

PRISCILLA C. MIJARES, LORETTA ANN P. ROSALES, HILDA B. NARCISO, SR. MARIANI DIMARANAN, SFIC, AND JOEL C. LAMANGAN IN THEIR BEHALF AND ON BEHALF OF THE CLASS PLAINTIFFS IN CLASS ...

G.R. NO. 139325. April 12, 2005

Ponente: TINGA, J.

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TINGA, J.:

Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the desaparecidos arouse outrage and sympathy in the hearts of the fair-minded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.

The petitioners in this case are prominent victims of human rights violations[1] who, deprived of the opportunity to directly confront the man who once held absolute rule over this country, have chosen to do battle instead with the earthly representative, his estate. The clash has been for now interrupted by a trial court ruling, seemingly comported to legal logic, that required the petitioners to pay a whopping filing fee of over Four Hundred Seventy-Two Million Pesos (P472,000,000.00) in order that they be able to enforce a judgment awarded them by a foreign court. There is an understandable temptation to cast the struggle within the simplistic confines of a morality tale, and to employ short-cuts to arrive at what might seem the desirable solution. But easy, reflexive resort to the equity principle all too often leads to a result that may be morally correct, but legally wrong.

Nonetheless, the application of the legal principles involved in this case will comfort those who maintain that our substantive and procedural laws, for all their perceived ambiguity and susceptibility to myriad interpretations, are inherently fair and just. The relief sought by the petitioners is expressly mandated by our laws and conforms to established legal principles. The granting of this petition for certiorari is warranted in order to correct the legally infirm and unabashedly unjust ruling of the respondent judge.

The essential facts bear little elaboration. On 9 May 1991, a complaint was filed with the United States District Court (US District Court), District of Hawaii, against the Estate of former Philippine President Ferdinand E. Marcos (Marcos Estate). The action was brought forth by ten Filipino citizens[2] who each alleged having suffered human rights abuses such as arbitrary detention, torture and rape in the hands of police or military forces during the Marcos regime.[3] The Alien Tort Act was invoked as basis for the US District Court's jurisdiction over the complaint, as it involved a suit by aliens for tortious violations of international law.[4] These plaintiffs

brought the action on their own behalf and on behalf of a class of similarly situated individuals, particularly consisting of all current civilian citizens of the Philippines, their heirs and beneficiaries, who between 1972 and 1987 were tortured, summarily executed or had disappeared while in the custody of military or paramilitary groups. Plaintiffs alleged that the class consisted of approximately ten thousand (10,000) members; hence, joinder of all these persons was impracticable.

The institution of a class action suit was warranted under Rule 23(a) and (b)(1)(B) of the US Federal Rules of Civil Procedure, the provisions of which were invoked by the plaintiffs. Subsequently, the US District Court certified the case as a class action and created three (3) sub-classes of torture, summary execution and disappearance victims.[5] Trial ensued, and subsequently a jury rendered a verdict and an award of compensatory and exemplary damages in favor of the plaintiff class. Then, on 3 February 1995, the US District Court, presided by Judge Manuel L. Real, rendered a Final Judgment (Final Judgment) awarding the plaintiff class a total of One Billion Nine Hundred Sixty Four Million Five Thousand Eight Hundred Fifty Nine Dollars and Ninety Cents (\$1,964,005,859.90). The Final Judgment was eventually affirmed by the US Court of Appeals for the Ninth Circuit, in a decision rendered on 17 December 1996.[6]

On 20 May 1997, the present petitioners filed Complaint with the Regional Trial Court, City of Makati (Makati RTC) for the enforcement of the Final Judgment. They alleged that they are members of the plaintiff class in whose favor the US District Court awarded damages.[7] They argued that since the Marcos Estate failed to file a petition for certiorari with the US Supreme Court after the Ninth Circuit Court of Appeals had affirmed the Final Judgment, the decision of the US District Court had become final and executory, and hence should be recognized and enforced in the Philippines, pursuant to Section 50, Rule 39 of the Rules of Court then in force.[8]

On 5 February 1998, the Marcos Estate filed a motion to dismiss, raising, among others, the non-payment of the correct filing fees. It alleged that petitioners had only paid Four Hundred Ten Pesos (P410.00) as docket and filing fees, notwithstanding the fact that they sought to enforce a monetary amount of damages in the amount of over Two and a Quarter Billion US Dollars (US\$2.25 Billion). The Marcos Estate cited Supreme Court Circular No. 7, pertaining to the proper computation and payment of docket fees. In response, the petitioners claimed that an action for the enforcement of a foreign judgment is not capable of pecuniary estimation; hence, a filing fee of only Four Hundred Ten Pesos (P410.00) was proper, pursuant to Section 7(c) of Rule 141.[9]

On 9 September 1998, respondent Judge Santiago Javier Ranada[10] of the Makati RTC issued the subject Order dismissing the complaint without prejudice. Respondent judge opined that contrary to the petitioners' submission, the subject matter of the complaint was indeed capable of pecuniary estimation, as it involved a judgment rendered by a foreign court ordering the payment of definite sums of money, allowing for easy determination of the value of the foreign judgment. On that score, Section 7(a) of Rule 141 of the Rules of Civil Procedure would find application, and the RTC estimated the proper amount of filing fees was approximately Four Hundred Seventy Two Million Pesos, which obviously had not been paid.

