

FIRST DIVISION

[G.R. No. 128803, September 25, 1998]

**ASIAVEST LIMITED, PETITIONER, VS. THE COURT OF APPEALS
AND ANTONIO HERAS, RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

In issue is the enforceability in the Philippines of a foreign judgment. The antecedents are summarized in the 24 August 1990 Decision^[1] of Branch 107 of the Regional Trial Court of Quezon City in Civil Case No. Q-52452; thus:

The plaintiff Asiavest Limited filed a complaint on December 3, 1987 against the defendant Antonio Heras praying that said defendant be ordered to pay to the plaintiff the amounts awarded by the Hong Kong Court Judgment dated December 28, 1984 and amended on April 13, 1987, to wit:

- 1) US\$1,810,265.40 or its equivalent in Hong Kong currency at the time of payment with legal interest from December 28, 1984 until fully paid;
- 2) interest on the sum of US\$1,500.00 at 9.875% per annum from October 31, 1984 to December 28, 1984; and
- 3) HK\$905.00 at fixed cost in the action; and
- 4) at least \$80,000.00 representing attorney's fees, litigation expenses and cost, with interest thereon from the date of the judgment until fully paid.

On March 3, 1988, the defendant filed a Motion to Dismiss. However, before the court could resolve the said motion, a fire which partially razed the Quezon City Hall Building on June 11, 1988 totally destroyed the office of this Court, together with all its records, equipment and properties. On July 26, 1988, the plaintiff, through counsel filed a Motion for Reconstitution of Case Records. The Court, after allowing the defendant to react thereto, granted the said Motion and admitted the annexes attached thereto as the reconstituted records of this case per Order dated September 6, 1988. Thereafter, the Motion to Dismiss, the resolution of which had been deferred, was denied by the Court in its Order of October 4, 1988.

On October 19, 1988, defendant filed his Answer. The case was then set for pre-trial conference. At the conference, the parties could not arrive at any settlement. However, they agreed on the following stipulations of

facts:

- 1) The defendant admits the existence of the judgment dated December 28, 1984 as well as its amendment dated April 13, 1987, but not necessarily the authenticity or validity thereof;
- 2) The plaintiff is not doing business and is not licensed to do business in the Philippines;
- 3) The residence of defendant, Antonio Heras, is New Manila, Quezon City.

The only issue for this Court to determine is, whether or not the judgment of the Hong Kong Court has been repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact, such as to overcome the presumption established in Section 50, Rule 39 of the Rules of Court in favor of foreign judgments.

In view of the admission by the defendant of the existence of the aforementioned judgment (Pls. See Stipulations of Facts in the Order dated January 5, 1989 as amended by the Order of January 18, 1989), as well as the legal presumption in favor of the plaintiff as provided for in paragraph (b), Sec. 50, (Ibid.), the plaintiff presented only documentary evidence to show rendition, existence, and authentication of such judgment by the proper officials concerned (Pls. See Exhibits "A" thru "B", with their submarkings). In addition, the plaintiff presented testimonial and documentary evidence to show its entitlement to attorney's fees and other expenses of litigation....

On the other hand, the defendant presented two witnesses, namely, Fortunata dela Vega and Russel Warren Lousich.

The gist of Ms. dela Vega's testimony is to the effect that no writ of summons or copy of a statement of claim of Asiavest Limited was ever served in the office of the Navegante Shipping Agency Limited and/or for Mr. Antonio Heras, and that no service of the writ of summons was either served on the defendant at his residence in New Manila, Quezon City. Her knowledge is based on the fact that she was the personal secretary of Mr. Heras during his JD Transit days up to the latter part of 1972 when he shifted or diversified to shipping business in Hong Kong; that she was in-charge of all his letters and correspondence, business commitments, undertakings, conferences and appointments, until October 1984 when Mr. Heras left Hong Kong for good; that she was also the Officer-in-Charge or Office Manager of Navegante Shipping Agency LTD, a Hong Kong registered and based company acting as ships agent, up to and until the company closed shop sometime in the first quarter of 1985, when shipping business collapsed worldwide; that the said company held office at 34-35 Connaught Road, Central Hong Kong and later transferred to Caxton House at Duddel Street, Hong Kong, until the company closed shop in 1985; and that she was certain of such facts because she held office at Caxton House up to the first quarter of 1985.

