GLOBAL BUSINESS HOLDINGS, INC. (FORMERLY GLOBAL BUSINESS BANK, INC.), PETITIONER, VS. SURECOMP SOFTWARE, B.V., RESPONDENT.

G.R. No. 173463. October 13, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 5, 2006 and the Resolution[2] dated July 10, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 75524.

The facts of the case are as follows:

On March 29, 1999, respondent Surecomp Software, B.V. (Surecomp), a foreign corporation duly organized and existing under the laws of the Netherlands, entered into a software license agreement with Asian Bank Corporation (ABC), a domestic corporation, for the use of its IMEX Software System (System) in the bank's computer system for a period of twenty (20) years.[3]

In July 2000, ABC merged with petitioner Global Business Holdings, Inc. (Global),[4] with Global as the surviving corporation. When Global took over the operations of ABC, it found the System unworkable for its operations, and informed Surecomp of its decision to discontinue with the agreement and to stop further payments thereon. Consequently, for failure of Global to pay its obligations under the agreement despite demands, Surecomp filed a complaint for breach of contract with damages before the Regional Trial Court (RTC) of Makati. The case was docketed as Civil Case No. 01-1278.[5]

In its complaint, Surecomp alleged that it is a foreign corporation not doing business in the Philippines and is suing on an isolated transaction. Pursuant to the agreement, it installed the System in ABC's computers for a consideration of US$298,000.00 as license fee. ABC also undertook to pay Surecomp professional services, which included on-site support and development of interfaces, and annual maintenance fees for five (5) subsequent anniversaries, and committed to purchase one (1) or two (2) Remote Access solutions at discounted prices. In a separate transaction, ABC requested Surecomp to purchase on its behalf a software called MF Cobol Runtime with a promise to reimburse its cost. Notwithstanding the delivery of the product and the services provided, Global failed to pay and comply with its obligations under the agreement. Thus, Surecomp demanded payment of actual damages amounting to US$319,955.00 and an additional amount of US$227,610.00 for Global's unilateral pretermination of the agreement, exemplary damages, attorney's fees and costs of suit.[6]

Instead of filing an answer, Global filed a motion to dismiss based on two grounds: (1) that Surecomp had no capacity to sue because it was doing business in the Philippines without a license; and (2) that the claim on which the action was founded was unenforceable under the Intellectual Property Code of the Philippines.[7]

On the first ground, Global argued that the contract entered into was not an isolated transaction since the contract

was for a period of 20 years. Furthermore, Global stressed that it could not be held accountable for any breach as the agreement was entered into between Surecomp and ABC. It had not, in any manner, taken part in the negotiation and execution of the agreement but merely took over the operations of ABC as a result of the merger. On the second ground, Global averred that the agreement, being a technology transfer arrangement, failed to comply with Sections 87 and 88 of the Intellectual Property Code of the Philippines.[8]

In the interim, Global filed a motion for leave to serve written interrogatories to Surecomp in preparation for the hearing on the motion to dismiss, attaching thereto its written interrogatories.

> After an exchange of pleadings on the motions filed by Global, on June 18, 2002, the RTC issued an Order,[9] the pertinent portions of which read:
>
> After a thorough and careful deliberation of the respective arguments advanced by the parties in support of their positions in these two (2) incidents, and since it cannot be denied that there is indeed a contract entered into between the plaintiff [Surecomp] and the defendant [Global], the latter as a successor in interest of the merging corporation Asian Bank, defendant [Global] is estopped from denying plaintiff's [Surecomp's] capacity to sue it for alleged breach of that contract with damages. Its argument that it was not the one who actually contracted with the plaintiff [Surecomp] as it was the merging Asian Bank which did, is of no moment as it does not relieve defendant Global Bank of its contractual obligation under the Agreement on account of its undertaking under it:
>
> "x x x shall be responsible for all the liabilities and obligations of ASIANBANK in the same manner as if the Merged Bank had itself incurred such liabilities or obligations, and any pending claim, action or proceeding brought by or against ASIANBANK may be prosecuted by or against the Merged Bank. The right of creditors or liens upon the property of ASIANBANK shall not be impaired by the merger; provided that the Merged Bank shall have the right to exercise all defenses, rights, privileges, set-offs and counter-claims of every kind and nature which ASIANBANK may have, or with the Merged Bank may invoke under existing laws."

