

**NATIONAL ABACA AND OTHER FIBERS CORPORATION, PLAINTIFF
AND APPELLANT, VS. APOLONIA PORE, DEFENDANT AND APPELLEE.***G.R. No. L-16779. August 16, 1961*

Ponente: CONCEPCION, J.

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Appeal by plaintiff National Abaca and other Fibers Corporation, from two (2) orders of the Court of First Instance of Leyte.

On November 14, 1953, plaintiff filed with the Municipal Court of Tacloban, Leyte, a complaint, against defendant Apolonia Pore, for the recovery of P1,213.64, allegedly advanced to her for the purchase of hemp for the account of the former and for which she had allegedly failed to account. In her answer, defendant alleged that she had accounted for all cash advances received by her for the aforementioned purpose from the plaintiff. In due course, said court rendered judgment on April 11, 1956, finding that the defendant had not accounted for cash advances in the sum of P272.49, which she was, accordingly, sentenced to pay to the plaintiff, with legal interest from November 18, 1953, in addition to the costs.

Said court having subsequently denied a reconsideration of this decision, as well as a new trial prayed for by the plaintiff, the latter appealed to the Court of First Instance of Leyte, in which defendant moved to dismiss the complaint upon the ground that plaintiff has no legal capacity to sue, it having been abolished by Executive Order No. 372 of the President of the Philippines, dated November 24, 1950. Plaintiff objected thereto upon the ground that, pursuant to said executive order, plaintiff "shall nevertheless be continued as a body corporate for a period of three (3) years from the effective date" of said executive order, which was November 30, 1950, "for the purpose of prosecuting and defending suits by or against it and of enabling the Board of Liquidators"—thereby created—"gradually to settle and close its affairs",* * * and that this case was begun on November 14, 1953, or before the expiration of the period aforementioned. After due hearing, the court of first instance issued an order dated August 1, 1956, directing plaintiff to amend the complaint within ten (10) days from notice, by including the Board of Liquidators as co-party plaintiff, with the admonition that otherwise the case would be dismissed.

On September 1, 1956, said court issued another order dismissing the case, without pronouncement as to costs, it appearing that the aforementioned amendment had not been made, despite the fact that copy of said order of August 1, 1956 had been sent, by registered mail, to plaintiff's counsel on August 6, 1956. Copy of the last order was delivered, on September 13, 1956, to counsel for the plaintiff, which filed, on September 21, 1956, a motion alleging that, copy of the order of August 1, 1956 was received by the plaintiff on August 17, 1956; that thereupon said counsel prepared an amended complaint—copy of which was annexed to the motion—as directed by the court; that on August 24, 1956, said counsel handed two copies of said amended complaint to Mrs. Receda Vda. de Ocampo, the employee of the aforesaid Board of Liquidators in charge of plaintiff's incoming and outgoing correspondence, with instructions to then mail said copies to the Court of First Instance of Leyte and counsel for defendant herein; that on September 13, 1956, plaintiff's counsel received copy of the order of September 1, 1956; that thereupon he inquired from plaintiff's mailing clerk whether or not his instructions,

concerning the mailing of copies of said amended complaint, had been complied with; that he then found out that, although said copies of the amended complaint were entered in the record book of plaintiff's outgoing correspondence on August 24, 1956, only the copy addressed to defendant's counsel had actually been mailed (as evidenced by registry receipt No. 57209 dated August 25, 1956); that the original copy of the amended complaint, addressed to the clerk of court, could not be located, despite diligent efforts made to find the same; that plaintiff's failure to file in court the original of said amended complaint is imputable to the excusable negligence of the aforementioned Mrs. Ocampo, whose affidavit was annexed, also to the motion for reconsideration; and that, plaintiff has a just and valid claim against the defendant. Plaintiff prayed, therefore, that said order of September 1, 1956 be reconsidered and set aside and that its aforementioned amended complaint be admitted.

