Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DEVELOPMENT BANK OF THE PHILIPPINES,
Petitioner,

- *versus* -

MONSANTO COMPANY,
Respondent.

G.R. No. 207153

Present:

GESMUNDO, *C.J.*, Chairperson
HERNANDO,
ZALAMEDA,
ROSARIO,* and
MARQUEZ, *JJ.*

Promulgated:

JAN 25 2023

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DECISION

ZALAMEDA, *J.*:

This is a Petition for Review on *Certiorari* (Petition)[1] from the Decision[2] dated 26 September 2012 and the Resolution[3] dated 30 April 2013 by the Court of Appeals (CA) in CA-G.R. CV No. 88100, which reversed and set aside the Decision[4] dated 15 August 2006 of Branch 165, Regional Trial Court (RTC) of Pasig City in Civil Case No. 53682.

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* On official leave.
[1] *Rollo*, pp. 23-46.
[2] Id. at 49-63; Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz. and Myra V. Garcia-Fernandez.
[3] Id. at 65-66.
[4] Id. at 148-169; Penned by Judge Marietta A. Legaspi.

Antecedents

Monsanto International Sales Company (MISCO), a foreign corporation organized and existing under the laws of Delaware, sold acrylic fibers to Continental Manufacturing Corporation (CMC) from 1978 to 1983. The sale was made through a local indentor, Robert Lipton and Co., Inc. (Lipton).[5]

The transactions were made in this wise: as an indentor, Lipton would inquire from CMC if it wanted to buy acrylic fiber. CMC would then give the specifications, which Lipton would relay to MISCO. If the product was available, MISCO would give Lipton the price inclusive of the delivery charge and terms of payment, which the latter would relay to CMC. The transaction for the purchase of products was documented through an indent order prepared and signed in five copies: three copies would be given to CMC, while Lipton and MISCO each kept a copy. The mode of payment was draft against acceptance, prepared by the supplier and sent to the buyer who in turn would indorse it to the bank. The drafts were paid on its maturity date.[6]

Issue arose when CMC failed to settle its obligations with MISCO prompting the latter to file a complaint[7] for sum of money on 31 July 1986. MISCO alleged that CMC purchased acrylic fibers for an aggregate amount of US$1,417,980.89 covered by five drafts co-accepted by CMC and petitioner Development Bank of the Philippines (DBP). MISCO sought payment for the unpaid outstanding balance amounting to US$938,267.58 covered by the drafts but no payments were made.[8]

In response, CMC admitted the obligation but argued that MISCO, being a foreign corporation "doing business" without the necessary license, had no capacity to sue in the Philippines.[9] It alleged that MISCO appointed Lipton as its representative in the Philippines, which appointment was considered as "doing business" under Republic Act No. (RA) 5455.[10]

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5 Id. at 49-50.
6 Id. at 260-261.
7 Id. at 67-69.
8 Id. at 50.
9 Id. at 72-75.
10 Section 1 of RA 5455 or "An Act to Require that the Making of Investments and the Doing of Business Within the Philippines by Foreigners or Business Organizations Owned in Whole or in Part by Foreigners Should Contribute to the Sound and Balanced Development of the National Economy on a Self-Sustaining Basis, and for Other Purposes, " approved on 30 September 1968, reads:

> Section 1. *Definitions and scope of this Act.*— (1) As used in this Act, the term "investment" shall mean equity participation in any enterprise formed, organized or existing under the laws of the Philippines; and **the phrase "doing business" shall include** soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; **appointing representatives or distributors who are domiciled in the Philippines** or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty days or more; participating in the management, supervision or control of any domestic

Assuming that MISCO can sue, CMC claimed that the manner of payment had been novated by a revised draft agreement. CMC averred that pursuant to such revised draft agreement, it made payments in the total amount of US$184,000.00, which MISCO accepted.[11]

For its part, [12] DBP contended that the complaint did not state a cause of action against it as it was not privy to the transactions between MISCO and CMC. DBP denied being a co-acceptor of the drafts, asseverating that the person who signed the drafts had no authority to bind DBP as an acceptor. It likewise raised MISCO's lack of capacity to sue.[13]

Upon motion[14] of MISCO with no opposition from CMC and DBP, the RTC granted[15] the amendment of the complaint whereby MISCO was substituted with respondent Monsanto Company (Monsanto) as party-plaintiff. Monsanto was the mother company of MISCO and the assignee[16] of the rights of the latter to all receivables, including the subject drafts.[17]

Ruling of the RTC

The RTC found that in selling acrylic fiber to CMC from 1978 to 1983, MISCO was transacting business in the Philippines without a license. As such, MISCO, or its assign, Monsanto, had no capacity to sue pursuant to Section 133 of the Corporation Code. Accordingly, it rendered the Decision dated 15 August 2006, the dispositive portion of which reads:

> **IN VIEW OF ALL THE FOREGOING**, plaintiff's complaint is hereby ***dismissed***. The counterclaims of defendant CMC and DBP are likewise dismissed for want evidence.
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> **SO ORDERED.**[18]

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business firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

11 *Rollo*, p. 50.
12 Id. at 76-80.
13 Id.
14 Id. at 102-111.
15 Id. at 473.
16 Id. at 106.
17 Id.
18 Id. at 169.

