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THIRD DIVISION

[G.R. No. 149177, November 23, 2007]

KAZUHIRO HASEGAWA AND NIPPON ENGINEERING CONSULTANTS CO., LTD., PETITIONERS, VS. MINORU KITAMURA, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the April 18, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 60827, and the July 25, 2001 Resolution[2] denying the motion for reconsideration thereof.

On March 30, 1999, petitioner Nippon Engineering Consultants Co., Ltd. (Nippon), a Japanese consultancy firm providing technical and management support in the infrastructure projects of foreign governments,[3] entered into an Independent Contractor Agreement (ICA) with respondent Minoru Kitamura, a Japanese national permanently residing in the Philippines.[4] The agreement provides that respondent was to extend professional services to Nippon for a year starting on April 1, 1999.[5] Nippon then assigned respondent to work as the project manager of the Southern Tagalog Access Road (STAR) Project in the Philippines, following the company's consultancy contract with the Philippine Government.[6]

When the STAR Project was near completion, the Department of Public Works and Highways (DPWH) engaged the consultancy services of Nippon, on January 28, 2000, this time for the detailed engineering and construction supervision of the Bongabon-Baler Road Improvement (BBRI) Project.[7] Respondent was named as the project manager in the contract's Appendix 3.1.[8]

On February 28, 2000, petitioner Kazuhiro Hasegawa, Nippon's general manager for its International Division, informed respondent that the company had no more intention of automatically renewing his ICA. His services would be engaged by the company only up to the substantial completion of the STAR Project on March 31, 2000, just in time for the ICA's expiry.[9]

Threatened with impending unemployment, respondent, through his lawyer, requested a negotiation conference and demanded that he be assigned to the BBRI project. Nippon insisted that respondent’s contract was for a fixed term that had already expired, and refused to negotiate for the renewal of the ICA.[10]

As he was not able to generate a positive response from the petitioners, respondent consequently initiated on June 1, 2000 Civil Case No. 00-0264 for specific

performance and damages with the Regional Trial Court of Lipa City.[11]

For their part, petitioners, contending that the ICA had been perfected in Japan and executed by and between Japanese nationals, moved to dismiss the complaint for lack of jurisdiction. They asserted that the claim for improper pre-termination of respondent's ICA could only be heard and ventilated in the proper courts of Japan following the principles of *lex loci celebrationis* and *lex contractus.*[12]

In the meantime, on June 20, 2000, the DPWH approved Nippon's request for the replacement of Kitamura by a certain Y. Kotake as project manager of the BBRI Project.[13]

On June 29, 2000, the RTC, invoking our ruling in *Insular Government v. Frank*[14] that matters connected with the performance of contracts are regulated by the law prevailing at the place of performance,[15] denied the motion to dismiss.[16] The trial court subsequently denied petitioners' motion for reconsideration,[17] prompting them to file with the appellate court, on August 14, 2000, their **first** Petition for *Certiorari* under Rule 65 [docketed as CA-G.R. SP No. 60205].[18] On August 23, 2000, the CA resolved to dismiss the petition on procedural grounds—for lack of statement of material dates and for insufficient verification and certification against forum shopping.[19] An Entry of Judgment was later issued by the appellate court on September 20, 2000.[20]

Aggrieved by this development, petitioners filed with the CA, on September 19, 2000, still within the reglementary period, a **second** Petition for *Certiorari* under Rule 65 already stating therein the material dates and attaching thereto the proper verification and certification. This second petition, which substantially raised the same issues as those in the first, was docketed as CA-G.R. SP No. 60827.[21]

Ruling on the merits of the second petition, the appellate court rendered the assailed April 18, 2001 Decision[22] finding no grave abuse of discretion in the trial court's denial of the motion to dismiss. The CA ruled, among others, that the principle of lex loci *celebrationis* was not applicable to the case, because nowhere in the pleadings was the validity of the written agreement put in issue. The CA thus declared that the trial court was correct in applying instead the principle of *lex loci solutionis*.[23]

Petitioners' motion for reconsideration was subsequently denied by the CA in the assailed July 25, 2001 Resolution.[24]

