

SECOND DIVISION

[G.R. No. 102223, August 22, 1996]

COMMUNICATION MATERIALS AND DESIGN, INC., ASPAC MULTI-TRADE, INC., (FORMERLY ASPAC-ITEC PHILIPPINES, INC.) AND FRANCISCO S. AGUIRRE, PETITIONERS, VS. THE COURT OF APPEALS, ITEC INTERNATIONAL, INC., AND ITEC, INC., RESPONDENTS.

DECISION

TORRES, JR., J.:

Business Corporations, according to Lord Coke, "have no souls." They do business peddling goods, wares or even services across national boundaries in "soulless forms" in quest for profits albeit at times, unwelcomed in these strange lands venturing into uncertain markets and, the risk of dealing with wily competitors.

This is one of the issues in the case at bar.

Contested in this petition for review on Certiorari is the Decision of the Court of Appeals on June 7, 1991, sustaining the RTC Order dated February 22, 1991, denying the petitioners' Motion to Dismiss, and directing the issuance of a writ of preliminary injunction, and its companion Resolution of October 9, 1991, denying the petitioners' Motion for Reconsideration.

Petitioners COMMUNICATION MATERIALS AND DESIGN, INC., (CMDI, for brevity) and ASPAC MULTI-TRADE INC., (ASPAC, for brevity) are both domestic corporations, while petitioner Francisco S. Aguirre is their President and majority stockholder. Private Respondents ITEC, INC. and/or ITEC, INTERNATIONAL, INC. (ITEC, for brevity) are corporations duly organized and existing under the laws of the State of Alabama, United States of America. There is no dispute that ITEC is a foreign corporation not licensed to do business in the Philippines.

On August 14, 1987, ITEC entered into a contract with petitioner ASPAC referred to as "Representative Agreement".^[1] Pursuant to the contract, ITEC engaged ASPAC as its "exclusive representative" in the Philippines for the sale of ITEC's products, in consideration of which, ASPAC was paid a stipulated commission. The agreement was signed by G.A. Clark and Francisco S. Aguirre, presidents of ITEC and ASPAC respectively, for and in behalf of their companies.^[2] The said agreement was initially for a term of twenty-four months. After the lapse of the agreed period, the agreement was renewed for another twenty-four months.

Through a "License Agreement"^[3] entered into by the same parties on November 10, 1988, ASPAC was able to incorporate and use the name "ITEC" in its own name. Thus, ASPAC Multi-Trade, Inc. became legally and publicly known as ASPAC-ITEC (Philippines).

By virtue of said contracts, ASPAC sold electronic products, exported by ITEC, to their sole customer, the Philippine Long Distance Telephone Company, (PLDT, for brevity).

To facilitate their transactions, ASPAC, dealing under its new appellation, and PLDT executed a document entitled "PLDT-ASPAC/ITEC PROTOCOL"^[4] which defined the project details for the supply of ITEC's Interface Equipment in connection with the Fifth Expansion Program of PLDT.

One year into the second term of the parties' Representative Agreement, ITEC decided to terminate the same, because petitioner ASPAC allegedly violated its contractual commitment as stipulated in their agreements.^[5]

ITEC charges the petitioners and another Philippine Corporation, DIGITAL BASE COMMUNICATIONS, INC. (DIGITAL, for brevity), the President of which is likewise petitioner Aguirre, of using knowledge and information of ITEC's products specifications to develop their own line of equipment and product support, which are similar, if not identical to ITEC's own, and offering them to ITEC's former customer.

On January 31, 1991, the complaint^[6] in Civil Case No. 91-294, was filed with the Regional Trial Court of Makati, Branch 134 by ITEC, INC. Plaintiff sought to enjoin, first, preliminarily and then, after trial, permanently; (1) defendants DIGITAL, CMDI, and Francisco Aguirre and their agents and business associates, to cease and desist from selling or attempting to sell to PLDT and to any other party, products which have been copied or manufactured "in like manner, similar or identical to the products, wares and equipment of plaintiff," and (2) defendant ASPAC, to cease and desist from using in its corporate name, letter heads, envelopes, sign boards and business dealings, plaintiff's trademark, internationally known as ITEC; and the recovery from defendants *in solidum*, damages of at least P500,000.00, attorney's fees and litigation expenses.

