

**ST. PAUL FIRE & MARINE INSURANCE COMPANY,
PLAINTIFF-APPELLANT, VS. UNITED STATES LINES COMPANY,
AMERICAN PIONEER LINE, MANILA PORT SERVICE AND/OR MANILA
RAILROAD COMPANY, DEFEND...**

G.R. No. L-24861. October 29, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the order of the Court of First Instance of Manila, dated February 20, 1965, in its Civil Case No. 46766 dismissing the complaint for failure of the plaintiff's authorized representative or its counsel to appear at the scheduled pre-trial conference.

On April 14, 1961 the St. Paul Fire & Marine Insurance Company, as subrogee of Winthrop Products, Inc., of New York, filed a complaint in the court a quo praying "for judgment against defendants American Pioneer Line and/or its agent United States Lines Company, jointly and solidarily, or, in the alternative, against defendants Manila Port Service and/or Manila Railroad Company,* for the prevailing value in Philip-pine currency of the loss sustained by the plaintiff in paying the assured the sum of \$1,005.15, U.S. currency, with legal interest thereon, plus costs." The said amount of \$1,005.15 represents the value of one (1) steel drum of Cortal granula-tion bulk shipped by Winthrop Products, Inc., of New York to Winthrop-Stearns, Inc., Manila, and allegedly lost either while still in transit, that is, in the hands of the shipping line, or after it was unloaded and delivered to the custody of the arrastre operator, Manila Port Service. Within the reglementary period, the alternative defendants, namely, the carrier and its agent on one hand, and the arrastre operator and its principal on the other, filed their respective answers disclaiming liability for the alleged loss.

The case was first dismissed on October 24, 1964 for lack of interest on the part of the plaintiff to prosecute. On Novem-ber 11, 1964 the trial court, on motion, reconsidered the dis-missal and reinstated the case on condition that its order of August 9, 1963 regarding the submission of a stipulation of facts be complied with so as to expedite the disposition of the case. Complying with the order, the plaintiff on December 7, 1964 submitted the proposed stipulation of facts signed by its counsel and by counsel for the defendants United States Lines Company and American Pioneer Lines, and moved to set the case for pre-trial conference on December 19, 1964 "for purposes of having the above-mentioned proposed 'Stipulation of Facts' ratified by counsel for the Manila Railroad and also for purposes of formally submitting the documentary evidence which have been duly marked in the course of the hearing of this case." Since the plaintiff's mo-tion was not acted upon, it again moved to set the case for pre--trial, this time on January 30, 1965. The trial court granted the motion, but on the scheduled date the parties through their respective counsel agreed to postpone the pre-trial conference to February 20, 1965.

Before the date agreed upon, or on February 11, 1965, the defendants Manila Port Service and Manila Railroad Company filed a motion to dismiss on the ground that the court was without jurisdiction over the subject matter insofar as they were con-cerned, since the cause of action against them did not involve admiralty and the amount

claimed was not more than P10,000.00.* The motion was heard on February 13, 1965. Upon request of the plaintiff's counsel, the trial court gave him ten (10) days from February 13, 1965 within which to file his opposition. Before the expiration of the period granted the plaintiff's counsel asked for an extension of ten (10) days from February 23, 1965 within which to file such opposition, but no action was taken on the motion.

On February 20, 1965, the date set for the pre-trial conference, neither the plaintiff's authorized representative nor its counsel appeared in court. Upon motion of counsel for the defendants Manila Port Service and Manila Railroad Company, the trial court declared the plaintiff non-suited and ordered the dismissal of the case, thus:

"Considering that this case had once been dismissed, that is, on October 24, 1964, for lack of interest on the part of the plaintiff because it has not prosecuted the action for an unreasonable length of time, although the order therefor was later reconsidered and set aside, and taking into account that at this scheduled pre-trial, despite notice, neither plaintiff nor its counsel appeared, the Court, pursuant to the provisions of Rule 20, Section 2 of the Rules of Court, declares the plaintiff non-suited and orders that the instant case be dismissed, without costs."

Unable to secure a reconsideration of the order of dismissal, the plaintiff interposed the instant appeal. The appellees United States Lines Company and American Pioneer Line did not file a brief but merely adopted that of the appellees Manila Port Service and Manila Railroad Company.

