

**HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED,
PETITIONER, VS. CECILIA DIEZ CATALAN, RESPONDENT.***G.R. No. 159590. October 18, 2004*

Ponente: AUSTRIA-MARTINEZ, J.

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Before us are two petitions for review on certiorari under Rule 45 of the Rules of Court separately filed by the Hongkong and Shanghai Banking Corporation Limited (HSBANK) and HSBC International Trustee Limited (HSBC TRUSTEE). They seek the reversal of the consolidated Decision,[1] dated August 14, 2003, of the Court of Appeals (CA) in CA-G.R. SP Nos. 75756 and 75757, which dismissed the petitions for certiorari of herein petitioners assailing the Order, dated May 15, 2002, of the Regional Trial Court, Branch 44, Bacolod City (RTC) in Civil Case No. 01-11372 that denied their respective motions to dismiss the amended complaint of respondent Cecilia Diez Catalan.

The factual antecedents are as follows:

On January 29, 2001, respondent filed before the RTC, a complaint for a sum of money with damages against petitioner HSBANK, docketed as Civil Case No. 01-11372, due to HSBANK's alleged wanton refusal to pay her the value of five HSBANK checks issued by Frederick Arthur Thomson (Thomson) amounting to HK\$3,200,000.00.[2]

On February 7, 2001, summons was served on HSBANK at the Enterprise Center, Tower I, Ayala Avenue corner Paseo de Roxas St., Makati City.[3] HSBANK filed a Motion for Extension of Time to File Answer or Motion to Dismiss dated February 21, 2001.[4] Then, it filed a Motion to Dismiss, dated March 8, 2001, on the grounds that (a) the RTC has no jurisdiction over the subject matter of the complaint; (b) the RTC has not acquired jurisdiction for failure of the plaintiff to pay the correct filing or docket fees; (c) the RTC has no jurisdiction over the person of HSBANK; (d) the complaint does not state a cause of action against HSBANK; and (e) plaintiff engages in forum-shopping.[5]

On September 10, 2001, Catalan filed an Amended Complaint impleading petitioner HSBC TRUSTEE as co-defendant and invoking Article 19 of the Civil Code as basis for her cause of action.[6]

The Amended Complaint alleges:

Defendants HSBANK and HSBC TRUSTEE, doing business in the Philippines, are corporations duly organized under the laws of the British Virgin Islands with head office at 1 Grenville Street, St. Helier Jersey, Channel Islands and with branch offices at Level 12, 1 Queen's Road Central, Hongkong and may be served with summons and other court processes through their main office in Manila with address at HSBC, the Enterprise Center, Tower 1, Ayala Avenue corner Paseo de Roxas Street, Makati City.

Sometime in March 1997, Thomson issued five HSBANK checks payable to Catalan, to wit:

CHECK NO. DATE AMOUNT

807852 Mar. 15, 1997 \$600,000.00

807853 Mar. 17, 1997 800,000.00

807854 Mar. 17, 1997 600,000.00

807855 Mar. 22, 1997 600,000.00

807856 Mar. 23, 1997 600,000.00

TOTAL \$3,200,000.00

The checks when deposited were returned by HSBANK purportedly for reason of “payment stopped” pending confirmation, despite the fact that the checks were duly funded. On March 18, 1997, Thomson wrote a letter to a certain Ricky Sousa[7] of HSBANK confirming the checks he issued to Catalan and requesting that all his checks be cleared. On March 20, 1997, Thomson wrote another letter to Sousa of HSBANK requesting an advice in writing to be sent to the Philippine National Bank, through the fastest means, that the checks he previously issued to Catalan were already cleared. Thereafter, Catalan demanded that HSBANK make good the checks issued by Thomson. On May 16, 1997, Marilou A. Lozada, personal secretary and attorney-in-fact of Thomson, wrote a letter to Sousa of HSBANK informing him that HSBANK’s failure to clear all the checks had saddened Thomson and requesting that the clearing of the checks be facilitated. Subsequently, Thomson died and Catalan forwarded her demand to HSBC TRUSTEE. Catalan sent photocopies of the returned checks to HSBC TRUSTEE. Not satisfied, HSBC TRUSTEE through deceit and trickery, required Catalan, as a condition for the acceptance of the checks, to submit the original copies of the returned checks, purportedly, to hasten payment of her claim. HSBC TRUSTEE succeeded in its calculated deception because on April 21, 1999, Catalan and her former counsel went to Hongkong at their own expense to personally deliver the originals of the returned checks to the officers of HSBC TRUSTEE, anxious of receiving the money value of the checks but HSBC TRUSTEE despite receipt of the original checks, refused to pay Catalan’s claim. Having seen and received the original of the checks, upon its request, HSBC TRUSTEE is deemed to have impliedly accepted the checks. Moreover, the refusal of HSBANK and HSBC TRUSTEE to pay the checks is equivalent to illegal freezing of one’s deposit. On the assurance of HSBC TRUSTEE that her claim will soon be paid, as she was made to believe that payments of the checks shall be made by HSBC TRUSTEE “upon sight,” the unsuspecting Catalan left the originals of the checks with HSBC TRUSTEE and was given only an acknowledgment receipt. Catalan made several demands and after several more follow ups, on August 16, 1999, Phoenix Lam, Senior Vice President of HSBC TRUSTEE, in obvious disregard of her valid claim, informed Catalan that her claim is disapproved. No reason or explanation whatsoever was made why her claim was disapproved, neither were the checks returned to her. Catalan appealed for fairness and understanding, in the hope that HSBC TRUSTEE would act fairly and justly on her claim but these demands were met by a stonewall of silence. On June 9, 2000, Catalan through counsel sent a last and final demand to HSBC TRUSTEE to remit the amount covered by the checks but despite receipt of said letter, no payment was made. Clearly, the act of the HSBANK and HSBC TRUSTEE in refusing to honor and pay the checks validly issued by Thomson violates the abuse of rights principle under Article 19 of the Civil Code which requires that everyone must act with justice, give everyone his due and observe honesty and good faith. The refusal of HSBANK and HSBC TRUSTEE to pay the checks without any valid reason is intended solely to prejudice and injure Catalan. When they declined payment of the checks despite instructions of the drawer, Thomson, to honor them, coupled with the fact that the checks were duly funded, they acted in bad faith, thus causing damage to Catalan. A person may not exercise his right unjustly or in a manner that is not in keeping with honesty or good faith, otherwise he

opens himself to liability for abuse of right.[8]

Catalan prays that HSBANK and HSBC TRUSTEE be ordered to pay P20,864,000.00 representing the value of the five checks at the rate of P6.52 per HK\$1 as of January 29, 2001 for the acts of HSBANK and HSBC TRUSTEE in refusing to pay the amount justly due her, in addition to moral and exemplary damages, attorney's fees and litigation expenses.[9]

On October 2, 2001, HSBANK filed a Motion to Dismiss Amended Complaint on the grounds that: (a) the RTC has no jurisdiction over the subject matter of the complaint since the action is a money claim for a debt contracted by Thomson before his death which should have been filed in the estate or intestate proceedings of Thomson; (b) Catalan engages in forum shopping by filing the suit and at the same time filing a claim in the probate proceeding filed with another branch of the RTC; (c) the amended complaint states no cause of action against HSBANK since it has no obligation to pay the checks as it has not accepted the checks and Catalan did not re-deposit the checks or make a formal protest; (d) the RTC has not acquired jurisdiction over the person of HSBANK for improper service of summons; and, (e) it did not submit to the jurisdiction of the RTC by filing a motion for extension of time to file a motion to dismiss.[10]

Meanwhile, on October 17, 2001, summons for HSBC TRUSTEE was tendered to the In House Counsel of HSBANK (Makati Branch) at the Enterprise Center, Tower 1, Ayala Avenue corner Paseo de Roxas, Makati. Without submitting itself to the jurisdiction of the RTC, HSBC TRUSTEE filed a Special Appearance for Motion to Dismiss Amended Complaint, dated October 29, 2001, questioning the jurisdiction of the RTC over it.[11] HSBC TRUSTEE alleges that tender of summons through HSBANK Makati did not confer upon the RTC jurisdiction over it because: (a) it is a corporation separate and distinct from HSBANK; (b) it does not hold office at the HSBANK Makati or in any other place in the Philippines; (c) it has not authorized HSBANK Makati to receive summons for it; and, (d) it has no resident agent upon whom summons may be served because it does not transact business in the Philippines.

