

HONGKONG AND SHANGHAI BANKING CORPORATION, PETITIONER, VS. JACK ROBERT SHERMAN, DEODATO RELOJ AND THE INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. 72494. August 11, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Intermediate Appellate Court (now Court of Appeals) dated August 2, 1985, which reversed the order of the Regional Trial Court dated February 28, 1985 denying the Motion to Dismiss filed by private respondents Jack Robert Sherman and Deodato Reloj.

A complaint for collection of a sum of money (pp. 49-52, Rollo) was filed by petitioner Hongkong and Shanghai Banking Corporation (hereinafter referred to as petitioner BANK) against private respondents Jack Robert Sherman and Deodato Reloj, docketed as Civil Case No. Q-42850 before the Regional Trial Court of Quezon City, Branch 84.

It appears that sometime in 1981, Eastern Book Supply Service PTE, Ltd. (hereinafter referred to as COMPANY), a company incorporated in Singapore applied with, and was granted by, the Singapore branch of petitioner BANK an overdraft facility in the maximum amount of Singapore dollars 200,000.00 (which amount was subsequently increased to Singapore dollars 375,000.00) with interest at 3% over petitioner BANK's prime rate, payable monthly, on amounts due under said overdraft facility; as a security for the repayment by the COMPANY of sums advanced by petitioner BANK to it through the aforesaid overdraft facility, on October 7, 1982, both private respondents and a certain Robin de Clive Lowe, all of whom were directors of the COMPANY at such time, executed a Joint and Several Guarantee (p. 53, Rollo) in favor of petitioner BANK whereby private respondents and Lowe agreed to pay, jointly and severally, on demand all sums owed by the COMPANY to petitioner BANK under the aforestated overdraft facility.

The Joint and Several Guarantee provides, inter alia, that;

"This guarantee and all rights, obligations and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore. We hereby agree that the Courts of Singapore shall have jurisdiction over all disputes arising under this guarantee x x x." (p. 33-A, Rollo).

The COMPANY failed to pay its obligation. Thus, petitioner BANK demanded payment of the obligation from private respondents, conformably with the provisions of the Joint and Several Guarantee. Inasmuch as the private respondents still failed to pay, petitioner BANK filed the above-mentioned complaint.

On December 14, 1984, private respondents filed a motion to dismiss (pp. 54-56, Rollo) which was opposed by petitioner BANK (pp. 58-62, Rollo). Acting on the motion, the trial court issued an order dated February 28, 1985 (pp. 64-65, Rollo), which read as follows:

"In a Motion To Dismiss filed on December 14, 1984, the defendants seek the dismissal of the complaint on two grounds, namely:

"1. That the court has no jurisdiction over the subject matter of the complaint; and

"2. That the court has no jurisdiction over the persons of the defendants.

"In the light of the Opposition thereto filed by plaintiff, the Court finds no merit in the motion.

"On the first ground, defendants claim that by virtue of the provision in the Guarantee (the actionable document) which reads –

“This guarantee and all rights, obligations and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore. We hereby agree that the courts in Singapore shall have jurisdiction over all disputes arising under this guarantee,’

the Court has no jurisdiction over the subject matter of the case. The Court finds and concludes otherwise. There is nothing in the Guarantee which says that the courts of Singapore shall have jurisdiction to the exclusion of the courts of other countries or nations. Also, it has long been established in law and jurisprudence that jurisdiction of courts is fixed by law; it cannot be conferred by the will, submission or consent of the parties.

"On the second ground, it is asserted that defendant Robert Sherman is not a citizen nor a resident of the Philippine. This argument holds no water. Jurisdiction over the persons of defendants is acquired by service of summons and copy of the complaint on them. There has been a valid service of summons on both defendants and in fact the same is admitted when said defendants filed a ‘Motion for Extension of Time to File Responsive Pleading’ on December 5, 1984.

"WHEREFORE, the Motion to Dismiss is hereby DENIED.

