Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, Petitioner,	**G.R. No. 172301**
	Present:
	CARPIO, *J., Chairperson,*
	BRION,
	BERSAMIN,*
-versus-	DEL CASTILLO, and
	LEONEN, *JJ.*
ASIAVEST MERCHANT BANKERS (M) BERHAD, Respondent.	**Promulgated:** AUG 19 2015

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DECISION

LEONEN, *J.*:

This case stemmed from an action for recovery of sum of money filed before the Regional Trial Court of Pasig by respondent Malaysian corporation against petitioner Philippine National Construction Corporation (PNCC), formerly Construction & Development Corporation of the Philippines. PNCC is a government-acquired asset corporation.

We resolve whether our courts have subject matter jurisdiction over an action for recovery of sum of money filed by a Malaysian corporation against a Philippine corporation involving a contract executed and performed in Malaysia, and the applicability of the *forum non conveniens* principle.

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* Designated additional member per S.O. No. 2146 dated August 10, 2015.

PNCC filed this Petition[1] assailing the Court of Appeals Decision[2] dated June 10, 2005 dismissing its appeal, and Resolution[3] dated April 7, 2006 denying reconsideration.[4] The trial court ruled in favor of Asiavest Merchant Bankers (M) Berhad and ordered PNCC to reimburse it the sum of Malaysian Ringgit (MYR) 3,915,053.54 or its equivalent in Philippine peso.[5]

PNCC prays that this court reverse and set aside the Court of Appeals Decision and Resolution, as well as the trial court's Decision[6] declaring it in default.[7] It prays the trial court's order of default be reversed and it be allowed to file its Answer, or, the cause of action having already prescribed under Malaysian laws, the case be dismissed outright.[8]

PNCC and Asiavest Holdings (M) Sdn. Bhd. (Asiavest Holdings) caused the incorporation of an associate company known as Asiavest-CDCP Sdn. Bhd. (Asiavest-CDCP), through which they entered into contracts to construct rural roads and bridges for the State of Pahang, Malaysia.[9]

In connection with this construction contract, PNCC obtained various guarantees and bonds from Asiavest Merchant Bankers (M) Berhad to guarantee the due performance of its obligations.[10] The four contracts of guaranty stipulate that Asiavest Merchant Bankers (M) Berhad shall guarantee to the State of Pahang "the due performance by PNCC of its construction contracts . . . and the repayment of the temporary advances given to PNCC[.]"[11] These contracts were understood to be governed by the laws of Malaysia.[12]

There was failure to perform the obligations under the construction contract, prompting the State of Pahang to demand payment against Asiavest Merchant Bankers (M) Berhad's performance bonds.[13] It "entered into a compromise agreement with the State of Pahang by paying . . . the reduced amount of [Malaysian Ringgit (MYR)] 3,915,053.54[.]"[14] Consequently, the corporation demanded indemnity from PNCC by demanding the amount it

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1 *Rollo*, pp. 38–77. The Petition was filed pursuant to Rule 45 of the Rules of Court.
2 Id. at 81–88. The Decision was penned by Associate Justice Edgardo P. Cruz and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza of the First Division.
3 Id. at 90–91. The Resolution was penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Renato C. Dacudao and Noel G. Tijam of the Special Former First Division.
4 Id. at 41–42, Petition.
5 Id. at 107–108, Regional Trial Court Decision.
6 Id. at 93–108. The Decision was penned by Judge Armie E. Elma of the Regional Trial Court of Branch 153, Pasig.
7 Id. at 74, Petition.
8 Id.
9 Id. at 81–82, Court of Appeals Decision, and 127, Complaint.
10 Id. at 82, Court of Appeals Decision.
11 Id. at 102, Regional Trial Court Decision.
12 Id. at 47, Petition, and 82, Court of Appeals Decision.
13 Id. at 48, Petition, and 82, Court of Appeals Decision.
14 Id. at 82, Court of Appeals Decision.

paid to the State of Pahang.[15]

On April 12, 1994, Asiavest Merchant Bankers (M) Berhad filed a Complaint[16] for recovery of sum of money against PNCC before the Regional Trial Court of Pasig.[17] It based its action on Malaysian laws. Specifically, it invoked Section 98[18] of the Malaysian Contracts Act of 1950 and Section 11[19] of the Malaysian Civil Law Act of 1956.[20]

PNCC filed Motions for extension of time to file its Answer on May 18, 1994, June 2, 1994, and June 17, 1994. The trial court granted these motions, with the last one set to expire on July 3, 1994. On July 4, 1994, PNCC filed a Motion for another five-day extension. The trial court denied this Motion on July 13, 1994.[21]

On July 27, 1994, the trial court declared PNCC in default for failure to file any responsive pleading, and allowed Asiavest Merchant Bankers (M) Berhad to present its evidence ex parte.[22]

The Regional Trial Court, in its Decision dated November 29, 1994, rendered judgment in favor of Asiavest Merchant Bankers (M) Berhad:

> WHEREFORE, premises considered and it appearing that plaintiff hads [sic] proved its claim by preponderance of evidence, judgment is hereby rendered in favor of plaintiff and against defendant Philippine National Construction Corporation ordering the latter to pay the plaintiff:
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> 1. The sum of Malaysian Ringgit M $3,915,053.54 or its equivalent in [P]hilippine peso at the bank rate of exchange (on the date of payment) plus legal interest from the date of demand until fully paid.
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> 2. The sum of ₱300,000.00 as and by way of attorney's fees; and
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> 3. Cost of suit.

