FACILITIES MANAGEMENT CASE: A Dubious Doctrine on Foreign Corporations.

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A corporation can have no legal existence out of the boundaries of the sovereignty by which it was created. It exists only in contemplation of law, and by force of law, and where that law ceases to operate and is no longer obligatory, the corporation can have no existence.[1] This conception resulted in the courts holding that the corporation could not be sued in an action for the recovery of a personal demand in a jurisdiction foreign to that which gave it existence.[2] More clearly, it means that a foreign corporation may be sued in a state other than that by which it was created, if jurisdiction can be acquired of it by lawful service of process.[3]

"The Philippines adheres to the principle that every state may impose conditions on the exercise by foreign corporations of activities within its territory. A corollary idea embodied in our corporation statute is that the State is entitled to subject foreign corporations to regulations and visitation only when the latter have a definite contact with the territory. The minimum contact required for such power is the fact of transacting business in the Philippines."[4]

Thus, in the early case of *Pacific Micronisian Line v. Del Rosario*[5] it was held by our Supreme Court that in order that service of process upon a private foreign corporation may be effected and jurisdiction over the same may be acquired, it is a *sine qua non* requirement that a foreign corporation be one which is doing business in the Philippines.[6] "[A]s long as a foreign private corporation does or engages in

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1Per Taney, J., in Augusta v. Earle, S.C. 519 at 588, quoted by Salonga, Philippine Law on Private Corporation, pp. 573-574 (1968).

[2]Fletcher Cyclopedia Corporations, on Foreign Corporations, Sec. 8636.

[3]Ibid.

[4]Salonga, supra, 574.

[5]96 Phil. 23 (1954).

[6]Ibid., 28.

business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts."[7] The opposite is likewise true: that a foreign corporation which does not engage in business here in the Philippines is generally *not* amenable to the process and jurisdiction of local courts.

Succintly, under Philippine jurisdiction, these are the rules regarding suits by or against a foreign corporation, to wit:

1. A foreign corporation doing business in the Philippines, if it has the license to do business as required by law, may sue and be sued. The basis of this rule is that the foreign corporation by obtaining the license and thus appointing the required agent in the Philippines to receive process, has consented to being sued in the local courts.[8]

2. A foreign corporation doing business in the Philippines but which has not obtained the license required by law, may still be sued, but it cannot sue in the Philippines.[9] The reason behind this *statutory* rule, as stated in the case of *Marshall Wells Co. v. Esler Co.*:[10] [It] is not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purposes of business without taking steps necessary to render it amenable to suit in the local courts."

3. A foreign corporation *not* doing business in the Philippines may sue in our local courts without need of obtaining a license. Again, as explained by the case of *Marshall Wells,* since the need to obtain license is only imposed upon foreign corporations doing business here in order to prevent them from acquiring domicile without taking the necessary steps to make them amenable to suits in local courts, then "[t]he implication of the law is that it was never the purpose of the legislature to exclude a foreign corporation which happens to obtain an isolated order for business from securing redress in the Philippine courts, and thus, permit persons to avoid their contracts made with such corporations."

4. A foreign corporation *not* doing business in the Philippines cannot generally be sued in our local courts.[11]

[7] Ibd., citing General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd., 49 O.G. 73.

[8] Sec. 128, Corporation Code. Used to be Sec. 68 of the Corporation Law.

[9] Sec. 133, Corporation Code. Used to be Sec. 69 of the Corporation Law.

[10] 46 Phil. 70.

[11] However, such corporation, if it owns property in the Philippines, may be sued in proceedings in rem or quasi in rem (Salonga, supra).

The reason for this last rule is one of practicality and recognition of the hardship of serving valid process upon a foreign entity that hardly has any contact within the Philippines. For the local courts to proceed in personal suits, without valid service of summons, against such foreign corporations would be a denial of due process.

This seems to have been the doctrine in Philippine jurisdiction until recently, when our Supreme Court came out with its decision in the case of *Facilities Management Corporation v. Dela Osa,*[12] a case which certainly merits more than just passing fancy. The decision in that case is reliatively short and seemingly simple.

THE CASE FACTS

Facilities Management Corporation, a foreign corporation domiciled in California. U.S.A., through a Filipino agent, J.V. Catuira, entered into an employment contract with Leonardo de la Osa in Manila, fo the latter to work as a houseboy in Wake Island. The contract was renewed twice, and in the last one, dela Osa was employed as a cashier. After a total period of three years of employment in Wake Island, dela Osa was laid-off. Upon returning to the Philippines, dela Osa filed an action in the then Court of Industrial Relations against Facilities Management Corp., one of its officers, J.S. Dreyer, and included in the suit J.V. Catuira. In said action, he sought reinstatement with full backwages, as well as recovery of his overtime compensation. It appears that summonses for Facilities Management Corp. and Dreyer were served in the Philippines upon Catuira.

The foreign corporation and its officers, through counsel, filed a motion to dismiss the case on the ground that the court had acquired no jurisdiction over them since they were alleged to be domiciled at Wake Island, which is beyond the territorial jurisdiction of the Philippines. The court sustained its jurisdiction, and, after trial, rendered judgment in favor of dela Osa. The defendants in that case elevated the matter to the Supreme Court by petition for review on certiorari.

