

GENERAL CORPORATION OF THE PHILIPPINES AND MAYON INVESTMENT CO., PLAINTIFFS AND APPELLEES, VS. UNION INSURANCE SOCIETY OF CANTON, LTD. AND/OR FIREMAN'S FUND INSURANCE CO., DEFEN...

G.R. No. L-2684. September 14, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

General Corporation of the Philippines and the Mayon Investment Co, are domestic corporations duly organized and existing by virtue of the laws of the Philippines, with principal offices in the City of Manila, The Union Insurance Society of Canton, Ltd, is a foreign insurance corporation, duly authorized to do business in the Philippines, with head office in the City of Hongkong, China, and a branch office in Manila. The Fireman's Fund Insurance Co. is a foreign insurance corporation duly organized and existing under the laws of the State of California, U.S.A. It has been duly registered with the Insurance Commissioner of the Bureau of Commerce as such insurance company since November 7, 1946, and authorized to do business in the Philippines since that date.

The Union Insurance Society of Canton, Ltd. has been acting as settling agent of and settling Insurance claims against the Fireman's Fund Insurance Co. even before the last world war and continued as such at least up to November 7, 1946,

In Civil Case No. 511 of the Court of First Instance of Manila, the General Corporation of the Philippines and the Mayon Investment Co. as plaintiffs sued the Union Insurance Society of Canton, Ltd, and the Fireman's Fund Insurance Co. for the payment of twelve marine insurance policies in the sum of P57,137.60. Said policies were issued by the Fireman's Fund Insurance Co. for merchandise shipped from the United States to the Philippines in 1945, in the name of Western Canvas Products Company and/or Rovon Trading Company, doing business in Seattle, Washington, U. S. A. The original bills of lading and the original insurance policies covering the merchandise, all indorsed in blank, were sent by the insured to the Hongkong & Shanghai Banking Corporation in Manila with instructions that the said documents were to be surrendered and title to the merchandise covered by them to be transferred upon payment in full of the invoice price.

Upon arrival of the merchandise in Manila the consignee or purchaser would appear to have failed to meet the terms of the sale and following a certain agreement between the shippers and the herein plaintiffs, the shipping papers, including the twelve marine insurance policies were surrendered to the herein plaintiffs and the merchandise released to them, the latter claiming that they had paid to the bank the full invoice price. It was later found that some of the merchandise were lost and others damaged while in transit and inasmuch as the policies were made payable to the order of the assured in Manila, the plaintiffs filed the corresponding claims with the defendant Union Insurance Society of Canton, Ltd. in Manila acting as settling agent of its co-defendant Fireman's Fund Insurance Co. It seems that all the claim papers with the exception of insurance policy No. 70448/6 (Exhibit E-2) for \$2,902.36 were forwarded to defendant Fireman's Fund Insurance Co. at Seattle,

Washington, following instructions from the said company, and the claims there approved by the insurance company. However, the claims were there adjudicated by the Superior Court of the State of Washington for King County against the plaintiffs in the present case and in favor of other claimants. As regards the claim based on insurance policy No. 70448/6, Exhibit E-2, involved in the present appeal, inasmuch as it was filed a little late, it was not forwarded to the United States and so was never passed upon by the Fireman's Fund Insurance Co. at Seattle; neither was it approved or disapproved by the Union Insurance Society of Canton, Ltd. in Manila.

In the trial court the parties submitted the case upon a partial stipulation of facts and some evidence, oral and documentary. After hearing, said court found and held that as regards the eleven marine insurance policies which have been the subject of interpleader in the Superior Court in the State of Washington for King County and decided by said court against the herein plaintiffs, said decision constituted *res adjudicata* binding upon the plaintiffs herein. The trial court absolved the defendant Union Insurance Society of Canton, Ltd. from the complaint but condemned the Fireman's Fund Insurance Co. to pay the plaintiffs the sum of \$2,000 or its equivalent in Philippine currency, with legal interest from and including September 12, 1946, on the claim based on the marine insurance policy No. 70448/6, Exhibit E-2.

