

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. MACONDRAY & CO., INC., DEFENDANT AND APPELLEE.

G.R. No. 19576. April 29, 1966

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by the Republic of the Philippines from the order of the Court of First Instance of Manila in Civil Case No. 49159 dismissing its complaint against Macondray & Co., Inc. on the ground that the cause of action was barred by the Statute of Limitations.

On September 6, 1961, appellant filed a complaint with the Municipal Court of Manila to collect from appellee the administrative fine—amounting to the sum of P500.00—imposed upon the latter, as agent of the vessel SS "Titania", by the Bureau of Immigration, for an alleged violation committed on June 11, 1955 of the provisions of Section 44 of the Philippine Immigration Act of 1940, as amended. The violation consisted in the failure of the master or agents of the SS "Titania" to include in the passenger manifest the name of an alien stowaway and to prevent his landing in the Philippines when the vessel arrived in Manila on the date aforesaid.

Appellee filed a motion to dismiss on the ground of prescription, citing the provisions of Section 44(f) of the Philippine Immigration Act of 1940, as amended, which provides that—

"No action or proceeding for the enforcement of any fine for any violation of the provisions of this section shall be instituted more than five years after the violation is committed."

The Municipal Court dismissed the case. On appeal, the Court of First Instance of Manila where appellee reiterated its motion to dismiss, issued the appealed order. Hence the present appeal.

It is not disputed that the violation of the provisions of Section 44 of the Immigration Act for which the fine was imposed was committed on June 11, 1955. The record discloses that on April 11, 1960, or exactly two months before the expiration of the five year prescriptive period, the office of the Solicitor General made a written demand upon appellee for the payment, within ten days, of the fine of P550.00 imposed upon it by the Commissioner of Immigration, otherwise the proper action would be filed in court. Appellee, through counsel, replied thereto on April 19 of the same year bringing to the attention of the Solicitor General the fact that the order imposing the fine aforesaid had been appealed to the Secretary of Justice the day before and making an express request that action on the matter be held in abeyance until after said official shall have finally decided the appeal.

It is thus crystal clear that if no action was filed in court within the prescriptive period for the collection of the fine in question, the inaction was due entirely to appellee's express request. The latter, therefore, is in estoppel and should not be permitted to rely upon the defense of the statute of limitations. (*Collector of Internal Revenue vs. Suyoc Consolidated etc.*, 104 Phil. 819, citing *Newport Company vs. U.S.* (DCINWIS), 34 F. Supp. 588.)

However, appellee claims that the doctrine of estoppel should not be applied to it because its request was never

granted by the office of the Solicitor General. This is not exactly correct. While it is true that there was no express or written grant of the request, there is no question that the office of the Solicitor General impliedly granted appellee's request, and it was only after the lapse of a reasonable time that it took the matter to court because of appellee's failure to give advice as to the result of its appeal to the Department of Justice.

Appellee contends further that because appellant's complaint contains no allegation concerning the suspension of the running of the prescriptive period, it may not be allowed to present any evidence to establish that fact. This contention is without merit. Appellee raised the question of prescription of the action in its motion to dismiss. In the answer thereto filed by appellant, the latter alleged all the facts that would justify the presentation of the evidence which appellee claims may not be allowed and admitted under the allegations of the complaint. (Record on Appeal, pp. 25-31) Appellant's reply (Record on Appeal, p. 31) did not deny the facts aforesaid but only claimed that "the case cited by the plaintiff in support of its argument is not applicable to the case at bar." In view of this, We believe that the motion to dismiss should have been resolved by the lower court only after taking into account the aforesaid allegations made in appellant's answer to the motion to dismiss or only after receiving evidence in connection therewith.

Wherefore, the order of dismissal appealed from is set aside and the case is hereby remanded to the lower court for further proceedings.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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