

SIGNETICS CORPORATION, PETITIONER, VS. COURT OF APPEALS AND FRUEHAUF ELECTRONICS PHILS. INC., RESPONDENTS.

G.R. No. 105141. August 31, 1993

Ponente: VITUG, J.

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VITUG, J.:

The crucial issue in this petition for review on certiorari is whether or not the lower court, given the factual allegations in the complaint, had correctly assumed jurisdiction over the petitioner, a foreign corporation, on its claim in a motion to dismiss, that it had since ceased to do business in the Philippines.

The petitioner, Signetics Corporation (Signetics), was organized under the laws of the United States of America. Through Signetics Filipinas Corporation (SigFil), a wholly-owned subsidiary, Signetics entered into a lease contract over a piece of land with Fruehauf Electronics Phils., Inc. (Fruehauf).

In a complaint initiated on 15 March 1990 Fruehauf sued Signetics for damages, accounting or return of certain machinery, equipment and accessories, as well as the transfer of title and surrender of possession of the buildings, installations and improvements on the leased land, before the Regional Trial Court of Pasig, Metro Manila (Civil Case No. 59264). Claiming that Signetics caused SigFil to insert in the lease contract the words "machineries, equipment and accessories," the defendants were able to withdraw these assets from the cost-free transfer provision of the contract.

On the basis of the allegation that Signetics is a "subsidiary of US PHILIPS CORPORATION, and may be served summons at Philips Electrical Lamps, Inc., Las Piñas, Metro Manila and/or c/o Technology Electronics Assembly & Management (TEAM) Pacific Corporation, Electronics Avenue, FTI Complex, Taguig, Metro Manila," service of summons was made on Signetics through TEAM Pacific Corporation.

By special appearance, Signetics filed on 14 May 1990 a motion to dismiss the complaint on the ground of lack of jurisdiction over its person. Invoking Section 14, Rule 14, of the Rules of Court and the rule laid down in *Pacific Micronesian Line, Inc., v. Del Rosario and Pelington*[1] to the effect that the fact of doing business in the Philippines should first be established in order that summons could be validly made and jurisdiction acquired by the court over a foreign corporation, Signetics moved to dismiss the complaint.

The trial court[2] denied the motion to dismiss in an Order, which reads:

"In the case of *Wang Laboratories, Inc. v. Mendoza*, 156 SCRA 44, the High Court explained what constitutes 'doing business' as follows:

'Indeed it has been held that "where a single act or transaction of a foreign corporation is not merely incidental or casual but is of such character as distinctly to indicate a purpose to do other business in the State, such constitutes doing business within the meaning of statutes prescribing the conditions under which a foreign corporation may be served with summons (*Far East Int'l. Import and Export Corp. v. Nankai Kogyo Co. Ltd.*, 6 SCRA 725 [1962]).'

Assuming, arguendo, that defendant is a foreign corporation not doing business in the Philippines, it has been categorically stated in the aforecited case that although a foreign corporation is not doing business in the Philippines, it may be sued for acts done against persons in the Philippines.

For lack of sufficient merits therefore, defendant's Motion to Dismiss is hereby DENIED."^[3]

Signetcs filed a motion for reconsideration but this, too, was denied by the court in its Order of 11 March 1991, reiterating that the rule expressed in *Wang Laboratories, Inc. v. Mendoza*^[4] was the applicable and prevailing "jurisprudence on the matter."

Signetcs elevated the issue to the Court of Appeals, via a petition for certiorari and prohibition, with application for preliminary injunction (CA-G.R. SP No. 24758). On 20 February 1992, the Court of Appeals rendered its decision,^[5] dismissing the petition and affirming the orders of the lower court. A motion for the reconsideration of the appellate court's decision, having been denied, the instant petition for review on certiorari was filed with this Court, still on the "basic question" of whether or not "a foreign corporation can be sued in the Philippines and validly summoned by a Philippine court without prior 'proof' that it was doing business here at the time of the suit."^[6]

Critically dissecting the complaint, the petitioner stresses that the averments in the complaint "are at best mere allegations and do not constitute proof of 'doing business';"^[7] that the allegations, in any case, do not demonstrate "doing business"; and that the phrase "becoming interested in doing business" is "not actual doing of business here." The petitioner argues that what was effectively only alleged in the complaint as an activity of doing business was "the mere equity investment" of petitioner in SigFil, which the petitioner insists, had theretofore been transferred to TEAM Holdings, Ltd..

