

MARUBENI NEDERLAND B.V. PETITIONER, VS. THE HONORABLE JUDGE RICARDO P. TENSUAN, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV, QUEZON CITY AND ARTEMIO GATCH...*G.R. No. 61950. September 28, 1990*

Ponente: FERNAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-61950/>**FERNAN, C.J.:**

On October 23, 1976, in Tokyo, Japan, petitioner Marubeni Nederland B.V. and D.B. Teodoro Development Corporation (DBT for short) entered into a contract whereby petitioner agreed to supply all the necessary equipment, machinery, materials, technical know-how and the general design of the construction of DBT's lime plant at the Guimaras Islands in Iloilo for a total contract price of US\$5,400,000.00 on a deferred payment basis. Simultaneously with the supply contract, the parties entered into two financing contracts, namely a construction loan agreement in the amount of US \$1,600,000.00 and a cash loan agreement for US \$1,500,000.00. The obligation of DBT to pay the loan amortizations on their due dates under the three (3) contracts were absolutely and unconditionally guaranteed by the National Investment and Development Corporation (NIDC).

Pursuant to the terms of the financing contracts, the loan amortizations of DBT fell due on January 7, 1980, July 7, 1980 and January 7, 1981. But before the first installment became due, DBT wrote a letter to the NIDC interposing certain claims against the petitioner and at the same time requesting NIDC for a revision of the repayment schedule and of the amounts due under the contracts on account of petitioner's delay in the performance of its contractual commitments.[1] In due time, the problems regarding the lime plant were ironed out and the parties signed a "Settlement Agreement" on July 2, 1981.[2]

However, on May 14, 1982, DBT, through counsel, informed petitioner that it was rejecting the lime plant on the ground that it has not been constructed in accordance with their agreement. DBT made a formal demand for indemnification in the total amount of P95,150,000.[3] In its letter dated June 1, 1982, petitioner refused to accept DBT's unilateral rejection of the plant and reasoned that the alleged operation and technical problems were "totally unrelated to the guaranteed capacity and specifications of the plant and definitely are not attributable to any fault or omission on the part of Marubeni." [4]

Before the first installment under the "Settlement Agreement" could be paid, private respondent Artemio Gatchalian, stockholder of DBT, sued petitioner Marubeni for contractual breach before the then Court of First Instance of Rizal, Branch 4, Quezon City.[5] In his complaint filed on June 22, 1982, Gatchalian impleaded DBT as an "unwilling plaintiff x x x for whose primary benefit th(e) action (wa)s being prosecuted" together with NIDC which, as pledgee of the voting shares in, DBT, has controlling interest in that corporation.[6] Gatchalian sought indemnification in the amount of P95,150,000.00 and further prayed for a writ of preliminary injunction to enjoin DBT and NIDC from making directly or indirectly any payment to Marubeni in connection with the contracts they had entered into. On June 25, 1982, respondent judge issued a temporary restraining order directed

against DBT and NIDC and set the injunction for hearing.[7]

On July 5, 1982, petitioner Marubeni entered a limited and special appearance and sought the dismissal of the complaint on the ground that the court a quo had no jurisdiction over the person of petitioner since it is a foreign corporation neither doing nor licensed to do business in the Philippines. Private respondent opposed that motion. On September 22, 1982, the lower court denied petitioner's motion to dismiss for lack of merit and gave it ten (10) days within which to file an answer. Petitioner opted to elevate the jurisdictional issue directly to the High Court.[8] Hence, this petition for certiorari and prohibition with prayer for a temporary restraining order. On October 6, 1982, we issued the restraining order and subsequently required the parties to file simultaneous memoranda.

The pivotal issue in this case is whether or not petitioner Marubeni Nederland B.V. can be considered as "doing business" in the Philippines and therefore subject to the jurisdiction of our courts.

Petitioner claims that it is a foreign corporation not doing business in the country and as an entity with its own capitalization, it is separate and distinct from Marubeni Corporation, Japan which is doing business in the Philippines through its Manila branch; that the three (3) contracts entered into with DBT were perfected and consummated in Tokyo, Japan; that the sale and purchase of the machineries and equipment for the Guimaras lime plant were isolated contracts and in no way indicated a purpose to engage in business; and that the services performed by petitioner in the Philippines were merely auxiliary to the aforesaid isolated transactions entered into and perfected outside the Philippines.

On the other hand, private respondent Gatchalian contends that petitioner can be sued in Philippine courts on liabilities arising from even a single transaction because in reality, it is already engaging in business in the country through Marubeni Corporation, Manila branch and that they, together with Nihon Cement Company, Ltd. of Japan are but "alter egos, adjuncts, conduits, instruments or branch affiliates of Marubeni Corporation of Japan", the parent company.[9]

In resolving the issue at hand, we reiterate that there is no general rule or principle that can be laid down to determine what constitutes doing or engaging in business. Each case must be judged in the light of its peculiar factual milieu and upon the language of the statute applicable.[10]

Contrary to petitioner's allegations, we hold that petitioner can be sued in the regular courts because it is doing business in the Philippines. The applicable law is Republic Act No. 5455 as implemented by the following rules and regulations of the Board of Investments which took effect on February 3, 1969. Thus:

" x x x x x x x x

" (f) the performance within the Philippines of any act or combination of acts enumerated in Section 1 (1) of the Act shall constitute 'doing business' therein-in. In particular, 'doing business' includes:

" 1) Soliciting orders, purchases (sales) or service contracts. Concrete and specific solicitations by a foreign firm amounting to negotiation or fixing of the terms and conditions of sales or service contracts, regardless of whether the contracts are actually reduced to writing, shall constitute doing business even if the enterprise has no office or fixed place of business in the Philippines. xxx xxx xxx .

