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[G.R. No. 154705, June 26, 2003]

THE REPUBLIC OF INDONESIA, HIS EXCELLENCY AMBASSADOR SOERATMIN, AND MINISTER COUNSELLOR AZHARI KASIM, PETITIONERS, VS. JAMES VINZON, DOING BUSINESS UNDER THE NAME AND STYLE OF VINZON TRADE AND SERVICES, RESPONDENT.

D E C I S I O N

AZCUNA, J.:

This is a petition for review on *certiorari* to set aside the Decision of the Court of Appeals dated May 30, 2002 and its Resolution dated August 16, 2002, in CA-G.R. SP No. 66894 entitled *"The Republic of Indonesia, His Excellency Ambassador Soeratmin and Minister Counselor Azhari Kasim v. Hon. Cesar Santamaria, Presiding Judge, RTC Branch 145, Makati City, and James Vinzon, doing business under the name and style of Vinzon Trade and Services."*

Petitioner, Republic of Indonesia, represented by its Counsellor, Siti Partinah, entered into a Maintenance Agreement in August 1995 with respondent James Vinzon, sole proprietor of Vinzon Trade and Services. The Maintenance Agreement stated that respondent shall, for a consideration, maintain specified equipment at the Embassy Main Building, Embassy Annex Building and the Wisma Duta, the official residence of petitioner Ambassador Soeratmin. The equipment covered by the Maintenance Agreement are air conditioning units, generator sets, electrical facilities, water heaters, and water motor pumps. It is likewise stated therein that the agreement shall be effective for a period of four years and will renew itself automatically unless cancelled by either party by giving thirty days prior written notice from the date of expiry.[1]

Petitioners claim that sometime prior to the date of expiration of the said agreement, or before August 1999, they informed respondent that the renewal of the agreement shall be at the discretion of the incoming Chief of Administration, Minister Counsellor Azhari Kasim, who was expected to arrive in February 2000. When Minister Counsellor Kasim assumed the position of Chief of Administration in March 2000, he allegedly found respondent's work and services unsatisfactory and not in compliance with the standards set in the Maintenance Agreement. Hence, the Indonesian Embassy terminated the agreement in a letter dated August 31, 2000.[2] Petitioners claim, moreover, that they had earlier verbally informed respondent of their decision to terminate the agreement.

On the other hand, respondent claims that the aforesaid termination was arbitrary and unlawful. Respondent cites various circumstances which purportedly negated petitioners' alleged dissatisfaction over respondent's services: (a) in July 2000, Minister Counsellor Kasim still requested respondent to assign to the embassy an

additional full-time worker to assist one of his other workers; (b) in August 2000, Minister Counsellor Kasim asked respondent to donate a prize, which the latter did, on the occasion of the Indonesian Independence Day golf tournament; and (c) in a letter dated August 22, 2000, petitioner Ambassador Soeratmin thanked respondent for sponsoring a prize and expressed his hope that the cordial relations happily existing between them will continue to prosper and be strengthened in the coming years.

Hence, on December 15, 2000, respondent filed a complaint[3] against petitioners docketed as Civil Case No. 18203 in the Regional Trial Court (RTC) of Makati, Branch 145. On February 20, 2001, petitioners filed a Motion to Dismiss, alleging that the Republic of Indonesia, as a foreign sovereign State, has sovereign immunity from suit and cannot be sued as a party-defendant in the Philippines. The said motion further alleged that Ambassador Soeratmin and Minister Counsellor Kasim are diplomatic agents as defined under the Vienna Convention on Diplomatic Relations and therefore enjoy diplomatic immunity.[4] In turn, respondent filed on March 20, 2001, an Opposition to the said motion alleging that the Republic of Indonesia has expressly waived its immunity from suit. He based this claim upon the following provision in the Maintenance Agreement:

> "Any legal action arising out of this Maintenance Agreement shall be settled according to the laws of the Philippines and by the proper court of Makati City, Philippines."

