

**JOAQUIN SO, PETITIONER, VS. HON GAUDENCIO CLORIBEL, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH VI), HON. FRANCISCO ARCA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANI...**

*G.R. Nos. L-23026-27. January 06, 1977*

Ponente: CONCEPCION, JR., J.

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**CONCEPCION, JR., J.:**

Petition for certiorari to annul:

(1) the Order of May 20, 1964, issued by the respondent Judge Gaudencio Cloribel in Civil Case No. 54912 of the Court of First Instance of Manila, ordering the respondent Reparations Commission to deliver the photographic materials involved in this case to the receiver, Atty. Ramon M. Velayo, in order that the said receiver shall distribute the same to the persons or parties entitled thereto, subject to the approval of the court;

(2) the Order of June 1, 1964, issued by the respondent Judge Gaudencio Cloribel in Civil Case No. 54912 of the Court of First Instance of Manila, approving the Compromise Agreement of May 13, 1964, executed by and between the respondents Joseph Cochingyan Jr., Cesar A. Eguia, Vicente B. Magno, Panay Legionnaires Enterprises, Inc., Worldwide Trading & Development Corporation, Keyser Mercantile Co., Inc., and the Legionnaires Enterprises, Inc., and directing the receiver to implement said compromise agreement in accordance with the terms and conditions thereof;

(3) the Order of June 1, 1964, issued by the respondent Judge Francisco Arca in Civil Case No. 55250 of the Court of First Instance of Manila, approving the Compromise Agreement entered into by and between the respondents Joseph Cochingyan, Jr., Cesar A. Eguia, Vicente B. Magno, Panay Legionnaires Enterprises, Inc., Worldwide Trading & Development Corporation, Keyser Mercantile Co., Inc., and the Legionnaires Enterprises, Inc.; and

(4) the Order of June 1, 1964, issued by the respondent Judge Gaudencio Cloribel in Civil Case No. 54912 of the Court of First Instance of Manila, ordering, among others, the respondent Reparations Commission to deliver to the respondent Ramon M. Velayo, in his capacity as receiver of Legionnaires Enterprises, Inc., the photographic supplies with the total value of US \$120,000.00 upon payment of the invoice value thereof and the other charges of the respondent Reparations Commission at the rate of P2.00 to \$1.00; the filing of a bond in favor of the said Commission to answer for the payment of the difference between the free market rate of exchange and the P2.00 to \$1.00 rate of exchange; and the payment to petitioner Joaquin So, by the said receiver, of the amount of US \$37,016.00, as reimbursement for the amount previously paid by the said petitioner to the Reparations Commission;

with a prayer for the issuance of a writ of preliminary injunction to restrain the said respondent courts from enforcing the same.

As prayed for, a temporary restraining order was issued by this Court on June 8, 1964, "effective immediately but expiring July 1." [1]

The record shows that on February 3, 1959, the Reparations Commission, in its Resolution No. 88, awarded to the Philippine Veterans Legion US \$4 million worth of reparation goods, pursuant to Section 2 (d) of Republic Act No. 1789, to generate a trust fund for the benefit and rehabilitation of World War II veterans, their widows, parents, and orphans.

On March 12, 1959, the Reparations Commission, in its Resolution No. 91, recognized and authorized the Legionnaires Enterprises, Inc., to act as the business arm of the Philippine Veterans Legion to handle the goods or commodities to be Procured by the Reparations Commission in Japan for the Philippine Veterans Legion.

On March 13, 1961, by Resolution No. 396, the Reparations Commission set aside for the Philippine Veterans Legion US \$1 million worth of reparation consumer goods,[2] and subsequently issued the corresponding Procurement Order No. 9, dated June 16, 1961, cover-ing said allocation.

Thereafter, the Philippine Mission in Japan contracted with Japanese suppliers for the consumer goods to meet the requirements of the Philippine Veterans Legion under its allocation. Among the reparations contracts executed by the Mission were contracts for US \$120,000.00 worth of photographic materials with the Fuji Photo Film Co. and Mitsubishi Kaisha.

