

**LA TONDEÑA DISTILLERS, INC., PETITIONER, VS. COURT OF APPEALS, NATIVIDAD AD-DURU SANTILLAN, JUDGE, BRANCH 38, RTC, MANILA, DEPUTY SHERIFF REGIO RUEFA AND TEE CHIN HO, RESPONDENTS.**

*G.R. No. 88938. June 08, 1992*

Ponente: NARVASA, J.

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**NARVASA, J.:**

The appellate proceedings at bar originated from an action of "replevin with damages" instituted in the Regional Trial Court of Manila by La Tondeña Distillers, Inc. against a person named "Te Tien Ho," described in the complaint as a "junk dealer" or owner of a "second hand store" with "office/bodega at 1005 Estrada St., Singalong, Manila." The action was docketed as Civil Case No. 89-47768 and assigned to Branch 38 of the Manila RTC, presided over by Hon. Natividad G. Adduru-Santillan.

In its verified complaint,[1] La Tondeña Distillers, Inc. (hereafter, simply La Tondeña) set out the following facts, to wit:

1) that "it manufactures and sells \*\* a gin popularly known as 'Ginebra San Miguel,' which is contained in 350 c.c. white flint bottles with the marks of ownership 'LA TONDEÑA, INC.' and 'GINEBRA SAN MIGUEL' stamped or blown-in to the bottles which \*\* (it [La Tondeña]) specially ordered from the bottle manufacturers for its exclusive use;"

2) that said white flint bottles were registered with the Philippine Patent Office by La Tondeña's predecessor-in-interest in accordance with Republic Act No. 623,[2] as amended,[3] the registration having thereafter been renewed and being valid and subsisting;

3) that use of the registered bottles by any one without written permission of the owner is declared unlawful by Section 2 of R.A. 623, as amended, pertinently reading as follows:

"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 \* \* for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not \* \* ."

4) that the sale of the gin in the registered white flint bottles does not include the sale of the bottles themselves; in fact, La Tondeña's "sales invoices never specified that the sale of the beverage includes the sale of the container;" and

5) that the defendant "Te Tien Ho" has in his possession a quantity of the registered bottles worth P20,000.00, and on the basis of these facts, prayed that:

"(a) Upon the filing and approval of a bond in the amount of P40,000.00, \* \* (the) Court issue an order directing

the Sheriff or other proper officer \*\* to take into his custody all the 350 c.c. bottles of the plaintiff in the possession of the defendant \* \* and to dispose of the same in accordance with the rules of court;

(b) After trial plaintiff be adjudged the lawful owner and possessor of the said bottles and \* \* judgment (be rendered) in the alternative against the defendant for the delivery thereof to plaintiff, or for the payment \* \* of the value thereof in case delivery cannot be made;" and

(c) Defendant be made to pay actual, nominal and temperate and exemplary damages in specific stated amounts (aggregating P75,400.00), as well as attorney's fees in the amount of P50,000.00.

Judge Santillan issued the writ of delivery prayed for on February 13, 1989 upon La Tondeña's posting of a bond in the amount of P40,000.00. In implementation of the writ, Deputy Sheriff Regio Ruefa seized on February 22, 1989 20,250 bottles with the blown-in marks, 'La Tondeña, Inc.' and 'Ginebra San Miguel' from No.1105 Estrada St., Singalong.[4] On that occasion Mr. Ruefa executed a handwritten "Receipt" of the following tenor:[5]

'RECEIVED FROM MR. TE TIEN HO 405 BOXES/50 \*\* (20,250) bottles, pieces 350 c.c. bottles, marks BLOWN-IN 'LA TONDEÑA INC. and GINEBRA San Miguel' subject of the Order of seizure in Civil Case No. 89--47768 entitled 'LA TONDEÑA INC. vs. TE TIEN HO located at 1105 Estrada St., Singalong, Manila.

\* \* \* \* \* Feb. 22, 1989.

FOR: THE SHERIFF OF MANILA

Note:

(405 boxes/50

OK EMPTY

20,250 bottles)

WITNESS BY :

(s) ALEXANDER ELLEVE[6]

Plaintiff

(s) TEE CHIN HO [7] \* \* \* \* \*

Defendant \* \* \* \* \*."

