B. VAN ZUIDEN BROS., LTD., PETITIONER, VS. GTVL MANUFACTURING INDUSTRIES, INC., RESPONDENT.

G.R. No. 147905. May 28, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] of the 18 April 2001 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66236. The Court of Appeals affirmed the Order[3] of the Regional Trial Court, Branch 258, Paraï¿½aque City (trial court) dismissing the complaint for sum of money filed by B. Van Zuiden Bros., Ltd. (petitioner) against GTVL Manufacturing Industries, Inc. (respondent).

The Facts

On 13 July 1999, petitioner filed a complaint for sum of money against respondent, docketed as Civil Case No. 99-0249. The pertinent portions of the complaint read:

> - Plaintiff, ZUIDEN, is a corporation, incorporated under the laws of Hong Kong. x x x ZUIDEN is not engaged in business in the Philippines, but is suing before the Philippine Courts, for the reasons hereinafter stated.
>
> x x x x
>
> - ZUIDEN is engaged in the importation and exportation of several products, including lace products.
>
> - On several occasions, GTVL purchased lace products from [ZUIDEN].
>
> - The procedure for these purchases, as per the instructions of GTVL, was that ZUIDEN delivers the products purchased by GTVL, to a certain Hong Kong corporation, known as Kenzar Ltd. (KENZAR), x x x and the products are then considered as sold, upon receipt by KENZAR of the goods purchased by GTVL.
>
> KENZAR had the obligation to deliver the products to the Philippines and/or to follow whatever instructions GTVL had on the matter.
>
> Insofar as ZUIDEN is concerned, upon delivery of the goods to KENZAR in Hong Kong, the transaction is concluded; and GTVL became obligated to pay the agreed purchase price.
>
> x x x x
>
> - However, commencing October 31, 1994 up to the present, GTVL has failed and refused to pay the agreed purchase price for several deliveries ordered by it and delivered by ZUIDEN, as above-mentioned.
>
> x x x x
>
> - In spite [sic] of said demands and in spite [sic] of promises to pay and/or admissions of liability, GTVL has

> failed and refused, and continues to fail and refuse, to pay the overdue amount of U.S.$32,088.02 [inclusive of interest].[4]

Instead of filing an answer, respondent filed a Motion to Dismiss[5] on the ground that petitioner has no legal capacity to sue. Respondent alleged that petitioner is doing business in the Philippines without securing the required license. Accordingly, petitioner cannot sue before Philippine courts.

After an exchange of several pleadings[6] between the parties, the trial court issued an Order on 10 November 1999 dismissing the complaint.

On appeal, the Court of Appeals sustained the trial court's dismissal of the complaint.

Hence, this petition.

The Court of Appealsï¿½ Ruling

In affirming the dismissal of the complaint, the Court of Appeals relied on Eriks Pte., Ltd. v. Court of Appeals.[7] In that case, Eriks, an unlicensed foreign corporation, sought to collect US$41,939.63 from a Filipino businessman for goods which he purchased and received on several occasions from January to May 1989. The transfers of goods took place in Singapore, for the Filipino's account, F.O.B. Singapore, with a 90-day credit term. Since the transactions involved were not isolated, this Court found Eriks to be doing business in the Philippines. Hence, this Court upheld the dismissal of the complaint on the ground that Eriks has no capacity to sue.

The Court of Appeals noted that in Eriks, while the deliveries of the goods were perfected in Singapore, this Court still found Eriks to be engaged in business in the Philippines. Thus, the Court of Appeals concluded that the place of delivery of the goods (or the place where the transaction took place) is not material in determining whether a foreign corporation is doing business in the Philippines. The Court of Appeals held that what is material are the proponents to the transaction, as well as the parties to be benefited and obligated by the transaction.

In this case, the Court of Appeals found that the parties entered into a contract of sale whereby petitioner sold lace products to respondent in a series of transactions. While petitioner delivered the goods in Hong Kong to Kenzar, Ltd. (Kenzar), another Hong Kong company, the party with whom petitioner transacted was actually respondent, a Philippine corporation, and not Kenzar. The Court of Appeals believed Kenzar is merely a shipping company. The Court of Appeals concluded that the delivery of the goods in Hong Kong did not exempt petitioner from being considered as doing business in the Philippines.

The Issue

The sole issue in this case is whether petitioner, an unlicensed foreign corporation, has legal capacity to sue before Philippine courts. The resolution of this issue depends on whether petitioner is doing business in the Philippines.

The Ruling of the Court

The petition is meritorious.

Section 133 of the Corporation Code provides:

> Doing business without license. - No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The law is clear. An unlicensed foreign corporation doing business in the Philippines cannot sue before Philippine

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courts. On the other hand, an unlicensed foreign corporation not doing business in the Philippines can sue before Philippine courts.

In the present controversy, petitioner is a foreign corporation which claims that it is not doing business in the Philippines. As such, it needs no license to institute a collection suit against respondent before Philippine courts.

Respondent argues otherwise. Respondent insists that petitioner is doing business in the Philippines without the required license. Hence, petitioner has no legal capacity to sue before Philippine courts.