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15 Id. at 48, Petition, and 82, Court of Appeals Decision.

16 Id. at 126–132.

17 Id. at 126.

18 Id. at 104–105, Regional Trial Court Decision; Malaysian Contracts Act of 1950, sec. 98 provides:
In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he has paid wrongfully.

19 Id. at 105, Regional Trial Court Decision; Malaysian Civil Law Act of 1956, sec. 11 provides:
In any proceedings tried in any Court for the recovery of debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such as it thinks fit on the whole or any part of the period between the date when the cause of action arose and the date of judgment.

20 Id. at 104–105, Regional Trial Court Decision, and 128–130, Complaint.

21 Id. at 82, Court of Appeals Decision.

22 Id.

SO ORDERED.[23]

The trial court found that Asiavest Merchant Bankers (M) Berhad complied with the requisites for proof of written foreign laws.[24] The Malaysian laws invoked were found to be similar with Articles 2066 and 2067 of the Civil Code:[25]

> ART. 2066. The guarantor who pays for a debtor must be indemnified by the latter.
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> The indemnity comprises:
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> (1) The total amount of the debt;
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> (2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;
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> (3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;
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> (4) Damages, if they are due.
>
> ART. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.
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> If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

On January 30, 1995, the trial court denied PNCC's Motion to Lift Order of Default[26] filed on December 12, 1994.[27] On August 11, 1995, it also denied PNCC's Motion for Reconsideration *Ad Cautelam*[28] dated December 21, 1994.[29] PNCC brought its case before the Court of Appeals.[30]

The Court of Appeals, in its Decision dated June 10, 2005, dismissed PNCC's appeal for raising pure questions of law exclusively cognizable by this court.[31] It likewise denied reconsideration.[32]

Hence, PNCC filed this Petition.

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23 Id. at 107–108, Regional Trial Court Decision.
24 Id. at 106.
25 Id. at 106–107.
26 Id. at 133–140.
27 Id. at 83, Court of Appeals Decision.
28 Id. at 141–151.
29 Id. at 83, Court of Appeals Decision.
30 Id. at 83, Court of Appeals Decision, and 152–153, Notice of Appeal.
31 Id. at 86–87, Court of Appeals Decision.
32 Id. at 91, Court of Appeals Resolution.

PNCC contends it had consistently raised the propriety of impleading the two Malaysian corporations, Asiavest-CDCP and Asiavest Holdings, and their participant liability, which are questions of fact.[33] According to PNCC, Asiavest-CDCP undertook to hold PNCC "free and harmless from all its obligations under the construction agreement[,]"[34] while Asiavest Holdings agreed in the guaranty agreement to share with PNCC the guarantee liability on a 51% (Asiavest Holdings) - 49% (PNCC) arrangement.[35] Since the repayment of financing facilities received by Asiavest-CDCP was jointly guaranteed by PNCC and Asiavest Holdings as admitted in the Complaint,[36] the lower courts "erred in ordering [PNCC] to reimburse the entire amount claimed by the respondent."[37] While the issue on its exact liability was not assigned as an error, PNCC argues it has amply discussed this issue in its pleadings.[38]

PNCC submits that the trial court could have invoked the principle of *forum non conveniens* and refused to take cognizance of the case considering the difficulty in acquiring jurisdiction over the two Malaysian corporations and in determining PNCC's exact liability.[39]

PNCC adds that it was deprived of its day in court when its Motion for another five-day extension to file an Answer was denied, and it was subsequently declared in default.[40] "[T]he transactions involved originated from and occurred in a foreign country[.]"[41] This constrained PNCC to request several extensions in order to collate the records in preparation for its defense.[42]

PNCC also raises prescription pursuant to Item 6 of the Malaysian Limitation Act of 1953 (Act 254) in that "actions founded on contract or to recover any sum . . . by virtue of any written law . . . shall not be brought after the expiration of six years from [accrual of cause of action]."[43] The Complaint alleged that Asiavest Merchant Bankers (M) Berhad paid the State of Pahang "in or about 1988[.]"[44] On April 14, 1982, April 2, 1983, and August 2, 1983, Asiavest Merchant Bankers (M) Berhad made demands against PNCC for payment on the guarantees in favor of the State of Pahang.[45] Since the Complaint was filed on April 13, 1994, six years had