It is noteworthy that Tee Chin Ho, denominated "defendant," signed Sheriff Ruefa's receipt as a witness. He does not deny his intervention in the receipt and in fact, as will shortly be narrated, insists that it was from him that the bottles were seized. Furthermore, Sheriff Ruefa's return dated March 3, 1989 attests that prior to seizing the bottles, he served summons, copy of the complaint and its annexes, copy of the bond, and the writ of seizure personally on "defendant Te Tien Ho,[8] who requested his wife Perla Diolesa to sign his name on the original copy of the summons and the writ of seizure for and in his own behalf, such service and implementation of the writ of seizure having been effected "at 1105 Estrada St., Singalong, Manila and not at 1005 Estrada St., Singalong, Manila, as evidence(d) by the signature appearing on the original summons and writ." [9]

The five-day period prescribed by law within which the sufficiency of the replevin bond might be objected to or the return of the property seized required,[10] expired without any person objecting to the bond or seeking the return of the bottles. Instead an individual identifying himself as "Tee Chin Ho" filed on March 1, 1989 a pleading denominated "ANSWER (with preliminary injunction and compulsory counterclaim)," [11] which opened with a plea that he be given "leave to intervene as party who has legal interest in the matter in litigation

such that he would be adversely affected by a distribution or disposition of the property in litigation," and a declaration that he was submitting the answer "as party-intervenor." The answer asserted that -

- 1) all purchases of La Tondena's gin necessarily included the bottles containing the gin; hence ownership of the bottles did not remain in La Tondeña but was transferred to the purchasers;
- 2) it was from him, Tee Chin Ho, and not from Te Tien Ho, that the bottles in question had been taken by Sheriff Ruefa, and the taking had occurred at 1105 Estrada Street (his [Tee Chin Ho's] place of business) and not at 1005 Estrada Street, the address given in the complaint; and
- 3) La Tondeña had "masterminded and caused two instances of seizure against intervenor, first through and by the Manila City police, and second through the Court's sheriff (copies of the receipts of seizures \* \* (being attached to and made parts of the answer) as Annexes '5' and '6'[12])."[13] Parenthetically, the text of the receipt, Annex 6, has already been set out herein, supra.[14] The other receipt, drawn up on October 6, 1988 -- about four months earlier -- and referred to as Annex 5 -- reads as follows:

**"DATE OCT. 6, 1988**

**TIME 9:50 AM**

**FROM: TEE CHIN HO JUNK SHOP**

ITEMS: QUANTITY:

432X50 (pcs. 21,600)

GSM ROUND 350 ml

GSM FRASCO 700 ml

GSM \* \* 350 ml

ANEJO FLAT 375 ml

ANEJO OVAL 750 ml

ISSUED BY: (s) PAT. BENITO DE LEON

RECEIVED BY: (s) F. LAZARO 10/6/88,"

and, on the basis of the foregoing allegations, prayed "for the issuance forthwith of a writ of preliminary mandatory and prohibitory injunction \* \* and, after due proceedings, that said writs be made permanent and that judgment be issued dismissing the complaint and, with respect to intervenor's compulsory counterclaim, that awards be made for actual damages in the sum of P300,000.00, moral damages in the sum of P1,000,000.00, exemplary damages in the sum of P2,000,000.00, and P100,000.00 to cover attorney's fees and litigation expenses \* \* ."

On March 3, 1989 the Sheriff delivered the 20,250 empty bottles seized by him to La Tondeña.[15]

The Court set Tee Chin Ho's application for injunction for hearing on March 17, 1989 but by Order of the same date, reset the hearing to April 3, 1989 to give La Tondeña time to file a reply. It however issued on the same day, April 3, 1989, a temporary restraining order "to preserve the status quo and to prevent further damages, \* \* (enjoining) the plaintiff, or other persons acting for and in its behalf, from seizing or otherwise confiscating any bottles subject of the writ of seizure dated February 20, 1989 from the movant Tee Chin Ho of 1105 Estrada

Street, Singalong, Manila, until further orders. \* \*. "[16]

La Tondeña filed its Reply on March 1, 1989 and its opposition to the application for injunction on April 3, 1989[17] -- which latter date, as aforesaid, was the date to which Tee Chin Ho's application for injunction was reset. La Tondeña also filed, under date of April 5, 1989, a "Motion to Admit Attached Amended Complaint with Motion to Dismiss Motion for Intervention and Petition for Preliminary Injunction," which it set for hearing on April 10, 1989 at 8:30 A.M.[18] In this motion La Tondeña alleged inter alia that Tee Chin Ho's answer-in-intervention had not yet been admitted (the implication clearly being that it still could amend its complaint as a matter of right[19]); that the amendment it wished to make in its complaint consisted merely in correcting the "spelling in the name of the defendant as well as his address," considering that as shown by the receipts annexed to the answer-in-intervention, "Tee Chin Ho with address at 1105 Estrada St., Singalong, Manila and Te Tien Ho with address at 1005 Estrada St., Singalong, Manila, \*\* (are) one and the same person;" and that Tee Chin Ho had "waived his right to question the incorrect spelling of the name \*\* and \*\* address when he voluntarily signed the sheriff's receipt dated February 22, 1989 through his wife \* \* ."

