

CACHO & HIDALGO, PLAINTIFF AND APPELLANT, VS. MANILA ELECTRIC COMPANY, DEFENDANT AND APPELLEE.*G. R. No. 35280. November 05, 1932*

Ponente: VICKERS, J.

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This is an appeal by the plaintiff from the following decision of Judge Francisco Zanduetta of the Court of First Instance of Laguna:

"La demandante es una sociedad regular colectiva domiciliada en la Ciudad de Manila. La demandada es una corporación organizada y existente de acuerdo con las leyes en vigor en las Islas Filipinas, y domiciliada también en la Ciudad de Manila. La demandante es concesionaria de dos franquicias, una del Concejo Municipal de Pagsanjan, y otra del Concejo Municipal de Lumban, ambos de la Provincia de Laguna, para la construcción y operación de una planta eléctrica en dichos municipios. La demandada que es también poseedora de una franquicia para el suministro de corriente eléctrica a la Ciudad de Manila desde la planta hidroeléctrica que está actualmente levantada en Botocan, Laguna, ha construido una línea de transmisión que pase a una altura de veintiocho pies sobre ciertos alambres de transmisión de la demandante en el Municipio de Pagsanjan, la cual atraviesa la carretera provincial en el Municipio de Lumban. La demandante solicita del Juzgado una orden de interdicto para que se le prohíba a la demandada hacer uso de su línea de transmisión de corriente eléctrica arriba mencionada y de los postes y torres que sostienen dicha línea, y una sentencia para que se le condene a la demandada a pagar a la demandante la suma de ₱20,000 como daños y perjuicios.

"Toda la cuestión a resolver en este asunto es de si o no la demandante podía construir su línea de transmisión, en vista de que dicha demandada no posee ninguna franquicia para la construcción y operación de una planta eléctrica, con sus accesorios, en los referidos municipios de Pagsanjan y Lumban. La demandada arguye, por otro lado, que no necesitaba de ninguna franquicia, en vista de que ella no suministra fluido eléctrico en ninguno de dichos municipios, y ha sido autorizado por la Junta Provincial de Laguna para construir la línea de transmisión en cuestión a través de la carretera provincial que pasa por el Municipio de Lumban.

"Consideradas y examinadas las pruebas aportadas durante el juicio, el Juzgado halla que las franquicias de la demandante no son exclusivas y que la demandada no suministra corriente eléctrica en ninguno de los municipios arriba mencionados, y bajo estas circunstancias, el Juzgado es de opinión que la teoría de la demandante es insostenible. Si la demandada suministrase corriente eléctrica en dichos municipios, la demandante tendría justo motivo de queja, pero por el solo hecho de haber construido la demandada su línea de transmisión de corriente eléctrica, no se ha violado, en opinión del Juzgado, ningún derecho de la demandante, ni ha sido perjudicada en absoluto esta en el goce de sus franquicias. Añádase a lo dicho que la Junta Provincial de Laguna concedió autorización a la demandada para construir su línea de transmisión, por lo que resulta pues evidente que a la demandante no le asiste ningún motivo de acción.

"Habiendo llegado a esta conclusión el Juzgado, parece superfluo emitir algún dictamen sobre los daños y perjuicios reclamados en la demanda, pero para una resolución completa, sin embargo, de todas las cuestiones envueltas en el asunto, el Juzgado declara que en autos no existe ninguna prueba de que la demandante haya sufrido tales daños o perjuicios. Una sentencia por daños y perjuicios debe basarse por pruebas positivas acerca

de la existencia de tales danos y perjuicios, y en la causa solo existen conjeturas de que podrian mermarse el negocio de la demandante por la construction de la linea en cuestion, y de que si algunos de los alambres de la linea de transmision de la demandada se cayeren sobre las de la demandante, las de esta se estropearian.

"Se dicta sentencia, absolviendo a la demandada de la demanda, con las costas a la demandante.

"Se declara disuelto el interdicto prohibitorio librado, segun orden de este Juzgado de fecha octubre 16 de 1930 y cancelada la fianza prestada por la demandante para la disolucion de dicho interdicto."

The appellant makesv the following assignment of errors:

"I. The lower court erred in holding that the franchises of the plaintiff-appellant in the municipalities of Pagsanjan and Lumban, Laguna, were not exclusive.

"II. The lower court erred in not holding that the defendant-appellee could not construct and maintain at Pagsanjan and Lumban, Laguna, its transmission lines from Botocan to Manila without any franchise granted by the duly authorized governmental agencies.

"III. The lower court erred in not declaring that the authority given unto the defendant-appellee by the provincial board of Laguna was null and void, said authority being given in excess of its powers.

"IV. The lower court erred in holding that the franchises of the plaintiff-appellant were in no way violated or impaired because the defendant-appellee was not supplying any of the municipalities of Pagsanjan and Lumban, with electric fluid and instead, the lines constructed by the defendant-appellee in said municipalities were merely used as transmission lines from Botocan to Manila.

"V. The lower court erred in holding that there was no proof to show the damages prayefi for the plaintiff-appellant, and in not granting the latter damages in the sum of P20,000 as alleged in the complaint."

