

## SECOND DIVISION

[ G.R. No. 110263, July 20, 2001 ]

**ASIAVEST MERCHANT BANKERS (M) BERHAD, PETITIONER, VS.  
COURT OF APPEALS AND PHILIPPINE NATIONAL  
CONSTRUCTION CORPORATION, RESPONDENTS.**

### DECISION

**DE LEON, JR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals dated May 19, 1993 in CA-G.R. CV No. 35871 affirming the Decision<sup>[2]</sup> dated October 14, 1991 of the Regional Trial Court of Pasig, Metro Manila, Branch 168 in Civil Case No. 56368 which dismissed the complaint of petitioner Asiavest Merchant Bankers (M) Berhad for the enforcement of the money judgment of the High Court of Malaya in Kuala Lumpur against private respondent Philippine National Construction Corporation.

The petitioner Asiavest Merchant Bankers (M) Berhad is a corporation organized under the laws of Malaysia while private respondent Philippine National Construction Corporation is a corporation duly incorporated and existing under Philippine laws.

It appears that sometime in 1983, petitioner initiated a suit for collection against private respondent, then known as Construction and Development Corporation of the Philippines, before the High Court of Malaya in Kuala Lumpur entitled "Asiavest Merchant Bankers (M) Berhad v. Asiavest - CDCP Sdn. Bhd. and Construction and Development Corporation of the Philippines."<sup>[3]</sup>

Petitioner sought to recover the indemnity of the performance bond it had put up in favor of private respondent to guarantee the completion of the Felda Project and the non-payment of the loan it extended to Asiavest-CDCP Sdn. Bhd. for the completion of Paloh Hanai and Kuantan By-Pass Project.

On September 13, 1985, the High Court of Malaya (Commercial Division) rendered judgment in favor of the petitioner and against the private respondent which is also designated therein as the "2nd Defendant." The judgment reads in full:

SUIT NO. C638 of 1983

Between

Asiavest Merchant  
Bankers (M) Berhad Plaintiffs

And

1. Asiavest-CDCP  
Sdn. Bhd.  
2. Construction &  
Development  
Corporation of the      Defendant  
Philippines

## J U D G M E N T

The 2nd Defendant having entered appearance herein and the Court having under Order 14, rule 3 ordered that judgment as hereinafter provided be entered for the Plaintiffs against the 2nd Defendant.

IT IS THIS DAY ADJUDGED that the 2nd defendant do pay the Plaintiffs the sum of \$5,108,290.23 (Ringgit Five million one hundred and eight thousand two hundred and ninety and Sen twenty-three) together with interest at the rate of 12% per annum on: -

- (i) the sum of \$2,586,866.91 from the 2nd day of March 1983 to the date of payment; and
- (ii) the sum of \$2,521,423.32 from the 11th day of March 1983 to the date of payment; and \$350.00 (Ringgit Three Hundred and Fifty) costs.

Dated the 13th day of September, 1985.

Senior Assistant Registrar,  
High Court, Kuala Lumpur

This Judgment is filed by Messrs. Skrine & Co., 3rd Floor, Straits Trading Building, No. 4, Leboh Pasar, Besar, Kuala Lumpur, Solicitors for the Plaintiffs abovenamed. (VP/Ong/81194.7/83)<sup>[4]</sup>

On the same day, September 13, 1985, the High Court of Malaya issued an Order directing the private respondent (also designated therein as the "2nd Defendant") to pay petitioner interest on the sums covered by the said Judgment, thus:

