

JOHNLO TRADING COMPANY, PETITIONER, VS. JOSE C. ZULUETA, JUDGE OF THE COURT OF FIRST INSTANCE OF LA UNION, AND NORTHERN LUZON STEVEDORING UNION, RESPONDENTS.*G. R. No. L-4459. May 18, 1951*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari.

On June 24, 1950, Northern Luzon Stevedoring Union filed with the Court of First Instance of La Union against Johnlo Trading Company a case for the collection of the sum of P4,211.58 representing excess tonnage stevedored by the plaintiff under a contract executed between the plaintiff and the defendant for the stevedoring of all demilitarized scrap ammunition shells belonging to the defendant in the port of San Fernando, La Union. The summons for the defendant was served on Charles T. Balcoff upon the claim that he is its representative in the Philippines. As no one appeared nor answered the complaint in behalf of the defendant, the Court, upon petition of the plaintiff, declared the defendant in default, and authorized the plaintiff to submit its evidence. After receiving the evidence, the Court rendered judgment on October 3, 1950, ordering the defendant to pay to the plaintiff the sum of P4,211.58. On November 4, 1950, the Court issued a writ of execution, which the sheriff of Manila tried to carry out by serving notice of garnishment on the then Department of Economic Coordination and by levying to the extent of the judgment on the money which that Department then owed to Johnio Trading Company. Upon receipt of the notice, the Acting Undersecretary of the Department informed Attorneys Balcoff and Poblador of the matter and requested their comment. On November 9, 1950, one J. A. Wolfson, a creditor of Johnio Trading Company, filed a pleading with the lower court wherein he suggested to the respondent judge that he set aside the decision rendered by him on October 3, 1950, on the ground that it is void for lack of service of summons on Johnio Trading Company, but the request was denied. J. A. Wolfson then informed the principals of Johnio Trading Company in the United States of the order of the Court refusing to set aside its decision, and on December 26, 1950, the said principals instructed Attorneys Balcoff and Poblador to take the necessary steps to have the decision set aside. Hence Johnio Trading Company filed this petition for certiorari

Johnio Trading Company, petitioner herein, claims that the summons served on Charles T. Balcoff upon the claim that he is the agent of said company in the Philippines is ineffectual because he is neither an agent nor a representative authorized to receive legal process in its behalf and, therefore, the lower court did not acquire jurisdiction over the person of Johnio Trading Company. Northern Luzon Stevedoring Union, respondent, claims on the other hand that he is the representative of that company in the Philippines and, therefore, the service made on him is valid and binding under Section 14, Rule 7, of the Rules of Court. The only question, therefore, to be determined hinges on whether the relation which Balcoff bore to petitioner is such as to engender the belief that he acted not only as its counsel but also is its representative in contemplation of law.

In G. R. No. L-3787, entitled Johnlo Trading Company vs. Jose P. Flores, Judge of the Court of First Instance of

La Union, and B. M. Florentino & Co., Ltd., wherein the same issue was raised, this Court said:

"Whether, therefore, Charles T. Balcoff is considered as an attorney or as a representative of Johnlo Trading Company in the light of the facts we have recited above, there is the inescapable conclusion that, whether under the law or under equity, the service made upon him is in contemplation of law sufficient and binding upon his client. As was well said in one case, 'the courts will not sanction a doctrine that a corporation can deny the power of an agent when an advantage is to be obtained by such denial, and share in the fruits of the contract when it is to its interest to consider such contract binding.' (Pollock vs. Carolina Interstate Bldg. & L. Association, *supra*.) Indeed, if Balcoff is not to be considered an agent of Johnlo Trading Company empowered to receive process in its behalf, as he claims, and it is admitted that there is no other person in the Philippines who can represent such company, how can the respondent then bring the petitioner within the jurisdiction of our courts? When the Government Enterprises Council gave the petitioner the privilege to engage in the demilitarization business in the Philippines without first obtaining a license from the Bureau of Commerce and without designating any agent on whom process may be served in cases of litigation as required by law, it did not certainly contemplate a situation whereby the petitioner could incur in obligations and then get away with them by placing itself beyond the jurisdiction of our courts. That can not be the import of the exemption extended to the petitioner by the government for such would be unfair and unreasonable to local creditors. And it cannot be contended, as claimed by the petitioner, that the remedy open to respondent is to serve the summons by publication under Section 17, Rule 7 of the Rules of Court, for that rule only applies when the action "affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, * * * or the property of the defendant has been attached within the Philippines', neither of which is present here. In fact, this is what petitioner said in its motion for reconsideration; 'In the instant case, this Court has jurisdiction neither over the res nor over the person of defendant Johnlo Trading Company, No property in the Philippines belonging to Johnlo Trading Company has been attached. What was attached is the money belonging to defendant Lipsett Pacific Corporation.' (Annex G). If this claim is entertained, then the respondent will be placed in a predicament where it would be found bereft of any remedy to press its claim against the petitioner, a situation which would be unfortunate indeed. For these reasons, we are constrained to hold that his Honor, the respondent Judge, acted properly in issuing the order subject of the present petition for certiorari."

Wherefore, this petition is hereby dismissed, without pronouncement as to costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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