

**FAR EAST INTERNATIONAL IMPORT AND EXPORT CORPORATION,
PLAINTIFF AND APPELLEE, VS. NANKAI KOGYO CO., LTD., ET AL.,
DEFENDANTS, NANKAI KOGYO CO., LTD., DEFENDANT AND
APPELLANT.**

G.R. No. L-13525. November 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On December 26, 1956, the Far East International Import & Export Corporation, Far East for short, organized under Philippine Laws, entered into a Contract of Sale of Steel Scrap with the Nankai Kogyo Co., Ltd., Nankai for short, a foreign corporation organized under Japanese laws with address at Osaka, Japan, The buyer signed in Japan and the seller in Manila, Philippines. The pertinent provisions of the agreement are reproduced below—

"1.

Quantity: Approximately 5,000 (five thousand) metric tons 10% more or less.

10.

Payments: Buyer shall establish an irrevocable without recourse Letter of Credit in the amount of U.S. \$312,500.00 with China Banking Corp. in Manila, not later than 30 days upon receipt of SELLER'S confirmation about the availability of export permit, and shall be subject to the following terms and conditions:

a.

This Letter of Credit shall be drawable 90% of quantity been shipped upon presentation of:

b.

The remaining balance of 10% of the shipment shall be adjusted between BUYER and SELLER immediately after the discharge is completed at the port of destination, and shall be drawable by the SELLER upon presentation of:

13.

Force Majeure: The execution of this agreement is subject to any and all Government restrictions prohibiting or penalizing in whole or in part the export of Iron & Steel Scrap from the Philippines, and the Seller shall not be responsible for delay in or failure of shipment or delivery or delays in transportation due to force majeure, strikes, differences with workmen, accidents, fires, floods, mobilizations, wars, foreign wars, riots, revolutions, regulations and restrictions or to any conditions beyond the control of the SELLER whether the nature herein stated or not.

14.

Dispute: In case of disputes, Board of Arbitration may be formed in Japan. Decision by the Board of Arbitration shall be final and binding on both BUYER and SELLER."

Upon perfection of the contract and after having been informed of the readiness to ship and that the Export License was to expire on March 19, 1957, Nankai opened a Letter of Credit (No. 38/80049) with the China Banking Corporation, issued by the Nippon Kangyo, Ltd., Tokyo, Japan, in the amount of \$312,500.00 on January 30, 1957. On March 15, 1957, only four (4) days before the expiration of the Far East license, three (3) boats sent by Nankai arrived in the Philippines, one to load in Manila, the other two at Poro Point, San Fernando, La Union, and Tacloban, Leyte, respectively. On March 19, 1957, the expiration of the export license, only 1,058.6 metric tons of scrap steel was loaded on the SS. Mina (loading in Manila). The loading was accordingly stopped. The boat at Poro Point was also unloaded of the 200 metric tons, for the same reason. An agreement was reached whereby the Far East would seek an extension of the license. However, the untimely death of President Magsaysay and the taking over by President Garcia changed the picture, for the latter and/or his agents refused to extend the license. The two boats sailed to Japan without any cargo, the third (SS Mina) with only 1,058.6 metric tons.

On April 27, 1957, Nankai confirmed and acknowledged delivery of the 1,058.6 metric tons of steel scrap, but asked for damages amounting to \$148,135.00, consisting of dead freight charges demurrages, bank charges, telephone and cable expenses (Exh. F).

On May 4, 1957, Far East wrote the Everett Steamship Corporation, requesting the issuance of a complete set of the Bill of Lading for the shipment, in order that payment thereof be effected against the Letter of Credit. Under date of May 7, 1957, the Everett informed the Far East that they were not in a position to comply because the bill of lading was issued and signed in Tokyo by the Master of the boat, upon request of the Charterer, defendant herein.

As repeated requests, both against the shipping agent and the buyers (Nankai), for the issuance of the Bill of Lading were ignored, Far East filed on May 16, 1957, the present complaint for Specific Performance, damages, a writ of preliminary mandatory injunction directed against Nankai and the shipping company, to issue and deliver to the plaintiff, a complete set of negotiable Bill of Lading for the 1,058.6 metric tons of scrap and a writ of preliminary injunction against the China Banking Corporation and the Nankai to maintain the Letter of Credit. The lower court issued on May 17, 1957, an ex-parte writ of preliminary mandatory injunction, after Far East had posted a bond in the amount of P50,000.00.

By Special appearance, defendant Nankai filed a Motion to Dismiss the complaint and dissolve the preliminary mandatory injunction on the following grounds: lack of jurisdiction over the person of the defendant and over the subject-matter; and failure to state a cause of action against the said defendant. On June 8, 1957, plaintiff Far East opposed the Special Appearance and Motion to Dismiss.

Before the Special Appearance, Motions to Dismiss and Dissolve Preliminary Mandatory Injunction could be ruled upon by the court a quo, plaintiff filed a Motion to File Amended complaint, it appearing that Nankai had already taken the Bill of Lading for the shipment from the Master of the SS Mina and used the same to secure the delivery of the 1,058.6 metric tons of scrap. The most important amendments introduced are the allegation that defendant is doing business in the Philippines with office address at R-517 Luneta Hotel, Manila, represented by Mr. Issei Ishida and Mr. Tominaga and the additional prayer to order the defendant Nankai to pay plaintiff the price of the scrap amounting to \$68,809.00 or its equivalence in Philippine currency.