On April 7, 1989, Judge Adduru-Santillan promulgated an Order ruling "for intervenor Tee Chin Ho" and directing issuance of "a writ of preliminary prohibitory injunction and a writ of preliminary mandatory injunction \* \* as prayed for in the answer in intervention, upon intervenor's filing a bond in the amount of Forty-Five Thousand Pesos (P45,000.00)." The Order was made to rest on the following findings, to wit:

" \* \* that the seizure authorized by the Court's writ of replevin is only against the person whose name and address is pleaded in the complaint namely TE TIEN HO at No. 1005 Estrada St., Singalong, Manila; the two truckloads of empty bottles seized by the Manila Police (Exhibit '4') and by the Sheriff of Manila (Exhibit '5') from intervenor Tee Chin Ho is improper and unlawful; intervenor Tee Chin Ho possessor of the two truckloads of empty bottles is presumed under the civil law as the owner thereof (Article 433 and 541, Civil Code); that even under Republic Act 623, as amended by Republic Act 5700, the fact that the law provides that the sale of the bottled products does not ipso jure carry with it the sale of the bottle yet the same law negates any right of action of plaintiff manufacturer and seller to recover the empty bottles from 'any person to whom the registered manufacturer . . . seller has transferred . . . any of the containers (Section 5) and, moreover, the statute expressly exempts from its coverage the use of bottles as containers for 'sisi', 'bagoong,' 'patis,' and similar native products' (Section 6); and that the due process clause protects intervenor in his right to earn his livelihood through engagement in his junk shop business (Quisumbing and Fernando, Philippine Constitutional Law, p. 80)."

Then Judge Adduru-Santillan issued the "writ of mandatory and prohibitory injunction" on April 11, 1989 -

1) "ordering plaintiff La Tondeña Distillers, Inc., its agents, duly authorized representatives or other persons acting for and in its behalf to return and restore unto intervenor Tee Chin Ho at his address at 1105 Estrada St., Singalong, Manila, all 41,850 empty bottles/containers with blown up mark 'La Tondeña Inc.' and 'Ginebra San Miguel' seized from intervenor mentioned in Annexes '4' and '5' of the answer-in-intervention;" and

2) "enjoining plaintiff from using, employing, inducing, corrupting or, otherwise causing members of the Manila Police Force and/or other persons for the purpose of seizing bottles/containers bearing the marks 'La Tondeña Inc.' or 'Ginebra San Miguel' found in intervenor's possession at his address at 1105 Estrada St., Singalong, Manila, until further orders \* \* ."

Earlier, on April 10, 1989, at the hearing of La Tondeña's motions (a) to dismiss application for injunction and (b) to amend its complaint. Judge Adduru-Santillan informed the parties that the motion to amend complaint was deemed "submitted for resolution but that (s)he had already granted the petition for the issuance of preliminary mandatory and prohibitory injunction, \* \* (and that) effective April 26, 1989, she will not be holding trial due to her application for retirement." [20] La Tondeña learned on the same day that by Order dated April 7, 1989, the

Judge had admitted Tee Chin Ho's answer in intervention.[21]

This Order La Tondeña assailed in the Court of Appeals. On April 19, 1989, it filed with that Court a petition "for Certiorari, Prohibition and Mandamus with Preliminary Prohibitory and Mandatory Injunction and/or Temporary Restraining Order." [22] In its petition, it alleged that Judge Santillan had in effect adjudicated the case on the merits without trial; she had ignored and failed to apply, or grossly misconstrued, the relevant provisions of R.A. 623, as amended; she had disregarded circumstances on record showing that Te Tien Ho and Tee Chin Ho are one and the same person; she had, albeit utterly without authority, taken cognizance of and passed upon the alleged seizure by the Manila Police of bottles from Tee Chin Ho on another, earlier occasion; and she "should have disqualified herself from acting on the petition or at least requested that it be transferred to her pairing judge." La Tondeña thus prayed for judgment "declaring null and void and of no effect and force the order dated April 7, 1989 \* \* \* including the writ of prohibitory, mandatory injunction dated April 11, 1989 and directing respondent sheriff Rufio [23] Ruefa to refrain from enforcing the said writ, commanding the respondent judge to desist from conducting any further proceedings in civil case no. 89-47768 \* \* \* ." It also prayed for a temporary restraining order, which the Court of Appeals granted by Resolution dated April 21, 1989 "in order not to render moot and academic the issue/issues raised \* \* \* ." [24]

