SECOND DIVISION

[G.R. No. 219744, March 01, 2021]

LEVI STRAUSS & CO., PETITIONER, VS. ANTONIO SEVILLA AND ANTONIO L. GUEVARRA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in the instant petition for review on *certiorari*[1] are the Decision[2] dated September 26, 2014 and the Resolution[3] dated July 28, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 126316, which dismissed the petition for review[4] filed by petitioner Levi Strauss & Co. (petitioner) before it on the grounds of mootness and *res judicata*; and essentially, affirmed the Decision[5] dated January 29, 2009 of the Intellectual Property Office (IPO) Bureau of Legal Affairs (IPO-BLA) and the Decision[6] dated August 13, 2012 of the IPO Director General (IPO-DG) dismissing petitioner's Petition for Cancellation[7] of the trademark **LIVE'S** with Registration No. 53918 under the names of respondents Antonio Sevilla (Sevilla) and Antonio L. Guevarra (Guevarra; collectively, respondents).

The Facts

Petitioner, a foreign corporation, is the owner of the word mark "LEVI'S" since 1946, and has extensively and continuously used the same on goods covered by Class 25 of the Nice Classification (NCL). In 1972, petitioner granted Levi Strauss Phils., Inc. (LSPI) a non-exclusive license to use its registered trademarks for the manufacture and sale of said goods in the Philippines. On the other hand, Sevilla was the original registrant of the mark **LIVE'S** also covering goods under Class 25 of the NCL. Later on, Sevilla assigned his rights over the **LIVE'S** mark to Guevarra a.k.a. Tony Lim, doing business under the name and style Vogue Traders Clothing Company.[8]

In 1995, LSPI commissioned a consumer survey codenamed "Project Cherokee 5" in order to determine if the general public had mistook marks used by other entities (such as respondents' **LIVE'S** mark) for that of petitioner's marks. The Final Report on Project Cherokee 5[9] confirmed that the public indeed strongly identified petitioner's "LEVI'S" mark with that of respondents' **LIVE'S** mark, further revealing that 86% of the survey participants associated the "LIVE'S" mark with "LEVI'S;" and 90% of said survey participants read the stylized "LIVE'S" mark, *i.e.*, **LIVE'S** , as "LEVI'S."[10]

Thus, on December 13, 1995, petitioner filed before the then-Bureau of Patents, Trademarks, and Technology Transfer (BPTTT, now the IPO) a Petition for Cancellation[11] of the trademark **LIVE'S** with Registration No. 53918 under the names of respondents, essentially on the ground that **LIVE'S** is confusingly similar with petitioner's "LEVI'S" mark.[12]

In his Answer, Guevarra rejected the idea that its **LIVE'S** mark is confusingly similar with petitioner's "LEVI'S" mark, claiming that the probability of confusion arising from the alleged similarity of the two (2) marks is negligible due to the attention given by the purchasers to the goods they are purchasing; and besides, there are sufficient differences in the price, hand tags, and other markings of the products.[13] For his part, Sevilla maintained that: (*a*) the two (2) marks are sufficiently distinguishable from each other because of the differences in spelling and pronunciation, and because the target market of the products are mature and educated purchasers who closely scrutinize the products; (*b*) the presentation and trade dress of products covered by the two (2) marks are different, and the fact that the BPTTT approved the registration of the **LIVE'S** mark despite the existence of petitioner's "LEVI'S" mark proves that there was no colorable imitation; and (*c*) the LIVE'S mark had long been in use before petitioner challenged the same, thus, respondents' rights over the **LIVE'S** mark had already been vested on them.[14]

The IPO-BLA Ruling

In a Decision[15] dated January 29, 2009, the IPO-BLA denied the petition for cancellation, and consequently' declared respondents' **LIVE'S** mark to be valid and subsisting.[16]

The IPO-BLA found that there was no confusing similarity between petitioner's "LEVI'S" mark and respondents' **LIVE'S** mark because they have different pronunciations, spellings, meanings, designs, prices, and trade channels. The IPO-BLA also took note of the case of *Levi Strauss (Phils.) Inc. v. Lim* (**G.R. No. 162311**),[17] wherein the Court purportedly held that there is no likelihood of confusion between the aforementioned marks, notwithstanding the results of Project Cherokee 5.[18]

Aggrieved, petitioner appealed to the IPO-DG.

The IPO-DG Ruling

In a Decision[19] dated August 13, 2012, the IPO-DG upheld the IPO BLA ruling. Mainly citing **G.R. No. 162311**, the IPO-DG opined that it could not sustain petitioner's contention that its "LEVI'S" mark and respondents' **LIVE'S** mark are confusingly similar with one another.[20]

Undaunted, petitioner filed a petition for review[21] under Rule 43 of the Rules of Court before the CA.