The plaintiffs General Corporation of the Philippines and Mayon Investment Co. appealed from that part of the decision referring to the eleven marine insurance policies. Said appeal is now docketed in the Supreme Court as G. R. No. L-2303. The Fireman's Fund Insurance Co. appealed from the decision insofar as it was sentenced to pay \$2,000 to the plaintiffs. Because of the amount involved the appeal was sent to the Court of Appeals. However, being a companion case of G. R. No. L-2303, at the instance of appellant, the case was finally elevated to the Supreme Court which gave it due course by its resolution of December 9, 1948, and docketed here as G.R. No. L-2684. This is the case on appeal now under consideration.

The appellant contends that the trial court erred in holding that it acquired jurisdiction over appellant Fireman's Fund Insurance Co. and in rendering judgment against it in the sum of \$2,000.

As regards the issue of jurisdiction, it is well to state that the summons corresponding to appellant Fireman's Fund Insurance Co. was served on September 12, 1946, on the Union Insurance Society of Canton, Ltd, then acting as appellant's settling agent in this country. At that time, the appellant had not yet been registered and authorized to do business in the Philippines. Said registration and authority came as already stated, only on November 7, 1946, that is, a little less than two months later.

The attorneys for the Union Insurance Society of Canton, Ltd. on September 25, 1946, petitioned the trial court to quash and declare null and void the summons issued thru it on its co-defendant Fireman's Fund Insurance Co. on the ground that the said company was not doing business in the Philippines, and that the Union Insurance Society of Canton, Ltd. had no authority from its co-defendant to receive summons on its behalf. The trial court in its order of October 18, 1946, overruled said petition on the ground that according to the complaint, the Fireman's Fund Insurance Co. was doing business in the Philippines and a mere denial of said allegation was not sufficient to justify the court in quashing the summons, and that the matter of doing business in the Philippines was a question of fact to be determined at the hearing of the case.

Section 14, Rule 7 of the Rules of Court reads as follows:

"Sec. 14. Service upon private foreign corporations.—If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

Applying the above legal provision, the trial court in its decision held that service of summons for appellant

Fireman's Fund Insurance Co. on its settling agent Union Insurance Society of Canton, Ltd., was legal and gave the court jurisdiction over said appellant, the court ruling that the phrase "or agents within the Philippines" clearly embraced settling agents like the Union Insurance Society of Canton, Ltd.

We agree with the trial court in its ruling on this point. Section 14, Rule 7 of the Rules of Court above-quoted in employing the phrase "doing business in the Philippines" makes no distinction as to whether said business was being done or engaged in legally with the corresponding authority and license of the Government or, perhaps illegally, without the benefit of any such authority or license. As long as a foreign private corporation does safe or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts, this for the protection of the citizens, and service upon any agent of said foreign corporation constitutes personal service upon the corporation and accordingly judgment may be rendered against said foreign corporation, (Fisher, Philippine Law of Stock Corporation, pp. 451, 456.)

But, was the Fireman's Fund Insurance Co. in September, 1946, then doing business in the Philippines, within legal contemplation? It is a rule generally accepted that one single or isolated business transaction does not constitute "doing business" within the meaning of the law, and that transactions which are occasional, incidental and casual, not of a character to indicate a purpose to engage in business do not constitute the doing or engaging in business contemplated by law. In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character. (Thompson on Corporations, Vol., 8, 3d edition, pp. 844-847 and Fisher's Philippine Law of Stock Corporation p. 415.)