Said motion for reconsideration was denied by an order dated October 3, 1956, whereupon plaintiff brought the case for review, by Record on Appeal, to the Court of Appeals which, however, forwarded the records to us, the issues raised in the appeal being purely of law, namely: (1) whether an action, commenced within three (3) years after the abolition of plaintiff, as a corporation, may be continued by the same after the expiration of said period; and (2) whether, under the facts set forth above, the lower court should have granted plaintiff's motion for reconsideration of its order of September 1, 1956.

With respect to the first question, the rule appears to be well settled that, in the absence of statutory provision to the contrary, pending actions by or against a corporation are abated upon expiration of the period allowed by law for the liquidation of its affairs.

"It is generally held, that where a statute continues the existence of a corporation for a certain period after its dissolution for the purpose of prosecuting and defending suits, etc., the corporation becomes defunct upon the expiration of such period, at least in the absence of a provision to the contrary, so that no action can afterwards be brought by or against it, and must be dismissed. Actions pending by or against the corporation when the period allowed by statute expires, ordinarily abate. * * * This time limit does not apply unless the circumstances are such as to bring the corporation within the provision of the statute. However, the wording of the statutes in some jurisdiction authorize suits after the expiration of the time limit, where the statute provides that for the purposes of any suit brought by or against the corporation shall continue beyond such period for a further named period after final judgment." (Fletcher's Cyclopedia on Corporations, Vol. 16, pp. 892-893.)

Our Corporation Law contains no provision authorizing a corporation, after three (3) years from the expiration of its lifetime, to continue in its corporate name actions instituted by it within said period of three (3) years. In fact, section 77 of said law provides that the corporation shall "be continued as a body corporate for three (3) years after the time when it would have been *** dissolved, for the purpose of prosecuting and defending suits by or against it ***", so that, thereafter, it shall no longer enjoy corporate existence for such purpose. For this reason, section 78 of the same law authorizes the corporation, "at any time during said three years * * * to convey all of its property to trustees for the benefit of members, stockholders, creditors and other interested" evidently for the purpose, among others, of enabling said trustees to prosecute and defend suits by or against the corporation begun before the expiration of said period. Hence, commenting on said sections, Judge Fisher, in his work entitled *Philippine Law on Stock Corporations* (1929 ed.) has the following to say:

"It is to be noted that the time during which the corporation through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but that there is no time limited within which the trustees must complete a liquidation placed in their hands. It is provided only (Corp. Law, Sec. 78) that the conveyance to the trustees must be made within the three year period. It may be found impossible to complete the work of liquidation within the three year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceases to be an entity capable of suing or being sued (7 R.C.L. Corps.

Par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of Section 78 may sue and be sued as such in all matters connected with liquidation. By the terms of the statute the effect of the conveyance is to make the trustees the legal owners of the property conveyed, subject to the beneficial interest therein of creditors and stockholders." (Pp. 389-390; see, also, *Sumera vs. Valencia* [67 Phil., 726-727]).

Obviously, the complete loss of plaintiff's corporate existence after the expiration of the period of three (3) years for the settlement of its affairs is what impelled the President to create a Board of Liquidators, to continue the management of such matters as may then be pending. The first question must, therefore, be answered in the negative.

With respect, however, to the second question, we hold that the lower court erred in not granting plaintiff's motion for reconsideration of September 21, 1956. To begin with, the judgment of the municipal court of Tacloban against the defendant is a strong indication of the validity and justice of plaintiff's claim against her. Moreover the record satisfactorily shows that plaintiff had prepared an amended complaint, as directed in the order of August 1, 1956, upon receipt thereof; that copy of said amended complaint had actually been sent by registered mail to defendant's counsel; that plaintiff's counsel had given to its mailing clerk the proper instructions for the filing of the original of said amended complaint with the office of the Court of First Instance of Leyte; that said mailing clerk had endeavored to comply with the aforementioned instructions, as evidenced by the corresponding entry in the record book of plaintiff's outgoing correspondence and that the failure to file in court said original of the amended complaint must have been due, therefore, either to accident or to excusable negligence on the part of said mailing clerk.

Wherefore, the orders appealed from, dated September 1 and October 3, 1956 are reversed, plaintiff's amended complaint is hereby admitted, and the record remanded to the lower court for further proceedings, with the costs of this instance against defendant-appellee, Apolonia Pore. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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