

HYOPSUNG MARITIME CO., LTD., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PIONEER INSURANCE & SURETY CORPORATION, RESPONDENTS.

G.R. No. 77369, August 31, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The relief prayed for in this petition, in effect, calls for the amendment of the dispositive portion of the decision[1] of the Court of Appeals to conform to the said court's findings of fact as recited in the body of the same decision.

An admiralty case was filed by Pioneer Insurance & Surety Corp., as plaintiff (private respondent herein), against Hyopsung Maritime Co., Ltd. (petitioner herein), Aurelio Navigation Corp. S.A., and Litonjua Shipping Corp., as parties defendants. Pioneer Insurance & Surety Corp., as subrogee of the consignee, sought the recovery of the value (P5,000,537.48) of the lost or undelivered cargo — consisting of steel billets allegedly shipped on board the vessel MV “Don Aurelio” — plus interest, attorney's fees, litigation expenses, exemplary damages, and cost of the suit.

Apparently, the above vessel was a member of a Protection & Indemnity Club (P & I Club, for short), which is “an association composed of shipowners in general who band together for the specific purpose of providing insurance cover on mutual basis against liabilities incidental to shipowning that the members incur in favor of third parties.”[2] Thus, the law firm of Teves, Campos, Hernandez & Lim, as one of the designated legal representatives of the P & I Club concerned, filed an Answer supposedly on behalf of all the defendants.

Subsequently, however, the new counsel, Ferrer, Valte, Mariano & Sangalang law firm, for the defendant Litonjua Shipping Co., alleged ship agent of the two other defendants, entered its appearance in substitution of Teves, Campos, Hernandez & Lim. Likewise, Atty. Eulalio A. Ventura filed a special appearance as counsel for the herein petitioner, alleged charterer of the vessel, for the sole purpose of questioning the jurisdiction of the court. The law firm of Teves, Campos, Hernandez & Lim continued to represent the defendant Aurelio Navigation Corp. S.A., the owner of the vessel.

Thereafter, the petitioner, through counsel, filed a Motion to Dismiss on the ground that the trial court[3] had a jurisdiction over its person as well as the subject matter of the suit. The defendant Aurelio Navigation Corp. S.A., also filed a Motion to Dismiss on the basis of the affirmative defenses in the Answer, particularly the defense of extinguishment of liability by the sinking of the vessel.

In an Order dated March 4, 1983, the trial court dismissed the complaint against all the defendants. However, upon motion of the private respondent (plaintiff below), the said Order of March 4, 1983 was set aside by another Order dated September 4, 1983. From this last order, only the petitioner filed a Motion for Reconsideration, which was resolved by the trial court in an Order dated May 3, 1984, stating thus:

WHEREFORE, the Order dated September 4, 1983 is hereby reconsidered, and the Order dated March 4, 1983, is hereby REVIVED.”[4]

Consequently, the above Orders dated March 4, 1983 and May 3, 1984 were appealed by the private respondent to the Court of Appeals, which later rendered judgment the dispositive portion of which reads:

WHEREFORE, the Order on May 1984 reviving in toto the Order on March 4, 1983 is hereby SET ASIDE and the case is remanded to the lower court for trial on the merits.[5]

The pivotal question raised in the present petition is whether or not there was a voluntary appearance by the petitioner’s counsel such that jurisdiction over the petitioner has been acquired by the trial court.

We need not look farther than the body of the subject decision of the Court of Appeals.

Lastly, appellant Pioneer Insurance contends that the lower court erred in not holding that appellee Hyopsung Maritime is already estopped from questioning the court’s jurisdiction over its person considering that the answer filed by the law firm of Teves, Campos, Hernandez & Lim takes the form of a “Voluntary Appearance” for which no service of summons is necessary in order for the lower court to acquire jurisdiction over the persons of appellee Hyopsung Maritime Co. Ltd.

While the rule is — that service of summons or voluntary general appearance confers court jurisdiction over the person of defendant (*Salmon and Pacific Commercial Co. vs. Tan Cuenco*, 36 Phil. 556), the voluntary appearance alluded to by appellant Pioneer Insurance does not exist. The answer with counterclaim filed by the law firm of Teves, Campos, Hernandez & Lim dated August 24, 1981, was never authorized by appellee Hyopsung Maritime Co. Ltd., evidenced by the admission of the law firm itself through Atty. Jaime Vibar that and we quote:

“x x x. If the representation was a mistake and not ratified, then the undersigned counsel would welcome and in fact, pray for an order to rectify the error/mistake with a view to serving the interest of justice and particularly protecting the interest of Hyopsung Maritime Co. Ltd.,” (Comment on Motion to Dismiss filed by defendant Hyopsung Maritime Co. Ltd., dated June 30, 1982, p. 74, original record).

