

**FILOMENA PECSON ET AL., PLAINTIFFS AND APPELLEES, VS.
EMERENCIANO PECSON ET AL., DEFENDANTS. A. L. AMMEN
TRANSPORTATION CO., APPELLANT.***G.R. No. 48003. June 19, 1947*

Ponente: BENGZON, J.

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On and before July, 1936, Emerenciano Pecson was the holder of two certificates of public convenience. The first, for the Legaspi-Daraga line, was acquired by purchase from Joaquin Oropeza with the approval of the Public Service Commission in 1924. The second was issued upon application to that Commission in 1928 for the Legaspi-Malabog line. He operated the said lines since the years mentioned, always in his name.

When on July 10, 1936, L. D. Lockwood, President of the defendant A. L. Ammen Transportation Company, hereafter named Alatco, visited Legaspi, Albay, Emerenciano Pecson offered to sell his transportation business to the said Alatco. The sale was agreed for P5,500; and a memorandum was drawn up, including the two certificates of public convenience and one "Fargo" truck. It was stipulated by Pecson that the four other trucks used by him in said lines were not included because his sisters might have some claims thereto. Thereafter Lockwood returned to Iriga, Camarines Sur, where he later received a telegram from Atty. Leoncio Imperial protesting against the sale on the ground that his clients, the sisters of Emerenciano (Filomena, Asuncion and Zoila) were the owners of the transportation business.

Lockwood came to Manila and examined the records of the Public Service Commission. He found that all the certificates were in the name of Emerenciano, and that the Commission had never approved any sale, mortgage or lease or encumbrance in favor of his sisters. Consequently he went through the transaction, paying the agreed amount, and thereafter filing the necessary application for approval of the Public Service Commission, which application was granted on February 24, 1937, in spite of the opposition filed by the clients of Atty. Leoncio Imperial, based on practically the same grounds now alleged in this proceeding. On appeal, this Supreme Court uphold the action of the Commission. The Commission issued a new certificate to the A. L. Ammen Transportation Company for the two lines aforesaid.

Meanwhile on July 22, 1936, Emerenciano's sisters Filomena and Zoila Pecson and his niece Gloria Pecson (heir of Asuncion) instituted in the Albay court this expediente, the principal purpose of which is to annul the sale made by Emerenciano Pecson to the Alatco, and to get certificates of public convenience for the two lines. They averred ownership of both certificates and of the "Fargo" truck.

After hearing both parties, that court found for the plaintiffs, cancelled the sale, required the appellant to convey the certificates to the plaintiffs so that when the transfer is presented, the Public Service Commission may issue new certificates of transfer to them. A similar order was made as to the "Fargo" truck for registration with the District Engineer. The judgment added that if the appellant should, within thirty days, fail to comply with the orders, the Public Service Commission will be directed to cancel the certificates of public convenience in the

name of the Alarco for the Legaspi-Daraga and Legaspi-Malabog lines, and to issue another in the name of Filomena Pecson, Zoila Pecson and Gloria Pecson and a similar directive will be sent to the District Engineer for the registration of the "Fargo" truck. Having vainly moved for a new trial, the defendant perfected its appeal in due time.

There should be no question about the "Fargo" truck. It is registered with the Bureau of Public Works in the name of Emerenciano Pecson. It was also registered in the Public Service Commission as part of his equipment for the above-mentioned lines. Plaintiffs failed to prove ownership thereof, the decision indicating no proof of their dominion over the same.

And as to the certificates of public convenience the lower court clearly erred. They were both granted by the Public Service Commission, and that body, in a contest between Emerenciano Pecson and his sisters, expressly declared that they belonged to Emerenciano. And that declaration was upheld by this Court on appeal. None was better qualified than the Commission to know who was the grantee of the certificates. That the sisters had in some way helped Emerenciano to secure those certificates or that they had a "bastardo" connection^[1] therewith, as impliedly admitted by appellant, does not alter the legal situation that, in the eyes of the law and of the Commission, the owner of the certificates was Emerenciano Pecson. Appellant had a right to rely on the records of the Commission, and in so doing he should not suffer through any secret arrangements between Emerenciano and his sisters.

The statute describes the conditions under which certificates of public convenience are granted (sections 16 et al., Com. Act No. 146) and the limitations therein as to the qualifications of grantees necessarily prohibit the recognition or enforcement of any private arrangements the grantee may have made with other undisclosed or unknown associates, what with the provision penalizing individuals who shall engage in any public service without having previously obtained the corresponding certificate.

The plaintiffs, having allowed Emerenciano to register, and publicly to manage and conduct the lines in his own name, should not be heard to complain against one who dealt with him in the belief that he was the owner, unless of course there was fraudulent connivance between Emerenciano and the Alarco, or some other inequitable combination repugnant to the law. Their remedy is obviously a suit for damages against him.

Appellant's rights are furthermore reinforced by the fact that the transfer to it by Emerenciano was expressly approved by the Commission. For that matter, if it is conceded that Emerenciano was a mere dummy of his sisters, the Commission could properly cancel the certificate of Emerenciano on the ground of misrepresentation (see Commonwealth Act No. 146, section 16 [m]), Emerenciano not being the real party in interest. The Commission could then proceed to award to the Alarco new certificates of public convenience for the same lines of Legaspi-Daraga and Legaspi-Malabog.

The preceding considerations make it unnecessary to consider the question raised by appellant as to the power of a court of first instance to issue orders of the kind addressed to the Public Service Commission.

The appealed judgment will be reversed and one entered absolving the defendant-appellant from the complaint. With costs.

Moran, C.J., Paras, Feria, Pablo, Hilado, Hontiveros, Padilla, and Tuason, JJ., concur.

[1] This is where the grantee of a certificate is authorized to operate a certain number of trucks but because of lack of capital or other reasons does not put the complete number into operation, but permits other persons to operate trucks of their own in his name and under his certificate.

CONCURRING

PERFECTO, J.:

Upon the facts found by the lower court, if they should happen to be supported by the evidence presented by both parties, there would not be any doubt in our mind that plaintiffs are entitled to the remedies granted to them by the appealed decision. Unfortunately, the evidence presented with the lower court is not available to us and it seems that the parties are unable to reconstitute it, and plaintiffs agreed with the facts stated in defendant-appellant's brief. Said facts do not support the lower court's conclusions, but on the contrary, justify reversal of the appealed decision and dismissal of the complaint, and we have no alternative than to vote to said effect.

Plaintiff's is one of the uncounted tragedies caused by the last war. Ours is not a lesser tragedy because we are compelled to render a judgment upon the absolute justice of which we cannot be sure, because the truth of the facts upon which the certainty of our conviction should be based is unascertainable, having been irretrievably lost with the destroyed evidence.

DISIDENTE

BRIONES, M.:

Creo que no estamos en situacion de dictar una sentencia definitiva en este asunto. Habiendose destruido el expediente, creo que se debiera proceder a la celebracion de un nuevo juicio o dar plena oportunidad a las partes para reconstituir los autos. Se dice, sin embargo, que el abogado de los apelados ha significado estar conforme con los hechos tal como estan expuestos en el alegato de la apelante. Esto es lo que ya no me parece claro. Estimo que se debiera preguntar antes a dicho abogado si esta realmente conforme con el relato de hechos de la apelante, renunciando a la reconstitucion del expediente o a la celebracion de nuevo juicio.

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