

**PHILIPPINE COLUMBIA ENTER-PRISES CO., RUFINO DY CHIN, AND  
FERMIN DY, PETITIONERS, VS. HON. GREGORIO T. LANTIN, IN HIS  
CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF  
MANILA,...**

*G.R. No. L-29072. June 07, 1971*

Ponente: REYES, J.B.L., J.

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**REYES, J.B.L., J.:**

Petition for certiorari to annul an order, dated 28 March 1968, of the respondent judge, the Hon. Gregorio T. Lantin of the Court of First Instance of Manila (Branch VII), deferring the determination of a motion to dismiss a complaint of a foreign corporation until the trial of the case on the merits, the said respondent being of the opinion that the alleged lack of legal capacity of the plaintiff to sue in Philippine courts, which was the ground stated in the said motion, does not appear to be indubitable. The petition also prays that respondent Judge be ordered to allow petitioners to present evidence upon the said ground.

Private respondent Katoh, & Co. Ltd., as plaintiff in the court below, alleged in its complaint (docketed as Civil Case No. 70942) that it is a corporation duly organized and existing under the laws of Japan, with head office in Tokyo, Japan. The complaint alleged ten (10) causes of action against the defendants, the petitioners herein, Philippine Columbia Enterprises Co., with principal place of business in Manila, and the general partners thereof, Rufino Dy Chin and Fermin Sy who reside in Manila. These ten (10) causes of action are for the collection of payment of ten (10) different shipments of angle bars, mild steel bars and cold rolled steel sheets allegedly ordered in May, July, October and November, 1966 by the defendants from the plaintiff which plaintiff had duly shipped and defendants duly received but which defendants refused to pay. The complaint does not allege that plaintiff has secured a license to transact business in the Philippines but it alleges that it "has not been and is not engaged in business in the Philippines and that the transactions averred in this complaint were exports made and consummated in Tokyo, Japan in pursuance of international trade." [1]

On 22 November 1967, the petitioners-defendants moved to dismiss the complaint on the following grounds: "I. The plaintiff has no legal capacity to sue. II. The complaint states no cause of action because (a) it failed to allege facts showing plaintiff's capacity to sue, as required by the Rules of Court, and (b) the contracts giving rise to the obligations sought to be enforced by the complaint, are null and void for being executed against prohibitory provisions of the Corporation Law." Respondent-plaintiff opposed the dismissal.

The motion was heard in argument by the court on 6 January 1968, with the court asking the parties whether they wanted to present evidence on the motion. Counsel for petitioners Columbia Enterprises manifested his readiness to present evidence and asked the court to set a date for the reception of evidence, while counsel for respondent Katoh & Co., Ltd., replied that he was leaving the matter to the pleasure of the petitioners. The court gave five (5) days to the petitioners to reply to the opposition. In said reply, petitioners averred that the very causes of action alleged in the complaint constitute by themselves transacting business in the Philippines by the plaintiff, for by

their contracts the goods were to be delivered to, and be paid for in, the Philippines; the transactions were characterized by their frequency and continuity; and the amounts involved were substantial, totalling P395,748.76. Petitioners again manifested their readiness to prove also that respondent company had been engaged in selling and buying steel and other products for more than seven years in the Philippines, that it maintains a regular office in the Philippines, and that the contracts it had entered into were perfected and consummated in the Philippines pursuant to orders solicited and negotiated by respondent company's representatives in the Philippines.

On 15 January 1968, respondent judge issued an order setting the hearing of the motion to dismiss on 27 January 1968. But on 24 January 1968, respondent company filed a "Rejoinder" to the "Reply" to the "Opposition to the Motion to Dismiss", arguing that the ground stated in the motion to dismiss does not appear to be indubitable.

During the hearing on 27 January 1968, respondent judge announced that he will hear petitioners' evidence but respondent company asked that reception of evidence be deferred to another date. Upon agreement of the parties, the court ordered that the presentation of evidence be set on 22 February 1968. But on the date thus set, respondent company objected to the reception of evidence and, after some argument, the court suggested that respondent company file a motion to defer the hearing and the determination of the motion to dismiss. On 28 February 1968, respondent company filed its motion, as suggested, and, on 28 March 1968, the respondent court, without receiving any evidence on the motion to dismiss, issued the order complained of, deferring the determination of the motion until the trial of the case on the merits because the ground stated therein does not appear to be indubitable. Petitioners moved to reconsider, but their motion was denied; hence, they filed the present petition for certiorari, pursuing only the first ground, lack of capacity to sue, stated in their motion to dismiss.