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33 Id. at 56, Petition.
34 Id. at 57.
35 Id. at 57 and 62–63.
36 Id. at 127.
37 Id. at 58–59, Petition.
38 Id. at 59.
39 Id. at 64.
40 Id. at 66.
41 Id.
42 Id.
43 Id. at 70.
44 Id. at 71.
45 Id.

already elapsed from 1988.[46]

Lastly, PNCC submits that Asiavest Merchant Bankers (M) Berhad already winded up voluntarily based on the Certification[47] issued by the Director of the Insolvency and Liquidation Department for Official Receiver, Malaysia.[48] PNCC alleges that the liquidators declared in their Account of Receipts and Payments and Statement of the Position in the Winding Up dated August 3, 1995 and submitted on April 4, 2006 that "there [were] no more debts or claims existing for or against the respondent."[49] Thus, the case is now moot and academic with the termination of Asiavest Merchant Bankers (M) Berhad's corporate existence coupled with the declaration of no claims.[50]

Asiavest Merchant Bankers (M) Berhad counters that the Court of Appeals did not err in dismissing the appeal as PNCC's Brief[51] only raised two issues that are both questions of law: lack of jurisdiction over the subject matter, and deprivation of day in court with the denial of its Motion for Reconsideration *Ad Cautelam*.[52]

Asiavest Merchant Bankers (M) Berhad argues that the principle of *forum non conveniens* was addressed to the discretion of the trial court.[53] Moreover, this issue was not raised before the Court of Appeals. The issue on prescription based on Malaysian laws was also not raised. In any case, PNCC failed to plead and prove this foreign law provision.[54]

On its civil personality, Asiavest Merchant Bankers (M) Berhad denies it has ceased to exist, and this issue was also not raised before the lower court. In any case, this is of no moment as Asiavest Merchant Bankers (M) Berhad had already acquired a decision in its favor.[55]

According to Asiavest Merchant Bankers (M) Berhad, PNCC was not denied due process as it was granted a total of 60 days to file a responsive pleading before the trial court.[56] It submits that PNCC wasted almost six months before moving to lift the default order.[57] Moreover, "the filing and consideration of a party's motion for reconsideration accords [it] due

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46 Id.
47 Id. at 223.
48 Id. at 72, Petition.
49 Id. at 73.
50 Id.
51 Id. at 154–168.
52 Id. at 233–234, Asiavest Merchant's Comment, and 162, PNCC's Brief.
53 Id. at 236, Asiavest Merchant's Comment.
54 Id. at 237.
55 Id.
56 Id. at 238.
57 Id.

process."[58]

The Petition raises the following issues:

First, whether the Court of Appeals erred in dismissing the appeal on the ground that it raised pure questions of law;

Second, whether the Court of Appeals erred in not finding that the two Malaysian corporations, Asiavest Holdings (M) Sdn. Bhd. and Asiavest-CDCP Sdn. Bhd., should have been impleaded as parties;

Third, whether the trial court "erred in not refusing to assume jurisdiction on the ground of forum non-conveniens[;]"[59]

Fourth, whether petitioner Philippine National Construction Corporation was deprived of due process when the trial court declared it in default;

Fifth, whether respondent Asiavest Merchant Bankers (M) Berhad's claim already prescribed under Malaysian laws; and

Lastly, whether this case "should be dismissed considering that respondent [Asiavest Merchant Bankers (M) Berhad] is no longer an existing corporation."[60]

I.

On the procedural issue, petitioner submits that the Court of Appeals erred in finding that only questions of law were raised.[61]

Section 9(3) of Batas Pambansa Blg. 129 enumerates the appellate jurisdiction of the Court of Appeals. This section includes the proviso: "except those falling within the appellate jurisdiction of the Supreme Court[.]" This court's appellate jurisdiction is found in Article VIII, Section 5(2)(e) of the Constitution:

> SECTION 5. The Supreme Court shall have the following powers:
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> . . . .

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58 Id.
59 Id. at 53.
60 Id. at 53–54.
61 Id. at 56.

> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
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> . . . .
>
> (e) All cases in which only an error or question of law is involved.

A question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts[,]"[62] while a question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts[.]"[63] Questions of fact require the examination of the probative value of the parties' evidence.[64]

This Petition originated from a default judgment against petitioner. Petitioner was not able to present evidence before the trial court. Necessarily, the errors raised from the trial court involved only questions of law.

II.

