

**TOP-WELD MANUFACTURING, INC., PETITIONER, VS. ECED, S.A.,
IRTI, S.A., EUTECTIC CORPORATION, VICTOR C. GAERLAN, AND THE
HON. COURT OF APPEALS, RESPONDENTS.**

G.R. No. L-44944. August 09, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Court of Appeals now Intermediate Appellate Court annulling portions of the orders issued by Judge Gregorio Pineda of the Court of First Instance of Rizal.

Petitioner Top-weld Manufacturing, Inc. (Top-weld) is a Philippine corporation engaged in the business of manufacturing and selling welding supplies and equipment.

In pursuance of its business, the petitioner entered into separate contracts with two different foreign entities. One contract, entitled a "LICENSE AND TECHNICAL ASSISTANCE AGREEMENT" and dated January 2, 1972 was entered into with IRTI, S.A., (IRTI), a corporation organized and existing under the laws of Switzerland with principal office at Fribourg, Switzerland. By virtue of this agreement, the petitioner was constituted a licensee of IRTI to manufacture welding products under certain specifications, with raw materials to be purchased by the former from suppliers designated by IRTI, for a period of three (3) years or up to January 1, 1975. This contract was later extended up to December 31, 1975 in a subsequent agreement.

The other contract was a "DISTRIBUTOR AGREEMENT" dated January 1, 1975 entered into with ECED, S.A., (ECED), a company organized and existing under the laws of Panama with principal office at Apartado 1903, Panama I, City of Panama. Under this agreement, the petitioner was designated as ECED's distributor in the Philippines of certain welding products and equipment. By its terms, the contract was to remain effective until terminated by either party upon giving six (6) months or 180 days written notice to the other.

Upon learning that the two foreign entities were negotiating with another group to replace the petitioner as their licensee and distributor, the latter instituted on June 16, 1975, Civil Case No. 21409 against IRTI, ECED another corporation named EUTECTIC Corporation, organized under the laws of the State of New York, U.S.A., and an individual named Victor C. Gaerlan, a Filipino citizen alleged to be the representative and employee of these three corporations.

In its complaint, the petitioner sought the issuance of a writ of preliminary injunction to restrain the corporations from negotiating with third persons or from actually carrying out the transfer of its distributorship and franchising rights. It also asked the court to prohibit the defendants from terminating their contracts with the petitioner, and if said termination had already been accomplished, from putting into effect and carrying out the terms and the consequences of said termination until after good faith negotiations on existing contracts between them had been carried out and completed.

On June 17, 1975, the lower court issued a restraining order against the corporation pending the hearing on the

issuance of a writ of preliminary injunction.

On July 25, 1975, IRTI and ECED wrote Top-weld separate notices about the termination of their respective contracts.

On September 3, 1975, Top-weld filed an amended complaint together with a supplemental complaint which embodied a new application for a preliminary mandatory injunction to compel ECED to ship and deliver various items covered by the distributorship contract, and to prohibit the corporations from importing into the Philippines directly or indirectly any EUTECTIC materials, supplies or equipment except to and/or through the petitioner.

Among others, the petitioner invoked the provisions of No. 9, Section 4 of Republic Act 5455 on alien firms doing business in the Philippines.

The corporations filed their answers setting up as affirmative defenses violations of the contracts allegedly committed by the petitioner consisting of the following:

- a) Failure to pay respondent IRTI the stipulated 3% royalties;
- b) The use of other wrong materials in the manu-facture of welding products bearing the Eutectic label;
- c) The use of the wrong core wire in the manu-facture of Eutectic 680;
- d) The use of obsolete and antiquated equipment;
- e) Rebranding of other manufactured welding products or non-Eutectic products with the Eutectic label;
- f)
The manufacture and sale of inferior and sub-standard quality products bearing the Eutectic label resulting in numerous complaints from customers such as Saulog Transit and Manila Mining Corporation;
- g) The falsification of ECED pro-forma invoices in order to procure Eutectic goods at lower prices;
- h) The illegal channeling of sales of Eutectic products through the Que Pe Hardware Store; and
- i) The sale of welding products bearing brands other than Eutectic, such as Fujiweld, and even Eutectic products not included in its authority and for which it has never been supplied by respondent EUTECTIC with the raw materials for its manufacture nor with finished products thereof.