In issue in this case is whether or not respondent-plaintiff's allegations in its complaint, particularly in its ten (10) causes of action, constitute by themselves an admission that it is transacting business in the Philippines. The allegations in the first cause of action, which may be considered as a sample for all the rest, read, as follows:

## **"II**

"That in or about July 1966, defendants ordered from plaintiff angle bars valued at US\$10,185.00 including consular fees and charges that pursuant to said order, plaintiff shipped unto said defendant on the SS 'Aminaka Maru' on or about November 9, 1966 said angle bars;

## **"III**

"That said angle bars have already arrived in the City of Manila and have been in fact delivered and released to said defendants and had already been disposed of and sold by them, said defendants having appropriated the proceeds of said sale without applying them to the payment of said shipment;

## **"IV**

"That on or about November 15, 1966, plaintiff drew in Tokyo, Japan upon defendants a D/A draft or bill of exchange for the sum of US\$10,185.00 covering the value or purchase price of said angle bars and payable at 120 days after sight to the Tokai Bank, Ltd. of Tokyo, Japan, which draft has been endorsed in due course to the Consolidated Bank & Trust Corporation, Manila for collection. A white print copy of said draft is attached hereto and made a part hereof as Annex 'A';

**"V**

"That in due course the aforesaid D/A draft, Annex 'A' was presented for acceptance unto said defendant Philippine Columbia Enterprises Company and the latter duly accepted the same, payment to be due as it became due, according to the tenor of said acceptance on March 31, 1967;

**"VI**

"That upon the due date of said draft, Annex 'A' namely: on March 31, 1967 same was presented to defendants for payment but said defendants requested for extension of time to pay said draft; that said extension of time was granted, whereupon said defendants following banking routine, re-accepted said draft, same to be due as it became due according to the tenor of said acceptance, on May 31, 1967;

**"VII**

"That in due course the draft Annex 'A' was presented to defendants for payment on May 12, 1967, but said defendants again requested for time to pay which extension was again granted; whereupon pursuant to banking practice, same was re-accepted by defendants, to fall due as it did in fact fall due on July 10, 1967;

**"VIII**

"That on the last due date of said draft, Annex 'A' namely, on July 10, 1967, said draft Annex 'A' was presented to defendant for payment, but said defendants, without justifiable reason or excuse failed and refused to pay the same to the damage and prejudice of plaintiff;"

Following the ten (10) causes of action, the complaint alleged, as follows:

**"ALLEGATIONS COMMON TO ALL****THE FOREGOING CAUSES OF ACTION**

"1. That the plaintiff in this case has not been and is not engaged in business in the Philippines and that the transactions averred in this complaint were exports made and consummated in Tokyo, Japan in pursuance of international trade;"

It is petitioners' position that respondent company is transacting business in the Philippines and that petitioners have evidence to show that the transactions involved in the ten (10) causes of action were transactions in the Philippines, apart from other activities of respondent company in the Philippines, contrary to the allegations in the complaint; that it was error and, in fact, abuse of discretion by the trial court in not allowing them to present their evidence before proceeding to trial on the merits. They submit the proposition that it is only after the parties have been permitted to present evidence that the court may determine whether the ground of the motion to dismiss is indubitable or not; that the court must receive evidence first before it can order the deferment of the determination of a motion to dismiss under Section 3, Rule 16, of the Rules of Court, which provides:

"Section 3. Hearing and order. - After hearing the court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable."

Cited in support of petitioners' proposition is a comment in 1 Moran (Rules of Court) 429, that there must be a hearing wherein the motion may be proved or disproved in accordance with Rule 133, Section 7, that is upon affidavits or depositions presented by the parties but the court may direct that the matter be heard wholly or in part on oral testimony; and what was stated in Asejo vs. Leonoso, 78 Phil. 213, that in denying or granting a motion to

dismiss, or in deferring the hearing or determination of a motion to dismiss if the ground does not appear to be indubitable, there must be a hearing where the parties should be allowed to present evidence.

It should be obvious, however, that a hearing with reception of evidence is only indispensable when the motion to dismiss is ultimately ruled upon and granted by the court. For such evidence is, as pointed out in the case cited by petitioner (*Asejo vs. Leonoso*), then necessary to enable the appellate court to resolve whether or not the dismissal is warranted. But where the trial court decides to defer the hearing, because the ground for the motion to dismiss is not indubitable, there can be no appeal to the superior courts, and the ratio for requiring a hearing with presentation of evidence does not exist. What would be the sense of receiving evidence if after all the hearing is to be deferred?

