

**AETNA CASUALTY & SURETY COMPANY,
PLAINTIFF-APPELLANT, VS. PACIFIC STAR LINE, THE BRADMAN CO.,
INC., MANILA PORT SERVICE AND/OR MANILA RAILROAD
COMPANY, INC., DEFENDANTS-APPELLEES.**

G.R. No. L-26809. December 29, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal from the decision of the Court of First Instance of Manila, Branch XVI, in Civil Case No. 53074 entitled "Aetna Casualty & Surety Company vs. Pacific Star Line, The Bradman Co. Inc., Manila Port Service and/or Manila Railroad Company, Inc." dismissing the complaint on the ground that the plaintiff has no legal capacity to bring this suit and making no finding as to the liability of the defendants.[1]

On February 11, 1963, Smith Bell & Co. (Philippines), Inc. and Aetna Casualty & Surety Co. Inc., as subrogee, instituted Civil Case No. 53074 in the Court of First Instance of Manila against Pacific Star Line, The Bradman Co. Inc., Manila Port Service and/or Manila Railroad Company, Inc. to recover the amount of US\$2,300.00 representing the value of the stolen and damaged cargo plus litigation expenses and exemplary damages in the amounts of P1,000.00 and P2,000.00, respectively, with legal interest thereon from the filing of the suit and costs.

The complaint stated that during the time material to the action, the defendant Pacific Star Line, as a common carrier, was operating the vessel SS Ampal on a commercial run between United States and Philippine Ports including Manila; that the defendant, The Bradman Co. Inc., was the ship agent in the Philippines for the SS Ampal and/or Pacific Star Line; that the Manila Railroad Co. Inc. and Manila Port Service were the arrastre operators in the port of Manila and were authorized to deliver cargo discharged into their custody on presentation of re-lease papers from the Bureau of Customs and the steamship carrier and/or its agents; that on December 22, 1961, the SS Ampal took on board at New York, N.Y., U.S.A., a consignment of cargo including 33 packages of Linen & Cotton Piece Goods for shipment to Manila for which defendant Pacific Star Line issued Bill of Lading No. 18 in the name of I. Shalom & Co., Inc., as shipper, consigned to the order of Judy Philippines, Inc., Manila; that the SS Ampal arrived in Manila on February 10, 1962 and in due course, discharged her cargo into the custody of Manila Port Service; that due to the negligence of the defendants, the shipment sustained damages valued at US\$2,300.00 representing pilferage and seawater damage; that I. Shalom & Co., Inc. immediately filed claim for the undelivered and damaged cargo with defendant Pacific Star Line in New York, N.Y., but said defendant refused and still refuses to pay the said claim; that the cargo was insured by I. Shalom & Co., Inc. with plaintiff Aetna Casualty & Surety Company for loss and/or damage; that upon demand, plaintiff Aetna Casualty & Surety Company indemnified I. Shalom & Co., Inc. the amount of US\$2,300.00; that in addition to this, the plaintiffs had obligated themselves to pay attorney's fees and they further anticipated incurring litigation expenses which may be assessed at P1,000.00; that plaintiffs and/or their predecessor-in-interest sustained losses due to the negligence of Pacific Star Line prior to delivery of the cargo to Manila or, in the alternative, due to the negligence of Manila Port Service after delivery of the cargo to it by the SS Ampal; that

despite repeated demands, none of the defendants has been willing to accept liability for the claim of the plaintiffs and/or I. Shalom & Co., Inc.; and that by reason of defendants' evident bad faith, they should consequently be liable to pay exemplary damages in the amount of P2,000.00.[2]

On motion of the defendants Pacific Star Line and The Bradman Co. Inc. and with the conformity of the plain-tiff Aetna Casualty & Surety Company, the plaintiff smith Bell & Co. (Philippines), Inc. was dropped and the com-plaint was dismissed as to said plaintiff.[3]