Not surprisingly, petitioners filed a Motion for Reconsideration, which Judge Ranada denied in an Order dated 28 July 1999. From this denial, petitioners filed a Petition for Certiorari under Rule 65 assailing the twin orders of respondent judge.[11] They prayed for the annulment of the questioned orders, and an order directing the reinstatement of Civil Case No. 97-1052 and the conduct of appropriate proceedings thereon.

Petitioners submit that their action is incapable of pecuniary estimation as the subject matter of the suit is the enforcement of a foreign judgment, and not an action for the collection of a sum of money or recovery of damages. They also point out that to require the class plaintiffs to pay Four Hundred Seventy Two Million Pesos (P472,000,000.00) in filing fees would negate and render inutile the liberal construction ordained by the Rules of

Court, as required by Section 6, Rule 1 of the Rules of Civil Procedure, particularly the inexpensive disposition of every action.

Petitioners invoke Section 11, Article III of the Bill of Rights of the Constitution, which provides that "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty," a mandate which is essentially defeated by the required exorbitant filing fee. The adjudicated amount of the filing fee, as arrived at by the RTC, was characterized as indisputably unfair, inequitable, and unjust.

The Commission on Human Rights (CHR) was permitted to intervene in this case.[12] It urged that the petition be granted and a judgment rendered, ordering the enforcement and execution of the District Court judgment in accordance with Section 48, Rule 39 of the 1997 Rules of Civil Procedure. For the CHR, the Makati RTC erred in interpreting the action for the execution of a foreign judgment as a new case, in violation of the principle that once a case has been decided between the same parties in one country on the same issue with finality, it can no longer be relitigated again in another country.[13] The CHR likewise invokes the principle of comity, and of vested rights.

The Court's disposition on the issue of filing fees will prove a useful jurisprudential guidepost for courts confronted with actions enforcing foreign judgments, particularly those lodged against an estate. There is no basis for the issuance a limited pro hac vice ruling based on the special circumstances of the petitioners as victims of martial law, or on the emotionally-charged allegation of human rights abuses.

An examination of Rule 141 of the Rules of Court readily evinces that the respondent judge ignored the clear letter of the law when he concluded that the filing fee be computed based on the total sum claimed or the stated value of the property in litigation.

In dismissing the complaint, the respondent judge relied on Section 7(a), Rule 141 as basis for the computation of the filing fee of over P472 Million. The provision states:

SEC. 7. Clerk of Regional Trial Court.-

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc., complaint, or a complaint in intervention, and for all clerical services in the same time, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

1. Less than P 100,00.00
- P 500.00
2. P 100,000.00 or more but less than P 150,000.00
- P 800.00
3. P 150,000.00 or more but less than P 200,000.00
- P1,000.00
4. P 200,000.00 or more but less than P 250,000.00
- P1,500.00
5. P 250,000.00 or more but less than P 300,00.00
- P1,750.00

6. P 300,000.00 or more but not more than P 400,000.00

- P2,000.00

7. P 350,000.00 or more but not more than P400,000.00

- P2,250.00

8. For each P 1,000.00 in excess of P 400,000.00

- P 10.00

...

(Emphasis supplied)

Obviously, the above-quoted provision covers, on one hand, ordinary actions, permissive counterclaims, third-party, etc. complaints and complaints-in-interventions, and on the other, money claims against estates which are not based on judgment. Thus, the relevant question for purposes of the present petition is whether the action filed with the lower court is a "money claim against an estate not based on judgment."

Petitioners' complaint may have been lodged against an estate, but it is clearly based on a judgment, the Final Judgment of the US District Court. The provision does not make any distinction between a local judgment and a foreign judgment, and where the law does not distinguish, we shall not distinguish.

A reading of Section 7 in its entirety reveals several instances wherein the filing fee is computed on the basis of the amount of the relief sought, or on the value of the property in litigation. The filing fee for requests for extrajudicial foreclosure of mortgage is based on the amount of indebtedness or the mortgagee's claim.[14] In special proceedings involving properties such as for the allowance of wills, the filing fee is again based on the value of the property.[15] The aforecited rules evidently have no application to petitioners' complaint.

Petitioners rely on Section 7(b), particularly the proviso on actions where the value of the subject matter cannot be estimated. The provision reads in full:

SEC. 7. Clerk of Regional Trial Court.-

(b) For filing

1. Actions where the value of the subject matter cannot be estimated

--- P 600.00

2. Special civil actions except judicial foreclosure which shall be governed by paragraph (a) above

--- P 600.00

3. All other actions not involving property

--- P 600.00

In a real action, the assessed value of the property, or if there is none, the estimated value, thereof shall be alleged by the claimant and shall be the basis in computing the fees.

