

**RED LINE TRANSPORTATION CO., INC., PLAINTIFF AND APPELLEE,
VS. BACHRACH MOTOR COMPANY, INC., AND RURAL TRANSIT
COMPANY, INC., DEFENDANTS AND APPELLANTS.**

G.R. No. 45173. April 27, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is an injunction suit brought by the plaintiff, Red Line Transportation Co., Inc., against the defendants, Bachrach Motor Company, Inc., and Rural Transit Company, Inc., in the Court of First Instance of Manila to restrain the said defendants, "their managers, inspectors, chauffeurs, conductors and all other persons acting for said defendants, from operating a transportation service by means of auto-trucks or autobuses for the transportation of passengers and express between Ilagan and Tuguegarao" and for the consequent "accounting of all sums of money received from the passengers or shippers of cargo for transportation between Ilagan and Tuguegarao since the 16th of March, 1931" and payment to the plaintiff of "the total of all amounts so received, together with the costs of this case."

The contract (Exhibit A) allegedly violated by the defendants is here reproduced:

"MUTUAL DEED OF SALE

"Know all men by these presents:

"That the Rural Transit Company, a corporation duly organized and existing in accordance with the laws of the Philippine Islands, and having its principal place of business in the City of Manila, Philippine Islands, hereinafter called party of the First Part; and ALFREDO ZURAEK individually and as attorney-in-fact for ALBERTO Zuraek with whom he is engaged in a partnership business for the transportation service under the name of INTER-PROVINCIAL TRANSPORTATION COMPANY, of legal age, married and resident of the Municipality of Bayombong, Province of Nueva Vizcaya, hereinafter called parties of the Second Part,

"WITNESSETH:

"That, for and in consideration of the sum of fifteen thousand pesos (P15,000), Philippine Currency, to them in hand paid by the party of the First Part and receipt of which is hereby acknowledged, the parties of the SECOND Part have sold, transferred, conveyed and assigned, and by these presents do sell, transfer, convey and assign unto the party of the First Part, all their rights and interests and participations in the Certificates of Public Convenience that have been granted by the Public Service Commission in their names or in the name of the INTER-PROVINCIAL TRANSPORTATION COMPANY, and those pending trial or decision and reconsidered in Expedientes Nos. 6111, 6152, 8573, 10025, 11886, 13959, 16300, 19939 and 21503, as well as all other cases to which they have a right, interest or participation, pending or decided, and covering all the routes from the Municipality of Ilagan, Province of Isabela, to any other point South of the said municipality. The parties of the SECOND PART do hereby also sell, transfer and convey unto the party of the FIRST PART, its one Chevrolet auto-truck. That, for and in consideration of the sum of one peso (P1), Philippine Currency, as well as other valuable considerations and receipt of which is hereby acknowledged, the party of the FIRST

PART has sold, transferred, conveyed and assigned, and by these presents does hereby sell, transfer, convey and assign, unto the parties of the SECOND PART, all its rights, interests and participations in its Certificates of Public Convenience which may have been decided by the Public Service Commission, in Expediente No. 10836, covering the route from the Municipality of Ilagan, Province of Isabela, to any point North of the said Municipality, as well as all pending applications covering the said route; and does hereby also sell and assign unto the said parties of the SECOND PART its one Durant auto-truck.

