

ANTAM CONSOLIDATED, INC., TAMBUNTING TRADING CORPORATION AND AURORA CONSOLIDATED SECURITIES AND INVESTMENT CORPORATION, PETITIONERS, VS. THE COURT OF APPEALS, THE HONORABLE MAXI...

G.R. No. 61523. July 31, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari and prohibition seeks to set aside the order of the Regional Trial Court of Laguna which denied the petitioners' motion to dismiss on the ground that the reason relied upon by them does not appear to be indubitable. Petitioners also seek to set aside the decision and resolution of the Intermediate Appellate Court which respectively upheld the order of the trial court and denied the petitioners' motion for reconsideration of the same.

On April 9, 1981, respondent Stokely Van Camp. Inc. (Stokely) filed a complaint against Banahaw Milling Corporation (Banahaw), Antam Consolidated, Inc., Tambunting Trading Corporation (Tambunting), Aurora Consolidated Securities and Investment Corporation, and United Coconut Oil Mills, Inc. (Unicom) for collection of sum of money.

In its complaint, Stokely alleged: (1) that it is a corporation organized and existing under the laws of the state of Indiana, U.S.A. and has its principal office at 941 North Meridian Street, Indianapolis, Indiana, U.S.A., and one of its subdivisions "Capital City Product Company" (Capital City) has its office in Columbus, Ohio, U.S.A.; (2) that Stokely and Capital City were not engaged in business in the Philippines prior to the commencement of the suit so that Stokely is not licensed to do business in this country and is not required to secure such license; (3) that on August 21, 1978, Capital City and Coconut Oil Manufacturing (Phil.) Inc. (Comphil) with the latter acting through its broker Rothschild Brokerage Company, entered into a contract (No. RBS 3655) wherein Comphil undertook to sell and deliver and Capital City agreed to buy 500 long tons of crude coconut oil to be delivered in October/November 1978 at the c.i.f. price of US\$0.30/lb. but Comphil failed to deliver the coconut oil so that Capital City covered its coconut oil needs in the open market at a price substantially in excess of the contract and sustained a loss of US\$103,600; that to settle Capital City's loss under the contract, the parties entered into a second contract (No. RBS 3738) on November 3, 1978 wherein Comphil undertook to buy and Capital City agreed to sell 500 long tons of coconut crude oil under the same terms and conditions but at an increased c.i.f. price of US\$0.3925/lb.; (4) that the second contract states that "it is a wash out against RBS 3655" so that Comphil was supposed to repurchase the undelivered coconut oil at US\$0.3925 from Capital City by paying the latter the sum of US\$103,600.00 which is the same amount of loss that Capital City sustained under the first contract; that Comphil again failed to pay said amount, so to settle Capital City's loss, it entered into a third contract with Comphil on January 24, 1979 wherein the latter undertook to sell and deliver and Capital City agreed to buy the same quantity of crude coconut oil to be delivered in April/May 1979 at the c.i.f. price of US\$0.3425/lb.; (5) that the latter price was 9.25 cents/lb. or US\$103,600 for 500 long tons below the then current

market price of 43.2 cents/lb. and by delivering said quantity of coconut oil to Capital City at the discounted price, Comphil was to have settled its US\$103,600 liability to Capital City; (6) that Comphil failed to deliver the coconut oil so Capital City notified the former that it was in default; (7) that Capital City sustained damages in the amount of US\$175,000; and (8) that after repeated demands from Comphil to pay the said amount, the latter still refuses to pay the same.

Respondent Stokely further prayed that a writ of attachment be issued against any and all the properties of the petitioners in an amount sufficient to satisfy any lien of judgment that the respondent may obtain in its action. In support of this provisional remedy and of its cause of action against the rest of the petitioners other than Comphil, the respondent alleged the following: 1) After demands were made by respondent on Comphil, the Tambuntings ceased to be directors and officers of Comphil and were replaced by their five employees, who were managers of Tambunting's pawnshops and said employees caused the name of Comphil to be changed to "Banahaw Milling Corporation" and authorized one of the Tambuntings, Antonio P. Tambunting, Jr., who was at that time neither a director nor officer of Banahaw to sell its oil mill; 2) Unicom has taken over the entire operations and assets of Banahaw because the entire and outstanding capital stock of the latter was sold to the former; 3) All of the issued and out-standing capital stock of Comphil are owned by the Tambuntings who were the directors and officers of Comphil and who were the ones who benefited from the sale of Banahaw's assets or shares to Unicom; 4) All of the petitioners evaded their obligation to respondent by the devious scheme of using Tambunting employees to replace the Tambuntings in the management of Banahaw and disposing of the oil mill of Banahaw or their entire interests to Unicom; and 5) Respondent has reasonable cause to believe and does believe that the coconut oil mill, which is the only substantial asset of Banahaw is about to be sold or removed so that unless prevented by the Court there will probably be no assets of Banahaw to satisfy its claim.

