

FIRST DIVISION

[G.R. No. 180677, February 18, 2013]

**VICTORIO P. DIAZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND LEVI STRAUSS [PHILS.], INC.,
RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

It is the tendency of the allegedly infringing mark to be confused with the registered trademark that is the gravamen of the offense of infringement of a registered trademark. The acquittal of the accused should follow if the allegedly infringing mark is not likely to cause confusion. Thereby, the evidence of the State does not satisfy the quantum of proof beyond reasonable doubt.

Accused Victorio P. Diaz (Diaz) appeals the resolutions promulgated on July 17, 2007^[1] and November 22, 2007,^[2] whereby the Court of Appeals (CA), respectively, dismissed his appeal in C.A.-G.R. CR No. 30133 for the belated filing of the appellant's brief, and denied his motion for reconsideration. Thereby, the decision rendered on February 13, 2006 in Criminal Case No. 00-0318 and Criminal Case No. 00-0319 by the Regional Trial Court, Branch 255, in Las Piñas City (RTC) convicting him for two counts of infringement of trademark were affirmed.^[3]

Antecedents

On February 10, 2000, the Department of Justice filed two informations in the RTC of Las Piñas City, charging Diaz with violation of Section 155, in relation to Section 170, of Republic Act No. 8293, also known as the *Intellectual Property Code of the Philippines (Intellectual Property Code)*, to wit:

Criminal Case No. 00-0318

That on or about August 28, 1998, and on dates prior thereto, in Las Piñas City, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent to defraud Levi's Strauss (Phil.) Inc. (hereinafter referred to as LEVI'S), did then and there, willfully, unlawfully, feloniously, knowingly and intentionally engaged in commerce by reproducing, counterfeiting, copying and colorably imitating Levi's registered trademarks or dominant features thereof such as the ARCUATE DESIGN, TWO HORSE BRAND, TWO HORSE PATCH, TWO HORSE LABEL WITH PATTERNED ARCUATE DESIGN, TAB AND COMPOSITE ARCUATE/TAB/TWO HORSE PATCH, and in connection thereto, sold, offered for sale, manufactured, distributed counterfeit patches and jeans, including other preparatory steps necessary to carry out the sale of said

patches and jeans, which likely caused confusion, mistake, and /or deceived the general consuming public, without the consent, permit or authority of the registered owner, LEVI'S, thus depriving and defrauding the latter of its right to the exclusive use of its trademarks and legitimate trade, to the damage and prejudice of LEVI'S.

CONTRARY TO LAW.^[4]

Criminal Case No. 00-0319

That on or about August 28, 1998, and on dates prior thereto, in Las Piñas City, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent to defraud Levi's Strauss (Phil.) Inc. (hereinafter referred to as LEVI'S), did then and there, willfully, unlawfully, feloniously, knowingly and intentionally engaged in commerce by reproducing, counterfeiting, copying and colorably imitating Levi's registered trademarks or dominant features thereof such as the ARCUATE DESIGN, TWO HORSE BRAND, TWO HORSE PATCH, TWO HORSE LABEL WITH PATTERNED ARCUATE DESIGN, TAB AND COMPOSITE ARCUATE/TAB/TWO HORSE PATCH, and in connection thereto, sold, offered for sale, manufactured, distributed counterfeit patches and jeans, including other preparatory steps necessary to carry out the sale of said patches and jeans, which likely caused confusion, mistake, and /or deceived the general consuming public, without the consent, permit or authority of the registered owner, LEVI'S, thus depriving and defrauding the latter of its right to the exclusive use of its trademarks and legitimate trade, to the damage and prejudice of LEVI'S.

