Act No. 623, as amended by Republic Act No. 5700, provides:

"SECTION 1. Persons engaged or licensed to engage in the manufacture, bottling, or selling of soda water, mineral or aerated waters, cider, milk, cream or other lawful beverages in bottles, boxes, casks, kegs, or barrels, and other similar containers, or in the manufacturing, compressing or selling of gases such as oxygen, acetylene, nitrogen, carbon dioxide ammonia, hydrogen, chloride, helium, sulphur, dioxide, butane, propane, freon, methyl chloride or similar gases contained in steel cylinders, tanks, flasks, accumulators or similar containers, with the names or the names of their principals or products, or other marks of ownership stamped or marked thereon, may register with the Philippine Patent Office a description of the names or marks, and the purpose for which the containers so marked and used by them, under the same conditions, rules, and regulations, made applicable by law or regulation to the issuance of trademarks.

"SEC. 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller, who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators or other similar containers so marked or stamped, for the purpose of sale, or to sell, disposed of, buy or traffic in, or wantonly destroy the same, whether filled or not, to use the same, for drinking vessels or glasses or drain pipes, foundation pipes, for any other purposes than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of not more than one thousand pesos or imprisonment of not more than one year or both.

"SEC. 3. The use by any person other than the registered manufacturer, bottler or seller, without written permission of the latter of any such bottle, cask, barrel, keg, box, steel cylinders, tanks, flask, accumulators, or other similar containers, or the possession thereof without written permission of the manufacturer, by any junk dealer or dealer in casks, barrels, kegs, boxes, steel cylinders, tanks, flasks, accumulators or other similar containers, the same being duly marked or stamped and registered as herein provided, shall give rise to a prima facie presumption that such use or possession is unlawful."

The above-quoted provisions grant protection to a qualified manufacturer who successfully registered with the Philippine

Patent Office its duly stamped or marked bottles, boxes, casks and other similar containers. The mere use of registered bottles or containers without the written consent of the manufacturer is prohibited, the only exceptions being when they are used as containers for "sisi," "bagoong" "patis" and similar native products.[10]

It is an admitted fact that herein petitioner Cagayan buys from junk dealers and retailers bottles which bear the marks or names "La Tondeña, Inc." and "Ginebra San Miguel" and uses them as containers for its own liquor products. The contention of Cagayan that the aforementioned bottles without the words "property of indicated thereon are not the registered bottles of LTI, since they do not conform with the statement or description in the supporting affidavits attached to the original registration certificate and renewal, is untenable.

Republic Act No. 623 which governs the registration of marked bottles and containers merely requires that the

bottles, in order to be eligible for registration, must be stamped or marked with the names of the manufacturers or the names of their principals or products, or other marks of ownership. No drawings or labels are required but, instead, two photographs of the container, duly signed by the applicant, showing clearly and legibly the names and other marks of ownership sought to be registered and a bottle showing the name or other mark of ownership, irremovably stamped or marked, shall be submitted.[11]

The term "Name or Other Mark of Ownership"[12] means the name of the applicant or the name of his principal, or of the product, or other mark of ownership. The second set of bottles of LTI without the words "property of substantially complied with the requirements of Republic Act No. 623, as amended, since they bear the name of the principal, La Tondeña, Inc., and of its product, Ginebra San Miguel. The omitted words "property of are not of such vital indispensability such that the omission thereof will remove the bottles from the protection of the law. The owner of a trade-mark or trade-name, and in this case the marked containers, does not abandon it by making minor modifications in the mark or name itself.[13] With much more reason will this be true where what is involved is the mere omission of the words "property of since even without said words.the ownership of the bottles is easily identifiable. The words "La Tondeña, Inc." and "Ginebra San Miguel" stamped on the bottles, even without the words "property of," are sufficient notice to the public that those bottles so marked are owned by LTI.

The claim of petitioner that hard liquor is not included under the term "other lawful beverages" as provided in Section 1 of Republic Act No. 623, as amended by Republic Act No. 5700, is without merit. The title of the law itself, which reads "An Act to Regulate the Use of Duly Stamped or Marked Bottles, Boxes, Casks, Kegs, Barrels and Other Similar Containers" clearly shows the legislative intent to give protection to all marked bottles and containers of all lawful beverages regardless of the nature of their contents. The words "other lawful beverages" is used in its general sense, referring to all beverages not prohibited by law. Beverage is defined as a liquor or liquid for drinking.[14] Hard liquor, although regulated, is not prohibited by law, hence it is within the purview and coverage of Republic Act No. 623, as amended.

