

Wherefore, the order appealed from is affirmed, without pre-judgment as to costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes, Barvera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

V

Luneta Motor Company, Petitioner, vs. A.D. Santos, Inc. et al., Respondents, G.R. No. L-17716, July 31, 1962, Dizon, J.

1. CORPORATION; AUTHORITY TO PURCHASE, HOLD OR DEAL IN REAL AND PERSONAL PROPERTY.—Under Section 13 (5) of the Corporation Law, a corporation created thereunder may purchase, hold, etc., and otherwise deal in such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of its lawful business may reasonably and necessarily require.
2. CERTIFICATE OF PUBLIC CONVENIENCE; IT IS LIABLE TO EXECUTION.—A certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase.
3. CORPORATION; CORPORATE PURPOSES; CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE WATER TRANSPORTATION IS NOT AN AUTHORITY TO ENGAGE IN LAND TRANSPORTATION BUSINESS.—Petitioner claimed that its corporate purposes are to carry on a general mercantile and commercial business, etc., and that it is authorized in its articles of incorporation to operate and otherwise deal in and concerning automobiles and automobile accessories' business in all its multifarious ramifications and to operate, etc., and otherwise dispose of vessels and boats, etc., and to own and operate steamship and mailing ships and other floating craft and deal in the same and engage in the Philippine Islands and elsewhere in the transportation of persons, merchandise and chattels by water; all this incidental to the transportation of automobiles. *Held:* There is nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention to engage in land transportation business and operate a taxicab service. To the contrary, they are precisely the best evidence that it has no authority at all to engage in such transportation business. That it may operate and otherwise deal in automobiles and automobile accessories; that it may engage in the transportation of persons by water does not mean that it may engage in the business of land transportation — an entirely different line of business. If it could not thus engage in this line of business, it follows that it may not acquire any certificate of public convenience to operate a taxicab service, such acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

DECISION

Appeal from the decision of the Public Service Commission in case No. 123401 dismissing petitioner's application for the approval of the sale in its favor, made by the Sheriff of the City of Manila, of the certificate of public convenience granted before the war to Nicolas Concepcion (Commission Cases Nos. 60604 and 60605, reconstituted after the war in Commission Case No. 1470) to operate a taxicab service of 27 units in the City of Manila and therefrom to any point in Luzon.

It appears that on December 31, 1941, to secure payment of loan evidenced by a promissory note executed by Nicolas Concepcion and guaranteed by one Placido Esteban in favor of petitioner, Concepcion executed a chattel mortgage covering the above mentioned certificate in favor of petitioner.

To secure payment of a subsequent loan obtained by Concepcion from the Rehabilitation Finance Corporation (now Development Bank of the Philippines) he constituted a second mortgage on the same certificate. This second mortgage was approved by the respondent Commission, subject to the mortgage lien in favor of petitioner.

The certificate was later sold to Francisco Benitez, Jr., who resold it to Redi Taxicab Company. Both sales were made with assumption of the mortgage in favor of the RFC, and were also approved provisionally by the Commission, subject to petitioner's lien.

On October 10, 1953 petitioner filed an action to foreclose the chattel mortgage executed in its favor by Concepcion (Civil Case No. 20853 of the Court of First Instance of Manila) in view of the failure of the latter and his guarantor, Placido Esteban, to pay their overdue account.

While the above case was pending, the RFC also instituted foreclosure proceedings on its second chattel mortgage and, as a result of the decision in its favor therein rendered, the certificate of public convenience was sold at public auction in favor of Amador D. Santos for P24,010.00 on August 31, 1956. Santos immediately applied with the Commission for the approval of the sale, and the same was approved on January 26, 1957, subject to the mortgage lien in favor of petitioner.