The respondent corporation further alleged that Section 4 (9) of R.A. No. 5455 cannot possibly apply to the instant case because:

a) With the violations of the contracts by the plaintiff and "other just causes" earlier mentioned, the defendants IRTI and ECED are fully justified in terminating them without being obliged to pay any compensation nor to reimburse plaintiff of investment or other expenses;

b)

In fact, the defendants have sent written notices dated July 25, 1975 of the termination of their respective agreements with plaintiffs; and

c)

Since no written certificate was applied for nor obtained by defendant entities from the Board of Investments, the latter cannot legally require of them compliance with No. 9, Section 4, R. A. No. 5455.

On October 9, 1975, the trial court issued an order granting the petitioner's application for preliminary injunction embodied in the amended complaint and its application for a writ of mandatory preliminary injunction embodied in the supplemental complaint.

The corporations filed with the trial court a motion for reconsideration.

On December 18, 1975, the trial court issued another order denying the said motion for reconsideration with respect to the lifting of the writ of preliminary injunction but granting the prayer for the lifting of the writ of preliminary mandatory injunction.

The case was elevated to the Court of Appeals on a petition for certiorari with preliminary injunction filed by the corporations. In setting aside the questioned orders, the appellate court held that:

"The determinative question defined by the contentions of the parties in this case is, whether or not TOP-WELD may rightfully invoke the provisions of Sec. 4, Republic Act No. 5455 to enjoin petitioner corporations from terminating the subject licensing and distributorship contracts they have with TOP-WELD. The pertinent portion of the provision reads:

"Section 4. Licenses to do business.— No alien, and no firm, association, partnership, corporation, or any other form of business organization formed, organized, chartered or existing under any laws other than those of the Philippines, or which is not a Philippine National, or more than thirty percent of the outstanding capital of which is owned or controlled by aliens shall do business or engage in any economic activity in the Philippines, or be registered, licensed, or permitted by the Securities and Exchange Commission, or by any other bureau, office, agency, political subdivision, or instrumentality of the government, to do business, or engage in an economic activity in the Philippines without first securing a written certificate from the Board of Investments to the effect x x x."

"Upon granting said certificate, the Board shall impose the following requirements on the alien or the firm, association, partnership, corporation, or other form of business organization that is not organized or existing under the laws of the Philippines. x x x.

(9) Not to terminate any franchise, licensing or other agreement that applicant may have with a resident of the Philippines, authorizing the latter to assemble, manufacture or sell within the Philippines the products of the applicant, except for violation thereof or other just cause and upon payment of compensation and reimbursement and other expenses incurred by the licensee in developing a market for the said products; Provided, however, That in case of disagreement, the amount of compensation or reimbursement shall be determined by the court where the licensee is domiciled or has its principal office who shall require the applicant to file a bond in such amount

as, in its opinion, is sufficient for this purpose.'

"By the licensing and distributorship arrangements had with TOPWELD, there is no doubt that IRTI and ECED were doing business and engaging in economic activity in the Philippines (see Sections 1 and 4, R.A. No. 5455), as a prerequisite to which they should have first secured a written certificate from the Board of Investments. It is not disputed, however, that IRTI and ECED have not secured such written certificate in consequence of which there was no occasion for the Board of Investments to impose the requirements prescribed in the aforementioned provisions of Sec. 4, R.A. No. 5455, among which is that the grantee of the certificate shall not terminate any franchise, licensing or other agreement it may have with a resident of the Philippines for the assembly, manufacture or sale within the country of the products of said grantee, except for violation thereof or other just cause and upon payment of compensation and reimbursement and other expenses incurred by the resident licensee in developing a market for said products. In this case, while the parties are in dispute as to the existence of a violation of the contracts involved or of other just cause, there is no quarrel over the fact that IRTI and ECED have not paid, and do not intend to pay, such compensation or reimbursement contemplated in the law, maintaining that TOPWELD is not entitled to the same.