The Fireman's Fund Insurance Co., to judge by the twelve marine insurance policies issued as already mentioned, policies covering different shipments, made payable in Manila, endorsed in blank, and in practice, collectible by the consignees in Manila or such other persons or entities who meet the terms by paying the amounts of the invoices, rendering it not only convenient but. necessary for said Fireman's Fund Insurance Co. to appoint and keep a settling agent in this jurisdiction, was certainly doing business in the Philippines. And these were not casual or Isolated business transactions. According to the evidence, since before the war, the Fireman's Fund Insurance Co, would appear to have engaged in this kind of business and had employed its co-defendant Union Insurance Society of Canton, Ltd. as its settling agent, altho sometime in 1946, between July and August of that year, appellant had its own employee from Its head office in America, one John L. Stewart, acting as its settling agent here. And, to conclusively prove continuity of the business and the intention of the appellant not only to establish but to continue such regular business in this jurisdiction, on November 7, 1946, less than two months after service of summons, it applied for, obtained a license and was authorized to regularly do business in the Philippines,

Counsel for appellant contends that at the time of the service of summons, the appellant had not yet been authorized to do business. But, as already stated, Sec. 14, Rule 7 of the Rules of Court makes no distinction as to or without authority to do business in the Philippines. The test is whether a foreign corporation was actually doing business here. Otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the corresponding license and authority to do business may successfully tho unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts. It would indeed be anomalous and quite prejudicial, even disastrous, to the citizens in this jurisdiction who in all good faith and in the regular course of business accept and pay for shipments of goods from America, relying for their protection on duly executed foreign marine insurance policies made payable in Manila and duly endorsed and delivered to them, that when they go to court to enforce said policies, the insurer who all along has been engaging in this business of issuing similar marine policies, serenely pleads immunity to local jurisdiction because of its refusal or

neglect to obtain the corresponding license to do business here thereby compelling the consignees or purchasers of the goods insured to go to America and sue in its courts for redress.

Appellant further contends that according to Section 68 of the Corporation Law, service of summons on a foreign corporation may be made only upon an agent of said corporation residing in the Philippines and authorized by the foreign corporation to accept service. Said section refers to a foreign corporation doing business in the Philippines ubina has complied with the law and obtained the corresponding license. It does not refer to a foreign corporation actually doing business here but without the corresponding license or authority. In the latter case, service of summons is governed by section 14, Rule 7 of the Rules of Court.

We may add that the defense of lack of jurisdiction interposed "by appellant seems to be based on a mere technicality. True, on September 12, 1946, when service of the summons was made, the appellant had not yet been authorized to do business in the Philippines and so it had not yet designated an agent authorized to accept service of summons. But less than no months thereafter, the appellant obtained such license or authority and even according to its own theory was then amenable to the jurisdiction of the local courts. It employed able attorneys who filed an, answer, including motions on its behalf, and during the hearing held on October 21, 1947, that is to say, about one year after it had been authorized to do business here, it was represented by the same attorneys who not only cross-examined the witness for the plaintiffs and agreed to or objected to documentary evidence, but Introduced a witness on its behalf and presented documentary evidence. Under such circumstances, it must be clear that the appellant may not successfully plead lack of jurisdiction over its person.

The appellant next urges that the plaintiffs had no interest in the insurance policy, having received the same merely for collection according to paragraph VII of the complaint. The truth is that the plaintiffs have such interest sufficient to authorize them to sue on and recover upon said policy because they have met all the terms of the shipper, paid all the amounts demanded by it thru the bank and in turn were given all the shipping papers, including the insurance policy, Exhibit E-2. It is to be remembered that this insurance policy was endorsed in blank and payable in Manila. One of the conditions of said policy is that thru it the appellant insured the shipper (Western Canvas Products Co.) "as will as in his or their own nature as in that of those to whomsoever the subject matter of this policy does, may or shall appertain, in the sum of \$2,000" (First paragraph of the policy, Exhibit E-2). Moreover, as correctly found by the trial court, there was an agreement Exhibit 2 attached to Exhibit F-2 whereby the shipper Western Canvas Product Co. authorized the plaintiffs herein to prosecute this case against appellant.