On June 9, 1958 the Court of First Instance of Manila rendered judgment in Civil Case No. 20853, amended on August 1, 1958, adjudging Concepcion indebted to petitioner in the sum of P15,197.84, with 12% interest thereon from December 2, 1941 until full payment, plus other assessments, and ordered that the certificate of public convenience subject matter of the chattel mortgage be sold at public auction in accordance with law. Accordingly, on March 3, 1959 said certificate was sold at public auction to petitioner, and six days thereafter the Sheriff of the City of Manila issued in its favor the corresponding certificate of sale. Thereupon petitioner filed the application mentioned heretofore for the approval of the sale. In the meantime and before his death, Amador D. Santos sold and transferred (Commission Case No. 1272231) all his rights and interests in the certificate of public convenience in question in favor of the now respondent A. D. Santos, Inc. who opposed petitioner's application.

The record discloses that in the course of the hearing on said application and after petitioner had rested its case, the respondent A.D. Santos, Inc., with leave of Court, filed a motion to dismiss, based on the following grounds:

- "a) under the petitioner's Articles of Incorporation, it was not authorized to engage in the taxicab business or operate as a common carrier;
- "b) the decision in Civil Case No. 20853 of the Court of First Instance of Manila did not affect the oppositor nor its predecessor Amador D. Santos inasmuch as neither of them had been impleaded into the case;
- "c) that what was sold to the petitioner were only the 'rights, interests and participation' of Nicolas Concepcion in the certificate that had been granted to him which were no longer existing at the time of the sale."

On October 18, 1960 the respondent Commission, after considering the memoranda submitted by the parties, rendered the appealed decision sustaining the first ground relied upon in support thereof, namely, that under petitioner's articles of incorporation it had no authority to engage in the taxicab business or operate as a common carrier, and that, as a result, it could not acquire by purchase the certificate of public convenience referred to above. Hence the present appeal interposed by petitioner who claims that, in accordance with the Corporation Law and its articles of incorporation, it can acquire by purchase the certificate of public convenience in question, maintaining inferentially that, after acquiring said certificate, it could make use of it by operating a taxicab business or operate as a common carrier by land.

There is no question that a certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase. The question involved in the present appeal, however, is not only whether, under the Corporation Law and petitioner's articles of incorporation, it may acquire by purchase a certificate of public convenience, such as the one in question, but also whether, after its acquisition, petitioner may hold the certificate and thereunder

operate as a common carrier by land.

It is not denied that under Section 13 (5) of the Corporation Law, a corporation created thereunder may purchase, hold, etc., and otherwise deal in such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of its lawful business may reasonably and necessarily require. The issue here is precisely whether the purpose for which petitioner was organized and the transaction of its lawful business reasonably and necessarily require the purchase and holding by it of a certificate of public convenience like the one in question and thus give it additional authority to operate thereunder as a common carrier by land.

Petitioner claims in this regard that its corporate purposes are to carry on a general mercantile and commercial business, etc., and that it is authorized in its articles of incorporation to operate and otherwise deal in and concerning automobiles and automobile accessories' business in all its multifarious ramifications (petitioner's brief, p. 7) and to operate, etc. and otherwise dispose of vessels and boats, etc., and to own and operate steamship and mailing ships and other floating craft and deal in the same and engage in the Philippine Islands and elsewhere in the transportation of persons, merchandise and chattels by water; all this incidental to the transportation of automobiles (id. pp. 7-8 and Exhibit B).

We find nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention in this case. To the contrary, they are precisely the best evidence that it has no authority at all to engage in the business of land transportation and operate a taxicab service. That it may operate and otherwise deal in automobiles and automobile accessories; that it may engage in the transportation of persons by water does not mean that it may engage in the business of land transportation — an entirely different line of business. If it could not thus engage in this line of business, it follows that it may not acquire any certificate of public convenience to operate a taxicab service, such as the one in question, because such acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

In view of the conclusion we have arrived at on the decisive issue involved in this appeal, we deem it unnecessary to resolve the other incidental questions raised by petitioner.

WHEREFORE, the appealed decision is affirmed, with costs.

Bengzon, C.J., Padilla, Concepcion, Barrera, Paredes, and Makintal, JJ., concurred.

Regala, J., did not take part.

VI

Ricardo M. Gutierrez, Plaintiff-Appellant, vs. Lucia Milagros Barretto-Datu, Executrix of the Testate Estate of the deceased Maria Gerardo Vda. de Barretto, Defendant-Appellee, G.R. No. L-17175, July 31, 1962, Makintal, J.