In due time, defendants filed a motion to dismiss^[7] the complaint on the following grounds: (1) That plaintiff has no legal capacity to sue as it is a foreign corporation doing business in the Philippines without the required BOI authority and SEC license, and (2) that plaintiff is simply engaged in forum shopping which justifies the application against it of the principle of "*forum non conveniens*".

On February 8, 1991, the complaint was amended by virtue of which ITEC INTERNATIONAL, INC. was substituted as plaintiff instead of ITEC, INC.^[8]

In their Supplemental Motion to Dismiss,^[9] defendants took note of the amendment of the complaint and asked the court to consider in toto their motion to dismiss and their supplemental motion as their answer to the amended complaint.

After conducting hearings on the prayer for preliminary injunction, the court a quo on February 22, 1991, issued its Order:^[10] (1) denying the motion to dismiss for being devoid of legal merit with a rejection of both grounds relied upon by the defendants in their motion to dismiss, and (2) directing the issuance of a writ of preliminary injunction on the same day.

From the foregoing order, petitioners elevated the case to the respondent Court of Appeals on a Petition for Certiorari and Prohibition^[11] under Rule 65 of the Revised Rules of Court, assailing and seeking the nullification and the setting aside of the Order and the Writ of Preliminary Injunction issued by the Regional Trial Court.

The respondent appellate court stated, thus:

"We find no reason whether in law or from the facts of record, to disagree with the (lower court's) ruling. We therefore are unable to find in respondent Judge's issuance of said writ the grave abuse of discretion ascribed thereto by the petitioners.

In fine, We find that the petition *prima facie* does not show that Certiorari lies in the present case and therefore, the petition does not deserve to be given due course.

WHEREFORE, the present petition should be, as it is hereby, denied due course and accordingly, is hereby dismissed. Costs against the petitioners.

SO ORDERED."^[12]

Petitioners filed a motion for reconsideration^[13] on June 7, 1991, which was likewise denied by the respondent court.

"WHEREFORE, the present motion for reconsideration should be, as it is hereby, denied for lack of merit. For the same reason, the motion to have the motion for reconsideration set for oral argument likewise should be and is hereby denied.

SO ORDERED."^[14]

Petitioners are now before us via Petition for Review on Certiorari^[15] under Rule 45 of the Revised Rules of Court.

It is the petitioners' submission that private respondents are foreign corporations actually doing business in the Philippines without the requisite authority and license from the Board of Investments and the Securities and Exchange Commission, and thus, disqualified from instituting the present action in our courts. It is their contention that the provisions of the Representative Agreement, petitioner ASPAC executed with private respondent ITEC, are similarly "highly restrictive" in nature as those found in the agreements which confronted the Court in the case of Top-Weld Manufacturing, Inc. vs. ECED S.A. et al.,^[16] as to reduce petitioner ASPAC to a mere conduit or extension of private respondents in the Philippines.

In that case, we ruled that respondent foreign corporations are doing business in the Philippines because when the respondents entered into the disputed contracts with the petitioner, they were carrying out the purposes for which they were created, i.e., to manufacture and market welding products and equipment. The terms and conditions of the contracts as well as the respondents' conduct indicate that they established within our country a continuous business, and not merely one

of a temporary character. The respondents could be exempted from the requirements of Republic Act 5455 if the petitioner is an independent entity which buys and distributes products not only of the petitioner, but also of other manufacturers or transacts business in its name and for its account and not in the name or for the account of the foreign principal. A reading of the agreements between the petitioner and the respondents shows that they are highly restrictive in nature, thus making the petitioner a mere conduit or extension of the respondents.

It is alleged that certain provisions of the "Representative Agreement" executed by the parties are similar to those found in the License Agreement of the parties in the Top-Weld case which were considered as "highly restrictive" by this Court. The provisions in point are:

"2.0 Terms and Conditions of Sales.