The Court of Appeals promulgated its judgment on the case on May 18, 1989. [25] It dismissed La Tondeña's petition. It declared that the petition did "not prima facie reveal such sufficiency in substance as would merit its being given due course;" that even "granting arguendo that the errors pointed out by petitioner had indeed attended respondent Judge's issuance of the assailed Order, these errors cannot be corrected by means of certiorari, \* \* \* the appropriate remedy \* \* \* being a timely appeal from the judgment on the merits;" and that the "solidly grounded and well-reasoned discussion of respondent Judge (in her challenged order) \* \* \* cannot be consistent with a finding \*\* that she indulged in a whimsical and capricious or arbitrary and despotic exercise of judgment, characteristic of the grave abuse of discretion calling for certiorari ."[26]

La Tondeña filed a motion for reconsideration of the decision [27] which was denied by Resolution dated June 29, 1989. [28] It then seasonably appealed to this Court on certiorari; and here it ascribes several errors to the Court of Appeals, i.e., in not finding that ?

- 1) " \* \* the Respondent Judge acted without jurisdiction and with grave abuse of discretion in including in \*\* (her) order the return of 21,600 registered bottles allegedly seized by the Manila Police on October 6, 1988, which were not the subject of the case and not within the jurisdiction of the trial court;
- 2) the Respondent Judge had violated fundamental rules on injunctions, viz.:
  - a) "that a mandatory injunction shall not issue in favor of a party whose rights are not clear;"
  - b) "that no advantage may be given (by an injunction to one (party) to the prejudice of the other;"
  - c) "that \*\* (an injunction's) primary purpose is to preserve the status quo;"
- 3) " \*\* the Respondent Judge violated a rule on Replevin that the disposition of a property seized under a replevin order upon the defendant shall be done only within 5 days from date of seizure;"
- 4) " \*\* the Respondent Judge utterly failed to apply the law in question, RA 623 as amended by RA 5700;"
- 5) " \*\* the act of Respondent Judge in \*\* granting the preliminary injunction was tainted with procedural infirmities;" and
- 6) Tee Chin Ho and Te Tien Ho are one and the same person.

## I

A defendant or other party in a replevin proceeding against whom a writ of seizure has issued has the following alternative remedies set forth in Section 5, Rule 60 of the Rules of Court, viz.:

"SEC. 5. Return of property.--If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property as stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney."

The defendant may avail of these alternative options only within five (5) days after the taking of the property by the officer. This is made plain albeit impliedly by Section 6 of the same Rule, providing as follows:[29]

SEC. 6. Disposition of property by officer.--If within five (5) days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects, and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason, the property is not delivered to the plaintiff, the officer must return it to the defendant."

Thus if a defendant in a replevin action wishes to have the property taken by the sheriff restored to him, he should within five days from such taking, (1) post a counter-bond in double the value of said property,[30] and (2) serve plaintiff with a copy thereof, both requirements -- as well as compliance therewith within the five-day period mentioned -- being mandatory.[31]

Alternatively, "the defendant may object to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon;" but if he does so, "he cannot require the return of the property" by posting a counter-bond pursuant to Sections 5 and 6.

In other words, the law does not allow the defendant to file a motion to dissolve or discharge the writ of seizure (or delivery) -- on the ground of insufficiency of the complaint or of the grounds relied upon therefor, as in proceedings on preliminary attachment or injunction,[32] and thereby put at issue the matter of the title or right of possession over the specific chattel being replevied, the policy apparently being that said matter should be ventilated and determined only at the trial on the merits.

On the other hand, a stranger to the action, i.e., a person not a party to the action, or as the law puts it, "any other person than the defendant or his agent," whose property is seized pursuant to the writ of delivery, is accorded the remedy known as a *terceria*, a third party claim, to wit:

"SEC. 7. Third-party claim.--If the property taken be claimed by any other person than the defendant or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer while he has possession of the property, and a copy thereof upon the plaintiff, the officer is not bound to keep the property or deliver it to the plaintiff, unless the plaintiff or his agent, on demand of the officer, indemnifies him against such claim by a bond in a sum not greater than the value of the property, and in case of disagreement as to such value the same shall be decided by the court issuing the order. The officer is not liable for damages, for the taking or keeping of such property, to any other person than the defendant or his agent, unless such a claim is so made and the action upon the bond brought within one hundred and twenty (120) days from the date of the filing of said bond. But

nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action. However, when the plaintiff, or the person in whose behalf the order of delivery was issued, is the Republic of the Philippines, or any officer duly representing it, the filing of bond shall not be required, and in case the sheriff or the officer executing the order is sued for damages as a result of such execution, he shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds to be appropriated for the purpose."