In their answer filed on February 28, 1963, the defendants Manila Port Service and Manila Railroad Company, Inc. alleged that they have exercised due care and dili-gence in handling and delivering the cargoes consigned to Judy Philippines, Inc.; that, in fact, they had delivered the merchandise to the consignee thereof in the same quantity, order and condition as when the same was actually received from the carrying vessel; that a portion of the shipment in question was discharged from the carrying vessel in bad order and condition and consequently, any loss or shortage incurred thereto, is the sole responsibility of the said carrying vessel and not that of the arrastre operator; that they have delivered to the consignee thereof the same quantity of merchandise and in the same order or condition as when received from the carrying vessel; that since no claim of the value of the goods in question was filed by the plaintiff or any of its representative within 15 days from the discharge of the last package from the carrying vessel, the claim has become time-barred and/or prescribed pursuant to the management contract under which said defendants were appointed as arrastre operator at the Port of Manila; that consequently, they are completely relieved or released from any or all liability therefor; and that they do not in any manner act as agent of the carrying vessel in the discharge of the goods at the piers.[4]

The Pacific Star Line and The Bradman Co. Inc. alleged in their answer as special defenses that the plaintiff's cause of action, if any, against the answering defendants had prescribed under the provisions of the Carriage of Goods by Sea Act and/or the terms of the covering bill of lading; that the entire shipment covered by the bill of lading issued by answering defendant Pacific Star Line was dis-charged complete and in good order condition into the cus-tody of the other defendant, Manila Port Service, which was the operator of the arrastre service at the Port of Manila; that any damage which may have occurred to the cargo while it was in the custody of the defendant Manila Port Service was caused solely by the negligence of said arrastre operator and is, therefore, its sole responsibi-lity; the defendant Manila Port Service is not the vessel agent in the receiving, handling, custody and/or delivery of the cargo purchased; that the vessel's responsibility ceased upon removal of the cargo from the ship's tackle; that defendant Manila Port Service is not the vessel's or answering defendant's agent in the receiving, handling, custody and/or delivery of the cargo consignee; that the vessel's responsibility ceased upon removal of the cargo from the ship's tackle; that the vessel's liability, if any, for one case cannot exceed the sum of P500.00 under the Carriage of Goods by Sea Act.[5]

The defendants Manila Port Service and Manila Railroad Company, Inc. amended their answer to allege that the plaintiff, Aetna Casualty & Surety Company, is a foreign corporation not duly licensed to do business in the Philippines and, therefore, without capacity to sue and be sued.[6]

The parties submitted on November 23, 1965 the fol-lowing partial stipulation of facts:

"PARTIAL STIPULATION OF FACTS

COME NOW the parties, through their undersigned counsel, and to this Honor-able Court respectfully submit the fol-lowing Partial Stipulation of Facts:

A. - On their part, defendants admit:

1. - Paragraphs 2, 3, and 4 of the complaint;

2. - That the S/S Ampal arrived in Manila, on February 10, 1962 and in due course discharged her cargoes into the custody of the defendant Manila Port Service, including the subject shipment complete and in good order, except two (2) cases Nos. 5804 and 16705 which were dis-charged under B. O. Tally Sheets Nos. 2721 and 2722 and turned over to the custody of the defendant Manila Port Service by the vessel S/S Ampal. The shipping documents covering the cargo were indorsed and sent to Judy's Philippines, Inc. for processing and eventual return thereof to the owner, and which cleared the documents with the defendants and the Bureau of Customs;

3. - That the I. Shalom & Co., Inc. filed claim for undelivered and damaged portion of subject cargo with defendant Pacific Star Line in New York, New York, but said defendant refused and still refuses to pay the said claim, for the reason stated in said defendant's letter to Smith, Bell & Co. (Philippines), Inc. dated June 1, 1962, copy of which letter is hereto attached and marked Annex A;

4. - That Judy's Philippines, Inc. through its customs broker filed provisional claims with defendant The Bradman Company, Inc. and the defendant Manila Port Service on February 13, 1962.

B. - Defendants admit the ge-nuineness and due execution of the following documents:

1.- Bill of Lading No. 18 dated December 22, 1961, ex S/S Ampal, attached hereto and marked as Annex B;

2.- Invoice dated December 26, 1961 of I. Shalom & Co., Inc. at-tached hereto and marked as Annex C;

3. - Provisional Claim filed with The Bradman Co., Inc. on February 13, 1962, attached hereto and marked as Annex D;

4. - Provisional Claim filed with the Manila Port Service on February 13, 1962, attached hereto and marked as Annex E;