Petitioner insists that the issue on "the propriety of impleading the two Malaysian corporations as well as their participant liability . . . involves a question of fact."[65]

According to petitioner, Asiavest-CDCP undertook to hold petitioner free and harmless from all its obligations under the construction agreement, while Asiavest Holdings agreed in the guaranty agreement to share with PNCC the guarantee liability on a 51% (Asiavest Holdings) - 49% (PNCC) arrangement.[66] Petitioner submits that "the propriety of impleading the two Malaysian corporations[,] [and] their participant liability[,] [are] question[s] of fact."[67]

Petitioner adds that it has consistently mentioned its argument on the two Malaysian companies in its pleadings before the lower courts.[68] Specifically, these pleadings were the Motion to Lift Order of Default[69] with

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62 *Cheesman v. Intermediate Appellate Court*, 271 Phil. 89, 97 (1991) [Per J. Narvasa, First Division], *citing, among others, Ramos, et al. v. Pepsi-Cola Bottling Co. of the P.I., et al.*, 125 Phil. 701, 705 (1967) [Per J. J. P. Bengzon, En Banc].

63 Id.

64 *Heirs of Jose Marcial K. Ochoa, et al. v. G & S Transport Corp.*, 660 Phil. 387, 407 (2011) [Per J. Del Castillo, First Division].

65 *Rollo*, p. 56, Petition.

66 Id. at 57 and 62–63.

67 Id. at 56.

68 Id.

69 Id. at 135.

Affidavit of Merit[70] dated December 9, 1994, Motion for Reconsideration *Ad Cautelam*,[71] Brief for PNCC,[72] and Comment[73] on Asiavest Merchant Bankers (M) Berhad's Motion to Dismiss Appeal.

Respondent counters that this was not assigned as an error before the Court of Appeals.[74]

Rule 44, Section 13 of the Rules of Court enumerates the required contents of an appellant's brief. In paragraph (e), the appellant's brief must include "[a] clear and concise statement of the issues of fact or law to be submitted to the court for its judgment[.]"

In its appellant's Brief before the Court of Appeals, petitioner only assigned the following two errors:

> I. THE TRIAL COURT GRAVELY ERRED IN RENDERING THE QUESTIONED DECISION AS IT HAD NO JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.
>
> II. THE TRIAL COURT GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION *AD CAUTELAM* FILED BY DEFENDANT-APPELLANT AS IT DEPRIVED THE LATTER OF HIS DAY IN COURT.[75]

The argument on the two Malaysian corporations was raised by petitioner for the first time in its Motion to Lift Order of Default with Affidavit of Merit dated December 9, 1994:

> 7. If the Defendant be given the chance to present its evidence, it will prove the following:
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> . . . .
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> b. Per subcontract agreement entered into by and between defendant and a third party, Asiavest CDCP Sdn. Bhd., the liability of defendant (CDCP) in the event of default regarding the performance bonds and guarantees alleged in the complaint which were posted in the name of the defendant shall be borne by Asiavest CDCP Sdn. Bhd. Hence, the need for impleading Asiavest CDCP Sdn. Bhd.
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> c. Assuming that Defendant is liable to the plaintiff,

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70 Id. at 139–140.
71 Id. at 145–146.
72 Id. at 166.
73 Id. at 180.
74 Id. at 233–234.
75 Id. at 162.

> its liability is joint with Asiavest Holdings Company and only to the extent of 49% of the total amount due which is its proportionate share in the joint venture project entered into by them.[76]

On January 30, 1995, the trial court denied petitioner's Motion to Lift Order of Default.[77] There is no showing whether petitioner questioned this trial court Order as petitioner opted to file the Motion for Reconsideration *Ad Cautelam* dated December 21, 1994, praying, among others, that it "be considered as Motion for Reconsideration of the Decision dated November 29, 1994 in the event that the Motion to Lift Order of Default is denied[.]"[78] On August 11, 1995, the trial court also denied this later Motion,[79] and there is no showing whether petitioner questioned this trial court Order.

In any event, this court has held that "[i]t is essential, to boot, that that party demonstrate that he has a meritorious cause of action or defense; otherwise, nothing would be gained by setting the default order aside."[80]

Petitioner's bare allegations fail to convince. The bases of its argument to implead and hold the two Malaysian corporations liable are the subcontract agreement and guaranty agreement. Copies of these agreements were not submitted with any of its pleadings. Thus, the lower courts could not have determined for certain whether the two Malaysian corporations did enter into the alleged agreements, the subject of the agreements, or the extent of their liabilities, if any.

Petitioner claims that respondent made admissions in its Complaint in relation to the two Malaysian companies.[81] Specifically, paragraphs 3 and 4 of the Complaint read:

> 3. While in Malaysia, defendant [PNCC] jointly with Asiavest Holdings (M) Sdn[.] Bhd[.], caused the incorporation of an associate company known as Asiavest-CDCP Sdn. Bhd., with which it undertook to construct rural roads and bridges under contracts with the State of Pahang, Malaysia.
>
> 4. In connection with defendant's construction contracts with the State of Pahang, it obtained various guarantees and bonds from plaintiff to guarantee to the State of Pahang and other parties the due performance of defendant's obligations. Defendant bound itself to indemnify plaintiff for *liability or payment on these bonds and guarantees*.

