

**INSURANCE COMPANY OF NORTH AMERICA,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES AND/OR
BUREAU OF CUSTOMS AND/OR CUSTOMS ARRASTRE SERVICE
AND/OR A. R. REYES & COMPANY, D...**

G.R. No. 26794. November 15, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On May 19, 1964, the Insurance Company of North America, as subrogee to the consignee Uy Tit & Co. Inc., for having paid the latter P21,040.69, filed before the Court of First Instance of Manila a complaint for recovery of the said amount plus attorney's fees and costs against the Customs Arrastre Service and/or Bureau of Customs and/or A.R. Reyes & Co., operator of the Customs Bonded Warehouse. The amount sought to be recovered was the alleged loss to a shipment of sixteen (16) cartons of Industrial Wheel Brushes, Measuring Instruments and Hand Tools discharged by SS "Lica Maersk" in good order condition into the custody of either of the defendants.

In answer the Bureau of Customs and the Customs Arrastre Service claimed, aside from their incapacity to sue or be sued, that the plaintiff had no valid cause of action against them, there being no showing that Act 3083, as amended by Commonwealth Act 327 has been complied with. A.R. Reyes & Co., on the other hand, claimed that the complaint was pre-mature because while six (6) cartons of cargoes with marks "UTC-M-5871-062033 Manila" were received by its warehouse, the same had not yet been claimed by consignee nor has the latter presented the necessary delivery permit in order that the cargo may be discharged to the consignee.

On plaintiff's motion, the court set the case for pre-trial on February 20, 1965 at 9:30 A.M. However, as the parties could not reach any settlement, the case was set for trial.

Subsequently, on March 11, 1965, the complaint was amended to include the Republic of the Philippines as defendant. The hearing was set for April 7, 1965. On that date, the Republic of the Philippines had not answered, so the court could not hear the case. On May 10, 1965 the Republic filed its answer adopting and repleading the answer filed by defendants Bureau of Customs and the Customs Arrastre Service. The case, however, was not set for hearing.

On August 31, 1966, the Court of First Instance dis-missed the case for plaintiff's lack of interest to prosecute. Its motion for reconsideration having been denied, the Insurance Company of North America appealed to Us claiming that the dismissal on such ground was an error.

Plaintiff-appellant relies on Section 1, Rule 20 of the Rules of Court which requires the court to hold a pre-trial before the case is heard. But a pre-trial has already been had on February 20, 1965, after which the case was set for trial when the case could not be settled. The fact that an amended complaint was later, with leave of court, filed, did not necessitate, under the circumstances, another pre-trial. It would have been impractical, useless and time consuming to call another pre-trial, considering that the Republic of the Philippines merely adopted and

repleaded all the pleadings of the Bureau of Customs and the Customs Arrastre Service.

The last pleading, the answer of the Republic of the Philippines, was filed on May 10, 1965. After one year, three months, and 21 days, or on August 31, 1966, the lower court dismissed the case for failure to prosecute. The dismissal was proper. A span of more than a year of inactivity on the part of the plaintiff shows its lack of interest in prosecuting the case. While under the Rules, the clerk of court has the duty to include a case in the trial calendar after the issues are joined, and to fix the date for trial as well as to notify the parties of the same, the plaintiff may not rely upon said duty of the clerk nor is it relieved of its own duty to prosecute the case diligently, calling if necessary the attention of the court to the need of putting the case back to its calendar if the court, because of its numerous cases, has neglected to attend thereto.[1]

At any rate, the suit against the Republic and its agencies for arrastre operations cannot be maintained in view of said defendants' immunity from suit. (*Mobil Philip-pines Exploration v. Customs Arrastre Service*, L-23139, December 17, 1966).

WHEREFORE, the order of dismissal appealed from is hereby affirmed, with costs against appellant.

SO ORDERED.

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

[1] *Ventura v. Baysa*, L-12960, January 31, 1962.

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