"The party of the First Part, its successors, or assigns, hereby agrees that it will not directly or indirectly operate, nor file an application in the Public Service Commission, to operate in any of the territory covered by the routes of the parties of the Second Part that may be north of the said Municipality of Ilagan, Province of Isabela, and neither will it purchase, directly or indirectly any Certificate of Public Convenience of any operator who may have a route in the said territory. The parties of the Second Part, their heirs, successors or assigns, in turn, hereby agree that they will not directly or indirectly operate nor file an application in the Public Service Commission, to operate in the territory, covered by the routes of the party of the First Part that may be South of the Municipality of Ilagan, Province of Isabela, and neither will they purchase, directly or indirectly, any right to any Certificate of Public Convenience of any operator who may have a route in the said territory. That it is also expressly agreed that the parties of the Second Part hereby bind themselves to refund the sum of fifteen thousand pesos (P15,000), Philippine Currency, to the party of the First Part, in case of violation of the above-mentioned provisions and whatever expenses and damages which the party of the First Part may suffer by reason of the said violation. The party of the First Part in turn will pay the parties of the SECOND Part any and all damages which the latter may suffer if the former will not live up to the provisions of this contract. It is also agreed to make their operations from the Municipality of San Jose, Province of Nueva Ecija, to any point north of the same, up to and including the 5th day of February, 1930, and that after the said date, the party of the FIRST PART will assume the responsibility of employing eleven (11) employees of the parties of the Second Part whose total daily salaries is around P20.25.

"The parties hereby also agree that they will request the dismissal of each and every complaint that may have been filed by either of them against the other in the Public Service Commission, and in case the Commission refuses to dismiss the case, the fine or penalty to be imposed be borne by the respondent in the corresponding case.

"In witness whereof, the parties have hereunto executed this instrument this 23rd day of January, 1930, in the City of Manila, Philippine Islands.

"RURAL TRANSIT COMPANY

(Sgd.) "By: E. M. BACHRACH

"President,

(Party of the First Part)

"INTERPROVINCIAL TRANSPORTATION CO.

(Sgd.) "By: ALFREDO ZURAEK

"By: ALBERTO ZURAEK

"Attorney-in-fact

"Signed in the presence of:

(Sgd.) "G, C. LEGASPI

"SEGUNDO E. MENDOZA

"United States of America

Philippine Islands SS.

City of Manila

"Before me, this date personally appeared Mr. E. M. Bachrach, in his capacity as President and General Manager of the Rural Transit Company, with Cedula No. F-9596, issued in Manila, P. I., on the 8th day of January, 1930; and Alfredo Zuraek personally and in the capacity as attorney-in-fact for Alberto Zuraek with Cedula No. F-1757051, issued in Bayombong, Nueva Vizcaya, on the 16th day of January, 1930; to me known and known to me to be the persons who executed the foregoing instrument and acknowledged before me that they signed the same after their own free and voluntary act and deed and that of the parties they represent.

"In witness whereof, I have hereunto set my hand and affixed my notarial seal this 23rd day of January, 1930.

(Sgd.) "Juan Nabong

"Notary Public

"My commission expires Dec. 31, 1980

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"Cert, true copy;

(Sgd.) "Ernesto A. Alcala

"Assistant Secretary

"Public Service Commission"

The mutual deed of sale in this Exhibit A was approved by the Public Service Commission on January 24, 1930 (Case No. 22053, Exhibit B), in the following language:

"There appearing, upon the examination of the application herein filed and of the Deed of Sale attached hereto, no reason why the above sale shall not be approved, and it being apparent that with the proposed sale and exchange of certificates, the public could be better served, the Commission thus hereby approve the said sale effective February 5, 1930, without prejudice to considering any protest that may be filed against same."