CONTRARY TO LAW.^[5]

The cases were consolidated for a joint trial. Diaz entered his pleas of *not guilty* to each information on June 21, 2000.^[6]

1. Evidence of the Prosecution

Levi Strauss and Company (Levi's), a foreign corporation based in the State of Delaware, United States of America, had been engaged in the apparel business. It is the owner of trademarks and designs of Levi's jeans like LEVI'S 501, the arcuate design, the two-horse brand, the two-horse patch, the two-horse patch with pattern arcuate, and the composite tab arcuate. LEVI'S 501 has the following registered trademarks, to wit: (1) the leather patch showing two horses pulling a pair of pants; (2) the arcuate pattern with the inscription "LEVI STRAUSS & CO;" (3) the arcuate design that refers to "the two parallel stitching curving downward that are being sewn on both back pockets of a Levi's Jeans;" and (4) the tab or piece of cloth located on the structural seam of the right back pocket, upper left side. All these trademarks were registered in the Philippine Patent Office in the 1970's, 1980's and early part of 1990's.^[7]

Levi Strauss Philippines, Inc. (Levi's Philippines) is a licensee of Levi's. After

receiving information that Diaz was selling counterfeit LEVI'S 501 jeans in his tailoring shops in Almanza and Talon, Las Piñas City, Levi's Philippines hired a private investigation group to verify the information. Surveillance and the purchase of jeans from the tailoring shops of Diaz established that the jeans bought from the tailoring shops of Diaz were counterfeit or imitations of LEVI'S 501. Levi's Philippines then sought the assistance of the National Bureau of Investigation (NBI) for purposes of applying for a search warrant against Diaz to be served at his tailoring shops. The search warrants were issued in due course. Armed with the search warrants, NBI agents searched the tailoring shops of Diaz and seized several fake LEVI'S 501 jeans from them. Levi's Philippines claimed that it did not authorize the making and selling of the seized jeans; that each of the jeans were mere imitations of genuine LEVI'S 501 jeans by each of them bearing the registered trademarks, like the arcuate design, the tab, and the leather patch; and that the seized jeans could be mistaken for original LEVI'S 501 jeans due to the placement of the arcuate, tab, and two-horse leather patch.^[8]

2. Evidence of the Defense

On his part, Diaz admitted being the owner of the shops searched, but he denied any criminal liability.

Diaz stated that he did not manufacture Levi's jeans, and that he used the label "LS Jeans Tailoring" in the jeans that he made and sold; that the label "LS Jeans Tailoring" was registered with the Intellectual Property Office; that his shops received clothes for sewing or repair; that his shops offered made-to-order jeans, whose styles or designs were done in accordance with instructions of the customers; that since the time his shops began operating in 1992, he had received no notice or warning regarding his operations; that the jeans he produced were easily recognizable because the label "LS Jeans Tailoring," and the names of the customers were placed inside the pockets, and each of the jeans had an "LSJT" red tab; that "LS" stood for "Latest Style;" and that the leather patch on his jeans had two buffaloes, not two horses.^[9]

Ruling of the RTC

On February 13, 2006, the RTC rendered its decision finding Diaz guilty as charged, disposing thus:

WHEREFORE, premises considered, the Court finds accused Victorio P. Diaz, a.k.a. Vic Diaz, GUILTY beyond reasonable doubt of twice violating Sec. 155, in relation to Sec. 170, of RA No. 8293, as alleged in the Informations in Criminal Case Nos. 00-0318 & 00-0319, respectively, and hereby sentences him to suffer in each of the cases the penalty of imprisonment of TWO (2) YEARS of *prision correccional*, as minimum, up to FIVE (5) YEARS of *prision correccional*, as maximum, as well as pay a fine of P50,000.00 for each of the herein cases, with subsidiary imprisonment in case of insolvency, and to suffer the accessory penalties provided for by law.

Also, accused Diaz is hereby ordered to pay to the private complainant Levi's Strauss (Phils.), Inc. the following, thus:

1. P50,000.00 in exemplary damages; and
2. P222,000.00 as and by way of attorney's fees.

Costs de officio.

SO ORDERED.^[10]

Ruling of the CA

Diaz appealed, but the CA dismissed the appeal on July 17, 2007 on the ground that Diaz had not filed his appellant's brief on time despite being granted his requested several extension periods.

