

**FRENCH OIL MILL MACHINERY CO., INC., PETITIONER, VS.
REGIONAL TRIAL COURT[RTC], CEBU CITY, BR. 11, AND LUDO &
LUYM OLEOCHEMICAL CO.), RESPONDENTS.**

G.R. No. 126477. September 11, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Private respondent filed a complaint for breach of contract with damages against petitioner foreign corporation and the latter's alleged Philippine agent Trans-World Trading Company. The complaint states in part that:

"1.2 Defendant French Oil Mill Machinery ('FOMMCO') is a corporation with principal office at, Piqua, Ohio, United States of America, engaged in business in the Philippines through its agent Trans-World Trading Company. FOMMCO may be served with summons and other court processes through its agent, Trans-World Trading Company.

"1.3 Defendant Trans-World Trading Company ('Trans-World') is the agent of FOMMCO in the Philippines, with office at Don Pablo Building, 144 Amorsolo St., Makati, Metro Manila, where it may be served with summons and other court processes."[1]

Summons was served on Trans-World which moved to dismiss the complaint arguing that it is not petitioner's agent. Petitioner itself filed a special appearance with motion to dismiss contending that the court had no jurisdiction over its person due to improper service of summons. It argued that (a) it is not doing business in the Philippines and (b) Trans-World is not its agent, therefore the procedure in Sections 14[2] and 17[3], Rule 14 should have been observed. The court a quo initially dismissed the complaint for lack of jurisdiction over petitioner[4] but on private respondent's motion for reconsideration, said court reversed the order of dismissal and ruled that summons was properly served on petitioner whom it found doing business in the Philippines with Trans-World as its agent. Petitioner elevated the case to the Court of Appeals (CA) via petition for certiorari and prohibition but to no avail. Not satisfied, petitioner filed this petition under Rule 45 which was initially dismissed for being filed late[5] but on petitioner's motion for reconsideration was reinstated by the Court.[6]

Petitioner contends that it is not doing business in the Philippines and that Trans-World is not its agent, and thus, the summons served on the latter has no effect on the former. The contention is not meritorious.

It is not enough to merely allege in the complaint that a defendant foreign corporation is doing business. For purposes of the rule on summons, the fact of doing business must first be "established by appropriate allegations in the complaint"[7] and the court in determining such fact need not go beyond the allegations therein.[8] In this case, the allegations that petitioner entered into a contract with private respondent to supply and install various machineries and equipments for the use of the latter's oil mill factory[9] and that the first shipment of machineries from petitioner was received by private respondent[10] are sufficient allegations that petitioner is doing business for purposes of Section 14, Rule 14. In any case, the determination that a foreign corporation is doing business is merely tentative and only to enable the local court to acquire jurisdiction over the person of the foreign

corporation through service of summons. It does not foreclose a subsequent finding to the contrary depending on the evidence.[11]

Having determined the issue of doing business, the Court will now inquire on whether petitioner was validly served with summons. Under the Rules of Court, if the defendant is a foreign corporation doing business in the Philippines, summons may be served on (a) its resident agent designated in accordance with law; (b) if there is no resident agent, the government official designated by law to that effect, or (c) any of its officer or agent within the Philippines.[12] Private respondent alleged in its complaint that Trans-World is petitioner's agent, so that the service was made on the latter. Such general allegation is insufficient to show the agency relationship between petitioner and Trans-World. However, although there is no requirement to first substantiate the allegation of agency yet it is necessary that there must be specific allegations in the complaint that establishes the connection between the principal foreign corporation and its alleged agent with respect to the transaction in question. Nowhere in the case of *Signetics Corporation v. CA*, [13] cited by both parties, did the court say that if the "complaint alleges that defendant has an agent in the Philippines, summons can validly be served thereto even without prior evidence of the truth of such factual allegation." It is only in the headnote of the reporter [14] where the quoted statement appears. Certainly a portion of the decision was paraphrase to convey that statement which is never meant nor mentioned in the ponencia and thus, was a misinterpretation of the scope of the decision. The headnote or syllabi is not the work of the court, nor does it state its decision. It is simply the work of the reporter, who gives his understanding of the decision, and is prepared for the convenience of the profession in the examination of the reports.[15] A headnote is not a part of the court's decision.

