343 Phil. 849

SECOND DIVISION

[G.R. No. 97642, August 29, 1997]

AVON INSURANCE PLC, BRITISH RESERVE INSURANCE. CO. LTD., CORNHILL INSURANCE PLC, IMPERIO REINSURANCE CO. (UK) LTD., INSTITUTE DE RESEGURROS DO BRAZIL, INSURANCE CORPORATION OF IRELAND PLC, LEGAL AND GENERAL ASSURANCE SOCIETY LTD., PROVINCIAL INSURANCE PLC, QBL INSURANCE (UK) LTD., ROYAL INSURANCE CO. LTD., TRINITY INSURANCE CO. LTD., GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORP. LTD., COOPERATIVE INSURANCE SOCIETY AND PEARL ASSURANCE CO. LTD., PETITIONERS, VS. COURT OF APPEALS, REGIONAL TRIAL COURT OF MANILA, BRANCH 51, YUPANGCO COTTON MILLS, WORLDWIDE SURETY & INSURANCE CO., INC., RESPONDENTS.

D E C I S I O N

TORRES, JR., J.:

Just how far can our court assert jurisdiction over the persons of foreign entities being charged with contractual liabilities by residents of the Philippines?

Appealing from the Court of Appeals' October 11, 1990 Decision[1] in CA-G.R. No. 22005, petitioners claim that the trial court's jurisdiction does not extend to them, since they are foreign reinsurance companies that are not doing business in the Philippines. Having entered into reinsurance contracts abroad, petitioners are beyond the jurisdictional ambit of our courts and cannot be rendered summons through extraterritorial service, as under Section 17, Rule 14 of the Rules of Court, nor through the Insurance Commissioner, under Section 14. Private respondent Yupangco Cotton Mills contend on the other hand that petitioners are within our courts' cognitive powers, having submitted voluntarily to their jurisdiction by filing motions to dismiss[2] the private respondent's suit below.

The antecedent facts, as found by the appellate court, are as follows:

> Respondent Yupangco Cotton Mills filed a complaint against several foreign reinsurance companies (among which are petitioners) to collect their alleged percentage liability under contract treaties between the foreign insurance companies and the international insurance broker C.J. Boatright, acting as agent for respondent Worldwide Surety and Insurance Company. Inasmuch as petitioners are not engaged in business in the Philippines with no offices, places of business or agents in the Philippines, the reinsurance treaties having been rendered abroad, service of summons upon motion of respondent Yupangco, was made upon petitioners through the office of the Insurance Commissioner. Petitioners, by counsel on special appearance, seasonably filed motions

> to dismiss disputing the jurisdiction of respondent Court and the extra-territorial service of summons. Respondent Yupangco filed its opposition to the motion to dismiss, petitioners filed their reply, and respondent Yupangco filed its rejoinder. In an order dated April 30, 1990 respondent Court denied the motions to dismiss and directed petitioners to file their answer. On May 29, 1990, petitioners filed their notice of appeal. In an order dated June 4, 1990, respondent court denied due course to the appeal."[3]

To this day, trial on the merits of the collection suit has not proceeded as in the present petition, petitioners continue vigorously to dispute the trial court's assumption of jurisdiction over them.

It will be remembered that in the plaintiff's complaint,[4] it was contended that on July 6, 1979 and on October 1, 1980, Yupangco Cotton Mills engaged to secure with Worldwide Security and Insurance Co. Inc., several of its properties for the periods July 6, 1979 to July 6, 1980 as under Policy No. 20719 for a coverage of P100,000,000.00 and from October 1, 1980 to October 1, 1981, under Policy No. 25896, also for P100,000,000.00. Both contracts were covered by reinsurance treaties between Worldwide Surety and Insurance and several foreign reinsurance companies, including the petitioners. The reinsurance arrangements had been made through international broker C.J. Boatright and Co. Ltd., acting as agent of Worldwide Surety and Insurance.

As fate would have it, on December 16, 1979 and May 2, 1981, with in the respective effectivity periods of Policies 20719 and 25896, the properties therein insured were razed by fire , thereby giving rise to the obligation of the insurer to indemnify the Yupangco Cotton Mills. Partial payments were made by Worldwide Surety and Insurance and some of the reinsurance companies.

On May 2, 1983, Worldwide Surety and Insurance, in a deed of Assignment, acknowledge a remaining balance of P19,444,447.75 still due Yupangco Cotton Mills, and assigned to the latter all reinsurance proceeds still collectible from all the foreign reinsurance companies. Thus, in its interest as assignee and original insured, Yupangco Cotton Mills instituted this collection suit against the petitioners.

Service of summons upon the petitioners was made by notification to the Insurance Commissioner, pursuant to Section 14, Rule 14 of the Rules of Court.[5]

In a Petition for Certiorari filed with the Court of Appeals, petitioners submitted that respondent Court has no jurisdiction over them, being all foreign corporations not doing business in the Philippines with no office, place of business or agents in the Philippines. The remedy of Certiorari was resorted to by petitioners on the premise that if petitioners had filed an answer to the complaint as ordered by the respondent court, they would risk abandoning the issue of jurisdiction. Moreover, extra-territorial service of summons on petitioners is null and void because the complaint for collection is not one affecting plaintiff's status and not relating to property within the Philippines.

The Court of Appeals found the petition devoid of merit, stating that:

1. Petitioners were properly served with summons and whatever defect, if any, in the service of summons were cured by their voluntary appearance in court, via motion to dismiss.

