

HOME INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS. UNITED STATES LINES CO., ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-25593. November 15, 1967*

Ponente: BENGZON, J.P., J.

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Sometime in 1964, SS "Pioneer Moon" arrived in Manila and discharged unto the custody of the Bureau of Customs, as arrastre operator, two hundred (200) cartons of carbon-ized adding machine rolls consigned to Burroughs, Limited. When the cargo was delivered to the consignee, however, several cartons were damaged. The consignee claimed the P2,605.64 worth of damage from the Bureau of Customs, the United Lines Company, owner of the vessel, and the Home Insurance Company which had insured the cargo. The latter paid the claim and demanded reimbursement from either arrastre operator or the carrier. When both rejected the claim, the Home Insurance Company, as subrogee, filed on June 11, 1965 an action against the Republic of the Philippines, the Bureau of Customs and the United States Lines, in the alternative, for the recovery of P2,605.64, with interest plus costs.

Both defendants answered. The United States Lines disclaimed liability on the ground that the damage was incurred while the cargo was in the possession of its co-defendants. The Republic of the Philippines and the Bureau of Customs, after denial of their motion to dismiss, answered and alleged among others, non-suability and non-compliance with Act 3083, as amended by Commonwealth Act 327 which requires money claims to be filed with the Auditor General.

On December 7, 1965, the date set for pre-trial, only the counsel for the plaintiff appeared, who upon being asked for written authority to compromise, assured the court that though he had no written authority he had such authority verbally given by the plaintiff. On the same day, the court dismissed the case for failure of the plaintiff to appear at the pre-trial conference.

Its motion for reconsideration having been denied, plaintiff appealed to Us, claiming that the lower court erred in dismissing the case for failure of the plaintiff to appear.

As against the Republic of the Philippines and the Bureau of Customs, the dismissal must be sustained in the light of our decision in *Mobil Philippines Exploration v. Customs Arrastre Service and Bureau of Customs*, L-23139, December 17, 1966 and subsequent rulings,* where We held that on grounds of public policy, the Republic of the Philippines or its agencies, may not be sued for the performance of arrastre operations as a function necessarily incidental to the governmental function of taxation.

As regards the other defendant, Section 1 of Rule 20 of the Revised Rules of Court, making pre-trial mandatory partly provides: "x x x in any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference" (underscoring supplied). This is different from Section 1 of Rule 25 of the old Rules of Court which provided that "the court may in its discretion direct the attorneys for the parties to appear before it for a conference...." (underscoring supplied). Section 2, Rule 20 of the new Rules of

Court says that "a party who fails to appear at a pre-trial conference may be non-suited or considered as in default." This shows the purpose of the Rules to compel the parties to appear personally before the court to reach, if possible, a compromise. Accordingly, the court is given the discretion to dismiss the case should plaintiff not appear at the pre-trial.

Taking into consideration said purpose and spirit of the new rules as well as the facts in the present case, We find no reversible error committed by the court a quo in dismissing the action for the reason that only plaintiff's counsel appeared at the pre-trial (and not plaintiff's official representative also). True, said counsel asserted that he had verbal authority to compromise the case. The Rules, however, require, for attorneys to compromise the litigation of their clients, a "special authority" (Section 23, Rule 138, Rules of Court). And while the same does not state that the special authority be in writing, the court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him. The court below, therefore did not act erroneously in proceeding to dismiss the case in spite of such manifestation of plaintiff's counsel. For, authority to compromise can-not lightly be presumed. And if, with good reason, the judge is not satisfied that said authority exists, as in this case, dismissal of the suit for non-appearance of plaintiff in pre-trial is sanctioned by the Rules. The dismissal should therefore be sustained in toto, with respect to all the defendants.

WHEREFORE, the appealed order of dismissal is affirmed, without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

* North British & Mercantile Insurance Co., Ltd. v. Isthmian Lines, Inc., L-26237, July 10, 1967; Insurance Company of North America v. Republic, L-26532, July 10, 1967; Insurance Company of North America v. Republic, L-24520, July 11, 1967; Insurance Company of North America v. Republic, L-25662, July 21, 1962; Manila Electric Company v. Customs Arrastre Service, L-25515, July 24, 1967; Shell Refining Co. (Phil.) Inc. v. Manila Port Service, L-24930, July 31, 1967; The American Insurance Company v. Macondray & Co., Inc., L-24031, August 19, 1967.

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