

OLYMPIA BUSINESS MACHINES CO. (PHIL.) INC. AND CALIFORNIA INSURANCE CO., LTD., PETITIONERS, VS. E. RAZON, INC., TOYO LINE, LTD., AND SEA BRIDGE CONTAINER SHIPPING LINES, INC., R...*G.R. No. 75631. October 28, 1987*

Ponente: NARVASA, J.

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Olympia Office Machines, Ltd., a foreign corporation with offices at Hongkong, shipped 300 portable typewriters to its sister company in Manila, Olympia business Machines Company (Phil.), Inc. The shipment was insured against all risks by California Insurance Co., Ltd., another foreign corporation. The typewriters were discharged at South Harbor, Manila on December 5, 1977 into the custody of the carrier's local agent which in turn turned it over to E. Razon, Inc. While in the latter's possession, part of the shipment was stolen. Olympia (Phil.) filed a claim for loss with California Insurance Co., Ltd. (hereafter, simply California). In due course, the latter paid the former P289,626.31 in full settlement of the claim; and Olympia (Phil.) in consideration thereof, executed a subrogation receipt in which inter alia it did -

- 1) " * * agree that ** (California) Insurance Company is subrogated to all of ** (its) rights of recovery on account of any and all such damage and/or loss (thus paid for) * *;
- 2) " * * agree to assist the said Insurance Company in effecting such recovery;" and
- 3) " * * authorize the said Insurance Company to file claims and begin suit against any such carriers, vessel, person, corporation or government in ** (its) names ** and appoint the officers and agents of said Insurance Company and their successors, severally, ** (its) agents and attorneys in fact, with irrevocable power to collect any and all such claims and to begin, prosecute, compromise or withdraw either in ** (its) name or in the name of said Insurance Co., but at the expense of said Insurance Company, any and all legal proceedings which they may deem necessary to enforce such claim or claims including proceeding before any international tribunal, and to execute in ** (its) names any documents which may be necessary to carry into effect the purpose of this agreement * * ." [1]

Both California and Olympia (Phil) thereafter brought suit in the Manila Regional Trial Court against E. Razon, Inc., the carrier and the container company, which had earlier refused to make good the loss of the goods. Although E. Razon, Inc. filed an answer seasonably, relying principally on the defense that the "loss/damage as claimed in the complaint ** was beyond ** (its) control," it failed to appear at the pre-trial despite notice and was consequently declared in default; and after ex parte reception of plaintiffs' evidence, the Trial Court rendered judgment on February 1, 1980 for California and against E. Razon, Inc. Subsequently, however, on Razon's motion for reconsideration, the judgment was set aside. E. Razon, Inc. filed an amended answer alleging the additional defense inter alia that since California "is a foreign corporation doing business in the Philippines without a license to do so, ** it cannot legally maintain suit in this jurisdiction, by itself or thru its agent." But once again, Razon failed to appear at the pre-trial despite notice. As a result, the Trial Court revived its Decision on February 1, 1980.

Razon appealed to the Intermediate Appellate Court. It assigned three (3) errors to the Trial Court all of which the Appellate Court held to be "unmeritorious except the second assignment of error ** (i.e.):

"The lower court erred when it did not give due consideration that appellant has valid and meritorious defenses in the case consisting (among others) in:

(a) Appellee is a foreign corporation not licensed to do business in the Philippines and therefore, cannot legally maintain suit in this jurisdiction by itself or thru its agent. * * "[2]

The Intermediate Appellate Court opined[3] that since "plaintiff (California) is a foreign corporation which is not licensed to do business in the Philippines ** (and there is no) allegation in the complaint that the transaction entered into by the plaintiff and sued upon by it ** is singular and isolated, it had no capacity to sue in Philippine courts. The Court deemed the situation to be on all fours with the case of *Atlantic Mutual Insurance Co. v. Cebu Stevedoring Co., Inc.*, 17 SCRA 1040-1041, holding that where the parties plaintiffs are foreign corporations, the specific circumstance -- that either they are duly licensed to do business in the Philippines, or "the transaction sued upon is singular and isolated" -- "is an essential part of the element of plaintiffs' capacity to sue and must be affirmatively pleaded", this being require by "the Revised Rules (Section 4, Rule 8) that 'facts showing the capacity of a party to sue or be sued **, must be averred."

The slightest reflection will however immediately make clear that between the factual settings of the *Atlantic Mutual* case and the case at bar, there are distinctions of no little significance. In the former, *Atlantic Mutual Insurance Co.* and *Continental Insurance Co.*, two (2) American firms, brought suit as subrogees of the shipper and/or consignee of the goods insured, without joining the latter. In the case at hand, the action was instituted by both the subrogee, *California Insurance Co., Ltd.*, and the subrogor, a domestic corporation, *Olympia (Philippines)* about whose capacity to sue no dispute exists. In *Atlantic Mutual*, the plaintiffs' lack of capacity to sue was raised by the defendant at the earliest opportunity, through a motion to dismiss filed within the reglementary period to answer in accordance with Rule 16 of the Rules of Court. In the case at bar, the defendant was twice declared in default, and the defense of lack of capacity to sue was not raised until after the first declaration of default had been lifted. Moreover, there is a pronouncement by the Court of Appeals in the instant case, that the defendant had no meritorious defenses save that of lack of capacity to sue on the part of the plaintiff.

These circumstances proscribe the application to the controversy at bar of the doctrine in *Atlantic Mutual*. The defendant's conduct in this case strongly indicates the absence of any valid defense on its part against the plaintiffs' claims: the defendant failed to appear for pre-trial despite notice, not once, but twice and was in consequence twice declared in default. The lack of any meritorious defense on its part was in fact confirmed by the declaration of the Court of Appeals, which it has not challenged, that all three (3) errors attributed by it to the Trial Court were "unmeritorious except the second", i.e., plaintiffs lack of capacity to sue. Even assuming incapacity on the part of California, no such incapacity may be attributed to its co-plaintiff, *Olympia Business Machines Co. (Phil.)*, Inc. And if strictly necessary, the latter could quite easily execute a cancellation of the deed of subrogation or of re-assignment of the right of action from California back to Olympia. Moreover, the dismissal of the case at this stage, would not bar the institution by California of the same action, this time alleging in its complaint that it was suing on a single, isolated transaction. But this would be an idle, circuitous ceremony in the light of the unchallenged declaration by the Court of Appeals of the absence of any meritorious substantial defense on the part of defendant Razon. This would be to accord undue importance and significance to technical rules, to allow an inflexible, unreasoning adherence to such technical rules to frustrate and defeat a plainly valid claim.

WHEREFORE, the judgment of the Intermediate Appellate Court subject of the appeal is reversed and that of the Trial Court, dated February 1, 1980 reinstated and affirmed, with costs against the respondents.

Teehankee, C.J., Cruz, Paras*, and Gancayco, JJ., concur.

[1] Rollo, pp. 8-9, 90

[2] Id., p. 28

[3] Id., Quetulio-Losa, J., ponente; Gaviola, Jr., Caguioa, Ines-Luciano, JJ., concurring

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