2.1 Sale of ITEC products shall be at the purchase price set by ITEC from time to time. Unless otherwise expressly agreed to in writing by ITEC the purchase price is net to ITEC and does not include any transportation charges, import charges or taxes into or within the Territory. All orders from customers are subject to formal acceptance by ITEC at its Huntsville, Alabama U.S.A. facility.

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3.0 Duties of Representative

3.1. REPRESENTATIVE SHALL:

3.1.1. Not represent or offer for sale within the Territory any product which competes with an existing ITEC product or any product which ITEC has under active development.

3.1.2. Actively solicit all potential customers within the Territory in a systematic and businesslike manner.

3.1.3. Inform ITEC of all request for proposals, requests for bids, invitations to bid and the like within the Territory.

3.1.4. Attain the Annual Sales Goal for the Territory established by ITEC. The Sales Goals for the first 24 months is set forth on Attachment two (2) hereto. The Sales Goal for additional twelve month periods, if any, shall be sent to the Sales Agent by ITEC at the beginning of each period. These Sales Goals shall be incorporated into this Agreement and made a part hereof.

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6.0. Representative as Independent Contractor

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6.2. When acting under this Agreement REPRESENTATIVE is authorized to

solicit sales within the Territory on ITEC's behalf but is authorized to bind ITEC only in its capacity as Representative and no other, and then only to specific customers and on terms and conditions expressly authorized by ITEC in writing."^[17]

Aside from the abovestated provisions, petitioners point out the following matters of record, which allegedly witness to the respondents' activities within the Philippines in pursuit of their business dealings:

"a. While petitioner ASPAC was the authorized exclusive representative for three (3) years, it solicited from and closed several sales for and on behalf of private respondents as to their products only and no other, to PLDT, worth no less than US \$15 Million (p. 20, tsn, Feb. 18, 1991);

b. Contract No. 1 (Exhibit for Petitioners) which covered these sales and identified by private respondents' sole witness, Mr. Clarence Long, is not in the name of petitioner ASPAC as such representative, but in the name of private respondent ITEC, INC. (p. 20, tsn, Feb. 18, 1991);

c. The document denominated as "PLDT-ASPAC/ITEC PROTOCOL" (Annex C of the original and amended complaints) which defined the responsibilities of the parties thereto as to the supply, installation and maintenance of the ITEC equipment sold under said Contract No. 1 is, as its very title indicates, in the names jointly of the petitioner ASPAC and private respondents;

d. To evidence receipt of the purchase price of US \$15 Million, private respondent ITEC, Inc. issued in its letter head, a Confirmation of payment dated November 13, 1989 and its Invoice dated November 22, 1989 (Annexes 1 and 2 of the Motion to Dismiss and marked as Exhibits 2 and 3 for the petitioners), both of which were identified by private respondent's sole witness, Mr. Clarence Long (pp. 25-27, tsn, Feb. 18, 1991)."^[18]

Petitioners contend that the above acts or activities belie the supposed independence of petitioner ASPAC from private respondents. "The unrebutted evidence on record below for the petitioners likewise reveal the continuous character of doing business in the Philippines by private respondents based on the standards laid down by this Court in Wang Laboratories, Inc. vs. Hon. Rafael T. Mendoza, et al. ^[19] and again in TOP-WELD. (*supra*)" It thus appears that as the respondent Court of Appeals and the trial court's failure to give credence on the grounds relied upon in support of their Motion to Dismiss that petitioners ascribe grave abuse of discretion amounting to an excess of jurisdiction of said courts.

Petitioners likewise argue that since private respondents have no capacity to bring suit here, the Philippines is not the "most convenient forum" because the trial court is devoid of any power to enforce its orders issued or decisions rendered in a case that could not have been commenced to begin with, such that in insisting to assume and exercise jurisdiction over the case below, the trial court had gravely abused its discretion and even actually exceeded its jurisdiction.

As against petitioner's insistence that private respondent is "doing business" in the