How the plaintiff and the defendants succeeded to the rights, interests and properties of the Zuraeks operating under the name and style of Inter-provincial Transportation Co., and the Rural Transit Company, respectively, is amply indicated in the bill of exceptions and well narrated in the briefs filed by the parties. It appears that all the rights and properties as public service operator of the Zuraeks, inducting those acquired by them under Exhibit A, passed to the plaintiff Red Line Transportation Co., Inc., by virtue of a deed of "Sale and Transfer of Public Utility Rights" (Exhibit C) executed on September 13, 1930, and approved by the Public Service Commission on September 15, 1930 (Case No. 24549, Exhibit D). The defendant Bachrach Motor Company, Inc., in turn, acquired all the assets and certificates of public convenience of the Rural Transit Company, Inc., at a sheriff's said resuming from the foreclosure of its chattel mortgage on all the properties of said Rural Transit Company, Inc. Among these properties was a certificate of public convenience issued to one Ceferino Medina and sold by the latter to the Rural Transit Company, Inc., which sale was approved by the Public Service Commission on July 22, 1930 (Case No. 22678, Exhibit E). It should be observed in this connection that the last named certificate of public "convenience authorizes, among other things, the operation of a transportation service from Soriano, Nueva Vizcaya, to Tuguegarao, Cagayan, passing through Ilagan, Isabela—which operation plaintiff now seeks to enjoin as violative of the contractual stipulations found in Exhibit A. The aforesaid sheriff's sale in favor of the defendant Bachrach Motor Company, Inc., was provisionally approved by the Public Service Commission on April 30, 1930 (Case No. 23217); was definitely approved, after the requisite publication, on May 23, 1930 (Case No. 23217, Exhibit F), and was, on petition of the Bachrach Motor Company, Inc., reapproved by the commission in a joint order on September 8, 1932, so as to include among the properties which passed to the Bachrach Motor Company,

Inc., under the sheriff's sale the Medina certificate of public convenience which was, so it is alleged, involuntarily omitted in a previous list submitted (Cases Nos. 22678 and 23217, Exhibit H). A motion by the Red Line Transportation Co., Inc., to reconsider the order of September 8, 1932, was denied by the commission, whereupon, appeal to this court on review followed (G. R. Nos. 395_5 and 39531, Nov. 17, 1933). Disposing of said appeal, this court said:

"These two cases have been brought on review from the Public Service Commission in an endeavour to secure the revocation of the order of the commission of September 8, 1932. However, our knowledge of the record leads us to conclude that there is a sufficient basis to sustain the order above-mentioned.

"In the first place, the respondents contend that their purpose in asking for the issuance of the order was simply to correct an involuntary error, and this argument is at least plausible. In the second place, while the procedure was irregular, nevertheless the petitioner was furnished with a copy of the order and thereafter was afforded an opportunity to. present its protest In the third place, we are given to understand that the respondents have been operating on the lines in question for a number of years, and that this is only one of various unsuccessful attempts by the petitioner to keep the respondents out of this territory. In the fourth place, the mortgage executed by the Rural Transit Company in favor of the Bachrach Motor Co., Inc., included all of the right, title, and interest of the Rural Transit Company in the business of auto-trucks and automobiles actually existing or that in the future might exist, and there is some authority for the proposition that a chattel mortgage is valid even as to future properties if their existence can definitely be proved (5 R. C. L., pp. 403, 404), and Medina's certificate of public convenience became a part of the assets of the Rural Transit Company before the auction sale. Lastly, and most important of all, even it we should set aside the order which is challenged, we do not see how it would favorably affect the petitioner for all the respondents would have to do would be to retrace their steps then moving forward again and securing the necessary confirmation of the transfer of Medina's certificate of public convenience to them.

"The sole error assigned will accordingly be overruled and the order brought here on review confirmed, the costs of this instance to be paid by the appellant."

The Red Line Transportation Co., Inc., by the present action, now seeks to enjoin the operation by the defendants of a transportation service under the questioned certificate upon the ground that the said operation being north of the municipality of Ilagan, Province of isabela, is in violation of the terms of the deed of mutual sale Exhibit A, originally entered into by the respective predecessors in interest of the plaintiff and the defendants. The defendants registered a general denial answer and, for special defenses, alleged (1) that the Bachrach Motor Company, inc., by the sheriff's sale, has taken over all the assets and certificates of public convenience of the Rural Transit Company, Inc., including the Medina certificate authorizing the operation of a transportation service on the Ilagan-Tuguegarao line, which acquisition was duly approved by the Public Service Commission, and (2) that the right of the Bachrach Motor Company, Inc., to operate the said line is res judicata, having been confirmed not only by the public Service Commission but also by this court. Upon such issues the Court of First Instance, after trial, rendered a decision for the plaintiff, concluding with the following judgment:

"Wherefore, defendants in this case Bachrach Motor Co., Inc., and the Rural Transit Co., Inc., are hereby enjoined, together with their managers, inspectors, chauffeurs, conductors and agents from operating a transportation service by means of auto-trucks or auto-buses for the transportation of passengers and freight between Ilagan and Tuguegarao under and by virtue of the said Medina's certificate. The defendants herein are further ordered to make an accounting of the money collected by them for the operation of said transportation service between said Ilagan and Tuguegarao route, above referred to, from the 16th of March, 1931, and to pay the costs of this action."

The case is before this court on appeal by the defendants from the aforesaid decision and judgment.

We are made to understand that the principal question to be determined in this appeal is whether or not the mutual deed of sale, Exhibit A, particularly its so-called. negative agreement reading "The party of the first part (Rural Transit Company), its successors, or assigns, hereby agrees that it will not directly or indirectly operate, nor file an application in the Public Service Commission, to operate in any of the territory covered by the routes of the parties of the second part (Alfredo Zuraek and Alberto Zuraek operating under the name and style of Inter-provincial Transportation Company) that may be north of the said municipality of Ilagan, Province of Isabela, and neither will it purchase, directly or indirectly any certificate of Public Convenience of any operator who may have a route in the said territory", is valid. The defendants-appellants in their various assigned errors argue for the negative of this proposition, and against the theory adopted by the trial court. The appellee, Red Line Transportation Co., Inc., supports the affirmative of the proposition and offers a vigorous replica to the contention of the appellants.

While it must be admitted that the negative agreement contained in Exhibit A is the root of the present controversy, we are of the opinion that the present appeal may and should properly be disposed of by determining the authority of the lower court upon the facts and under the law to issue the writ of injunction against the defendants-appellants in this case, without overlooking the character of the stipulation upon which the lower court based its decision in the injunction suit.

Without repeating the history of the acquisition by the parties herein of the respective rights, interests and properties of their predecessors in interest, it should be observed that finally a certificate of public convenience was issued by the Public Service Commission in favor of Bachrach Motor Company, Inc. to establish and maintain a transportation service by means of auto-trucks from Solano, Nueva Vizcaya, to Tuguegarao, Cagayan. This was on September 8, 1932. Reconsideration of the action taken by the commission on the ground that the authority was in violation of the negative agreement contained in the second paragraph of the original contract Exhibit A was presented but was denied (Cases Nos. 22678 and 23217). The Red Line Transportation Co., Inc., the plaintiff-appellee here, presented petitions for review in this court in G. R. Nos. 39525 and 39531, to revoke the order of the commission, but we confirmed the order of the commission in cases Nos. 22678 and 23217, and this is why Bachrach Motor Company, Inc., is now operating between Solano, Nueva Vizcaya, and Tuguegarao, Cagayan. Under these circumstances, we are of the opinion that the Court of First Instance of Manila is without authority to enjoin the operation of the appellants.' Primarily, the Public Service Commission is the entity invested with authority to authorize the operation of public services and issue certificates of public convenience therefor. The determination of that question cannot be reviewed by a Court of First Instance, especially where, as in this case, this court had affirmed the order of the Public Service Commission upon a proper petition for review. To permit the Court of First Instance to enjoin the operator here is to restrain the operator from doing what the Public Service Commission and this court have authorized to be done. (Cf. *People and Hongkong & Shanghai Banking Corporation vs. Vera and Cu Unjieng*, 37 Off. Gaz., 164, 171; *Shioji vs. Harvey*, 43 Phil., 333.) While the injunction here is against the operator, the result is the same, for what cannot be done directly cannot be done by indirection. There is no showing here that the appellants were operating in violation of the conditions of their certificate of public convenience.