Remaining steadfast in their stance despite the series of denials, petitioners instituted the instant Petition for Review on Certiorari[25] imputing the following errors to the appellate court:

> A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE TRIAL COURT VALIDLY EXERCISED JURISDICTION OVER THE INSTANT CONTROVERSY, DESPITE THE FACT THAT THE CONTRACT SUBJECT MATTER OF THE PROCEEDINGS A QUO WAS ENTERED INTO BY AND BETWEEN TWO JAPANESE NATIONALS,

WRITTEN WHOLLY IN THE JAPANESE LANGUAGE AND EXECUTED IN TOKYO, JAPAN.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN OVERLOOKING THE NEED TO REVIEW OUR ADHERENCE TO THE PRINCIPLE OF LEX LOCI SOLUTIONIS IN THE LIGHT OF RECENT DEVELOPMENT[S] IN PRIVATE INTERNATIONAL LAWS.[26]

The pivotal question that this Court is called upon to resolve is whether the subject matter jurisdiction of Philippine courts in civil cases for specific performance and damages involving contracts executed outside the country by foreign nationals may be assailed on the principles of lex loci celebrationis, *lex contractus,* the "state of the most significant relationship rule," or *forum non conveniens.*

However, before ruling on this issue, we must first dispose of the procedural matters raised by the respondent.

Kitamura contends that the finality of the appellate court's decision in CA-G.R. SP No. 60205 has already barred the filing of the second petition docketed as CA-G.R. SP No. 60827 (fundamentally raising the same issues as those in the first one) and the instant petition for review thereof.

We do not agree. When the CA dismissed CA-G.R. SP No. 60205 on account of the petition's defective certification of non-forum shopping, it was a dismissal without prejudice.[27] The same holds true in the CA's dismissal of the said case due to defects in the formal requirement of verification[28] and in the other requirement in Rule 46 of the Rules of Court on the statement of the material dates.[29] The dismissal being without prejudice, petitioners can re-file the petition, or file a second petition attaching thereto the appropriate verification and certification—as they, in fact did—and stating therein the material dates, within the prescribed period[30] in Section 4, Rule 65 of the said Rules.[31]

The dismissal of a case without prejudice signifies the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced. In other words, the termination of a case not on the merits does not bar another action involving the same parties, on the same subject matter and theory.[32]

Necessarily, because the said dismissal is without prejudice and has no *res judicata* effect, and even if petitioners still indicated in the verification and certification of the second *certiorari* petition that the first had already been dismissed on procedural grounds,[33] petitioners are no longer required by the Rules to indicate in their certification of non-forum shopping *in the instant petition for review of the second certiorari petition,* the status of the aforesaid first petition before the CA. In any case, an omission in the certificate of non-forum shopping about any event that will not constitute *res judicata* and *litis pendentia,* as in the present case, is not a fatal defect. It will not warrant the dismissal and nullification of the entire proceedings, considering that the evils sought to be prevented by the said certificate are no longer present.[34]

The Court also finds no merit in respondent's contention that petitioner Hasegawa is only authorized to verify and certify, on behalf of Nippon, the *certiorari* petition filed with the CA and not the instant petition. True, the Authorization[35] dated September 4, 2000, which is attached to the second certiorari petition and which is also attached to the instant petition for review, is limited in scope—its wordings indicate that Hasegawa is given the authority to sign for and act on behalf of the company only in the petition filed with the appellate court, and that authority cannot extend to the instant petition for review.[36] In a plethora of cases, however, this Court has liberally applied the Rules or even suspended its application whenever a satisfactory explanation and a subsequent fulfillment of the requirements have been made.[37] Given that petitioners herein sufficiently explained their misgivings on this point and appended to their Reply[38] an updated Authorization[39] for Hasegawa to act on behalf of the company in the instant petition, the Court finds the same as sufficient compliance with the Rules.

