

**DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLANT, VS. EVERETT SIAM LINE, EVERETT
STEAMSHIP CORPORATION, REPUBLIC OF THE PHILIPPINES AND/OR
A. R. REYES & COMPANY...**

G.R. No. L-23878. July 31, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

Out of a total consignment of 191 cases of malleable iron pipe fittings imported from Osaka, Japan by the Weston Hardware & Plumbing, Inc. sometime in June, 1963, 8 cases valued at P1,246.97 reportedly remained undelivered and were considered lost in the course of their importation into the Philippines. The plaintiff Domestic Insurance Company of the Philippines which had indemnified the owner for the loss and, therefore, was subrogated to the latter's rights, could not, however, definitively determine at which stage of the importation the loss occurred and which party to hold responsible therefor. Finally, the plaintiff lodged a complaint against several alternative defendants, to wit: the Everett Siam Line, operator of the SS Pablo which carried the goods; the Everett Steamship Corporation, Philippine agent of the Everett Siam Line; the Republic of the Philippines, as operator of the Customs Arrastre Service which had allegedly received the goods discharged from the SS Pablo; and the A.R. Reyes & Company to whose bonded warehouse an undefined portion of the subject importation is claimed to have been subsequently transferred without the owner's consent.

The present appeal is from the dismissal by the court a quo of the complaint insofar as it affects the defendant Republic of the Philippines on the grounds of 1) lack of jurisdiction and 2) non-suability of the State without its consent. These involve pure questions of law.

1. On the matter of lack of jurisdiction, the lower court reasoned that since the complaint against the Government is one founded upon a breach of the contract of deposit and involves an amount not exceeding P10,000, the same is exclusively cognizable by the city or municipal court.

This is obviously erroneous. The court a quo overlooks the fact that the complaint also impleads, in the alternative, the Everett Siam Line and its Philippine agent, the Everett Steamship Corporation, upon a breach of their contract of affreightment, thus, properly invoking the court's admiralty jurisdiction.[1] The rule is now settled that in the joinder of two causes of action, in the alternative, under section 5 of Rule 2 of the Rules of Court, the fact that one of the causes of action is within the exclusive jurisdiction of the city or municipal court, will not deprive the Court of First Instance of its jurisdiction over both, if the latter has jurisdiction over one of the causes of action.[2]

2. As regards, however, the non-suability of the State without its consent in its operation Of the Customs Arrastre Service, the lower court correctly dismissed the complaint insofar as the Republic of the Philippines is concerned. We have repeatedly held that the then Customs Arrastre Service, as an arm of the Bureau of Customs, was performing services purely incidental to the governmental function of assessing and collecting

customs duties, and, in engaging in such necessary incidental activity, the Government did not thereby shed its immunity from suit.[3]

The plaintiff's remedy, if any, may be found in the provisions of Act 3083 and Commonwealth Act 327.

A third ground relied upon by the lower court in dismissing the case against the Republic of the Philippines, although assailed by the plaintiff, need not be resolved in view of the result we have just reached.

ACCORDINGLY, the judgment, dismissing the complaint in so far as the Republic of the Philippines is concerned, is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] Sec. 44(d) of the Judiciary Act of 1948, as amended.

[2] *Firemen's Insurance Co. vs. Manila Port Service*, L-22810, August 31, 1967, 20 SCRA 1273.

[3] This uniform ruling, which was announced in *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service*, L-23139, December 17, 1966, 18 SCRA 1120, has been subsequently affirmed in no less than 40 cases.

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