If the injunction is, as held by the lower court, to be justified on the ground that the operation by the appellants is in violation of the negative agreement contained in the contract Exhibit A, it should be observed that the contract was entered into between Rural Transit Company, Inc., predecessor in interest of Bachrach Motor Company, Inc., and the Zuraeks; that negative agreement does not appear to have been expressly sanctioned by the Public Service Commission; and finally, notwithstanding the negative agreement, the operation by the appellants appears to have been authorized, as already stated, by the Public Service Commission and, on appeal, the action taken by the commission was affirmed by this court. Upon the other hand, we do not countenance with favor the agreement

sought to be enforced in so far as its effect is to deprive the Public Service Commission of its power to fix routes and schedules of public utilities independently of contractual stipulations by and between public operators. (Pampanga Bus Co. vs. Enriquez, and Pampanga Bus Co. vs. Diaz, G. R. Nos. 46040 and 46041, promulgated Nov. 29, 1938, in relation to Pampanga Bus Co. vs. Enriquez, G. R. No. 38695, Sept. 14, 1933; vide also Mejica vs. Public Utility Commission, 49 Phil., 774.)

The law concerning contracts which tend to restrain business or trade has gone through a long series of changes from time to time with the changing conditions of trade and commerce. But regardless of limitations as to time and place spoken of in various decisions as proper test for validity of contracts of this nature (Anchor Electric Co. vs. Hawkes, 171 Mass., 101; Alger vs. Thacher, 19 Pickering [Mass.], 51; Taylor vs. Blanchard, 13 Alien [Mass.], 370; Lufkin Rule Co. vs. Fringeli, 57 Ohio State, 596; Fowle vs. Park, 131 U. S., 88, 97; Diamond Match Co. vs. Roeber, 106 N. Y., 473; National Benefit Co. vs. Union Hospital Co., 45 Minn., 272; Swigert and Howard vs. Tilden, 121 Iowa, 650), and whatever may have been the development of the rule, it is settled that public welfare or public interest is the primordial consideration, and this we have emphasized in Ollendorff vs. Abrahamson (38 Phil., 585) ; Del Castillo vs. Richmond (45 Phil., 679), and Ferrazzini vs. Gsell (34 Phil., 697). The test of validity is whether under the particular circumstances of the case and considering the nature of the particular contract involved, public interest and welfare are not involved and the restraint is not only reasonably necessary for the protection of the contracting parties but will not affect public interest or service. (Oregon Steam Navigation Co. vs. Winsor, 20 Wall., 64.) The agreement here sought to be enforced is virtually a division of territory between two operators: the Rural Transit Company, Inc., to operate on territory south of the municipality of Ilagan, Province of Isabela, and binding itself not to operate in any of the territory covered by the routes of the Inter-provincial Transportation Company; and the latter company to operate north of the same municipality and province, and imposing upon itself a similar obligation not to operate in any territory covered by the routes of the Rural Transit Company, Inc. It is true that the agreement does not bind other persons than the parties to the agreement, but if the contract is to be sustained, then the control over them by the Public Service Commission is pro tanto impaired even to the detriment of public convenience and interest. It should be observed that public service companies are more strictly limited than others in entering into contracts in restraint of the free flow of trade, commerce and communication because of their duty to give equal service to the public. They can make no contracts inimical to that duty. As a general proposition, all contracts and agreements, of every kind and character, made and entered into by those engaged in an employment or business impressed with a public character, which tend to prevent competition between those engaged in like employment, are opposed to the public policy and are therefore unlawful. All agreements and contracts tending to create monopolies and prevent proper competition are by the common law illegal and void. (People vs. Chicago Gas Trust Co., 130 Ill., 263; 22 N. E., 798; 8 L. R. A., 497; 17 Am. St. Rep., 319; Dunbar vs. American Telephone & Telegraph Co., 87 N. E., 521, 533.)

The judgment of the lower court is hereby reversed with costs against the appellee. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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