Then, too, there is the Certification from the President of the company Mr. B.S. Kim that appellee Hyopsung Maritime Co. Ltd. has not and has never engaged the services of the Philippine Law Firm of Teves, Campos, Hernandez & Lim, or particularly Atty. Jaime Vibar, to represent it in the above mentioned case, nor has it authorized, allowed or tolerated said law firm and/or individual lawyers to prepare and file in its behalf the “Answer” to a complaint dated August 24, 1981, signed by Atty. Jaime Vibar, that the only authorized counsel in the Philippines whose services have been engaged on October 27, 1981, for the principal purpose of raising the question of jurisdiction of the Philippine courts in Atty. Eulalio Ventura of the Aquino, Castro & Ventura Law Offices and that Hyopsung Maritime Co. Ltd. has never engaged nor has it done or conducted any business whatever in the Philippines. (Certification, pp. 57-58, original record). Apparently then, appellee Hyopsung Maritime Co. Ltd. is not bound by the pleading or answer mistakenly filed by the law firm of Teves, Campos, Hernandez & Lim for in behalf of all the appellees.[6] (Emphasis Supplied).

Thus, the Court of Appeals found that the petitioner never appeared voluntarily before the trial court as the answer filed by the law firm of Teves, Campos, Hernandez & Lim was not authorized by it; that the same was mistakenly filed for and on behalf of the petitioner and the other defendants; and that as a matter of fact, the said law firm had never been engaged to represent, in whatever manner, the petitioner in the said case.

In the light of the foregoing express findings of fact of the Court of Appeals, which are binding upon this Court as a matter of general rule, there could be no other logical and valid conclusion but to dismiss the complaint as against the petitioner for lack of jurisdiction over its person. Indeed, to pursue the complaint against the petitioner

would be an act of futility because any judgment against it would be void for want of jurisdiction. That the Court of Appeals refused to consider, or at the very least, to clarify its questioned decisions, is frankly, beyond our comprehension. Fortunately for the petitioner, this mistake, though serious, is easily remediable.

Finally laying to rest the question of jurisdiction, we likewise hold that, the civil case below being a personal action, personal or substituted service of summons on the petitioner, pursuant to Sec. 14, Rule 14 (then Sec. 14, Rule 7) of the Rules of Court, is necessary to confer jurisdiction on the court;^[7] however, considering that the respondent Court of Appeals accepted the explanation of the president of the petitioner company that it is not doing business in the Philippines, and no proof to the contrary having been adduced below by the private respondent, ergo, the petitioner is not amenable to process and the jurisdiction on the local courts. For as we said in *Pacific Micronesian Line, inc., del Rosario and Pelingon*:

x x x But, it should be noted, in order that services may effected in the manner above stated, said section also requires that the foreign corporation be one which is doing business in the Philippines. This is a sine qua non requirement. This fact must first be established in order that summons can be made and jurisdiction acquired.^[8]

The present case must be distinguished from the *Facilities Management Corp, vs. de la Osa*,^[9] which involved the non-payment by Facilities Management Corp. (FMC in short), a non-resident foreign corporation, of overtime compensation, as well as swing shift and graveyard shift premiums to Leonardo de la Osa, a Filipino, successively employed as painter, houseboy, and cashier. Notably, de la Osa was hired in Manila by the Filipino agent of FMC was originally executed and subsequently renewed in Manila. Therein, we ruled:

Indeed, if a foreign corporation, not engaged in business in the Philippines is not barred from seeking redress from courts in the Philippines, a fortiori, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines.^[10]

On the other hand, the present suit for the recovery of damages based on a breach of contract which appears to have been entirely entered into, executed, and consummated in Korea. Indisputably, the shipment was loaded on board the foreign vessel MV “Don Aurelio” at Pohang, Korea, by a Korean firm with office at Seoul, Korea and the freight was prepaid also at Seoul; the above vessel with its cargo never even docked at Manila or at any other port of entry in the Philippines; lastly, the petitioner did not appoint any ship agent in the Philippines. Simply put, the petitioner is beyond the reach of our courts.

The other issues raised by the parties are merely subordinate to the main issue and therefore, need no longer be discussed.

WHEREFORE, the petition is GRANTED. The dispositive portion of the decision of the Court of Appeals is hereby MODIFIED in that the complaint against the petitioner is hereby ordered DISMISSED, and the case is remanded to the lower court for trial on the merits as against the two other defendants in Civil Case No. 142115. No Costs.

SO ORDERED.

Melencio-Herrera,(Chairman), Paras, Padilla and Regalado, JJ., concur.

[1] Coquia, Jorge R., J., ponente; Castro-Bartolome, Florelia and Ejercito, Bienvenido C., JJ., concurring.

[2] HERNANDEZ AND PEÑALES, *PHILIPPINE ADMIRALTY AND MARITIME ,LAW*, 722 (1987), citing J. Claro Tesoro, *P & I Clubs and Other Concepts*.

- [3] Hon. Antonio H. Martinez, presiding Judge, Regional Trial Court of Manila, Branch XX.
- [4] Rollo, 64.
- [5] Rollo, 27.
- [6] Rollo, 5-6.
- [7] The Dial Corporation, et al. vs. Soriano, et al., G.R. No. 82330, May 31, 1988, p. 5.
- [8] 96 Phil. 27-28 (October 23, 1954).
- [9] No. L-38649, March 26, 1979, 89 SCRA 131.
- [10] Id., p. 139, also cited in FBA Aircraft, S.A. vs. Zosa, No. L-58345, Dec. 9, 1981, 110 SCRA 3.

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