The petitioner relies, in good part, on the Pacific Micronisian rule. The pronouncements in *Wang Laboratories* and in *Facilities Management Corporation*^[8], the petitioner adds, are mere obiter dicta since the foreign corporations involved in both cases were found to have, in fact, been doing business in the Philippines and were thus unquestionably amenable to local court processes.

We rule for the affirmance of the appealed decision.

Petitioner's contention that there should be "proof" of the foreign corporation's doing business in country before it may be summoned is based on the following portions of the decision in *Pacific Micronisian*:

"The pertinent rule to be considered is section 14, Rule 7 of the Rules of Court, which refers to service upon private foreign corporations. This section 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 of its officers or agents within the Philippines.'

The above section provides for three modes of effecting services upon a private corporation, namely: (1) by serving upon the agent designated in accordance with law to accept service by summons; (2) if there be no special agent, by serving on the government official designated by law to that effect; and (3) by serving on any officer or agent within the Philippines. But, it should be noted, in order that services may be effected in the manner above stated, said section also requires that the foreign corporation be one which is doing business in the Philippines. This is a *sine qua non* requirement. This fact must first be established in order that summons can be made and jurisdiction acquired. This is not only clear in the rule but is reflected in a recent decision of this Court. We there said that 'as long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts.' (General

Corporation of the Philippines, et al. vs. Union Insurance Society of Canton, Ltd., et al. 49 Off. Gaz., 73, September 14, 1950)."[9]

The petitioner opines that the phrase, "(the) fact (of doing business in the Philippines) must first be established in order that summons be made and jurisdiction acquired," used in the above pronouncement, would indicate that a mere allegation to that effect in the complaint is not enough - there must instead be proof of doing business.[10] In any case, the petitioner, points out, the allegations themselves did not sufficiently show the fact of its doing business in the Philippines.

It should be recalled that jurisdiction and venue of actions are, as they should so be, initially determined by the allegations of the complaint.[11] Jurisdiction cannot be made to depend on independent pleas set up in a mere motion to dismiss, otherwise jurisdiction would become dependent almost entirely upon the defendant.[12] The fact of doing business must then, in the first place, be established by appropriate allegations in the complaint. This is what the Court should be seen to have meant in the Pacific Micronesian case. The complaint, it is true, may have been vaguely structured but, taken correlatively, not disjunctively as the petitioner would rather suggest, it is not really so weak as to be fatally deficient in the above requirement. Witness the following allegations of the complaint:

"3. In the year 1978, the defendant became interested in engaging in business in the Philippines x x x;

4. To serve as its local business conduit, the defendant organized a wholly-owned domestic subsidiary corporation known as SIGNETICS FILIPINAS CORPORATION (SIGFIL, for brevity), which was supposed to be its actual operating entity in the Philippines;

x x x x x x x x;

18. In February 1983, the defendant ceased all its business operations in the leased premises. x x x;

x x x x x x x x;

23. (a) In November 21, 1986, the defendant transferred all shares of stock of SIGFIL in favor of TEAM HOLDING LIMITED, a foreign corporation organized under the laws of British Virgin Islands;

x x x x x x x x;

23. (d) Subsequently, on January 12, 1987, the new owners unmasked itself when it dropped SIGFIL's name and changed its corporate name to TECHNOLOGY ELECTRONICS ASSEMBLY AND MANAGEMENT (T.E.A.M.) PACIFIC CORPORATION, otherwise known as TEAM PACIFIC CORPORATION. The similarity between 'TEAM HOLDINGS LIMITED' and 'TEAM PACIFIC CORPORATION' is all too, apparent; and

