

UNIVERSAL MILLS CORPORATION, PLAINTIFF AND APPELLANT, VS. BUREAU OF CUSTOMS AND/OR CUSTOMS ARRASTRE SERVICE, DEFENDANTS AND APPELLEES.

G.R. No. L-24005. January 29, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The above-entitled cases have a common issue whether or not the Bureau of Customs and the Customs Arrastre Service have a juridical personality of their own and may, together with the Republic of the Philippines, be sued without their consent. Hence, this joint decision.

In L-24005, plaintiff, Universal Mills Corporation, seeks to recover from the defendants, the Bureau of Customs and/or the Customs Arrastre Service, the aggregate sum of P5,130.69, with interest thereon at the legal rate, in addition to attorney's fees. Of said sum, P3,106.05 represents the damages allegedly sustained by the plaintiff for five (5) drums of Immersol NF Supra Textile Specialty Compound, covered by Bill of Lading No. 3, and consigned to and owned by said plaintiff. Said goods were brought to the Port of Manila, on board the vessel SS Pioneer Mist, and discharged into the custody of the defendants, on or about April 10, 1963. Upon delivery by the latter, plaintiff found that four (4) drums were empty and that one-third of the contents of one (1) drum had been spilled. The balance of P2,024.64 of plaintiff's claim is said to be the value of two (2) drums of Coal Tar Dyestuff and Textile Specialty Compounds, covered by Bill of Lading No. 5001, brought to the Port of Manila on board the same vessel and discharged into the custody of the aforementioned defendants, but not delivered by the same to the plaintiff.

After the filing of defendants' answer, admitting the formal allegations of the complaint and denying or qualifying the other allegations thereof, a pre-trial was held. Subsequently thereto, the defendants moved to dismiss the complaint upon the ground that the lower court had no jurisdiction over the defendants and the subject matter of the action and that the complaint states no cause of action. Despite plaintiff's opposition thereto, the Court of First Instance of Manila, in which the case was initiated, granted the motion and dismissed the complaint, upon the theory that the defendants have no juridical personality; that the action cannot be maintained without the consent of the Government; and that the court had no jurisdiction over the subject matter of the action, there being no showing that plaintiff had complied with the provisions of Commonwealth Act 327. Thereafter, plaintiff sought leave to amend the complaint, by including the Republic of the Philippines as an additional defendant. The motion having been denied, plaintiff interposed the present appeal.

In L-25339, plaintiff Fireman's Fund Insurance Company, as subrogee of the General Electric Company (Philippines), Inc., seeks to recover from the defendants, the Republic of the Philippines and the Bureau of Customs, the sum of P487.23, representing the amount allegedly paid by the plaintiff, thru E.E. Elser, Inc., to said Electric Company, as the reasonable value of a case, containing a video cone, brought to the Port of Manila, on August 19, 1963, on board the vessel SS Pioneer Main, under Bill of Lading No. 212, consigned to the

aforementioned Electric Company and insured with the plaintiff against loss and damage, and discharged into the custody of the defendants, but not delivered by the latter to said consignee, which, accordingly, was paid said sum of P487.23 by plaintiff as insurer of the missing cone.

After appropriate proceedings, the City Court of Manila, in which the action was commenced, rendered judgment for the plaintiff. On appeal taken by the defendants, the Court of First Instance of Manila dismissed the complaint, upon the ground, inter alia, that the defendants cannot be sued without their consent. Hence, this appeal by the plaintiff.

The appeals in both cases are manifestly devoid of merit, it being well-settled, as well as conceded by the plaintiff, that the State cannot be sued without its consent and that the Bureau of Customs and the Customs Arrastre Service are offices of the Government. Plaintiffs argue that in handling the arrastre operations for the Port of Manila, the Bureau of Customs had acted in a proprietary capacity, for which reason it cannot invoke the immunity of the government from suit; but this theory has been consistently rejected in a long line of cases.[1] In the language of *Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service*: [2]

" * * * the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily result in its being suable. If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity."

"* * * * *

"The Bureau of Customs, to repeat, is part of the Department of Finance (Sec. 81, Rev. Adm. Code), with no personality of its own apart from that of the national government. Its primary function is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties (Sec. 602, R.A. 1937). To this function, arrastre service is a necessary incident.

"* * * * *

"Clearly, therefore, although said arrastre function may be deemed proprietary, it is a necessary incident of the primary and governmental function of the Bureau of Customs, so that engaging in the same does not necessarily render said Bureau liable to suit. For otherwise, it could not perform its governmental function without necessarily exposing itself to suit. Sovereign immunity, granted as to the end, should not be denied as to the necessary means to that end.

"* * * * *

"It must be remembered that statutory provisions waiving State immunity from suit are strictly construed and that waiver of immunity, being in derogation of sovereignty, will not be lightly inferred. (49 Am. Jur., States, Territories and Dependencies, Sec. 96, p. 314; *Petty vs. Tennessee-Missouri Bridge Com.*, 359 U.S. 275, 3 L. Ed. 804, 79 S. Ct. 785). From the provision authorizing the Bureau of Customs to lease arrastre operations to private parties, We see no authority to sue the said Bureau in the instances where it undertakes to conduct said operation itself. The Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary."