2. Even assuming that petitioners have not yet voluntarily appeared as co-defendants in the case below even after having filed the motion to dismiss adverted to, still the situation does not deserve dismissal of the complaint as far as they are concerned, since as held by this Court in Linger Fisher GMBH vs. IAC, 125 SCRA 253.

> A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive for example, that when a defendant personally appears before a court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An alias summons can be actually served on said defendant."

3. Being reinsurers of respondent Worlwide Surety and Insurance of the risk which the latter assumed when it issued the fire insurance policies in dispute in favor of respondent Yupangco, petitioners cannot now validly argue that they do not do business in this country. At the very least, petitioners must be deemed to have engaged in business in the Philippines no matter how isolated or singular such business might be, even on the assumption that among the local domestic insurance corporations of this country, it is only in favor of Worldwide Surety and Insurance that they have ever reinsured any risk arising from reinsurance within the territory.

4. The issue of whether or not petitioners are doing business in the country is a matter best reffered to a trial on the merits of the case and so should be addressed there.

Maintaining its submission that they are beyond the jurisdiction of the Philippine Courts, petitioners are now before us, stating:

> Petitioners, being foreign corporations, as found by the trial court, not doing business in the Philippines with no office, place of business or agents in the Philippines, are not subject to the jurisdiction of the Philippine courts.
>
> The complaint for sum of money being a personal action not affecting status or relating to property, extraterritorial service of summons on petitioners – all not doing business in the Philippines – is null and void.
>
> The appearance of counsel for petitioners being explicitly 'by special appearance without waiving objections to the jurisdiction over their persons or the subject matter' and the motions do dismiss having excluded non-jurisdictional grounds, there is no voluntary submission to the jurisdiction of the trial court."[6]

For its part, private respondent Yupangco counter-submits:

> 1. Foreign corporations, such as petitioners, not doing business in the Philippines, can be sued in the Philippine Courts, not withstanding

petitioners' claim to the contrary.

2. While the complaint before the Honorable Trial Court is for a sum of money, not affecting status or relating to property, petitioners (then defendants) can submit themselves voluntarily to the jurisdiction of Philippine Courts, even if there is no extra-judicial (sic) service of summons upon them.

3. The voluntary appearance of the petitioners (then defendants) before the Honorable Trial Court amounted, in effect, to voluntary submission to its jurisdiction over their persons."[7]

In the decisions of the courts below, there is much left to speculation and conjecture as to whether or not the petitioners were determined to be "doing business in the Philippines" or not.

To qualify the petitioners' business of reinsurance within the Philippine forum, resort must be made to established principles in determining what is meant by "doing business in the Philippines." In Communication Materials and Design, Inc. et. al vs. Court of Appeals,[8] it was observed that:

> There is no exact rule of governing principle as to what constitutes doing or engaging in or transacting business. Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized.
>
> Article 44 of the Omnibus Investments Code of 1987 defines the phrase to include:

'soliciting orders, purchases, service contracts opening offices, whether called 'liaison offices of 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 totaling 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 or 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 purpose and object of the business organization.'"

The term ordinarily implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.[9]

A single act or transaction made in the Philippines, however, could not qualify a foreign corporation to be doing business in the Philippines, if such singular act is not merely incidental or casual, but indicates the foreign corporation's intention to do business in the Philippines.[10]

There is no sufficient basis in the records which would merit the institution of this collection suit in the Philippines. More specifically, there is nothing to substantiate the private respondent's submission that the petitioners had engaged in business activities in this country. This is not an instance where the erroneous service of summons upon the defendant can be cured by the issuance and service of alias summons, as in the absence of showing that petitioners had been doing business in the country, they cannot be summoned to answer for the charges leveled against them.

The Court is cognizant of the doctrine is Signetics Corp. vs. Court of Appeals[11] that for the purpose of acquiring jurisdiction by way of summons on a defendant foreign corporation, there is no need to prove first the fact that defendant is doing business in the Philippines. The plaintiff only has to allege in the complaint that the defendant has an agent in the Philippines for summons to be validly served thereto, even without prior evidence advancing such factual allegation.

As it is, private respondent has made no allegation or demonstration of the existence of petitioners' domestic agent, but avers simply that they are doing business not only abroad but in the Philippines as well. It does not appear at all that the petitioners had performed any act which would give the general public the impression that it had been engaging, or intends to engage in its ordinary and usual business undertakings in the country. The reinsurance treaties between the petitioners and Worldwide Surety and Insurance were made through an international insurance brokers, and not through any entity of means remotely connected with the Philippines. Moreover there is authority to the effect that a reinsurance company is not doing business in a certain state merely because the property of lives which are insured by the original insurer company are located in that state.[12] The reason for this is that a contract or reinsurance is generally a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement.[13] Hence, the original insured has generally no interest in the contract of reinsurance.[14]

A foreign corporation, is one which owes its existence to the laws of another state, [15] and generally has no legal existence within the state in which it is foreign. In Marshall Wells Co. vs. Elser,[16] it was held that corporations have no legal status beyond the bounds of sovereignty by which they are created. Nevertheless, it is widely accepted that foreign corporations are, by reason of state comity, allowed to transact business in other states and to sue in the courts of such fora. In the Philippines foreign corporations are allowed such privileges, subject to certain restrictions, arising from the state's sovereign right of regulation.

Before a foreign corporation can transact business in the country, it must first obtain a license to transact business here[17] and secure the proper authorizations under existing law.

If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines.[18]