SUIT NO. C638 OF 1983

Between

Asiavest Merchant      Plaintiffs  
Bankers (M) Berhad

And

1. Asiavest-CDCP  
Sdn. Bhd.  
2. Construction &  
Development  
Corporation of the      Defendants  
Philippines

BEFORE THE SENIOR ASSISTANT REGISTRAR

CIK SUSILA S. PARAM

THIS 13th DAY OF SEPTEMBER, 1985

IN CHAMBERS

O R D E R

Upon the application of Asiavest Merchant Bankers (M) Berhad, the Plaintiffs in this action AND UPON READING the Summons in Chambers dated the 16th day of August, 1984 and the Affidavit of Lee Foong Mee affirmed on the 14th day of August 1984 both filed herein AND UPON HEARING Mr. T. Thomas of Counsel for the Plaintiffs and Mr. Khaw Chay Tee of Counsel for the 2nd Defendant abovenamed on the 26th day of December 1984 IT WAS ORDERED that the Plaintiffs be at liberty to sign final judgment against the 2nd Defendant for the sum of \$5,108,290.23 AND IT WAS ORDERED that the 2nd Defendant do pay the Plaintiffs the costs of suit at \$350.00 AND IT WAS FURTHER ORDERED that the plaintiffs be at liberty to apply for payment of interest AND upon the application of the Plaintiffs for payment of interest coming on for hearing on the 1st day of August in the presence of Mr. Palpanaban Devarajoo of Counsel for the Plaintiffs and Mr. Khaw Chay Tee of Counsel for the 2nd Defendant above-named AND UPON HEARING Counsel as aforesaid BY CONSENT IT WAS ORDERED that the 2nd Defendant do pay the Plaintiffs interest at a rate to be assessed AND the same coming on for assessment this day in the presence of Mr. Palpanaban Devarajoo of Counsel for the Plaintiffs and Mr. Khaw Chay Tee of Counsel for the 2nd Defendant AND UPON HEARING Counsel as aforesaid BY CONSENT IT IS ORDERED that the 2nd Defendant do pay the Plaintiffs interest at the rate of 12% per annum on:

- (i) the sum of \$2,586,866.91 from the 2nd day of March 1983 to the date of payment; and
- (ii) the sum of \$2,521,423.32 from the 11th day of March 1983 to the date of Payment.

Dated the 13th day of September, 1985.

Senior Assistant Registrar,  
High Court, Kuala Lumpur.<sup>[5]</sup>

Following unsuccessful attempts<sup>[6]</sup> to secure payment from private respondent under the judgment, petitioner initiated on September 5, 1988 the complaint before Regional Trial Court of Pasig, Metro Manila, to enforce the judgment of the High Court of Malaya.<sup>[7]</sup>

Private respondent sought the dismissal of the case via a Motion to Dismiss filed on October 5, 1988, contending that the alleged judgment of the High Court of Malaya should be denied recognition or enforcement since on its face, it is tainted with want of jurisdiction, want of notice to private respondent, collusion and/or fraud, and

there is a clear mistake of law or fact.<sup>[8]</sup> Dismissal was, however, denied by the trial court considering that the grounds relied upon are not the proper grounds in a motion to dismiss under Rule 16 of the Revised Rules of Court.<sup>[9]</sup>

On May 22, 1989, private respondent filed its Answer with Compulsory Counterclaim<sup>[10]</sup> and therein raised the grounds it brought up in its motion to dismiss. In its Reply<sup>[11]</sup> filed on June 8, 1989, the petitioner contended that the High Court of Malaya acquired jurisdiction over the person of private respondent by its voluntary submission to the court's jurisdiction through its appointed counsel, Mr. Khay Chay Tee. Furthermore, private respondent's counsel waived any and all objections to the High Court's jurisdiction in a pleading filed before the court.

In due time, the trial court rendered its Decision dated October 14, 1991 dismissing petitioner's complaint. Petitioner interposed an appeal with the Court of Appeals, but the appellate court dismissed the same and affirmed the decision of the trial court in a Decision dated May 19, 1993.