In *Domestic Insurance Co. vs. Everett Siam Line*, [3] We reiterated the view that the Customs Arrastre Service is merely a branch or arm of the Bureau of Customs, performing services purely incidental to the governmental function of assessing and collecting customs duties, and that, by engaging in that necessary incidental activity, the Government had not shed its mantle of immunity from suit.

The cases of *Associated Workers Union, et al. vs. Bureau of Customs*, [4] *the National Airports Corp. vs.*

Teodoro,[5] the Manila Hotel Employees Association vs. Manila Hotel Co.,[6] and the Price Stabilization Corp. vs. CIR,[7] cited by appellants herein, are not in point. The suability of the Government was not in issue in the case of Associated Workers Union. Upon the other hand, the National Airports Corp. had been held to come "under the category of a private entity," the function of which is "essentially a business," and not a "necessary function of government." Similarly, the issue in the case of the Manila Hotel Company was whether or not the CIR had jurisdiction over controversies affecting the relationship between said company and its employees and laborers as such. The question was decided in the affirmative, upon the theory that, when the Government enters into "commercial business, it abandons its sovereign capacity and is to be treated like any other corporation." Again, the Price Stabilization Corporation was held to be a government-owned corporation "run and operated like any ordinary corporation," which, as such, is subject to the provisions of the Eight-Hour Labor Law and the jurisdiction of the CIR.

Apart from the foregoing, pursuant to Act No. 3083, as amended, and Commonwealth Act 327, the Government may not be sued in court for the recovery of a sum of money unless a claim therefor has been previously filed with the Office of the Auditor General. No such claim has been filed with the Auditor General by plaintiffs herein.

Plaintiff in L-25339 alleges that said officer had no jurisdiction to hear its claim, because the same allegedly involves "unliquidated damages." There is no merit in this pretense for said claim is already liquidated, plaintiff having paid, to the General Electric Company, pursuant to the contract of insurance between them, the sum of P487.23 as the agreed value of the undelivered or missing video cone.

Plaintiff in L-24005 maintains that the lower court erred in not allowing the inclusion of the Republic of the Philippines as defendant herein. The same would not have offset, however, the non-suability of the government.

WHEREFORE, the decisions appealed from in these two (2) cases are hereby affirmed, with costs against plaintiffs-appellants, Universal Mills Corporation in L-24005 and Fireman's Fund Insurance Company in L-25339.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., took no part.

[1] Insurance Co. of North America vs. Republic, L-27515, Sept. 5, 1967; Philippine First Insurance Co., Inc. vs. Customs Arrastre Service, L-26951, Sept. 12, 1967; Insurance Co. of North America vs. Republic, L-27517, Sept. 15, 1967; Insurance Co. of North America vs. Republic, L-25477, Oct. 23, 1967; American Insurance Co. vs. Republic, L-25478, Oct. 23, 1967; American Insurance Co. vs. Republic, L-25695, Oct. 23, 1967; Fireman's Insurance Co. vs. Republic, L-25784, Oct. 23, 1967; Fireman's Fund Insurance Co. vs. Republic, L-25844, Oct. 23, 1967; Insurance Co. of North America vs. Republic, L-25871, Oct. 23, 1967; Fireman's Fund Insurance Co. vs. Republic, L-26618, Oct. 23, 1967; Northern Assurance Co. Ltd. vs. Republic, L-27077, Oct. 23, 1967; Insurance Co. of North America vs. Warner, Barnes & Co., Ltd., L-24106, Oct. 31, 1967; Hartford Fire Insurance Co. vs. P.D. Marchessini & Co. (New York), Inc., L-24544, Nov. 15, 1967; Royal Insurance Co. vs. American Pioneer Line, L-25323, Nov. 15, 1967; Home Insurance Co. vs. United States Lines Co., L-25593, Nov. 15, 1967; Atlantic Mutual Insurance Co. vs. Republic, L-25663, Nov. 15, 1967; Insurance Co. of North America vs. Republic, L-26794, Nov. 15, 1967; Domestic Insurance Co. of the Phil. vs. Barber Line, L-23879, Nov. 18, 1967; Fireman's Fund Insurance Co. vs. United States Lines Co., L-26533, Jan. 30, 1970; Caltex (Phils.) Inc. vs.

Customs Arrastre Service, L-26632, May 29, 1970; Gloren, Inc. vs. Republic, L-26811, July 31, 1970; Domestic Insurance Co. of the Phils. vs. Everett Siam Line, L-23878, July 31, 1970.

[2] L-23139, Dec. 17, 1966. Citing Bureau of Printing vs. Employees Association, L-15751, Jan. 28, 1961.

[3] Supra.

[4] L-21397, Aug. 6, 1963.

[5] 91 Phil. 203.

[6] 73 Phil. 374.

[7] 102 Phil. 515.

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