

SECOND DIVISION

[G.R. No. 168266, March 05, 2010]

CARGILL, INC., PETITIONER, VS. INTRA STRATA ASSURANCE CORPORATION, RESPONDENT.

DECISION

CARPIO, J.:

The Case

This petition for review^[1] assails the 26 May 2005 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 48447.

The Facts

Petitioner Cargill, Inc. (petitioner) is a corporation organized and existing under the laws of the State of Delaware, United States of America. Petitioner and Northern Mindanao Corporation (NMC) executed a contract dated 16 August 1989 whereby NMC agreed to sell to petitioner 20,000 to 24,000 metric tons of molasses, to be delivered from 1 January to 30 June 1990 at the price of \$44 per metric ton. The contract provides that petitioner would open a Letter of Credit with the Bank of Philippine Islands. Under the "red clause" of the Letter of Credit, NMC was permitted to draw up to \$500,000 representing the minimum price of the contract upon presentation of some documents.

The contract was amended three times: first, on 11 January 1990, increasing the purchase price of the molasses to \$47.50 per metric ton;^[3] second, on 18 June 1990, reducing the quantity of the molasses to 10,500 metric tons and increasing the price to \$55 per metric ton;^[4] and third, on 22 August 1990, providing for the shipment of 5,250 metric tons of molasses on the last half of December 1990 through the first half of January 1991, and the balance of 5,250 metric tons on the last half of January 1991 through the first half of February 1991.^[5] The third amendment also required NMC to put up a performance bond equivalent to \$451,500, which represents the value of 10,500 metric tons of molasses computed at \$43 per metric ton. The performance bond was intended to guarantee NMC's performance to deliver the molasses during the prescribed shipment periods according to the terms of the amended contract.

In compliance with the terms of the third amendment of the contract, respondent Intra Strata Assurance Corporation (respondent) issued on 10 October 1990 a performance bond^[6] in the sum of P11,287,500 to guarantee NMC's delivery of the 10,500 tons of molasses, and a surety bond^[7] in the sum of P9,978,125 to guarantee the repayment of downpayment as provided in the contract.

NMC was only able to deliver 219.551 metric tons of molasses out of the agreed 10,500 metric tons. Thus, petitioner sent demand letters to respondent claiming payment under the performance and surety bonds. When respondent refused to pay, petitioner filed on 12 April 1991 a complaint^[8] for sum of money against NMC and respondent.

Petitioner, NMC, and respondent entered into a compromise agreement,^[9] which the trial court approved in its Decision^[10] dated 13 December 1991. The compromise agreement provides that NMC would pay petitioner P3,000,000 upon signing of the compromise agreement and would deliver to petitioner 6,991 metric tons of molasses from 16-31 December 1991. However, NMC still failed to comply with its obligation under the compromise agreement. Hence, trial proceeded against respondent.

On 23 November 1994, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is rendered in favor of plaintiff [Cargill, Inc.], ordering defendant INTRA STRATA ASSURANCE CORPORATION to solidarily pay plaintiff the total amount of SIXTEEN MILLION NINE HUNDRED NINETY-THREE THOUSAND AND TWO HUNDRED PESOS (P16,993,200.00), Philippine Currency, with interest at the legal rate from October 10, 1990 until fully paid, plus attorney's fees in the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00), Philippine Currency and the costs of the suit.

The Counterclaim of Intra Strata Assurance Corporation is hereby dismissed for lack of merit.

SO ORDERED.^[11]

On appeal, the Court of Appeals reversed the trial court's decision and dismissed the complaint. Hence, this petition.

The Court of Appeals' Ruling

The Court of Appeals held that petitioner does not have the capacity to file this suit since it is a foreign corporation doing business in the Philippines without the requisite license. The Court of Appeals held that petitioner's purchases of molasses were in pursuance of its basic business and not just mere isolated and incidental transactions.

The Issues

Petitioner raises the following issues:

1. Whether petitioner is doing or transacting business in the Philippines in contemplation of the law and established

jurisprudence;

2. Whether respondent is estopped from invoking the defense that petitioner has no legal capacity to sue in the Philippines;
3. Whether petitioner is seeking a review of the findings of fact of the Court of Appeals; and
4. Whether the advance payment of \$500,000 was released to NMC without the submission of the supporting documents required in the contract and the "red clause" Letter of Credit from which said amount was drawn.^[12]

The Ruling of the Court

We find the petition meritorious.

Doing Business in the Philippines and Capacity to Sue

The principal issue in this case is whether petitioner, an unlicensed foreign corporation, has legal capacity to sue before Philippine courts. Under Article 123^[13] of the Corporation Code, a foreign corporation must first obtain a license and a certificate from the appropriate government agency before it can transact business in the Philippines. Where a foreign corporation does business in the Philippines without the proper license, it cannot maintain any action or proceeding before Philippine courts as provided under Section 133 of the Corporation Code:

Sec. 133. *Doing business without a license.* - No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

Thus, the threshold question in this case is whether petitioner was doing business in the Philippines. The Corporation Code provides no definition for the phrase "doing business." Nevertheless, Section 1 of Republic Act No. 5455 (RA 5455),^[14] provides that:

x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; **and any**

other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization. (Emphasis supplied)

This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987.

Republic Act No. 7042 (RA 7042), otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states:

[T]he phrase "doing business" shall include "soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however,* That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account.

Since respondent is relying on Section 133 of the Corporation Code to bar petitioner from maintaining an action in Philippine courts, respondent bears the burden of proving that petitioner's business activities in the Philippines were not just casual or occasional, but so systematic and regular as to manifest continuity and permanence of activity to constitute doing business in the Philippines. In this case, we find that respondent failed to prove that petitioner's activities in the Philippines constitute doing business as would prevent it from bringing an action.

The determination of whether a foreign corporation is doing business in the Philippines must be based on the facts of each case.^[15] In the case of *Antam Consolidated, Inc. v. CA*,^[16] in which a foreign corporation filed an action for collection of sum of money against petitioners therein for damages and loss sustained for the latter's failure to deliver coconut crude oil, the Court emphasized