

ALFRED HAHN, PETITIONER, VS. COURT OF APPEALS AND BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT (BMW), RESPONDENTS.

G.R. No. 113074. January 22, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Court of Appeals dismissing a complaint for specific performance which petitioner had filed against private respondent on the ground that the Regional Trial Court of Quezon City did not acquire jurisdiction over private respondent, a nonresident foreign corporation, and of the appellate court's order denying petitioner's motion for reconsideration.

The following are the facts:

Petitioner Alfred Hahn is a Filipino citizen doing business under the name and style "Hahn-Manila." On the other hand, private respondent Bayerische Motoren Werke Aktiengesellschaft (BMW) is a nonresident foreign corporation existing under the laws of the former Federal Republic of Germany, with principal office at Munich, Germany.

On March 7, 1967, petitioner executed in favor of private respondent a "Deed of Assignment with Special Power of Attorney," which reads in full as follows:

WHEREAS, the ASSIGNOR is the present owner and holder of the BMW trademark and device in the Philippines which ASSIGNOR uses and has been using on the products manufactured by ASSIGNEE, and for which ASSIGNOR is the authorized exclusive Dealer of the ASSIGNEE in the Philippines, the same being evidenced by certificate of registration issued by the Director of Patents on 12 December 1963 and is referred to as Trademark No. 10625;

WHEREAS, the ASSIGNOR has agreed to transfer and consequently record said transfer of the said BMW trademark and device in favor of the ASSIGNEE herein with the Philippines Patent Office;

NOW THEREFORE, in view of the foregoing and in consideration of the stipulations hereunder stated, the ASSIGNOR hereby affirms the said assignment and transfer in favor of the ASSIGNEE under the following terms and conditions:

1. The ASSIGNEE shall take appropriate steps against any user other than ASSIGNOR or infringer of the BMW trademark in the Philippines, for such purpose, the ASSIGNOR shall inform the ASSIGNEE immediately of any such use or infringement of the said trademark which comes to his knowledge and upon such information the ASSIGNOR shall automatically act as Attorney-In-Fact of the ASSIGNEE for such case, with full power, authority and responsibility to prosecute unilaterally or in concert with ASSIGNEE, any such infringer of the subject mark and for purposes hereof the ASSIGNOR is hereby named and constituted as ASSIGNEE's Attorney-In-Fact, but any such suit without ASSIGNEE's consent will exclusively be the responsibility and for the account of the ASSIGNOR,

2. That the ASSIGNOR and the ASSIGNEE shall continue business relations as has been usual in the past without a formal contract, and for that purpose, the dealership of ASSIGNOR shall cover the ASSIGNEE's complete production program with the only limitation that, for the present, in view of ASSIGNEE's limited production, the latter shall not be able to supply automobiles to ASSIGNOR.

Per the agreement, the parties "continue[d] business relations as has been usual in the past without a formal contract." But on February 16, 1993, in a meeting with a BMW representative and the president of Columbia Motors Corporation (CMC), Jose Alvarez, petitioner was informed that BMW was arranging to grant the exclusive dealership of BMW cars and products to CMC, which had expressed interest in acquiring the same. On February 24, 1993, petitioner received confirmation of the information from BMW which, in a letter, expressed dissatisfaction with various aspects of petitioner's business, mentioning among other things, decline in sales, deteriorating services, and inadequate showroom and warehouse facilities, and petitioner's alleged failure to comply with the standards for an exclusive BMW dealer.[2] Nonetheless, BMW expressed willingness to continue business relations with the petitioner on the basis of a "standard BMW importer" contract, otherwise, it said, if this was not acceptable to petitioner, BMW would have no alternative but to terminate petitioner's exclusive dealership effective June 30, 1993.

Petitioner protested, claiming that the termination of his exclusive dealership would be a breach of the Deed of Assignment.[3] Hahn insisted that as long as the assignment of its trademark and device subsisted, he remained BMW's exclusive dealer in the Philippines because the assignment was made in consideration of the exclusive dealership. In the same letter petitioner explained that the decline in sales was due to lower prices offered for BMW cars in the United States and the fact that few customers returned for repairs and servicing because of the durability of BMW parts and the efficiency of petitioner's service.

