

NEW YORK MARINE MANAGERS, INC., PETITIONER, VS. COURT OF APPEALS AND VLASONS SHIPPING INC., RESPONDENTS.

G.R. No. 111837. October 24, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

NEW YORK MARINE MANAGERS, INC., a foreign corporation organized under the laws of the United States, seeks in this special civil action for certiorari under Rule 65 of the Rules of Court[1] the annulment of the decision of the Court of Appeals which reversed the ruling of the trial court denying the motion to dismiss of private respondent Vlasons Shipping Company, Inc.

On 25 July 1990 American Natural Soda Ash Corporation (ANSAC) loaded in Portland, U.S.A., a shipment of soda ash on board the vessel "MS Abu Hanna" for delivery to Manila. The supplier/shipper insured the shipment with petitioner. Upon arrival in Manila the shipment was unloaded and transferred to the vessel "MV Biyayang Ginto" owned by private respondent. Since the shipment allegedly sustained wettagage, hardening and contamination, it was rejected as total loss by the consignees. When the supplier sought to recover the value of the cargo loss from petitioner the latter paid the claim in the amount of US\$58,323.96.

On 20 November 1991 petitioner as subrogee filed with the Regional Trial Court of Manila a complaint for damages against private respondent alleging among others that -

x x x x 1.01. Plaintiff is a non-life foreign insurance corporation organized under the laws of the State of New York with offices at 123 William Street, New York, N.Y. 10038 and engaged in an isolated transaction in this case; defendant is a local domestic corporation organized under Philippine law with offices at Zobel Street, Isla de Provisor, Paco, Metro Manila where it may be served with summons and other court processes x x x x[2]

On 24 January 1992 private respondent filed a motion to dismiss the complaint alleging that: (a) The complaint was filed by counsel who had no authority to sue for plaintiff; (b) The complaint stated no cause of action or without a cause of action as (a) there was no privity of contract between plaintiff and defendant; (b) the risks which allegedly caused damages on the goods were not covered by the insurance issued by plaintiff, and (c) the charter agreement between the consignee, ALCHEMCO PHILIPPINES, INC., and private respondent absolved the latter from all kinds of claim whatsoever; (3) The claim of plaintiff was already extinguished, waived, abandoned and/or had prescribed; and, (4) Plaintiff had no legal capacity to sue.

On 5 February 1992 petitioner opposed the motion to dismiss. On 10 April 1992 the trial court denied the motion. On 18 August 1992 the motion to reconsider the denial was also denied. The trial court ruled that since petitioner alleged in its complaint that it was suing on an isolated transaction the qualifying circumstance of plaintiff's capacity to sue as an essential element has been properly pleaded. The trial court also held that the grounds relied upon by private respondent in its motion to dismiss were matters of defense.

On 28 September 1992 private respondent filed a petition for certiorari and prohibition with the Court of Appeals

alleging that the trial court gravely abused its discretion in issuing the orders of 10 April 1992 and 18 August 1992 which amounted to lack or excess of jurisdiction.

On 29 July 1993 the appellate court granted the petition after finding the assailed orders to be patently erroneous.[3] While it found the allegation in the complaint that plaintiff was a non-life foreign insurance corporation engaged in an isolated transaction to be a sufficient averment, it nevertheless held the complaint to be fatally defective for failure to allege the duly authorized representative or resident agent of petitioner in the Philippines. Thus it enjoined the trial court from further proceeding except to dismiss the case with prejudice.

This petition alleges that the Court of Appeals acted whimsically, capriciously and arbitrarily amounting to lack or excess of jurisdiction in deciding that petitioner's complaint was fatally defective for failing to allege its duly authorized representative or resident agent in the Philippines. Petitioner argues that there is no law, substantive or procedural, that requires a foreign corporation engaged only in an isolated transaction to appoint a duly authorized representative or a resident agent in the Philippines before it can sue locally.

