

**PHILIPPINE INTERNATIONAL SHIPPING CORPORATION (PISC),
GEORGE LIM, MARCOS BAUTISTA, CARLOS LAUDE, TAN SING LIM,
ANTONIO LIU LAO, ONG TEH, PHILIPPINE CONSORTIUM
CONSTRUCTION CORPO...**

G.R. No. 77085. April 26, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

The subject of the present Petition is the Decision of the Court of Appeals dated 12 December 1986, in CA - G.R. SP No. 10614. The appellate court upheld the Order of Branch 93 of the Regional Trial Court of Quezon City granting the issuance of a writ of execution, in Civil Case No. Q-39927.

The undisputed facts are stated in the appealed decision:

"Plaintiff [respondent Interpool, Ltd.] is a foreign corporation, duly organized and existing under the laws of Bahamas Islands, with office and business address at 630 3rd Avenue, New York. New York and not licensed to do, and not doing business, in the Philippines.

Defendants Philippine International Shipping Corporation, Philippine Construction Consortium Corporation, Pacific Mills, Inc., and Universal Steel Smelting Company, Inc., are corporations duly organized and existing under and by virtue of the laws of the Philippines. The other defendants, George Lim, Marcos Bautista, Carlos Laude, Tan Sing Lim, Antonio Liu Lao and Ong Teh are Philippine residents.

In 1979 to 1981, the defendant, Philippine International Shipping Corporation (PISC) leased from the plaintiff and its wholly owned subsidiary, the Container Trading Corporation, several containers pursuant to the Membership Agreement and Hiring Conditions (Exhibit B)[1] and the Master Equipment Leasing Agreement (Exhibit C),[2] both dated June 8, 1979.

Defendants Philippine Construction Consortium Corporation, Pacific Mills, Inc. and Universal Steel Smelting Company, guaranteed to pay (sic) all monies due, or to become due, to the plaintiff from PISC and any liability of the latter arising out of the leasing or purchasing of equipment from the plaintiff or any of its subsidiaries, affiliates and/or agents of I.S.C. dry cargo containers and/or chassis, including but not limited, to per diem leasing charges, damages protection plan charges, damages charge and/or replacement costs of constructively and/or totally lost containers as well as handling and drop-off charges (Exhibit J).[3]

The other defendants, namely: 1) George Lim; 2) Marcos Bautista; 3) Carlos Laude; 4) Tan Sing Lim; 5) Antonio Liu Lao; and 6) Ong Teh, unconditionally and irrevocably guaranteed to pay (sic) plaintiff all payments due to it under the Master Equipment Leasing Agreement (Exhibit C) and Membership Agreement and Hiring Conditions (Exhibit B) dated June 8, 1979, in the amounts at the time and in the manner set out in the said agreements and to indemnify plaintiff against all claims, liabilities, costs, damages and expenses (including legal fees) suffered or incurred by plaintiff, arising out of or in connection with any failure by defendant Philippine International Shipping Corporation to perform any of its obligations under the aforesaid Agreements (Exhibits D, E, F, G, H and I).[4]

In 1979 to 1981, defendant Philippine International Shipping Corporation incurred outstanding and unpaid obligations with the plaintiff, in the amount of \$94,456.28, representing unpaid per diems, drop-off charges, interest and other agreed charges.

The plaintiff sent letters to the defendants (Exhibit K, L, M, N, O, P, Q, R, S and T),[5] demanding payment of their outstanding and unpaid obligations, but to no avail, so plaintiff was constrained to file a case against the principal defendant, PISC, before the United States District Court, Southern District of New York, which was docketed as 83 Civil 290 (EW). Plaintiff obtained a Default Judgement on July 3, 1983 against PISC ordering it to pay the plaintiff the sum of \$80,779.33, as liquidated damages, together with interest in the amount of \$13,676.95 and costs in the amount of \$80.00 or for a total judgment of \$94,456.28 (Exhibit A).[6]

Because of the unjustifiable failure and refusal of PISC and its guarantors to jointly and severally pay their obligations to the plaintiff, the latter filed on November 16, 1983 a complaint [docketed as Civil Case No. Q-39927, Branch 93, Regional Trial Court of Quezon City] (Annex A)[7] to enforce the default judgment of the U.S. District Court against the defendant PISC, and also to enforce the individually executed Continuing Guaranties of the other defendants (Annexes D, E, G, H, I and J of the Complaint).