Because of Hahn's insistence on the former business relation, BMW withdrew on March 26, 1993 its offer of a "standard importer contract" and terminated the exclusive dealer relationship effective June 30, 1993.[4] At a conference of BMW Regional Importers held on April 26, 1993 in Singapore, Hahn was surprised to find Alvarez among those invited from the Asian region. On April 29, 1993, BMW proposed that Hahn and CMC jointly import and distribute BMW cars and parts.

Hahn found the proposal unacceptable. On May 14, 1993, he filed a complaint for specific performance and damages against BMW to compel it to continue the exclusive dealership. Later he filed an amended complaint to include an application for temporary restraining order and for writs of preliminary, mandatory and prohibitory injunction to enjoin BMW from terminating his exclusive dealership. Hahn's amended complaint alleged in pertinent parts:

2. Defendant [BMW] is a foreign corporation doing business in the Philippines with principal offices at Munich, Germany. It may be served with summons and other court processes through the Secretary of the Department of Trade and Industry of the Philippines. . . .

. . . .

5. On March 7, 1967, Plaintiff executed in favor of defendant BMW a Deed of Assignment with Special Power of Attorney covering the trademark and in consideration thereof, under its first whereas clause, Plaintiff was duly acknowledged as the "exclusive Dealer of the Assignee in the Philippines"

. . . .

8. From the time the trademark "BMW & DEVICE" was first used by the Plaintiff in the Philippines up to the present, Plaintiff, through its firm name "HAHN MANILA" and without any monetary contribution from defendant BMW, established BMW's goodwill and market presence in the Philippines. Pursuant thereto,

Plaintiff has invested a lot of money and resources in order to single-handedly compete against other motorcycle and car companies Moreover, Plaintiff has built buildings and other infrastructures such as service centers and showrooms to maintain and promote the car and products of defendant BMW.

....

10. In a letter dated February 24, 1993, defendant BMW advised Plaintiff that it was willing to maintain with Plaintiff a relationship but only "on the basis of a standard BMW importer contract as adjusted to reflect the particular situation in the Philippines" subject to certain conditions, otherwise, defendant BMW would terminate Plaintiff's exclusive dealership and any relationship for cause effective June 30, 1993. . . .

....

15. The actuations of defendant BMW are in breach of the assignment agreement between itself and plaintiff since the consideration for the assignment of the BMW trademark is the continuance of the exclusive dealership agreement. It thus, follows that the exclusive dealership should continue for so long as defendant BMW enjoys the use and ownership of the trademark assigned to it by Plaintiff.

The case was docketed as Civil Case No. Q-93-15933 and raffled to Branch 104 of the Quezon City Regional Trial Court, which on June 14, 1993 issued a temporary restraining order. Summons and copies of the complaint and amended complaint were thereafter served on the private respondent through the Department of Trade and Industry, pursuant to Rule 14, § 14 of the Rules of Court. The order, summons and copies of the complaint and amended complaint were later sent by the DTI to BMW via registered mail on June 15, 1993[5] and received by the latter on June 24, 1993.

On June 17, 1993, without proof of service on BMW, the hearing on the application for the writ of preliminary injunction proceeded ex parte, with petitioner Hahn testifying. On June 30, 1993, the trial court issued an order granting the writ of preliminary injunction upon the filing of a bond of P100,000.00. On July 13, 1993, following the posting of the required bond, a writ of preliminary injunction was issued.

On July 1, 1993, BMW moved to dismiss the case, contending that the trial court did not acquire jurisdiction over it through the service of summons on the Department of Trade and Industry, because it (BMW) was a foreign corporation and it was not doing business in the Philippines. It contended that the execution of the Deed of Assignment was an isolated transaction; that Hahn was not its agent because the latter undertook to assemble and sell BMW cars and products without the participation of BMW and sold other products; and that Hahn was an indenter or middleman transacting business in his own name and for his own account.

Petitioner Alfred Hahn opposed the motion. He argued that BMW was doing business in the Philippines through him as its agent, as shown by the fact that BMW invoices and order forms were used to document his transactions; that he gave warranties as exclusive BMW dealer; that BMW officials periodically inspected standards of service rendered by him; and that he was described in service booklets and international publications of BMW as a "BMW Importer" or "BMW Trading Company" in the Philippines.

The trial court[6] deferred resolution of the Motion to dismiss until after trial on the merits for the reason that the grounds advanced by BMW in its motion did not seem to be indubitable.