In the meanwhile, the Philippine Veterans Legion and Legionnaires Enterprises, Inc. entered into an agreement, whereby from the category of a mere business arm of the former, the latter was converted into that of a commission agent of the aforesaid US \$1 million worth of reparations goods, in consideration of the sum of P300,000.00, representing 15% of the invoice dollar value of the allocation to the Philippine Veterans Legion, pegged at P2.00 per US \$1.00. As such agent, the Legionnaires Enterprises, Inc. was vested with authority to handle the procurement of the goods from Japan in the name of the Philippine Veterans Legion, and the sale and disposition of the same in favor of whomsoever it may choose and at such price as it may deem fit to fix, with the right to retain whatever profit it may realize from such sale and disposition.[3]

On October 12, 1959, Francisco B. Offemaria, president of the Legionnaires Enterprises, Inc., and National Commander of the Philippine Veterans Legion, constituted Cesar P. Roces as his attorney-in-fact "to make all necessary representations, acts and transactions in Japan regarding the implementation or carrying out the intents and purposes of the award embodied in Resolutions No. 88 and 91 of the Philippine Reparations Commission in relation to Republic Act No. 1789" and "to Make, sign, execute and deliver contracts, documents, agreements and other writings of whatever nature and kind, with any and all government offices concerned and any and all third persons, concerns or entities upon such terms and conditions acceptable to the said Attorney, within the scope and sphere of the above-mentioned Resolutions Nos. 88 and 91 and Republic Act No. 1789." [4]

On August 31, 1961, Cesar P. Roces, acting in behalf of the Legionnaires Enterprises, Inc. by virtue of the general power of attorney heretofore conferred upon him, sold to the Worldwide Trading & Development Corporation, US \$500,000.00 worth of reparation goods of the US \$1 million awarded to the Philippine Veterans Legion under Resolution No. 396 of the Reparations Commission.[5] On September 6, 1961, the said Cesar P. Roces sold US \$150,000.00 worth of reparation goods to Joaquin So,[6] and on September 15, 1961, the said Cesar P. Roces, sold the remaining US \$350,000.00 worth of reparations consumer goods to Roman Baldovino.[7]

On August 30, 1963, the Worldwide Trading & Development Corporation, Roman Baldovino, and Joaquin So, realizing that their respective purchases would be arriving at different times and would be so commingled that it would be extremely difficult to separate what pertains respectively to each of them, executed an agreement captioned "Deed of Assignment", whereby the Worldwide Trading & Development Corporation and Roman Baldovino assigned and transferred their rights and interests in the aforementioned reparation goods to Joaquin So.[8]

On September 6, 1963, Joaquin So, in his own behalf, and as assignee of Worldwide Trading & Development Corporation and Roman Baldovino, filed a complaint against the Legionnaires Enterprises, Inc., Philippine Reparations Commission, and Cesar P. Roces, for Specific Performance with Preliminary Injunction. The case was docketed as Civil Case No. 54912 and assigned to Branch VI of the Court of First Instance of Manila, presided by the respondent Judge Gaudencio Cloribel. The substance of the complaint is that the reparation goods, subject matter of the contracts executed by Cesar P. Roces in favor of the Worldwide Trading & Development Corporation, Roman Baldovino, and Joaquin So, have been procured under Resolution No. 396 of the Reparations Commission and have already left Japan on August 25, 1963, and due to arrive in the Philippines on or about the first week of September, 1963, but that the Legionnaires Enterprises, Inc. and Cesar P. Roces refused to comply with the terms thereof. Joaquin So prayed for a writ of preliminary injunction restraining the defendant Reparations Commission, its officers, representative, or agent from releasing the goods to the defendant Legionnaires Enterprises, Inc. or anyone else until further orders; the defendants Legionnaires Enterprises, Inc. and Cesar P. Roces from selling the allocation granted to the Philippine Veterans Legion or any part thereof, and from taking deliveries of the reparation goods covered by said allocation.[9]

On November 7, 1963, the respondent Judge Gaudencio Cloribel issued a writ of preliminary mandatory injunction "requiring defendant Reparations Commission to endorse all the shipping documents pertaining to the photographic materials with an invoice value of some \$120,000.00 to plaintiff Joaquin So, and to deliver to him immediately the photographic materials with an invoice value of \$37,016.00 upon the filing by said plaintiff of a bond in the amount of P74,032.00 in favor of the defendant Reparations Commission, and the payment to the said defendant of the invoice value of the goods and such other fees and charges computed at the preferred rate of exchange of 2 to 1 per invoice dollar; also requiring that thereafter the said defendant Reparations Commission make the deliveries of the other photographic materials that will arrive upon Joaquin So's posting additional bonds equivalent in amount to P2.00 per invoice dollar, and upon his payment of the invoice value of the goods and other fees and charges at the preferred rate of 2 to 1 per invoice dollar." [10]

