

[G. R. No. L-12544. August 25, 1958]

CHARLIE BROWN, PLAINTIFF AND APPELLANT, VS. CONSTANCIO S. SUEZO, AN OPERATOR OF THE MOTOR-LAUNCH FERRY SERVICE DOING BUSINESS UNDER THE COMMON NAME "C. S. SUEZO & BROS.", DEFENDANT AND APPELLEE.

D E C I S I O N

FELIX, J.:

Charlie Brown is the operator of a motor-launch ferry service, crossing the Panguil Bay, from Ozamis City to Baroy, Lanao, by way of Tubod, Lanao, since 1947. For this purpose, he uses the motor launches "Rosita II", "Rosita III" and "Rosita IV", which were duly registered with the Bureau of Customs. In the early part of 1954, Constancio S. Suezo obtain a license from the Bureau of Customs to engage in the same business of carrying or towing passengers or freight along the same route as covered by Brown's vessels, and in offering his services to the public, the former utilized 2 launches, the "M/L Azucena" and "M/L Sampaguita".

On February 17, 1956, presumably upon application, Charlie Brown was issued a certificate of public convenience by the Public Service Commission allowing him to operate a ferry service in the above-mentioned areas, regulating the trips and the passengers and freight rates therefor. Suezo, on the other hand, apparently did not see the wisdom of securing such a certificate from the Commission for he made no move to obtain one.

On April 4, 1956, Brown filed a complaint with the Court of First Instance of Misamis Oriental against Constancio S. Suezo, who was sued as operator of a motor launch ferry service doing business under the common name "C. S. Suezo & Bros." (Civil Case No. 1877) charging that defendant's operation of vessels plying the same distance and route covered by his certificate of public convenience without securing a permit from the Public Service Commission, rendered with operation unauthorized; that this operation was offering plaintiff a ruinous and illegal competition causing him damage at the rate of P50.00 a day per launch; that being the holder of a permit from the Public Service Commission to engage in

such business, he should be protected from such unfair competition; that in view of the precarious business brought about by the aforesaid undertaking, plaintiff was forced to pull out of operation his motor launch "Rosita IV". It was thus prayed that defendant's operation of a ferry service along the route covered by his permit be declared illegal; that defendant be ordered to pay damages in the sum of P50 a day for every motor launch in operation from February 17, 1956, until defendant desist from offering services to the public; and that defendant be enjoined from continuing said activity.

And finding his petition meritorious, the lower Court issued the writ of preliminary injunction prayed for upon plaintiff's filing a bond in the sum of P10,000. The writ, however, was dissolved when defendant posted a counterbond in the amount of P20,000.

On April 28, 1956, defendant filed a motion to dismiss for lack of cause of action for the reason that as a certificate of public convenience is not a condition precedent in the business of towing passengers and freight, plaintiff's claim for damages could not prosper. Furthermore, it was alleged that under Commonwealth Act 146 as amended, the Public Service Commission was the body empowered to investigate any charges or grievances against public utility operators. The Court, therefore, defendant claimed, had no jurisdiction to entertain such complaint. As the aforesaid motion was denied defendant filed his answer denying the material averments of the complaint and setting up as affirmative defenses the reasons adduced in his motion to dismiss. In praying for the dismissal of the action, defendant also claimed for actual and moral damages, attorney's fees and such other relief as may be just and equitable in the premises.

On January 8, 1957, defendant filed a motion for the reconsideration of the order of June 25, 1956, denying the motion to dismiss, based on the ruling rendered by this Court in the case of *Elpidio Javellana vs. Public Service Commission and Artemio Barron*, 98 Phil., 964; 52 Off. Gaz. (14) 6196, holding that the Public Service Commission has no authority to require operators of steamboats, motor boats and motor vessels used in ferry or coastwise trade, to secure a certificate of public convenience. Acting upon said motion, the Court, in its order of February 25, 1957, dismissed the complaint, without costs. From this order, plaintiff instituted the instant appeal contending that the case of *Javellana vs. Public Service Commission* is not in point and not applicable to the instant action.

Appellant tries to draw a dividing line between the aforesaid *Javellana* case and the one at bar, distinguishing one from the other, arguing that the pronouncement of this Court in the former is operative only to cases involving motor service and not to ordinary, ferry business,

taking into consideration the distance to be covered, the nature of the water to be traversed and the kind of craft or vessel to be used for the purpose. Relying on Section 13-(a) and (b) of the Public Service Law, as amended, this Court speaking through Mr. Justice Montemayor, made a ruling on this matter when it said:

“* * *. Anyway, whether, said service between the different islands is regarded as ferry service or coastwise trade service, *as long as the water craft used are steamboats, motorboats or motor vessels, the result will be the same as far as the Commission is concerned.* * * *. It is true that steamboats, motorboats and motor vessels are included in the public service over which the Commission has jurisdiction. It is equally true, however, that as regards those means of transportation, whether used in a ferry or in the coastwise trade, the Commission has no authority to require them to obtain certificate of public convenience or prescribe their definite route or line. * * *” *Javellana et al. vs. The Public Service Commission et al.*, 98 Phil., 964). (See Section 13- [a] and [b] of Commonwealth Act No. 146, known as the Public Service Act, as amended).

It may be asked in this connection, if it is not the Public Service Commission, what office or body has jurisdiction over the same?

Section 1139 of the Revised Administrative Code provides:

“SEC. 1139. *General Jurisdiction of Bureau.*—The general duties, powers, and jurisdiction of Bureau of Customs shall include:

* * * * *

(b) The general supervision, control and regulation of the coastwise trade and in the carrying or towing of passengers and freight in the bays and rivers of the Philippines.”

Appellee Constancio Suezos was duly granted permit by the Bureau of Customs to engage in ferrying passengers or towing freight in said areas; hence, said operation cannot be declared to be unauthorized or illegal. It may not be amiss to state at this juncture that from 1947 up to February 17, 1956, appellant in the operation of the same ferry business was

equipped by no less a similar permit from the Bureau of Customs than the one he is now trying to contest, which shows that before his competitor entered into the picture, he believed in the efficacy and sufficiency of such permit to sustain the legality of his aforesaid business. Certainly, it is not difficult to comprehend why he should now contest its validity.

Wherefore, the order of the lower Court of February 25, 1957, appealed from is hereby affirmed, with costs against appellant. It is so ordered.

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

CONCURRING

REYES, A., J.,

I concur in the result, considering that the ferry service here in question may well belong to the coastwise trade. But whether a ferry service across a narrow body of water, such as a river, for instance, would be outside the jurisdiction of the Public Service Commission if the watercraft used were steam vessels or motorboats, is a question on which I am not now expressing my opinion.