

GLOBAL BUSINESS HOLDINGS, INC. (FORMERLY GLOBAL BUSINESS BANK, INC.), PETITIONER, VS. HON. JUDGE CESAR D. SANTAMARIA, AS PRESIDING JUDGE RTC OF MAKATI CITY, BRANCH 146 AND SUREC...

Ponente: PERLAS-BERNABE, E., J.

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PERLAS-BERNABE, E., J.:

Before the Court is a Petition for Certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 65 of the Rules of Court which seeks to annul and set aside the Orders dated June 18, 2002[2] and November 27, 2002[3] of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 01-1278 for breach of contract and damages. The assailed orders denied petitioner's motion to dismiss and declared, among others, that petitioner Global Business Holdings, Inc. is estopped from challenging the capacity to sue of private respondent Surecomp Software B.V..

The antecedent facts are as follows:

On March 29, 1999, private respondent Surecomp Software B.V. (hereinafter Surecomp), a foreign corporation engaged in the business of licensing out software, entered into a Software License Agreement[4] (hereinafter Agreement) with Asian Bank Corporation (ABC) for the use of its IMEX Software System (System) in the latter's computer system for a period of twenty (20) years.

Sometime in July, 2000, ABC merged with petitioner Global Business Bank, Inc., now Global Business Holdings, Inc. (hereinafter petitioner), pursuant to the Articles of Merger and Plan of Merger, with petitioner as the surviving corporation[5]. When the latter took over the operations of ABC, petitioner found the System unworkable for its operations and thus, informed Surecomp of its decision to discontinue with the Agreement and its further payments thereon[6]. Consequently, for failure of the petitioner to pay its obligations under the Agreement despite demands, a complaint[7] for breach of contract with damages was filed by Surecomp against petitioner before the Regional Trial Court of Makati City, docketed as Civil Case No. 01-1278.

In its complaint, Surecomp alleged that it is a foreign corporation not doing business in the Philippines and is suing on an isolated transaction. That pursuant to the Agreement, it installed the System in ABC's computers for a consideration of US\$298,000.00 which the latter paid as License Fee. ABC also undertook to pay Surecomp professional services which includes on-site support and the development of interfaces, the annual maintenance fees for a duration of five (5) subsequent anniversaries, and committed to purchase one or two of the Remote Access Solutions at discounted prices. In a separate transaction, ABC likewise requested Surecomp to purchase on its behalf a software called MF Cobol Runtime with a promise to reimburse its cost. Notwithstanding the delivery of the foregoing product and the services provided, petitioner failed to pay and/or comply with its obligations under the Agreement. Hence, Surecomp demanded payment of actual damages amounting to US\$319,955.00 and an additional amount of US\$227,610 for unilaterally pre-terminating the Agreement, exemplary damages, attorney's fees and cost of suit.

Petitioner, instead of filing an answer, filed a Motion to Dismiss[8] anchored on two grounds, namely: (1) that plaintiff has no capacity to sue because it is doing business in the Philippines without a license and (2) that the claim on which the action is founded is unenforceable under the Intellectual Property Code of the Philippines. It contended that contrary to Surecomp's claim that it is not doing business in the Philippines, "the nature and scope of the services provided by Surecomp under the Agreement shows (sic) an exercise of "the body or substance of the business or enterprise for which it was organized"[9]. Moreover, it argued that the contract entered into is not an isolated transaction inasmuch as the contract is for a duration of twenty (20) years, clearly implying "a continuity of commercial dealings and arrangements and contemplate, to that extent, the performance of acts or works or the exercise of the functions normally incident to and in progressive prosecution of the purpose and object of its organization"[10]. Besides, petitioner stressed that it could not be held accountable for any breach as the Agreement was entered into between Surecomp and ABC and that it had not in any manner taken part in its negotiation and execution but merely took over ABC's operations as a result of the merger[11]. Finally, petitioner averred that the Agreement, being a technology transfer arrangement as defined under Section 4.2 of the Intellectual Property Code, failed to comply with Sections 87 and 88 of the same Code on Prohibited and Mandatory Clauses for License Contracts[12]. As such, the Agreement is unenforceable and the complaint, therefore, must be dismissed.

In the interim, petitioner also filed a motion[13] for leave to serve written interrogatories to Surecomp in preparation for the hearing on the motion to dismiss, attaching therewith its written interrogatories.