"Under the particular situation obtaining in this case, this Court is of the opinion that petitioner corporations are not bound by the requirement on termination, and TOPWELD cannot invoke the same against the former. The reason is not simply because IRTI and ECED, by failing to get the required certificate from the Board of Investment, were not made subject by the said Board to the requirement on termination, as maintained by petitioners. To impose such requirement on petitioners would be to perpetuate, and force them to remain in, an unlawful business operation. Moreover, it was incumbent upon TOPWELD to know whether or not IRTI and ECED were properly authorized to engage into the licensing and distributorship agreements. At the very least TOPWELD has not come to court with clean hands, and cannot be heard to invoke the equitable remedy of injunction to perpetuate an illegal situation it voluntarily helped bring about.

"If only for the foregoing considerations, there appears a grave abuse of discretion on the part of respondent Judge in issuing the orders complained of."

Petitioner, TOP-WELD filed this present petition putting in issue the following assignments of errors:

I

Respondent Court of Appeals committed a grave error when it held that a foreign corporation, which is admittedly 'doing business in the Philippines' but which has failed to secure the required certificate and license to do business in the Philippines, is not subject to the stricture imposed by Sec. 4(9) of Republic Act No. 5455.

II

Respondent Court of Appeals committed a grave error when it held that the failure of petitioner to know at the outset whether or not respondents were properly authorized to engage in business in the Philippines estops petitioner to invoke the protection of Sec. 4(9) of Republic Act No. 5455.

III

Respondent Court of Appeals committed a grave error when it held that petitioner cannot invoke the remedy of injunction against respondents.

At the vortex of the controversy is the issue whether or not respondent corporations can be considered as "doing business" in the Philippines and, therefore, subject to the provisions of R.A. No. 5455. There is no dispute that respondents are foreign corporations not licensed to do business in the Philippines. More important, however, there is no serious objection interposed by the respondents as to their amenability to the jurisdiction of our courts.

There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or

"transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. (*Mentholatum Co. v. Mangaliman*, 72 Phil. 524). Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines (*General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd.*, 87 Phil. 313) and a foreign corporation which had been collecting premiums on outstanding policies (*Manufacturing Life Insurance Co. v. Meer*, 89 Phil. 351) were regarded as doing business here. The acts of these corporations should be distinguished from a single or isolated business transaction or occasional, incidental and casual transactions which do not come within the meaning of the law. Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines. (*Far East International Import and Export Corporation v. Nankai Kogyo, Co.*, 6 SCRA 725).

In the *Mentholatum Co. v. Mangaliman* case earlier cited, this Court held:

x x x x x x x x

"x x x The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue [C. C. A. Ohio]*, 223 F. 984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (*Griffin v. Implement Dealers' Mut. Fire Ins. Co.*, 241 N.W. 75, 77; *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P. 851, 852, 118 Okl. 111; *Automotive Material Co. v. American Standard Metal Products Corp.*, 158 N.E. 698, 703, 327 Ill. 367.)"

Judged by the foregoing standards, we agree with the Court of Appeals in considering the respondents as "doing business" in the Philippines. When the respondents entered into the disputed contracts with the petitioner, they were carrying out the purposes for which they were created, i.e. to manufacture and market welding products and equipment. The terms and conditions of the contracts as well as the respondents' conduct indicate that they established within our country a continuous business, and not merely one of a temporary character. This fact is even more strengthened by the admission of the respondents that they are negotiating with another group for the transfer of the distributorship and franchising rights from the petitioner.