Ruling of the CA

On appeal, the CA rendered the assailed Decision. The dispositive portion reads:

> **WHEREFORE**, the appeal is **PARTLY GRANTED**. The *Decision* dated August 15, 2006 of the Regional Trial Court, Branch 156, Pasig City in Civil Case No. 53682 is **REVERSED** and **SET ASIDE**. The instant case is **REMANDED** to the trial court which is directed to decide the case on the merits and with dispatch.
>
> **SO ORDERED**.[19]

The CA ruled that Monsanto is not deemed "doing business" in the Philippines as defined under Sec. 3(d) of RA 7042 or the Foreign Investments Act of 1991. It stated that if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and for its own account, the foreign corporation cannot be considered to be doing business in the Philippines. Giving credence to the testimony of Lipton's Vice President, Desiderio F. Torres, the CA held that the subject transactions were made through a *bona fide* local indentor.[20]

It further held that even assuming that MISCO lacked the capacity to sue, the parties were estopped from raising said ground since CMC admitted its obligation to MISCO subject only to the defense of novation.[21]

The motion for reconsideration having been denied in the assailed Resolution, petitioner filed the present Petition.[22]

Ruling of the Court

The Petition must be denied.

In its Memorandum,[23] DBP maintains that the complaint should be dismissed on the ground of lack of capacity to sue. It posits that the applicable law is Presidential Decree No. (PD) 1789[24] or the Omnibus Investments Act of 1981, not RA 7042 which was passed on 14 June 1991 or almost a decade after the transaction between MISCO and CMC in 1981.

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[19] Id. at 14.
[20] Id. at 13-17.
[21] Id. at 17.
[22] Id. at 19-20.
[23] Id. at 627-647.
[24] Entitled "A Decree to Revise, Amend and Codify the Investment, Agricultural and Export Incentives Acts to be Known as the Omnibus Investment Code," published 01 April 1981.

Monsanto countered that the CA correctly concluded that MISCO and its assign, Monsanto, are not deemed "doing business" in the Philippines by transacting through a local indentor. While the CA cited RA 7042, Monsanto emphasized that foreign corporations transacting through a local indentor is not considered "doing business" in the Philippines under the implementing rules and regulation (IRR) of PD 1789.[25]

In essence, the sole issue for resolution of this Court is whether the CA erred in finding that MISCO, or its assign Monsanto, a foreign corporation without license to transact business in the Philippines, has the capacity to sue.

The rule that an unlicensed foreign corporation doing business in the Philippine does not have the capacity to sue before the local courts is well-established.[26] Foreign corporations are required to obtain a license to do business in the Philippines to be clothed with the capacity to sue as provided under Sec. 133[27] of *Batasang Pambansa Blg. 68*[28] or the Corporation Code of the Philippines (Corporation Code):

> SECTION 133. *Doing Business Without License.* — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The Corporation Code, however, is silent as to the definition of the phrase "doing business." It has been held that there is no general rule or governing principle as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. As such, each case must be judged in the light of its peculiar circumstances.[29]

Notably, the phrase "doing business" is defined in PD 1789 – the law applicable in this case as argued by DBP. The provision reads:

> ARTICLE 65. *Definition of Terms.* — As used in this Book, the term "investment" shall mean equity participation in any enterprise formed, organized or existing under the laws of the Philippines; and the phrase **"doing business" shall include soliciting orders, purchases, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty (180)**

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[25] *Rollo*, pp. 664-665; Memorandum dated 28 January 2016.
[26] *Steelcase, Inc. v. Design International Selections, Inc.*, 686 Phil. 59, 65 (2012).
[27] Now Section 150 of RA 11232 or the Revised Corporation Code of the Philippines.
[28] Entitled "The Corporation Code of the Philippines," approved on 01 May 1980.
[29] *Georg Grotjahn GMBH & Co. v. Isnani*, 305 Phil. 231, 238-239 (1994).

> **days or more;** participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization. (Emphasis supplied.)