After the parties filed their respective responsive pleadings on the foregoing motions, the RTC on June 18, 2002 rendered the first assailed Order denying petitioner's motion to dismiss based on the first ground, declaring petitioner estopped from denying Surecomp's capacity to sue for breach of contract. The court, however, deferred the resolution of the motion to dismiss anchored on the second ground until after a hearing is conducted. The pertinent portions of the assailed order read:

"After a thorough and careful deliberation of the respective arguments advanced by the parties in support of their positions in these two (2) incidents, and since it cannot be denied that there is indeed a contract entered into between the plaintiff and the defendant, the latter as a successor in interest of the merging corporation Asian Bank, defendant is estopped from denying plaintiff's capacity to sue it for alleged breach of that contract with damages. Its argument that it was not the one who actually contracted with the plaintiff as it was the merging Asian Bank which did, is of no moment as it does not relieve defendant Global Bank of its contractual obligation under the Agreement on account of its undertaking under it:

x x x x x x x x

It appearing however that the second ground relied upon by the defendant, i.e., that the cause of action of the plaintiff is anchored on an unenforceable contract under the provision of the Intellectual Property Code, will require a hearing before the motion to dismiss can be resolved and considering the established jurisprudence in this jurisdiction, that availing of mode of discovery by any of the parties to a litigation, shall be liberally construed to the end that the truth of the controversy on hand, shall be ascertained at a less expense with the concomitant facility and expeditiousness, the motion to serve written interrogatories upon the plaintiff filed by the defendant is GRANTED insofar as the alleged unenforceability of the subject contract is concerned. Accordingly, the latter is directed to serve the written interrogatories upon the plaintiff, which is required to act on it in accordance with the pertinent rule on the matter.

Necessarily, the resolution of the motion to dismiss is held in abeyance until after a hearing on it is properly conducted, relative to the second ground aforementioned.

SO ORDERED."

Surecomp moved for partial reconsideration of the aforecited order praying for an outright dismissal of the motion to dismiss while petitioner questioned the court's ruling that it is estopped from denying Surecomp's capacity to sue. On November 27, 2002, the RTC in the second assailed order sustained Surecomp's capacity to sue but modified its ruling with respect to the issue on unenforceability of the Agreement, holding the same to be a partially executed contract, hence, not covered by the Statute of Frauds. The dispositive portion of the Order reads:

“WHEREFORE, the Order of this Court dated 18 June 2002 is modified. Defendant's Motion to Dismiss dated 17 October 2001 is denied on the two grounds therein alleged. Defendant is given five (5) days from receipt of this Order within which to file its Answer.

The resolution of defendant's Motion to Serve Written Interrogatories is held in abeyance pending the filing of the Answer.

SO ORDERED.”

Hence, the instant petition assailing the Orders denying its motion to dismiss on the first ground[14] based on the following issues:

- Whether or not the respondent judge gravely abused his judicial discretion and acted in excess of his jurisdiction in holding that Global Bank is estopped from denying Surecomp's capacity to sue on the sole basis that a contract has been entered into between them without making a factual determination thereof.
- Whether or not the respondent judge, in denying the motion to dismiss, gravely abused his judicial discretion and acted in excess of his jurisdiction as he completely ignored that, under the general rule, Surecomp, being a foreign corporation doing business in the Philippines without a license, is barred from suing in Philippine courts.

The petition is without merit.

At the outset, it is worthy to note that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[15]

To justify the grant of the extraordinary remedy of certiorari, therefore, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law or to act at all in contemplation of law.[16]

In the case at bar, the Court finds no grave abuse of discretion to have been committed by the public respondent judge when he declared petitioner estopped from denying Surecomp's capacity to sue. As a general rule, unlicensed foreign non-resident corporations cannot file suits in the Philippines as provided for in Section 133 of the Corporation Code, to wit:

“Sec. 133. Doing business without a license. - No foreign corporation transacting in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.”

A corporation has legal status only within the state or territory in which it was organized. For this reason, a corporation organized in another country has no personality to file suits in the Philippines unless it acquires a license from the latter to do business therein. Such requirement, however, is “never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country.” Consequently, after contracting with a foreign corporation, a domestic firm is estopped from denying the former's capacity to sue[17]. On this score is the landmark case of *Merrill Lynch Futures, Inc. vs. Court of Appeals*[18] where the Supreme Court held that:

“The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the “doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations”; “one who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its existence and capacity.” The principle “will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract x x x.”