Upon denial of his motion for reconsideration, Diaz is now before the Court to plead for his acquittal.

Issue

Diaz submits that:

THE COURT OF APPEALS VIOLATED EXISTING LAW AND JURISPRUDENCE WHEN IT APPLIED RIGIDLY THE RULE ON TECHNICALITIES AND OVERRIDE SUBSTANTIAL JUSTICE BY DISMISSING THE APPEAL OF THE PETITIONER FOR LATE FILING OF APPELLANT'S BRIEF.^[11]

Ruling

The Court first resolves whether the CA properly dismissed the appeal of Diaz due to the late filing of his appellant's brief.

Under Section 7, Rule 44 of the *Rules of Court*, the appellant is required to file the appellant's brief in the CA "within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee." Section 1(e) of Rule 50 of the *Rules of Court* grants to the CA the discretion to dismiss an appeal either *motu proprio* or on motion of the appellee should the appellant fail to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court*.^[12]

The usage of the word *may* in Section 1(e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the *Rules of Court* does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the

appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

The records reveal that Diaz's counsel thrice sought an extension of the period to file the appellant's brief. The first time was on March 12, 2007, the request being for an extension of 30 days to commence on March 11, 2007. The CA granted his motion under its resolution of March 21, 2007. On April 10, 2007, the last day of the 30-day extension, the counsel filed another motion, seeking an additional 15 days. The CA allowed the counsel until April 25, 2007 to serve and file the appellant's brief. On April 25, 2007, the counsel went a third time to the CA with another request for 15 days. The CA still granted such third motion for extension, giving the counsel until May 10, 2007. Notwithstanding the liberality of the CA, the counsel did not literally comply, filing the appellant's brief only on May 28, 2007, which was the 18th day beyond the third extension period granted.

Under the circumstances, the failure to file the appellant's brief on time rightly deserved the outright rejection of the appeal. The acts of his counsel bound Diaz like any other client. It was, of course, only the counsel who was well aware that the *Rules of Court* fixed the periods to file pleadings and equally significant papers like the appellant's brief with the lofty objective of avoiding delays in the administration of justice.

Yet, we have before us an appeal in two criminal cases in which the appellant lost his chance to be heard by the CA on appeal because of the failure of his counsel to serve and file the appellant's brief on time despite the grant of several extensions the counsel requested. Diaz was convicted and sentenced to suffer two indeterminate sentences that would require him to spend time in detention for each conviction lasting two years, as minimum, to five years, as maximum, and to pay fines totaling P100,000.00 (with subsidiary imprisonment in case of his insolvency). His personal liberty is now no less at stake. This reality impels us to look beyond the technicality and delve into the merits of the case to see for ourselves if the appeal, had it not been dismissed, would have been worth the time of the CA to pass upon. After all, his appellant's brief had been meanwhile submitted to the CA. While delving into the merits of the case, we have uncovered a weakness in the evidence of guilt that cannot be simply ignored and glossed over if we were to be true to our oaths to do justice to everyone.

We feel that despite the CA being probably right in dismissing the excuses of oversight and excusable negligence tendered by Diaz's counsel to justify the belated filing of the appellant's brief as unworthy of serious consideration, Diaz should not be made to suffer the dire consequence. Any accused in his shoes, with his personal liberty as well as his personal fortune at stake, expectedly but innocently put his fullest trust in his counsel's abilities and professionalism in the handling of his appeal. He thereby delivered his fate to the hands of his counsel. Whether or not those hands were efficient or trained enough for the job of handling the appeal was a learning that he would get only in the end. Likelier than not, he was probably even unaware of the three times that his counsel had requested the CA for extensions. If he were now to be left to his unwanted fate, he would surely suffer despite his innocence. How costly a learning it would be for him! That is where the Court comes in. It is most important for us as dispensers of justice not to allow the inadvertence or incompetence of any counsel to result in the outright deprivation of an appellant's