Sec. 1(g) of the IRR of PD 1789 clarifies said definition by providing that "doing business" includes:

> (1) Soliciting orders, purchases (sales) or service contracts. **Concrete and specific solicitations by a foreign firm or by an agent of such foreign firm, not acting independently of the foreign firm, amounting to negotiations or fixing of the terms and conditions of sales or service contracts, regardless of where the contracts are actually reduced to writing, shall constitute doing business** even if the enterprise has no office or fixed place of business in the Philippines. The arrangements agreed upon as to manner, time and terms of delivery of the goods or the transfer of title thereto is immaterial. **A foreign firm which does business through the middlemen acting in their own names, such as indentors, commercial brokers or commission merchants, shall not be deemed doing business in the Philippines.** But such indentors, commercial brokers or commission merchants shall be the ones deemed to be doing business in the Philippines.
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> (2) **Appointing a representative or distributor who is domiciled in the Philippines, unless said representative or distributor has an independent status, i.e., it transacts business in its name and for its own account, and not in the name or for the account of a principal.** Thus, where a foreign firm is represented in the Philippines by a person or local company which does not act in its name but in the name of the foreign firm, the latter is doing business in the Philippines. (Emphases and underscoring supplied.)

The same language was used in the definition of "doing business" under Executive Order No. 226 or the Omnibus Investment Code of 1987 and its IRR. Section 3(d) of RA 7042 likewise provides a similar definition:

> (d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase **"doing business: shall not be deemed to include** mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise

> of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor **appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account**; (Emphasis supplied.)

The foregoing laws and rules consistently provide that the appointment of representatives which transact business in its own name and for its own account shall not be deemed as "doing business." Markedly, the IRR of PD 1789 specifically mentions transactions done through middlepersons acting in their own names, such as indentors, as excluded from the phrase "doing business."

Verily, as a foreign corporation without license to do business in the Philippines, the capacity to sue of MISCO, or its assignee Monsanto, hinges on whether Lipton transacts business in its own name and for its own account. In order to determine compliance with such requirement, We need to understand how an indentor operates.

In the case of *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*[30] (*Schmid*), the Court elucidated on the nature of the business of an indentor thusly:

> On the other hand, there is no statutory definition of "indent" in this jurisdiction. However, the Rules and Regulations to Implement Presidential Decree No. 1789 (the Omnibus Investments Code) lumps "indentors" together with "commercial brokers" and "commission merchants" in this manner: x x x
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> Therefore, **an indentor is a middleman in the same class as commercial brokers and commission merchants.** To get an idea of what an indentor is, a look at the definition of those in his class may prove helpful.
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> x x x x
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> Thus, the chief feature of a commercial broker and a commercial merchant is that **in effecting a sale, they are merely intermediaries or middlemen, and act in a certain sense as the agent of both parties to the transaction**.
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> Webster defines an indent as "a purchase order for goods especially when sent from a foreign country." [Webster's Ninth New Collegiate Dictionary 612 (1986).] It would appear that there are three parties to an indent transaction, namely, the buyer, the indentor, and the supplier who is usually a non-resident manufacturer residing in the country where the goods are to be bought [Commissioner of Internal Revenue v. Cadwallader Pacific Company, G.R. No. L-20343, September 29, 1976, 73 SCRA 59.] **An indentor may therefore be best described as one who, for**

[30] 248 Phil. 727 (1988).

> **compensation, acts as a middleman in bringing about a purchase and sale of goods between a foreign supplier and a local purchaser.**[31] (Emphases supplied.)

From the language of Section 1(g) of the IRR of PD 1789 and the nature of the business of an indentor as described in *Schmid*, it can be concluded that when an indentor brings about a purchase and sale of goods between a foreign supplier and a local purchaser, as an agent of both parties, it is in contemplation of law transacting for its own account. Precisely because such is the business of an indentor as a middleman.

In this case, both the RTC and the CA found that the sale between CMC and MISCO was made through Lipton acting as an indentor. The records of this case likewise show that Lipton is a registered domestic corporation whose purpose is, among others, "[t]o engage and carry on a general brokerage business; to act as agents or brokers in effecting sales of merchandise and other commodities."[32] In the pursuit of its business, Lipton represents a number of manufacturers.[33] This can be gleaned from the testimony of Lipton's Vice-President describing the nature of Lipton's business, to wit:

> Q. And as indentor can you please describe how you pursue the business?
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> A. We are or we represent the different manufacturers through out the world and we have all the products that they manufacture and we elicit and offer the products to various manufacturers here in the Philippines, sir. It is from this transaction that we get our commission. In other words, we put together the buyer and the manufacturer and from that we get commission. That is our manner of operating our income, sir.[34]

DBP does not deny nor offer controverting evidence against the foregoing. It contends, however, that Lipton is not transacting business in its own name and account, as its function was merely to act as go-between to the transactions of CMC and MISCO. It stressed that Lipton had no authority to agree and enter into agreement for the supply of raw materials for MISCO and that MISCO acted and transacted in its own behalf.