The defendants (herein petitioners) were duly summoned, but they failed to answer the complaint. On motion of the plaintiff, they were declared in default[8] and the plaintiff (herein private respondent) was allowed to present its evidence ex parte.

On April 11, 1985 the court rendered judgment for the plaintiff,[9] the dispositive part reading as follows:

'WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering:

- 1) The defendant, Philippine International Shipping Corporation, and the defendants-Guarantors, to jointly and severally pay plaintiff the liquidated amount of \$80,779.33, together with interest in the amount of \$13,676.95 and costs in the amount of \$80.00 or a total of \$94,456.28, pursuant to the Default Judgment rendered by the United States District Court, Southern District of New York, or in the Philippine currency equivalent of the aforesaid amount of \$94,456.28, computed at the time of payment, with interest for late payment at the rate of 18% per annum from July 4, 1983, until fully paid;
- 2) The defendant, Philippine International Shipping Corporation, and the defendants-Guarantors, to jointly and severally pay plaintiff the sum equivalent to twenty (20%) percent of the total amount due from the defendants by way of attorney's fees; and
- 3) To pay the costs.

On May 17, 1985, the defendants appealed the decision to this Appellate Court (AC-G.R. UDK No. 7383) which dismissed the appeal on November 13, 1985 for failure of the appellants to pay the docketing fee despite their receipt of the notice to do so on August 26, 1985.[10] Entry of that final resolution was made on December 6, 1985.

In view of the finality of the decision, the plaintiff filed on July 23, 1986 a motion for execution and for appointment of a special sheriff to enforce it.[11]

Over the defendants' opposition, the trial court issued an order of execution on October 15, 1986 and appointed Norberto V. Doblado, Jr., of the Office of the Makati Sheriff, as special sheriff for the purpose (Annex D)."[12]

On 20 November 1986, petitioners (defendants below) filed with the Court of Appeals a Petition to Annul Judgment (docketed as C.A. - G.R. SP No. 10614)[13] directed at the 15 October 1986 Order of the Regional Trial Court. On 12 December 1986, the appellate court rendered a Decision[14] denying that petition for lack of

merit. A Motion for Reconsideration was likewise denied for lack of merit.[15]

In the instant Petition for Review, filed with this Court on 27 February 1987, petitioners allege that both the Default Judgment rendered by the U.S. District Court, Southern District of New York, in 83 Civil 290 (EW), and the Decision of the Regional Trial Court of Quezon City, in Civil Case No. Q-39927, are null and void essentially on jurisdictional grounds. In the first instance, petitioners contend that the U.S. District Court never acquired jurisdiction over their persons as they had not been served with summons and a copy of the Complaint in 83 Civil 290 (EW). In the second instance, petitioners contend that such jurisdictional infirmity effectively prevented the Regional Trial Court of Quezon City from taking cognizance of the Complaint in Civil Case No. Q-39927 and from enforcing the U.S. District Court's Default Judgment against them. Petitioners contend, finally, that assuming the validity of the disputed Default Judgment, the same may be enforced only against petitioner Philippine International Shipping Corporation ("PISC"), the other nine (9) petitioners not having been impleaded originally in the case filed in New York, U.S.A.

The Petition must fail.