Meanwhile, on October 2, 1963, Keyser Mercantile Co., Inc., claiming to have an interest in the matter under litigation, sought to intervene in said Civil Case No. 54912.[11] However, before its motion to intervene could be resolved by the court, Keyser Mercantile Co., Inc. withdrew the same.[12] In its stead, Keyser Mercantile Co., Inc. filed a complaint before the Court of First Instance of Manila against the Legionnaires Enterprises, Inc. for specific performance with injunction, which case was docketed therein as Civil Case No. 55250 and assigned to Branch I, presided by the respondent Judge Francisco Arca. In this independent action, Keyser Mercantile Co., Inc. sought to compel specific performance of the contract executed in its favor by the Legionnaires Enterprises, Inc. It prayed for a writ of preliminary injunction restraining the defendant Legionnaires Enterprises, Inc. from releasing and/or disposing of the photographic materials subject of the complaint.[13]

On October 19, 1963, the respondent Judge Francisco Arca issued an order restraining the defendant Legionnaires Enterprises, Inc., from releasing and/or disposing of the photographic supplies subject-matter of the complaint, which are now in Manila ports, until further orders of the court.[14]

On December 3, 1963, the Reparations Commission filed a pleading captioned "Petitionary Manifestation" calling the attention of Judge Arca to the fact that its order of November 27, 1963,[15] restraining the delivery of photographic materials to anybody except Keyser Mercantile Co., Inc.[16] was in conflict with the mandatory injunction issued on November 7, 1963 by Judge Cloribel in Civil Case No. 54912 which ordered the delivery of the same photographic materials to Joaquin So.[17]

On December 6, 1963, Joaquin So filed a motion in Civil Case No. 55250 seeking, among others, the consolidation of Civil Case No. 55250 with Civil Case No. 54912.[18]

On January 24, 1964, the respondent Judge Francisco Arca, in an Omnibus Order, denied the aforementioned Petitionary Manifestation and the petition to consolidate Civil Cases Nos. 55250 and 54912, upon the grounds that the parties in said cases are not the same and that there is no showing that the goods involved in both cases are, also the same. In said order, the respondent judge also approved the motions to intervene filed by Vicente B. Magno and Cesar A. Eguia.[19]

Thereafter, the Panay Legionnaires Enterprises, Inc., Joseph Cochingyan, Jr., and the Worldwide Trading & Development Corporation, all claiming to be the vendees of the reparations goods in question, were allowed to intervene in Civil Cases Nos. 55250 and 54912.[20]

On February 29, 1964, the Panay Legionnaires Enterprises, Inc. filed a petition in Civil Case No. 55250 asking that a receiver be appointed for the defendant Legionnaires Enterprises, Inc. and of the properties in litigation, claiming that the appointment of a receiver is indispensable for the protection of the interests of the parties concerned in view of the inherent perishable nature of the photographic films and materials; the number of overlapping claims which may drag the determination of the case for several years; and the insolvency of the Legionnaires Enterprises, Inc. or the imminent danger of its insolvency due to gross mismanagement of its officials as eloquently manifested by the overlapping contracts with several parties which they have executed over the same reparations goods,[21] and on April 22, 1964, Atty. Ramon M. Velayo was appointed receiver of the Legionnaires Enterprises, Inc.[22]

On April 24, 1964, the said receiver filed an urgent omnibus motion in Civil Case No. 54912, seeking permission to intervene in said case and asking the court to set aside its order of November 7, 1963, granting the writ of preliminary mandatory injunction and thereafter, to direct the Reparations Commission to deliver to him all the photographic materials previously ordered to be delivered to Joaquin So.[23]

On May 20, 1964, the respondent Judge Gaudencio Cloribel issued an order directing the Reparations Commission "to deliver the photographic materials involved in this case to the receiver Atty. Ramon M. Velayo, in order that said receiver shall distribute the same to the persons or parties entitled thereto, subject to the approval of the Court. Provided, however, that those who had already paid for them or advanced expenses in connection herewith, should be reimbursed for their money." [24]