The remedy is identical to that granted to strangers in a proceeding on preliminary attachment or execution of judgments.[33]

In lieu of, or in addition to the filing of a *terceria*, the third party may, as Section 7 points out, vindicate "his claim to the property by any proper action." This effort at vindication may take the form of a separate action for recovery of the property, or intervention in the *replevin* action itself.[34]

It was thus imperative for the Trial Judge, before ultimately resolving the motion for leave to intervene as party defendant of the person identifying himself as "Tee Chin Ho," to determine the precise status of said "Tee Chin Ho:" whether he was indeed a stranger to the action, as he claims, and could therefore avail of the remedy of intervention as a party defendant, or he was in truth a proper party defendant, who had been mistakenly and inadvertently referred to as "Te Tien Ho," and who therefore only had the alternative remedies aforementioned of either (a) objecting to the *replevin* bond or the surety or sureties thereof or (b) posting a counter-bond to compel return of the property.

As of April 11, 1989, when the Trial Judge issued the "writ of mandatory and prohibitory injunction," she was aware, or should have known, of certain facts in the record bearing strongly on the identity of "Tee Chin Ho," namely: -

- 1) that "Tee Chin Ho" was actually served with summons at his junk shop at Estrada Street;
- 2) that the bottles described in La Tondeña's complaint and the writ of delivery were actually found at his establishment, and were there seized;
- 3) that Tee Chin Ho's shop is the only junk shop on Estrada Street;
- 4) that "Tee Chin Ho" did not then protest to the sheriff that he was not the defendant named in the summons, "Te Tien Ho," or that his address was different from that indicated in the process; instead he asked his wife to sign his name on the sheriff's receipt wherein he was described as "defendant," as well as "on the original copy of the summons and the writ of seizure for and in his own behalf;"[35]
- 5) that "Tee Chin Ho" is not phonetically all that different from "Te Tien Ho;"
- 6) that "Tee Chin Ho" admitted that earlier, he had been found in possession of empty bottles marked "La Tondeña, Inc." and "Ginebra San Miguel," which had been seized by Manila police officers; and
- 7) that La Tondeña had filed a "motion to admit attached amended complaint with motion to dismiss motion for intervention and petition for preliminary injunction" dated April 5, 1989, in which it alleged *in alia*, in relation to the amendment of its complaint, that ?
  - a) the "name of defendant Tee Chin Ho and his address at 1105 Estrada St., Singalong, Manila \*\* (had been) inadvertently indicated as Te Tien Ho with address at 1005 Estrada St., Singalong, Manila in the complaint;"
  - b) the amendment consisted merely in the correction of "the spelling in the name of the defendant as well as his address \*\*,"

c) the error in La Tondeña's identification of the defendant was not a fatal one since the principal object of the replevin suit was the recovery of identifiable bottles in the wrongful possession of another; and

d) in any case, Tee Chin Ho had waived his right to object to such an error.

There were thus circumstances of record, of which Her Honor was charged with knowledge, that tended to show that La Tondeña's proffered thesis was not entirely far-fetched: that the real target of its replevin suit was a junk dealer at Estrada Street, Singalong, Manila, who was in unlawful possession of a large number of its empty bottles, whose name and address had been mistakenly stated in the original complaint but could nonetheless be ascertained. At the very least, therefore, it was a matter of preferential priority for the Judge to determine whether "Tee Chin Ho" is in fact "Te Tien Ho," and thus enable her to know, to turn, whether or not the remedy of intervention was proper in the premises, instead of that provided in Section 5 of Rule 60, *supra*. In other words, unless there were a prior determination by Her Honor of whether or not "Tee Chin Ho" was a proper party defendant or a stranger to the action, she was in no position to adjudge that his intervention as party defendant was correct. But this is what respondent Judge did. Without first making that prior determination, she proceeded to pass upon the motion for intervention; she just simply assumed and declared that Tee Chin Ho was not Te Tien Ho. She thus appears to have acted without foundation, rashly, whimsically, oppressively.