Hence, the instant petition which is anchored on two (2) assigned errors,<sup>[12]</sup> to wit:

#### I

**THE COURT OF APPEALS ERRED IN HOLDING THAT THE MALAYSIAN COURT DID NOT ACQUIRE PERSONAL JURISDICTION OVER PNCC, NOTWITHSTANDING THAT (a) THE FOREIGN COURT HAD SERVED SUMMONS ON PNCC AT ITS MALAYSIA OFFICE, AND (b) PNCC ITSELF APPEARED BY COUNSEL IN THE CASE BEFORE THAT COURT.**

#### II

**THE COURT OF APPEALS ERRED IN DENYING RECOGNITION AND ENFORCEMENT TO (SIC) THE MALAYSIAN COURT JUDGMENT.**

Generally, in the absence of a special compact, no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country;<sup>[13]</sup> however, the rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.<sup>[14]</sup>

In this jurisdiction, a valid judgment rendered by a foreign tribunal may be recognized insofar as the immediate parties and the underlying cause of action are concerned so long as it is convincingly shown that there has been an opportunity for a full and fair hearing before a court of competent jurisdiction; that the trial upon regular proceedings has been conducted, following due citation or voluntary appearance of the defendant and under a system of jurisprudence likely to secure an impartial administration of justice; and that there is nothing to indicate either a prejudice in court and in the system of laws under which it is sitting or fraud in procuring the judgment.<sup>[15]</sup>

A foreign judgment is presumed to be valid and binding in the country from which it

comes, until a contrary showing, on the basis of a presumption of regularity of proceedings and the giving of due notice in the foreign forum. Under Section 50(b), [16] Rule 39 of the Revised Rules of Court, which was the governing law at the time the instant case was decided by the trial court and respondent appellate court, a judgment, against a person, of a tribunal of a foreign country having jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title. The judgment may, however, be assailed by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. In addition, under Section 3(n), Rule 131 of the Revised Rules of Court, a court, whether in the Philippines or elsewhere, enjoys the presumption that it was acting in the lawful exercise of its jurisdiction. Hence, once the authenticity of the foreign judgment is proved, the party attacking a foreign judgment, is tasked with the burden of overcoming its presumptive validity.

In the instant case, petitioner sufficiently established the existence of the money judgment of the High Court of Malaya by the evidence it offered. Vinayak Prabhakar Pradhan, presented as petitioner's sole witness, testified to the effect that he is in active practice of the law profession in Malaysia; [17] that he was connected with Skrine and Company as Legal Assistant up to 1981; [18] that private respondent, then known as Construction and Development Corporation of the Philippines, was sued by his client, Asiavest Merchant Bankers (M) Berhad, in Kuala Lumpur; [19] that the writ of summons were served on March 17, 1983 at the registered office of private respondent and on March 21, 1983 on Cora S. Deala, a financial planning officer of private respondent for Southeast Asia operations; [20] that upon the filing of the case, Messrs. Allen and Gledhill, Advocates and Solicitors, with address at 24th Floor, UMBC Building, Jalan Sulaiman, Kuala Lumpur, entered their conditional appearance for private respondent questioning the regularity of the service of the writ of summons but subsequently withdrew the same when it realized that the writ was properly served; [21] that because private respondent failed to file a statement of defense within two (2) weeks, petitioner filed an application for summary judgment and submitted affidavits and documentary evidence in support of its claim; [22] that the matter was then heard before the High Court of Kuala Lumpur in a series of dates where private respondent was represented by counsel; [23] and that the end result of all these proceedings is the judgment sought to be enforced.

In addition to the said testimonial evidence, petitioner offered the following documentary evidence:

- (a) A certified and authenticated copy of the Judgment promulgated by the Malaysian High Court dated September 13, 1985 directing private respondent to pay petitioner the sum of \$5,108,290.23 Malaysian Ringgit plus interests from March 1983 until fully paid; [24]
- (b) A certified and authenticated copy of the Order dated September 13, 1985 issued by the Malaysian High Court in Civil Suit No. C638 of 1983; [25]
- (c) Computation of principal and interest due as of January 31, 1990 on the amount adjudged payable to petitioner by private