"2) Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, i.e., it transacts business in its name and for its own account, and not in the name or for the account of the principal.

" xxx xxx xxx.

" 4) Opening offices whether called 'liaison' offices, agencies or branches, unless proved otherwise.

“ xxx xxx xxx.

"10) Any other act or acts that imply a continu-ty of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, or in the progressive prosecution of, commer-cial gain or of the purpose and objective of the business organization."[11]

It cannot be denied that petitioner had solicited the lime plant business from DBT through the Marubeni Manila branch. Records show that the "turn-key proposal for the x x x 300 T/D Lime Plant" was initiated by the Manila office through its Mr. T. Hojo. In a follow-up letter dated August 3, 1976, Hojo committed the firm to a price reduction of \$200,000.00 and submitted the proposed contract forms. As reflected in the letterhead used, it was Marubeni Corporation, Tokyo, Japan which assumed an active role in the initial stages of the negotiation. Petitioner Maru-beni Nederland B.V. had no visible participation until the actual signing of the October 28, 1976 agreement in Tokyo and even there, in the space reserved for petitioner, it was the signature of "S. Adachi as General Manager of Marubeni Corporation, Tokyo on behalf of Marubeni Nederland B.V." which appeared.[12]

Even assuming for the sake of argument that Marubeni Nederland B. V. is a different and separate business entity from Marubeni Japan and its Manila branch, in this particular transaction, at least, Marubeni Nederland B. V. through the foregoing acts, had effectively solicited "orders, purchases (sales) or service contracts" as well as constituted Marubeni Corporation, Tokyo, Japan and its Manila Branch as its representative in the Philippines to transact business for its account as principal. These circumstances, taken singly or in combination, constitute "doing business in the Philippines" within the contemplation of the law.

At this juncture it must be emphasized that a foreign corporation doing business in the Philippines with or without license is subject to process and jurisdiction of the local courts. If such corporation is properly licensed, well and good. But it shall not be allowed, under any circumstances, to invoke its lack of license to impugn the jurisdiction of our courts.[13]

Finally, petitioner contends that it was denied due process when respondent Judge Tensuan peremptorily denied its motion to dismiss without giving petitioner any opportunity to present evidence at a hearing set for this purpose.[14]

The alleged denial of due process is more apparent than real. Under Section 13, Rule 16 of the Revised Rules of Court, the court, when confronted with a motion to dismiss, is given two courses of action, to wit: (1) to deny or grant the motion or allow amendment of the pleading or (2) to defer the hearing and determination of the motion until the trial on the merits, if the ground alleged therein does not appear to be indubitable.

In the case at bar, assuming there was no formal hearing on the motion to dismiss prior to its rejection, such did not unduly prejudice the rights of petitioner. Respondent court still had to conduct trial on the merits during which time it could grant the motion after sufficient evidence has been presented showing without any question the want of jurisdiction over the person of the movant. It would have been different had respondent court sustained petitioner's motion to dismiss without the required hearing in which case, the corrective writ of certiorari would have issued against said court. In the absence of a hearing, the appellate court, in an appeal from an order of dismissal, would have had no means of determining or resolving the legality of the proceedings and the sufficiency of the proofs on which the order was based.

WHEREFORE, the petition is DISMISSED for lack of merit. Respondent Court is hereby directed to proceed with the hearing of Civil Case No. Q-35534 with dispatch. This decision is immediately executory. Costs against

the petitioner.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 308-317.

[2] Rollo, p. 321.

[3] Rollo, p. 372.

[4] Rollo, p. 372.

[5] Civil Case No. Q-35534.

[6] Rollo, p. 31.

[7] Rollo, p. 45.

[8] Rollo, pp. 101-102.

[9] Rollo, p. 55.

[10] Mentholatum Co. Inc. vs. Mangaliman, 72 Phil. 524; Far East International Import and Export Corporation vs. Nankai Kogyo Co., Ltd., No. L-13525, November 30, 1962, 6 SCRA 725; Facilities Management Corporation vs. De La Rosa, No. L-38649, March 26, 1979, 89 SCRA 131; Top-Weld Manufacturing Inc. vs. ECED, S.A. et al., No. L-44944, August 9, 1985; Wang Laboratories, Inc. vs. Mendoza, G.R. No. 72147, December 1, 1987, 156 SCRA 44.

[11] 54 O.G. 53, cited in Facilities Management Corporation vs. De la Osa, No. L-38649, March 26, 1979, 89 SCRA 131, 135-136. See also 65 O.G. No. 29, p. 7410.

[12] Rollo, pp. 158, 201 and 258.

[13] General Corporation of the Philippines, et al. vs. Union Insurance Society of Canton Ltd., et al., 87 Phil. 313.

[14] Rollo, p. 12.

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