Respondent's Opposition likewise alleged that Ambassador Soeratmin and Minister Counsellor Kasim can be sued and held liable in their private capacities for tortious acts done with malice and bad faith.[5]

On May 17, 2001, the trial court denied herein petitioners' Motion to Dismiss. It likewise denied the Motion for Reconsideration subsequently filed.

The trial court's denial of the Motion to Dismiss was brought up to the Court of Appeals by herein petitioners in a petition for *certiorari* and prohibition. Said petition, docketed as CA-G.R. SP No. 66894, alleged that the trial court gravely abused its discretion in ruling that the Republic of Indonesia gave its consent to be sued and voluntarily submitted itself to the laws and jurisdiction of Philippine courts and that petitioners Ambassador Soeratmin and Minister Counsellor Kasim waived their immunity from suit.

On May 30, 2002, the Court of Appeals rendered its assailed decision denying the petition for lack of merit.[6] On August 16, 2002, it denied herein petitioners' motion for reconsideration.[7]

Hence, this petition.

In the case at bar, petitioners raise the sole issue of whether or not the Court of Appeals erred in sustaining the trial court's decision that petitioners have waived their immunity from suit by using as its basis the abovementioned provision in the Maintenance Agreement.

The petition is impressed with merit.

International law is founded largely upon the principles of reciprocity, comity, independence, and equality of States which were adopted as part of the law of our land under Article II, Section 2 of the 1987 Constitution.[8] The rule that a State may not be sued without its consent is a necessary consequence of the principles of independence and equality of States.[9] As enunciated in *Sanders v. Veridiano II*,[10] the practical justification for the doctrine of sovereign immunity is that there can be no legal right against the authority that makes the law on which the right depends. In the case of foreign States, the rule is derived from the principle of the sovereign equality of States, as expressed in the maxim *par in parem non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another.[11] A contrary attitude would "unduly vex the peace of nations."[12]

The rules of International Law, however, are neither unyielding nor impervious to change. The increasing need of sovereign States to enter into purely commercial activities remotely connected with the discharge of their governmental functions brought about a new concept of sovereign immunity. This concept, the restrictive theory, holds that the immunity of the sovereign is recognized only with regard to public acts or acts *jure imperii*, but not with regard to private acts or acts *jure gestionis*.[13]

In *United States v. Ruiz*,[14] for instance, we held that the conduct of public bidding for the repair of a wharf at a United States Naval Station is an act *jure imperii*. On the other hand, we considered as an act *jure gestionis* the hiring of a cook in the recreation center catering to American servicemen and the general public at the John Hay Air Station in Baguio City,[15] as well as the bidding for the operation of barber shops in Clark Air Base in Angeles City.[16]

Apropos the present case, the mere entering into a contract by a foreign State with a private party cannot be construed as the ultimate test of whether or not it is an act *jure imperii* or *jure gestionis*. Such act is only the start of the inquiry. Is the foreign State engaged in the regular conduct of a business? If the foreign State is not engaged regularly in a business or commercial activity, and in this case it has not been shown to be so engaged, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii*.[17]

Hence, the existence alone of a paragraph in a contract stating that any legal action arising out of the agreement shall be settled according to the laws of the Philippines and by a specified court of the Philippines is not necessarily a waiver of sovereign immunity from suit. The aforesaid provision contains language not necessarily inconsistent with sovereign immunity. On the other hand, such provision may also be meant to apply where the sovereign party elects to sue in the local courts, or otherwise waives its immunity by any subsequent act. The applicability of Philippine laws must be deemed to include Philippine laws in its totality, including the principle recognizing sovereign immunity. Hence, the proper court may have no proper action, by way of settling the case, except to dismiss it.

Submission by a foreign state to local jurisdiction must be clear and unequivocal. It must be given explicitly or by necessary implication. We find no such waiver in this