"SO ORDERED."

A motion for reconsideration of the said order was filed by private respondents which was, however, denied (p. 66, Rollo).

Private respondents then filed before the respondent Intermediate Appellate Court (now Court of Appeals) a petition for prohibition with preliminary injunction and/or prayer for a restraining order (pp. 39-48, Rollo). On August 2, 1985, the respondent Court rendered a decision (p. 37, Rollo), the dispositive portion of which reads:

"WHEREFORE, the petition for prohibition with preliminary injunction is hereby GRANTED. The respondent-Court is enjoined from taking further cognizance of the case and to dismiss the same for filing with the proper court of Singapore which is the proper forum. No costs.

"SO ORDERED."

The motion for reconsideration was denied (p. 38, Rollo), hence, the present petition.

The main issue is whether or not Philippine courts have jurisdiction over the suit.

The controversy stems from the interpretation of a provision in the Joint and Several Guarantee, to wit:

"(14) This guarantee and all rights, obligations and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore. We hereby agree that the Courts in Singapore shall have jurisdiction over all disputes arising under this guarantee x x x." (p. 53-A, Rollo)

In rendering the decision in favor of private respondents, the Court of Appeals made the following observations (pp. 35-36, Rollo):

"There are significant aspects of the case to which our attention is invited. The loan was obtained by Eastern Book Service PTE, Ltd., a company incorporated in Singapore. The loan was granted by the Singapore Branch of Hongkong and Shanghai Banking Corporation. The Joint and Several Guarantee was also concluded in Singapore. The loan was in Singaporean dollars and the repayment thereof also in the same currency. The transaction, to say the least, took place in Singaporean setting in which the law of that country is the measure by which that relationship of the parties will be governed.

x x x x x x x x

"Contrary to the position taken by respondents, the guarantee agreement commands that any litigation will be before the courts of Singapore and that the rights and obligations of the parties shall be construed and determined in accordance with the laws of the Republic of Singapore. A closer examination of paragraph 14 of the Guarantee Agreement upon which the motion to dismiss is based, employs in clear and unmistakeable (sic) terms the word 'shall' which under statutory construction is mandatory.

"Thus, it was ruled that:

'x x x the word 'shall' is imperative, operating to impose a duty which may be enforced' (Dizon vs. Encarnacion, 9 SCRA 714).

"There is nothing more imperative and restrictive than what the agreement categorically commands that all rights, obligations, and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore."

While it is true that "the transaction took place in Singaporean setting" and that the Joint and Several Guarantee contains a choice-of-forum clause, the very essence of due process dictates that the stipulation that "[t]his guarantee and all rights, obligations and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore. We hereby agree that the Courts in Singapore shall have jurisdiction over all disputes arising under this guarantee" be liberally construed. One basic principle underlies all rules of jurisdiction in International Law: a State does not have jurisdiction in the absence of some reasonable basis for exercising it, whether the proceedings are in rem, quasi in rem or in personam. To be reasonable, the jurisdiction must be based on some minimum contacts that will not offend traditional notions of fair play and substantial justice (J. Salonga, *Private International Law*, 1981, p. 46). Indeed, as pointed-out by petitioner BANK at the outset, the instant case presents a very odd situation. In the ordinary habits of life, anyone would be disinclined to litigate before a foreign tribunal, with more reason as a defendant. However, in this case, private respondents are Philippine residents (a fact which was not disputed by them) who would rather face a complaint against them before a foreign court and in the process incur considerable expenses, not to mention inconvenience, than to have a Philippine court try and resolve the case. Private respondents' stance is hardly comprehensible, unless their ultimate intent is to evade, or at least delay, the payment of a just obligation.

The defense of private respondents that the complaint should have been filed in Singapore is based merely on technicality. They did not even claim, much less prove, that the filing of the action here will cause them any unnecessary trouble, damage, or expense. On the other hand, there is no showing that petitioner BANK filed the action here just to harass private respondents.

