



Republic of the Philippines
COURT OF APPEALS
Manila

SPECIAL TWELFTH DIVISION

ROBERTO U. JUAN (substituted
by his son JEFFREY C. JUAN)
AND LAUNDROMATIC CORP.,
Petitioners-Appellees,

CA-G.R. CV No. 102017

Members:

- versus -

CASTILLO, M.,
Chairperson
MACALINO, F.S., and
*SADANG, M.Q..C., *JJ.*

FERNANDO U. JUAN AND
JULIANO NACINO,
Respondents-Appellants.

Promulgated:

08 May 2015

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DECISION

CASTILLO, M., J.:

This is an appeal from the Resolution of the Regional Trial Court (RTC) of Makati City, Branch 149 dated 23 September 2013 involving a complaint for Injunction, Unfair Competition, Infringement of Copyright, Cancellation of Registration of Trademark and Name with/and prayer for TRO and Preliminary Injunction. The dispositive portion of the assailed Resolution reads:

WHEREFORE, premises considered, this court finds both the plaintiff-Roberto and defendant-Fernando guilty of making misrepresentations before this court, done under oath, hence the Amended Petition and the Answer with their money claims prayed for therein are hereby DISMISSED.

* Acting Junior Member, vice Justice Laguilles, per Office Order No. 169-15-ABR.

Therefore, the Amended Petition and the Answer are hereby DISMISSED for no cause of action, hence the prayer for the issuance of a writ of injunction is hereby DENIED for utter lack of merit; and the Writ of Preliminary Injunction issued on June 10, 2004 is hereby LIFTED AND SET ASIDE.

Finally, The National Library is hereby ordered to cancel the Certificate of Registration issued to Roberto U. Juan on March 17, 1997 over the word "Lavandera Ko", under certificate No. 97-362. Moreover, the Intellectual Property Office is also ordered to cancel Certificate of Registration No. 4-1995-102749, Serial No. 100556, issued on October 18, 2001, covering the work LAVANDERA KO AND DESIGN, in favor of Fernando U. Juan.

The two aforesaid government agencies are hereby requested to furnish this Court of the copy of their cancellation.

Cost de oficio.

SO ORDERED.¹

The factual antecedents of the case are as follows:

Petitioner-appellee Roberto U. Juan (Roberto) averred, among others, that he began using the name and mark "Lavandera Ko" in his laundry business on 4 July 1994. He opened his laundry store at No. 119 Alfaro Street, Salcedo Street, Makati City in 1995. On 17 March 1997, the National Library issued to him a certificate of copyright over said name and mark. Said laundry business grew over the years. There are now more than fifty (50) franchise outlets in Metro Manila and nearby provinces. There are also franchise outlets of "Lavandera Ko" in Cebu and Cagayan de Oro. As petitioner-appellee Roberto's business grew, there was a need to form a corporation to handle the same. Petitioner-appellee Laundromatic Corporation (Laundromatic) was incorporated in 1997 while "Lavandera Ko" was registered as a business name on 13 November 1998 with the Department of Trade and Industry (DTI). The franchise business of petitioners-appellees expanded and was given recognition by the media, through ads and featured articles. Unilever even entered into an advertising contract with "Lavandera Ko". Petitioner-appellee Roberto discovered that his brother, respondent-appellant Fernando U. Juan (Fernando) was able to register the name and mark "Lavandera Ko" with the Intellectual Property Office (IPO) on 18 October 2001. Said registration was filed on 5 June 1995. Respondent-appellant Juliano Nacino (Juliano) had

¹ Rollo, pp. 33-34.

been writing the franchisees of petitioners-appellees threatening them with criminal and civil cases if they did not stop using the mark and name “Lavandera Ko”. Respondents-appellants have been selling franchises in direct competition with petitioners-appellees. The latter further prayed in their petition for the issuance of a writ of injunction plus damages.²

After due notice and hearing, the court *a quo* issued a writ of preliminary injunction against respondents-appellants per the Order dated 10 June 2004.³ On 21 July 2008, upon the death of petitioner-appellee Roberto, his son Christian Juan (Christian) was substituted in his stead.⁴ The pre-trial conference of the case was concluded on 13 July 2010.⁵

After the presentation of the parties' respective evidence, the court *a quo* rendered the assailed Resolution dismissing petitioners-appellees' petition and respondents-appellants' counterclaims. The court *a quo* held that neither of the parties had a right to the exclusive use or appropriation of the mark “Lavandera Ko” as the same was the original mark and work of Santiago S. Suarez (Suarez). Said mark was created by Suarez in 1942 in his musical composition called “Lavandera Ko”. The court *a quo* held that the parties in the instant case both failed to prove that they were the originators of said mark.⁶

Aggrieved, respondents-appellants filed the instant appeal with the following assignment of errors⁷:

A.

