PERKIN ELMER SINGAPORE PTE LTD., PETITIONER, VS. DAKILA TRADING CORPORATION, RESPONDENT.

G.R. NO. 172242. August 14, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

The case before this Court is a Petition for Review[1] on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to annul and set aside the Decision,[2] dated 4 April 2006, of the Court of Appeals in CA-G.R. SP No. 78981, which affirmed the Orders, dated 4 November 2002[3] and 20 June 2003,[4] of the Mandaluyong City Regional Trial Court (RTC), Branch 212, in Civil Case No. MC99-605, which, in turn, denied the Motion to Dismiss and subsequent Motion for Reconsideration of herein petitioner Perkin Elmer Singapore Pte Ltd.

Petitioner is a corporation duly organized and existing under the laws of Singapore. It is not considered as a foreign corporation "doing business" in the Philippines. Herein respondent Dakila Trading Corporation is a corporation organized and existing under Philippine laws, and engaged in the business of selling and leasing out laboratory instrumentation and process control instrumentation, and trading of laboratory chemicals and supplies.

The antecedents of the present case are as follows:

Respondent entered into a Distribution Agreement[5] on 1 June 1990 with Perkin-Elmer Instruments Asia Pte Ltd. (PEIA), a corporation duly organized and existing under the laws of Singapore and engaged in the business of manufacturing, producing, selling or distributing various laboratory/analytical instruments. By virtue of the said agreement, PEIA appointed the respondent as the sole distributor of its products in the Philippines. The respondent was likewise granted the right to purchase and sell the products of PEIA subject to the terms and conditions set forth in the Distribution Agreement. PEIA, on the other hand, shall give respondent a commission for the sale of its products in the Philippines.

Under the same Distribution Agreement, respondent shall order the products of PEIA, which it shall sell in the Philippines, either from PEIA itself or from Perkin-Elmer Instruments (Philippines) Corporation (PEIP), an affiliate of PEIA. PEIP is a corporation duly organized and existing under Philippine laws, and involved in the business of wholesale trading of all kinds of scientific, biotechnological, and analytical instruments and appliances. PEIA allegedly owned 99% of the shares of PEIP.

On 2 August 1997, however, PEIA unilaterally terminated the Distribution Agreement, prompting respondent to file before the RTC of Mandaluyong City, Branch 212, a Complaint[6] for Collection of Sum of Money and Damages with Prayer for Issuance of a Writ of Attachment against PEIA and PEIP, docketed as Civil Case No. MC99-605.

The RTC issued an Order,[7] dated 26 March 1999, denying respondent's prayer for the issuance of a writ of attachment. The respondent moved for the reconsideration of the said Order but it was denied in another Order,

dated 11 January 2000.[8]

Respondent then filed Ex-Parte Motions for Issuance of Summons and for Leave of Court to Deputize Respondent's General Manager, Richard A. Tee, to Serve Summons Outside of the Philippines,[9] which the RTC granted in its Order, dated 27 April 2000.[10] Thus, an Alias Summons, dated 4 September 2000, was issued by the RTC to PEIA. But the said Alias Summons was served on 28 September 2000 and received by Perkinelmer Asia, a Singaporean based sole proprietorship, owned by the petitioner and, allegedly, a separate and distinct entity from PEIA.

PEIP moved to dismiss[11] the Complaint filed by respondent on the ground that it states no cause of action. Perkinelmer Asia, on the other hand, through its counsel, sent letters, dated 12 October 2000[12] and 15 November 2000,[13] to the respondent and to the RTC, respectively, to inform them of the wrongful service of summons upon Perkinelmer Asia.

Accordingly, respondent filed an Ex-Parte Motion to Admit Amended Complaint, together with the Amended Complaint claiming that PEIA had become a sole proprietorship[14] owned by the petitioner, and subsequently changed its name to Perkinelmer Asia. Being a sole proprietorship of the petitioner, a change in PEIA's name and juridical status did not detract from the fact that all its due and outstanding obligations to third parties were assumed by the petitioner. Hence, in its Amended Complaint[15] respondent sought to change the name of PEIA to that of the petitioner. In an Order, dated 24 July 2001,[16] the RTC admitted the Amended Complaint filed by the respondent. Respondent then filed another Motion[17] for the Issuance of Summons and for Leave of Court to Deputize Respondent's General Manager, Richard A. Tee, to Serve Summons Outside the Philippines. In another Order, dated 4 March 2002,[18] the RTC deputized respondent's General Manager to serve summons on petitioner in Singapore. The RTC thus issued summons[19] to the petitioner. Acting on the said Order, respondent's General Manager went to Singapore and served summons on the petitioner.

Meanwhile, in an Order, dated 10 October 2001, the RTC denied the Motion to Dismiss filed by PEIP, compelling the latter to file its Answer to the Amended Complaint.