Republic Act No. 623, as amended, has for its purpose the protection of the health of the general public and the prevention of the spread of contagious diseases. It further seeks to safeguard the property rights of an important sector of Philippine industry.[15]

As held by this Court in *Destileria Ayala, Inc. vs. Tan Tay & Co.*,[16] the purpose of then Act 3070, was to afford a person a means of identifying the containers he uses in the manufacture, preservation, packing or sale of his products so that he may secure their registration with the Bureau of Commerce and Industry and thus prevent other persons from using them. Said Act 3070 was substantially reenacted as Republic Act No. 623.[17]

The proposition that Republic Act No. 623, as amended, protects only the containers of the soft drinks enumerated by petitioner and those similar thereto, is unwarranted and specious. The rule of *ejusdem generis* cannot be applied in this case. To limit the coverage of the law only to those enumerated or of the same kind or class as those specifically mentioned will defeat the very purpose of the law. Such rule of *ejusdem generis* is to be resorted to only for the purpose of determining what the intent of the legislature was in enacting the law. If that intent clearly appears from other parts of the law, and such intent thus clearly manifested is contrary to the result which would be reached by the appreciation of the rule of *ejusdem generis*, the latter must give way.[18]

Moreover, the above conclusions are supported by the fact that the Philippine Patent Office, which is the proper and competent government agency vested with the authority to enforce and implement Republic Act No. 623, registered the bottles of respondent LTI as containers for gin and issued in its name a certificate of registration with the following findings:

"It appearing, upon due examination that the applicant is entitled to have the said MARKS or NAMES registered under R.A. No. 623, the said marks or names have been duly registered this day in the PATENT OFFICE under the said Act. for gin, Ginebra San Miguel.[19]

While executive construction is not necessarily binding upon the courts, it is entitled to great weight and consideration. The reason for this is that such construction comes from the particular branch of government called upon to implement the particular law involved.[20]

Just as impuissant is petitioner's contention that respondent court erred in holding that there is no need for LTI to display the words "Reg. Phil. Pat. Off." in order to succeed in its injunction suit against Cagayan for the illegal use of the bottles. To repeat, Republic Act No. 623 governs the registration of marked bottles and containers and merely requires that the bottles and/or containers be marked or stamped by the names of the manufacturer or the names of their principals or products or other marks of ownership. The owner, upon registration of its marked bottles, is vested by law with an exclusive right to use the same to the exclusion of others, except as a container for native products. A violation of said right gives rise to a cause of action against the violator or infringer.

While Republic Act No. 623, as amended, provides for a criminal action in case of violation, a civil action for damages is proper under Article 20 of the Civil Code which provides that every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same. This particular provision of the Civil Code was clearly meant to complement all legal provisions which may have inadvertently failed to provide for indemnification or reparation of damages when proper or called for. In the language of the Code Commission "(t)he foregoing rule pervades the entire legal system, and renders it impossible that a person who suffers damage because another has violated some legal provisions, should find himself without relief." [21] Moreover, under Section 23 of Republic Act No. 166, as amended, a person entitled to the exclusive use of a registered mark or trade-name may recover damages in a civil action from any person who infringes his rights. He may also, upon proper showing, be granted injunction.

It is true that the aforesaid law on trade-marks provides:

"SEC. 21. Requirements of notice of registration of trade-mark. — The registrant of a trade-mark, heretofore registered or registered under the provisions of this Act, shall give notice that his mark is registered by displaying with the same as used the words 'Registered in the Philippines Patent Office' or 'Reg. Phil. Pat. Off.'; and in any suit for infringement under this Act by a registrant failing so to mark the goods bearing the registered trade-mark, no damages shall be recovered under the provisions of this Act, unless the defendant has actual notice of the registration."

Even assuming that said provision is applicable in this case, the failure of LTI to make said marking will not bar civil action against petitioner Cagayan. The aforesaid requirement is not a condition sine qua non for filing of a civil action against the infringer for other reliefs to which the plaintiff may be entitled. The failure to give notice of registration will not deprive the aggrieved party of a cause of action against the infringer but, at the most, such failure may bar recovery of damages but only under the provisions of Republic Act No. 166.