24. As seen in the next-preceding paragraph, the defendant made a devious use of the fiction of separate corporate identity to shield chicanery and to perpetuate fraud."[13]

The petitioner's reliance on *Hyopsung Maritime Co., Ltd., v. Court of Appeals*[14] is misplaced. While the Court therein cited the Pacific Micronesian ruling and dismissed the complaint against the petitioner for lack of jurisdiction, the *Hyopsung* case is under a completely different factual milieu. As summarized by the Court, the complaint therein was -

"x x x for the recovery of damages based on a breach of contract which appears to have been entirely entered into, executed, and consummated in Korea. Indisputably, the shipment was loaded on board the foreign vessel MV 'Don Aurelio' at Pohang, Korea, by a Korean firm with offices at Seoul, Korea; the corresponding bill of lading was issued in Seoul, Korea and the freight was prepaid also at Seoul; the above vessel with its cargo

never even docked at Manila or at any other port of entry in the Philippines; lastly, the petitioner did not appoint any ship agent in the Philippines. Simply put, the petitioner is beyond the reach of our courts." [15]

On the other hand, the complaint, in this instance, has alleged, among other things, that Signetics had become interested in engaging in business in the Philippines; that it had actually organized SigFil, as its local business conduit or actual operating entity in the Philippines; that, through Sigfil, it had entered into the lease contract involving properties in the Philippines a situation that could have allowed Freuhauf to avail itself of the provisions of Section 17, Rule 14, on extraterritorial, service of summons since the relief sought consists in excluding the defendant from any interest in property within the Philippines); and that while Signetics may have had transferred all its shareholdings (before the complaint was filed) in favor of TEAM Holdings, Ltd., another foreign corporation, SIGFIL's corporate name, however, was forthwith changed to TEAM Pacific corporation, which Freuhauf claims is a "devious" attempt to "shield chicanery and to perpetuate fraud" (see paragraphs 23 and 24, Complaint). On this score, what might in a way also be revealing is that after Freuhauf had moved to sell the attached property subject matter of the litigation, the petitioner filed the following pleading, intriguingly captioned, "Manifestation"; viz:

"Defendant, by counsel, respectfully states:

1. Plaintiff filed a Motion to Sell Attached Properties and scheduled it for hearing on August 24, 1990, justifying the sale on the allegations that certain properties belonging to the defendant are perishable in nature and liable to material depreciation in value.
2. In pleadings filed by the defendant, the Court was requested to determine whether there is a valid attachment on this alleged properties. This determination is necessary because defendant has pointed out that personal jurisdiction could not be justified on the basis of the so-called attachment because it was legally ineffective. Two reasons were given to the Court. First, the property has not been taken into actual custody of the sheriff as required by Rule 57, Section 7 (c). Second, the property has not been shown to be owned by the defendant.
3. Since jurisdiction over the defendant is premised on the attachment, the Honorable Court should therefore act on the motion to sell by determining (i) whether plaintiff has shown that the property proposed to be sold belongs to the defendant (ii) whether it was effectively attached and (iii) whether its sale is justified (because it is perishable or deteriorating in value).

Respectfully submitted." [16]

The petitioner contends that the motion to sell was filed by Freuhauf "ostensibly to ask permission to sell properties (sic.), but really to hurt petitioner in the first fight" (meaning the dismissal incident) because Freuhauf used the motion to sell "incident" as forum to prove ex-parte, its argument on jurisdiction." [17] Far from continuing the "fight" on the issue of jurisdiction, the aforequoted manifestation reflects nothing less than a surprising interest in the property which petitioner claims are not its own.

Having said that, Freuhauf, in effect, has invoked the doctrine of piercing the veil of corporate fiction, and it cannot thus be held to have improperly caused the service of summons on TEAM Pacific pursuant to Section 14, of Rule 14. As explained by the Court in *Pacific Micronesian*, summons may be served upon an agent of the defendant who may not necessarily be its "resident agent designated in accordance with law." The term "agent", in the context it is used in Section 14, refers to its general meaning, i.e., one who acts on behalf of a principal. [18] The allegations in the complaint, taken together, have thus been able to amply convey that not only is TEAM Pacific the business conduit of the petitioner in the Philippines but that, also, by the charge of fraud, is none other than the petitioner itself.