Subsequently, HSBC TRUSTEE filed a Submission, dated November 15, 2001, attaching the Affidavit executed in Hongkong by Phoenix Lam, Senior Vice-President of HSBC TRUSTEE, attesting to the fact that: 1) HSBC TRUSTEE has not done nor is it doing business in the Philippines; 2) it does not maintain any office in Makati or anywhere in the Philippines; 3) it has not appointed any agent in Philippines; and 4) HSBANK Makati has no authority to receive any summons or court processes for HSBC TRUSTEE.[12]

On May 15, 2002, the RTC issued an Order denying the two motions to dismiss.[13] The RTC held that it has jurisdiction over the subject matter of the action because it is an action for damages under Article 19 of the Civil Code for the acts of unjustly refusing to honor the checks issued by Thomson and not a money claim against the estate of Thomson; that Catalan did not engage in forum-shopping because the elements thereof are not attendant in the case; that the question of cause of action should be threshed out or ventilated during the proceedings in the main action and after the plaintiff and defendants have adduced evidence in their favor; that it acquired jurisdiction over the person of defendants because the question of whether a foreign corporation is doing business or not in the Philippines cannot be a subject of a Motion to Dismiss but should be ventilated in the trial on the merits; and defendants voluntarily submitted to the jurisdiction of the RTC setting up in their Motions to Dismiss other grounds aside from lack of jurisdiction.

HSBANK and HSBC TRUSTEE filed separate motions for reconsideration[14] but both proved futile as they were denied by the RTC in an Order dated December 20, 2002.[15]

On February 21, 2003, Catalan moved to declare HSBANK and HSBC TRUSTEE in default for failure to file their answer to the amended complaint.

On March 5, 2003, HSBANK and HSBC TRUSTEE filed separate petitions for certiorari and/or prohibition with the CA, docketed as CA-G.R. SP Nos. 75756[16] and 75757,[17] respectively.

Subsequently, HSBANK and HSBC TRUSTEE filed before the RTC separate Answers ad cautelam, both dated March 18, 2003, as a “precaution against being declared in default and without prejudice to the separate petitions for certiorari and/or prohibition then pending with the CA.”[18]

Meanwhile, the two petitions for certiorari before the CA were consolidated and after responsive pleadings were filed, the cases were deemed submitted for decision.

In a consolidated Decision dated August 14, 2003, the CA dismissed the two petitions for certiorari.[19] The CA held that the filing of petitioners’ answers before the RTC rendered moot and academic the issue of the RTC’s lack of jurisdiction over the person of the petitioners; that the RTC has jurisdiction over the subject matter since it is one for damages under Article 19 of the Civil Code for the alleged unjust acts of petitioners and not a money claim against the estate of Thomson; and, that the amended complaint states a cause of action under Article 19 of the Civil Code which could merit a favorable judgment if found to be true. The CA noted that Catalan may have prayed for payment of the value of the checks but ratiocinated that she merely used the value as basis for the computation of the damages.

Hence, the present petitions.

In G.R. No. 159590, HSBANK submits the following assigned errors:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE COURT A QUO, ACTING AS AN (SIC) REGULAR COURT, HAS JURISDICTION OVER THE AMENDED COMPLAINT SEEKING TO ORDER HSBC TRUSTEE, THE EXECUTOR OF THE DECEASED FREDERICK ARTHUR THOMSON, TO PAY SUBJECT CHECKS ISSUED BY THE LATE FREDERICK ARTHUR THOMSON, ADMITTEDLY IN PAYMENT OF HIS INDEBTEDNESS TO CATALAN.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT THE AMENDED COMPLAINT DOES NOT SEEK TO ORDER HSBANK AND HSBC INTERNATIONAL TRUSTEE LIMITED TO PAY THE OBLIGATION OF THE (SIC) FREDERICK ARTHUR THOMSON AS EVIDENCED BY THE CHECKS, BUT PRAYS FOR DAMAGES EQUIVALENT OR COMPUTED ON THE BASIS OF THE VALUE OF THE CHECKS BECAUSE THE DEFENDANTS FAILED TO COMPLY WITH THE MANDATES OF ARTICLE 19 OF THE NEW CIVIL CODE.