Petitioner subsequently filed with the RTC a Special Appearance and Motion to Dismiss[20] respondent's Amended Complaint on 30 May 2002 based on the following grounds: (1) the RTC did not acquire jurisdiction over the person of the petitioner; (2) the respondent failed to state a cause of action against the petitioner because it is not the real party-in-interest; (3) even assuming arguendo that the respondent correctly filed the case against the petitioner, the Distribution Agreement which was the basis of its claim grants PEIA the right to terminate the contract at any time; and (4) the venue was improperly laid. The RTC in its Order, dated 4 November 2002, denied petitioner's Motion to Dismiss, ratiocinating as follows:

> Prescinding from the above arguments of both parties, the [RTC] is inclined to DENY the Motion to Dismiss.
>
> A careful scrutiny on (sic) the allegation in the (Amended) Complaint would show that [herein respondent] alleges ownership by the [herein petitioner] of shares of stocks in the [PEIP]. Such allegation of ownership of shares of stocks by the [petitioner] would reveal that there is an allegation of personal property in the Philippines. Shares of stocks represent personal property of the shareholder. Thus, it follows that even though the Amended Complaint is primarily for damages, it does relate to a property of the [petitioner], to which the latter has a claim interest (sic), or an actual or contingent lien, which will make it fall under one of the requisite (sic) for extraterritorial service under Section 15, Rule 14, of the Rules of Court. Thus, it could be gainfully said that the summons had been validly served for [RTC] to acquire jurisdiction over the [petitioner].
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> The [petitioner] hinges its dismissal on the failure of the [respondent] to state a cause of action. The [RTC] would like to emphasize that in a Motion to Dismiss, it hypothetically admits the truth of the facts alleged in a

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> complaint.
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> When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint x x x and from no other x x x and the Court cannot consider other matters aliunde x x x. This implies that the issue must be passed upon on the basis of the allegations and declare them to be false, otherwise it would be a procedural error and a denial of due process to the [respondent] x x x.
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> The three (3) essential elements of a cause of action are the following:
> a) The plaintiff's legal rights;
> b) A correlative obligation of the defendant;
> c) The omission of the defendant in violation of the legal rights.

A cursory reading of the Amended Complaint would reveal that all of the essential elements of a cause of action are attendant in the Amended Complaint.

As for the contention that venue was improperly laid, x x x, the [RTC] in its ultimate desire that the ends of justice could be served in its fullest, cannot rule that venue was improperly laid.

x x x x

The stipulation as to the venue of a prospective action does not preclude the filing of the suit in the residence of the [respondent] under Section 2, Rule 4, Rules of Court, especially where the venue stipulation was imposed by the [petitioner] for its own benefits.

x x x x

The [RTC] further believes that it is imperative that in order to ferret out the truth, a full-blown trial is necessary for parties to be able to prove or disprove their allegations.[21]

Petitioner moved for the reconsideration of the aforesaid Order but, it was denied by the RTC in its Order, dated 20 June 2003.

Consequently, petitioner filed a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure with application for temporary restraining order and/or preliminary injunction before the Court of Appeals alleging that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss the Amended Complaint. The Court of Appeals never issued any temporary restraining order or writ of injunction. On 4 April 2006, the Court of Appeals rendered a Decision affirming the RTC Orders of 4 November 2002 and 20 June 2003.

This brings us to the present Petition before this Court wherein petitioner raised the following issues.

> I.
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> WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT RULING THAT THE SERVICE OF SUMMONS ON PETITIONER WAS DEFECTIVE AND THAT THE TRIAL COURT THUS FAILED TO ACQUIRE JURISDICTION OVER THE PERSON OF THE PETITIONER.
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> II.
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> WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT THE "SOLE ISSUE" IN THE PETITION FOR CERTIORARI FILED BEFORE IT IS THE QUESTION OF WHETHER THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE PETITIONER THROUGH THE EXTRATERRITORIAL SERVICE OF SUMMONS.

A.

WHETHER OR NOT THE COURT OF APPEALS SHOULD HAVE GRANTED THE PETITION FOR CERTIORARI AND REVERSED THE RTC ORDERS ON THE GROUND THAT THE AMENDED COMPLAINT FAILED TO STATE A CAUSE OF ACTION AGAINST PETITIONER.

- BASED ON THE ALLEGATIONS IN THE EX-PARTE MOTION TO ADMIT AMENDED COMPLAINT, AMENDED COMPLAINT, AND ALL DOCUMENTS ATTACHED AND/OR RELATED THERETO, PETITIONER IS NOT THE REAL PARTY-IN-INTEREST DEFENDANT IN THE CASE BELOW.

- ASSUMING ARGUENDO THAT RESPONDENT DAKILA FILED THIS CASE AGAINST THE CORRECT [PARTY], INASMUCH AS THE DISTRIBUTION AGREEMENT DATED 1 JUNE 1990 GRANTS [PEIA] THE RIGHT TO TERMINATE THE CONTRACT AT ANY TIME, RESPONDENT DAKILA FAILS TO STATE A CAUSE OF ACTION IN THE CASE BELOW.

B.

WHETHER OR NOT THE COURT OF APPEALS SHOULD HAVE GRANTED THE PETITION FOR CERTIORARI AND REVERSED THE RTC ORDERS ON THE GROUND OF IMPROPER VENUE.

III.

WHETHER OR NOT PETITIONER IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF INJUNCTION.

The foregoing issues raised by petitioner essentially requires this Court to make a determination of the (1) proper service of summons and acquisition of jurisdiction by the RTC over the person of the petitioner; (2) existence of a cause of action against petitioner in respondent's Amended Complaint; and (3) proper venue for respondent's civil case against petitioner.