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76 Id. at 134–135.
77 Id. at 83, Court of Appeals Decision.
78 Id. at 147.
79 Id. at 83, Court of Appeals Decision.
80 *Circle Financial Corporation v. Court of Appeals*, 273 Phil. 379, 387 (1991) [Per J. Narvasa, First Division], *citing Carandang v. Hon. Cabatuando*, 153 Phil. 138, 146–147 (1973) [Per J. Zaldivar, First Division].
81 *Rollo*, pp. 61–62, Petition.

> Defendant also directly guaranteed to plaintiff, jointly with Asiavest Holdings (M) Sdn. Bhd., the repayment of certain *financing facilities* received from plaintiff by Asiavest-CDCP Sdn. Bhd.[82] (Emphasis supplied)

However, there was no factual finding on the connection between the "financing facilities" received by Asiavest-CDCP from respondent, and the performance bond transactions respondent now claims from. This was argued by respondent in its Brief before the Court of Appeals as follows:

> The suit below was not filed to collect repayment of those financing facilities, whether against the entity that received the facilities or its guarantors. It was filed to enforce PNCC's obligation to indemnify plaintiff Asiavest on its performance bond payments to project owners that PNCC had abandoned. The Asiavest performance bonds were transactions different from the "financing facilities" PNCC refers to. The Asiavest indemnification claims, and the bonds and other contracts on which they were based, were clearly identified in the complaint as follows: . . . .[83]

Also, since petitioner mentioned its argument on the two Malaysian corporations in its Motion to Lift Order of Default[84] and Motion for Reconsideration *Ad Cautelam*[85] filed before the trial court, these were already considered by the lower court when it ruled on both Motions.

Assuming that the subcontract agreement indeed provides that Asiavest-CDCP would answer any liability upon default on the performance bond, petitioner may later claim reimbursement from this Malaysian corporation the amount it was made to pay by judgment in this suit.

III.

Petitioner raised only two errors before the Court of Appeals.[86] First, the trial court had no jurisdiction over the subject matter of the case, and it would be more convenient for both parties if the case was heard in the forum where the contracts were executed and performed.[87] Second, petitioner was deprived of its day in court.[88]

Petitioner raised these contentions before the trial court in its Motion to Lift Order of Default with Affidavit of Merit dated December 9, 1994[89]

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82 Id. at 127.
83 Id. at 219.
84 Id. at 135.
85 Id. at 145–146.
86 Id. at 162, PNCC's Brief.
87 Id. at 163.
88 Id. at 165.
89 Id. at 133 and 139.

and Motion for Reconsideration *Ad Cautelam* dated December 21, 1994.[90] These were the same two errors it elevated to the Court of Appeals in its Brief.[91]

On the jurisdiction issue, jurisdiction over the subject matter is conferred by law.[92] Batas Pambansa Blg. 129, otherwise known as The Judiciary Reorganization Act of 1980, is one such law that provides for the jurisdiction of our courts. A plain reading of Section 19[93] shows that civil actions for payment of sum of money are within the exclusive original jurisdiction of trial courts:

> SEC. 19. *Jurisdiction in civil cases.*–Regional Trial Courts shall exercise exclusive original jurisdiction:
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> . . . .
>
> (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (P100,000) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two hundred thousand pesos (P200,000).

These jurisdictional amounts were adjusted to ₱300,000.00, and ₱400,000.00 in the case of Metro Manila.[94] Thus, the Regional Trial Court of Pasig has jurisdiction over respondent's complaint for recovery of the sum of Malaysian Ringgit (MYR) 3,915,053.54.

Petitioner argues that "[i]n view of the compelling necessity to implead the two foreign corporations, the Trial Court should have refused to assume jurisdiction over the case on the ground of forum non-conveniens, even if the Court might have acquired jurisdiction over the subject matter and over the person of the petitioner."[95] We find that the trial court correctly assumed jurisdiction over the Complaint.

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90 Id. at 144–145.

91 Id. at 163–165.

92 *Magno v. People, et al.*, 662 Phil. 726, 735 (2011) [Per J. Brion, Third Division], *citing Machado, et al. v. Gatdula, et al.*, 626 Phil. 457, 468 (2010) [Per J. Brion, Second Division], *citing in turn Spouses Vargas v. Spouses Caminas, et al.*, 577 Phil. 185, 197–198 (2008) [Per J. Carpio, First Division], *Metromedia Times Corporation v. Pastorin*, 503 Phil. 288, 303 (2005) [Per J. Tinga, Second Division], and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242–243 (1986) [Per J. Narvasa, First Division].

93 As amended by Rep. Act No. 7691 (1994), sec. 1.

94 Rep. Act No. 7691 (1994), sec. 5 provides:
SEC. 5. After five (5) years from the effectivity of this Act, the jurisdictional amounts mentioned in Sec. 19(3), (4), and (8); and Sec. 33(1) of Batas Pambansa Blg. 129 as amended by this Act, shall be adjusted to Two hundred thousand pesos (P200,000.00). Five (5) years thereafter, such jurisdictional amounts shall be adjusted further to Three hundred thousand pesos (P300,000.00): Provided, however, That in the case of Metro Manila, the abovementioned jurisdictional amounts shall be adjusted after five (5) years from the effectivity of this Act to Four hundred thousand pesos (P400,000.00).

95 *Rollo*, p. 43, Petition.

"*Forum non conveniens* literally translates to 'the forum is inconvenient.'"[96] This doctrine applies in conflicts of law cases. It gives courts the choice of not assuming jurisdiction when it appears that it is not the most convenient forum and the parties may seek redress in another one.[97] It is a device "designed to frustrate illicit means for securing advantages and vexing litigants that would otherwise be possible if the venue of litigation (or dispute resolution) were left entirely to the whim of either party."[98]

Puyat v. Zabarte[99] enumerated practical reasons when courts may refuse to entertain a case even though the exercise of jurisdiction is authorized by law:

> 1) The belief that the matter can be better tried and decided elsewhere, either because the main aspects of the case transpired in a foreign jurisdiction or the material witnesses have their residence there;
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> 2) The belief that the non-resident plaintiff sought the forum[,] a practice known as *forum shopping*[,] merely to secure procedural advantages or to convey or harass the defendant;
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> 3) The unwillingness to extend local judicial facilities to non-residents or aliens when the docket may already be overcrowded;
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> 4) The inadequacy of the local judicial machinery for effectuating the right sought to be maintained; and
>
> 5) The difficulty of ascertaining foreign law.[100] (Emphasis in the original)

On the other hand, courts may choose to assume jurisdiction subject to the following requisites: "(1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine Court has or is likely to have power to enforce its decision."[101]

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96 *Saudi Arabian Airlines v. Rebesencio*, G.R. No. 198587, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf> 12 [Per J. Leonen, Second Division], *citing Pioneer Concrete Philippines, Inc. v. Todaro*, 551 Phil. 589, 599 (2007) [Per J. Austria-Martinez, Third Division].

97 *Pioneer Concrete Philippines, Inc. v. Todaro*, 551 Phil. 589, 599–600 (2007) [Per J. Austria-Martinez, Third Division], *citing Bank of America NT&SA v. Court of Appeals*, 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].

98 *Saudi Arabian Airlines v. Rebesencio*, G.R. No. 198587, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf> 9 [Per J. Leonen, Second Division].

99 405 Phil. 413 (2001) [Per J. Panganiban, Third Division].

100 Id. at 432, *citing* Jovito R. Salonga, PRIVATE INTERNATIONAL LAW 47 (1979).

101 *Bank of America NT&SA v. Court of Appeals*, 448 Phil. 181, 196 (2003) [Per J. Austria-Martinez, Second Division], *citing Communication Materials and Design, Inc. v. Court of Appeals*, 329 Phil. 487, 510–511 (1996) [Per J. Torres, Jr., Second Division].

The determination of whether to entertain a case is addressed to the sound discretion of the court, which must carefully consider the facts of the particular case.[102] A mere invocation of the doctrine of *forum non conveniens* or an easy averment that foreign elements exist cannot operate to automatically divest a court of its jurisdiction. It is crucial for courts to determine first if facts were established such that special circumstances exist to warrant its desistance from assuming jurisdiction.[103]

We discussed in *Saudi Arabian Airlines v. Rebesencio*[104] how the doctrine grounds on "comity and judicial efficiency"[105] and how it involves a recognition that other tribunals may be "better positioned to enforce judgments[:]"[106]

> *Forum non conveniens* is soundly applied not only to address parallel litigation and undermine a litigant's capacity to vex and secure undue advantages by engaging in forum shopping on an international scale. It is also grounded on principles of comity and judicial efficiency.
>
> Consistent with the principle of comity, a tribunal's desistance in exercising jurisdiction on account of *forum non conveniens* is a deferential gesture to the tribunals of another sovereign. It is a measure that prevents the former's having to interfere in affairs which are better and more competently addressed by the latter. Further, ***forum non conveniens entails a recognition*** not only that tribunals elsewhere are *better suited to rule on and resolve* a controversy, but also, ***that these tribunals are better positioned to enforce judgments and, ultimately, to dispense justice***. *Forum non conveniens* prevents the embarrassment of an awkward situation where a tribunal is rendered incompetent in the face of the greater capability — both analytical and practical — of a tribunal in another jurisdiction.[107] (Emphasis supplied)

Saudi Arabian Airlines also discussed the need to raise *forum non conveniens* at the earliest possible time, and to show that a prior suit has been brought in another jurisdiction:

> On the matter of pleading *forum non conveniens,* we state the rule, thus: *Forum non conveniens must not only be clearly pleaded as a ground for dismissal; it must be pleaded as such at the earliest possible opportunity. Otherwise, it shall be deemed waived.*

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102 Id., *citing Hongkong and Shanghai Banking Corporation v. Sherman*, 257 Phil. 340, 347 (1989) [Per J. Medialdea, First Division].