## II

Also overlooked by respondent Judge was that the amendment sought by La Tondeña was one of those explicitly mentioned, and could, in the premises, be made as a matter of right, in accordance with Sections 1 and 2, Rule 10 of the Rules of Court, *viz.*:<sup>[36]</sup>

"SECTION 1. Amendments in general.--Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and the most expeditious and inexpensive manner.

SECTION 2. When amendments allowed as a matter of right.--A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served."

It is plain from the record that at the time that La Tondeña moved to amend its complaint to correct "a mistake in the name of a party" and "a mistaken or inadequate allegation or description" of that party's place of residence or business, no effective "responsive pleading" (i.e., the answer) had been served on it by the person impleaded in the action as defendant; for the admission of Tee Chin Ho's answer-in-intervention (with permissive counterclaim) was yet hanging fire and no notice of the Court's action thereon had been served on La Tondeña. Clearly, then, the amendment which La Tondeña wished to make was a matter of right in accordance with Section 2, Rule 10. Being directed at a "defect in the designation of the parties," it was in truth a correction that could be summarily made at any stage of the action provided no prejudice is caused thereby to the adverse party," as Section 4 of the same Rule 10 further provides.

It is simply amazing why in light of all these factual and legal considerations, respondent Judge did not quickly admit the amendment in question to correct the mistaken reference to Tee Chin Ho as Te Tien Ho, but what is worse, first granted leave to Tee Chin Ho's intervention, and then indefinitely deferred the matter of the amendment of the complaint by simply declaring it "submitted for resolution" and commending it to the attention of the Judge who would succeed her in her sala in view of her impending retirement. The Judge thus appears to have acted in disregard of the plain provisions of the Rules, whimsically, oppressively.

### III

It is amazing, too, why Tee Chin Ho -- who was already actually a defendant because he had been served with summons and had implicitly acknowledged his status as such by signing or causing the signing of his name to certain papers in which he was described as defendant -- should thereafter still have moved to intervene in the action as defendant in intervention. The more direct step indicated under the circumstances, since he had already been brought into the action as defendant, although against his will, was merely to draw the court's attention, by some appropriate motion or pleading, to the lack of any cause of action against him because he was not the person impleaded as defendant in the complaint and, of course, seek relief from the writ of seizure and the recovery of such damages as might have been caused to him by the enforcement thereof. However, Tee Chin Ho chose the more circuitous path: although already technically a defendant, he still filed a motion to intervene as defendant, and also with the same basic objective: to tell the Court he was not the person named in the complaint, and to recover the property seized from him as well as damages.

By this maneuver, Tee Chin Ho was able to evade the legal consequences of the expiration of the five-day period prescribed by Section 5 (in relation to Section 6) of Rule 10, *supra*; he succeeded in recovering the bottles in question even after the expiry of said period, and what is more, as defendant in intervention, he was able to put at issue the propriety of the ground relied upon for a writ of delivery -- which he would have been disqualified to do as defendant. It was seriously wrong for the Court to have sanctioned such a maneuver.

### IV

Again, the subject of La Tondeña's replevin suit, as already stated, are the 20,250 bottles seized from Tee Chin Ho on February 22, 1989 on the strength of the writ of delivery of February 13, 1989.

But the Trial Court's Order of April 7, 1989, directed La Tondeña to "return and restore unto intervenor Tee Chin Ho \* \* all 41,850 empty bottles/containers with blown up mark 'La Tondeña Inc.' and 'Ginebra San Miguel' seized from intervenor mentioned in Annexes '4' and '5' of the answer-in-intervention" -- more particularly, in the permissive counterclaim set out in said answer-in-intervention. In other words, the Court ordered the return not only of the 20,250 bottles seized pursuant to its writ of delivery of February 13, 1989, but also the quantity of bottles claimed by Tee Chin Ho to have been seized from him by Manila Police officers at an earlier date.

Now, as regards these bottles earlier taken into custody by the Manila Police, certain circumstances are germane, namely:

- 1) the claim therefor was made in a permissive counterclaim, it not appearing that said claim "arises out of or is necessarily connected with, the transaction or occurrence that is the subject matter of the opposing party's \*\* claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction;"[37] and
- 2) the only evidence on record is the receipt issued by the officers involved in the seizure (Annex 5, answer-in-intervention); the police officers were not impleaded as parties defendant on Tee Chin Ho's counterclaim nor required to appear and give evidence on said seizure; no proof was ever adduced by Tee Chin Ho of the reason for the confiscation of the bottles, or whether or not the bottles had been turned over to La Tondeña.