Petitioner contends that Civil Case No. MC99-605 involves an action for collection of sum of money and damages arising from the alleged breach of the Distribution Agreement. The action is one in personam, or an action against a person based on his personal liability; and for the court a quo to acquire jurisdiction over the person of the petitioner, personal service of summons, and not extraterritorial service of summons, must be made within the state even if the petitioner is a non-resident. Petitioner avers that extraterritorial service of summons stated under Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure, is only proper in in rem and quasi in rem cases; thus, resort to an extraterritorial service of summons in the case at bar was erroneous. Petitioner asseverates that the allegations in the respondent's Amended Complaint that the petitioner has personal properties within the Philippines does not make the present case one that relates to, or the subject of which is, property within the Philippines warranting the extraterritorial service of summons under Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure. Petitioner states that for an action to be considered as one that relates to, or the subject of which is, property within the Philippines, the main subject matter of the action must be the property within the Philippines itself, and such was not the situation in this case. Likewise, the prayer in respondent's Amended Complaint for the issuance of a writ of attachment over the personal property of PEIP, which is 99% owned by petitioner (as the supposed successor of PEIA), did not convert the action from one in personam to one that is quasi in rem. Also, the petitioner points out that since the respondent's prayer for the issuance of a writ of attachment was denied by the RTC in its Order, dated 26 March 1999, then the nature of Civil Case No. MC99-605 remains in personam, contrary to the ruling of the Court of Appeals that by the attachment of the petitioner's interest in PEIP the action in personam was converted to an action quasi in rem. Resultantly, the extraterritorial service of summons on the petitioner was not validly effected, and did not give the RTC

jurisdiction over the petitioner.

Petitioner further argues that the appellate court should have granted its Petition for Certiorari on the ground that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss respondent's Amended Complaint for failure to state a cause of action against petitioner which was not the real party-in-interest in Civil Case No. MC99-605. Petitioner claims that it had never used the name PEIA as its corporate name, and neither did it change its name from that of PEIA. Petitioner stresses that PEIA is an entirely different corporate entity that is not connected in whatever manner to the petitioner. Even assuming arguendo that petitioner is the real party-in-interest in Civil Case No. MC99-605 or that petitioner and PEIA are one and the same entity, petitioner still avows that the respondent failed to state a cause of action against it because the Distribution Agreement expressly grants PEIA the right to terminate the said contract at any time.

Lastly, it is the contention of the petitioner that the appellate court should have granted its Petition for Certiorari because the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss Civil Case No. MC99-605 for having been filed in an improper venue. Petitioner asserts that in the Distribution Agreement entered into between the respondent and PEIA, both had mutually agreed to the exclusive jurisdiction of the courts of Singapore or of the Philippines as elected by PEIA. Absent any waiver by PEIA of its right to choose the venue of the dispute, the Complaint filed by the respondent before the RTC in the Philippines should have been dismissed on the ground of improper venue.

The Petition is meritorious.

Jurisdiction is the power with which courts are invested for administering justice; that is, for hearing and deciding cases. In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties.[22]

Jurisdiction of the court over the subject matter is conferred only by the Constitution or by law. It is determinable on the basis of allegations in the complaint.[23]

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, while jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them in the manner required by law or through their voluntary appearance in court and their submission to its authority. If the defendants have not been summoned, unless they voluntarily appear in court, the court acquires no jurisdiction over their persons and a judgment rendered against them is null and void. To be bound by a decision, a party should first be subjected to the court's jurisdiction.[24]

Thus, one of the modes of acquiring jurisdiction over the person of the defendant or respondent in a civil case is through service of summons. It is intended to give notice to the defendant or respondent that a civil action has been commenced against him. The defendant or respondent is thus put on guard as to the demands of the plaintiff or the petitioner.[25]

The proper service of summons differs depending on the nature of the civil case instituted by the plaintiff or petitioner: whether it is in personam, in rem, or quasi in rem. Actions in personam, are those actions brought against a person on the basis of his personal liability; actions in rem are actions against the thing itself instead of against the person; and actions are quasi in rem, where an individual is named as defendant and the purpose of the proceeding is to subject his or her interest in a property to the obligation or loan burdening the property.[26]

Under Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure, there are only four instances wherein a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service, to wit: (1) when the action affects the personal status of the plaintiff; (2) when the action relates to, or the

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subject of which is property, within the Philippines, in which the defendant claims a lien or an interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[27]

Undoubtedly, extraterritorial service of summons applies only where the action is in rem or quasi in rem, but not if an action is in personam.

When the case instituted is an action in rem or quasi in rem, Philippine courts already have jurisdiction to hear and decide the case because, in actions in rem and quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the court acquires jurisdiction over the res.[28] Thus, in such instance, extraterritorial service of summons can be made upon the defendant. The said extraterritorial service of summons is not for the purpose of vesting the court with jurisdiction, but for complying with the requirements of fair play or due process, so that the defendant will be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of the plaintiff, and he can thereby take steps to protect his interest if he is so minded.[29] On the other hand, when the defendant or respondent does not reside and is not found in the Philippines,[30] and the action involved is in personam, Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court.[31]

In the case at bar, this Court sustains the contention of the petitioner that there can never be a valid extraterritorial service of summons upon it, because the case before the court a quo involving collection of a sum of money and damages is, indeed, an action in personam, as it deals with the personal liability of the petitioner to the respondent by reason of the alleged unilateral termination by the former of the Distribution Agreement. Even the Court of Appeals, in its Decision dated 4 April 2004, upheld the nature of the instant case as an action in personam. In the said Decision the appellate court ruled that:

> In the instant petition, [respondent's] cause of action in Civil Case No. MC99-605 is anchored on the claim that petitioner unilaterally terminated the Distribution Agreement. Thus, [respondent] prays in its [C]omplaint that "Upon the filing of the Complaint, issue an Order fixing the amount of the bond and issue a writ of attachment requiring the sheriff to attach the properties of [Perkin-Elmer Philippines], which are not exempt from execution, and as much as may be sufficient to satisfy [respondent's] demands."
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> The action instituted by [respondent] affects the parties alone, not the whole world. Hence, it is an action in personam, i.e., any judgment therein is binding only upon the parties properly impleaded.
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> The objective sought in [respondent's] [C]omplaint was to establish a claim against petitioner for its alleged unilateral termination of [D]istribution [A]greement. Hence, to repeat, Civil Case No. MC99-605 is an action in personam because it is an action against persons, namely, herein petitioner, on the basis of its personal liability. As such, personal service of summons upon the [petitioner] is essential in order for the court to acquire of (sic) jurisdiction over [its person].[32] (Emphasis supplied.)

Thus, being an action in personam, personal service of summons within the Philippines is necessary in order for the RTC to validly acquire jurisdiction over the person of the petitioner, and this is not possible in the present case because the petitioner is a non-resident and is not found within the Philippines. Respondent's allegation in its

Amended Complaint that petitioner had personal property within the Philippines in the form of shares of stock in PEIP did not make Civil Case No. MC99-605 fall under any of the four instances mentioned in Section 15, Rule 14 of the Rules of Court, as to convert the action in personam to an action in rem or quasi in rem and, subsequently, make the extraterritorial service of summons upon the petitioner valid.

It is incorrect for the RTC to have ruled that the allegations made by the respondent in its Amended Complaint, which is primarily for collection of a sum of money and damages, that the petitioner owns shares of stock within the Philippines to which the petitioner claims interest, or an actual or contingent lien, would make the case fall under one of the aforesaid instances wherein extraterritorial service of summons under Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure, would be valid. The RTC in arriving at such conclusions relied on the second instance, mentioned under Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure (i.e., when the action relates to, or the subject of which is property, within the Philippines, in which the defendant claims a lien or interest, actual or contingent), where extraterritorial service of summons can be properly made. However, the aforesaid second instance has no application in the case before this Court. Primarily, the Amended Complaint filed by the respondent against the petitioner was for the collection of sum of money and damages. The said case was neither related nor connected to any property of the petitioner to which it claims a lien or interest. The action for collection of a sum of money and damages was purely based on the personal liability of the petitioner towards the respondent. The petitioner is correct in saying that "mere allegations of personal property within the Philippines does not necessarily make the action as one that relates to or the subject of which is, property within the Philippines as to warrant the extraterritorial service of summons. For the action to be considered one that relates to, or the subject of which, is the property within the Philippines, the main subject matter of the action must be the property itself of the petitioner in the Philippines." By analogy, an action involving title to or possession of real or personal property -- such as the foreclosure of real estate or chattel mortgage where the mortgagor does not reside or is not found in the Philippines -- can be considered as an action which relates to, or the subject of which is, property within the Philippines, in which the defendant claims a lien or interest, actual or contingent; and in such instance, judgment will be limited to the res.[33]

Moreover, the allegations made by the respondent that the petitioner has property within the Philippines were in support of its application for the issuance of a writ of attachment, which was denied by the RTC. Hence, it is clear from the foregoing that the Complaint filed by the respondent against the petitioner does not really relate to, or the subject of which is, property within the Philippines of the petitioner.

This Court also finds error in the Decision of the Court of Appeals. It is provided for in the said Decision, thus:

> However, let it be emphasized that in the [C]omplaint filed before the trial court, [respondent] prayed that "Upon the filing of the Complaint, issue an Order fixing the amount of the bond and issue a writ of attachment requiring the sheriff to attach the properties of [Perkin-Elmer Philippines], which are not exempt from execution, and as much as may be sufficient to satisfy [respondent's] demands.
>
> In other words, although the [C]omplaint before the trial court does not involve the personal status of the [respondent], nevertheless, the case involves property within the Philippines in which the [petitioner] has or claim an interest, or which the [respondent] has attached, which is one of the instances where extraterritorial service of summons is proper.
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> Hence, it is submitted that one of the instances when exterritorial service of summons under Section 15, Rule 14 of the Rules of Court is proper may be considered to have been met. This is because the [C]omplaint for collection of sum of money which is an action in personam was converted into an action quasi in rem by the attachment of [petitioner's] interest in [Perkin-Elmer Philippines].[34] (Emphasis supplied.)

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Respondent's allegation in its Amended Complaint that petitioner had personal property within the Philippines in the form of shares of stock in PEIP does not convert Civil Case No. MC99-605 from an action in personam to one quasi in rem, so as to qualify said case under the fourth instance mentioned in Section 15, Rule 14 of the 1997 Revised Rules of Civil Procedure (i.e., when the non-resident defendant's property has been attached within the Philippines), wherein extraterritorial service of summons upon the petitioner would have been valid. It is worthy to note that what is required under the aforesaid provision of the Revised Rules of Civil Procedure is not a mere allegation of the existence of personal property belonging to the non-resident defendant within the Philippines but, more precisely, that the non-resident defendant's personal property located within the Philippines must have been actually attached. This Court in the case of Venturanza v. Court of Appeals[35] ruled that when the attachment was void from the beginning, the action in personam which required personal service of summons was never converted into an action in rem where service by publication would have been valid. Hence, the appellate court erred in declaring that the present case, which is an action in personam, was converted to an action quasi in rem because of respondent's allegations in its Amended Complaint that petitioner had personal property within the Philippines.