1. To begin with, the evidence of record clearly shows that the U.S. District Court had validly acquired jurisdiction over petitioner PISC under the procedural law applicable in that forum, i.e., the U.S. Federal Rules on Civil Procedure. Copies of the Summons and Complaint[16] in 83 Civil 290 (EW) which were in fact attached to the Petition for Review filed with this Court, were stamped "Received, 18 Jan 1983, P.I.S.C., Manila." indicating that service thereof had been made upon and acknowledged by the PISC office in Manila on, 18 January 1983, and that PISC had actual notice of such Complaint and Summons. Moreover, copies of said Summons and Complaint had likewise been served upon Prentice-Hall Corporation System, Inc. (New York), petitioner PISC'S agent, expressly designated by it in the Master Equipment Leasing Agreement with respondent Interpool, "for the purpose of accepting service of any process within the State of New York, USA with respect to any claim or controversy arising out of or relating to, directly or indirectly, this Lease." [17] The record also shows that petitioner PISC, without, however, assailing the jurisdiction of the U.S. District Court over the person of petitioner, had filed a Motion to Dismiss[18] the Complaint in 83 Civil 290 (EW), which Motion was denied. All of the foregoing matters, which were stated specifically in the U.S. District Court's disputed Default Judgment,[19] have not been disproven or otherwise overcome by petitioners, whose bare and unsubstantiated allegations cannot prevail over clear and convincing evidence of record to the contrary.

That foreign judgment -- which had become final and executory, no appeal having been taken therefrom and perfected by petitioner PISC -- is thus "presumptive evidence of a right as between the parties [i.e., PISC and Interpool] and their successors in interest by a subsequent title." [20] We note, further, that there has been in this case no showing by petitioners that the Default Judgment rendered by the U.S. District Court in 83 Civil 290 (EW), was vitiated by "want of notice to the party, collusion, fraud, or clear mistake of law or fact." [21] In other words, the Default Judgment imposing upon petitioner PISC a liability of U.S.\$94,456.28 in favor of respondent Interpool, is valid and may be enforced in this jurisdiction.

2. The existence of liability (i.e., in the amount of U.S.\$94,456.28) on the part of petitioner PISC having been duly established in the U.S. case, it was not improper for respondent Interpool, in seeking enforcement in this jurisdiction of the foreign judgment imposing such liability to have included the other nine (9) petitioners herein (i.e., George Lim, Marcos Bautista, Carlos Laude, Tan Sing Lim, Antonio Liu Lao, Ong Teh, Philippine Consortium Construction Corporation, Pacific Mills, Inc. and Universal Steel Smelting Co., Inc.) as defendants in Civil Case No. Q-39927, filed with Branch 93 of the Regional Trial Court of Quezon City. With respect to the latter, Section 6, Rule 3 of the Revised Rules of Court expressly provides:

"Sec. 6. Permissive joinder of parties. -- All persons in whom or against whom any right to relief in respect to

or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest." (Underscoring supplied)

The record shows that said nine (9) petitioners had executed "continuing guarantees" to secure performance by petitioner PISC of its contractual obligations, under the Membership Agreement and Hiring Conditions and Master Equipment Leasing Agreement with respondent Interpool. As guarantors, they had held themselves out as liable "whether jointly, severally, or in the alternative," to respondent Interpool under their separate "continuing guarantees" executed in the Philippines, for any breach of those Agreements on the part of PISC. The liability of the nine (9) other petitioners was in other words, not based upon the Membership Agreement and the Master Equipment Leasing Agreement to which they were not parties. The New York award of U.S.\$94,456.28 is precisely premised upon a breach by PISC of its own obligations under those Agreements. We, therefore, consider the nine (9) other petitioners as persons "against whom (a) right to relief in respect to or arising out of the same transaction or series of transactions [has been] alleged to exist," as contemplated in the Rule quoted above and, consequently, properly impleaded as defendants in Civil Case No. Q-39927. There was, in other words, no need at all, in order that Civil Case No. Q-39927 would prosper, for respondent Interpool to have first impleaded the nine (9) other petitioners in the New York case and there obtain judgment against all ten (10) petitioners.

3. Petitioners' argument of lack or absence of jurisdiction on the part of the Quezon City Regional Trial Court, on the alleged ground of non-service of notice or summons in Civil Case No. Q-39927, does not persuade. But we do not need to address this specific argument. For even assuming (though merely *arguendo*) that none of the ten (10) petitioners herein had been served with notice or summons below, the record shows, however, that they did in fact file with the Regional Trial Court a Motion for Extension of Time to File Answer[22] (dated 9 December 1983) as well as a Motion for Bill of Particulars[23] (dated 15 December 1983), both addressing respondent Interpool's Complaint in Civil Case No. Q-39927. In those pleadings, petitioners not only manifested their intention to controvert the allegations in the Complaint, but they neither questioned nor assailed the jurisdiction of the trial court, either over the case filed against them or over their individual persons, as defendants therein. There was here, in effect, voluntary submission to the jurisdiction of the Quezon City trial court by petitioners, who are thereby estopped from asserting otherwise before this Court.[24]

ACCORDINGLY, the Petition for Review is DENIED and the Decision dated 12 December 1986 of the Court of Appeals in C.A. - G.R. SP No. 10614, is hereby AFFIRMED. This Resolution is immediately executory. Costs against petitioners.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 93-95.