It is worth noting that the provision also provides that in real actions, the assessed value or estimated value of the property shall be alleged by the claimant and shall be the basis in computing the fees. Yet again, this provision does not apply in the case at bar. A real action is one where the plaintiff seeks the recovery of real property or an

action affecting title to or recovery of possession of real property.[16] Neither the complaint nor the award of damages adjudicated by the US District Court involves any real property of the Marcos Estate.

Thus, respondent judge was in clear and serious error when he concluded that the filing fees should be computed on the basis of the schematic table of Section 7(a), as the action involved pertains to a claim against an estate based on judgment. What provision, if any, then should apply in determining the filing fees for an action to enforce a foreign judgment?

To resolve this question, a proper understanding is required on the nature and effects of a foreign judgment in this jurisdiction.

The rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.[17] This principle was prominently affirmed in the leading American case of *Hilton v. Guyot*[18] and expressly recognized in our jurisprudence beginning with *Ingenholl v. Walter E. Olsen & Co.*[19] The conditions required by the Philippines for recognition and enforcement of a foreign judgment were originally contained in Section 311 of the Code of Civil Procedure, which was taken from the California Code of Civil Procedure which, in turn, was derived from the California Act of March 11, 1872.[20] Remarkably, the procedural rule now outlined in Section 48, Rule 39 of the Rules of Civil Procedure has remained unchanged down to the last word in nearly a century. Section 48 states:

SEC. 48. Effect of foreign judgments. - The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

(a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title;

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

There is an evident distinction between a foreign judgment in an action in rem and one in personam. For an action in rem, the foreign judgment is deemed conclusive upon the title to the thing, while in an action in personam, the foreign judgment is presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title.[21] However, in both cases, the foreign judgment is susceptible to impeachment in our local courts on the grounds of want of jurisdiction or notice to the party,[22] collusion, fraud,[23] or clear mistake of law or fact.[24] Thus, the party aggrieved by the foreign judgment is entitled to defend against the enforcement of such decision in the local forum. It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy.[25]

It is clear then that it is usually necessary for an action to be filed in order to enforce a foreign judgment[26], even if such judgment has conclusive effect as in the case of in rem actions, if only for the purpose of allowing the losing party an opportunity to challenge the foreign judgment, and in order for the court to properly determine its efficacy.[27] Consequently, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity.[28]

The rules are silent as to what initiatory procedure must be undertaken in order to enforce a foreign judgment in the Philippines. But there is no question that the filing of a civil complaint is an appropriate measure for such purpose. A civil action is one by which a party sues another for the enforcement or protection of a right,[29] and clearly an action to enforce a foreign judgment is in essence a vindication of a right prescinding either from a

"conclusive judgment upon title" or the "presumptive evidence of a right." [30] Absent perhaps a statutory grant of jurisdiction to a quasi-judicial body, the claim for enforcement of judgment must be brought before the regular courts. [31]

There are distinctions, nuanced but discernible, between the cause of action arising from the enforcement of a foreign judgment, and that arising from the facts or allegations that occasioned the foreign judgment. They may pertain to the same set of facts, but there is an essential difference in the right-duty correlatives that are sought to be vindicated. For example, in a complaint for damages against a tortfeasor, the cause of action emanates from the violation of the right of the complainant through the act or omission of the respondent. On the other hand, in a complaint for the enforcement of a foreign judgment awarding damages from the same tortfeasor, for the violation of the same right through the same manner of action, the cause of action derives not from the tortious act but from the foreign judgment itself.

More importantly, the matters for proof are different. Using the above example, the complainant will have to establish before the court the tortious act or omission committed by the tortfeasor, who in turn is allowed to rebut these factual allegations or prove extenuating circumstances. Extensive litigation is thus conducted on the facts, and from there the right to and amount of damages are assessed. On the other hand, in an action to enforce a foreign judgment, the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds.

As stated in Section 48, Rule 39, the actionable issues are generally restricted to a review of jurisdiction of the foreign court, the service of personal notice, collusion, fraud, or mistake of fact or law. The limitations on review is in consonance with a strong and pervasive policy in all legal systems to limit repetitive litigation on claims and issues. [32] Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes, and - in a larger sense - to promote what Lord Coke in the Ferrer's Case of 1599 stated to be the goal of all law: "rest and quietness." [33] If every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation. [34]

Petitioners appreciate this distinction, and rely upon it to support the proposition that the subject matter of the complaint-the enforcement of a foreign judgment-is incapable of pecuniary estimation. Admittedly the proposition, as it applies in this case, is counter-intuitive, and thus deserves strict scrutiny. For in all practical intents and purposes, the matter at hand is capable of pecuniary estimation, down to the last cent. In the assailed Order, the respondent judge pounced upon this point without equivocation:

The Rules use the term "where the value of the subject matter cannot be estimated." The subject matter of the present case is the judgment rendered by the foreign court ordering defendant to pay plaintiffs definite sums of money, as and for compensatory damages. The Court finds that the value of the foreign judgment can be estimated; indeed, it can even be easily determined. The Court is not minded to distinguish between the enforcement of a judgment and the amount of said judgment, and separate the two, for purposes of determining the correct filing fees. Similarly, a plaintiff suing on promissory note for P1 million cannot be allowed to pay only P400 filing fees (sic), on the reasoning that the subject matter of his suit is not the P1 million, but the enforcement of the promissory note, and that the value of such "enforcement" cannot be estimated. [35]

The jurisprudential standard in gauging whether the subject matter of an action is capable of pecuniary estimation is well-entrenched. The Marcos Estate cites *Singsong v. Isabela Sawmill* and *Raymundo v. Court of Appeals*, which ruled:

[I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it

is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).