The proper remedy available to petitioner from a decision of the Court of Appeals is a petition for review on certiorari under Rule 45 of the Rules of Court, not a petition for certiorari under Rule 65 of the Rules of Court. Mere errors of judgment cannot be the proper subject of a special civil action for certiorari. Where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for certiorari. Erroneous findings and conclusions do not render the appellate court vulnerable to the corrective writ of certiorari. For where the court has jurisdiction over the case, even if its findings are not correct, they would, at most, constitute errors of law and not abuse of discretion correctible by certiorari.[4]

But even if we treat the instant petition as one for review on certiorari the same must still fail. The issue on whether a foreign corporation can seek the aid of Philippine courts for relief recoils to the basic question of whether it is doing business in the Philippines or has merely entered into an isolated transaction. This Court has held in a long line of cases that a foreign corporation not engaged in business in the Philippines may exercise the right to file an action in Philippine courts for an isolated transaction.[5] However, in *Commissioner of Customs v. K.M.K. Gani et al.*,[6] citing *Atlantic Mutual Insurance Company v. Cebu Stevedoring, Inc.*,[7] we ruled that to say merely that a foreign corporation not doing business in the Philippines does not need a license in order to sue in our courts does not completely resolve the issue. When the allegations in the complaint have a bearing on the plaintiff's capacity to sue and merely state that the plaintiff is a foreign corporation existing under the laws of the United States, such averment conjures two alternative possibilities: either the corporation is engaged in business in the Philippines, or it is not so engaged. In the first, the corporation must have been duly licensed in order to maintain the suit; in the second, and the transaction sued upon is singular and isolated, no such license is required. In either case, compliance with the requirement of license, or the fact that the suing corporation is exempt therefrom, as the case may be, cannot be inferred from the mere fact that the party suing is a foreign corporation. The qualifying circumstance being an essential part of the plaintiff's capacity to sue must be affirmatively pleaded. Hence, the ultimate fact that a foreign corporation is not doing business in the Philippines must first be disclosed for it to be allowed to sue in Philippine courts under the isolated transaction rule.[8] Failing in this requirement, the complaint filed by petitioner with the trial court, it must be said, fails to show its legal capacity to sue.

Moreover, petitioner's complaint is fatally defective for failing to allege its duly authorized representative or resident agent in this jurisdiction. The pleadings filed by counsel for petitioner do not suffice. True, a lawyer is generally presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client. But this presumption is disputable. Where

said authority has been challenged or attacked by the adverse party the lawyer is required to show proof of such authority or representation in order to bind his client. The requirement of the production of authority is essential because the client will be bound by his acquiescence resulting from his knowledge that he was being represented by said attorney.[9] In the instant case, the extent of authority of counsel for petitioner has been expressly and continuously assailed but he has failed to show competent proof that he was indeed duly authorized to represent petitioner.

WHEREFORE, the petition is DENIED. The assailed decision of the Court of Appeals dated 29 July 1993 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Petition, p. 2; Rollo, p. 3.

[2] Annex "A" of Petition; Rollo, p. 18.

[3] Decision penned by Justice Eduardo G. Montenegro, 5th Division, with Justices Fidel P. Purisima, Chairman, and Justo P. Torres, Jr., concurring.

[4] *Planters Products, Inc. v. Court of Appeals*, G.R. No. 76591, 6 February 1991, 193 SCRA 563.

[5] *Signetics v. Court of Appeals*, G.R. No. 105141, 31 August 1993, 225 SCRA 737.

[6] G.R. No. 73722, 26 February 1990, 182 SCRA 591.

[7] No. L-18961, 31 August 1966, 17 SCRA 1037.

[8] *Commissioner of Customs v. K.M.K. Gani*, see Note 6; *Bulakhidas v. Navarro*, No. L-49695, 7 April 1986, 142 SCRA 1.

[9] *Tan Lua v. O'Brien*, 55 Phil. 53 [1930].

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