

Z.E. LOTHO, INC., PLAINTIFF AND APPELLANT, VS. ICE AND COLD STORAGE INDUSTRIES OF THE PHILIPPINES, INC., ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-16563. December 28, 1961*

Ponente: REYES, J.B.L., J.

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This action was commenced on March 11, 1957, in the Court of First instance of Laguna by the plaintiff corporation charging the defendants with unfair competition and demanding from them the payment of damages. The court a quo denied the plaintiff's claim on the grounds of laches and consent; hence this appeal, which was directed to this Court because the amount involved is more than P200,000.00.

Briefly, the facts are as follows; Z.E. Lotho, Inc. was incorporated on June 9, 1947, with a capital stock of P100,000.00, for the purpose of operating an ice plant and selling the manufactured ice at wholesale or retail. It secured a certificate of public convenience to serve an area that included the towns of San Pedro, Biñan, Sta. Rosa, Cabuyao and Calamba, all in the province of Laguna.

From 1947 until sometime in 1951, the corporation operated a 10-ton ice-producing unit. From June 9 to December 31, 1947, the plaintiff obtained a gross revenue of P13,590.05, but against the corresponding operating expenses, it incurred a loss of P251.01. For the entire year 1948, the company suffered another loss of P4,789.42. In 1949, however, the plaintiff was able to make a profit of P1,907.33, but in 1950, "it again incurred a loss of P2,873.68. It suffered the heaviest loss amounting to P17,080.24 in 1951, and in that year, the corporation first discontinued operating its ice plant.

Because of the stoppage, plaintiff's certificate of public convenience was cancelled, but on February 14, 1955, it was revived upon the company's petition. When it resumed operation on or before February 28, 1955, only an old 5-ton ice producing unit was used in place of the 10 ton unit which was by then already sold to the spouses Emilio Gomez and Crisanta Sta. Maria Gomez in order to meet pressing obligations of the company. Since then until June of 1955, when it altogether ceased to engage in business, whenever there was a breakdown in its machinery, the plaintiff would buy from the Farola Ice Plant of the Ice and Cold Storage Industries of the Philippine, Inc., for resale to its customers.

On January 21, 1958, the plaintiff's certificate of public convenience was definitely cancelled by the Public Service Commission.

Upon the other hand, defendant Ice and Cold Storage Industries of the Philippines, Inc., is a corporation likewise engaged in the manufacture and sale of ice. Comprised within its franchised territory are the City of Manila, Pasay City, Quezon City and some towns of Cavite and Bulacan. The other defendants are all ice dealers in different municipalities of Laguna which are covered by the plaintiff's franchise. Up to December, 1947, these defendants were regular customers of the plaintiff. Beginning the following year, however, they started to buy the greater bulk of the ice that they resold from the defendant ice company. Z.E. Lotho, Inc. made efforts to get back the

patronage of the ice dealers as early, it appears, as 1948, but it was unsuccessful, apparently because it was more profitable in many ways to buy from the defendant company.

Claiming that the sales made to the dealers by said defendant company constituted or amounted to indirect sales within the plaintiff's authorized territory, Z.E. Lotho, sometime in June, 1955, made representations to discuss the matter with the defendants. A conference was held, and a tentative agreement was reached between Z.E. Lotho and the ice dealers. However, the draft of the agreement was never signed, each party blaming the other for the non-consummation.

Upon the foregoing facts, this litigation ensued. The trial court, as already said, dismissed the plaintiff's action. Resorting to this Court, the appellant urges that—

"The lower court erred in holding that, notwithstanding that defendant-appellees have committed unlawful acts constituting unfair competition, plaintiff-appellant is barred from recovering damages as a consequence thereof because of laches and consent on its part, even though those supposed defenses are neither pleaded nor their essential elements proven."

The appellant's charge is not substantiated by the records. That the affirmative defenses of laches and consent as barring plaintiff's claim have been substantially pleaded is evident from each of defendants' respective answers to the complaint, to wit:

"4. That plaintiff has never exercised the diligence of a good father of a family by trying to minimize or eliminate the alleged damages resulting from the alleged acts of the herein defendant, and plaintiff has never notified or ordered defendants to stop the alleged selling of ice, until the filing of the complaint." (Answer of defendant Ice and Gold Storage Industries of the Philippines, Inc.) (Italics supplied)

"3. That the said plaintiff has never asked or prohibited the herein defendant to stop selling ice until the complaint in the present case was filed." (Answer of defendants-spouses Jose Espeleta and Justine de los Reyes; to the same effect are the separate answers of defendants Giriaco Beato, Demetrio Carpena, Felix Carpena, Felix Bautista, Isabel Almoro and Feliciano Olivares, see Rec. on Appeal, pp. 14-55).