On the other hand, petitioners cite the ponencia of Justice JBL Reyes in *Lapitan v. Scandia*,^[36] from which the rule in *Singsong and Raymundo* actually derives, but which incorporates this additional nuance omitted in the latter cases:

xxx However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance.^[37]

Petitioners go on to add that among the actions the Court has recognized as being incapable of pecuniary estimation include legality of conveyances and money deposits,^[38] validity of a mortgage,^[39] the right to support,^[40] validity of documents,^[41] rescission of contracts,^[42] specific performance,^[43] and validity or annulment of judgments.^[44] It is urged that an action for enforcement of a foreign judgment belongs to the same class.

This is an intriguing argument, but ultimately it is self-evident that while the subject matter of the action is undoubtedly the enforcement of a foreign judgment, the effect of a providential award would be the adjudication of a sum of money. Perhaps in theory, such an action is primarily for "the enforcement of the foreign judgment," but there is a certain obtuseness to that sort of argument since there is no denying that the enforcement of the foreign judgment will necessarily result in the award of a definite sum of money.

But before we insist upon this conclusion past beyond the point of reckoning, we must examine its possible ramifications. Petitioners raise the point that a declaration that an action for enforcement of foreign judgment may be capable of pecuniary estimation might lead to an instance wherein a first level court such as the Municipal Trial Court would have jurisdiction to enforce a foreign judgment. But under the statute defining the jurisdiction of first level courts, B.P. 129, such courts are not vested with jurisdiction over actions for the enforcement of foreign judgments.

Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases. - Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed One hundred thousand pesos (P100,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed Two hundred thousand pesos (P200,000.00) exclusive of interest damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: Provided, That where there are several claims or causes of action between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (P20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (P50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That value of such property shall be determined by the assessed value of the adjacent lots.[45]

Section 33 of B.P. 129 refers to instances wherein the cause of action or subject matter pertains to an assertion of rights and interests over property or a sum of money. But as earlier pointed out, the subject matter of an action to enforce a foreign judgment is the foreign judgment itself, and the cause of action arising from the adjudication of such judgment.

An examination of Section 19(6), B.P. 129 reveals that the instant complaint for enforcement of a foreign judgment, even if capable of pecuniary estimation, would fall under the jurisdiction of the Regional Trial Courts, thus negating the fears of the petitioners. Indeed, an examination of the provision indicates that it can be relied upon as jurisdictional basis with respect to actions for enforcement of foreign judgments, provided that no other court or office is vested jurisdiction over such complaint:

Sec. 19. Jurisdiction in civil cases. - Regional Trial Courts shall exercise exclusive original jurisdiction:

xxx

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction or any court, tribunal, person or body exercising judicial or quasi-judicial functions.

Thus, we are comfortable in asserting the obvious, that the complaint to enforce the US District Court judgment is one capable of pecuniary estimation. But at the same time, it is also an action based on judgment against an estate, thus placing it beyond the ambit of Section 7(a) of Rule 141. What provision then governs the proper computation of the filing fees over the instant complaint? For this case and other similarly situated instances, we find that it is covered by Section 7(b)(3), involving as it does, "other actions not involving property."

Notably, the amount paid as docket fees by the petitioners on the premise that it was an action incapable of pecuniary estimation corresponds to the same amount required for "other actions not involving property." The petitioners thus paid the correct amount of filing fees, and it was a grave abuse of discretion for respondent judge to have applied instead a clearly inapplicable rule and dismissed the complaint.

There is another consideration of supreme relevance in this case, one which should disabuse the notion that the doctrine affirmed in this decision is grounded solely on the letter of the procedural rule. We earlier adverted to the the internationally recognized policy of preclusion,[46] as well as the principles of comity, utility and convenience of nations[47] as the basis for the evolution of the rule calling for the recognition and enforcement of foreign judgments. The US Supreme Court in *Hilton v. Guyot*[48] relied heavily on the concept of comity, as especially derived from the landmark treatise of Justice Story in his *Commentaries on the Conflict of Laws of 1834*. [49] Yet the notion of "comity" has since been criticized as one "of dim contours"[50] or suffering from a number of fallacies.[51] Other conceptual bases for the recognition of foreign judgments have evolved such as the vested rights theory or the modern doctrine of obligation.[52]

There have been attempts to codify through treaties or multilateral agreements the standards for the recognition and enforcement of foreign judgments, but these have not borne fruition. The members of the European Common Market accede to the Judgments Convention, signed in 1978, which eliminates as to participating countries all of such obstacles to recognition such as reciprocity and *révision au fond*.^[53] The most ambitious of these attempts is the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, prepared in 1966 by the Hague Conference of International Law.^[54] While it has not received the ratifications needed to have it take effect,^[55] it is recognized as representing current scholarly thought on the topic.^[56] Neither the Philippines nor the United States are signatories to the Convention.