1. ESTATE OF A DECEASED PERSON; CLAIMS; AS USED IN STATUTE REQUIRING PRESENTATION OF CLAIMS AGAINST A DECEDENT'S ESTATE: CONSTRUED.—The word "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract. 21 Am. Jur. 579.
2. ID.; CLAIM BASED ON BREACH OF CONTRACT.—The claim in the case at bar is based on contract — specifically, on a breach thereof. It falls squarely under Section 5 of Rule 87, Rules of Court.
3. ID.; ID.; CONTRACTS BY DECEDENT BROKEN DURING HIS LIFETIME; PERSONAL REPRESENTATIVE LIABILITY FOR BREACH OUT OF THE ASSETS.— Upon all contracts by the decedent broken during his lifetime, even though they were personal to the decedent in liability, the representative is answerable for the breach out of the assets.

3 Schouler on Wills, Executors and Administrators, 6th Ed., 2395.

4. ID.; ID.; PRESENTATION OF CLAIM FOR BREACH OF A COVENANT IN A DEED OF DECEDENT.— A claim for breach of a covenant in a deed of the decedent must be presented under a statute requiring such presentation of all claims grounded on contract.
5. EXECUTOR OR ADMINISTRATOR; ACTIONS THAT MAY BE INSTITUTED AGAINST EITHER.— The only actions that may be instituted against the executor or administrator are those to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal. Rule 88, section 1. The instant suit is not one of them.

DECISION

Ricardo M. Gutierrez appeals from the orders of the Court of First Instance of Rizal (1) dismissing his complaint against Lucia Milagros Barretto-Datu, as executrix of the estate of the deceased Maria Gerardo Vda. de Barretto, and (2) denying his motion for reconsideration of the dismissal.

The relevant facts alleged by appellant are as follows: In 1940 Maria Gerardo vda. de Barretto, owner of 371 hectares of fishpond lands in Pampanga, leased the same to appellant Gutierrez for a term to expire on May 1, 1947. On November 1, 1941, pursuant to a decision of the Department of Public Works rendered after investigation, the dikes of the fishponds were opened at several points, resulting in their destruction and in the loss of great quantities of fish inside, to the damage and prejudice of the lessee.

In 1956, the lessor having died in 1948 and the corresponding testate proceeding to settle her estate having been opened (Sp. Proc. No. 5002, C.F. I, Manila), Gutierrez filed a claim for two items: first, for the sum of P32,000.00 representing advance rentals he had paid to the decedent (the possession of the leased property, it is alleged, having been returned to her after the opening of the dikes ordered by the government); and second, for the sum of P60,000.00 as damages in the concept of unearned profits, that is, profits which the claimant failed to realize because of the breach of the lease contract allegedly committed by the lessor.

On June 7, 1957 appellant commenced the instant ordinary civil action in the Court of First Instance Rizal (Quezon City branch) against the executrix of the testate estate for the recovery of the same amount of P60,000.00 referred to as the second item claimed in the administration proceeding. The complaint specifically charges the decedent Maria Gerardo Vda. de Barretto, as lessor, with having violated a warranty in the lease contract against any damages the lessee might suffer by reason of the government that several rivers and creeks of the public domain were included in the fishponds.

In July 1957 appellant amended his claim in the testate proceeding by withdrawing therefrom the item of P60,000.00, leaving only the one for refund of advance rentals in the sum of P32,000.00.

After the issues were joined in the present case with the filing of the defendant's answer, together with a counterclaim, and after two postponements of the trial were granted, the second of which was in January 1958, the court dismissed the action for abandonment by both parties in an order dated July 31, 1959. Appellant moved to reconsider; appellee opposed the motion; and after considerable written argument the court, on March 7, 1960, denied the motion for reconsideration on the ground that the claim should have been prosecuted in the testate proceeding and not by ordinary civil action.

Appellant submits his case on this lone legal question: whether or not his claim for damages based on unrealized profits is a money claim against the estate of the deceased Maria Gerardo vda. de Barretto within the purview of Rule 87, Section 5. This section states:

"SEC. 5. Claims which must be filed under the notice. If not filed, barred; exception.—All claims for money against