

LINGNER & FISHER GMBH, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HON. RICARDO L. PRONOVE, JR. AND PHILIPPINE CHEMICAL LABORATORIES, INC., RESPONDENTS.

G.R. No. 63557. October 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The factual background of this case may be stated as follows: DEUTCHE MILCHWERKE DR. A. SAUER (DMW, for brevity) was a firm in West Germany manufacturing PRODUCTS (probably chemicals) under the trademarks FISSAN, etc. Private respondent Philippine Chemical Laboratories, Inc. (PHILCHEM, for brevity) is a local company which apparently also manufactures and sells chemicals.

On February 28, 1963, DMW and PHILCHEM executed a so-called Agency AGREEMENT the basic provision of which was that PHILCHEM would be the exclusive importer of the PRODUCTS into the Philip-pines. The benefit to PHILCHEM would be the profits realized from re-sale in this country of imported PRODUCTS. Other relevant provisions, generally stated, were that:

- (a) The term of the AGREEMENT was five years renewable auto-matically for five years each time unless one party gives due notice of termination to the other.
- (b) PHILCHEM could manufacture the PRODUCTS locally with raw materials from sources other than LINGNER, but in such case DMW will have to be paid 5% of 80% of PHILCHEM's wholesale prices.
- (c) After termination of the AGREEMENT, PHILCHEM will be entitled, for five years, to 10% royalty on sales of PRODUCTS in the Philippines (hereinafter to be referred to as the ROYALTY CLAUSE).
- (d) "All legal settlements within the compass of this AGREE-MENT shall fall under the jurisdiction of Philippine courts".

It appears that, subsequently, the DMW interests were ac-quired by LINGNER & FISHER GMBH (LINGNER, for brevity). On the other hand, LINGNER was a subsidiary of BEECHAM GROUP LTD. which, through BEECHAM PRODUCTS INTERNATIONAL (BEECHAM, for brevity), had opened an office in this country at Unit A, Padilla Building, Emerald Avenue, Pasig, Metro Manila, under the supervision or managership of one named TANNER. LINGNER and BEECHAM can be deemed to constitute a single personality. Subsequent reference to LINGNER will include reference to DMW and BEECHAM.

The AGREEMENT was automatically renewed once, or up to Feb-ruary 28, 1973, and finally terminated on August 31, 1977. The events relative to the termination were as follows:

Before February 28, 1973, the parties agreed to extend the AGREEMENT up to February 28, 1975. If it is not terminated by prior notice six months before February 28, 1975, as it was not, it would be extended for a further two years up to February 28, 1977.

By letter dated February 25, 1977, through the law firm of Ozaeta, Romulo, De Leon, Mabanta, Buenaventura, Sayoc and De los Angeles (the Law Firm, for brevity) PHILCHEM was ad-vised that LINGNER was interested in continuing business relationship with PHILCHEM and will be interested in negotiating a new contract and that, prior to the signing of a new contract, LINGNER was proposing that the old contract be extended by mutual agree-ment for a period of six (6) calendar months beginning March 1, 1977 to expire automatically on August 31, 1977 if no contract is entered into. The proposal was accepted by PHILCHEM, and no new contract having been signed by August 31, 1977, the AGREEMENT terminated on that date.

On July 20, 1979, PHILCHEM presented a claim to LINGNER for P1,055,000.00 under the ROYALTY CLAUSE. The claim was discussed between PHILCHEM and TANNER of BEECHAM with the interven-tion of the Law Firm. No settlement having been arrived at, PHILCHEM, on August 6, 1980, filed a complaint against BEECHAM alone in Civil Case No. 38086 of the then Court of First Instance of Rizal. The summons issued could not be served on BEECHAM, the Sheriff having reported that BEECHAM was neither a company registered in the Philippines, nor resident at the given address of Unit A, Padilla Building, Emerald Avenue, Pasig, Metro Manila.