Glaringly, respondent's prayer in its Amended Complaint for the issuance of a writ of attachment over petitioner's purported shares of stock in PEIP located within the Philippines was denied by the court a quo in its Order dated 26 March 1999. Respondent's Motion for Reconsideration of the said Order was likewise denied by the RTC in its subsequent Order, dated 11 January 2000. Evidently, petitioner's alleged personal property within the Philippines, in the form of shares of stock in PEIP, had not been attached; hence, Civil Case No. MC99-605, for collection of sum of money and damages, remains an action in personam. As a result, the extraterritorial service of summons was not validly effected by the RTC against the petitioner, and the RTC thus failed to acquire jurisdiction over the person of the petitioner. The RTC is therefore bereft of any authority to act upon the Complaint filed before it by the respondent insofar as the petitioner is concerned.

If there was no valid summons served upon petitioner, could RTC have acquired jurisdiction over the person of the petitioner by the latter's voluntary appearance? As a rule, even if the service of summons upon the defendant or respondent in a civil case is defective, the court can still acquire jurisdiction over his person when he voluntary appears in court or submits himself to its authority. Nonetheless, voluntary appearance, as a mode of acquiring jurisdiction over the person of the defendant, is likewise inapplicable in this case.

It is settled that a party who makes a special appearance in court for the purpose of challenging the jurisdiction of said court, based on the invalidity of the service of summons, cannot be considered to have voluntarily submitted himself to the jurisdiction of the court.[36] In the present case, petitioner has been consistent in all its pleadings in assailing the service of summons upon it and the jurisdiction of the RTC over its person. Thus, the petitioner cannot be declared in estoppel when it filed an Answer ad cautelam with compulsory counterclaim before the RTC while the instant Petition was still pending before this Court. The petitioner was in a situation wherein it had no other choice but to file an Answer; otherwise, the RTC would have already declared that petitioner had waived its right to file responsive pleadings.[37] Neither can the compulsory counterclaim contained in petitioner's Answer ad cautelam be considered as voluntary appearance of petitioner before the RTC. Petitioner seeks to recover damages and attorney's fees as a consequence of the unfounded suit filed by respondent against it. Thus, petitioner's compulsory counterclaim is only consistent with its position that the respondent wrongfully filed a case against it and the RTC erroneously exercised jurisdiction over its person.

Distinction must be made in Civil Case No. MC99-605 as to the jurisdiction of the RTC over respondent's complaint and over petitioner's counterclaim -- while it may have no jurisdiction over the former, it may exercise jurisdiction over the latter. The compulsory counterclaim attached to petitioner's Answer ad cautelam can be

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treated as a separate action, wherein petitioner is the plaintiff while respondent is the defendant.[38] Petitioner could have instituted a separate action for the very same claims but, for the sake of expediency and to avoid multiplicity of suits, it chose to demand the same in Civil Case No. MC99-605.[39] Jurisdiction of the RTC over the subject matter and the parties in the counterclaim must thus be determined separately and independently from the jurisdiction of the same court in the same case over the subject matter and the parties in respondent's complaint.

Moreover, even though the petitioner raised other grounds in its Motion to Dismiss aside from lack of jurisdiction over its person, the same is not tantamount to its voluntary appearance or submission to the authority of the court a quo. While in De Midgely v. Ferandos,[40] it was held that, in a Motion to Dismiss, the allegation of grounds other than lack of jurisdiction over the person of the defendant, including a prayer "for such other reliefs as" may be deemed "appropriate and proper" amounted to voluntary appearance, such ruling must be deemed superseded by the declaration of this Court in La Naval Drug Corporation v. Court of Appeals[41] that estoppel by jurisdiction must be unequivocal and intentional. It would be absurd to hold that petitioner unequivocally and intentionally submitted itself to the jurisdiction of the court by seeking other reliefs to which it might be entitled when the only relief that it could properly ask from the trial court is the dismissal of the complaint against it.[42] Thus, the allegation of grounds other than lack of jurisdiction with a prayer "for such other reliefs" as may be deemed "appropriate and proper" cannot be considered as unequivocal and intentional estoppel. Most telling is Section 20, Rule 14 of the Rules of Court, which expressly provides:

> SEC. 20. Voluntary appearance. - The defendant's voluntary appearance in the action shall be equivalent to service of summons. 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.[43] (Emphasis supplied.)

In sum, this Court finds that the petitioner did not submit itself voluntarily to the authority of the court a quo; and in the absence of valid service of summons, the RTC utterly failed to acquire jurisdiction over the person of the petitioner.

Anent the existence of a cause of action against petitioner and the proper venue of the case, this Court upholds the findings of the RTC on these issues.