Without seeking reconsideration of the aforementioned order, BMW filed a petition for certiorari with the Court of Appeals alleging that:

I. THE RESPONDENT JUDGE ACTED WITH UNDUE HASTE OR OTHERWISE INJUDICIOUSLY IN PROCEEDINGS LEADING TOWARD THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION, AND IN PRESCRIBING THE TERMS FOR THE ISSUANCE THEREOF.

II. THE RESPONDENT JUDGE PATENTLY ERRED IN DEFERRING RESOLUTION OF THE MOTION TO DISMISS ON THE GROUND OF LACK OF JURISDICTION, AND THEREBY FAILING TO IMMEDIATELY DISMISS THE CASE A QUO.

BMW asked for the immediate issuance of a temporary restraining order and, after hearing, for a writ of preliminary injunction, to enjoin the trial court from proceeding further in Civil Case No. Q-93-15933. Private respondent pointed out that, unless the trial court's order was set aside, it would be forced to submit to the jurisdiction of the court by filing its answer or to accept judgment in default, when the very question was whether the court had jurisdiction over it.

The Court of Appeals enjoined the trial court from hearing petitioner's complaint. On December 20, 1993, it rendered judgment finding the trial court guilty of grave abuse of discretion in deferring resolution of the motion to dismiss. It stated:

Going by the pleadings already filed with the respondent court before it came out with its questioned order of July 26, 1993, we rule and so hold that petitioner's (BMW) motion to dismiss could be resolved then and there, and that the respondent judge's deferment of his action thereon until after trial on the merit constitutes, to our mind, grave abuse of discretion.

....

. . . [T]here is not much appreciable disagreement as regards the factual matters relating, to the motion to dismiss. What truly divide (sic) the parties and to which they greatly differ is the legal conclusions they respectively draw from such facts, (sic) with Hahn maintaining that on the basis thereof, BMW is doing business in the Philippines while the latter asserts that it is not.

Then, after stating that any ruling which the trial court might make on the motion to dismiss would anyway be elevated to it on appeal, the Court of Appeals itself resolved the motion. It ruled that BMW was not doing business in the country and, therefore, jurisdiction over it could not be acquired through service of summons on the DTI pursuant to Rule 14, Section 14. The court upheld private respondent's contention that Hahn acted in his own name and for his own account and independently of BMW, based on Alfred Hahn's allegations that he had invested his own money and resources in establishing BMW's goodwill in the Philippines and on BMW's claim that Hahn sold products other than those of BMW. It held that petitioner was a mere indenter or broker and not an agent through whom private respondent BMW transacted business in the Philippines. Consequently, the Court of Appeals dismissed petitioner's complaint against BMW.

Hence, this appeal. Petitioner contends that the Court of Appeals erred (1) in finding that the trial court gravely abused its discretion in deferring action on the motion to dismiss and (2) in finding that private respondent BMW is not doing business in the Philippines and, for this reason, dismissing petitioner's case.

Petitioner's appeal is well taken. Rule 14, § 14 provides:

§14. Service upon foreign corporations. — If the defendant is a foreign corporation, or a nonresident 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. (Emphasis added)

What acts are considered "doing business in the Philippines" are enumerated in §3(d) of the Foreign Investments Act of 1991 (R.A. No. 7042) as follows:[7]

d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches, appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more;

participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate 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, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having, a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account. (Emphasis supplied)

Thus, the phrase includes "appointing representatives or distributors in the Philippines" but not when the representative or distributor "transacts business in its name and for its own account." In addition, Section 1(f)(1) of the Rules and Regulations implementing (IRR) the Omnibus Investment Code of 1987 (E.O. No. 226) provided:

(f) "Doing business" shall be any act or combination of acts, enumerated in Article 44 of the Code. In particular, "doing business" includes:

(1)... A foreign firm which does business through middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines. But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines.

The question is whether petitioner Alfred Hahn is the agent or distributor in the Philippines of private respondent BMW. If he is, BMW may be considered doing business in the Philippines and the trial court acquired jurisdiction over it (BMW) by virtue of the service of summons on the Department of Trade and Industry. Otherwise, if Hahn is not the agent of BMW but an independent dealer, albeit of BMW cars and products, BMW, a foreign corporation, is not considered doing business in the Philippines within the meaning of the Foreign Investments Act of 1991 and the IRR, and the trial court did not acquire jurisdiction over it (BMW).