Under Section 3(d) of Republic Act No. 7042 (RA 7042) or "The Foreign Investments Act of 1991," the phrase "doing business" includes:

> x x x 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.

The series of transactions between petitioner and respondent cannot be classified as "doing business" in the Philippines under Section 3(d) of RA 7042. An essential condition to be considered as "doing business" in the Philippines is the actual performance of specific commercial acts within the territory of the Philippines for the plain reason that the Philippines has no jurisdiction over commercial acts performed in foreign territories. Here, there is no showing that petitioner performed within the Philippine territory the specific acts of doing business mentioned in Section 3(d) of RA 7042. Petitioner did not also open an office here in the Philippines, appoint a representative or distributor, or manage, supervise or control a local business. While petitioner and respondent entered into a series of transactions implying a continuity of commercial dealings, the perfection and consummation of these transactions were done outside the Philippines.[8]

In its complaint, petitioner alleged that it is engaged in the importation and exportation of several products, including lace products. Petitioner asserted that on several occasions, respondent purchased lace products from it. Petitioner also claimed that respondent instructed it to deliver the purchased goods to Kenzar, which is a Hong Kong company based in Hong Kong. Upon Kenzar's receipt of the goods, the products were considered sold. Kenzar, in turn, had the obligation to deliver the lace products to the Philippines. In other words, the sale of lace products was consummated in Hong Kong.

As earlier stated, the series of transactions between petitioner and respondent transpired and were consummated in Hong Kong.[9] We also find no single activity which petitioner performed here in the Philippines pursuant to its purpose and object as a business organization.[10] Moreover, petitioner's desire to do business within the Philippines is not discernible from the allegations of the complaint or from its attachments. Therefore, there is no basis for ruling that petitioner is doing business in the Philippines.

In Eriks, respondent therein alleged the existence of a distributorship agreement between him and the foreign corporation. If duly established, such distributorship agreement could support respondent's claim that petitioner

was indeed doing business in the Philippines. Here, there is no such or similar agreement between petitioner and respondent.

We disagree with the Court of Appeals' ruling that the proponents to the transaction determine whether a foreign corporation is doing business in the Philippines, regardless of the place of delivery or place where the transaction took place. To accede to such theory makes it possible to classify, for instance, a series of transactions between a Filipino in the United States and an American company based in the United States as "doing business in the Philippines," even when these transactions are negotiated and consummated only within the United States.

An exporter in one country may export its products to many foreign importing countries without performing in the importing countries specific commercial acts that would constitute doing business in the importing countries. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country, cannot be deemed as doing business in the importing country. The importing country does not acquire jurisdiction over the foreign exporter who has not performed any specific commercial act within the territory of the importing country. Without jurisdiction over the foreign exporter, the importing country cannot compel the foreign exporter to secure a license to do business in the importing country.

Otherwise, Philippine exporters, by the mere act alone of exporting their products, could be considered by the importing countries to be doing business in those countries. This will require Philippine exporters to secure a business license in every foreign country where they usually export their products, even if they do not perform any specific commercial act within the territory of such importing countries. Such a legal concept will have a deleterious effect not only on Philippine exports, but also on global trade.

To be doing or "transacting business in the Philippines" for purposes of Section 133 of the Corporation Code, the foreign corporation must actually transact business in the Philippines, that is, perform specific business transactions within the Philippine territory on a continuing basis in its own name and for its own account. Actual transaction of business within the Philippine territory is an essential requisite for the Philippines to acquire jurisdiction over a foreign corporation and thus require the foreign corporation to secure a Philippine business license. If a foreign corporation does not transact such kind of business in the Philippines, even if it exports its products to the Philippines, the Philippines has no jurisdiction to require such foreign corporation to secure a Philippine business license.

Considering that petitioner is not doing business in the Philippines, it does not need a license in order to initiate and maintain a collection suit against respondent for the unpaid balance of respondentï¿½s purchases.

WHEREFORE, we GRANT the petition. We REVERSE the Decision dated 18 April 2001 of the Court of Appeals in CA-G.R. CV No. 66236. No costs.
SO ORDERED.

Quisumbing, (Chairperson), Tinga, and Velasco, Jr., JJ., concur.
Carpio-Morales, J., on official leave.

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[1] Under Rule 45 of the Rules of Court.

[2]Rollo, pp. 24-33. Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole, concurring.

[3] Id. at 34. Penned by Judge Raul E. De Leon.

[4] Records, pp. 1-3.

[5] Id. at 47-56.

[6] The last pleading filed was a sur-rejoinder.

[7] G.R. No. 118843, 6 February 1997, 267 SCRA 567.

[8] See Villanueva, PHILIPPINE CORPORATE LAW 813 (2001).

[9] See Pacific Vegetable Oil Corporation v. Singzon, G.R. No. L-7917, 29 April 1955 (unreported).

[10] See Communication Materials and Design, Inc. v. Court of Appeals, G.R. No. 102223, 22 August 1996, 260 SCRA 673.

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