

SECOND DIVISION

[G.R. NO. 156848, October 11, 2007]

PIONEER INTERNATIONAL, LTD., PETITIONER, VS. HON. TEOFILO GUADIZ, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 147, MAKATI CITY, AND ANTONIO D. TODARO, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

This is a petition for review on *certiorari*^[1] of the Decision^[2] dated 27 September 2001 and of the Resolution^[3] dated 14 January 2003 of the Court of Appeals (appellate court) in CA-G.R. SP No. 54062. The Decision affirmed the Orders^[4] dated 4 January 1999^[5] and 3 June 1999^[6] of Branch 147 of the Regional Trial Court of Makati City (trial court) in Civil Case No. 98-124. The trial court denied the motion to dismiss filed by Pioneer International, Ltd. (PIL)^[7] in its special appearance.

The Facts

On 16 January 1998, Antonio D. Todaro (Todaro) filed a complaint for sum of money and damages with preliminary attachment against PIL, Pioneer Concrete Philippines, Inc. (PCPI), Pioneer Philippines Holdings, Inc. (PPHI), John G. McDonald (McDonald), and Philip J. Klepzig (Klepzig). PIL and its co-defendants were served copies of the summons and of the complaint at PPHI and PCPI's office in Alabang, Muntinlupa, through Cecille L. De Leon (De Leon), who was Klepzig's Executive Assistant.

Todaro alleged that PIL is a corporation duly organized under Australian laws, while PCPI and PPHI are corporations duly organized under Philippine laws. PIL is engaged in the ready-mix and concrete aggregates business and has established a presence worldwide. PIL established PPHI as the holding company of the stocks of its operating company in the Philippines, PCPI. McDonald is the Chief Executive Officer of PIL's Hong Kong office while Klepzig is the President and Managing Director of PPHI and PCPI. For his part, Todaro further alleged that he was the managing director of Betonval Readyconcrete, Inc. (Betonval) from June 1975 up to his resignation in February 1996.

Before Todaro filed his complaint, there were several meetings and exchanges of letters between Todaro and the officers of Pioneer Concrete (Hong Kong) Limited, Pioneer Concrete Group HK, PPHI, and PIL. According to Todaro, PIL contacted him in May 1996 and asked if he could join it in establishing a pre-mixed concrete plant

and in overseeing its operations in the Philippines. Todaro confirmed his availability and expressed interest in joining PIL. Todaro met with several of PIL's representatives and even gave PIL the names of three of his subordinates in Betonval whom he would like to join him in PIL.

Todaro attached nine letters, marked as Annexes "A" to "I," to his complaint. Annex "A"^[8] shows that on 15 July 1996, Todaro, under the letterhead of Ital Tech Distributors, Inc., sent a letter to Max Lindsay (Lindsay) of Pioneer Concrete (Hong Kong) Limited. Todaro wrote that "[m]y aim is to run again a ready-mix concrete company in the Philippines and not to be a part-time consultant. Otherwise, I could have charged your company with a much higher fee."

Annex "B"^[9] shows that on 4 September 1996, Lindsay, under the letterhead of Pioneer Concrete (Hong Kong) Limited, responded by fax to Todaro's faxed letter to McDonald and proposed that Todaro "join Pioneer on a retainer basis for 2 to 3 months on the understanding that [Todaro] would become a permanent employee if as we expect, our entry proceeds." The faxed letter to McDonald referred to by Lindsay is not found in the *rollo* and was not attached to Todaro's complaint.

Annex "C"^[10] shows that on the same date as that of Annex "B," Todaro, under the letterhead of Ital Tech Distributors, Inc., faxed another letter to Lindsay of Pioneer Concrete (Hong Kong) Limited. Todaro asked for a formal letter addressed to him about the proposed retainer. Todaro requested that the letter contain a statement on his remuneration package and on his permanent employment "with PIONEER once it has established itself on a permanent basis in the Philippines."