It appearing however that the second ground relied upon by the defendant [Global], i.e., that the cause of action of the plaintiff is anchored on an unenforceable contract under the provision of the Intellectual Property Code, will require a hearing before the motion to dismiss can be resolved and considering the established jurisprudence in this jurisdiction, that availment of mode of discovery by any of the parties to a litigation, shall be liberally construed to the end that the truth of the controversy on hand, shall be ascertained at a less expense with the concomitant facility and expeditiousness, the motion to serve written interrogatories upon the plaintiff [Surecomp] filed by the defendant [Global] is GRANTED insofar as the alleged unenforceability of the subject contract is concerned. Accordingly, the latter is directed to serve the written interrogatories upon the plaintiff [Surecomp], which is required to act on it in accordance with the pertinent rule on the matter.

Necessarily, the resolution of the motion to dismiss is held in abeyance until after a hearing on it is property conducted, relative to the second ground aforementioned.

SO ORDERED.[10]

Surecomp moved for partial reconsideration, praying for an outright denial of the motion to dismiss, while Global filed a motion for reconsideration.[11]

On November 27, 2002, the RTC issued an Order,[12] the fallo of which reads:

> WHEREFORE, the Order of this Court dated 18 June 2002 is modified. Defendant's [Global's] Motion to Dismiss dated 17 October 2001 is denied on the two grounds therein alleged. Defendant [Global] is given five (5) days from receipt of this Order within which to file its Answer.

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> The resolution of defendant's [Global's] Motion to Serve Written Interrogatories is held in abeyance pending the filing of the Answer.
>
> SO ORDERED.[13]

In partially modifying the first assailed Order, the RTC ratiocinated, viz.:

> This court sees no reason to further belabor the issue on plaintiff's capacity to sue since there is a prima facie showing that defendant entered into a contract with defendant and having done so, willingly, it cannot now be made to raise the issue of capacity to sue [Merrill Lynch Futures, Inc. v. CA, 211 SCRA 824]. That defendant was not aware of plaintiff's lack of capacity to sue or that defendant did not benefit from the transaction are arguments that are hardly supported by the evidence already presented for the resolution of the Motion to Dismiss.
>
> As to the issue of unenforceability of the subject contract under the Intellectual Property Code, this court finds justification in modifying the earlier Order allowing the further presentation of evidence. It appearing that the subject contract between the parties is an executed, rather than an executory, contract the statute of frauds therefore finds no application here.
>
> x x x x
>
> As to defendant's Motion to Serve Written Interrogatories, this court finds that resort to such a discovery mechanism while laudable is premature as defendant has yet to file its Answer. As the case now stands, the issues are not yet joined and the disputed facts are not clear.[14]

Undaunted, Global filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 65 of the Rules of Court before the CA, contending that the RTC abused its discretion and acted in excess of its jurisdiction.[15]

On May 5, 2006, the CA rendered a Decision,[16] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed Orders dated June 18, 2002 and November 27, 2002 of the Regional Trial Court of Makati City, Branch 146, in Civil Case No. 01-1278 are hereby AFFIRMED.
>
> SO ORDERED.[17]

A motion for reconsideration was filed by Global. On July 10, 2006, the CA issued a Resolution[18] denying the motion for reconsideration for lack of merit.

Hence, this petition.

Global presents the following issues for resolution: (1) whether a special civil action for certiorari is the proper remedy for a denial of a motion to dismiss; and (2) whether Global is estopped from questioning Surecomp's capacity to sue.[19]

The petition is bereft of merit.

I

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment.[20]

To justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[21]

In the instant case, Global did not properly substantiate its claim of arbitrariness on the part of the trial court judge that issued the assailed orders denying the motion to dismiss. In a petition for certiorari, absent such showing of arbitrariness, capriciousness, or ill motive in the disposition of the trial judge in the case, we are constrained to uphold the court's ruling, especially because its decision was upheld by the CA.