The CA Ruling

In a Decision[22] dated September 26, 2014 the CA dismissed the petition. It held that the case has been rendered moot and academic by the fact that respondents had already assigned their rights and interests over the **LIVE'S** mark to a certain Dale Sy on July 31, 2012. Furthermore, the CA also took note of **G.R. No. 162311** which it opined to be *res judicata* to this case.[23]

Petitioner moved for reconsideration but the same was denied in a Resolution[24] dated July 28, 2015; hence, this petition.[25]

The Issue Before the Court

The issues before the Court are as follows: (a) whether or not the CA correctly ruled that the case had already been rendered moot and academic and **G.R. No. 162311** is *res judicata* to this case; and (b) whether or not the petition for cancellation should be granted on the ground of confusing similarity between petitioner's "LEVI'S" mark and respondents' **LIVE'S** mark.

The Court's Ruling

The petition is meritorious.

I.

At the outset, it is well to reiterate that the CA did not resolve the issue of confusing similarity between petitioner's and respondents' marks. Rather, it dismissed the petition on two (2) grounds, namely, mootness and *res judicata*.

The CA erred in this regard.

The case has not been rendered moot and academic.

It is settled that "[a] case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."[26]

In this case, while a cursory search on the IPO's online trademark database confirms that Registration No. 53918 for the **LIVE'S** mark had indeed been assigned to a certain Dale Sy, it is important to point out that such registration remains ***valid and subsisting*** – as in fact, it will only expire on November 16, 2022.[27] Furthermore, it must be noted that the assignment only occurred on July 31, 2012, or during the pendency of the instant cancellation case filed by petitioner; and hence, will not affect the resolution thereof. As a transferee *pendente lite*, Dale Sy will be bound by the resolution of this case. The Court's ruling in *Sunfire Trading, Inc. v. Guy*[28] is instructive on this matter, to wit:

> As a transferee *pendente lite*, the Court agrees with the CA that petitioner need not be a party to the main case. Rule 3, Section 19 of the 1997 Rules of Civil Procedure, provides:
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> > **SEC. 19.** *Transfer of interest.* — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

> The above provision gives the trial court discretion to allow or disallow the substitution or joinder by the transferee. Discretion is permitted because, in general, the transferee's interest is deemed by law as adequately represented and protected by the participation of his transferors in the case. There may be no need for the transferee *pendente lite* to be substituted or joined in the case because, in legal contemplation, he is not really denied protection as his interest is one and the same as his transferors, who are already parties to the case.
>
> **We held that a transferee stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. It is not legally tenable for a transferee *pendente lite* to still intervene. Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee *pendente lite*.**[29] (Emphasis and underscoring supplied)

As such, the Court rules that this case has not been rendered moot and academic by the assignment of Registration No. 53918 for the **LIVE'S** mark to Dale Sy.

G.R. No. 162311 is not res judicata to the instant case.

"*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' It lays the rule that an existing final judgment or decree ***rendered on the merits***, without fraud or collusion, ***by a court of competent jurisdiction***, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit."[30] Thus, for *res judicata* to apply – whether the same is in the concept of bar by prior judgment or by conclusiveness of judgment[31] – it is imperative that, *inter alia*, the disposition of the case must be a judgment on the merits rendered by a court of competent jurisdiction.[32]

At this juncture, it is important for the Court to point out that **G.R. No. 162311** was not a criminal case that was decided on the merits by a court of competent jurisdiction. Rather, the case emanated from mere preliminary investigation proceedings which was elevated to the regular courts on the issue of whether or not the Department of Justice (DOJ) committed grave abuse of discretion when it found no probable cause to indict therein respondent for unfair competition. In *Imingan v. The Office of the Honorable Ombudsman*,[33] the Court reiterated the rule that results of preliminary investigations ***cannot rise to the level of final and executory judgments of regular courts; and hence, are not proper subjects of res judicata***, to wit:

> **Jurisprudence has long settled that preliminary investigation does not form part of trial.** Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation **is a purely administrative,**

> **rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication**: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.
>
> **The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata*** x x x.[34] (Emphases and underscoring supplied).

Furthermore, in *Encinas v. Agustin, Jr.*,[35] the Court further expounded that *res judicata* applies only to judicial or quasi-judicial proceedings. In this regard, while there is case law stating that a prosecutor conducting a preliminary investigation performs a quasi-judicial function,[36] the Court, in *Bautista v. CA*,[37] clarified that "this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court;"[38] and the similarity ends there. It further expounded that unlike proceedings in quasi-judicial agencies whose awards determine the rights of the parties, and hence, their decisions have the same effect as judgments of a court, a preliminary investigation, which is merely inquisitorial, does not determine the guilt or innocence of the accused. ***It is not a trial on the merits*** and its purpose is only to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While it is the prosecutor that makes such determination, he cannot be said to be exercising a quasi-judicial function, as it is the courts that ultimately pass judgment on the accused.[39] In *Manila Electric Company v. Atilano*,[40] the Court further delineated the differences between a quasi-judicial proceeding and a preliminary investigation, to wit:

> A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court. "[This] is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions" on determination of probable cause.
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> In *Odchigue-Bondoc* [*v. Tan Tiong Bio*], we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises *investigative* or *inquisitorial* powers. **Investigative or inquisitorial powers include the powers of an administrative body to inspect the records and premises, and investigate the activities of persons or entities coming under his jurisdiction, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. This power is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties**. Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court.