[2] Id. pp. 96-103.

[3] Id., pp. 124-125.

[4] Id., pp. 106-123.

[5] RTC Exhibits, pp. 39-58.

[6] Rollo, pp. 36-37, Annex "C" of Petition.

[7] Id., pp. 38-43, Annex "D" of Petition.

[8] RTC Records, p. 284, Order dated 26 October 1984.

[9] Id., pp. 291-295.

[10] Id., p. 309.

[11] Id., p. 306-308.

[12] Id., p. 321.

[13] Court of Appeals Records, pp. 2-13.

[14] Rollo, pp. 55-60. Annex "I" of Petition.

[15] Id., p. 62, Annex "J" of Petition.

[16] Id., pp. 29-33, Annexes "A" and "A-1" of Petition.

[17] Article 15 (c), Master Equipment Leasing Agreement; Rollo, p. 102. Petitioners have not disputed the validity and effect of this clause under New York law, the governing law of that Agreement. [See Article 14, Master Equipment Leasing Agreement; Rollo, p. 102. See also *American Blower Corp. v. B.F. Sturtevant Co.*, 61 F. Supp. 756 (1945); and *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939).] There appears nothing in this clause offensive to our own law and public policy.

[18] Rollo, p. 34, Annex "B" of Petition.

[19] The Default Judgment read, in its entirety:

"This action having been commenced by the filing of a complaint and issuance of a summons on January 7, 1983, and a copy of said summons and complaint having been served upon defendant by the Clerk of the Court pursuant to Fed. R. Civ. P. Rule 40 (i) (1) (d) by registered mail, return receipt requested to defendant at its residence in the Philippines, certificate of mailing of which was filed with the Clerk of this Court on January 10, 1983, and the postal return indicating receipt of said summons and complaint by defendant on January 18, 1983, and an additional copy of said summons and complaint having been served on defendant by personal service on Prentice-Hall, Inc., defendant's contractually appointed agent to accept service of process, on January 11, 1983, proof of which service was filed with this Court on January 13, 1983.

And defendant having filed with this Court a Motion to Dismiss, without having designated a member of the Bar of this Court, and defendant having been advised of the requirements of Local Rule 3(a) by letter of March 25, 1983, and defendant having further been instructed, by Memorandum to Counsel of May 11, 1983, to comply with Local Rule 3(a) by May 31, 1983, which memorandum advised defendant that failure to so comply would result in the imposition of appropriate sanctions,

And defendant having failed to comply with the May 11, 1983 memorandum to counsel directing compliance with Local Rule 3(a) regarding designation of local counsel,

And this Court; by memorandum decision dated June 16, 1983 having dismissed defendant's motion, and defendant having failed to serve its answer to the complaint within the period provided by F.R. Civ. P. 12(a), and the time for defendant to answer having expired, it is

ORDERED, ADJUDGED AND DECREED, that plaintiff, Interpool Ltd., have judgment against defendant, Philippine International Shipping Corp. for the liquidated amount of \$80,779.33, together with interest in the amount of \$13,676.95 and costs in the amount of \$80.00 for a total judgment of \$94,456.28."

[20] See Section 50 (b), Rule 39, Revised Rules of Court.

[21] Ibid.

[22] RTC Records, pp. 43-44.

[23] Id., pp. 46-49.

[24] Section 23, Rule 14, Revised Rules of Court. See *Paramount Insurance Corporation v. Luna*, 148 SCRA 564 (1987); and *Royales v. Intermediate Appellate Court*, 127 SCRA 470 (1984).

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