

## **NEW MANILA LUMBER COMPANY, INC., PLAINTIFF AND APPELLANT, VS. REPUBLIC OF THE PHILIPPINES, DEFENDANT AND APPELLEE.**

*G.R. No. L-14248. April 28, 1960*

Ponente: GUTIERREZ DAVID, J.

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### **GUTIERREZ DAVID, J.:**

Appeal from an order of dismissal of the Court of First Instance of Manila.

On May 8, 1958, the plaintiff lumber company filed in the court below a complaint against the defendant Republic of the Philippines for the recovery of a sum of money. The complaint alleges, among other things, that defendant, thru the Director of Schools, entered into a contract with one Alfonso Mendoza to build two school houses; that plaintiff furnished the lumber materials in the construction of the said buildings; that prior to the payment by defendant of any amount due the contractor, the latter executed powers of attorney in favor of the plaintiff "constituting it as his sole, true and lawful attorney-in-fact with specific and exclusive authority to collect and receive from the defendant any and all amounts due or may be due to said contractor from the defendant in connection with the construction of the aforesaid school buildings, as may be necessary to pay materials supplied by the plaintiff"; and that originals of the powers of attorney were received by defendant (thru the Director of Public Schools) who promised to pay plaintiff, but that it, nevertheless, paid the contractor several amounts on different occasions without first making payment to plaintiff. The complaint, therefore, prays that defendant be ordered to pay plaintiff the sum of P18,327.15, the unpaid balance of the cost of lumber supplied and used in the construction of the school buildings, with interest at the legal rate from the date same was due, plus attorney's fees and costs.

Served with a copy of the complaint, the defendant Republic of the Philippines, through the Solicitor General, moved to dismiss the same on the grounds (1) that it does not allege a sufficient cause of action, (2) that plaintiff has no right to institute the action under Act No. 3688, and (3) that the court is without jurisdiction to entertain the same against the defendant.

The motion was opposed by plaintiff, but after hearing, the court below—holding that "there is no juridical tie between plaintiff-supplier and defendant-owner"—sustained the motion to dismiss on the first ground, and on June 23, 1958 issued an order dismissing plaintiff's complaint. Its motion for reconsideration having been denied, plaintiff took the present appeal.

The appeal is without merit.

Briefly stated, plaintiff's complaint seeks to enforce against the Republic of the Philippines a money claim for the payment of materials it furnished for the construction of two public school buildings undertaken by contractor Alfonso Mendoza, on the basis of powers of attorney executed by the latter authorizing said plaintiff to collect and receive from defendant Republic any amount due or may be due to said contractor as contract price for the payment of the materials so supplied.

Section one of Public Act No. 3688, entitled "An Act for the protection of persons furnishing material and labor for the construction of public works", reads in part as follows:

"SECTION 1. Any person, partnership or corporation entering into a formal contract with the Government of the Philippine Islands for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or his or its sub-contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the Government of the Philippine Islands on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the Government of the Philippine Islands. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the Government, the remainder shall be distributed pro rata among said intervenors. If no suit should be brought by the Government of the Philippine Islands within six months from the completion and final settlement of said contract, or if the Government expressly waives its right to institute action on the penal bond, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the department under the direction of which said work has been prosecuted, that labor or materials for the prosecution of such work have been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the Government of the Philippine Islands in the Court of First Instance in the district in which said contract was to be performed and executed, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution, \* \*

\*."

In the case at bar, it is not disputed that defendant Republic has already instituted a suit against the contractor for the forfeiture of the latter's bond posted to secure the faithful performance of stipulations in the construction contract with regards to one of the two school buildings (Civil Case No. 26815, Court of First Instance of Manila). The contractor has a similar bond with respect to the other school building. Pursuant to Act 3688, plaintiff's legal remedy is, not to bring suit against the Government, there being no privity of contract between them, but to intervene in the civil case above-mentioned as an unpaid supplier of materials to the contractor, or file an action in the name of the Republic against said contractor on the latter's other bond.

Plaintiff argues that an implied contract between it and the defendant Republic arose, when the latter, thru the Director of Public Schools, on being furnished copies of the powers of attorney executed by the contractor, promised to make payment to plaintiff for the materials supplied for the construction of the school buildings. It will be observed, however, that defendant was not a party to the execution of the powers of attorney. Besides, the Director of Public Schools had no authority to bind defendant on the payment. While he was the official who entered into contract with the contractor for the construction of the school buildings, payment of the contract price was not within his exclusive control but subject to approval under existing laws not only by the Department Head (Sec. 568, Rev. Adm. Code), but also by the Auditor General.

At any rate, under the facts alleged in the complaint, the powers of attorney in question made plaintiff the contractor's agent in the collection of whatever amounts may be due the contractor from the defendant. And since it is also alleged that, after the execution of the powers of attorney, the contractor (principal) demanded and collected from defendant the money the collection of which he entrusted to plaintiff, the agency apparently has

already been revoked. (Articles 1920 and 1924, new Civil Code.)

The point is made by plaintiff that the powers of attorney executed by the contractor in its favor are irrevocable and are coupled with interest. But even supposing that they are, still their alleged irrevocability cannot affect defendant who is not a party thereto. They are obligatory only on the principal who executed the agency.

Plaintiff also cites Article 1729 of the new Civil Code, which provides that—

"Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made.

\* \* \*."

This article, however, as expressly provided in its last paragraph, "is subject to the provisions of special law." The special law governing in the present case, as already seen, is Act No. 3688.

There is another reason for upholding the order of dismissal complained of Plaintiff's action being a claim for a sum of money arising from an alleged implied contract between it and the Republic of the Philippines, the same should have been lodged with the Auditor General. The State cannot be sued without its consent.

In view of the foregoing, the order of dismissal appealed from is affirmed, with costs against plaintiff-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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