

SECOND DIVISION

[G.R. No. 172301, August 19, 2015]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. ASIAVEST MERCHANT BANKERS (M) BERHAD,
RESPONDENT.**

DECISION

LEONEN, J.:

This case stemmed from an action for recovery of sum of money filed before the Regional Trial Court of Pasig by respondent Malaysian corporation against petitioner Philippine National Construction Corporation (PNCC), formerly Construction & Development Corporation of the Philippines. PNCC is a government-acquired asset corporation.

We resolve whether our courts have subject matter jurisdiction over an action for recovery of sum of money filed by a Malaysian corporation against a Philippine corporation involving a contract executed and performed in Malaysia, and the applicability of the *forum non conveniens* principle.

PNCC filed this Petition^[1] assailing the Court of Appeals Decision^[2] dated June 10, 2005 dismissing its appeal, and Resolution^[3] dated April 7, 2006 denying reconsideration.^[4] The trial court ruled in favor of Asiavest Merchant Bankers (M) Berhad and ordered PNCC to reimburse it the sum of Malaysian Ringgit (MYR) 3,915,053.54 or its equivalent in Philippine peso.^[5]

PNCC prays that this court reverse and set aside the Court of Appeals Decision and Resolution, as well as the trial court's Decision^[6] declaring it in default.^[7] It prays the trial court's order of default be reversed and it be allowed to file its Answer, or, the cause of action having already prescribed under Malaysian laws, the case be dismissed outright.^[8]

PNCC and Asiavest Holdings (M) Sdn. Bhd. (Asiavest Holdings) caused the incorporation of an associate company known as Asiavest-CDCP Sdn. Bhd. (Asiavest-CDCP), through which they entered into contracts to construct rural roads and bridges for the State of Pahang, Malaysia.^[9]

In connection with this construction contract, PNCC obtained various guarantees and bonds from Asiavest Merchant Bankers (M) Berhad to guarantee the due performance of its obligations.^[10] The four contracts of guaranty stipulate that Asiavest Merchant Bankers (M) Berhad shall guarantee to the State of Pahang "the due performance by PNCC of its construction contracts . . . and the repayment of the temporary advances given to PNCC[.]"^[11] These contracts were understood to

be governed by the laws of Malaysia.^[12]

There was failure to perform the obligations under the construction contract, prompting the State of Pahang to demand payment against Asiavest Merchant Bankers (M) Berhad's performance bonds.^[13] It "entered into a compromise agreement with the State of Pahang by paying . . . the reduced amount of [Malaysian Ringgit (MYR)] 3,915,053.54[.]"^[14] Consequently, the corporation demanded indemnity from PNCC by demanding the amount it paid to the State of Pahang.^[15]

On April 12, 1994, Asiavest Merchant Bankers (M) Berhad filed a Complaint^[16] for recovery of sum of money against PNCC before the Regional Trial Court of Pasig.^[17] It based its action on Malaysian laws. Specifically, it invoked Section 98^[18] of the Malaysian Contracts Act of 1950 and Section 11^[19] of the Malaysian Civil Law Act of 1956.^[20]

PNCC filed Motions for extension of time to file its Answer on May 18, 1994, June 2, 1994, and June 17, 1994. The trial court granted these motions, with the last one set to expire on July 3, 1994. On July 4, 1994, PNCC filed a Motion for another five-day extension. The trial court denied this Motion on July 13, 1994.^[21]

On July 27, 1994, the trial court declared PNCC in default for failure to file any responsive pleading, and allowed Asiavest Merchant Bankers (M) Berhad to present its evidence ex parte.^[22]

The Regional Trial Court, in its Decision dated November 29, 1994, rendered judgment in favor of Asiavest Merchant Bankers (M) Berhad:

WHEREFORE, premises considered and it appearing that plaintiff had[sic] proved its claim by preponderance of evidence, judgment is hereby rendered in favor of plaintiff and against defendant Philippine National Construction Corporation ordering the latter to pay the plaintiff:

1. The sum of Malaysian Ringgit M \$3,915,053.54 or its equivalent in [Philippine peso at the bank rate of exchange (on the date of payment) plus legal interest from the date of demand until fully paid.
2. The sum of P300,000.00 as and by way of attorney's fees; and
3. Cost of suit.

SO ORDERED.^[23]

The trial court found that Asiavest Merchant Bankers (M) Berhad complied with the requisites for proof of written foreign laws.^[24] The Malaysian laws invoked were found to be similar with Articles 2066 and 2067 of the Civil Code:^[25]

ART. 2066. The guarantor who pays for a debtor must be indemnified by the latter.

The indemnity comprises:

- (1) The total amount of the debt;
- (2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;
- (3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;
- (4) Damages, if they are due.

ART. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

On January 30, 1995, the trial court denied PNCC's Motion to Lift Order of Default^[26] filed on December 12, 1994.^[27] On August 11, 1995, it also denied PNCC's Motion for Reconsideration *Ad Cautelam*^[28] dated December 21, 1994.^[29] PNCC brought its case before the Court of Appeals.^[30]

The Court of Appeals, in its Decision dated June 10, 2005, dismissed PNCC's appeal for raising pure questions of law exclusively cognizable by this court.^[31] It likewise denied reconsideration.^[32]

Hence, PNCC filed this Petition.