Dismissal of a Complaint for failure to state a cause of action is provided for by the Rules of Court.[44] When a Motion to Dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them to be true. For it to do otherwise would be a procedural error and a denial of plaintiff's right to due process.[45] While, truly, there are well-recognized exceptions[46] to the rule that the allegations are hypothetically admitted as true and inquiry is confined to the face of the complaint,[47] none of the exceptions apply in this case. Hence, the general rule applies. The defense of the petitioner that it is not the real party-in-interest is evidentiary in nature which must be proven in trial. The appellate court, then, cannot be faulted for not granting petitioner's Motion to Dismiss on the ground of failure to state a cause of action.

In the same way, the appellate court did not err in denying petitioner's Motion to Dismiss Civil Case No. MC99-605 on the ground of improper venue. In arriving at such conclusion, this Court quotes with approval the following ratiocination of the RTC:

> As for the contention that venue was improperly laid, x x x, the [trial court] in its ultimate desire that the ends of justice could be served in its fullest, cannot rule that venue was improperly laid.
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> x x x x

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> The stipulation as to the venue of a prospective action does not preclude the filing of the suit in the residence of the [respondent] under Section 2, Rule 4, Rules of Court, especially where the venue stipulation was imposed by the [petitioner] for its own benefits.[48] (Emphasis supplied.)

Despite the venue stipulation found in the Distribution Agreement stipulating that the exclusive jurisdiction over disputes arising from the same shall lie in the courts of Singapore or of the Territory (referring to the Philippines), whichever is elected by PEIA (or petitioner, as PEIA's alleged successor), the RTC of the Philippines cannot be considered as an improper venue. Truly, the venue stipulation used the word "exclusive," however, a closer look on the Distribution Agreement would reveal that the venue stipulation was really in the alternative i.e., courts of Singapore or of the Territory, meaning, the Philippines; thus, the court a quo is not an improper venue for the present case.

Nonetheless, it bears to emphasize that despite our findings that based on the allegations in respondent's Complaint in Civil Case No. MC99-605, respondent appears to have a cause of action against the petitioner and that the RTC is the proper venue for the said case, Civil Case No. MC99-605 is still dismissible, for the RTC never acquired jurisdiction over the person of the petitioner. The extraterritorial service of summons upon the petitioner produces no effect because it can only be done if the action is in rem or quasi in rem. The case for collection of sum of money and damages filed by the respondent against the petitioner being an action in personam, then personal service of summons upon the petitioner within the Philippines is essential for the RTC to validly acquire jurisdiction over the person of the petitioner. Having failed to do so, the RTC can never subject petitioner to its jurisdiction. The mere allegation made by the respondent that the petitioner had shares of stock within the Philippines was not enough to convert the action from one in personam to one that was quasi in rem, for petitioner's purported personal property was never attached; thus, the extraterritorial service of summons upon the petitioner remains invalid. In light of the foregoing findings, this Court concludes that the RTC has no power to hear and decide the case against the petitioner, because the extraterritorial service of summons was not validly effected upon the petitioner and the RTC never acquired jurisdiction over its person.

Finally, as regards the petitioner's counterclaim, which is purely for damages and attorney's fees by reason of the unfounded suit filed by the respondent against it, it has long been settled that the same truly falls under the classification of compulsory counterclaim and it must be pleaded in the same action, otherwise, it is barred.[49] In the case at bar, this Court orders the dismissal of the Complaint filed by the respondent against the petitioner because the court a quo failed to acquire jurisdiction over the person of the latter. Since the Complaint of the respondent was dismissed, what will happen then to the counterclaim of the petitioner? Does the dismissal of the complaint carry with it the dismissal of the counterclaim?

In the cases of Metal Engineering Resources Corp. v. Court of Appeals,[50] International Container Terminal Services, Inc. v. Court of Appeals,[51] and BA Finance Corporation v. Co.,[52] the Court ruled that if the court does not have jurisdiction to entertain the main action of the case and dismisses the same, then the compulsory counterclaim, being ancillary to the principal controversy, must likewise be dismissed since no jurisdiction remained for any grant of relief under the counterclaim.[53] If we follow the aforesaid pronouncement of the Court in the cases mentioned above, the counterclaim of the herein petitioner being compulsory in nature must also be dismissed together with the Complaint. However, in the case of Pinga vs. Heirs of German Santiago,[54] the Court explicitly expressed that:

> Similarly, Justice Feria notes that "the present rule reaffirms the right of the defendant to move for the dismissal of the complaint and to prosecute his counterclaim, as stated in the separate opinion [of Justice Regalado in BA Finance]. Retired Court of Appeals Justice Hererra pronounces that the amendment to Section 3, Rule 17 [of the 1997 Revised Rules of Civil Procedure] settles that "nagging question "whether the dismissal of the complaint carries with it the dismissal of the counterclaim, and opines that by reason of the amendments,

> the rulings in Metals Engineering, International Container, and BA Finance "may be deemed abandoned." x x x.
>
> x x x, when the Court promulgated the 1997 Rules of Civil Procedure, including the amended Rule 17, those previous jural doctrines that were inconsistent with the new rules incorporated in the 1997 Rules of Civil Procedure were implicitly abandoned insofar as incidents arising after the effectivity of the new procedural rules on 1 July 1997. BA Finance, or even the doctrine that a counterclaim may be necessarily dismissed along with the complaint, clearly conflicts with the 1997 Rules of Civil Procedure. The abandonment of BA Finance as doctrine extends as far back as 1997, when the Court adopted the new Rules of Civil Procedure. If, since then, abandonment has not been affirmed in jurisprudence, it is only because no proper case has arisen that would warrant express confirmation of the new rule. That opportunity is here and now, and we thus rule that the dismissal of a complaint due to fault of the plaintiff is without prejudice to the right of the defendant to prosecute any pending counterclaims of whatever nature in the same or separate action. We confirm that BA Finance and all previous rulings of the Court that are inconsistent with this present holding are now abandoned.[55] [Emphasis supplied].