Yet even if there is no unanimity as to the applicable theory behind the recognition and enforcement of foreign judgments or a universal treaty rendering it obligatory force, there is consensus that the viability of such recognition and enforcement is essential. Steiner and Vagts note:

. . . The notion of unconnected bodies of national law on private international law, each following a quite separate path, is not one conducive to the growth of a transnational community encouraging travel and commerce among its members. There is a contemporary resurgence of writing stressing the identity or similarity of the values that systems of public and private international law seek to further - a community interest in common, or at least reasonable, rules on these matters in national legal systems. And such generic principles as reciprocity play an important role in both fields.^[57]

Salonga, whose treatise on private international law is of worldwide renown, points out:

Whatever be the theory as to the basis for recognizing foreign judgments, there can be little dispute that the end is to protect the reasonable expectations and demands of the parties. Where the parties have submitted a matter for adjudication in the court of one state, and proceedings there are not tainted with irregularity, they may fairly be expected to submit, within the state or elsewhere, to the enforcement of the judgment issued by the court.^[58]

There is also consensus as to the requisites for recognition of a foreign judgment and the defenses against the enforcement thereof. As earlier discussed, the exceptions enumerated in Section 48, Rule 39 have remain unchanged since the time they were adapted in this jurisdiction from long standing American rules. The requisites and exceptions as delineated under Section 48 are but a restatement of generally accepted principles of international law. Section 98 of The Restatement, Second, Conflict of Laws, states that "a valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States," and on its face, the term "valid" brings into play requirements such notions as valid jurisdiction over the subject matter and parties.^[59] Similarly, the notion that fraud or collusion may preclude the enforcement of a foreign judgment finds affirmation with foreign jurisprudence and commentators,^[60] as well as the doctrine that the foreign judgment must not constitute "a clear mistake of law or fact."^[61] And finally, it has been recognized that "public policy" as a defense to the recognition of judgments serves as an umbrella for a variety of concerns in international practice which may lead to a denial of recognition.^[62]

The viability of the public policy defense against the enforcement of a foreign judgment has been recognized in this jurisdiction.^[63] This defense allows for the application of local standards in reviewing the foreign judgment, especially when such judgment creates only a presumptive right, as it does in cases wherein the judgment is against a person.^[64] The defense is also recognized within the international sphere, as many civil law nations adhere to a broad public policy exception which may result in a denial of recognition when the foreign court, in the light of the choice-of-law rules of the recognizing court, applied the wrong law to the case.^[65] The public policy defense can safeguard against possible abuses to the easy resort to offshore litigation if it can be demonstrated that the original claim is noxious to our constitutional values.

There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof. However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations.[66] The classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinio juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[67]

While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is among those generally accepted principles of international law.[68] As earlier demonstrated, there is a widespread practice among states accepting in principle the need for such recognition and enforcement, albeit subject to limitations of varying degrees. The fact that there is no binding universal treaty governing the practice is not indicative of a widespread rejection of the principle, but only a disagreement as to the imposable specific rules governing the procedure for recognition and enforcement.

Aside from the widespread practice, it is indubitable that the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, adopted in various foreign jurisdictions. In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines. Again, there may be distinctions as to the rules adopted by each particular state,[69] but they all prescind from the premise that there is a rule of law obliging states to allow for, however generally, the recognition and enforcement of a foreign judgment. The bare principle, to our mind, has attained the status of *opinio juris* in international practice.

This is a significant proposition, as it acknowledges that the procedure and requisites outlined in Section 48, Rule 39 derive their efficacy not merely from the procedural rule, but by virtue of the incorporation clause of the Constitution. Rules of procedure are promulgated by the Supreme Court,[70] and could very well be abrogated or revised by the high court itself. Yet the Supreme Court is obliged, as are all State components, to obey the laws of the land, including generally accepted principles of international law which form part thereof, such as those ensuring the qualified recognition and enforcement of foreign judgments.[71]

Thus, relative to the enforcement of foreign judgments in the Philippines, it emerges that there is a general right recognized within our body of laws, and affirmed by the Constitution, to seek recognition and enforcement of foreign judgments, as well as a right to defend against such enforcement on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

The preclusion of an action for enforcement of a foreign judgment in this country merely due to an exorbitant assessment of docket fees is alien to generally accepted practices and principles in international law. Indeed, there are grave concerns in conditioning the amount of the filing fee on the pecuniary award or the value of the property subject of the foreign decision. Such pecuniary award will almost certainly be in foreign denomination, computed in accordance with the applicable laws and standards of the forum.[72] The vagaries of inflation, as well as the relative low-income capacity of the Filipino, to date may very well translate into an award virtually unenforceable in this country, despite its integral validity, if the docket fees for the enforcement thereof were predicated on the amount of the award sought to be enforced. The theory adopted by respondent judge and the Marcos Estate may even lead to absurdities, such as if applied to an award involving real property situated in places such as the

United States or Scandinavia where real property values are inexorably high. We cannot very well require that the filing fee be computed based on the value of the foreign property as determined by the standards of the country where it is located.

As crafted, Rule 141 of the Rules of Civil Procedure avoids unreasonableness, as it recognizes that the subject matter of an action for enforcement of a foreign judgment is the foreign judgment itself, and not the right-duty correlatives that resulted in the foreign judgment. In this particular circumstance, given that the complaint is lodged against an estate and is based on the US District Court's Final Judgment, this foreign judgment may, for purposes of classification under the governing procedural rule, be deemed as subsumed under Section 7(b)(3) of Rule 141, i.e., within the class of "all other actions not involving property." Thus, only the blanket filing fee of minimal amount is required.

Finally, petitioners also invoke Section 11, Article III of the Constitution, which states that "[F]ree access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty." Since the provision is among the guarantees ensured by the Bill of Rights, it certainly gives rise to a demandable right. However, now is not the occasion to elaborate on the parameters of this constitutional right. Given our preceding discussion, it is not necessary to utilize this provision in order to grant the relief sought by the petitioners. It is axiomatic that the constitutionality of an act will not be resolved by the courts if the controversy can be settled on other grounds^[73] or unless the resolution thereof is indispensable for the determination of the case.^[74]

One more word. It bears noting that Section 48, Rule 39 acknowledges that the Final Judgment is not conclusive yet, but presumptive evidence of a right of the petitioners against the Marcos Estate. Moreover, the Marcos Estate is not precluded to present evidence, if any, of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. This ruling, decisive as it is on the question of filing fees and no other, does not render verdict on the enforceability of the Final Judgment before the courts under the jurisdiction of the Philippines, or for that matter any other issue which may legitimately be presented before the trial court. Such issues are to be litigated before the trial court, but within the confines of the matters for proof as laid down in Section 48, Rule 39. On the other hand, the speedy resolution of this claim by the trial court is encouraged, and contumacious delay of the decision on the merits will not be brooked by this Court.

WHEREFORE, the petition is GRANTED. The assailed orders are NULLIFIED and SET ASIDE, and a new order REINSTATING Civil Case No. 97-1052 is hereby issued. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Priscilla Mijares is a judge of the Regional Trial Court of Pasay, Loretta Ann P. Rosales an incumbent member of the House of Representatives, and Joel Lamangan a noted film director.

[2] Namely Celsa Hilao, Josefina Hilao Forcadilla, Arturo P. Revilla, Jr., Rodolfo G. Benosa, Danila M. Fuente, Renato Pineda, Domiciano Amparo, Chistopher Sorio, Jose Duran, and Adora Faye De Vera. Rollo, pp. 42-47.

[3] Except for Celsa Hilao, who instead alleged that her daughter, Liliosa Hilao, had been tortured then executed by military personnel during martial law. *Id.* at 42-43.

[4] *Id.* at 42.

[5] *Id.* at 35.

[6] The Opinion was authored by Circuit Judge Betty B. Fletcher and concurred in by Circuit Judge Harry Pragerson. Circuit Judge Pamela Ann Rymer filed an opinion concurring and dissenting in part, her dissent centering on the methodology used for computing compensatory damages. Rollo, pp. 84-132.

[7] Under Section 58 of the US Federal Rules of Civil Procedure, the judgment for compensatory damages in a class suit is awarded to a randomly selected... Petitioner Joel Lamangan was among the randomly selected claimants of the Torture subclass awarded damages by the US District Court. See Rollo, p. 71.

[8] Now Section 48, Rule 39, 1997 Rules of Civil Procedure.

[9] Since increased to P600.00.

[10] Now an Associate Justice of the Court of Appeals.

[11] Petitioners correctly note that they are precluded from filing an appeal on certiorari under Section 1, Rule 41 of the Rules of Civil Procedure, which bars an appeal taken from an order dismissing an action without prejudice and dictates the aggrieved party to file an appropriate civil action under Rule 65 instead. See Rollo, p. 9

[12] In a Resolution dated 4 December 2000. Rollo, p. 282.

[13] Id. at 205.

[14] See Section 7(c), Rule 141.

[15] See Section 7(d), id.

[16] *Gochan v. Gochan*, 423 Phil. 491, 502 (2001).

[17] *Philippine Aluminum Wheels v. Fasgi Enterprises, Inc.*, G.R. No. 137378, 12 October 2000, 342 SCRA 722, 734; citing *Jovito R Salonga, Rex Bookstore, Manila, Philippines*, 1995 Edition, p. 543.