III.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT ALLEGATIONS IN THE AMENDED COMPLAINT MAKE OUT A CAUSE OF ACTION WHICH COULD MERIT A FAVORABLE JUDGMENT IF FOUND TO BE TRUE, OR IN NOT HOLDING THAT THE AMENDED COMPLAINT STATES NO CAUSE OF ACTION AGAINST HSBANK, AS DRAWEE BANK.

IV.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN DISREGARDING THE FACT THAT CATALAN ENGAGED IN FORUM SHOPPING BY FILING THE AMENDED COMPLAINT WHILE HER PETITION FOR THE PROBATE OF THE SUPPOSED WILL OF THE DECEASED FREDERICK ARTHUR THOMSON IS PENDING WITH ANOTHER BRANCH OF THE COURT A QUO.

V.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT HSBANK HAD SUBMITTED TO THE JURISDICTION OF THE COURT A QUO BY SUBMITTING AN ANSWER TO THE AMENDED COMPLAINT.[20]

In G.R. No. 159591, HSBC TRUSTEE also assigns the foregoing first, second and fifth errors as its own.[21] In addition, it claims that:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT ORDERING THE DISMISSAL OF THE AMENDED COMPLAINT AGAINST HSBC TRUSTEE DESPITE THE FACT IT HAS NOT BEEN DULY SERVED WITH SUMMONS. [22]

HSBANK and HSBC TRUSTEE contend in common that Catalan has no cause of action for abuse of rights under Article 19 of the Civil Code; that her complaint, under the guise of a claim for damages, is actually a money claim against the estate of Thomson arising from checks issued by the latter in her favor in payment of indebtedness.

HSBANK claims that the money claim should be dismissed on the ground of forum-shopping since Catalan also filed a petition for probate of the alleged last will of Thomson before RTC, Branch 48, Bacolod City, docketed as Spec. Proc No. 00-892. In addition, HSBANK imputes error upon the CA in holding that by filing an answer to the amended complaint, petitioners are estopped from questioning the jurisdiction of the RTC.

HSBC TRUSTEE maintains that the RTC did not acquire jurisdiction over it for improper service of summons.

In her Comment, Catalan insists that her complaint is one for damages under Article 19 of the Civil Code for the wanton refusal to honor and pay the value of five checks issued by the Thomson amounting to HK\$3,200,000.00. She argues that the issue of jurisdiction has been rendered moot by petitioners' participation in the proceedings before the RTC.

Succinctly, the issues boil down to the following:

- 1) Does the complaint state a cause of action?
- 2) Did Catalan engage in forum-shopping by filing the complaint for damages when she also filed a petition for probate of the alleged last will of Thomson with another branch of the RTC? and,
- 3) Did the RTC acquire jurisdiction over HSBANK and HSBC TRUSTEE? Corollary thereto, did the filing of the answer before the RTC render the issue of lack of jurisdiction moot and academic?

We shall resolve the issue in seriatim.

Does the complaint state a cause of action against HSBANK and HSBC TRUSTEE?

The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein?[23] The inquiry is into the sufficiency, not the veracity of the material allegations.[24] If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.[25]

Catalan anchors her complaint for damages on Article 19 of the Civil Code. It speaks of the fundamental principle of law and human conduct that a person "must, in the exercise of his rights and in the performance of his duties, act with justice, give every one his due, and observe honesty and good faith." It sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is

exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.[26] But a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse.[27] There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[28]

Thus, in order to be liable under the abuse of rights principle, three elements must concur, to wit: (a) that there is a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[29]

In this instance, after carefully examining the amended complaint, we are convinced that the allegations therein are in the nature of an action based on tort under Article 19 of the Civil Code. It is evident that Catalan is suing HSBANK and HSBC TRUSTEE for unjustified and willful refusal to pay the value of the checks.

HSBANK is being sued for unwarranted failure to pay the checks notwithstanding the repeated assurance of the drawer Thomson as to the authenticity of the checks and frequent directives to pay the value thereof to Catalan. Her allegations in the complaint that the gross inaction of HSBANK on Thomson's instructions, as well as its evident failure to inform Catalan of the reason for its continued inaction and non-payment of the checks, smack of insouciance on its part, are sufficient statements of clear abuse of right for which it may be held liable to Catalan for any damages she incurred resulting therefrom. HSBANK's actions, or lack thereof, prevented Catalan from seeking further redress with Thomson for the recovery of her claim while the latter was alive.