Mr. Lousich was presented as an expert on the laws of Hong Kong, and as a representative of the law office of the defendant's counsel who made a verification of the record of the case filed by the plaintiff in Hong Kong against the defendant, as well as the procedure in serving Court processes in Hong Kong.

In his affidavit (Exh. "2") which constitutes his direct testimony, the said witness stated that:

The defendant was sued on the basis of his personal guarantee of the obligations of Compania Hermanos de Navegacion S.A. There is no record that a writ of summons was served on the person of the defendant in Hong Kong, or that any such attempt at service was made. Likewise, there is no record that a copy of the judgment of the High Court was furnished or served on the defendant; anyway, it is not a legal requirement to do so under Hong Kong laws;

a) The writ of summons or claim can be served by the solicitor (lawyer) of the claimant or plaintiff. In Hong Kong there are no Court personnel who serve writs of summons and/or most other processes.

b) If the writ of summons or claim (or complaint) is not contested, the claimant or the plaintiff is not required to present proof of his claim or complaint nor present evidence under oath of the claim in order to obtain a Judgment.

c) There is no legal requirement that such a Judgment or decision rendered by the Court in Hong Kong [to] make a recitation of the facts or the law upon which the claim is based.

d) There is no necessity to furnish the defendant with a copy of the Judgment or decision rendered against him.

e) In an action based on a guarantee, there is no established legal requirement or obligation under Hong Kong laws that the creditor must first bring proceedings against the principal debtor. The creditor can immediately go against the guarantor.

On cross examination, Mr. Lousich stated that before he was commissioned by the law firm of the defendant's counsel as an expert witness and to verify the records of the Hong Kong case, he had been acting as counsel for the defendant in a number of commercial matters; that there was an application for service of summons upon the defendant outside the jurisdiction of Hong Kong; that there was an order of the Court authorizing service upon Heras outside of Hong Kong, particularly in Manila or any other place in the Philippines (p. 9, TSN, 2/14/90); that there must be adequate proof of service of summons, otherwise the Hong Kong Court will refuse to render judgment (p. 10, *ibid*); that the mere fact that the Hong Kong Court rendered judgment, it can be presumed that there was service of summons; that in this case, it is not just a presumption because there was an affidavit stating that service was effected in [sic] a particular man here in Manila; that such affidavit

was filed by one Jose R. Fernandez of the firm Sycip Salazar on the 21st of December 1984, and stated in essence that "on Friday, the 23rd of November 1984 he served the 4th defendant at No. 6 First Street, Quezon City by leaving it at that address with Mr. Dionisio Lopez, the son-in-law of the 4th defendant the copy of the writ and Mr. Lopez informed me and I barely believed that he would bring the said writ to the attention of the 4th defendant" (pp. 11-12, *ibid.*); that upon filing of that affidavit, the Court was asked and granted judgment against the 4th defendant; and that if the summons or claim is not contested, the claimant of the plaintiff is not required to present proof of his claim or complaint or present evidence under oath of the claim in order to obtain judgment; and that such judgment can be enforced in the same manner as a judgment rendered after full hearing.

The trial court held that since the Hong Kong court judgment had been duly proved, it is a presumptive evidence of a right as between the parties; hence, the party impugning it had the burden to prove want of jurisdiction over his person. HERAS failed to discharge that burden. He did not testify to state categorically and under oath that he never received summons. Even his own witness Lousich admitted that HERAS was served with summons in his Quezon City residence. As to De la Vega's testimony regarding non-service of summons, the same was hearsay and had no probative value.

As to HERAS' contention that the Hong Kong court judgment violated the Constitution and the procedural laws of the Philippines because it contained no statements of the facts and the law on which it was based, the trial court ruled that since the issue related to procedural matters, the law of the forum, i.e., Hong Kong laws, should govern. As testified by the expert witness Lousich, such legalities were not required under Hong Kong laws. The trial court also debunked HERAS' contention that the principle of excussion under Article 2058 of the Civil Code of the Philippines was violated. It declared that matters of substance are subject to the law of the place where the transaction occurred; in this case, Hong Kong laws must govern.

