

103 Phil. 520

**[ G.R. No. L-11381. April 28, 1958 ]**

**ATKINS KROLL & CO., INC., PLAINTIFF AND APPELLANTS, VS. CITY OF MANILA AND MARCELINO SARMIENTO, AS CITY TREASURER, DEFENDANTS AND APPELLEES.**

**REYES, A., J.:**

This is an appeal from a decision of the Court of First Instance of Manila dismissing plaintiff's complaint on the ground of prescription.

It appears that on various dates from January 19, 1949 to March 28, 1950, appellant, a domestic corporation engaged in importing and selling meat and meat products in the City of Manila, paid to said City inspection fees of the total amount of P3,553.33 levied under Ordinance No. 2991 of said City, approved on November 23, 1946; that on January 11, 1951, the Secretary of Justice rendered an opinion declaring the said ordinance void as beyond the power of the City to enact, and in deference apparently to said opinion, the City, on October 31, 1952, approved Ordinance No. 3538, authorizing the refund in full of all meat inspection fees paid under Ordinance No. 2991, and appropriating funds for the purpose; that on November 20, 1952, appellant filed its claim with the City Treasurer for the refund of the inspection fees paid by it, but as the claim was disallowed, appellant on January 6, 1955 filed a complaint in the Court of First Instance of Manila against the City of Manila and the City Treasurer for the recovery of the amount claimed.

Answering the complaint, the defendants set up the defense that the inspection fees sought to be recovered were paid voluntarily and without any protest and that plaintiff's action had already prescribed.

Overruling the defense that the fees were paid voluntarily without protest, but upholding the defense of prescription, the lower court, after trial, dismissed the action.

Hence, this appeal.

The appeal is meritorious. This case is similar to that of *Wise & Co., Inc. vs. City of*

Manila, et al. (101 Phil., 244; 54 Off. Gaz., [14], 4245) where this Court declared that the cause of action for the recovery of inspection fees paid under Ordinance No. 2991 accrued on October 31, 1952 when Ordinance No. 3538, authorizing the refund thereof, was enacted. We there said:

“The other ground of the motion to dismiss that the action is barred by the statute of limitations is not well taken.’ The complaint alleges that Ordinance No. S53S, appropriating funds for and authorizing the refund of meat inspection fees illegally collected under Ordinance No. 2991, was enacted on 28 October and approved on 31 October 1952. From the last mentioned date, when the cause of action accrued, to 7 January 1955, when the complaint in the case was filed, only two years, two months and eight days had elapsed. Hence, whether the prescriptive period is six years under article 1145 of the new Civil Code, as contended by the plaintiff, or four years under article 1146(1) of the new Civil Code or section 43, paragraph 3, of Act No. 190, as claimed by the defendants the action was not barred by the statute of limitations.”

From the above pronouncement it is clear that when plaintiff’s complaint was filed on January 6, 1955, its action had not yet prescribed,

The decision appealed from must, therefore be as it is hereby, revoked, and it is ordered that judgment be rendered for the refund of the sum of P3,553.33 claimed Araneta and Uy vs. Commonwealth Ins. Co., et al. by plaintiff, with legal interest from the date of the filing of the complaint as therein prayed. Without special pronouncement as to costs.

*Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*