HSBANK claims that Catalan has no cause of action because under Section 189 of the Negotiable Instruments Law, "a check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies it." However, HSBANK is not being sued on the value of the check itself but for how it acted in relation to Catalan's claim for payment despite the repeated directives of the drawer Thomson to recognize the check the latter issued. Catalan may have prayed that she be paid the value of the checks but it is axiomatic that what determines the nature of an action, as well as which court has jurisdiction over it, are the allegations of the complaint, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[30]

Anent HSBC TRUSTEE, it is being sued for the baseless rejection of Catalan's claim. When Catalan parted with the checks as a requirement for the processing of her claim, even going to the extent of traveling to Hongkong to deliver personally the checks, HSBC TRUSTEE summarily disapproved her claim with nary a reason. HSBC TRUSTEE gave no heed to Catalan's incessant appeals for an explanation. Her pleas fell on deaf and uncaring corporate ears. Clearly, HSBC TRUSTEE's acts are anathema to the prescription for human conduct enshrined in Article 19 of the Civil Code.

Did Catalan engage in forum-shopping?

It has been held that forum-shopping exists where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest.[31]

Thus, there is forum-shopping when there exist: a) identity of parties, or at least such parties as represent the same

interests in both actions, b) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to res judicata in the other.[32]

Applying the foregoing requisites to the case before us in relation to Spec. Proc No. 00-892, the probate proceeding brought by Catalan before RTC, Branch 48, Bacolod City, it is obvious that forum-shopping does not exist.

There is no identity of parties. HSBANK is not a party in the probate proceeding. HSBC TRUSTEE is only a party in the probate proceeding because it is the executor and trustee named in the Hongkong will of Thomson. HSBC TRUSTEE is representing the interest of the estate of Thomson and not its own corporate interest.

With respect to the second and third requisites, a scrutiny of the entirety of the allegations of the amended complaint in this case reveals that the rights asserted and reliefs prayed for therein are different from those pleaded in the probate proceeding, such that a judgment in one case would not bar the prosecution of the other case. Verily, there can be no forum-shopping where in one proceeding a party raises a claim for damages based on tort and, in another proceeding a party seeks the allowance of an alleged last will based on one's claim as an heir. After all, the merits of the action for damages is not to be determined in the probate proceeding and vice versa. Undeniably, the facts or evidence as would support and establish the two causes of action are not the same.[33] Consequently, HSBANK's reliance on the principle of forum-shopping is clearly misplaced.

Did the RTC acquire jurisdiction over HSBANK and HSBC TRUSTEE?

The Rules of Court provides that a court generally acquires jurisdiction over a person through either a valid service of summons in the manner required by law or the person's voluntary appearance in court.[34]

In holding that it acquired jurisdiction over HSBANK and HSBC TRUSTEE, the RTC held that both voluntarily submitted to the jurisdiction of the court by setting up in their Motions to Dismiss other grounds aside from lack of jurisdiction. On the other hand, the CA ruled that HSBANK and HSBC TRUSTEE are estopped from challenging the jurisdiction of the RTC because they filed their respective answers before the RTC.

We find that both lower courts overlooked Section 20 of Rule 14 of the 1997 Rules of Civil Procedure which provides that "the inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance." Nonetheless, such omission does not aid HSBANK's case.

It must be noted that HSBANK initially filed a Motion for Extension of Time to File Answer or Motion to Dismiss.[35] HSBANK already invoked the RTC's jurisdiction over it by praying that its motion for extension of time to file answer or a motion to dismiss be granted. The Court has held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court.[36] Consequently, HSBANK's expressed reservation in its Answer ad cautelam that it filed the same "as a mere precaution against being declared in default, and without prejudice to the Petition for Certiorari and/or Prohibition xxx now pending before the Court of Appeals"[37] to assail the jurisdiction of the RTC over it is of no moment. Having earlier invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time to file answer or motion to dismiss, HSBANK, effectively submitted voluntarily to the jurisdiction of the RTC and is thereby estopped from asserting otherwise, even before this Court.