The trial court concluded that the Hong Kong court judgment should be recognized and given effect in this jurisdiction for failure of HERAS to overcome the legal presumption in favor of the foreign judgment. It then decreed; thus:

WHEREFORE, judgment is hereby rendered ordering defendant to pay to the plaintiff the following sums or their equivalents in Philippine currency at the time of payment: US\$1,810,265.40 plus interest on the sum of US\$1,500,000.00 at 9.875% per annum from October 31, 1984 to December 28, 1984, and HK\$905 as fixed cost, with legal interests on the aggregate amount from December 28, 1984, and to pay attorney's fees in the sum of P80,000.00.

ASIAVEST moved for the reconsideration of the decision. It sought an award of judicial costs and an increase in attorney's fees in the amount of US\$19,346.45 with interest until full payment of the said obligations. On the other hand, HERAS no longer opposed the motion and instead appealed the decision to the Court of Appeals, which docketed the appeal as CA-G.R. CV No. 29513.

In its order^[2] November 1990, the trial court granted ASIAVEST's motion for reconsideration by increasing the award of attorney's fees to "US\$19,345.65 OR ITS EQUIVALENT IN PHILIPPINE CURRENCY, AND TO PAY THE COSTS OF THIS SUIT," provided that ASIAVEST would pay the corresponding filing fees for the increase. ASIAVEST appealed the order requiring prior payment of filing fees. However, it later withdrew its appeal and paid the additional filing fees.

On 3 April 1997, the Court of Appeals rendered its decision^[3] reversing the decision of the trial court and dismissing ASIAVEST's complaint without prejudice. It underscored the fact that a foreign judgment does not of itself have any extraterritorial application. For it to be given effect, the foreign tribunal should have acquired jurisdiction over the person and the subject matter. If such tribunal has not acquired jurisdiction, its judgment is void.

The Court of Appeals agreed with the trial court that matters of remedy and procedure such as those relating to service of summons upon the defendant are governed by the *lex fori*, which was, in this case, the law of Hong Kong. Relative thereto, it gave weight to Lousich's testimony that under the Hong Kong law, the substituted service of summons upon HERAS effected in the Philippines by the clerk of Sycip Salazar Hernandez & Gatmaitan firm would be valid provided that it was done in accordance with Philippine laws. It then stressed that where the action is in personam and the defendant is in the Philippines, the summons should be personally served on the defendant pursuant to Section 7, Rule 14 of the Rules of Court.^[4] Substituted service may only be availed of where the defendant cannot be promptly served in person, the fact of impossibility of personal service should be explained in the proof of service. It also found as persuasive HERAS' argument that instead of directly using the clerk of the Sycip Salazar Hernandez & Gatmaitan law office, who was not authorized by the judge of the court issuing the summons, ASIAVEST should have asked for leave of the local courts to have the foreign summons served by the sheriff or other court officer of the place where service was to be made, or for special reasons by any person authorized by the judge.

The Court of Appeals agreed with HERAS that "notice sent outside the state to a non-resident is unavailing to give jurisdiction in an action against him personally for money recovery." Summons should have been personally served on HERAS in Hong Kong, for, as claimed by ASIAVEST, HERAS was physically present in Hong Kong for nearly 14 years. Since there was not even an attempt to serve summons on HERAS in Hong Kong, the Hong Kong Supreme Court did not acquire jurisdiction over HERAS. Nonetheless, it did not totally foreclose the claim of ASIAVEST; thus:

While We are not fully convinced that [HERAS] has a meritorious defense against [ASIAVEST's] claims or that [HERAS] ought to be absolved of any liability, nevertheless, in view of the foregoing discussion, there is a need to deviate from the findings of the lower court in the interest of justice and fair play. This, however, is without prejudice to whatever action [ASIAVEST] might deem proper in order to enforce its claims against [HERAS].

Finally, the Court of Appeals also agreed with HERAS that it was necessary that evidence supporting the validity of the foreign judgment be submitted, and that our courts are not bound to give effect to foreign judgments which contravene our laws and the principle of sound morality and public policy.