326 Phil. 710

SECOND DIVISION

[G.R. No. 94980, May 15, 1996]

LITTON MILLS; INC., PETITIONER, VS. COURT OF APPEALS AND GELHAAR UNIFORM COMPANY, INC., RESPONDENTS.

D E C I S I O N

Â MENDOZA, J.:

This is a petition to review the decision of the Court of Appeals annulling the order of the Regional Trial Court which denied private respondent's plea that it is a foreign corporation not doing business in the Philippines and therefore not subject to the jurisdiction of Philippine courts.

Petitioner Litton Mills, Inc. (Litton) entered into an agreement with Empire Sales Philippines Corporation (Empire), as local agent of private respondent Gelhaar Uniform Company (Gelhaar), a corporation organized under the laws of the United States, whereby Litton agreed to supply Gelhaar 7,770 dozens of soccer jerseys. The agreement stipulated that be fore it could collect from the bank on the letter of credit, Litton must present an inspection certificate issued by Gelhaar's agent in the Philippines, Empire Sales, that the goods were in satisfactory condition.

Litton sent four shipments totalling 4,770 dozens of the soccer jerseys between December 2 and December 30, 1983. A fifth shipment, consisting of 2,110 dozens of the jerseys, was inspected by Empire from January 9 to January 19, 1984, but Empire refused to issue the required certificate of inspection.

Alleging that Empire's refusal to issue a certificate was without valid reason, Litton filed a complaint with the Regional Trial Court of Pasig (Branch 158) on January 23,1984, for specific performance. Litton alleged that under the terms of the letter of credit, the goods should be shipped not later than January 30, 1984; that the vessel stipulated to carry the shipment was scheduled to receive the cargo only on January 27, 1984; and that the letter of credit itself was due to expire on February 14, 1984. Litton sought the issuance of a writ of preliminary mandatory injunction to compel Empire to issue the inspection certificate covering the 2,110 dozen jerseys and the recovery of compensatory and exemplary damages, costs, attorney's fees and other just and equitable relief.

The trial court issued the writ on January 25, 1984. The next day, Empire issued the inspection certificate, so that the cargo was shipped on time.

On February 8, 1984, Atty. Remie Noval filed in behalf of the defendants a "Motion For Extension of Time To File An Answer/Responsive Pleading." He filed on February 17, February 22, March 2, March 14, March 26, April 5, April 16, May 2, May 16, May 31, all in 1984, ten other motions for extension, all of which were granted by the court, with the exception of the last, which the Court denied. On his motion, the

court later reconsidered its order of denial and admitted the answer of the defendants. On September 10, 1984, Atty. Noval filed the pretrial brief for the defendants.

On January 29,1985, the law firm of Sycip, Salazar, Feliciano and Hernandez entered a special appearance for the purpose of objecting to the jurisdiction of the court over Gelhaar. On February 4,1985, it moved to dismiss the case and to quash the summons on the ground that Gelhaar was a foreign corporation not doing business in the Philippines, and as such, was beyond the reach of the local courts.

It contended that Litton failed to allege and prove that Gelhaar was doing business in the Philippines, which they argued was required by the ruling in *Pacific Micronisian Lines, Inc. v. Del Rosario,*[1] before summons could be served under Rule 14, §14.

It likewise denied the authority of Atty. Noval to appear for Gelhaar and contended that the answer filed by Atty. Noval on June 15, 1984 could not bind Gelhaar and its filing did not amount to Gelhaar's submission to the jurisdiction of the court.

Litton opposed the motion. On the other hand, Empire moved to dismiss on the ground of failure of the complaint to state a cause of action since the complaint alleged that Empire only acted as agent of Gelhaar; that it was made party-defendant only for the purpose of securing the issuance of an inspection certificate; and that it had already issued such certificate and the shipment had already been shipped on time.

For his part, Atty. Remie Noval claimed that he had been authorized by Gelhaar to appear for it in the case; that he had in fact given legal advice to Empire and his advice had been transmitted to Gelhaar; that Gelhaar had been furnished a copy of the answer; that Gelhaar denied his authority only on December of 1984; and that the belated repudiation of his authority could be only an afterthought because of problems which had developed between Gelhaar and Empire. (Gelhaar refused to pay Empire for its services as agent). Nevertheless, Atty. Noval withdrew his appearance with respect to Gelhaar.

On September 24, 1986, the trial court issued an order denying for lack of merit Gelhaar's motion to dismiss and to quash the summons. It held that Gelhaar was doing business in the Philippines, and that the service of summons on Gelhaar was therefore valid. Gelhaar filed a motion for reconsideration, but its motion was denied.

Gelhaar then filed a special civil action of certiorari with the Court of Appeals, which on August 20, 1990, set aside the orders of the trial court. The appellate court held that proof that Gelhaar was doing business in the Philippines should have been presented because, under the doctrine of *Pacific Micronisian,* this is a condition *sine qua non* for the service of summons under Rule 14, § 14 of the Rules of Court, and

that it was error for the trial court to rely on the mere allegations of the complaint.

The appellate court held that neither did the trial court acquire jurisdiction over Gelhaar through voluntary submission because the authority of Atty. Noval to represent Gelhaar had been questioned. Pursuant to Rule 138, §21, the trial court

should have required Atty. Noval to prove his authority.

Consequently, the appellate court ordered the trial court to issue anew summons to be served on Empire Sales Philippines Corporation, after the allegation in the complaint that Gelhaar was doing business in the Philippines had been established. Hence this petition.

Litton contends that jurisdiction over Gelhaar was acquired by the trial court by the service of summons through Gelhaar's agent and, at any rate, by the voluntary appearance of Atty. Remie Noval as counsel of Gelhaar.

We sustain petitioner's contention based on the first ground, namely, that the trial court acquired jurisdiction over Gelhaar by service of summons upon its agent pursuant to Rule 14, §14.

First. The appellate court invoked the ruling in *Pacific Micronisian,* in which it was stated that the fact of doing business must first be established before summons can be served in accordance with Rule 14, § 14. The Court of Appeals quoted the following portion of the opinion in that case:

> The above section [referring to Rule 14, Section 14] provides for three modes of effecting service upon a private corporation, namely: [enumerates the three modes of service of summons]. But, it should be noted, in order that service may be effected in the manner above stated, said section also requires that the foreign corporation be one which is doing business in the Philippines. This is a *sine qua non* requirement. This fact must first be established in order that summons can be made and jurisdiction acquired. (Italics by the Court of Appeals)[2]

In the later case of *Signetics Corporation v. Court of Appeals,*[3] however, we clarified the holding in *Pacific Micronisian,* thus:

> The petitioner opines that the phrase, "(the) fact (of doing business in the Philippines) must first be established in order that summons be made and jurisdiction acquired," used in the above pronouncement, would indicate that a mere *allegation* to that effect in the complaint is not enough " there must instead be *proof* of doing business. In any case, the petitioner points out, the allegations themselves did not sufficiently show the fact of its doing business in the Philippines.
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> It should be recalled that jurisdiction and venue of actions are, as they should so be, initially determined by the allegations of the complaint. Jurisdiction cannot be made to depend on independent pleas set up in a mere motion to dismiss, otherwise jurisdiction would become dependent almost entirely upon the defendant. The fact of doing business must then, in the first place, be established by *appropriate allegations in the complaint.* This is what the Court should be seen to have meant in the *Pacific Micronisian case.* The complaint, it is true, may have been vaguely structured but, taken correlatively, not disjunctively as the petitioner