In contrast, the filing by HSBC TRUSTEE of a motion to dismiss cannot be considered a voluntary submission to the jurisdiction of the RTC. It was a conditional appearance, entered precisely to question the regularity of the

service of summons. It is settled that a party who makes a special appearance in court challenging the jurisdiction of said court, e.g., invalidity of the service of summons, cannot be considered to have submitted himself to the jurisdiction of the court.[38] HSBC TRUSTEE has been consistent in all its pleadings in assailing the service of summons and the jurisdiction of the RTC over it. Thus, HSBC TRUSTEE cannot be declared in estoppel when it filed an Answer ad cautelam before the RTC while its petition for certiorari was pending before the CA. Such answer did not render the petition for certiorari before the CA moot and academic. The Answer of HSBC TRUSTEE was only filed to prevent any declaration that it had by its inaction waived the right to file responsive pleadings.

Admittedly, HSBC TRUSTEE is a foreign corporation, organized and existing under the laws of the British Virgin Islands. For proper service of summons on foreign corporations, Section 12 of Rule 14 of the Revised Rules of Court provides:

SEC. 12. Service upon foreign private juridical entity. – When the defendant is a foreign private juridical entity which has transacted 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.

In *French Oil Mill Machinery Co., Inc. vs. Court of Appeals*,[39] we had occasion to rule that 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" and the court in determining such fact need not go beyond the allegations therein.[40]

The allegations in the amended complaint subject of the present cases did not sufficiently show the fact of HSBC TRUSTEE's doing business in the Philippines. It does not appear at all that HSBC TRUSTEE had performed any act which would give the general public the impression that it had been engaging, or intends to engage in its ordinary and usual business undertakings in the country. Absent from the amended complaint is an allegation that HSBC TRUSTEE had performed any act in the country that would place it within the sphere of the court's jurisdiction.

We have held that a general allegation, standing alone, that a party is doing business in the Philippines does not make it so; a conclusion of fact or law cannot be derived from the unsubstantiated assertions of parties notwithstanding the demands of convenience or dispatch in legal actions, otherwise, the Court would be guilty of sorcery; extracting substance out of nothingness.[41]

Besides, there is no allegation in the amended complaint that HSBANK is the domestic agent of HSBC TRUSTEE to warrant service of summons upon it. Thus, the summons tendered to the In House Counsel of HSBANK (Makati Branch) for HSBC TRUSTEE was clearly improper.

There being no proper service of summons, the RTC cannot take cognizance of the case against HSBC TRUSTEE for lack of jurisdiction over it. Any proceeding undertaken by the RTC is therefore null and void.[42] Accordingly, the complaint against HSBC TRUSTEE should have been dismissed for lack of jurisdiction over it.

WHEREFORE, the petition in G.R. No. 159590 is DENIED. The Decision of the Court of Appeals, dated August 14, 2003, in CA-G.R. SP No. 75757 dismissing the petition for certiorari of the Hongkong and Shanghai Banking Corporation Limited is AFFIRMED.

The petition in G.R. No. 159591 is GRANTED. The Decision of the Court of Appeals, dated August 14, 2003, in CA-G.R. SP No. 75756 dismissing the petition for certiorari of the HSBC International Trustee Limited is REVERSED and SET ASIDE. The Regional Trial Court, Branch 44, Bacolod City is declared without jurisdiction

to take cognizance of Civil Case No. 01-11372 against the HSBC International Trustee Limited, and all its orders and issuances with respect to the latter are hereby ANNULLED and SET ASIDE. The said Regional Trial Court is hereby ORDERED to DESIST from maintaining further proceedings against the HSBC International Trustee Limited in the case aforestated.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.

Chico-Nazario, J., on leave.

[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justices Elvi John S. Asuncion and Lucas P. Bersamin.

[2] Rollo of G.R. No. 159590, p. 110.

[3] Id., p. 134.

[4] Id., p. 135.

[5] Id., p. 138.

[6[] Id, p. 199.

[7] The amended complaint does not describe the designation or position of Ricky Sousa in HSBANK.

[8] Id., pp. 199-207.

[9] Id., p. 208.

[10] Id., p. 226.

[11] Rollo of G.R. No. 159591, p. 211.

[12] Id., p. 259.

[13] Rollo of G.R. No. 159590, p. 101.

