

THE AMERICAN INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS. MACONDRAY & CO., INC., REPUBLIC OF THE PHILIPPINES AND BUREAU OF CUSTOMS, DEFENDANTS. REPUBLIC OF THE PHILIPPINES AND BU...

G.R. No. 24031. August 19, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

On appeal from an order of the Court of First Instance of Manila, dismissing the complaint in Civil Case No. 57118 of said court as against the Republic of the Philippines and the Bureau of Customs.

On May 21, 1964, the American Insurance Company filed a complaint against Macondray & Co., Inc. and the Bureau of Customs, as alternative defendants, for the recovery of a sum of money. In its answer, the Bureau of Customs prayed for the dismissal of the case, one of its defenses being that "it is not a juridical entity endowed with capacity to sue or be sued, in any case, it cannot be sued without its consent."

On July 3, 1964, the plaintiff filed an amended complaint, this time including the Republic of the Philippines as party defendant. The action is for the collection of a sum of money representing an unsatisfied claim for loss and non-delivery of goods consigned to an importer who was subrogated by the plaintiff as insurer, upon payment by the latter of the loss. It was alleged that the goods were loaded on board certain vessels at New York, U.S.A., of which vessels Macondray & Co., Inc. was the agent in the Philippines, and upon arrival of the goods in Manila, the defendants "either failed to discharge all the cargoes completely or having discharged the same completely thereafter failed to take the trans-shipment of the cargoes, resulting in their loss and non--delivery" to the consignee. The participation of the Bureau of Customs in the transaction, as alleged in para-graph 4 of the complaint, is as follows:

"4. That since November 21, 1962, defendant Bureau has been operating the arrastre service at the port of Manila through its division known as Customs Arrastre Service created for the purpose, charged with the duty of receiving imported cargoes discharged from ocean carriers and safe-keeping and in due course delivering the same to the owners thereof or to such other parties as are entitled to delivery thereof, upon such delivery being duly approved."

The claim for the loss was duly filed against the defendants, Macondray & Co., Inc. and the Bureau of Customs which, according to plaintiff, refused and failed to pay the same.

On August 24, 1964, the Republic of the Philippines and the Bureau of Customs, through counsel, filed a motion to dismiss the complaint, on the ground that the court has no jurisdiction over the subject matter of the action as to them, as operator of the arrastre service, the amount involved being less than P10,000.00, falling within the exclusive jurisdiction of the City Court of Manila.

After the consideration of the motion and the opposition thereto, the lower court dismissed the case with respect

to the Government and the Bureau of Customs upon the ground set forth in their motion.

As above stated, the plaintiff appealed from this order.

The question raised in appellant's brief is whether a money claim of less than P10,000.00, which allegedly arose from the failure of the Bureau of Customs in its arrastre service, may be joined with a subject matter involving admiralty in one suit, filed in the Court of First Instance against alternative defendants. This is not a novel question. In a string of cases, this Court has ruled in the affirmative where the money claim and the admiralty aspect of the suit arose, as in the present case, out of one and the same transaction.[1]

Paragraph 10 of the complaint discloses that at the time the case was instituted, plaintiff was not certain as to when and in whose custody the goods were lost, hence, the joinder of alternative parties and causes of action, which is sanctioned by the following provisions of the Rules of Court

"Joinder of causes of action. - Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the said causes of action arise out of the same contract, transaction or relation between the parties, or (b) if the cause of action are for demands for money, or are of the same nature and character.

"In the cases falling under clause (a) of the preceding paragraph, the action shall be filed in the interior court unless any of the causes joined falls within the jurisdiction of the Court of First Instance, in which case it shall be filed in the latter court. (Sec. 5, Rule 2, Rules of Court.)

"Alternative Defendants. - Where the plaintiff is uncertain against which of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right to relief against the other." (Sec. 13, Rule 3, Rules of Court.)

Applying these rules, this Court in the case of *Switzerland General Insurance Co., Ltd. v. Java Pacific and Hoegh Lines and the Manila Railroad*, G.R. No. L-21760, April 30, 1966, stated:

"As may be seen, the instant case comes within the purview of the rule above quoted for therein it is postulated that a party may in one pleading state in the alternative as many causes of action as he may have against an opposing party if they arise from the same transaction with the particularity that the case may be filed in the Court of First Instance if any of said cause of action falls within its jurisdiction. This is precisely what was done in this particular case. Because of the uncertainty of the place where the disappearance of the shipment occurred, plaintiff brought the case in the alternative before the Court of First Instance upon the theory that it may have occurred while the shipment was in transit or while in the custody of the arrastre operator."

From the allegations in the complaint, it appears that the causes of action against the alternative defendants arose out of the same transactions and/or contracts, and one of the causes of action - that of admiralty against the *Macondray & Co., Inc.* - falls within the jurisdiction of the Court of First Instance [Sec. 44 (d), Republic Act 296, as amended]. Consequently, the said court has jurisdiction to try the case in its entirety.

But a matter of transcendental importance remains to be considered in view of the lack of any allegation in the complaint that the Republic of the Philippines has given its consent to be sued. While it is true that the absence of such an allegation is not one of the instances in which the court *motu proprio* may dismiss the complaint, and although it was not relied upon by the Republic in its motion to dismiss, since it inherently vitiates the complaint and as it may be passed upon at any stage of the proceedings, we believe it is within our power to determine at this instance, the effect of the absence of such an allegation.

Non-suability of the State without its consent is one of the basic principles which underlie our republican form of

government. It derives its force from the will of the people in freely creating a representative government through which they have agreed to exercise the powers and discharge the duties of the sovereignty for the common good and general welfare. (Metran vs. Paredes, L-1232, January 12, 1948) Justice Holmes has aptly stated the basis for the principle thus: "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the legal and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." (Kawananakao vs. Poyblank, 206 U.S. 349) A contrary principle would dissipate the time and energy of the State in endless suits against it, which would be subversive of the public interest.

It is the duty of a party attempting to show liability on the part of the Government to allege in the complaint, as basis of the cause of action, that the Republic of the Philippines has consented to be sued, either by special law covering special subject matter or by general law expressing the terms on which such consent is given. Such an allegation is essential to create a justiciable cause of action against the Government, without which the complaint suffers from a fatal defect. In the case at bar, no such allegation was made. The case against the Republic may therefore be dismissed. And since the Bureau of Customs is but a finger of the Department of Finance, with no personality of its own apart from that of the national Government (Mobil Philippines Exploration, Inc. vs. Bureau of Customs and Arrastre Service, L-23139, December 17, 1966), the complaint as against it may also be dismissed.

Upon the foregoing considerations, the complaint as against the Republic of the Philippines and the Bureau of Customs is hereby dismissed. No costs.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

[1] United Insurance Company, Inc. v. Royal Interocean Lines, et al., L-22688, April 27, 1967; Rizal Surety & Insurance Company v. MRR, et al., L-20875, April 30, 1966; Insurance Co. of North America v. U.S. Lines Co., L-21021, May 27, 1966; Fireman's Fund Insurance Co. v. Cia General de Tabacos de Filipinas, et al., L-22625, April 27, 1967.

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