103 *Philsec Investment Corporation v. Court of Appeals*, 340 Phil. 232, 242 (1997) [Per J. Mendoza, Second Division], *citing K.K. Shell Sekiyu Osaka Hatsubaisho v. Court of Appeals*, 266 Phil. 156, 165 (1990) [Per J. Cortes, Third Division] and *Hongkong and Shanghai Banking Corporation v. Sherman*, 257 Phil. 340, 347 (1989) [Per J. Medialdea, First Division].

104 G.R. No. 198587, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf> [Per J. Leonen, Second Division].

105 Id. at 13.

106 Id.

107 Id.

. . . .

> Consistent with *forum non conveniens* as fundamentally a factual matter, it is imperative that it proceed from a *factually established basis*. It would be improper to dismiss an action pursuant to *forum non conveniens* based merely on a perceived, likely, or hypothetical multiplicity of fora. Thus, *a defendant must also plead and show that a prior suit has, in fact, been brought in another jurisdiction.*
>
> . . . .
>
> *We deem it more appropriate and in the greater interest of prudence that a defendant not only allege supposed dangerous tendencies in litigating in this jurisdiction; the defendant must also show that such danger is real and present in that litigation or dispute resolution has commenced in another jurisdiction* ***and*** *that a foreign tribunal has chosen to exercise jurisdiction.*[108] (Emphasis in the original)

The trial court assumed jurisdiction and explained in its Order dated August 11, 1995 that "[o]n the contrary[,] to try the case in the Philippines, it is believed, would be more convenient to defendant corporation as its principal office is located in the Philippines, its records will be more accessible, witnesses would be readily available and entail less expenses in terms of legal services."[109] We agree.

Petitioner is a domestic corporation with its main office in the Philippines. It is safe to assume that all of its pertinent documents in relation to its business would be available in its main office. Most of petitioner's officers and employees who were involved in the construction contract in Malaysia could most likely also be found in the Philippines. Thus, it is unexpected that a Philippine corporation would rather engage this civil suit before Malaysian courts. Our courts would be "better positioned to enforce [the] judgment and, ultimately, to dispense"[110] in this case against petitioner.

Also, petitioner failed to plead and show real and present danger that another jurisdiction commenced litigation and the foreign tribunal chose to exercise jurisdiction.[111]

IV.

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108 Id. at 15.

109 *Rollo*, p. 211, Asiavest Merchant's Brief, *quoting* the trial court Order dated August 11, 1995, Annex B of appellant's Brief, pp. 3–4.

110 *Saudi Arabian Airlines v. Rebesencio*, G.R. No. 198587, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf> 13 [Per J. Leonen, Second Division].

111 *See Saudi Arabian Airlines v. Rebesencio*, G.R. No. 198587, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf> 15 [Per J. Leonen, Second Division].

The other error petitioner raised before the Court of Appeals involved due process. Petitioner argues it was denied its day in court. We find no denial of petitioner's right to due process by the lower court.

This court has consistently held that the essence of due process is the opportunity to be heard. In other words, there is no denial of the right to due process if there was an opportunity for the parties to defend their interests in due course.[112]

Petitioner had been able to file a Motion for Reconsideration *Ad Cautelam* before the trial court, and later elevated its case before the Court of Appeals. There is no denial of due process if a party was given an opportunity to be heard in a Motion for Reconsideration.[113]

Petitioner also did not take advantage of the opportunities it was given to file a responsive pleading. It allowed the periods it was given for the filing of pleadings to lapse.

The trial court granted petitioner's three Motions for extension of time to file its Answer,[114] yet petitioner still failed to file its Answer on the day it was due. In its Motion to Lift Order of Default, petitioner alleged that "[t]he Lawyer previously handling this case, Atty. Noel de Leon, had already transferred to another government office and that he failed to file an Answer in this case due to excusable negligence brought about by the failure of the Defendant to furnish and provide him with all the pertinent documents necessary in the preparation of its defense."[115] Excusable negligence means negligence that "ordinary diligence and prudence could not have guarded against."[116] The Motion did not state the pertinent documents it needed from respondent that prevented petitioner from filing a timely Answer.

Petitioner never attempted to file its Answer, even belatedly. In its Petition before this court, petitioner prays that it still be allowed to file an Answer.[117] Petitioner argued below that the trial court had no jurisdiction over the subject matter, yet it did not file a Motion to Dismiss on this ground

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112 *See Pasiona, Jr. v. Court of Appeals, et al.*, 581 Phil. 124, 135–136 (2008) [Per J. Austria-Martinez, Third Division], *Spouses Dela Cruz v. Spouses Andres*, 550 Phil. 679, 684 (2007) [Per J. Quisumbing, Second Division], and *Arroyo v. Rosal Homeowners Association, Inc.*, G.R. No. 175155, October 22, 2012, 684 SCRA 297, 303–304 [Per J. Mendoza, Third Division].