The plaintiff partnership alleges in its complaint that it is operating an electric light plant in the municipality of Pagsanjan, Laguna Province, in pursuance of a resolution of the municipal council of that municipality granting the plaintiff a franchise for that purpose, which was approved by the provincial board of Laguna, the Public Service Commission, and by the Governor-General on October 28, 1922; and that it is operating an electric light plant in the municipality of Lumban, Province of Laguna, in pursuance of a resolution of the municipal council of that municipality granting the plaintiff a franchise for that purpose, which was approved by the provincial board of Laguna, the Public Service Commission, and by the Governor-General on December 16, 1929;

That on or about the month of August, 1930 the defendant, without obtaining any franchise from the municipal council of Pagsanjan or Lumban or any other authority empowered to grant franchises, and over and against the objection of the plaintiff," unlawfully, maliciously, and unnecessarily constructed and erected towers, poles, and wires within the boundaries of said municipalities for the purpose of using said wires as a transmission line of its electric current for public use from Botocan to Manila and intermediate towns;

That the defendant is actually so using or will use said poles, towers, and wires as its transmission line for its electric current from Botocan, and will continue using the same in said way during the litigation, in violation of the applicant's acquired rights and will work injustice to the applicant;

That the plaintiff is the exclusive grantee of the rights and privileges to construct, erect, and maintain towers, poles, and wires for electric power within the boundaries of Pagsanjan and Lumban, Laguna;

That the defendant has crossed the electric wires of the applicant after cutting the same, and has caused damages to said wiring and the posts belonging to the plaintiff, and the defendant has also crossed the right of way of the plaintiff within the boundaries of the municipality of Lumban, which crossings interfere with the rights and

privileges acquired by said applicant under the franchises above referred to;

That the respondent has interfered in the enjoyment of plaintiff's franchises, which together with its business and credit have been greatly and permanently damaged and depreciated in value, and the plaintiff has otherwise been irreparably damaged in the enjoyment thereof in the sum of P20,000;

That the plaintiff has no other plain, expedient and adequate remedy in the ordinary course of law;

That the plaintiff is willing to put up a bond for the issuance of a preliminary writ of injunction;

That the plaintiff has acquired all the interests and rights of Eugenio Zalamea in and to the electric franchise for the municipality of Pagsanjan referred to in case No. 1594 of the Public Service Commission.

The plaintiff prayed for a writ of preliminary injunction commanding the defendant to desist from using said towers, poles, and wires as a transmission line of its electric current from Botocan to Manila, that in due course said injunction be made permanent; that the defendant be condemned to remove all the said towers, poles, and wires; and to pay the plaintiff P20,000 as damages, and costs. Plaintiff prayed for any other remedy that might be just and equitable.

Defendant in its answer denied all the allegations of the complaint except those impliedly admitted, and as a special defense alleged that the plaintiff is not a possessor of an exclusive franchise to construct, erect and maintain poles, towers and wires for electricity in or across the municipalities of Pagsanjan and Lumban, Laguna Province;

And as a second special defense the defendant alleged that upon the favorable recommendation of the Secretary of Commerce and Communications the defendant was given permission by the provincial board of Laguna to construct and maintain the transmission line of electric current complained of in the municipalities of Pagsanjan and Lumban.

There is no merit in the appellant's first assignment of error. There is nothing in the plaintiff's franchises which makes them exclusive.

"In the absence of an express provision to that effect, grants of franchises are not construed to be grants of exclusive privileges." (26 C. J., 1034.)

Appellant's second assignment of error is likewise without merit. The defendant is not operating an electric plant for the purpose of furnishing light and power to the towns of Pagsanjan and Lumban, but has erected a transmission line to bring its electric current from Botocan, in Laguna Province, to Manila. Act No. 667, which authorizes municipal councils to grant franchises to construct and maintain electric street railways, telephone plants and lines, and electric light and power plants and lines, has no application in the present case.

With respect to appellant's fourth and fifth assignments of error, we find after examining the evidence that it is not proved that the plaintiff has suffered or is likely to suffer any damage by reason of the construction of defendant's transmission line. Although it appears that the transmission line of the defendant crosses the electric wires of the plaintiff in the municipality of Pagsanjan, the testimony of R. Folkanson, superintendent of construction at Botocan and an electrical engineer of wide experience in the United States, nevertheless shows that there is a distance of twenty-five feet between the wires of the plaintiff and the transmission line of the defendant, the usual distance required in the United States being only ten feet; that the transmission line of the defendant has been constructed to resist a storm with a velocity of 150 miles an hour, and with a resistance of 30 pounds to the square inch, and that in addition thereto it has a margin of safety; that under these circumstances the probability of any interference between the electric wires of the plaintiff and the transmission line of the defendant or of defendant's

transmission line breaking is so remote as to be practically nil. It appears from the evidence that the provincial board of Laguna granted the defendant permission to construct its transmission line across the provincial road upon the favorable recommendation of the Secretary of Commerce and Communications pursuant to an indorsement of the Director of Public Works setting forth the conditions under which the transmission line of the defendant should be constructed. It is not suggested in the record that the defendant has not constructed its transmission line in accordance with the conditions laid down by the Director of Public Works, which are based on the National Electrical Safety Code of the United States Bureau of Standards. The mere fact that the plaintiff has a franchise to install and maintain an electric light in Pagsanjan and Lumban and to erect the necessary poles and wires therefor does not give it the right to prevent the construction and maintenance of defendant's transmission line through those municipalities. No right of the plaintiff partnership has been invaded, or any injury sustained by it. There is nothing extraordinary in the fact that defendant's transmission line crosses plaintiff's, wires. A similar situation frequently arises. The person constructing the new line is, however, under the duty so to construct his line as not unnecessarily to interfere with the prior licensee in the exercise of his franchise (20 C. J., 314). As already stated, defendant's line was apparently constructed in the most approved manner, and plaintiff has not sustained any interference with the exercise of its franchise or any damage to its property.

Under these circumstances, we find that the plaintiff has no ground for complaint, or any right to raise the question of the authority of the provincial board of Laguna Province to grant the defendant permission to construct its transmission line across the provincial road.

For the foregoing reasons, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Malcolm, Ostrand, Villa-Real, Abad Santos, Imperial, and Butte, JJ., concur.

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