The Court of Appeals held that petitioner Alfred Hahn acted in his own name and for his own account and not as agent or distributor in the Philippines of BMW on the ground that "he alone had contacts with individuals or entities interested in acquiring BMW vehicles. Independence characterizes Hahn's undertakings, for which reason he is to be considered, under governing statutes, as doing business." (p. 13) In support of this conclusion, the appellate court cited the following allegations in Hahn's amended complaint:

8. From the time the trademark "BMW & DEVICE" was first used by the Plaintiff in the Philippines up to the present, Plaintiff, through its firm name "HAHN MANILA" and without any monetary contributions from defendant BMW; established BMW's goodwill and market presence in the Philippines. Pursuant thereto, Plaintiff invested a lot of money and resources in order to single-handedly compete against other motorcycle and car companies.... Moreover, Plaintiff has built buildings and other infrastructures such as service centers and showrooms to maintain and promote the car and products of defendant BMW.

As the above quoted allegations of the amended complaint show, however, there is nothing to support the appellate court's finding that Hahn solicited orders alone and for his own account and without "interference from, let alone direction of, BMW." (p. 13) To the contrary, Hahn claimed he took orders for BMW cars and transmitted them to BMW. Upon receipt of the orders, BMW fixed the down payment and pricing charges, notified Hahn of the scheduled production month for the orders, and reconfirmed the orders by signing and returning to Hahn the acceptance sheets. Payment was made by the buyer directly to BMW. Title to cars purchased passed directly to the buyer and Hahn never paid for the purchase price of BMW cars sold in the Philippines. Hahn was credited

with a commission equal to 14% of the purchase price upon the invoicing of a vehicle order by BMW. Upon confirmation in writing that the vehicles had been registered in the Philippines and serviced by him, Hahn received an additional 3% of the full purchase price. Hahn performed after-sale services, including, warranty services, for which he received reimbursement from BMW. All orders were on invoices and forms of BMW.[8]

These allegations were substantially admitted by BMW which, in its petition for certiorari before the Court of Appeals, stated:[9]

9.4. As soon as the vehicles are fully manufactured and full payment of the purchase prices are made, the vehicles are shipped to the Philippines. (The payments may be made by the purchasers or third-persons or even by Hahn.) The bills of lading are made up in the name of the purchasers, but Hahn-Manila is therein indicated as the person to be notified.

9.5. It is Hahn who picks up the vehicles from the Philippine ports, for purposes of conducting pre-delivery inspections. Thereafter, he delivers the vehicles to the purchasers.

9.6. As soon as BMW invoices the vehicle ordered, Hahn is credited with a commission of fourteen percent (14%) of the full purchase price thereof, and as soon as he confirms in writing, that the vehicles have been registered in the Philippines and have been serviced by him, he will receive an additional three percent (3%) of the full purchase prices as commission.

Contrary to the appellate court's conclusion, this arrangement shows an agency. An agent receives a commission upon the successful conclusion of a sale. On the other hand, a broker earns his pay merely by bringing the buyer and the seller together, even if no sale is eventually made.

As to the service centers and showrooms which he said he had put up at his own expense, Hahn said that he had to follow BMW specifications as exclusive dealer of BMW in the Philippines. According to Hahn, BMW periodically inspected the service centers to see to it that BMW standards were maintained. Indeed, it would seem from BMW's letter to Hahn that it was for Hahn's alleged failure to maintain BMW standards that BMW was terminating Hahn's dealership.

The fact that Hahn invested his own money to put up these service centers and showrooms does not necessarily prove that he is not an agent of BMW. For as already noted, there are facts in the record which suggest that BMW exercised control over Hahn's activities as a dealer and made regular inspections of Hahn's premises to enforce compliance with BMW standards and specifications.[10] For example, in its letter to Hahn dated February 23, 1996, BMW stated:

In the last years we have pointed out to you in several discussions and letters that we have to tackle the Philippine market more professionally and that we are through your present activities not adequately prepared to cope with the forthcoming challenges.[11]

In effect, BMW was holding Hahn accountable to it under the 1967 Agreement.

This case fits into the mould of *Communications Materials, Inc. v. Court of Appeals*,^[12] in which the foreign corporation entered into a "Representative Agreement" and a "Licensing Agreement" with a domestic corporation, by virtue of which the latter was appointed "exclusive representative" in the Philippines for a stipulated commission. Pursuant to these contracts, the domestic corporation sold products exported by the foreign corporation and put up a service center for the products sold locally. This Court held that these acts constituted doing business in the Philippines. The arrangement showed that the foreign corporation's purpose was to penetrate the Philippine market and establish its presence in the Philippines.

