

ATLANTIC MUTUAL INSURANCE COMPANY AND CONTINENTAL INSURANCE COMPANY, PLAINTIFFS AND APPELLANTS, VS. CEBU STEVEDORING CO., INC., DEFENDANT AND APPELLEE.

G.R. No. 18961. August 31, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from three orders of the Court of First Instance of Cebu, the last one dismissing appellants' complaint. These appellants - Atlantic Mutual Insurance Company and Continental Insurance Company - are both foreign corporations existing under the laws of the United States. They sued the Cebu Stevedoring Co. Inc., a domestic corporation, for recovery of a sum of money on the following allegations: that defendant, a common carrier, undertook to carry a shipment of copra for delivery to Procter & Gamble Company, at Cebu City; that upon discharge, a portion of the copra was found damaged; that since the copra had been previously insured with plaintiffs they paid the shipper and/or consignee, upon proper claim and assessment of the damage, the sum of P15,980.30; and that as subrogee to the shipper's and/or consignee's rights, plaintiffs demanded, without success, settlement from defendant by reason of its failure to comply with its obligation, as carrier, to deliver the copra in good order.

Defendant moved to dismiss on two grounds: (a) that plaintiffs had "no legal personality to appear before Philippine courts and with no capacity to sue;" and (b) that the complaint did not state a cause of action. Both grounds were based upon failure of the complaint to allege compliance with section 69 of the Corporation Law, which states:

"SECTION 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippines shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceeding. Any officer, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the Court."

Section 68 of the Corporation Law is almost identical with the first part of Section 69 which requires a license before a foreign corporation may be permitted to transact business in the Philippines, but adds that such license may be obtained from the Director of Commerce upon order of the Secretary of Commerce and Industry.

Plaintiffs opposed the motion to dismiss; and the trial court, in an order dated June 27, 1960, found the complaint deficient in that it failed to state that plaintiffs were duly licensed to transact business in the Philippines, but gave them an opportunity to amend said complaint within a period of ten days. Plaintiffs moved to reconsider and, after the motion was denied, filed a manifestation to the effect that they could not comply with the order to amend but would wait for the dismissal of the complaint so as to be able to elevate the matter to this Court on appeal. On

September 6, 1960, the order of dismissal was issued.

The trial court would have plaintiffs amend the complaint by including therein an allegation that as foreign corporations they were duly licensed to engage in business in the Philippines. The implication of the court's ruling is that without such license a foreign corporation may not sue in our courts in view of section 69 of the Corporation Law. Appellants contend that this is an erroneous interpretation of the statute; that a license is necessary before a foreign corporation may transact, that is, engage in, business in the Philippines, and if so engaged, before it may maintain a suit in our courts; but that if a foreign corporation is not doing business here it is not barred from seeking redress in our courts in proper cases, as when it sues on an isolated transaction, even if it has not obtained a license pursuant to Section 69.

Appellants' contention is correct as far as it goes. It finds support in the decision written by Mr. Justice Malcolm in *Marshall-Wells Co. vs. Elser & Co.*, 46 Phil. 71 (September 1, 1924), where this Court said after analyzing Section 69 of the Corporation Law: "The law simply means that no foreign corporation shall be permitted to transact business in the Philippines, x x x unless it shall have the license required by law, and, until it complies with this law, shall not be permitted to maintain any suit in the local courts."

"The object of the statute," this Court explained in that case, "was to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object of the statute was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine Courts, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations. The effect of the statute preventing foreign corporations from doing business and from bringing actions in the local courts, except in compliance with elaborate requirements, must not be unduly extended or improperly applied. It should not be construed to extend beyond the plain meaning of its terms, considered in connection with its object, and in connection with the spirit of the entire law."

But merely to say that a foreign corporation not doing business in the Philippines does not need a license in order to sue in our courts does not completely resolve the issue in the present case. The proposition, as stated, refers to the right to sue; the question here refers to pleading and procedure. It should be noted that insofar as the allegations in the complaint have a bearing on appellants' capacity to sue, all that is averred is that they are both foreign corporations existing under the laws of the United States. This averment conjures two alternative possibilities: either they are engaged in business in the Philippines or they are not so engaged. If the first, they must have been duly licensed in order to maintain this suit; if the second, if the transaction sued upon is singular and isolated, no such license is required. In either case, the qualifying circumstance is an essential part of the element of plaintiffs' capacity to sue and must be affirmatively pleaded.

To be sure, under the Rules of Court (section 11, Rule 15) in force prior to the promulgation of the Revised Rules on January 1, 1964, it was not necessary to aver the capacity of a party to sue except to the extent required to show jurisdiction of the court. In our opinion, however, such rule does not apply in all situations and under all circumstances. The theory behind a similar rule in the United States is "that capacity x x x of a party for purpose of suit is not in dispute in the great bulk of cases, and that pleading and proof can be simplified by a rule that an averment of such matter is not necessary, except to show jurisdiction." [1] But where, as in the present case, the law denies to a foreign corporation the right to maintain suit unless it has previously complied with a certain requirement, then such compliance, or the fact that the suing corporation is exempt therefrom, becomes a necessary averment in the complaint. These are matters peculiarly within the knowledge of appellants alone, and it would be unfair to impose upon appellee the burden of asserting and proving the contrary. It is enough that

foreign corporations are allowed by law to seek redress in our courts under certain conditions: the interpretation of the law should not go so far as to include, in effect, an inference that those conditions have been met from the mere fact that the party suing is a foreign corporation.

It was indeed in the light of these and other consideration that this Court has seen fit to amend the former rule by requiring in the Revised Rules (Section 4, Rule 8) that "facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred."

The orders appealed from are affirmed, with costs against plaintiffs-appellants.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

[1] Moore 's Federal Practice Under the New Rules, p. 582 (Anno. Rules of Court by Francisco, Vol. i, p. 475, 1948 Edition).

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