On April 10, 1981, the trial court ordered the issuance of a writ of attachment in favor of the respondent upon the latter's deposit of a bond in the amount of P1,285,000.00.

On June 3, 1981, the respondent filed a motion for reconsideration to reduce the attachment bond. Attached to this motion is an affidavit by the assistant attorney of the respondent's counsel stating that he has verified with the records of Comphil and the Securities and Exchange Commission (SEC) the facts he alleged in the prayer for the attachment order.

On June 11, 1981, the petitioners filed a motion to dismiss the complaint on the ground that the respondent, being a foreign corporation not licensed to do business in the Philippines, has no personality to maintain the instant suit.

After the respondent had filed an opposition to the motion to dismiss and petitioner had opposed the attachment and the motion to reduce the attachment bond, the trial court issued an order, dated August 10, 1981, reducing the attachment bond to P500,000.00 and denying the motion to dismiss by petitioners on the ground that the reason cited therein does not appear to be indubitable.

Petitioners filed a petition for certiorari before the Intermediate Appellate Court.

On June 14, 1982, the appellate court dismissed the petition stating that the respondent judge did not commit any grave abuse of discretion in deferring the petitioners' motion to dismiss because the said judge is not yet satisfied that he has the necessary facts which would permit him to make a judicious resolution. The appellate court further ruled that in another case entitled *United Coconut Oil Mills, Inc. and Banahaw Milling Corporation v. Hon. Maximiano C. Asuncion and Stokely Van Camp, Inc.* where the facts and issues raised therein are intrinsically the same as in the case at bar, it has already denied the petition for certiorari filed by Unicom and Banahaw for lack of merit and the same was upheld by the Supreme Court.

Petitioners filed a motion for reconsideration but the same was denied. Hence, they filed this instant petition for certiorari and prohibition with prayer for temporary restraining order, questioning the propriety of the appellate court's decision in: a) affirming the deferment of the resolution on petitioners' motion to dismiss; and b) denying the motion to set aside the order of attachment.

With regard to the first question, petitioners maintain that the appellate court erred in denying their motion to dismiss since the ground relied upon by them is clear and indubitable, that is, that the respondent has no personality to sue. Petitioners argue that to maintain the suit filed with the trial court, the respondent should have secured the requisite license to do business in the Philippines because, in fact, it is doing business here. Petitioners anchor their argument that the respondent is a foreign corporation doing business in the Philippines on the fact that by the respondent's own allegations, it has participated in three transactions, either as a seller or buyer, which are by their nature, in the pursuit of the purpose and object for which it was organized. Petitioners further argue that the test of whether one is doing business or not is "whether there is continuity of transactions which are in the pursuance of the normal business of the corporation" and that the transactions entered into by respondent undoubtedly fall within this category.

We reject the petitioners' arguments.

In the case of *Top-Weld Manufacturing, Inc. v. ECED, S.A.* (138 SCRA 118, 127-128), we stated:

"There is no general rule or governing principle laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business in the Philippines. Each case must be judged in the light of its peculiar circumstances. (*Mentholatum Co. v. Mangaliman*, 72 Phil. 524). Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines (*General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd.*, 87 Phil. 313) and a foreign corporation which had been collecting premiums on outstanding policies (*Manufacturing Life Insurance Co., v. Meer*, 89 Phil. 351) were regarded as doing business here. The acts of these corporations should be distinguished from a single or isolated business transaction or occasional, incidental and casual transactions which do not come within the meaning of the law. Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes 'doing' or 'engaging in' or 'transacting' business in the Philippines. (*Far East International Import and Export Corporation v. Nankai Kogyo, Co.*, 6 SCRA 725).

"In the *Mentholatum Co. v. Mangaliman* case earlier cited, this Court held:

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"x x x The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors of Int. Revenue [C.C.A, Ohio]*, 223 F. 984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (*Griffin v. Implement Dealers' Mut. Fire Ins. Co.*, 241 N. W. 75, 77, *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P. 851, 852, 118 Okl. 111; *Automotive Material Co. v. American Standard Metal Products Corp.*, 158 N.E. 698, 703, 327 Ill. 367.)"