For purposes of the rules on summons, the determination of principal-agent relationship from the allegations in the complaint is only preliminary and is not even conclusive as to liability. Nothing bars the court from later making a different finding after the parties had substantiated their respective allegations with respect to agency should the same be disputed. As found by both courts below, petitioner treated Trans-World as its Philippine agent in the assailed transaction.[16] Such factual assessment is binding on this Court [17] and will not be disturbed as no exceptional circumstances [18] nor cogent reasons [19] were shown to justify its reversal. For it is well-settled that factual findings of the trial court are respected on appeal when it is supported by substantial evidence on record [20] and carry more weight when affirmed by the appellate court, [21] absent any proof that significant facts or circumstances were overlooked or disregarded which would have varied the outcome of the case.[22]

Finally, petitioner fears that it could no longer contest the jurisdiction of the court once it files an answer instead of a motion to dismiss, as the filing of the former amounts to voluntary appearance.[23] Suffice it to say that the filing of an answer per se should not be automatically treated as voluntary appearance by the defendant for purposes of summons. It should be noted that when the appearance of defendant is precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court.[24] The foregoing, however, need not be further discussed in this case as petitioner did not file any answer.

ACCORDINGLY, the petition is DENIED for lack of merit.

SO ORDERED.

Melo, Puno and Mendoza, JJ., concur.

Regalado, J., (Chairman) on official leave

[1]Annex "A" of Petition, Complaint dated May 23, 1992 of private respondent; Rollo, pp. 47-48.

[2]Service upon private 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 any of its officers or agents within the Philippines.

[3]Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action x x x the subject of which is, property within the Philippines, x x x service may, by leave of court be effected out of the Philippines by personal service as under Section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. X x x .

[4]Omnibus Resolution dated May 3, 1993 of Cebu City Regional Trial Court, Branch 11; Rollo, pp. 70-72.

[5]Minute Resolution, January 20, 1997; Rollo, p. 130.

[6]Minute Resolution, March 10, 1997; Rollo, p. 136.

[7]Signetics Corporation v. CA, 225 SCRA 737 clarifying the ruling in Pacific Micronesian Lines, Inc. v. Del Rosario and Pelington, 96 Phil. 231; In Hahn v. CA, 266 SCRA 537 the Court said that: "It is now settled that for purposes of having summons served on a foreign corporation in accordance with Rule 14, Section 14, it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines.

[8] Hahn v. CA, 266 SCRA 537; Litton v. Mills, Inc. v. CA, 326 Phil. 710.

[9] Complaint, p. 2; Rollo, p. 48.

[10] Complaint, p. 7; Rollo, p. 53.

[11] Hahn v. CA, 266 SCRA 537.

[12] Far East International Export and Import Corporation v. Nankai Kagyo Co., Ltd., 6 SCRA 725; See also Section 14, Rule 14 (now Section 12, Rule 14 of the 1997 Rules of Civil Procedure).

[13] 225 SCRA 737.

[14] SUPREME COURT REPORTS ANNOTATED.

[15] U.S. v. Detroit Timber & Lumber Co., 200 U.S. 321, 337.

[16] Annex "D" of Petition; Rollo, pp. 73-74.

[17] Willex Plastic Industries Corp. v. CA, 256 SCRA 478

[18] Food Terminal Inc. v. CA, 262 SCRA 339.

[19] Matuguina Integrated Wood Products, Inc.v. CA, 263 SCRA 490.

[20] Ditching v. CA, 263 SCRA 343; Spouses Mario and Carmelita Bella v. CA, G.R. No. 105997, September 26, 1997.

[21] Meneses v. CA, 246 SCRA 162; Catapusan v. CA, 264 SCRA 534; Chua Tiong Tay v. CA, and Goldrock Construction, 312 Phil. 1128; Chua v. CA, 312 Phil. 857.

[22] People v. Buemio, 265 SCRA 587; People v. Pajaro, 265 SCRA 668; Dr. Alforte v. Santos, 313 Phil. 384;

Acevedo Optical v. CA, 250 SCRA 409.

[23] See Santos v. NLRC, 254 SCRA 673 and Amigo v. CA, 253 SCRA 382.

[24] Navale v. CA, 253 SCRA 705.

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