PHILCHEM then filed an amended complaint, this time making LINGNER and BEECHAM as the defendants, and pleading that summons could be served on the law Firm as an agent of the defendants. The Law Firm submitted a special appearance in the case on behalf of LINGNER, and, also on behalf of LINGNER, moved for dismissal on the grounds (a) that LINGNER was not a foreign corporation doing business in the Philippines and hence could not be sued locally, and, (b) that LINGNER could not be served with summons through the Law Firm. It will thus be noted that two issues were being raised. The first was whether or not LINGER was doing business in the Philippines; and the second was whether or not LINGNER could be validly summoned through the Law Find as its agent. The Trial Court denied the Motion to Dismiss, assuming that LINGNER could be sued in this jurisdic-tion, and holding that LINGNER can be served with summons through the Law Firm.

LINGNER went on certiorari to the Intermediate Appellate Court where it reiterated the plea that summons could not be va-lidly served on it through the Law Firm; and it also re-quested that a hearing be held, conformably to the provisions of Section 9(3) of Batas Pambansa Blg. 129, on the question of whether or not LINGNER was doing business in this country.

The Appellate Court held that summons served through the Law Firm was valid on the strength of *Johnlo Trading Co. vs. Flores* (88 Phil. 741 [1951]); and it further ruled that re-ceiving evidence on whether or not LINGNER was doing business in the Philippines could not be justified under the cited Batas Pambansa Blg. 129.

Considering the Comment, Reply, Rejoinder and Sur-rejoinder submitted by the parties, we resolved to give due course, without requiring the submittal of memoranda.

The Appellate Court acted correctly in denying the request for an evidentiary hearing. Evidence necessary in regards to factual issues raised in cases falling within the Appellate Court's original and appellate jurisdiction contemplates "inci-dental" facts which were not touched upon, or fully heard by the trial or respondent Court. The law could not have intended that the Appellate Court would hold an original and full trial of a main factual issue in a case, which properly pertains to Trial Courts.

It is our view that evidence as to whether LINGNER was doing business in the Philippines, even before the Trial Court, is no longer necessary view of the fact that PHILCHEM and LINGNER were contractees in the AGREEMENT and the claim of PHILCHEM is based on the ROYALTY CLAUSE of that AGREEMENT. Whether LINGNER is or is not doing business in the Philippines will not matter because the parties had expressly stipulated in the AGREE-MENT that all controversies based on the AGREEMENT "shall fall under the

jurisdiction of Philippine courts". In other words, there was a covenant on venue to the effect that LINGNER can be sued by PHILCHEM before Philippine Courts in regards to a controversy related to the AGREEMENT.

A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An alias summons can be actually served on said defendant.

For the expeditious determination of this controversy, therefore, in view of the insufficiency of evidence that LINGNER is doing business in the Philippines, which is a sine qua non requirement under the provision of Section 14, Rule 14[1] of the Rules before service of process can be effected upon foreign corporation and jurisdiction over the same may be acquired, it is best that alias summons on LINGNER be issued, in this case under the provisions of Section 17, Rule 14,[2] in relation to Rule 4 of the Rules of Court, which recognizes the principle that venue agreed by the parties. If a local plaintiff and a foreign corporation have agreed on Philippine venue, summons by publication can be made on the foreign corporation under the principle of liberal construction of the rules to promote just determination of actions.

ACCORDINGLY, the judgment under review of the Intermediate Appellate Court (Third Special Cases Division) is hereby upheld insofar as it sustained the Orders, dated August 24, 1981 and December 18, 1981, of the then Court of First Instance of Rizal, Branch XI, Pasig, denying petitioner's Motion to Dismiss and the subsequent Motion for Reconsideration, albeit on grounds different from those relied upon by the Intermediate Appellate Court. The now Regional Trial Court, to which the case below has been assigned, is hereby directed to allow private respondent Philippine Chemical Laboratories, Inc., to apply for the issuance of alias summons on petitioner Lingner and Fischer GMBH by publication under the provisions of Section 17, Rule 14 in relation to Rule 4 of the Rules of Court, and after issues have been joined, to proceed to trial and judgment accordingly.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] "Sec. 14. Service upon private foreign corporations. - If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents with-in the Philippines" (Emphasis supplied).

[2] "Sec. 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philip-pines, in which the defendant has or claims a lien or inte-rest actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer."

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