Now, we come to the evidence or proof as to the loss or damage said to have been suffered by the plaintiffs. Said plaintiffs claim that their documentary evidence Exhibits E to E-23 establish their loss; that said documents are of the same class of documents presented in the other eleven insurance policies and which were approved by the appellant in America in G.R. No. L-2303. Counsel for the appellant, however, insists that the plaintiffs1 claim was never approved by appellant or its settling agent. In this we agree. The settling; agent here declined to take action upon the claim filed by the plaintiffs based on the policy Exhibit E-2 and said plaintiffs failed or refused to present said claim before the appellant in America. We shall therefore have to determine whether the evidence is sufficient to support the claim. The trial court without discussing the evidence or referring to the documents merely held that the evidence was sufficient to prove the claim.

Examining the evidence we find that Atty, Nabong for the the plaintiffs gave no testimony about the loss. He merely identified the documents intended to prove said loss, According to the report (Exh. E-21) of plaintiffs1 surveyor C.B. Nelson & Co, which made the survey in order to ascertain the nature and extent of the damage alleged to have been sustained on the shipment of the 21 cases of merchandise which came on the American Mail Line SS Wideawake which arrived in Manila on October 14, 1945, covered by the policy Exhibit E-2, eleven

cases—Nos. 8, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 21 still remained undelivered, and that claim for these cases should be supported by short landed certificates issued by the Steamship agent. We failed to find these certificates among the exhibits presented. It seems that efforts were made on behalf of the plaintiffs to obtain these certificates from the Manila Terminal Co. (Exhibit E-8), American Mail Line, Ltd, (Exhibit E-9), and the Luzon Stevedoring Co. (Exhibits E-10 and E-11), but that said certificates were never issued. In Exhibit E-14, the Manila Terminal Co., writing to the Luzon Brokerage Co., and speaking of the eleven cases of merchandise said to have been short landed, merely promised to make careful investigation and to issue the corresponding certificate if its record indicated that the cargoes were not landed from the vessel. And, in Exhibit E-18, the Everett Steamship Corporation in a letter to one of the plaintiffs (General Corporation of the Philippines) said that "all merchandise manifested on the bill of lading No. S-76 was discharged in full and in apparent good order;" that "once cargo leaves the ship's tackle, responsibility was entirely out of our hands," and "in view of the above we regret that we cannot tender recognition of your claim" (apparently referring to the eleven cases). We therefore find that the claim for the loss or short landing of these eleven cases which constitute the bulk of the claim has not been proven.

Going back to the report of the surveyor C.B. Nelson & Co. (Exhibit E-21), said report made a detailed survey of the shortage or damage on cases Nos. 5, 9, 13 and 14. According to Exhibit E-7 the shortage or damage on these four cases is valued at \$635.50 or P1,271. These exhibits E-7 and E-21 were admitted in court without objection by the appellant. We find the claim in the amount of \$635.50 to have been duly established.

In conclusion we hold that a foreign corporation actually doing business in this jurisdiction, with or without license or authority to do so, is amenable to process and the jurisdiction of local courts. If such foreign corporation has a license to do business, then summons to it will be served on the agent designated by it for the purpose, or otherwise in accordance with the provisions of the Corporation Law. Where such foreign corporation actually doing business here has not applied for license to do so and has not designated an agent to receive summons, then service of summons on it will be made pursuant to the provisions of the Rules of Court, particularly Rule 7, Section 14 thereof. We further hold that where a foreign Insurance corporation engages in regular marine insurance business here by issuing marine insurance policies abroad to cover foreign shipments to the Philippines, said policies being made payable here, and said Insurance company appoints and keeps an agent here to receive and settle claims flowing from said policies, then said foreign corporation will be regarded as doing business here in contemplation of law.

In view of the foregoing, the decision appealed from is hereby modified so as to reduce the amount awarded to the plaintiffs and to be paid by the appellant Fireman's Fund Insurance Co. from \$2,000 to \$635.50 or Its equivalent in Philippine currency, and in all other respects, the decision is affirmed. No pronouncement as to costs.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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