It does not appear that any docketing fees were paid by Tee Chin Ho for his permissive counterclaim. At no point has Tee Chin Ho ever stated that he had indeed paid any filing or other fees thereon. The Trial Court, therefore, should not have admitted the permissive counterclaim, much less issued preliminary mandatory and prohibitory injunctions founded on the averments thereof.[38]

The Trial Court also required La Tondeña to return to Tee Chin Ho the bottles seized from the latter by Manila police officers notwithstanding the absence of any showing whatever that, the confiscation of those bottles had been had at La Tondeña's instance or, more importantly, that the bottles had been turned over to La Tondeña, and without requiring the police officers concerned to give evidence of the facts surrounding the seizure of those bottles.

It being presumed that "official duty has been regularly performed" and "the law has been obeyed,"[39] the act of seizure of the police officers cannot initially be deemed unlawful upon its face, in the absence of evidence of the circumstances under which they effected the seizure. Indeed, since regularity may be assumed in the act of the police officers in question, it may not unreasonably be supposed that they acted in virtue of a search warrant or some order of a competent Court -- a court other than respondent Judge's, which would consequently have jurisdiction, to the exclusion of the Court a quo, to release the bottles. Prudence thus dictated that the respondent Judge, at the very least, require evidence on this matter: as to why seizure was made and whether or not, the bottles had been surrendered to La Tondeña -- so that it could be ordered to return them to Tee Chin Ho. But this the respondent Judge did not do. Without knowing if jurisdiction over the bottles seized by the Manila Police was in another court, without requiring the officers concerned to appear and shed light on the issue, without knowing if the bottles were indeed in possession of La Tondeña, she required La Tondeña to restore possession thereof to Tee Chin Ho. In doing so, Her Honor acted quite imprudently, recklessly, capriciously, oppressively.

## V

Finally, it would appear that respondent Judge, in resolving an application for a provisional remedy, in the process already disposed of the case on the merits. The basic issue in the action at bar is whether or not La Tondeña has a right of action to prevent the use by Tee Chin Ho (or as he was mistakenly named in the complaint: Te Tien Ho) of the bottles especially manufactured for it pursuant to its specifications. This issue was resolved by respondent Judge in her challenged Order of April 7, 1989 in the following manner:

" \*\* even under Republic Act 623, as amended by Republic Act 5700, the fact that the law provides that the sale of the bottled products does not ipso jure carry with it the sale of the bottle, yet the same law negates any right of action of plaintiff manufacturer and seller to recover the empty bottles from 'any person to whom the registered manufacturer . . . seller has transferred . . . any of the containers (Section 5) and, moreover, the statute expressly exempts from its coverage the use of bottles as containers for 'sisi', 'bagoong', 'patis,' and similar native products' (Section 6); and that the due process clause protects intervenor in his right to earn his livelihood through engagement in his junk shop business (Quisumbing and Fernando, Philippine Constitutional Law, p. 80).

"It is of public knowledge that when a person purchases a drink, whatever it may be, the buyer is required to deposit an amount for the bottles and if the empty bottles, after consuming its contents, is not returned, then the buyer is answerable for the empty bottle, thereby converting the transaction to one of a sale to include the bottle thereof and the seller would not and shall not be permitted to complain and recover the said bottles until and unless the corresponding deposit is returned to the buyer in exchange of the bottle."

Such a ruling having been handed down, what else, it may be asked, would still have to be resolved at the trial, and stated in its final judgment, as regards the merits of the action?

Said ruling, moreover, does not seem to be correct, being in conflict with Section 3 of Republic Act No. 623, which reads:[40]

"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, flasks, accumulators, or

other similar containers, or the possession thereof without any written permission of the manufacturer, by any junk dealer or dealer in casks, barrels, kegs, boxes, steel cylinders, tanks, flask 3, 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."

Since Tee Chin Ho never denied being a junk dealer -- indeed, his registered business name describes him as one such[41] -- or that he did not have La Tondeña's written permission to possess the bottles in question, a correct application of the law called for invoking the presumption created by the confluence of these twin circumstances to deny said respondent any right to the possession or use of the bottles, instead of ordering their return to him, howsoever provisionally. And lacking any showing that La Tondeña conveyed the bottles, sans contents, to Tee Chin Ho, or that the latter is a bottler of "sisi," "bagoong," or similar products, no argument can be made for extending to him the exemptive provisions of Sections 5 and 6 of the same Act cited in the questioned Order of the Regional Trial Court.