The motions to dismiss the complaint and to dissolve the Writ of Preliminary Mandatory Injunction were denied, the Court holding that the grounds therefor "do not appear to be indubitable".

On June 26, 1957, the defendant Nankai presented an opposition to the motion to admit amended complaint, stating that the same is belated and an unfair and unjust attempt to establish by allegation, a semblance of jurisdiction of the Court over the person of the defendant Nankai and the subject matter.

Under date of June 29, 1957, the motion to file an amended complaint was denied. A motion for reconsideration of the order was presented on June 31, 1957, plaintiff alleging that the amended complaint contained facts which are necessary and indispensable for the complete resolution of the issues between the parties and that the amendment is a matter of right, since defendants have not yet filed a responsive pleading (Sec. 1, Rule 17, Rules of Court). An opposition was registered by defendant. Before resolution on the reconsideration could be issued, defendant filed its Answer to the original complaint containing the customary admissions and denials. As Special Defenses, it reiterated the grounds contained in the Motion to Dismiss Complaint and Dissolve the writ of Preliminary Mandatory Injunction and the arguments invoked in the oppositions, replies, etc. On August 20, 1957, the Amended Complaint was ordered admitted and on September 30, 1957, Nankai presented its Answer, which is identical to the Answer to the original complaint. At the trial, plaintiff Far East, thru the testimony of its Secretary Pablo Ocampo, showed that the transaction in question was intended to be the beginning of business to be

undertaken by Nankai, as in fact, the representatives of the company had made inquiries as to the operation of mines and mining rights in this jurisdiction; that (Nankai) thru its representatives, Messrs. Ishida and Tominaga, established a temporary office at Room 517 Luneta Hotel and manifested their intention to put up one at the Madrigal building, which did not materialize, due to the belated confirmation of the head office; that in spite of the repeated demands and actual receipt of the delivery of the 1,056.8 metric tons of scrap steel, Nankai and the steamship company failed and consistently refused to issue the Bill of Lading, which acts prevented plaintiff from collecting the price of the scrap from the China Banking Corporation against the Letter of Credit. Defendant Everett Steamship Company and the China Banking Corporation also presented evidence, both oral and documentary.

Defendant Nankai presented Francisco Santos, accountant of the Luneta Hotel, to prove that it has not established an office at Room 517 of said Hotel; Nabuo Yoshida, chief of the Import Section of defendant Nankai, to show that it has not established a branch office in the Philippines and that the buying of the scrap was the only transaction of the defendant had in the Philippines; Tan Tiong Tick, the financier of the exportation in behalf of appellee, and Tan Tia Cuan, the contact man, to prove that the real party in interest is not the plaintiff Far East but the Delta Enterprises, and that the plaintiff was merely the holder of the Export License but had no scrap.

The lower court rendered judgment absolving defendants Everett Steamship Company and China Banking Corporation from liability and denied the claim for damages, both actual and moral, of the parties, found that the question of jurisdiction over the person of defendant and the subject matter has become moot, and

"* * * hereby renders judgment in favor of the plaintiff and against defendant Nankai Kogyo Co., Ltd., sentencing said defendant to pay plaintiff the amount of U.S. \$67,710.50, or its equivalent in pesos, with interest thereon at the legal rate from the date of filing of plaintiff's complaint until fully paid, plus the sum of P1,000.00 as attorney's fees, and to pay the costs."

Defendant assigned six (6) errors allegedly committed by the lower court, which may be consolidated into two propositions: to wit—

- (1) Whether or not the trial court acquired jurisdiction over the subject matter and over the person of the defendant-appellant and
- (2) the propriety of the award.

Defendant contends that Philippine Courts have no jurisdiction to take cognizance of the case, because the Nankai, is not doing business in the islands; and that while it has entered into the transaction in question, same, however, does not constitute "doing business", so as to make it amenable to summons and subject it to the court's jurisdiction. It bolstered this claim by a provision in the contract which provides that "In case of disputes, Board of Arbitration may be formed in Japan. Decision of the Board of Arbitration shall be final and binding on both buyer and seller".

The rule pertinent to the questions in issue provides—

"SEC. 14. Service upon private foreign corporations.—If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any officer or agent within the Philippines." (Rule 7).

The above rule indicates three modes of effecting service of summons upon a private foreign corporation, viz: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if there is no

resident agent, by service on the government official designated by law to that effect; and (3) by serving on any officer or agent of said corporation within the Philippines. The plaintiff complied with the third mode stated above, for it has been shown that Mr. Ishida, who personally signed the contract for the purchase of the scrap in question in behalf of the Nankai Kogyo, is the Trade Manager of said company, Mr. Tominaga was the Chief of the Petroleum Section of the same company and Mr. Yoshida was the man-in-charge of the Import Section of the company's Tokyo Branch. All these three, including the first two who were served with Summons, were officers of the defendant company.