It is true that the aforesaid declaration of the Court refers to instances covered by Section 3, Rule 17 of the 1997 Revised Rules of Civil Procedure[56] on dismissal of the complaint due to the fault of the plaintiff. Nonetheless, it does not also preclude the application of the same to the instant case just because the dismissal of respondent's Complaint was upon the instance of the petitioner who correctly argued lack of jurisdiction over its person.

Also in the case of Pinga v. Heirs of German Santiago, the Court discussed the situation wherein the very filing of the complaint by the plaintiff against the defendant caused the violation of the latter's rights. As to whether the dismissal of such a complaint should also include the dismissal of the counterclaim, the Court acknowledged that said matter is still debatable, viz:

> Whatever the nature of the counterclaim, it bears the same integral characteristics as a complaint; namely a cause (or causes) of action constituting an act or omission by which a party violates the right of another. The main difference lies in that the cause of action in the counterclaim is maintained by the defendant against the plaintiff, while the converse holds true with the complaint. Yet, as with a complaint, a counterclaim without a cause of action cannot survive.
>
> x x x if the dismissal of the complaint somehow eliminates the cause(s) of the counterclaim, then the counterclaim cannot survive. Yet that hardly is the case, especially as a general rule. More often than not, the allegations that form the counterclaim are rooted in an act or omission of the plaintiff other than the plaintiff's very act of filing the complaint. Moreover, such acts or omissions imputed to the plaintiff are often claimed to have occurred prior to the filing of the complaint itself. The only apparent exception to this circumstance is if it is alleged in the counterclaim that the very act of the plaintiff in filing the complaint precisely causes the violation of the defendant's rights. Yet even in such an instance, it remains debatable whether the dismissal or withdrawal of the complaint is sufficient to obviate the pending cause of action maintained by the defendant against the plaintiff.[57]

Based on the aforequoted ruling of the Court, if the dismissal of the complaint somehow eliminates the cause of the counterclaim, then the counterclaim cannot survive. Conversely, if the counterclaim itself states sufficient cause of action then it should stand independently of and survive the dismissal of the complaint. Now, having been directly confronted with the problem of whether the compulsory counterclaim by reason of the unfounded suit may prosper even if the main complaint had been dismissed, we rule in the affirmative.

It bears to emphasize that petitioner's counterclaim against respondent is for damages and attorney's fees arising from the unfounded suit. While respondent's Complaint against petitioner is already dismissed, petitioner may have very well already incurred damages and litigation expenses such as attorney's fees since it was forced to

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engage legal representation in the Philippines to protect its rights and to assert lack of jurisdiction of the courts over its person by virtue of the improper service of summons upon it. Hence, the cause of action of petitioner's counterclaim is not eliminated by the mere dismissal of respondent's complaint.

It may also do well to remember that it is this Court which mandated that claims for damages and attorney's fees based on unfounded suit constitute compulsory counterclaim which must be pleaded in the same action or, otherwise, it shall be barred. It will then be iniquitous and the height of injustice to require the petitioner to make the counterclaim in the present action, under threat of losing his right to claim the same ever again in any other court, yet make his right totally dependent on the fate of the respondent's complaint.

If indeed the Court dismisses petitioner's counterclaim solely on the basis of the dismissal of respondent's Complaint, then what remedy is left for the petitioner? It can be said that he can still file a separate action to recover the damages and attorney's fees based on the unfounded suit for he cannot be barred from doing so since he did file the compulsory counterclaim in the present action, only that it was dismissed when respondent's Complaint was dismissed. However, this reasoning is highly flawed and irrational considering that petitioner, already burdened by the damages and attorney's fees it may have incurred in the present case, must again incur more damages and attorney's fees in pursuing a separate action, when, in the first place, it should not have been involved in any case at all.

Since petitioner's counterclaim is compulsory in nature and its cause of action survives that of the dismissal of respondent's complaint, then it should be resolved based on its own merits and evidentiary support.

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The Decision of the Court of Appeals, dated 4 April 2006, in CA-G.R. SP No. 78981, affirming the Orders, dated 4 November 2002 and 20 June 2003, of the Regional Trial Court of Mandaluyong City, Branch 212, in Civil Case No. MC99-605, is hereby REVERSED AND SET ASIDE. Respondent's Amended Complaint in Civil Case No. MC99-605 as against the petitioner is hereby ordered DISMISSED, and all the proceedings against petitioner in the court a quo by virtue thereof are hereby DECLARED NULL AND VOID. The Regional Trial Court of Mandaluyong City, Branch 212, is DIRECTED to proceed without further delay with the resolution of respondent's Complaint in Civil Case No. MC99-605 as to defendant PEIP, as well as petitioner's counterclaim. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Rollo, pp. 10-69.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring; id. at 76-90.

[3] Penned by Judge Rizalina T. Capco-Umali; id. at 315-318.

[4] Id. at 371-372.

[5]Id. at 180-188.

[6]Id. at 97-105.