The argument must be rejected. To be clear, acting as a "go-between" is exactly the business of an indentor, and Lipton's lack of authority to enter into an agreement with CMC is consistent with its role as a middleperson. DBP's assertions do not negate the independence of Lipton. As discussed above, the IRR of PD 1789 saw it proper to expressly exclude transactions of foreign corporations done through indentors from the contemplation of the phrase "doing business."[35]

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[31] Id. at 735-736.
[32] Articles of Incorporation of Robert Lipton & Co., Inc. *(Rollo,* p. 399.)
[33] *Rollo,* p. 404.
[34] Id. at 15.
[35] *See Schmid,* supra note 30. The Court stated that "[a]n indentor, acting in his own name, is not,

Anent the DBP's argument that estoppel does not apply in this case, We are not convinced.

Notwithstanding the license requirement for foreign corporations under Section 133 of the Corporation Code, the doctrine of estoppel allows a foreign corporation doing business in the Philippines without license to sue in Philippine courts, when such suit is against a Philippine citizen or entity who had contracted with and benefited by said corporation.[36] The Court, in *Merrill Lynch Futures, Inc. v. Court of Appeals,*[37] thus stated:

> **The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it.** And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;" "one who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity." **The principle "will be applied to prevent a person contracting with a foreign corporations from later taking advantage of its noncompliance with the statues, chiefly in cases where such person has received the benefits of the contract** (Sherwood v. Alvis, 83 Ala 115, 3 So 307, limited and distinguished in Dudley v. Collier, 87 Ala 431, 6 So 304; Spinney v. Miller 114 Iowa 210, 86 NW 317), where such person has acted as agent for the corporation and has violated his fiduciary obligations as such, and where the statute does not provide that the contract shall be void, but merely fixes a special penalty for violation of the statute. . . ."
>
> The doctrine was adopted by this Court as early as 1924 in *Asia Banking Corporation v. Standard Products Co.*, in which the following pronouncement was made:
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> > "The general rule that in the absence of fraud a person who has contracted or otherwise dealt with an association in such a way as to recognize and in effect admit its legal existence as corporate body is thereby estopped to deny its corporate existence in any action leading out of or involving such contract or dealing, unless its existence is attacked for causes which have arisen since making the contract or other dealing relied on as an estoppel and this applies to foreign as well as domestic corporations. (14 C.J. 227; Chinese Chamber of Commerce vs. Pua Te Ching, 14 Phil. 222)."

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however, covered by the above-quoted provision [Section 69 of the old Corporation Law]. In fact, the provision of the Rules and Regulations implementing the Omnibus Investments Code quoted above, which was copied from the Rules implementing Republic Act No. 5455, recognizes the distinct role of an indentor, such that when a foreign corporation does business through such indentor, the foreign corporation is not deemed doing business in the Philippines."

[36] *See Communications Materials and Design, Inc. v. Court of Appeals*, 329 Phil. 487 (1996); *Agilent Technologies Singapore v. Integrated Silicon Technology Phil. Corp.*, 471 Phil. 582 (2004); and *Magna Ready Mix Concrete Corp. v. Andersen Bjornstad Kane Jacobs, Inc.*, G.R. No. 196158, 20 January 2021.

[37] G.R. No. 97816, 24 July 1992.

Here, the CA did not err in ruling that the doctrine of estoppel applies. This is in view of the undisputed fact that CMC contracted with, and was benefitted by, the transaction with MISCO. While DBP denies participation in the transaction, this Court, not being a trier of facts, is constrained from making a determination based on such allegation. Further, such argument is rendered unavailing by the above disquisition resolving MISCO's, or Monsanto's, capacity to sue.

The Court likewise rejects the contention Monsanto is not a real party-in-interest. We take notice that DBP did not question the substitution of the party-plaintiff before the RTC. In any event, the Court is convinced that. Monsanto, as the sole stockholder of record and mother company of MISCO, is a real party in interest pursuant to the board resolution providing for the declaration of dividends on all income of MISCO to its stockholders of record. In any event, even if there is non-joinder and misjoinder of parties or that the suit is not brought in the name of the real party in interest, the same would not result in outright dismissal of the complaint.[38]

In fine, the Court finds no cogent reason to reverse the findings and conclusions of the CA.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED**. The Decision dated 26 September 2012 and the Resolution dated 30 April 2013 by the Court of Appeals in CA-G.R. CV No. 88100 are **AFFIRMED**.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

[38] Section 9, Rule 3 of the Rules of Court. See also *Pacaña-Contreras v. Rovila Water Supply, Inc.*, G.R. No. 168979, 02 December 2013 and *Juarez v. Court of Appeals*, G.R. No. 93474, 07 October 1992.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

RAMON PAUL L. HERNANDO
Associate Justice

on official leave
RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice