

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G.R. No. L-16485. January 30, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

From the order of the Court of First Instance of Ma-nila dismissing the complaint upon defendant's motion, plaintiff has taken the present appeal.

The complaint alleges that the Armed Forces of the Philippines, one of plaintiff's instrumentalities, opened a current account with defendant bank in July 1947; that on December 27, 1949 defendant, through negligence, paid to an unnamed person the sum of P37,553.32, covered by two checks drawn against the said account but bearing fictitious names as payees and forged signatures of the officers authorized to make withdrawals; that when one of said officers noticed from the statement sent by defendant that the value of the checks had been charged against the account, he called defendant's attention to the mistake by letter dated April 15, 1950, and that in spite of repeated demands defendant refused to refund the value of the two checks, for which reason this action was filed on November 6, 1959, praying that defendant be sentenced to pay the amount involved to plaintiff, with costs.

Defendant moved to dismiss on the ground that the action had prescribed. The lower court sustained the motion and dismissed the complaint by order dated November 21, 1959, but on an entirely different ground. Said order reads:

"This is a case wherein the Republic of the Philippines is suing the Philippine National Bank, an entity 97% of which stocks belong to the Government; therefore, the plaintiff and defendant in this case are the same; the taking of money of one to give to another is what the Spaniards say *Desunder un santo para vestir a otro* (to unrobe an image to cloth another); this Court sees that the presentation of this action is just a waste of time and will only cause unnecessary costs and expenses to the Government. It is a common practice in commercial circles where interlocking corporations are the parties concerned for the heads of the corporations to find and pinpoint the responsible or guilty party without going into expensive litigation among themselves. This practice is worthy of limitation (emulation) to avoid waste of time or unnecessary expenses."

Plaintiff assigns but one error in its brief; the ruling that "plaintiff and defendant are the same" and that a suit by the former against the latter is only a waste of time. Defendant, on its part, prays for affirmance of the order of dismissal, not for the reason stated therein but on the ground of prescription and the additional ground that the real party in interest is the Armed Forces and not the Republic of the Philippines.

We hold that the Republic of the Philippines is the proper party-plaintiff in this case. The Army is one of its instrumentalities through which its governmental functions are exercised, specifically the preservation of the State against any danger to its security, whether from within or from outside. These functions are compulsory and essential to sovereignty, constituent in character as distinguished from those ministerial and hence optional functions which are undertaken only in order to advance the general interest of society. *Bacani vs. National*

Co-conut Corporation, 100 Phil, 468; 53 Off. Gaz., 2798.

Defendant bank is one of those corporations and entities owned or controlled by the Government and endowed with proprietary functions which have nothing to do with the exercise of political authority. They are governed by the Corporation Law and/or by their individual charters; in the case of defendant, by Republic Act 1300, which took effect on June 16, 1955, authorizing it, among other purposes, to engage in the business of general banking. Thus it has a personality of its own and may sue and be sued as an entity entirely distinct from the Republic.

Since the statute of limitations does not run against the State and it is neither alleged nor shown that plaintiff, in making the deposit of its funds in question with defendant, did so other than as an instrumentality of the Republic, the plea of prescription cannot be maintained.

The order appealed from is hereby set aside and the case remanded to the lower court for further proceedings, with costs against defendant-appellee.

Bengzon, C. J., Bautista Aijelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Bengzon, J.P. and Zaldivar, JJ., concur.

Order set aside. Case remanded for further proceeding.

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