

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FAR EAST AMERICAN COMMERCIAL CO., INC. AND MANILA UNDERWRITERS INSURANCE CO., INC., DEFENDANTS. MANILA UNDERWRITERS INSU...**

*G.R. No. L-17475. February 28, 1963*

Ponente: PADILLA, J.

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**PADILLA, J.:**

Appeal from a judgment rendered by the Court of First Instance of Manila (civil case No. 37108) certified by the Court of Appeals (CA-G. R. No. 27104-R) to this Court for final determination pursuant to section 17, paragraph 6, of the Judiciary Act of 1948, as amended.

In a complaint filed on 24 July 1958 the plaintiff avers that on 1 December 1950 the Commissioner (then Collector) of Internal Revenue assessed and demanded from the defendant Far East American Commercial Co., Inc. the payment of P208,514.45 as deficiency sales tax, surcharges and penalty on its gross sales for the years 1946 and 1947, as provided and imposed by sections 183-186 of the National Internal Revenue Code; that on 23 April 1951 the defendant offered as a compromise to pay P100,000 in full settlement of the assessment, which was accepted by the Commissioner; that the Far East American Commercial Co., Inc. paid P75,000, thereby leaving a balance of P25,000 which was guaranteed by MUIC bond No. 1208 (Annex A) in the sum of P25,000 executed by the Manila Underwriters Insurance Co., Inc. on December 1951 and approved by the Commissioner; that out of the balance of P25,000 the defendant paid from 1951 to 1954 the sum of P15,000, thereby leaving unpaid a balance of P10,000, and that the Far East American Commercial Co., Inc. and the Manila Underwriters Insurance Co., Inc. failed and refused to pay the balance of P10,000, notwithstanding repeated demands made upon them by the Commissioner. Hence, the plaintiff prays that judgment be rendered declaring MUIC bond No. 1208 forfeited and ordering the defendants to pay, jointly and severally, the plaintiff the sum of P10,000, legal interest thereon from the date of the filing of the complaint to the date of payment in full thereof and costs and for any other just and equitable relief.

On 1 September 1958 the defendant Manila Underwriters Insurance Co., Inc. answered the complaint denying and admitting parts thereof, and alleging that for and in consideration of MUIC bond No. 1208 issued by it, the Far East American Commercial Co., Inc., together with the A. Syypap & Co., Antonio Syypap and Angel Syypap, executed an indemnity agreement (Annex 1) in favor of the Manila Underwriters Insurance Co., Inc., "to render it harmless of any damage, loss, costs, advances and expenses of whatever kind and nature, including attorney's fees, as a consequence of its having issued the aforementioned bond." It prays that judgment be rendered dismissing the complaint and sentencing the defendant Far East American Commercial Co., Inc., the A. Syypap & Co., Antonio Syypap and Angel Syypap, jointly and severally, to pay it (the Manila Underwriters Insurance Co., Inc.) the sum of P1,297.20 for unpaid premium and documentary stamps and 15% thereof as attorney's fees, or, if the complaint be not demanded by the plaintiff, the defendants Far East American Commercial Co., Inc. the A. Syypap & Co., Antonio Syypap and Angel Syypap be ordered to pay, jointly and severally, to it the sum to be paid to