However, in this case an award of damages to LTI is ineluctably called for. Petitioner cannot claim good faith. The record shows that it had actual knowledge that the bottles with the blown-in marks "La Tondeña, Inc." and "Ginebra San Miguel" are duly registered. In Civil Case No. 102859 of the Court of First Instance of Manila, entitled "La Tondeña, Inc. versus Diego Lim, doing business under the name and style 'Cagayan Valley Distillery,'" a decision was rendered in favor of plaintiff therein on the basis of the admission and/or acknowledgment made by the defendant that the bottles marked only with the words "La Tondena, Inc." and "Ginebra San Miguel" are registered bottles of LTI.[22]

Petitioner cannot avoid the effect of the admission and/or acknowledgment made by Diego Lim in the said case. While a corporation is an entity separate and distinct from its stockholders and from other corporations with which it may be connected, where the discreteness of its personality is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons, or in the case of two corporations, merge them into one. When the corporation is the mere alter ego or business conduit of a person, it may be disregarded.[23]

Petitioner's claim that it is separate and distinct from the former

Cagayan Valley Distillery is belied by the evidence on record. The following facts warrant the conclusion that petitioner, as a corporate entity, and Cagayan Valley Distillery are one and the same, to wit: (1) petitioner is being managed by Rogelio Lim, the son of Diego Lim, the owner and manager of Cagayan Valley Distillery; (2) it is a family corporation;[24] (3) it is an admitted fact that before petitioner was incorporated it was under a single proprietorship;[25] (4) petitioner is engaged in the same business as Cagayan Valley Distillery, the manufacture of wines and liquors; and (5) the factory of petitioner is located in the same place as the factory of the former Cagayan Valley Distillery.

It is thus clear that herein petitioner is a mere continuation and successor of Cagayan Valley Distillery. It is likewise indubitable that the admission made in the former case, as earlier explained, is binding on it as cogent proof that even before the filing of this case it had actual knowledge that the bottles in dispute were registered containers of LTI. As held in *La Campana Coffee Factory, Inc., et al. vs. Kaisahan NgMga Manggagawa sa La Campana (KKM), et al.*,[26] where the main purpose in forming the corporation was to evade one's subsidiary liability for damages in a criminal case, the corporation may not be heard to say that it has a personality separate and distinct from its members, because to allow it to do so would be to sanction the use of the fiction of corporate entity as a shield to further an end subversive of justice.

Anent the several motions of private respondent LTI to have petitioner cited for contempt, we reject the argument of petitioner that an appeal from a verdict of acquittal in a contempt proceeding constitutes double jeopardy. A failure to do something ordered by the court for the benefit of a party constitutes civil contempt.[27] As we held in *Converse Rubber Corporation vs. Jacinto Rubber & Plastics Co., Inc.*:

"x x x True it is that generally, contempt proceedings are characterized as criminal in nature, but the more accurate juridical concept is that contempt proceedings may actually be either civil or criminal, even if the distinction between one and the other may be so thin as to be almost imperceptible. But it does exist in law. It is criminal when the purpose is to vindicate the authority of the court and protect its outraged dignity. It is civil when there is failure to do something ordered by a court to be done for the benefit of a party. (3 Moran Rules of Court, pp. 343-344, 1970ed.; see also *Perkins vs. Director of Prisons*, 58 Phil. 272; *Harden vs. Director of Prisons*, 81 Phil. 741.) And with this distinction in mind, the fact that the injunction in the instant case is manifestly for the benefit of plaintiffs makes of the contempt herein involved civil, not criminal. Accordingly, the conclusion is inevitable that appellees have been virtually found by the trial court guilty of civil contempt, not criminal contempt, hence, the rule on double jeopardy may not be invoked." [28]

The contempt involved in this case is civil and constructive in nature, it having arisen from the act of Cagayan in violating the writ of preliminary injunction of the lower court which clearly defined the forbidden act, to wit:

"NOW THEREFORE, pending the resolution of this case by the court, you are enjoined from using the 350 c.c. white flint bottles with the marks 'La Tondeña Inc.,' and 'Ginebra San Miguel' blown-in or stamped into the bottles as containers for the defendant's products." [29]

On this incident, two considerations must be borne in mind. Firstly, an injunction duly issued must be obeyed,

however erroneous the action of the court may be, until its decision is overruled by itself or by a higher court.[30] Secondly, the American rule that the power to judge a contempt rests exclusively with the court contemned does not apply in this jurisdiction. The provision of the present Section 4, Rule 71 of the Rules of Court as to where the charge may be filed is permissive in nature and is merely declaratory of the inherent power of courts to punish contumacious conduct. Said rules do not extend to the determination of the jurisdiction of Philippine courts.[31] In appropriate cases, therefore, this Court may, in the interest of expedient justice, impose sanctions on contemnors of the lower courts.