However, the Court cannot extend the same liberal treatment to the defect in the verification and certification. As respondent pointed out, and to which we agree, Hasegawa is truly not authorized to act on behalf of Nippon in this case. The aforesaid September 4, 2000 Authorization and even the subsequent August 17, 2001 Authorization were issued only by Nippon's president and chief executive officer, not by the company's board of directors. In not a few cases, we have ruled that corporate powers are exercised by the board of directors; thus, no person, not even its officers, can bind the corporation, in the absence of authority from the board.[40] Considering that Hasegawa verified and certified the petition only on his behalf and not on behalf of the other petitioner, the petition has to be denied pursuant to *Loquias v. Office of the Ombudsman.*[41] Substantial compliance will not suffice in a matter that demands strict observance of the Rules.[42] While technical rules of procedure are designed not to frustrate the ends of justice, nonetheless, they are intended to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.[43]

Further, the Court has observed that petitioners incorrectly filed a Rule 65 petition to question the trial court's denial of their motion to dismiss. It is a well-established rule that an order denying a motion to dismiss is interlocutory, and cannot be the subject of the extraordinary petition for *certiorari* or *mandamus.* The appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course.[44] While there are recognized exceptions to this rule,[45] petitioners' case does not fall among them.

This brings us to the discussion of the substantive issue of the case.

Asserting that the RTC of Lipa City is an inconvenient forum, petitioners question its jurisdiction to hear and resolve the civil case for specific performance and damages filed by the respondent. The ICA subject of the litigation was entered into and perfected in Tokyo, Japan, by Japanese nationals, and written wholly in the Japanese language. Thus, petitioners posit that local courts have no substantial relationship to the parties[46] following the [state of the] most significant relationship rule in Private International Law.[47]

The Court notes that petitioners adopted an additional but different theory when they elevated the case to the appellate court. In the Motion to Dismiss[48] filed with the trial court, petitioners never contended that the RTC is an inconvenient forum. They merely argued that the applicable law which will determine the validity or invalidity of respondent's claim is that of Japan, following the principles of *lex loci celebrationis* and *lex contractus.*[49] While not abandoning this stance in their petition before the appellate court, petitioners on certiorari significantly invoked the defense of *forum non conveniens.*[50] On petition for review before this Court, petitioners dropped their other arguments, maintained the *forum non conveniens* defense, and introduced their new argument that the applicable principle is the [state of the] most significant relationship rule.[51]

Be that as it may, this Court is not inclined to deny this petition merely on the basis of the change in theory, as explained in *Philippine Ports Authority v. City of Iloilo.*[52] We only pointed out petitioners' inconstancy in their arguments to emphasize their incorrect assertion of conflict of laws principles.

To elucidate, in the judicial resolution of conflicts problems, three consecutive phases are involved: jurisdiction, choice of law, and recognition and enforcement of judgments. Corresponding to these phases are the following questions: (1) Where can or should litigation be initiated? (2) Which law will the court apply? and (3) Where can the resulting judgment be enforced?[53]

Analytically, jurisdiction and choice of law are two distinct concepts.[54] Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The power to exercise jurisdiction does not automatically give a state constitutional authority to apply forum law. While jurisdiction and the choice of the *lex fori* will often coincide, the "minimum contacts" for one do not always provide the necessary "significant contacts" for the other.[55] The question of whether the law of a state can be applied to a transaction is different from the question of whether the courts of that state have jurisdiction to enter a judgment.[56]

In this case, only the first phase is at issue—jurisdiction. Jurisdiction, however, has various aspects. For a court to validly exercise its power to adjudicate a controversy, it must have jurisdiction over the plaintiff or the petitioner, over the defendant or the respondent, over the subject matter, over the issues of the case and, in cases involving property, over the res or the thing which is the subject of the litigation.[57] In assailing the trial court's jurisdiction herein, petitioners are actually referring to subject matter jurisdiction.

Jurisdiction over the *subject matter* in a judicial proceeding is conferred by the sovereign authority which establishes and organizes the court. It is given only by law and in the manner prescribed by law.[58] It is further determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[59] To succeed in its motion for the dismissal of an action for lack of jurisdiction over the subject matter of the claim,[60] the movant