II

The determination of a corporation's capacity is a factual question that requires the elicitation of a preponderant set of facts.[22] As a rule, unlicensed foreign non-resident corporations doing business in the Philippines cannot file suits in the Philippines.[23] This is mandated under Section 133 of the Corporation Code, which reads:

> Sec. 133. Doing business without a 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.

A corporation has a legal status only within the state or territory in which it was organized. For this reason, a corporation organized in another country has no personality to file suits in the Philippines. In order to subject a foreign corporation doing business in the country to the jurisdiction of our courts, it must acquire a license from the Securities and Exchange Commission and appoint an agent for service of process. Without such license, it cannot institute a suit in the Philippines.[24]

The exception to this rule is the doctrine of estoppel. Global is estopped from challenging Surecomp's capacity to sue.

A foreign corporation doing business in the Philippines without license may sue in Philippine courts a Filipino citizen or a Philippine entity that had contracted with and benefited from it.[25] A party is estopped from challenging the personality of a corporation after having acknowledged the same by entering into a contract with it.[26] The principle is applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract. [27]

Due to Global's merger with ABC and because it is the surviving corporation, it is as if it was the one which entered into contract with Surecomp. In the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved, and all its rights, properties, and liabilities are acquired by the surviving corporation.[28] This is particularly true in this case. Based on the findings of fact of the RTC, as affirmed by the CA, under the terms of the merger or consolidation, Global assumed all the liabilities and obligations of ABC as if it had incurred such liabilities or obligations itself. In the same way, Global also has the right to exercise all defenses, rights, privileges, and counter-claims of every kind and nature which ABC may have or invoke under the law. These findings of fact were never contested by Global in any of its pleadings filed before this Court.

WHEREFORE, in view of the foregoing, the Decision dated May 5, 2006 and the Resolution dated July 10, 2006 of the Court of Appeals in CA-G.R. SP No. 75524 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[*] Leonardo-De Castro,[***] Brion,[****] and Mendoza, JJ., concur.

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[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[**] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[***] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 905 dated October 5, 2010.

[****] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 904 dated October 5, 2010.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid, concurring; rollo, pp. 10-18.

[2] Id. at 19.

[3] Id. at 11.

[4] Formerly known as Global Business Bank, Inc.

[5] Rollo, p. 11.

[6] Id.

[7] Id. at 12.

[8] Id.

[9] Penned by Pairing Judge Cesar D. Santamaria, Branch 146, Makati City; id. at 105-107.

[10] Id. at 106-107.

[11] Id. at 13, 108, 510.

[12] Id. at 108-110.

[13] Id. at 110.

[14] Id. at 108-110. (Citations omitted.)

[15] Id. at 15.

[16] Supra note 1.

[17] Id. at 17.

[18] Supra note 2.

[19] Rollo, pp. 511-512.

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[20] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, 507 Phil. 631, 645 (2005).

[21] Id.

[22] Id. at 646.

[23] Subic Bay Metropolitan Authority v. Universal International Group of Taiwan, 394 Phil. 691, 703 (2000).

[24] European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, 479 Phil. 114, 124 (2004), citing Subic Bay Metropolitan Authority v. Universal International Group of Taiwan, supra, at 704; Georg Grotjahn GMBH & Co. v. Isnani, G.R. No. 109272, August 10, 1994, 235 SCRA 216; Merrill Lynch Futures v. Court of Appeals, G.R. No. 97816, July 24, 1992, 211 SCRA 824; Antam Consolidated, Inc. v. CA, 227 Phil. 267 (1986).

[25] European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, supra, at 125.

[26] Id.; Merrill Lynch Futures, Inc. v. Court of Appeals, supra note 23, at 837.

[27] Merrill Lynch Futures, Inc. v. Court of Appeals, supra.

[28] Babst v. Court of Appeals, 403 Phil. 244, 258 (2001).

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