In the case of *Polytrade Corporation vs. Blanco*, G.R. No. L-27033, October 31, 1969, 30 SCRA 187, it was ruled:

"x x x. An accurate reading, however, of the stipulation, 'The parties agree to sue and be sued in the Courts of Manila,' does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is

that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that plaintiff and defendant bound themselves to file suits with respect to the last two transactions in question only or exclusively in Manila. For, that agreement did not change or transfer venue. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4. *Renuntiatio non praesumitur.*"

This ruling was reiterated in the case of *Neville Y. Lamis Ents., et al. v. Lagamon, etc., et al.*, G.R. No. 57250, October 30, 1981, 108 SCRA 740, where the stipulation was "[i]n case of litigation, jurisdiction shall be vested in the Court of Davao City." We held:

"Anent the claim that Davao City had been stipulated as the venue, suffice it to say that a stipulation as to venue does not preclude the filing of suits in the residence of plaintiff or defendant under Section 2(b), Rule 4, Rules of Court, in the absence of qualifying or restrictive words in the agreement which would indicate that the place named is the only venue agreed upon by the parties."

Applying the foregoing to the case at bar, the parties did not thereby stipulate that only the courts of Singapore, to the exclusion of all the rest, has jurisdiction. Neither did the clause in question operate to divest Philippine courts of jurisdiction. In International Law, jurisdiction is often defined as the right of a State to exercise authority over persons and things within its boundaries subject to certain exceptions. Thus, a State does not assume jurisdiction over travelling sovereigns, ambassadors and diplomatic representatives of other States, and foreign military units stationed in or marching through State territory with the permission of the latter's authorities. This authority, which finds its source in the concept of sovereignty, is exclusive within and throughout the domain of the State. A State is competent to take hold of any judicial matter it sees fit by making its courts and agencies assume jurisdiction over all kinds of cases brought before them (J. Salonga, *Private International Law*, 1981, pp. 37-38).

As regards the issue on improper venue, petitioner BANK avers that the objection to improper venue has been waived. However, We agree with the ruling of the respondent Court that:

"While in the main, the motion to dismiss fails to categorically use with exactitude the words 'improper venue' it can be perceived from the general thrust and context of the motion that what is meant is improper venue. The use of the word 'jurisdiction' was merely an attempt to copy-cat the same word employed in the guarantee agreement but conveys the concept of 'venue.' Brushing aside all technicalities, it would appear that jurisdiction was used loosely as to be synonymous with venue. It is in this spirit that this Court must view the motion to dismiss. x x x" (p. 35, Rollo).

At any rate, this issue is now of no moment because We hold that venue here was properly laid for the same reasons discussed above.

The respondent Court likewise ruled that (pp. 36-37, Rollo):

"x x x. In a conflict problem, a court will simply refuse to entertain the case if it is not authorized by law to exercise jurisdiction. And even if it is so authorized, it may still refuse to entertain the case by applying the principle of *forum non conveniens*. x x x."

However, whether a suit should be entertained or dismissed on the basis of the principle of *forum non conveniens* depends largely upon the facts of the particular case and is addressed to the sound discretion of the trial court (J. Salonga, *Private International Law*, 1981, p. 49). Thus, the respondent Court should not have relied on such principle.

Although the Joint and Several Guarantee prepared by petitioner BANK is a contract of adhesion and that

consequently, it cannot be permitted to take a stand contrary to the stipulations of the contract, substantial bases exist for petitioner BANK's choice of forum, as discussed earlier.

Lastly, private respondents allege that neither the petitioner based at Hongkong nor its Philippine branch is involved in the transaction sued upon. This is a vain attempt on their part to further thwart the proceedings below inasmuch as well-known is the rule that a defendant cannot plead any defense that has not been interposed in the court below.

ACCORDINGLY, the decision of the respondent Court is hereby REVERSED and the decision of the Regional Trial Court is REINSTATED, with cost against private respondents. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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