5.- Request for Bad Order Exa-mination No. 1073 dated March 6, 1962 covering Cases Nos. 16705 and 5804, attached hereto and marked as Annex F;

6. - Request for Bad Order Exa-mination No. 1177 dated March 5, 1962 covering Cases Nos. 14913 and 15043, attached hereto and marked as Annex G;

7. - Formal Claim dated April 10, 1962 addressed to defendant Pacific Star Line filed by I. Shalom & Co. Inc. attached hereto and marked as Annex H;

8.- Letter dated May 3, 1962 addressed to defendant Manila Port Service by Smith, Bell & Co. (Phi-lippines) Inc., attached hereto and marked as Annex I;

9. - Letter dated August 8, 1962 addressed to the defendant Manila Port Service by Smith, Bell & Co. (Philippines) Inc., attached hereto and marked as Annex J;

10. - Certification of Insurance, authenticated by the Philippine Consul, New York, U.S.A., attached hereto and marked as Annex K;

11. - Subrogation Receipt dated June 1, 1962, attached hereto and marked as Annex L;

C. - On their part, plaintiff and defendants Pacific Star Line and The Bradman Company, Inc. admit:

1.- Having knowledge and being bound by the provisions of the Manage-ment Contract entered into by and between the Manila Port Service and the Bureau of Customs on February 29, 1956, covering the operation of the arrastre service in the Port of Manila, a copy of which is attached hereto and marked as Annex M;

2.- The genuineness and due exe-cution of Gate Pass No. 35482 which, among others, covers Case No. 14915, attached hereto and marked as Annex N;

3. - The genuineness and due execution of Gate Pass No. 34837, which, among others, cover Cases Nos. 16706 and 16707, attached hereto and marked as Annex O;

4.- The genuineness and due execution of a Certification issued by the Office of the Insurance Commissioner dated December 19, 1964, a photostat copy of which is attached hereto and marked as Annex P;

5. - The genuineness and due execution of a Certification issued by the Securities and Exchange Commission dated November 10, 1964, a photostat copy of which is attached hereto and marked as Annex Q;

6. - That the value of the shipment in question was not specified or manifested in the bill of lading and that the arrastre charges thereon were paid on the basis of weight and/or measurement and not on the value thereof.

D. On their part, plaintiff and defendant Manila Port Service admit:

1.- That the shipment in question was discharged complete and in good order condition into the custody of the Manila Port Service except Cases Nos. 5804 and 16705 covered by Tally Sheets Nos. 2721 and 2722;

2. - That as per signed copies of Survey Report and Turnover Receipt both dated February 26, 1962, all goods contained in Case No. 5804 were received in good order condition by the consignee who waived all claims thereon and that the contents of Case No. 16705 were turned over to the defendant Manila Port Service in the condition shown in said Turnover Receipt;

3.- The genuineness and due execution of the following documents:

(a) Tally Sheet No. 2721 dated November 2, 1962 attached hereto and marked as Annex R;

(b) Tally Sheet No. 2722, dated November 2, 1962, attached hereto and marked as Annex S;

(c) Survey Report dated February 26, 1962, attached hereto and marked as Annex T;

(d) Turnover Receipt dated February 26, 1962, attached hereto and marked as Annex U.

WHEREFORE, it is respectfully prayed that the following Partial Stipulation of Facts be approved, and the parties be allowed to present evidence on the remaining controverted issues.

Manila, Philippines, September, 1965.

ROSS, SELPH, SALCEDO, DEL ROSARIO, BITO AND MISA

By:

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MANILA RAILROAD COMPANY, INC.

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Manila"[7]

The case was submitted for decision on the basis of the partial stipulation of facts and three (3) documents submitted in evidence by the defendants consisting of (a) a certification issued by the Office of the Insurance Commission to the effect that there is no record in said office showing that Aetna Casualty & Surety Company has been licensed to transact insurance business in the Philippines; (b) a certification issued by the Securities and Exchange Commission that its records do not show the registration of the Aetna Casualty & Surety Company either as a corporation or a partnership nor that it has been licensed to transact business in the Philippines as a foreign corporation; (c) a certification of the Clerk of Court of the Court of First Instance of Manila issued on August 5, 1965 to the effect that thirteen (13) civil cases appear to have been filed by and/or against the Aetna Casualty & Surety Company in said court.[8]