It is true that the defendant entered a Special Appearance, wherein it contested the jurisdiction of the Philippine Courts to take cognizance of the case on grounds contained in the various pleadings presented by it. The motion to dismiss on the ground of lack of jurisdiction had been overruled because it did not appear indubitable. Subsequently, however, the defendant filed its Answer and invoked defenses and grounds for dismissal of the complaint other than lack of jurisdiction (See pars. 12 & 13, of Answer to, Amended Complaint), which circumstance vested upon the Court jurisdiction to take cognizance of the case.

"Even though the defendant objects to the jurisdiction of the court, if at the same time he alleges any non-jurisdictional ground for dismissing the action, the Court acquires jurisdiction over him. Even though he does not intend to confer jurisdiction upon the court, his appearance for some other purpose than to object to the jurisdiction subjects him to the jurisdiction of the court. Even though he does not wish to submit to the jurisdiction of the court, he cannot ask the court to act upon any question except the question of jurisdiction, without conferring jurisdiction upon the court.

"Thus though a Special appearance to object to the jurisdiction is not a submission, if it is followed by a motion to dismiss or to quash the motion invokes the jurisdiction of the Court to decide the issue raised by the motion; and a decision of that issue binds the defendant. Therefore if the decision of the motion is based upon a finding of facts necessary to jurisdiction, this finding binds the defendant, and the court acquires jurisdiction to determine the merits of the case."

"* * *. Undoubtedly if after his objection to the jurisdiction is wrongly over-ruled, a defendant files a cross complaint demanding affirmative relief, he cannot thereafter claim that the court had no jurisdiction over him." (p. 352). (I Conflict of Laws, Beale and authorities cited therein).

Not only did appellant allege non-jurisdictional grounds in its pleadings to have the complaint dismissed, but it also went into trial on the merits and presented evidence destined to resist appellee's claim. Verily, there could not be a better situation of acquired jurisdiction based on consent. Consequently, the provision of the contract wherein it was agreed that disputes should be submitted to a Board of Arbitration which may be formed in Japan (in the supposition that it can apply to the matter in dispute—payment of the scrap), seem to have been waived with appellant's voluntary submission. Apart from the fact that the clause employs the word "may".

The appellant alleges that the lower court did not acquire jurisdiction, because it was not doing business in the Philippines and the requirement of summons had not been fulfilled. It is difficult to lay down any rule of universal application to determine when a foreign corporation is doing business. Each case must turn upon its own peculiar facts and upon the language of the statute applicable. But from the proven facts obtaining in this particular case, the appellant's defense of lack of jurisdiction appears unavailing. The case of *Pacific Micronesia Line, Inc. vs. N. Baens del Rosario, et al.*, 96 Phil., 23; 50 Off. Gaz. [11] 5271, relied upon in the Motion to Dismiss and other pleadings presented by defendant-appellant, stand on a different footing. Therein, We made the following pronouncements:

"* * * And the only act it did here was to secure the services of Luceno Pelingon to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation,

and the contract of employment was entered into on July 18, 1951. It further appears that petitioner has never sent its ships to the Philippines, nor has it transported nor even solicited the transportation of passengers and cargoes to and from the Philippines. In other words, petitioner engaged the services of Pelingon not as part of the operation of its business but merely to employ him as member of the crew in one of its ships. That act apparently is an isolated one, incidental, or casual, and 'not of a character to indicate a purpose to engage in business' within the meaning of the rule." (*Italics ours*).

In the instant case, the testimony of Atty. Pablo Ocampo, that appellant was doing business in the Philippines was corroborated by no less than Nabuo Yoshida, one of the appellant's officers, that he was sent to the Philippines by his company to look into the operation of mines, thereby revealing the defendant's desire to continue engaging in business here, after receiving the shipment of the scrap iron under consideration, making the Philippines a base thereof.

"The rule stated in the preceding section that the doing of a single act does not constitute business within the meaning of statutes prescribing the conditions to be complied with by foreign corporations must be qualified to this extent, that a single act may bring the corporation within the purview of the statute where it is an act of the ordinary business of the corporation. In such a case, the single act or transaction is not merely incidental or casual, but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a basis of operations for the conduct of a part of the corporation's ordinary business." (17 Fletcher's Cyc. of Corporations, sec. 8470, pp. 572-573, and authorities cited therein). (*Italics ours*).

It is finally noted that when defendant's motion to dismiss in the Micronesian case was denied, it immediately brought the matter to this Court on Prohibition, seeking to restrain the Workmen's Compensation Commission from exercising jurisdiction over the controversy. In the present case, the defendant, while entering a Special appearance to contest the jurisdiction of the Court, pursued its defense further by filing its Answer and going into trial.

There is no appeal on the lower court's findings that the failure of the appellee herein to make full shipment of the scrap was due, not to the fault of said appellee, but to the action and intervention of the Philippine Government, which was beyond the control of the plaintiff. This aspect of the case is particularly covered by paragraph 13 of the contract, heretofore reproduced.

Wherefore, the judgment appealed from is hereby affirmed, with costs against defendant-appellant Nankai Kogyo.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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