Not only is inaction within a reasonable time to enforce a right the basic premise that underlies a valid defense of laches, but such inaction often evinces implied consent or acquiescence to the violation of the right. Consonant with the mandate that the rules of procedure should be liberally construed (Sec 2, Rule 1, Rules of Court), we hold that defendants affirmative allegations previously quoted sufficiently comply with the requirements of Section 5, Rule 9 of the Rules of Court; i.e., that affirmative defenses should be "specifically pleaded." At any rate, the introduction of evidence tending to prove laches without any objection on the part of the plaintiff would have cured whatever formal defect there was in the answers of the defendants regarding that defense.

This brings us to the question whether or not the equitable defense of laches should apply in this case. In the leading case of *Go Chi Gun, et al., vs. Co Cho, et al.*, 96 Phil., 622, this Court, citing 19 Am. Jur. pp. 343-344, enumerated the essential elements of that defense as follows:

"(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred."

The first element is naturally conceded to exist by the plaintiff when it claimed that there was an invasion by the defendants of its rights under the certificate of public convenience. The attendance of the second element is, on

the other hand, clear from the evidence on record, which shows that Zoilo E. Lotho, the general manager and treasurer of the appellant corporation, knew since 1948 that defendant Ice and Cold Storage Industries was selling ice to its co-defendants, and that indeed he tried to win back the ice dealers' patronage. From 1948 to March 11, 1957, when the complaint was filed in the court below, a period of more than nine years had elapsed, and taking into account the nature of this action, the delay is unreasonable (see 52 Am. Jur. 633). The situation did not change because defendants had allegedly, continued to violate plaintiff's right. Plaintiff's action, it should be noted, is not merely for the protection of a legal right or to prevent further violation of such right, to which laches would have little, if any, application, but to obtain relief for the past violation.

While there is some merit in the assertion that the period of laches has at times been held to be comparable to the period prescribed by the statute of limitations, strictly, said equitable defense may apply independently of that statutory period, so that it has been successfully interposed even if a shorter time had elapsed (*Abraham vs. Ordway*, 39 L. Ed. 1036, 158 U.S. 416, 15 S.Ct. 894; *Whitney vs. Fox*, 41 L. Ed. 1145, 166 U.S. 637, 17 S.Ct. 713; see also 19 Am. Jur. 346). Furthermore, the statutory period of limitation in this case is not ten years, as erroneously pointed out by the plaintiff, but four years.

"ART. 1146. The following actions must be instituted within four years.

(1) Upon an injury to the rights of the plaintiff; * * * (Civil Code)

The provision just quoted was based on Section 43 of the Code of Civil Procedure that reads:

"Other Civil Actions; How Limited.—action other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

* * * 3. Within four years: An action for an injury to or trespass upon real estate. An action for the recovery of personal property. An action for the recovery of damages for taking, retaining, or injuring personal property. An action for injury to the person other than injuries resulting from assault, battery, or false imprisonment. An action for an injury to the rights of the plaintiff not rising on contract and not hereinafter enumerated. * * * "
(Italics Supplied)

The third element which requires lack of knowledge or notice on the part of the defendants that the plaintiff would assert its right is likewise evident. The plaintiff was full aware that the defendant company was selling ice to its co-defendants as early as 1948, yet it made no genuine efforts for stop that practice, although it tried to court or win back the ice-dealers patronage. It was only about seven years thereafter or sometime in June, 1955, that the plaintiff informally charged the defendant with having conducted sales within the former's franchised territory. As observed by the court below, the evidence showed that plaintiff was not real opposed to the sales being made by time defendant company with its territory, so much so that in the conference of July 1, 1955, the parties reached an "unconsummated" agreement where among other things, it was made clear that the ice dealers could continue buying any quantity of ice from the Ice and Cold Storage Industries of the Philippines; Inc. (Exh. R-1") Also indicating acquiescence by the plaintiff to the questioned sales is the fact that the plaintiff itself used to buy ice from the defendant company which it re-sold to its customers. There was even a time when the plaintiff asked that it be given a special quota of 40 blocks of ice a day (Exhibit "18").

The last of the elements of laches is injury or prejudice to the defendant In the event relief is accorded to the plaintiff. Stated in another way, the doctrine of stale demands would apply only where by reason of the lapse of time, "it would be inequitable to allow a party to enforce his legal rights." (19 Am. Jur. 352).

Such inequity is apparent in the case at bar. It is admitted that some of the material records of the plaintiff that itemize or support its statement of the gross damage were lost because of the long delay in bringing this suit, and,

therefore, could not be produced when the defendants asked to have recours to said records. Plaintiff thus made it more difficult for defendant to controvert the correctness and veracity of the damages, which justifies a presumption against the truth of the plaintiff's stale claim (See 30 C.J.S. 542-543). Had the defendants been properly forewarned of the bringing of this action or had this litigation been brought to court earlier, they could have guards against Incurring liability for damages or at least minimized the same, so that any relief accorded now to the plaintiff would result in defendants being held answerable for damages that they could have otherwise avoided. It would be unjust enable plaintiff to reap benefit from having slept on its rights.

In view, of the foregoing considerations, it becomes unnecessary for us to dwell on the other points raised in this appeal.

Wherefore, the decision appealed from is affirmed, with costs against the appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon JJ., concur.

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