Annex "D"^[11] shows that Todaro, under the letterhead of Ital Tech Distributors, Inc., sent a letter to McDonald of PIL. Todaro confirmed the following to McDonald:

1. That I am accepting the proposal of PIONEER INT'L. as a consultant for three (3) months, starting October 1, 1996, with a retainer fee of U.S. \$15,000.00 per month;
2. That after three (3) months consultancy, I should be employed by PIONEER INT'L., on a permanent basis, as its Managing Director or CEO in the Philippines. Remuneration package will be mutually agreed upon by PIONEER and the undersigned;
3. That Gino Martinel and the Sales Manager – Jun Ong, will be hired as well, on a permanent basis, by PIONEER as soon as the company is established. Salary, likewise, will be accepted by both PIONEER and the respective parties.

Annex "E"^[12] is a faxed letter dated 18 November 1996 of McDonald, under the letterhead of Pioneer Concrete Group HK, to Todaro of Ital Tech Distributors, Inc. The first three paragraphs of McDonald's letter read:

Further to our recent meeting in Hong Kong, I am now able to confirm my offer to engage you as a consultant to Pioneer International Ltd. Should Pioneer proceed with an investment in the Philippines, then Pioneer would offer you a position to manage the premixed concrete operations.

Pioneer will probably be in a position to make a decision on proceeding with an investment by mid January '97.

The basis for your consultancy would be:

- Monthly fee USD 15,000 per month billed on monthly basis and payable 15 days from billing date.
- Additional pre-approved expenses to be reimbursed.
- Driver and secretarial support-basis for reimbursement of this to be agreed.
- Arrangement to commence from 1st November '96, reflecting your contributions so far and to continue until Pioneer makes a decision.

Annex "F"^[13] shows Todaro's faxed reply, under the letterhead of Ital Tech Distributors, Inc., to McDonald of Pioneer Concrete Group HK dated 19 November 1996. Todaro confirmed McDonald's package concerning the consultancy and reiterated his desire to be the manager of Pioneer's Philippine business venture.

Annex "G"^[14] shows Todaro's faxed reply, under the letterhead of Ital Tech Distributors, Inc., to McDonald of PIL dated 8 April 1997. Todaro informed McDonald that he was willing to extend assistance to the Pioneer representative from Queensland. The tenor of the letter revealed that Todaro had not yet occupied his expected position.

Annex "H"^[15] shows Klepzig's letter, under the letterhead of PPHI, to Todaro dated 18 September 1997. Klepzig's message reads:

It has not proven possible for this company to meet with your expectations regarding the conditions of your providing Pioneer with consultancy services. This, and your refusal to consider my terms of offer of permanent employment, leave me no alternative but to withdraw these offers of employment with this company.

As you provided services under your previous agreement with our Pioneer Hong Kong office during the month of August, I will see that they pay you at the previous rates until the end of August. They have authorized me on behalf of Pioneer International Ltd. to formally advise you that the agreement will cease from August 31st as per our previous discussions.

Annex "I"^[16] shows the letter dated 20 October 1997 of K.M. Folwell (Folwell), PIL's Executive General Manager of Australia and Asia, to Todaro. Folwell confirmed the contents of Klepzig's 18 September 1997 letter. Folwell's message reads:

Thank you for your letter to Dr. Schubert dated 29th September 1997 regarding the alleged breach of contract with you. Dr. Schubert has asked me to investigate this matter.

I have discussed and examined the material regarding your association with Pioneer over the period from mid 1996 through to September 1997.

Clearly your consultancy services to Pioneer Hong Kong are well documented and have been appropriately rewarded. However, in regard to your request and expectation to be **given permanent employment with Pioneer Philippines Holdings, Inc.** I am informed that negotiations to reach agreement on appropriate terms and conditions have not been successful.

The employment conditions you specified in your letter to John McDonald dated 11th September are well beyond our expectations.

Mr. Todaro, I regret that we do not wish to pursue our association with you any further. Mr. Klepzig was authorized to terminate this association and the letter he sent to you dated 18th September has my support.