[18] 159 U.S. 113 (1895)

[19] 47 Phil. 189 (1925). While the Philippine Supreme Court in this case refused to enforce the judgment of the Hongkong Court on the ground of mistake of law or fact, it was reversed on appeal to the US Supreme Court.

[20] Id. JJ. Malcolm and Avanceña, dissenting.

[21] See also *Borthwick v. Hon. Castro-Bartolome*, G.R. No. L-57338, 23 July 1987, 152 SCRA 129, 235; *Philippine International Shipping Corp. v. Court of Appeals*, G.R. No. 77085, 26 April 1989, 172 SCRA 810, 819.

[22]" Ultimately, matters of remedy and procedure such as those relating to the service of summons or court process upon the defendant, the authority of counsel to appear and represent a defendant and the formal requirements in a decision are governed by the *lex fori* or the internal law of the forum." *Asiavest Merchant Bankers (M) Berhad v. Court of Appeals*, 414 Phil. 13, 29 (1991).

[23] "Fraud, to hinder the enforcement within this jurisdiction of a foreign judgment, must be extrinsic, i.e., fraud based on facts not controverted or resolved in the case where judgment is rendered, or that which would go to the jurisdiction of the court or would deprive the party against whom judgment is rendered a chance to defend the action to which he has a meritorious case or defense. In fine, intrinsic fraud, that is, fraud which goes to the very existence of the cause of action - such as fraud in obtaining the consent to a contract - is deemed already adjudged, and it, therefore, cannot militate against the recognition or enforcement of the foreign judgment." *Philippine Aluminum Wheels v. Fasgi Enterprises, Inc.*, supra note 17.

[24] See, e.g., *Nagarmull v. Binalbagan-Isabela Sugar Co.*, 144 Phil. 72, 77 (1970); *Ingenholl v. Walter E. Olsen and Company, Inc.*, *supra* note 20.

[25] *Roeher v. Rodriguez*, G.R. No. 142820, 20 June 2003, 404 SCRA 495, 503.

[26] "An action must be brought in the second state upon the judgment recovered in the first." J. Salonga, *Private International Law* (3rd ed., 1967), at 500; citing *Goodrich*, 600, 601; *Cheshire*, 628; II *Beale*, 1377. But see E. Scoles and P. Hay, *Conflict of Laws* (2nd ed., 1982), at 969, which recognizes that civil law countries provide a procedure to give executory force to the foreign judgment, as distinguished from the Anglo-American common law (but not statutory) practice of requiring an action on the judgment.

[27] See *Philsec Investment Corp. v. Court of Appeals*, G.R. No. 103493, 19 June 1997, 274 SCRA 102, 110.

[28] *Northwest Orient Airlines v. Court of Appeals*, G.R. No. 112573, 9 February 1995, 241 SCRA 192, 199.

[29] See Section 3(a), Rule 1, Rules of Civil Procedure.

[30] Every ordinary civil action must be based on a cause of action. Section 1, Rule 2, Rules of Civil Procedure. A cause of action is the act or omission by which a party violates a right of another. Section 2, Rule 2, Rules of Civil Procedure.

[31] See *Pacific Asia Overseas Shipping Corp. v. NLRC*, G.R. No. 76595, 6 May 1988, 161 SCRA 122, 133.

[32] *Soles & Hay*, *supra* note 27, at 916.

[33] *Ibid.*

[34] *Salonga*, *supra* note 27, at 514; citing *Cheshire*, 803.

[35] *Rollo*, p. 30. Emphasis omitted.

[36] 133 Phil. 526 (1968).

[37] *Id.* at 528.

[38] *Rollo*, at 326, citing *Arroz v. Alojado*, 19 SCRA 711 (1967).

[39] *Ibid* citing *Bunayog v. Tunas*, 106 Phil. 715 (1959)

[40] *Id.* citing *Baito v. Sarmiento*, 109 Phil. 148 (1960).

[41] *Id.* citing *De Rivera v. Halili*, 9 SCRA 59 (1963).

[42] *Id.* citing *Bautista v. Lim*, 88 SCRA 479 (1979) and *De Leon v. Court of Appeals*, 287 SCRA 94 (1998).

[43] *Id.* citing *Amorganda v. Court of Appeals*, 166 SCRA 203 (1988); *Ortigas & Company v. Herrera*, 120 SCRA 89 (1983).

[44] *Id.* citing *Mercado v. Ubay*, 187 SCRA 719 (1990) and *Filipino Pipe Workers Union v. Batario, Jr.*, 163 SCRA 789 (1988).

[45] As amended by Rep. Act No. 7691.

[46] *Supra* note 32.

[47] *Supra* note 17.

[48] *Supra* note 18.

[49] H. Steiner & D. Vagts, *Transnational Legal Problems: Materials and Text* (2nd ed., 1976), at 775.

[50] *Ibid.*

[51] See Salonga, *supra* note 27, at 66.

[52] *Id.* at 502-503.

[53] Scoles & Hays, *supra* note 27, at 970.

[54] Steiner & Vagts, *supra* note 51, at 808. "A decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State under the terms of this Convention - (1) if the decision was given by a court considered to have jurisdiction within the meaning of this Convention, and (2) if it is no longer subject to ordinary forms of review in the State of origin." Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Chapter II, Article 4.

[55] To date, only Cyprus, the Netherlands, Portugal and Kuwait have either ratified or acceded to the Convention.

[56] Steiner & Vagts, *supra* note 51.

[57] Steiner & Vagts, *supra* note 51, at 776.

[58] Salonga, *supra* note 51, at 502.

[59] Steiner & Vagts, *supra* note 27, at 779. "A policy common to all legal systems is to provide for the final resolution of disputes. The policy is furthered by each nation's adoption of a view of "jurisdiction in the international sense" which recognizes the foreign court's assertion of jurisdiction as satisfying its own notions of due process in circumstances in which it itself would have asserted jurisdiction." Soles & Hay, *supra* note 27, at 976; citing Hay, *International versus Interstate Conflicts Law in the United States*, 35 *Rabels Zeitschrift* 429, 450 n. 101 (1971) and *Cherun v. Frishman*, 236 F. Supp. 292 (D.D.C. 1964). Salonga, in affirming the rule of want of jurisdiction, cites the commentaries of Cheshire, Wolff, Goodrich and Nussbaum.

[60] See, e.g., Salonga, *supra* note 27 at 513.

[61] *Ibid.*; citing *Henderson v. Henderson*, 6 Q.B. (1844) 288; *Vanquelin v. Bouard*, 15 C.B. (N.S. 1863) 341; *Godard v. Gray*, L.R. 6 Q.B. 139 (1870); *Vadala v. Lawes* 25 Q.B.D. (1890) 319, 316; cf. *Chandler v. Peketz*, 297 U.S. 609, 56 S.Ct., 80 L.Ed. 881 (1936); Cheshire, 661-664; Wolff, 268; Goodrich, 603.

[62] Soles & Hay, *supra* note 27, at 978.

[63] "Thus, when the foreign law, judgment or contract is contrary to a sound and established public policy of the forum, the said foreign law, judgment or order shall not be applied." *Bank of America v. American Realty Corp.*, 378 Phil. 1279, 1296 (1999); citing *Philippine Conflict of Laws*, Eight Edition, 1996, Paras, page 46. "Las sentencias de tribunals extranjeros no pueden ponerse en vigor en Filipinas si son contrarias a las leyes, costumbres y orden público. Si dichas decisiones, por la simple teoría de reciprocidad, cortesía judicial y urbanidad internacional son base suficiente para que nuestros tribunales decidan a tenor de las mismas, entonces nuestros juzgados estarían en la pobre tessitura de tener que dictar sentencias contrarias a nuestras leyes, costumbres y orden público. Esto es absurdo." *Querubin v. Querubin*, 87 Phil. 124, 133. (1950).

[64] See Section 48, Rule 39, Rules of Civil Procedure.

[65] Soles & Hays, *supra* note 27, at 979.

[66] "[It] is generally recognized that, subject to [exceptions], a rule of general customary international law is binding on all States, whether or not they have participated in the practice from which it sprang." H. Thirlway, "The Sources of International Law", International Law (ed. by M.Evans, 1st ed., 2003), at 124.

[67] "Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. North Sea Continental Shelf, Judgment, ICJ Reports 1969, p. 3, para. 77; cited in H. Thirlway, *ibid*.

[68] "The problems that arise in the enforcement of foreign judgments are generally to be solved by the principles of international law. The Philippines by its Constitution, adopts the generally accepted principles of international law. F. Gupit, "Enforcement of Foreign Judgments and Arbitral Awards", XXIII J. Integ. Bar. Phil. 3, at 69.

[69] Divergent practices do not necessarily preclude recognition of a customary norm. In reviewing the question of the existence of customary rules forbidding the use of force or intervention, the International Court of Justice pertinently held: "It is not to be expected that in the practice of States the application of the rules in question should have been perfect, in the sense that States should have refrained, with complete consistency, from the use of force or from intervention in each other's internal affairs. The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States, should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of recognition of a new rule." (emphasis supplied) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14, para. 186; citing in H. Thirlway, *supra* note 66.

[70] And other inferior courts, relative to their jurisdictions.

[71] Sec. 2, Art. II, 1987 Const., which states "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.

[72] Indeed, the valuation of foreign money judgments remains a matter of debate in international law. In the United States, Section 144 of the Restatement, Second, Conflicts of Laws (1971) adopts the rule that the forum would convert the currency into local currency as of the date of the award. However, this rule has been criticized. In England, the judgment debtor may now effect payment either in the foreign currency in the amount due or in local currency equivalent to the foreign currency on the date of payment. French and German law similarly permit the expression of a judgment in foreign currency. Soles & Hays, *supra* note 27, at 973.

[73] *Ty v. Trampe*, 321 Phil. 81 (1995).

[74] *Tarrosa v. Singson*, G.R. No. 111243, 25 May 1994, 232 SCRA 553, 557.

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