The only issue to be resolved in this appeal is the propriety of the dismissal of the complaint for failure of the appellant and its counsel to appear at the pre-trial conference.

As against the appellees United States Lines Company and American Pioneer Line, the trial court correctly dismissed the case. The motion to dismiss for lack of jurisdiction filed by the alternative defendants Manila Port Service and Manila Railroad Company did not necessarily relieve the appellant of its duty to attend the pre-trial insofar as two shipping companies were concerned inasmuch as the question of jurisdiction alleged in the motion to dismiss did not affect them. Under Sections 1 and 2, Rule 20 of the Rules of Court[1] pre-trial is mandatory. The parties as well as their counsel are required to appear thereat and the dismissal of the suit for non-appearance of the appellant at the pre-trial is sanctioned by the Rules.[2]

But regardless of this procedural point, under Paragraph 6 of the Stipulation of Facts signed by counsel for the appellant and by counsel for the appellees United States Lines Company and American Pioneer Line, the said appellees were absolved from any liability for the loss of one (1) drum of Cortal granulation bulk, it being stated therein "that the 92 drums were discharged all in good order and condition into the custody of the Manila Port Service; and that under the terms of the covering Bill of Lading, the vessel's responsibility for the cargo ceased upon discharge thereof ex the ship's tackle;" On the basis of said stipulation, the said appellees could have asked for the dismissal of the case as against them at the scheduled pre-trial conference.

As against the appellees Manila Port Service and Manila Railroad Company, the trial court erred in dismissing the complaint. In the first place, it was improper for said appellees to ask the trial court to declare the appellant non-suited for failure to appear at the pre-trial conference while in the same breath they were questioning its jurisdiction to try and decide the case. Secondly, insofar as said appellees are concerned, the trial court should have resolved first the question of jurisdiction before proceeding with the pre-trial conference. Otherwise, in the event that it should find itself without jurisdiction and ultimately dismiss the complaint on that ground, all proceedings held would have been useless and a waste of time. Lastly, the trial court's order giving appellant's counsel a period of ten (10) days from February 13, 1965, or until February 23, 1965, within which to file his opposition to the motion to dismiss, in effect, superseded the agreement of the parties to hold a pre-trial conference on February 20, 1965 insofar as said appellees were concerned.

WHEREFORE, the trial court's order of dismissal is hereby set aside and the case remanded below for further proceedings with respect to the appellees Manila Port Service and Manila Railroad Company, and affirmed with respect to the appellees United States Lines Company and American Pioneer Line. Costs against the Manila Port Service and the Manila Railroad Company, now the Philippine National Railways.

Concepcion, C.J., Reyes, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

* Now the Philippine National Railways.

* 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. (Domestic Insurance Co. of the Philip-pines vs. Everett Siam Line, L-23878, July 31, 1970, 34 SCRA 80, citing Firemen's Insurance Co. vs. Manila Port Service, L-22810, August 31, 1967, 20 SCRA 1273. See also American Ins. Co. vs. Macondray & Co. Inc., L-24031, August 19, 1967, 20 SCRA 1103; United Insurance Company, Inc. vs. Royal Inter-ocean Lines, et al., L-22688, April 27, 1967, 19 SCRA 879; Firemen's Fund Insurance Co. vs. Cia. General de Tabaco de Filipinas, et al., L-22625, April 27, 1967, 19 SCRA 874; Hano-ver Insurance Company vs. MPS, et al., L-20976, January 23, 1967, 19 SCRA 69; Insurance Co. of North America vs. U.S. Lines Co., L-21021, May 27, 1966, 17 SCRA 301; Rizal Surety & Insur-ance Co. vs. MRR Co., et al., L-29875, April 30, 1966 (16 SCRA 912) Switzerland General Insurance Co., Ltd. vs. Java Pacific and Hoegh Lines and the Manila Railroad Co., L-21760, April 30, 1966, 16 SCRA 916).

[1] SECTION 1. Pre-trial mandatory. – In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference x x x.

SECTION 2. Failure to appear at pre-trial conference. – A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

[2] International Harvester Macleod, Inc. vs. Co Ban Ling & Sons Co., L-26863, October 26, 1968, 25 SCRA 612, and the cases cited.

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