PNCC contends it had consistently raised the propriety of impleading the two Malaysian corporations, Asiavest-CDCP and Asiavest Holdings, and their participant liability, which are questions of fact.^[33] According to PNCC, Asiavest-CDCP undertook to hold PNCC "free and harmless from all its obligations under the construction agreement[,]"^[34] while Asiavest Holdings agreed in the guaranty agreement to share with PNCC the guarantee liability on a 51% (Asiavest Holdings) - 49% (PNCC) arrangement.^[35] Since the repayment of financing facilities received by Asiavest-CDCP was jointly guaranteed by PNCC and Asiavest Holdings as admitted in the Complaint,^[36] the lower courts "erred in ordering [PNCC] to reimburse the entire amount claimed by the respondent."^[37] While the issue on its exact liability was not assigned as an error, PNCC argues it has amply discussed this issue in its pleadings.^[38]

PNCC submits that the trial court could have invoked the principle of *forum non conveniens* and refused to take cognizance of the case considering the difficulty in acquiring jurisdiction over the two Malaysian corporations and in determining PNCC's exact liability.^[39]

PNCC adds that it was deprived of its day in court when its Motion for another five-day extension to file an Answer was denied, and it was subsequently declared in default.^[40] "[T]he transactions involved originated from and occurred in a foreign country[.]"^[41] This constrained PNCC to request several extensions in order to

collate the records in preparation for its defense.^[42]

PNCC also raises prescription pursuant to Item 6 of the Malaysian Limitation Act of 1953 (Act 254) in that "actions founded on contract or to recover any sum ... by virtue of any written law . . . shall not be brought after the expiration of six years from [accrual of cause of action]."^[43] The Complaint alleged that Asiavest Merchant Bankers (M) Berhad paid the State of Pahang "in or about 1988[.]"^[44] On April 14, 1982, April 2, 1983, and August 2, 1983, Asiavest Merchant Bankers (M) Berhad made demands against PNCC for payment on the guarantees in favor of the State of Pahang.^[45] Since the Complaint was filed on April 13, 1994, six years had already elapsed from 1988.^[46]

Lastly, PNCC submits that Asiavest Merchant Bankers (M) Berhad already winded up voluntarily based on the Certification^[47] issued by the Director of the Insolvency and Liquidation Department for Official Receiver, Malaysia.^[48] PNCC alleges that the liquidators declared in their Account of Receipts and Payments and Statement of the Position in the Winding Up dated August 3, 1995 and submitted on April 4, 2006 that "there [were] no more debts or claims existing for or against the respondent."^[49] Thus, the case is now moot and academic with the termination of Asiavest Merchant Bankers (M) Berhad's corporate existence coupled with the declaration of no claims.^[50]

Asiavest Merchant Bankers (M) Berhad counters that the Court of Appeals did not err in dismissing the appeal as PNCC's Brief^[51] only raised two issues that are both questions of law: lack of jurisdiction over the subject matter, and deprivation of day in court with the denial of its Motion for Reconsideration *Ad Cautelam*.^[52]

Asiavest Merchant Bankers (M) Berhad argues that the principle of *forum non conveniens* was addressed to the discretion of the trial court.^[53] Moreover, this issue was not raised before the Court of Appeals. The issue on prescription based on Malaysian laws was also not raised. In any case, PNCC failed to plead and prove this foreign law provision.^[54]

On its civil personality, Asiavest Merchant Bankers (M) Berhad denies it has ceased to exist, and this issue was also not raised before the lower court. In any case, this is of no moment as Asiavest Merchant Bankers (M) Berhad had already acquired a decision in its favor.^[55]

According to Asiavest Merchant Bankers (M) Berhad, PNCC was not denied due process as it was granted a total of 60 days to file a responsive pleading before the trial court.^[56] It submits that PNCC wasted almost six months before moving to lift the default order.^[57] Moreover, "the filing and consideration of a party's motion for reconsideration accords [it] due process."^[58]

The Petition raises the following issues:

First, whether the Court of Appeals erred in dismissing the appeal on the ground that it raised pure questions of law;

Second, whether the Court of Appeals erred in not finding that the two Malaysian corporations, Asiavest Holdings (M) Sdn. Bhd. and Asiavest-CDCP Sdn. Bhd., should have been impleaded as parties;

Third, whether the trial court "erred in not refusing to assume jurisdiction on the ground of forum non-conveniens[;]"^[59]

Fourth, whether petitioner Philippine National Construction Corporation was deprived of due process when the trial court declared it in default;

Fifth, whether respondent Asiavest Merchant Bankers (M) Berhad's claim already prescribed under Malaysian laws; and

Lastly, whether this case "should be dismissed considering that respondent [Asiavest Merchant Bankers (M) Berhad] is no longer an existing corporation."^[60]

I.

On the procedural issue, petitioner submits that the Court of Appeals erred in finding that only questions of law were raised.^[61]

Section 9(3) of Batas Pambansa Blg. 129 enumerates the appellate jurisdiction of the Court of Appeals. This section includes the proviso: "except those falling within the appellate jurisdiction of the Supreme Court[.]" This court's appellate jurisdiction is found in Article VIII, Section 5(2)(e) of the Constitution:

SECTION 5. The Supreme Court shall have the following powers:

. . . .

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

. . . .

(e) All cases in which only an error or question of law is involved.

A question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts[,]"^[62] while a question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts[.]"^[63] Questions of fact require the examination of the probative value of the parties' evidence.^[64]

This Petition originated from a default judgment against petitioner. Petitioner was not able to present evidence before the trial court. Necessarily, the errors raised from the trial court involved only questions of law.

II.

Petitioner insists that the issue on "the propriety of impleading the two Malaysian