Respondents' acts enabled them to enter into the mainstream of our economic life in competition with our local business interests. This necessarily brings them under the provisions of R. A. No. 5455.

The respondents contend that they should be exempted from the requirements of R. A. 5455 because the petitioner maintained an independent status during the existence of the disputed contracts.

This may be true if the petitioner is an independent entity which buys and distributes products not only of the petitioner but also of other manufacturers or transacts business in its name and for its account and not in the name or for the account of the foreign principal.

A perusal of the agreements between the petitioner and the respondents shows that they are highly restrictive in nature. The agreements provide in part the following terms:

x x x x x x x x

"10. No Sales in Territory by IRTI

IRTI shall not solicit or cause or permit its employees, licensees or agents to solicit or make any sales, directly or indirectly, of WELDING PRODUCTS within or to the Philippines. IRTI agrees to refer to LICENSEE all product inquiries received by IRTI for WELDING PRODUCTS destined for Philippines.

x x x x x x x x

"16. x x x x x x x x

Restrictive Covenant

LICENSEE will not, directly or, indirectly, without the written consent of IRTI at any time during the continuance of this Agreement and for a period of two years after the date of the termination of this Agreement, engage either directly or indirectly in the business of selling products similar to said WELDING PRODUCTS, either as principal, agent, employee or through stock or proprietary interests in a third part entity."

x x x x x x x x

"RESTRICTIVE COVENANT

"6. DISTRIBUTOR shall not during the continuance of this agreement distribute products of any other manufacturer or supplier in the Territory assigned to him, which are similar to the Products.

"Upon the termination of this agreement by either party, DISTRIBUTOR agrees not to engage, directly or indirectly, in the commercialization, distribution and/or manufacture of products competing with any EUTECTIC+CASTOLIN products covered by this agreement, or of products likely to affect the sale of any EUTECTIC+CASTOLIN products, either as principal, agent or employee in the Territory, this prohibition to extend for a period of two (2) years from the date of termination, except for the explicit purpose of selling any remaining Products still in DISTRIBUTOR's possession on the date of termination of this agreement which sales shall not be below the DISTRIBUTOR'S pretermination selling price for such Products unless such sale is to ECED or its nominee in which case Clause 19 hereof shall govern."

x x x x x x x x

We can conclude that assuming the petitioner maintains an independent status, in essence it merely extends to the Philippines the business of the foreign corporations.

On the basis of the foregoing, we uphold the appellate court's finding that "IRTI and ECED were doing business and engaging in economic activity in the Philippines x x x as a prerequisite to which they should have first secured a written certificate from the Board of Investments."

The respondent court, however, erred in holding that "IRTI and ECED have not secured such written certificate in consequence of which there is no occasion for the Board of Investments to impose the requirements prescribed in the aforequoted provisions of Sec. 4, R.A. No. 5455 x x x." To accept this view would open the way for an interpretation that by doing business in the country without first securing the required written certificate from the Board of Investments, a foreign corporation may violate or disregard the safeguards which the law, by its provisions, seeks to establish.

We agree, however, that there is a more compelling reason behind the finding that the "corporations are not bound by the requirement on termination, and TOP-WELD cannot invoke the same against the former."

As between the parties themselves, R. A. No. 5455 does not declare as void or invalid the contracts entered into without first securing a license or certificate to do business in the Philippines. Neither does it appear to intend to prevent the courts from enforcing contracts made in contravention of its licensing provisions. There is no denying, though, that an "illegal situation", as the appellate court has put it, was created when the parties voluntarily contracted without such license.

The parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative. (Twiehaus v. Rosner, 245 SW 2d 107; Hall v. Bucher, 227 SW.2d 98). Moreover, a

person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary. In this case, the record shows that, at least, petitioner had actual knowledge of the applicability of R. A. No. 5455 at the time the contract was executed and at all times thereafter. This conclusion is compelled by the fact that the same statute is now being propounded by the petitioner to bolster its claim. We, therefore, sustain the appellate court's view that "it was incumbent upon TOP-WELD to know whether or not IRTI and ECED were properly authorized to engage in business in the Philippines when they entered into the licensing and distributorship agreements." The very purpose of the law was circumvented and evaded when the petitioner entered into said agreements despite the prohibition of R. A. No. 5455. The parties in this case being equally guilty of violating R. A. No. 5455, they are in *pari delicto*, in which case it follows as a consequence that petitioner is not entitled to the relief played for in this case.

In *Bough v. Cantiveros* (40 Phil. 210), the principle is laid down in these words: "The rule of *pari delicto* is expressed in the maxims "ex dolo malo non eritur actio" and "in *pari delicto potior est conditio defendentis*." The law will not aid either party to an illegal agreement. It leaves the parties where it finds them."

No remedy could be afforded to the parties because of their presumptive knowledge that the transaction was tainted with illegality. (*Soriano v. Ong Hoo*, 103 Phil. 829). Equity cannot lend its aid to the enforcement of an alleged right claimed by virtue of an agreement entered into in contravention of law.

Lastly, we come to the issue of "just cause" for the termination of the contracts or the alleged violations of the contracts made by petitioner. Though properly ventilated below, this factual issue was not determined by both the trial court and the appellate court.

The record shows that respondents, in opposing the injunction suit and alleging the violations of the contracts, submitted and relied on their affidavits. The petitioner, however, to refute these charges, submitted a "Reply to Opposition" which is neither verified nor supported by counter-affidavits. There is no showing in the records before us whether oral testimony was presented by any of the parties or whether the affiants were subjected to the test of cross-examination and if any, what was stated during the oral testimony.

The burden of overcoming the responsive effect of the answer is upon the petitioner. He who alleges a fact has the burden of proving it and a mere allegation is not evidence. (*Legasca v. De Vera*, 79 Phil. 376) Hearsay evidence alone may be insufficient to establish a fact in an injunction suit (*Parker v. Furlong*, 62 P 490) but, when no objection is made thereto, it is, like any other evidence, to be considered and given the importance it deserves. (*Smith v. Delaware & Atlantic Telegraph & Telephone Co.*, 51 A 464) Although we should warn of the undesirability of issuing judgments solely on the basis of the affidavits submitted, where as here, said affidavits are overwhelming, uncontroverted by competent evidence and not inherently improbable, we are constrained to uphold the allegations of the respondents regarding the multifarious violations of the contracts made by the petitioner. Accordingly, we rule that there exists a just cause for respondents to move for the termination of their contracts with the petitioner.

Moreover, the facts on record show that the "License and Technical Assistance Agreement" between petitioner and respondent IRTI was extended only for a period of one year or to be precise, from January 1, 1975 to December 31, 1975. The original injunction suit was brought in the court a quo in June 1975, the purpose being to stop the respondent from terminating the contract. This purpose was realized when the court granted the injunction. By the time respondents' appeal was decided by the Court of Appeals, it was already past the extended period. The dispute between the parties had been rendered moot and academic. It should be stated that the courts be it the original trial court or the appellate court have no power to make contracts for the parties. No court would be justified in extending the life of the contracts, subject of this controversy, since that would do violence to the

basic principle that contracts must be the voluntary agreements of parties.

Parties can not be coerced to enter into a contract where no agreement is had between them as to the principal terms and condition of the contract (Republic v. Philippine Long Distance Telephone Co., 26 SCRA 620).

With the above observations, there is nothing more for this Court to do except to dismiss the petition.

ACCORDINGLY, the petition is hereby dismissed. The appealed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Plana, Relova, De Le Fuente, and Alampay, JJ., concur.

Teehankee, (Chairman), J., concurs on the specific grounds of just cause for termination and expiration of the subject agreements.

Melencio-Herrera, J., no part.

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