

**PHILIPPINE PRODUCTS COMPANY, PLAINTIFF AND APPELLANT, VS.
PRIMATERIA SOCIETE ANONYME POUR LE COMMERCE EXTERIEUR,
ET AL., DEFENDANTS AND APPELLEES.**

G.R. No. L-17160. November 29, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is an action to recover from defendants the sum of P33,009.71 with interest and attorney's fees of P8,000.00. Defendant Primateria Societe Anonyme Pour Le Commerce Exterieur (hereinafter referred to as Primateria Zurich), is a foreign juridical entity and, at the time of the transactions involved herein, had its main office at Zurich, Switzerland. It was then engaged in Transactions in international trade with agricultural products, particularly in oils, fats and oil-seeds and related products.

The record shows that,

On October 24, 1951, Primateria Zurich, through defendant Alexander G. Baylin, entered into an agreement with plaintiff Philippine Products Company, whereby the latter undertook to buy copra in the Philippines for the account of Primateria Zurich, during "a tentative, experimental period of one month from date". The contract was renewed by mutual agreement of the parties to cover an extended period up to February 24, 1952, later extended to 1953. During such period, plaintiff caused the shipment of copra to foreign countries, pursuant to instructions from defendant Primateria Zurich, thru Primateria (Phil.) Inc.,—referred to hereafter as Primateria Philippines—acting by defendant Alexander G. Baylin and Jose M. Crame, officers of said corporation. As a result, the total amount due to the plaintiff as of May 30, 1955, was P33,009.71.

At the trial, before the Manila court of first instance, it was proven that the amount due from defendant Primateria Zurich, on account of the various shipments of copra, was P31,009.71, because it had paid P2,000.00 of the original claim of plaintiff. There is no dispute about accounting.

And there is no question that Alexander G. Baylin and Primateria Philippines acted as the duly authorized agents of Primateria Zurich in the Philippines. As far as the record discloses, Baylin acted indiscriminately in these transactions in the dual capacities of agent of the Zurich firm and executive vice-president of Primateria Philippines, which also acted as agent of Primateria Zurich. It is likewise undisputed that Primateria Zurich had no license to transact business in the Philippines.

For failure to file an answer within the reglementary period, defendant Primateria Zurich was declared in default.

After trial, judgment was rendered by the lower court holding defendant Primateria Zurich liable to the plaintiff for the sums of P31,009.71, with legal interest from the date of the filing of the complaint, and P2,000.00 as and for attorney's fees; and absolving defendants Primateria (Phil.), Inc., Alexander G. Baylin, and Jose M. Crame from any and all liability.

Plaintiff appealed from that portion of the judgment dismissing its complaint as regards the three defendants.

It is plaintiff's theory that Primateria Zurich is a foreign corporation within the meaning of Sections 68 and 69 of the Corporation Law; and since it has transacted business in the Philippines without the necessary license, as required by said provisions, its agents here are personally liable for contracts made in its behalf.

Section 68 of the Corporation Law states: "No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippines shall be permitted to transact business in the Philippines, until after it shall have obtained a license for that purpose from the Securities and Exchange Commission * * *", And under Section 69, any officer, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for etc. * * *.

The issues which have to be determined, therefore, are the following:

1. Whether defendant Primateria Zurich may be considered a foreign corporation within the meaning of Sections 68 and 69 of the Corporation Law;
2. Assuming said entity to be a foreign corporation, whether it may be considered as having transacted business in the Philippines within the meaning of said sections; and
3. If so, whether its agents may be held personally liable on contracts made in the name of the entity with third persons in the Philippines.

The lower court ruled that the Primateria Zurich was not duly proven to be a foreign corporation; nor that a *societe anonyme* ("sociedad anonima") is a corporation; and that failing such proof, the *societe* cannot be deemed to fall within the proscription of Section 68 of the Corporation Law. We agree with the said court's conclusion. In fact, our corporation law recognized the difference between *sociedades anonimas* and corporations.

At any rate, we do not see how the plaintiff could recover from both the principal (Primateria Zurich) and its agents. It has been given judgment against the principal for the whole amount. It asked for such judgment, and did not appeal from it. It clearly stated that its appeal concerned the other three defendants.

But plaintiff alleges that the appellees as agents of Primateria Zurich are liable to it under Art. 1897 of the New Civil Code which reads as follows:

"ART. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his power."

But there is no proof that, as agents, they exceeded the limits of their authority. In fact, the principal—Primateria Zurich—who should be the one to raise the point, never raised it, never denied its liability on the ground of excess of authority. At any rate, the article does not hold that in case of excess of authority, both the agent and the principal are liable to the other contracting party.

This view of the cause dispenses with the necessity of deciding the other two issues, namely: whether the agent of a foreign corporation doing business, but not licensed here is personally liable for contracts made by him in the name of such corporation.[1] Although, the solution should not be difficult, since we already held that such foreign corporation may be sued here (*General Corporation vs. Union Ins.* 87 Phil. 309). And obviously, liability of the agent is necessarily premised on the inability to sue the principal or non-liability of such principal. In the absence of express legislation, of course.

In view of the foregoing consideration, the appealed judgment is affirmed, with costs against appellant.

Bautista Angelo, Concepción, Reyes J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] *Lashar vs. Stimson*, 23 Atl. 552, is one case invoked by the appellant. We are not fully aware of the statutory provisions in Pennsylvania. But one thing is certain: in that case, the foreign corporation was not sued; and no judgment against it was obtained.

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