In addition, BMW held out private respondent Hahn as its exclusive distributor in the Philippines, even as it

announced in the Asian region that Hahn was the "official BMW agent" in the Philippines.[13]

The Court of Appeals also found that petitioner Alfred Hahn dealt in other products, and not exclusively in BMW products, and, on this basis, ruled that Hahn was not an agent of BMW. (p. 14) This finding is based entirely on allegations of BMW in its motion to dismiss filed in the trial court and in its petition for certiorari before the Court of Appeals.[14] But this allegation was denied by Hahn[15] and therefore the Court of Appeals should not have cited it as if it were the fact.

Indeed this is not the only factual issue raised, which should have indicated to the Court of Appeals the necessity of affirming the trial court's order deferring resolution of BMW's motion to dismiss. Petitioner alleged that whether or not he is considered an agent of BMW, the fact is that BMW did business in the Philippines because it sold cars directly to Philippine buyers. [16] This was denied by BMW, which claimed that Hahn was not its agent and that, while it was true that it had sold cars to Philippine buyers, this was done without solicitation on its part.[17]

It is not true then that the question whether BMW is doing business could have been resolved simply by considering the parties' pleadings. There are genuine issues of facts which can only be determined on the basis of evidence duly presented. BMW cannot short circuit the process on the plea that to compel it to go to trial would be to deny its right not to submit to the jurisdiction of the trial court which precisely it denies. Rule 16, §3 authorizes courts to defer the resolution of a motion to dismiss until after the trial if the ground on which the motion is based does not appear to be indubitable. Here the record of the case bristles with factual issues and it is not at all clear whether some allegations correspond to the proof.

Anyway, private respondent need not apprehend that by responding to the summons it would be waiving its objection to the trial court's jurisdiction. It is now settled that, for purposes of having summons served on a foreign corporation in accordance with Rule 14, §14, it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction.[18] A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to Rule 14, §14. Such determination does not foreclose a contrary finding should evidence later show that it is not transacting business in the country. As this Court has explained:

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 Sigmetics claims, that its only involvement in the Philippines was through a passive investment in Sigfil, which it even later disposed of, and that TEAM Pacific is 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.[19]

Far from committing an abuse of discretion, the trial court properly deferred resolution of the motion to dismiss and thus avoided prematurely deciding a question which requires a factual basis, with the same result if it had denied the motion and conditionally assumed jurisdiction. It is the Court of Appeals which, by ruling that BMW is

not doing business on the basis merely of uncertain allegations in the pleadings, disposed of the whole case with finality and thereby deprived petitioner of his right to be heard on his cause of action. Nor was there justification for nullifying the writ of preliminary injunction issued by the trial court. Although the injunction was issued ex parte, the fact is that BMW was subsequently heard on its defense by filing a motion to dismiss.

WHEREFORE, the decision of the Court of Appeals is REVERSED and the case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Torres, Jr., JJ., concur.d

[1] Per Justice Cancio C. Garcia and concurred in by Justices Ramon U. Mabutas and Antonio M. Martinez, chairman.

[2] Rollo, pp. 75-78.

[3] Rollo, pp. 79-82.

[4] Rollo, pp. 83-84.

[5] Rollo, p. 593.

[6] Per Judge Maximiano Asuncion.

[7] The Foreign Investments Act of 1991 superseded Arts. 44-56 of the Omnibus Investments Code.

[8] Rollo, pp. 96, 140-141.

[9] Id., p. 141.

[10] Wang Laboratories, Inc. v. Mendoza, 156 SCRA 44 (1987).

[11] Rollo, p. 75.

[12] G.R. No. 102223, Aug. 22, 1996.

[13] Rollo, p. 213.

[14] Rollo, pp. 91,163.

[15] Rollo, p. 124.

[16] Rollo, pp. 245, 292.

[17] Rollo, pp. 177, 284, 600.

[18] Litton Mills. Inc. v. Court of Appeals. G.R. No. 94980. May 15, 1996; Signetics Corp. v. Court of Appeals, 225 SCRA 737 (1993).

[19] Signetics Corp. v . Court of Appeals, 225 SCRA at 746.

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