Thank you for your involvement with Pioneer. I wish you all the best for the future. (Emphasis added)

PIL filed, by special appearance, a motion to dismiss Todaro's complaint. PIL's co-defendants, PCPI, PPHI, and Klepzig, filed a separate motion to dismiss.^[17] PIL asserted that the trial court has no jurisdiction over PIL because PIL is a foreign corporation not doing business in the Philippines. PIL also questioned the service of summons on it. Assuming *arguendo* that Klepzig is PIL's agent in the Philippines, it was not Klepzig but De Leon who received the summons for PIL. PIL further stated that the National Labor Relations Commission (NLRC), and not the trial court, has jurisdiction over the subject matter of the action. It claimed that assuming that the trial court has jurisdiction over the subject matter of the action, the complaint should be dismissed on the ground of forum non-conveniens. Finally, PIL maintained that the complaint does not state a cause of action because there was no perfected contract, and no personal judgment could be rendered by the trial court against PIL because PIL is a foreign corporation not doing business in the Philippines and there was improper service of summons on PIL.

Todaro filed a Consolidated Opposition dated 26 August 1998 to refute PIL's assertions. PIL filed, still by special appearance, a Reply on 2 October 1998.

The Ruling of the Trial Court

On 4 January 1999, the trial court issued an order^[18] which ruled in favor of Todaro. The trial court denied the motions to dismiss filed by PIL, PCPI, PPHI, and Klepzig.

The trial court stated that the merits of a motion to dismiss a complaint for lack of cause of action are tested on the strength of the allegation of facts in the complaint. The trial court found that the allegations in the complaint sufficiently establish a cause of action. The trial court declared that Todaro's cause of action is based on an alleged breach of a contractual obligation and an alleged violation of Articles 19 and 21 of the Civil Code. Therefore, the cause of action does not lie within the jurisdiction of the NLRC but with the trial court.

The trial court also asserted its jurisdiction over PIL, holding that PIL did business in the Philippines when it entered into a contract with Todaro. Although PIL questions the service of summons on Klepzig, whom PIL claims is not its agent, the trial court ruled that PIL failed to adduce evidence to prove its contention. Finally, on the issue of *forum non-conveniens*, the trial court found that it is more convenient to hear and decide the case in the Philippines because Todaro resides in the Philippines and the contract allegedly breached involves employment in the Philippines.

PIL filed an urgent omnibus motion for the reconsideration of the trial court's 4 January 1999 order and for the deferment of filing its answer. PCPI, PPHI, and Klepzig likewise filed an urgent omnibus motion. Todaro filed a consolidated opposition, to which PIL, PCPI, PPHI, and Klepzig filed a joint reply. The trial court issued an order^[19] on 3 June 1999 denying the motions of PIL, PCPI, PPHI, and Klepzig. The trial court gave PIL, PCPI, PPHI, and Klepzig 15 days within which to file their respective answers.

PIL did not file an answer before the trial court and instead filed a petition for certiorari before the appellate court.

The Ruling of the Appellate Court

The appellate court denied PIL's petition and affirmed the trial court's ruling *in toto*. The dispositive portion of the appellate court's decision reads:

WHEREFORE, premises considered, the present petition for certiorari is hereby DENIED DUE COURSE and accordingly DISMISSED. The assailed Orders dated January 4, 1999 and June 3, 1999 of the Regional Trial Court of Makati City, Branch 147, in Civil Case No, 98-124 are hereby AFFIRMED in toto.

SO ORDERED.^[20]

On 14 January 2003, the appellate court dismissed^[21] PIL's motion for reconsideration for lack of merit. The appellate court stated that PIL's motion raised no new substantial or weighty arguments that could impel the appellate court from departing or overturning its previous decision. PIL then filed a petition for review on certiorari before this Court.

The Issues

PIL raised the following issues before this Court:

- A. [The trial court] did not and cannot acquire jurisdiction over the person of [PIL] considering that:
 - A.1.[PIL] is a foreign corporation "not doing business" in the Philippines.
 - A.2.Moreover, the complaint does not contain appropriate allegations of ultimate facts showing that [PIL] is doing or transacting business in the Philippines.