In any event, it may well be that the Court should restate the rule, and it is that a foreign corporation, although not

engaged in business in the Philippines, may still look up to our courts for relief; reciprocally, such corporation may likewise be "sued in Philippine courts for acts done against a person or persons in the Philippines" (*Facilities Management Corporation v. De la Osa*[19]), provided that, in the latter case, it would not be impossible for court processes to reach the foreign corporation, a matter that can later be consequential in the proper execution of judgment. Verily, a State may not exercise jurisdiction in the absence of some good basis (and not offensive to traditional notions of fair play and substantial justice) for effectively exercising it, whether the proceedings are in rem, quasi in rem or in personam.[20]

This is not to say, however, that the petitioner's right to question the jurisdiction of the court over its person is now to be deemed a foreclosed matter. If it is true, as Signetics claims, that its only involvement in the Philippines was through a passive investment in Sigfil,[21] which it even later disposed of; and that TEAM Pacific not its agent, then it cannot really be said to be doing business in the Philippines. It is a defense, however, that requires the contravention of the allegations of the complaint, as well as a full ventilation, in effect, of the main merits of the case, which should not thus be within the province of a mere motion to dismiss. So, also, the issue posed by the petitioner as to whether a foreign corporation which has done business in the country, but which has ceased to do business at the time of the filing of a complaint, can still be made to answer for a cause of action which accrued while it was doing business, is another matter that would yet have to await the reception and admission of evidence. Since these points have seasonably been raised by the petitioner, there should be no real cause for what may understandably be its apprehension, i.e., that by its participation during the trial on the merits, it may, absent an invocation of separate or independent reliefs of its own, be considered to have voluntarily submitted itself to the court's jurisdiction.

All told Signetics cannot, at least in this early stage, assail, on the one hand, the veracity and correctness of the allegations in the complaint and proceed, on the other hand, to prove its own, in order to hasten a peremptory escape.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED. The lower court shall proceed with dispatch in resolving Civil Case No. 59264. Costs against the petitioner.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Feliciano, J., (Chairman), No part. One of parties is represented by the former firm.

[1] 96 Phil. 23 (1954).

[2] Presided by Judge Martin Villarama, Jr.

[3] Rollo, pp. 52-53.

[4] G.R. No. 72147, December 1, 1987, 136 SCRA 44.

[5] Penned by Associate Justice Serafin E. Camilon and concurred in by Associate Justices Celso L. Magsino and Artemon D. Luna.

[6] Petition, p. 1.

[7] Ibid, p. 12.

[8] L-38649, March 26, 1979, 89 SCRA 131.

[9] Supra, at pp. 27-28.

[10] Petition, p. 12; Rollo, p. 13.

[11] Notre Dame de Lourdes Hospital v. Mallare-Phillips, G.R. No. 96630, May 15, 1991, 197 SCRA 187.

[12] Commart (Phils.) Inc. v. Securities and Exchange Commission, G.R. No. 85318, June 3, 1991, 198 SCRA 73.

[13] CA Decision, p. 4; Rollo, p. 30.

[14] G.R. No. 77369, August 31, 1988, 165 SCRA 258.

[15] Supra, at p. 264.

[16] Rollo, p. 77.

[17] Reply to Comment, p. 15; Rollo, p. 105.

[18] Moreno, Philippine Law Dictionary, 3rd Ed., p. 43.

[19] L-38649, March 26, 1979, 89 SCRA 131.

[20] Hongkong and Shanghai Banking Corporation v. Sherman, G.R. No. 72494, August 11, 1989, 176 SCRA 331, 336 citing J. Salonga, Private International Law, 1981 ed., p. 46.

[21] Petition, p. 13; Rollo, p. 14.

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