## VI

All the foregoing considered; the Court is satisfied that the grave errors ascribed to the Regional Trial Court were in fact committed; and that it was quite wrong for the Court of Appeals to have failed to declare those errors as constituting grave abuse of discretion, and to have upheld the Order assailed in these proceedings.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals complained of is REVERSED. The Order of April 7, 1989 of the Regional Trial Court of Manila in Civil Case No. 89-47768 and the Writ of Mandatory and Prohibitory Injunction of April 11, 1989 issued pursuant thereto are ANNULLED and SET ASIDE. The status quo obtaining prior to the issuance of said Order and Writ is ORDERED RESTORED, and the proceedings in said case shall continue as if they had never been issued. Costs against the private respondent.

## SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.

Nocon, J., on leave.

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[1] Rollo, pp. 33-38. The complaint was verified by two Product Investigation Officers of plaintiff La Tondeña.

[2] "An Act to Regulate the Use of Duly Stamped or Marked Bottles, Boxes, Casks, Kegs, Barrels and other Similar Containers"

[3] By R.A. 5700

[4] Not No. 1005, as alleged in the verified complaint

[5] Rollo, pp. 70, 76: Annex 6 of Tee Chin Ho's Answer-in-intervention in Civil Case No. 89-47768, being apparently a copy of Exhibit 5, submitted by said Tee Chin Ho at the hearing on his application for injunction in said Civil Case No. 89-47768

[6] Evidently one of the two (2) affiants who later verified La Tondena's complaint, signing as Alex Elleve, the other being Felipe Empeynado

[7] N.B. Tee Chin Ho signed the sheriff's receipt as witness and "defendant" although the receipt recites that the bottles were seized from "TE TIEN HO located at 1105 Estrada St., Singalong, Manila."

[8] It is La Tondeña's position that Te Tien Ho and Tee Chin Ho are one and the same person.

[9] Rollo, p. 77

[10] SEC. 6, Rule 60: "Disposition of property by officer.--If within five (5) days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section [by filing a counter-bond "in double the value of the property as stated in the plaintiff's affidavit"], \* \* \* the property shall be delivered to the plaintiff. \* \* \*."

[11] Rollo, pp. 54-64, with Annexes 1 to 6, inclusive

[12] "Annex 6" is the receipt executed by Sheriff Ruefa: SEE footnotes 5 to 7, *supra*

[13] Italics supplied

[14] SEE footnote 5 and related text, *supra*

[15] SEE footnote 8, *supra*

[16] Rollo, p. 71

[17] *Id.*, p. 85

[18] *Id.*, pp. 72-75

[19] SEC. 2, Rule 10 of the Rules of Court pertinently provides that "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served \* \* \*."

[20] Par. 3 (n), petition in C.A., Rollo, p. 98: an allegation never denied

[21] Par. 3 (o), petition in C.A.

[22] Docketed as CA-G.R. SP No. 17384

[23] Correctly quoted from p. 117, rollo, but the correct name is "Regio"

[24] Rollo, p. 105

[25] Written for the Eighth Division by Lombos-de la Fuente, J., Chairman, and concurred in by Herrera and Santiago, JJ.

[26] Rollo, pp. 134-140

[27] *Id.*, pp. 141-157

[28] *Id.*, p. 32

[29] Underscoring supplied; see footnote 10, *supra*

[30] Like the plaintiff's replevin bond: Sec. 2 (last par.), Rule 60

[31] *Chan v. Villanueva, et al.*, et al., April 30, 1952; *Case and Nantz v. Jugo, et al.*, 77 Phil. 517; *Bachrach Motor Co., Inc. v. Albert*, 60 Phil. 308, cited in *Moran, Comments on the Rules*, 1980 ed., Vol. 3, p. 129

[32] SEE Sec. 13, Rule 57 and Sec. 6, Rule 58, Rules of Court, respectively

[33] SEE Sec. 14, Rule 57 and Sec. 17, Rule 39, respectively

[34] SEE *Ong v. Tating*, 149 SCRA 269

[35] Sheriffs Return, March 3, 1989, Annex B, Petition: Rollo, p. 77 (see footnote 7, *supra*)

[36] Emphasis supplied

[37] Sec. 4, Rule 9, Rules of Court

[38] SEE *Manchester v. C.A.*, 149 SCRA 562; *Taccay v. RTC*, 180 SCRA 433

[39] Sec. 2 (m) and (ff), Rule 131, Revised Rules on Evidence, eff. July 1, 1989

[40] Italics supplied

[41] Rollo, pp. 66-67: Annexes 2 and 3 of respondent's Answer

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