The court *a quo* erred in holding that no one among the parties have the right to use “Lavandera Ko”.

B.

The court *a quo* erred in holding that a trademark is the same as a copyright.

C.

The court *a quo* erred in holding that other people, who are not even parties to the case, are the alleged owners of the mark and work “Lavandera Ko”.

2 Rollo, pp. 27-28.

3 Rollo, p. 29.

4 *Id.*

5 *Id.*

6 Rollo, pp. 31-34.

7 Rollo, p. 46.

D.

The court *a quo* erred in using as basis for its Resolution an internet article, over and above the evidence submitted by the parties.

Respondents-appellants jointly discussed the above assigned errors. They contend that a mark is different from a copyright. They are not interchangeable. A mark, as defined in Republic Act (RA) No. 8293, has no application to a song. It refers to a visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container. In this case, “Lavandera Ko” is a service mark. On the other hand, a copyright applies to literary and artistic works including musical compositions (with or without words) and not to goods and services. The song “Lavandera Ko” that is covered by the concept of copyright, does not cover or embrace “Lavandera Ko” that is used as a service mark. Respondent-appellant Fernando is the owner of said service mark as he was able to register the same with the IPO pursuant to Section 122 of RA No. 8293. Under this law, a mark is acquired through a valid registration made in accordance with the provisions thereof.⁸

Respondents-appellants further contend that the court *a quo* erred in giving credence to the article or information it obtained from the internet rather than the actual evidence presented by the parties. Said article stated that the Filipino folk song “Lavandera Ko” was a composition of Suarez in 1942. Based on said internet article, the court *a quo* held that the rightful owners of the mark “Lavandera Ko” are the heirs of Suarez. Respondents-appellants contend that such information is hearsay because no one was presented to testify on the veracity of such article. It has no probative value at all.⁹

On the other hand, petitioners-appellees filed their Appellees' Brief contending that the instant appeal should be dismissed outright for raising purely questions of law. Under Section 2 of Rule 41 of the Rules of Court, issues purely of law are not reviewable by the Court of Appeals.¹⁰ Another ground for the dismissal of the present appeal is the failure of respondents-appellants to cite the page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44. The Appellants' Brief of respondents-appellants also failed

8 Rollo, pp. 47-49.

9 Rollo, pp. 49-56.

10 Rollo, pp. 86-89.

to provide a statement of facts.¹¹ Such omissions are grounds for the dismissal of the appeal. Petitioners-appellees also contend that assuming that the Appellants' Brief complied with the formal requirements of the Rules of Court, the court *a quo* did not err in dismissing their answer with counterclaims. Respondents-appellants cannot be declared as the owners of "Lavandera Ko" since there is prior use of said mark by another person.¹²

Respondents-appellants did not submit their Reply Brief despite due notice.¹³

After consideration and appraisal of the respective contentions of the parties, We find merit in petitioners-appellees' argumentation.

In all cases appealed to this Court under Rule 41 of the Rules of Court, Section 13, Rule 44 of the Rules of Court requires that the Appellant's Brief should contain the following:

Sec. 13. Contents of appellant's brief. —
The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

(b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record;

(d) **Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy,** together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, **with page references to the record;**

11 Rollo, pp. 89-92.

12 Rollo, pp. 92-94.

13 Rollo, p. 110.

- (e) A clear and concise statement of the issues of fact or law to be submitted to the court for its judgment;
- (f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;
- (g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and
- (h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.¹⁴

In the Appellants' Brief of respondents-appellants, while there is the heading "Statement of Facts", there is absolutely no statement in narrative form of the facts of the case. It merely states, "[the] following matters were the subjects of stipulation from the parties" without any elaboration and narration of facts.¹⁵ Accordingly, there is no page references to the record in the statement of facts. In fact, the entire Appellants' Brief of respondents-appellants has no page references to the record at all.¹⁶ Page references to the record in the statement of facts are important in an Appellant's Brief, as the absence thereof is a basis for the dismissal of an appeal under Section 1 (f), Rule 50 of the Rules of Court, which provides:

SECTION 1. Grounds for dismissal of appeal.
— An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

- (f) **Absence** of specific assignment of errors in the appellant's brief, or **of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44.**¹⁷

The Supreme Court held that Rules 44 and 50 of the Rules of Court are designed for the proper and prompt disposition of cases before the Court of Appeals.¹⁸ It declared that rules of procedure exist

14 Emphasis supplied.

15 Rollo, p. 46.

16 Rollo, pp. 41-58.

17 Emphasis supplied. See also *Mendoza v. United Coconut Planters Bank*, G.R. No. 165575, February 2, 2011.

18 *Id.*, *Mendoza v. United Coconut Planters Bank*.

for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.¹⁹ In *De Liano v. Court of Appeals*²⁰, the importance of page references to the record in the statement of facts was underscored, to wit:

In turn, the statement of facts comprises the very heart of the appellant's brief. The facts constitute the backbone of a legal argument; they are determinative of the law and jurisprudence applicable to the case, and consequently, will govern the appropriate relief. Appellants should remember that the Court of Appeals is empowered to review both questions of law and of facts. Otherwise, where only a pure question of law is involved, appeal would pertain to this Court. An appellant, therefore, should take care to state the facts accurately though it is permissible to present them in a manner favorable to one party. The brief must state the facts admitted by the parties, as well as the facts in controversy. To laymen, the distinction may appear insubstantial, but the difference is clear to the practitioner and the student of law. Facts which are admitted require no further proof, whereas facts in dispute must be backed by evidence. Relative thereto, the rule specifically requires that one's statement of facts should be supported by page references to the record. Indeed, disobedience therewith has been punished by dismissal of the appeal. **Page references to the record are not an empty requirement. If a statement of fact is unaccompanied by a page reference to the record, it may be presumed to be without support in the record and may be stricken or disregarded altogether.**²¹

Apart from the fact that there is no page references to the record, the Appellants' Brief in this case does not contain a statement of facts, which warrants the dismissal of the instant appeal. In *Heirs of Palomique v. Court of Appeals*²², the Supreme Court held that the omission of the statement of facts, together with the absence of page references to the record to support the factual allegations, justified the dismissal of the appeal. For the similar violation of Section 1, Rule 50 of the Rules of Court by the appellants in the cases of *Del*

19 *Id.*

20 G.R. No. 142316, November 22, 2001.

21 *Id.*, emphasis supplied.

22 134 SCRA 331; also cited in *Mercury Drug Corporation v. Court of Appeals*, G.R. No. 165622, October 17, 2008.

*Rosario v. Court of Appeals*²³ and *Bucad v. Court of Appeals*²⁴, the Supreme Court dismissed the appeals. It was held that liberal application of the rules cannot be applied as it would mean deviation from the aforementioned rules, which cannot be tolerated.²⁵ The right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules.²⁶ In *Del Rosario v. Court of Appeals*²⁷, the Supreme Court declared:

Long ingrained in our jurisprudence is the rule that the right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules. In *People v. Marong*, we held that deviations from the rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. **In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity. Their observance cannot be after (sic) to the whims and caprices of appellants.**²⁸

*De Liano v. Court of Appeals*²⁹ further held:

Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, **we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration.** It comes as an unpleasant shock to us that the contents of an appellant's brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, 18 which took effect on July 1, 1940, as well as the Revised Rules of Court, 19 which took effect on January 1, 1964, until they were

23 311 Phil 630.

24 G.R. No. 93783, December 11, 1992.

25 Estate of Tarcila Vda. De Villegas v. Gaboya, G.R. No. 143006, July 14, 2006.

26 *Id.*

27 *Supra*, note 23.

28 Citation omitted. Emphasis supplied.

29 *Supra* note 20.

superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions.³⁰

With the dismissal of the present appeal, there is no need to discuss the assignment of errors and issues raised by respondents-appellants.

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for failure to comply with the requirements of Section 13, Rule 44 and Section 1, Rule 50 of the Rules of Court.

SO ORDERED.

MARIFLOR P. PUNZALAN CASTILLO
Associate Justice

WE CONCUR:

FLORITO S. MACALINO
Associate Justice

MELCHOR QUIRINO C. SADANG
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIFLOR P. PUNZALAN CASTILLO
Associate Justice
Chairperson, Twelfth Division

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³⁰ Emphasis supplied. Also cited in *Mendoza v. United Coconut Planters Bank*, supra note 17.