It is settled that the court has discretion to defer the hearing if the ground in the motion to dismiss is not indubitable;<sup>[2]</sup> although a deferment has been held to be in excess of jurisdiction if the ground for the motion to dismiss were lack of jurisdiction,<sup>[3]</sup> or lack of cause of action,<sup>[4]</sup> for, in these events, the allegations in the complaint are deemed admitted for purposes of the motion to dismiss so that it can be resolved without waiting for the trial on the merits.

If at all, where the court below might have committed an abuse of discretion or excess of jurisdiction in this case could be in declaring that the ground alleged in the motion to dismiss "does not appear to be indubitable". But not only does petitioner not challenge this finding of the court a quo (as distinct and separate from its claimed right to produce evidence at a preliminary hearing), but the environmental circumstances strongly point to its correctness. The main ground of the motion to dismiss was that the complaint does not allege a cause of action because plaintiff is not licensed to do business in the Philippines and its transactions constituted engaging in business within the Philippines, so that the contracts sued upon became invalid and unenforceable. Now, an examination of the complaint will show that the same expressly avers that the transactions upon which respondent plaintiff is suing were "consummated in Tokyo" and, hence, not in the Philippines. Petitioners-defendants' assertion that the contracts were made in the Philippines squarely contradicts the averments in the complaint, and violates the basic and well-known rule that whether a cause of action is pleaded or not must be ascertained solely upon the face of the complaint. Thus, petitioners-defendants' position is contradictory; it alleges that the complaint avers no cause of action because petitioners' transactions were contracts made within the Philippines, contrary to what the complaint pleads. Such inconsistency suffices to render the ground of the motion to dismiss doubtful. Moreover, it is by no means clear or certain that the rule invoked by petitioner herein (that a foreign corporation must obtain a license in order to be able to sue in this forum) was intended to enable a Philippine entity to evade payment for goods it has solicited and obtained from abroad.

Since the petitioners' averment that the plaintiff's transactions were made in the Philippines, being contradictory of the complaint, can not be set up in a motion to dismiss for lack of cause of action, but must be pleaded in an answer, any reception of evidence on the point would merely duplicate the trial on the merits, and should be deferred.<sup>[5]</sup>

We, therefore, conclude that the court below committed no abuse of discretion amounting to excess of jurisdiction in resolving to defer action on the motion to dismiss. Applicable here are the considerations expressed by this Court in *Escaler vs. Panganiban* (L-23457, 16 December 1968), 26 SCRA 379 (at page 382):

"True, by reason of the order complained of, petitioners will be compelled to file their answer and go to trial, but We are of the opinion that the orderly procedure established for the disposal of judicial cases should be followed, there being no clear showing in this case that to do so would cause unnecessary and substantial prejudice to one of the litigants. The facts of the case, as disclosed in the petition under consideration, do not seem to demand a protracted and cumbersome trial.

The last objection of the petitioners to the deferment order is that if they file a counterclaim against respondent foreign corporation, they would be recognizing the legal capacity of said corporation which they are precisely questioning. This fear is without legal basis, for actions by foreign corporations are governed by rules different from those in actions against them. A counterclaim partakes of the nature of a complaint and/or cause of action against the plaintiff,[6] so that if the petitioners-defendants should file a counterclaim, the private respondent-plaintiff Katoh & Co., Ltd., would be a defendant thereto, in which case the said foreign corporation would not be maintaining a suit and, consequently, Section 69 of the Corporation Law would not apply.[7]

FOR THE FOREGOING REASONS, the questioned order is hereby affirmed, with costs against the petitioners.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.  
Ruiz Castro and Teehankee, JJ., did not take part.

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[1] Annex "A" to Petition, page 21.

[2] Ong Peng v. Custodio, L-14911, 25 March 1961, 1 SCRA 780; Zobel v. Abreu, 98 Phil. 343.

[3] Campos Rueda Corp. v. Bautista, L-18453, 29 September 1962, 6 SCRA 240; Abo v. Philame (KG) Employees & Workers Union PTGWO, L-19912, 30 January 1965, 13 SCRA 120; The Edward J. Nell Co. v. Cubacub, et al., L-20843, 23 June 1965, 14 SCRA 419.

[4] Phil. Sugar Inst. v. C.I.R., et al., L-18930, 26 February 1967, 19 SCRA 471.

[5] Nico vs. Blanco, 81 Phil. 213; Serrano vs. Serrano, L-19562, 23 May 1964, 11 SCRA 22.

[6] Matela v. Chua Tay, L-16407, 30 May 1962, 5 SCRA 163.

[7] See Time, Inc. vs. Villegas, et al., G. R. No. L-28882, May, 1971.

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