The trial court dismissed the complaint because:

"There has been a ruling that foreign corporation may file a suit in the Philippines in isolated cases. But the case of the plaintiff here is not that. The evidence shows that the plaintiff has been filing actions in the Philippines not just in isolated instances, but in numerous cases and therefore, has been doing business in this country, contrary to Philippine laws."[9]

The plaintiff Aetna Casualty & Surety Company appealed to this Court assigning the following errors:

"I

THE LOWER COURT ERRED IN RULING THAT APPELLANT INSURANCE COMPANY IS SUBJECT TO THE REQUIREMENTS OF SECTIONS 68 AND 69 OF ACT 1459, AS AMENDED, AND FAILING TO COMPLY THEREWITH, HAS NO LEGAL CAPACITY TO BRING SUIT IN THIS JURISDICTION.

II

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT."[10]

The main issue involved in this appeal is whether or not the appellant, Aetna Casualty & Surety Company, has been doing business in the Philippines. It is a fact that said appellant has no license to transact business in the Philippines as a foreign corporation.

Section 68 of the Corporation Law provides that "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 Commissioners x x x." And according to Section 69 of said Corporation Law "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 or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding x x x."

It is settled that if a foreign corporation is not engaged in business in the Philippines, it may not be denied the right to file an action in Philippine courts for isolated transactions.[11]

The object of Sections 68 and 69 of the Corporation Law was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. It was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts.[12]

In *Mentholatum Co., Inc. et al. vs. Mangaliman, et al.*, this Court ruled that:

"No general rule or governing principle can be laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue* [C. C. A. Ohio], 223 F. 984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (*Griffin v. Implement Dealers' Mut. Fire Ins. Co.*, 241 N. W. 75, 77; *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P. 851, 852, 118 Okl. 111; *Automotive Material Co. vs. American Standard Metal Products Corp.*, 158 N. E. 698, 703, 327 Ill. 367.)"[13]

And in *Eastboard Navigation, Ltd., et al. vs. Juan Ysmael & Co., Inc.*, this Court held that:

"(d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts. (*Marshall-Wells Co. vs. Henry W. Elser & Co.* 49 Phil., 70; *Pacific Vegetable Oil Corporation vs. Angel O. Singson*, G. R. No. L-7917, April 29, 1955.)"[14]

Based on the rulings laid down in the foregoing cases, it cannot be said that the Aetna Casualty & Surety

Company is transacting business of insurance in the Philippines for which it must have a license. The contract of insurance was entered into in New York, U.S.A., and payment was made to the consignee in its New York branch. It appears from the list of cases issued by the Clerk of Court of the Court of First Instance of Manila that all the actions, except two (2) cases filed by Smith, Bell & Co., Inc. against the Aetna Casualty & Surety Company, are claims against the shipper and the arrastre operators just like the case at bar.

Consequently, since the appellant Aetna Casualty & Surety Company is not engaged in the business of insurance in the Philippines but is merely collecting a claim as-signed to it by the consignee, it is not barred from filing the instant case although it has not secured a li-cense to transact insurance business in the Philippines.

WHEREFORE, the decision appealed from is hereby set aside and the case is remanded to the trial court for fur-ther proceedings to determine the liability of the de-fendants-appellees, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Guerrero, JJ., concur.
Martin, J., no part.

[1] Record on Appeal, p. 50, Rollo, p. 13.

[2] Ibid., pp. 2-5, Rollo, p. 13.

[3] Ibid., p. 19, Rollo, p. 13.

[4] Ibid., pp. 20-24, Rollo, p. 13.

[5] ibid., pp. 25-29, Rollo, p. 13.

[6] Ibid., pp. 30-34, Rollo, p. 13.

[7] Ibid., pp. 35-41, Rollo, p. 13.

[8] Ibid., pp. 41-47, Rollo, p. 13.

[9] Ibid., p. 50, Rollo, p. 13.

[10] Brief for Plaintiff-Appellant, pp. 1-2, Rollo, p. 78.

[11] Western Equipment & Supply Co. vs. Reyes, 51 Phil. 115.

[12] Marshall-Wells Co. vs. Elser & Co., 46 Phil. 70, 75.

[13] 72 Phil. 524, 528-529.

[14] 102 Phil., pp. 1, 18.

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