[14] Rollo of G.R. No. 159590, pp. 268, 287; Rollo of G.R. No. 159591, p. 222.

[15] Rollo of G.R. No. 159591, p. 90.

[16] Rollo of G.R. No. 159591, p. 59.

[17] Rollo of G.R. No. 159590, p. 71.

[18] Rollo of G.R. No. 159590, p. 304; Rollo of G.R. No. 159591, p. 288.

[19] Id., p. 57.

[20] Rollo of G.R. No. 159590, pp. 22-23.

[21] Rollo of G.R. No. 159591, pp. 22-23.

[22] Id., p. 23.

[23] G & S Transport Corporation vs. Court of Appeals, 382 SCRA 262, 274 (2002), citing I V. J. Francisco, The Revised Rules of Court in the Philippines (1973 ed.), p. 945.

- [24] Dabuco vs. Court of Appeals, 322 SCRA 853, 862 (2000).
- [25] Vda. de Daffon vs. Court of Appeals, 387 SCRA 427, 432 (2002).
- [26] Albenson Enterprises Corp. vs. Court of Appeals, 217 SCRA 16, 24 (1993).
- [27] De Guzman vs. National Labor Relations Commission, 211 SCRA 723, 730-731 (1992).
- [28] I A. M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines (1990 ed.), pp. 61-62.
- [29] Sea Commercial Company, Inc. vs. Court of Appeals, 319 SCRA 210, 218-219 (1999); Globe Mackay Cable and Radio Corp. vs. Court of Appeals, 176 SCRA 778, 783-785 (1989); and, Albenson Enterprises Corp. vs. Court of Appeals, *supra*, p. 25.
- [30] Platinum Tours and Travel, Incorporated vs. Panlilio, 411 SCRA 142, 146 (2003); Herrera vs. Bollos, 374 SCRA 107, 111 (2002); Intestate Estate of Alexander T. Ty vs. Court of Appeals, 356 SCRA 661, 666-667 (2001); and, Alemar's (Sibal & Sons), Inc. vs. Court of Appeals, 350 SCRA 333, 339 (2001).
- [31] Prubankers Association vs. Prudential Bank & Trust Company, 302 SCRA 74, 84 (1999); First Philippine International Bank vs. Court of Appeals, 252 SCRA 259, 284 (1996).
- [32] Philippine Commercial International Bank vs. Court of Appeals, 406 SCRA 575, 599 (2003).
- [33] Quezon Province vs. Marte, 368 SCRA 145, 152 (2001); Bangko Silangan Development Bank vs. Court of Appeals, 360 SCRA 322, 336 (2001); and, Development Bank of the Philippines vs. Court of Appeals, 357 SCRA 626, 637 (2001).
- [34] Rule 14 of the 1997 Rules of Civil Procedure.
- [35] Rollo of G.R. No. 159590, p. 135.
- [36] Oaminal vs. Castillo, 413 SCRA 189, 199 (2003), citing Villareal vs. Court of Appeals, 295 SCRA 511, 527 (1998); Orosa vs. Court of Appeals, 261 SCRA 376, 379 (1996); Navale vs. Court of Appeals, 253 SCRA 705, 712 (1996); and, Europa vs. Hunter Garments Mfg. (Phil.), Inc., 175 SCRA 394, 396 (1989).
- [37] Rollo of G.R. No. 159590, p. 304.
- [38] United Coconut Planters Bank vs. Ongpin, 368 SCRA 464, 470 (2001), citing 1 F.D. Regalado, Remedial Law Compendium (1999 ed.), pp. 234-244.

[39] 295 SCRA 462 (1998).

- [40] *Id.*, p. 466; Litton Mills, Inc. vs. Court of Appeals, 256 SCRA 696, 702 (1996).
- [41] Avon Insurance PLC vs. Court of Appeals, 278 SCRA 312, 324 (1997).
- [42] E.B. Villarosa & Partner Co., Ltd. vs. Benito, 312 SCRA 65, 76 (1999); Gan Hock vs. Court of Appeals, 197 SCRA 223, 232 (1991); Santiago Syjuco, Inc. vs. Castro, 175 SCRA 171, 198 (1989); and, Keister vs. Navarro, 77 SCRA 209, 214 (1977).

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