Section 3 of Republic Act No. 623, as amended, creates a prima facie presumption against Cagayan for its unlawful use of the bottles registered in the name of LTI. Corollarily, the writ of injunction directing petitioner to desist from using the subject bottles was properly issued by the trial court. Hence, said writ could not be simply disregarded by Cagayan without adducing proof sufficient to overcome the aforesaid presumption. Also, based on the findings of respondent court, and the records before us being sufficient for arbitrament, without remanding the incident to the court a quo petitioner can be adjudged guilty of contempt and imposed a sanction in this appeal since it is a cherished rule of procedure for this Court to always strive to settle the entire controversy in a single proceeding.[32] We so impose such penalty concordant with the preservative principle and as demanded by the respect due the orders, writs and processes of the courts of justice.

WHEREFORE, judgment is hereby rendered DENYING the petition in this case and AFFIRMING the decision of respondent Court of Appeals. Petitioner is hereby declared in contempt of court and ORDERED to pay a fine of One Thousand Pesos (P1,000.00), with costs.

SO ORDERED.

Paras (Acting Chairman), Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, J., (Chairperson), on leave.

[1] An Act to Regulate the Use of Duly Stamped or Marked Bottles, Boxes, Casks, Kegs, Barrels and Other Similar Containers.

[2] Original Record, Civil Case No. 2668. 6-12.

[3] Ibid., id., 1-14.

[4] Ibid., id., 44.

[5] Ibid., id., 45-53.

[6] Ibid., id., 71-73.

[7] Penned by Judge Hfrcn N. Ambrosio.

[8] Rollo, 45; Justice Jose C. Campos, Jr., ponente, with Justice Venancio D. Aldecoa, Jr. concurring and Justice Reynato S. Puno concurring in the result.

[9] Rollo, 7-8, 13-14, 16, 18.

[10] Sec. 6, Republic Act No. 623, as amended.

[11] Rules 128 and 129, Revised Rules of Practice Before the Philippine Patent Office in Trademark Cases.

[12] Rule 33, *id.*, citing Sec. 1, Republic Act No. 623.

[13] *Drexel Enterprises, Inc. vs. Richardson*, (CA10 Kan) 312 F2d 525, *Beech-Nut Packing Co. vs. P. Lorillard Co.* (DC NJ) 299 F 834, *affd* (CA3 NJ) 7 F2d 967. *affd* 273 US 629. 71 L Ed 810, 47 SCT481, as cited in 74 Am. Jur. 2d, 726.

[14] *Burnstein vs. U.S.*, CC. A. Cal.o 55 F2d 599, 603; *Black's Law Dictionary*, Fourth Edition, 204.

[15] *Congressional Record*, Vol. II, No. 69, 942; Exh. 6. Civil Case No. 2668, Folio of Exhibits, 3.

[16] 74 Phil. 301 (1943).

[17] Bxplanatory Note. Mouse Bill No. 1112. *Congressional Record*. 2733-2734. Second Congress of the Republic. First Session. Vol. I, No. 80, Session of May 18, 1950.

[18] *U.S. vs. Sto. Nino*, 13 Phil. 141 (1909).

[19] Exh. B, Original Record, Civil Case No. 2668. 6.

[20] *Ramos vs. Court of Industrial Relations*, 21 SCRA 1282 (1967).

[21] Report of the Code Commission on the Proposed Civil Code of the Philippines(1948), 39.

[22] Exh. F, F-2, Original Record, Civil Case No. 2668. 270-275.

[23] *Yutivo & Sons Hardware Company vs. Court of Tax Appeals*, 1 SCRA 161 (1961).

[24] Original Record, Civil Case No. 2668. TSN. Sept. 19. 1984,3.

[25] *Ibid.*, *id.*, TSN, Nov. 13, 1984. 120-121.

[26] 93 Phil. 160(1953).

[27] *Mabale, el al. vs. Apalisok, el al.*, U SCRA 234 (1979).

[28] 97 SCRA 158 (1980).

[29] Original Record, Civil Case No. 2668, 109.

[30] *Harden vs. Pena, et al.*, 87 Phil. 620 (1950).

[31] *People vs. De Luna, et al.*, 102 Phil. 968 (1958).

[32] *Alger Electric, Inc. vs. Court of Appeals, et al*, 135 SCRA 37 (1985); *Liang Bay Logging Co., Inc., et al. vs. Court of Appeals, et al.*, 157 SCRA 357(1988).

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