the plaintiff and 15% thereof as attorney's fees, and costs. On 3 September, the defendant Manila Underwriters Insurance Co., Inc. moved to bring in A. Syyp & Co., Antonio Syyp and Angel Syyp as defendants for the granting of complete relief in the determination of its cross-claim, pursuant to section 9, Rule 10, Rules of Court. The motion was granted. On 28 October, the defendant Far East American Commercial Co., Inc. moved for the dismissal of the complaint, on the ground that the action is barred by the statute of limitations (section 332, subparagraph 2 of paragraph c, of the National Internal Revenue Code). On 6 November, the plaintiff objected to the defendant's motion. It contended that as its cause of action is predicated upon a written contract (between the Commissioner and a tax-payer) article 1144 of the Civil Code that provides for ten-year prescriptive period and not section 332 of the Internal Revenue Code that bars an action after five years from the date of assessment, applies to the case. In 13 November, the defendant Manila Underwriters Insurance Co., Inc. moved for a default order against the cross-defendants A. Syyp & Co., Antonio Syyp and Angel Syyp for failure to file an answer within the reglementary period. On 14 November, the defendant Far East American Commercial Co., Inc. filed its answer reiterating the special defense that the cause of action already had prescribed. On 20 November, the trial court entered an order of default against the cross defendants A. Syyp & Co., Antonio Syyp and Angel Syyp. On 7 December, the cross-defendants moved, for reconsideration of the order of default entered against them on 20 November 1958 and for relief from the order of default on the ground of excusable negligence and prayed that the reply filed, by the defendant and cross-defendant Far East American Commercial Co., Inc. be considered their reply. On 8 December, the defendant Manila Underwriters Insurance Co., Inc. moved for an order of default against the defendant Far East American Commercial Co., Inc. on the cross-claim, for failure to file an answer. On 11 December, the defendant and cross-plaintiff Manila Underwriters Insurance Co., Inc. objected to the petition for relief. On 16 December, the court denied the petition for relief from the order of default. On 19 December, the cross-defendants A. Syyp & Co., Antonio Syyp and Angel Syyp again moved for relief from the order which was objected to by the cross-plaintiff of claimant Manila Underwriters Insurance Co., Inc. On 29 December, the petition for relief filed by the cross-defendants was granted and in a separate order of even date the court declared the cross-defendant Far East American Commercial Co., Inc. in default on the cross-claim. On 9 January 1959 the cross-defendant Far East American Commercial Co., Inc. filed a reply to the cross-claim reiterating that it is not liable to pay any amount as the period within which the said claim could be instituted already had expired. On 15 January, the cross-defendant Far East American Commercial Co., Inc. filed a motion, for reconsideration and relief from the order declaring it in default on the cross-claim. On 27 January, the plaintiff filed a pleading informing the court that it no longer was interested in prosecuting its claim of P10,000 in the complaint, for the reason that the defendant and cross-claimant Manila Underwriters Insurance Co., Inc. had paid in full the said sum. On 31 January, the trial court dismissed the complaint in so far as the defendants Far East American Commercial Co., Inc. and Manila Underwriters Insurance Co., Inc. are concerned, without pronouncement as to costs and left as parties to the case the Manila Underwriters Insurance Co., Inc. as cross-claimant and the A. Syyp & Co., Antonio Syyp and Angel Syyp as cross-defendants. On 10 February, the cross-claimant moved for reconsideration of the last order (dated 31 January 1959) and prayed that the defendant and cross-defendant Far East American Commercial Co., Inc. be reinstated as party to the case, because it has a claim and right to be reimbursed by the cross-defendant Far East American Commercial Co., Inc. of the P10,000 it had paid to the plaintiff. Acting on said motion, on 17 February 1959 the trial court reconsidered its order of 31 January 1959, in the following language:

\* \* \* that the principal, claim of the Republic of the Philippines against the defendants is jointly dismissed, but the cross-claim of the Manila Underwriters Insurance Co., Inc. against the cross-defendant Far East American Commercial Co., Inc. is hereby maintained with all the legal force and effect.

The hearing of the case was set for 15 July 1959. On this date the parties agreed to submit the cross-claim for judgment on the pleadings. On 16 November 1959 the trial court rendered judgment, the dispositive part of which

reads, as follows:

Wherefore, the Court hereby renders judgment, ordering the cross-defendants to pay or indemnify, jointly and severally, the cross-claimant Manila Underwriters Insurance Co., Inc., in the amount of P10,000, plus another sum of P1,297.00 as unpaid premium and documentary stamps, and another sum of P1,500.00 (15% of the obligation) as attorney's fees, without pronouncement as to costs.

From the above judgment, the cross-defendants Far East American Commercial Co., Inc., A. Syypap & Co., Antonio Syypap and Angel Syypap have appealed.

The errors claimed by the appellants to have been committed by the trial court narrow down to the question whether the action brought by the plaintiff is a tax collection or the enforcement of a contractual liability.

This is a settled question. This Court has ruled and held that the action is predicated upon contract and not one to collect taxes.[1] Consequently, the prescriptive period that would bar the action is not that provided or prescribed by the National Internal Revenue Code but the Civil Code.

The judgment appealed from is affirmed, with costs against the appellants.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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[1] Republic of the Philippines vs. J. Amado Araneta, G. R. No. L-14142, 30 May 1961.

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