That petitioner was not a party to the Agreement entered into between ABC and Surecomp and therefore cannot be deemed in estoppel with respect to Surecomp's capacity to sue deserves scant consideration. It is settled that in the merger of two existing corporations, all the rights, properties and liabilities of the dissolving corporation are acquired by the surviving corporation[19]. As such, the Court agrees with the public respondent judge that defendant Global Bank cannot be relieved of its contractual obligation under the Agreement on account of its undertaking under the Articles of Merger.

Petitioner's assertion that for the doctrine of estoppel to apply under the *Merrill Lynch* case, the local contracting party must be aware that the foreign corporation lacked the requisite business license; that it received benefits from the contract entered into; and that the foreign corporation should not have dealt or transacted with other local parties, is devoid of merit. An examination of the aforementioned case failed to disclose that a concurrence of the foregoing requirements must be met before the doctrine of estoppel may apply. While the general rule prohibits an unlicensed foreign corporation to file suits in the Philippines, the *Merill Lynch* case, on the other hand, laid down the jurisprudential exception that one who has dealt with a foreign corporation is estopped from denying the former's capacity to sue especially when such person has received the benefits of the contract[20]. This doctrine of estoppel was further highlighted in a more recent case of *European Resources and Technologies, Inc. vs. Ingenieburo Birkhahn + Nolte, Ingeniurgesellschaft mbh*[21], where the Supreme Court held that the “party is estopped from questioning the capacity of a foreign corporation to institute an action in our courts where it had obtained benefits from its dealings with such foreign corporation and thereafter committed a breach of or sought to renege on its obligations. The rule relating to estoppel is deeply rooted in the axiom of *commodum ex injuria sua non habere debet* – no person ought to derive any advantage from his own wrong.”

Moreover, petitioner failed to sufficiently establish that it or ABC had not benefited from the installation of the System in its operations or that it was not able to use the System upon merger. Hence, the public respondent judge correctly applied the doctrine of estoppel even as against petitioner, being the surviving corporation in its merger with ABC. It bears to stress that the foregoing doctrine is intended to avoid the common ploy of defaulting local companies which are sued by unlicensed foreign companies not engaged in business in the Philippines to invoke lack of capacity to sue[22]. Besides, having admitted the voluntary execution of the agreement which provides for the submission of the parties to the court of competent jurisdiction in Netherlands or in Makati City in case of legal action or proceedings against it[23], considerations of fair play dictate that petitioner should be barred from questioning Surecomp's capacity to sue.

Accordingly, for failure to show any arbitrariness, despotism or capriciousness on the part of the public

respondent judge in issuing the assailed orders, no grave abuse of discretion can be imputed on the public respondent judge.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Orders dated June 18, 2002 and November 27, 2002 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 01-1278 are hereby AFFIRMED.

SO ORDERED.

Salazar-Fernando and Abdulwahid, JJ., concur.

[1] Part of the initial case load assigned to the Ponente pursuant to Office Order No. 16-04-EV dated October 26, 2004.

[2] Rollo, p. 24.

[3] Rollo, p. 25.

[4] Rollo, pp. 42-76.

[5] Rollo, pp. 27, 108.

[6] Rollo, Letter dated January 31, 2001, p. 93.

[7] Rollo, pp. 26-41.

[8] Rollo, pp. 108-140.

[9] Rollo, p. 113.

[10] Ibid.

[11] Rollo, p. 108.

[12] Rollo, p. 116.

[13] Rollo, pp. 180-182.

[14] Rollo, p. 3.

[15] Rimbunan Hijau Group of Companies vs. Oriental Wood Processing Corporation, GR No. 152228, September 23, 2005 [470 SCRA 650].

[16] Ibid.

[17] Subic Bay Metropolitan Authority vs. Universal International Group of Taiwan, GR No. 131680, September 14, 2000 [340 SCRA 359].

[18] GR No. 97816, July 24, 1992 [211 SCRA 824].

[19] Babst vs. Court of Appeals, GR Nos. 99398 & 104625, January 26, 2001 [350 SCRA 341].

[20] Communications Materials and Design vs. Court of Appeals, GR No.102223, August 22, 1996 [260 SCRA 673].

[21] GR No. 159586, July 26, 2004 [435 SCRA 246].

[22] Antam Consolidated, Inc. vs. Court of Appeals, GR No. L-61523, July 31, 1986 [143 SCRA 289].

[23] Rollo, Software License Agreement, Section 10.8 which reads: “Submission to Jurisdiction. Each party agrees and consents that any legal action or proceedings against it or any of its properties or assets with respect to this Agreement may be brought only before the courts of competent jurisdiction located in the Netherlands or in Makati City, the Philippines.”, p. 59.

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