[7]The reason of the trial court in denying the prayer of the respondent for the issuance of a writ of attachment was: "Based on the records, [respondent] is desirous of attaching the property of [Perkin-Elmer Philippines] by invoking that [petitioner] owns 99% of [Perkin-Elmer Philippines]. x x x, let this Court emphasize that a

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corporation such as [Perkin-Elmer Philippines] has a personality separate and distinct from shareholder, [the petitioner]. Hence, the property belonging to [Perkin-Elmer Philippines] cannot be attached to pay for the obligation incurred by its shareholder." (Id. at 731-732.)

[8] Id. at 733.

[9]Id. at 156-159.

[10] Id. at 96.

[11] Id. at 160-164.

[12] Id. at 151.

[13] Id. at 152.

[14] A sole proprietorship is neither a natural person nor a juridical person under Article 44 of the Civil Code. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit. It does not vest juridical or legal personality in the sole proprietorship or empowers it to file or defend an action in court. (Yao Ka Sin Trading v. Court of Appeals, G.R. No. 53820, 15 June 1992, 209 SCRA 763, 780.) Likewise, a sole proprietorship does not possess any juridical personality separate and apart from the personality of the owner of the enterprise and the personality of the persons acting in the name of such proprietorship. Hence, any case filed against a sole proprietorship must be brought against its owner.

[15] Rollo, pp. 170-179.

[16] Id. at 225-226.

[17] Id. at 227-230.

[18]Id. at 238.

[19] Id. at 155.

[20] Id. at 239-264.

[21] Rollo, pp. 316-318.

[22]Paramount Insurance Corp. v. Japzon, G.R. No. 68037, 29 July 1992, 211 SCRA 879, 884-885.

[23] De Leon v. Court of Appeals, 315 Phil. 140, 150 (1995).

[24] Bank of the Philippine Islands v. Evangelista, 441 Phil. 445, 453 (2002).

[25]Paramount Insurance Corp. v. Japzon, supra note 22 at 885.

[26] Banco Do Brasil v. Court of Appeals, 389 Phil. 87, 99-100 (2000).

[27] Id.

[28] Id.

[29]Valmonte v. Court of Appeals, 322 Phil. 96, 106 (1996).

[30] Romualdez-Licaros v. Licaros, 449 Phil. 824, 833 (2003).

[31] Banco Do Brasil v. Court of Appeals, supra note 26.

[32] Rollo, pp. 85-87.

[33] Civil Law Commentaries by Justice Jose Y. Feria, Vol. 1, 2001 Edition, p. 138, citing therein El Banco Español-Filipino v. Palanca, 37 Phil. 921, 927 (1918).

[34] Rollo, pp. 88-89.

[35] G.R. No. L-77760, 11 December 1987, 156 SCRA 305, 312.

[36] Hongkong and Shanghai Banking Corporation Limited v. Catalan, G.R. No. 159590, 18 October 2004, 440 SCRA 498, 516.

[37] Id.

[38] Civil Procedure Commentaries by Justice Jose Y. Feria, Vol. 1 (2001 Edition), p. 277, citing the case of Golden Ribbon Lumber Co., Inc. v. Santos, 52 O.G. 1477 (1955); Civil Procedure Commentaries by Justice Florenz D. Regalado, Vol. 1 (Seventh Revised Edition), p. 128.

[39] Section 6, Rule 6 of the 1997 Revised Rules of Civil Procedure; Reyes v. Court of Appeals, 148 Phil. 135, 149 (1971); Lafarge Cement Philippines, Inc. v. Continental Cement Corporation, G.R. No. 155173, 23 November 2004, 443 SCRA 522, 533.

[40] G.R. No. L-34314, 13 May 1975, 64 SCRA 23, 31.

[41]G.R. No. 103200, 31 August 1994, 236 SCRA 78, 86.

[42] Millennium Industrial Commercial Corporation v. Tan, 383 Phil. 468, 478 (2000).

[43] 1997 Revised Rules of Civil Procedure.

[44]Section 1(g), Rule 16, 1997 Revised Rules of Civil Procedure.

[45] Indiana Aerospace University v. Commission on Higher Education, G.R. No. 139371, 4 April 2001, 356 SCRA 367, 385.

[46] There is no hypothetical admission of the veracity of allegations if their falsity is subject to judicial notice, or if such allegations are legally impossible, or if these refer to facts which are inadmissible in evidence, or if by the record or document included in the pleading these allegations appear unfounded. Also, inquiry is not confined to the complaint if there is evidence which has been presented to the court by stipulation of the parties, or in the course of hearings related to the case.

[47] Dabuco v. Court of Appeals, 379 Phil. 939, 950 (2000).

[48] Rollo, pp. 317-318.

[49]Tiu Po vs. Bautista, G.R. No. L-55514, 17 March 1981, 103 SCRA 388, 391; Alday vs. FGU Insurance Corporation, G.R. No. 138822, 23 January 2001, 350 SCRA 113, 123.

[50]G.R. No. 95631, 28 October 1991, 203 SCRA 273, 282.

[51]G.R. No. 90530, 7 October 1992, 214 SCRA 456.

[52] G.R. No. 105751, 30 June 1993, 224 SCRA 163, 167.

[53] Supra note 50.

[54]G.R. No. 170354, 30 June 2006, 494 SCRA 393, 414-415.

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[55] Supra note 54.

[56]SEC. 3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[57] Pinga vs. Heirs of German Santiago, id. at 418-419.

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