In the meantime, the receiver used his good offices to bring about a settlement of the conflicting claims of the parties. On May 13, 1964, the parties, claiming to have executed contracts with the Legionnaires Enterprises, Inc. for the purchase of reparations goods under Resolution No. 396 of the Reparations Commission, namely: Joseph Cochingyan, Jr., Cesar A. Eguia, Vicente B. Magno, Panay Legionnaires Enterprises, Inc., Worldwide Trading & Development Corporation, Keyser Mercantile Co., Inc., and Legionnaires Enterprises, Inc., executed a Compromise Agreement, the principal feature of which is that Cesar A. Eguia, Vicente B. Magno, Panay Legionnaires Enterprises, Inc., and Worldwide Trading & Development Corporation have agreed to postpone the implementation of their respective contracts with the Legionnaires Enterprises, Inc. in consideration of certain undertakings and obligations assumed by Joseph Cochingyan, Jr. the most notable of which is that the said Joseph Cochingyan, Jr. shall file a bond to answer for any damages that may be sustained by Joaquin So arising from breach of contract, should his contract with the Legionnaires Enterprises, Inc. be adjudged to be valid.[25]

Upon motion of the receiver,[26] the respondent courts, in their respective orders of June 1, 1964, approved the aforementioned Compromise Agreement.[27]

On June 1, 1964, the respondent Judge Gaudencio Cloribel also granted the motion of the receiver seeking the delivery of the photographic materials with a total value of \$120,000.00 upon payment or the invoice value thereof and other charges of the Reparations Commission.[28]

Claiming that the respondent judges, in issuing the questioned orders of May 20, 1964 and June 1, 1964, have acted without or in excess of their jurisdiction or with grave abuse of discretion in gross violation of his rights and to his grave and irreparable damage, and that there is no appeal, nor any plain and adequate remedy in the ordinary course of law, Joaquin So instituted the instant cases.

The Philippine Veterans Legion and Cesar P. Roces, thereafter, sought leave,[29] and was allowed by this Court to intervene as petitioners in the above-entitled cases.[30]

As heretofore stated, the petitioner seeks the annulment of certain orders of the respondent courts, ordering the Reparations Commission to deliver the photographic materials involved in these cases to the receiver of the Legionnaires Enterprises, Inc., who shall, in turn, distribute the same to the parties, pursuant to the Compromise Agreement dated May 13, 1964, and to enjoin the respondent courts from enforcing said orders.

Although a temporary restraining order was issued by this Court on June 8, 1964, the said temporary restraining order expired on July 1, 1964 and has not been renewed despite several motions filed by the petitioner.[31] Such being the case, the receiver did in fact take delivery of the photographic materials involved in these cases and delivered the same to Joseph Cochingyan, Jr. pursuant to the Compromise Agreement and the order of the respondent Judge Gaudencio Cloribel, dated June 1, 1964,[32] so that this Court, on September 27, 1973, required the "petitioner and all other affected parties, if any, to show cause, within ten (10) days from notice, why the case at bar should not be dismissed for having become moot and academic." [33]

The delivery of the photographic materials to the receiver and the distribution of the same pursuant to the compromise agreement being an accomplished fact, there is no other recourse but to dismiss the petitions herein filed.

WHEREFORE, the above-entitled cases are hereby dismissed, without costs.

**SO ORDERED.**

Barredo, (Acting Chairman), Antonio, Muñoz Palma, and Martin, JJ., concur.  
Fernando and Aquino, JJ., no part.

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[1] p. 184, rollo.

[2] p. 359, rollo.

[3] p. 558, rollo.

[4] p. 562, rollo.

[5] p. 563, rollo.

[6] p. 514, rollo.

[7] p. 522, rollo.

[8] p. 54, rollo.

[9] p. 43, rollo.

[10] p. 65, rollo.

[11] p. 497, rollo.

[12] p. 58, rollo.

[13] p. 499, rollo.

[14] p. 419, rollo.

[15] the complaint having been amended in the meantime, another restraining order was issued by the court on November 27, 1963.

[16] p. 68, rollo.

[17] p. 69, rollo.

[18] p. 71, rollo.

[19] p. 74, rollo.

[20] pp. 89, 90, 535, rollo.

[21] pp. 376, 605, rollo.

[22] p. 384, rollo.

[23] p. 96, rollo.

[24] p. 107, rollo.

[25] p. 233, rollo.

[26] p. 118, rollo.

[27] pp. 160, 164, rollo.

[28] p. 166, rollo.

[29] p. 313, rollo.

[30] See petition, p. 582, rollo.

[31] See resolution of this Court, pp. 654, 845, rollo.

[32] See pp. 696, 817, rollo.

[33] p. 854, rollo.

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