In the appeal, the Court took cognizance of the fact that previously three (3) other cases involving the same foreign corporation as petitioner, were filed before the High Tribunal, all of which were finally disposed of: two for lack of merits, a third by the voluntary manifestation of the respondent in that case that his claims have been settled, thus, rendering it moot.

THE CASE ISSUE

The Supreme Court itself appears to have clearly set forth, as it should, the issue involved in the petition for review, thus:

> In the case at bar, which was filed this Court on June 3, 1974, petitioners presented, *inter alia,* the following issue: "x x x can the CIR validly affirm a judgement against persons domiciled outside and not doing business in the Philip-

[12] G.R. No. L-38649, March 26, 1979 (89 SCRA 131), decided by the First Division; decision was penned by Justice Makasiar, and concurred with by Justices Techankee, Fernandez, Guerrero, De Castro and Melencio-Herrera.

pines, and over whom it did not acquire jurrisdiction?

This sole issue having been set, the only task of the Court was to answer it and not tackle other matters. But this was not to be so.

THE CASE DECISION

The Court decided to answer the problem by navigating two rivers at the same time: first, consider Facilities Management Corp. as a foreign corporation doing business in the Philippines; second, as a foreign corporation not doing business in the Philippines – an untenable situation which could only breed mischief.

Thus, the Court took cognizance of the three (3) previous cases brought by Facilities Management Corp. to the Supreme Court from the Court of Appeals. All said three cases, according to the Court, involved facts similar to the case at bar. The Court then proceeded to adopt the decision of the Court of Appeals in one of those three cases, penned by Justice Fernandez, who was still then with the latter court, which held that Facilities Management Corp., by appointing an agent in the Philippines with authority to execute employment contracts, was actually doing business in the Philippines. From that standpoint, it was then easy for the Court to conclude that summons having been served upon said agent, the corporation was brought under the jurisdiction of the trial court.

If the Court had stopped at that point and rested its decision on such a solid foundation, then there would be no controversy; its decision would have been in accordance with the settled doctrine that unlicensed foreign corporation transacting business in the Philippines may be sued in the local courts, and service of process may be made on any of its officers or agents in the Philippines.[13]

But the Court, probably realizing that it had itself set the issue, proceeded to answer it. It cited the case of *Aetna Casualty & Surety Company v. Pacific Star Line.*[14] That case held that a foreign corporation not doing business in the Philippines, need not obtain the license required by the Corporation Law in order to sue in Philippine courts.[15] Relying on *Aetna* as basis, the Court made this astounding conclusion:

> Indeed, if a foreign corporation, not engaged in business in the Philippines is not barred from seeking redress from courts in the Philippines, *a fortiori*, that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines.

[13] General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd., 87 Phil. 313 (1950).

[14] G.R. No. L-26809, Dec. 29, 1977 (80 SCRA 635)

[15] Citing cases Marshall Wells Co. v. Elser & Co. 46 phil. 70; Mentholatum Co. v. Mangaliman, 72 Phil. 524; Pacific Vegetable Oil Corp. v. Angel D. Singson, 102 Phil. 1.

This conclusion is not correct. In theory it may be logical, following the consideration of fairness. But such ruling can have no practical application. In proceedings *in rem* and *quasi in rem*, such a ruling has long been conceded to be applicable.[16] But even in such cases, the local courts really acquire no jurisdiction over the "person" of the foreign corpration; in truth, the jurisdiction of the court is over the *res*, or the very object involved in the litigation.

Strictly speaking, jurisdiction over the foreign corporation itself cannot be acquired by our local courts in suits against such foreign corporations not transacting business in the Philippines. In actions *in personam*, summons cannot be served on such entities by publication, for that would be denial of due process.[17]

To this writer, the basic flaw in the decision is trying to answer opposite positions and treating them as one: Facilities Management Corp. is a foreign corporation engaged in business in the Philippines and not engaged in business in the Philippines. Which is which? At first the Court seemed to have decided that it was doing business in the Philippines; then why did it discuss the doctrine of suability of a foreign corporation not doing business in the Philippines? The Reporter Division of the Supreme Court itself seems also not to be certain. In the syllabus of the case, it reported only the ruling of the Court regarding the suability of foreign corporation not doing business in the Philippines. According to the Rules,[18] the syllabus is approved by the Justice who penned the decision. Does it mean that that portion of the decision is not *obiter?*

This writer feels that said portion of the decision is not *obiter.* First, as was previously quoted, the Court itself set forth that the suability of foreign corporations not doing business in the Philippines was the issue to be resolved. Second, the syllabus of the case, which in the normal course of procedure, was approved by the *ponente,* discussed only the aspect on the suability of foreign corporations not doing business in the Philippines. Third, in discussing that aspect, the Court did not do so "by way of argument", which it usually does in cases where a discussion is not meant to be *ratio decidendi.* Lastly, the pronouncement of the court was in clear terms, and to think that the Supreme Court is the final arbiter in deciding whether a ruling is *obiter* or not, in future litigations regarding the same matter, it may simply say that such has been settled in the case of *Facilities Management.*

If the Supreme Court wanted to do away with the traditional doctrine that "doing of business" is the only instance by which a foreign corporation is said to be "present" in the Philippines to be amenable to local suits, this would be fine. This would not be a new doctrine anyway. As early as 1945, the U.S. Supreme Court

[16] See note 11.

[17] Citizens Surety v. Melencio-Herrera, 38 SCRA 369.

[18] Rule 55 in connection with Sec. 1, Rule 56, Rules of Court.