In the case at bar, the transactions entered into by the respondent with the petitioners are not a series of commercial dealings which signify an intent on the part of the respondent to do business in the Philippines but constitute an isolated one which does not fall under the category or "doing business." The records show that the only reason why the respondent entered into the second and third transactions with the petitioners was because it wanted to recover the loss it sustained from the failure of the petitioners to deliver the crude coconut oil under the

first transaction and in order to give the latter a chance to make good on their obligation. Instead of making an outright demand on the petitioners, the respondent opted to try to push through with the transaction to recover the amount of US\$103,600.00 it lost. This explains why in the second transaction, the petitioners were supposed to buy back the crude coconut oil they should have delivered to the respondent in an amount which will earn the latter a profit of US\$103,600.00. When this failed the third transaction was entered into by the parties whereby the petitioners were supposed to sell crude coconut oil to the respondent at a discounted rate, the total amount of such discount being US\$103,600.00. Unfortunately, the petitioners failed to deliver again, prompting the respondent to file the suit below.

From these facts alone, it can be deduced that in reality, there was only one agreement between the petitioners and the respondent and that was the delivery by the former of 500 long tons of crude coconut oil to the latter, who in turn, must pay the corresponding price for the same. The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines. Thus, the trial court, and the appellate court did not err in denying the petitioners' motion to dismiss not only because the ground thereof does not appear to be indubitable but because the respondent, being a foreign corporation not doing business in the Philippines, does not need to obtain a license to do business in order to have the capacity to sue. As we have held in *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.* (102 Phil. 1, 18):

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"(d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts (*Marshall-Wells Co. v. Henry W. Elser & Co.* 49 Phil. 70; *Pacific Vegetable Oil Corporation v. Angel O. Singson*, G. R. No. L-7917, April 29, 1955; also cited in *Facilities Management Corporation v. De la Osa*, 89 SCRA 131, 138)."

We agree with the respondent that it is a common ploy of defaulting local companies which are sued by unlicensed foreign companies not engaged in business in the Philippines to invoke lack of capacity to sue. The respondent cites decisions from 1907 to 1957 re-cognizing and rejecting the improper use of this procedural tactic. (*Damtschieffs Rhedered Union v. Cia Trans-atlantica*, 8 Phil. 766 [1907]; *Marshall-Wells Co. v. Henry W. Elser & Co.*, 49 Phil. 70 [1924]; *Western Equipment Co. v. Reyes*, 51 Phil. 115 [1927]; *Central Republic Bank v. Bustamante*, 71 Phil. 359 [1941]; *Pacific Vegetable Oil Co. v. Singson*, 96 Phil. 986 [1955]; *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.*, 102 Phil. 1 [1957]). The doctrine of lack of capacity to sue based on failure to first acquire a local license is based on considerations of sound public policy. It was never intended to favor domestic corporations who enter into solitary transactions with unwary foreign firms and then repudiate their obligations simply because the latter are not licensed to do business in this country. The petitioners in this case are engaged in the exportation of coconut oil, an export item so vital in our country's economy. They filed this petition on the ground that Stokely is an unlicensed foreign corporation without a bare allegation or showing that their defenses in the collection case are valid and meritorious. We cannot fault the two courts below for acting as they did.

Anent the second issue they raise, the petitioners contend that the trial court should not have issued the order of attachment and the appellate court should not have affirmed the same because the verification in support of the

prayer for attachment is insufficient. They state that the person who made such verification does not personally know the facts relied upon for the issuance of the attachment order. Petitioners capitalize on the fact that Renato Calma, the assistant attorney of Bito Misa, and Lozada, counsel for respondent, stated in his verification that "he has read the foregoing complaint and that according to his information and belief the allegations therein contained are true and correct."

The above contention deserves scant consideration.

We rule that the defect in the original verification was cured when Renato Calma subsequently executed an affidavit to the effect that the allegations he made in support of the prayer for attachment were verified by him from the records of Comphil and the Securities and Exchange Commission. Moreover, petitioner had the opportunity to oppose the issuance of the writ.

As to the merit of the attachment order itself, we find that the allegations in the respondent's complaint satisfactorily justify the issuance of said order.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is DISMISSED for lack of merit. The Temporary Restraining Order dated February 2, 1983 is hereby DISSOLVED. Costs against the petitioners.

SO ORDERED.

Feria, (Chairman), Fernan, Cruz, and Paras, JJ., concur.

Alampay, J., no part.

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