113 *National Association of Electricity Consumers for Reforms, Inc., et al. v. Energy Regulatory Commission (ERC) et al.*, 669 Phil. 93, 105 (2011) [Per J. Sereno (now C.J.), Second Division], *citing Samalio v. Court of Appeals*, 494 Phil. 456, 466 (2005) [Per J. Corona, En Banc].

114 *Rollo*, p. 82, Court of Appeals Decision.

115 Id. at 133.

116 *Magtoto v. Court of Appeals*, G.R. No. 175792, November 21, 2012, 686 SCRA 88, 101 [Per J. Del Castillo, Second Division], *citing Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 503 (2001) [Per J. Bellosillo, Second Division].

117 *Rollo*, p. 74.

pursuant to Rule 16, Section 1(b)[118] of the Rules of Court.

Also, the trial court ordered petitioner in default on July 27, 1994 and rendered judgment on November 29, 1994. It was only after five months or on December 12, 1994 that petitioner filed a Motion to Lift Order of Default.

This Motion included a two-page Affidavit of Merit alleging that the trial court has no jurisdiction over the subject matter; its subcontract agreement with Asiavest-CDCP provides that the latter will be the one liable in case of default in the performance bond; and it is jointly liable with Asiavest Holdings so its liability, if any, is only to the extent of 49%.[119] The Affidavit did not state the evidence it plans to present in the event its Motion is granted, or attach documents in support of its claims.

V.

Petitioner contends that under Item 6 of the Malaysian Limitation Act of 1953 (Act 254), "actions founded on contract or to recover any sum . . . by virtue of any written law . . . shall not be brought after the expiration of six years from [accrual of] cause of action[.]"[120] It contends that the Complaint was filed on April 13, 1994. Thus, six years already elapsed from 1988.[121]

Prescription is one of the grounds for a motion to dismiss,[122] but petitioner did not avail itself of this remedy. Prescription was also not raised as an error before the Court of Appeals. Nevertheless, we have ruled that prescription may be raised for the first time before this court.[123]

Petitioner invokes Malaysian laws on prescription, but it was not able to prove these foreign law provisions. Our courts follow the doctrine of processual presumption:

> It is hornbook principle, however, that the party invoking the application of a foreign law has the burden of proving the law, under the doctrine of *processual presumption* which, in this case, petitioners failed

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118 RULES OF COURT, Rule 16, sec. 1(b) provides:
SECTION 1. Grounds.— . . .
. . . .
(b) That the court has no jurisdiction over the subject matter of the claim[.]

119 *Rollo*, pp. 139–140, Motion to Lift Order of Default with Affidavit of Merit.

120 Id. at 70, Petition.

121 Id. at 71.

122 RULES OF COURT, Rule 16, sec. 1(f) provides:
SECTION 1. Grounds.— . . .
. . . .
(f) That the cause of action is barred by a prior judgment or by the statute of limitations[.]

123 *Manuel Uy & Sons, Inc. v. Valbueco, Incorporated*, G.R. No. 179594, September 11, 2013, 705 SCRA 537, 558 [Per J. Peralta, Third Division].

to discharge. The Court's ruling in *EDI-Staffbuilders Int'l., v. NLRC* illuminates:

> In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (e.g. specific causes for termination, termination procedures, etc.). Being the law intended by the parties (*lex loci intentiones*) to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.
>
> In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law.
>
> Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play. ***Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours***. Thus, we apply Philippine labor laws in determining the issues presented before us.
>
> ***The Philippines does not take judicial notice of foreign laws, hence, they must not only be alleged; they must be proven***. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court[.][124] (Emphasis supplied)

Our provisions on prescription are found in the Civil Code. Specifically, Article 1144(1) of the Civil Code states that actions upon a written contract must be brought within 10 years from the accrual of the right, and not six years.

Even assuming that the six-year prescription applies, petitioner cannot conclude prescription from the allegations in the Complaint. The Complaint filed on April 12, 1994 states that Asiavest Merchant Bankers (M) Berhad reached settlement with the State of Pahang "[i]n or about 1988[.]"[125] If Asiavest Merchant Bankers (M) Berhad paid on April 13, 1988 onward, six years would not yet elapse since the Complaint was filed on April 12, 1994.

VI.

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[124] *ATCI Overseas Corp., et al. v. Echin*, 647 Phil. 43, 49–50 (2010) [Per J. Carpio Morales, Third Division], *quoting EDI-Staffbuilders International, Inc. v. National Labor Relations Commission*, 563 Phil. 1, 22 (2007) [Per J. Velasco, Jr., Second Division].

[125] *Rollo*, p. 130.

Lastly, petitioner submits that respondent voluntarily winded up and is no longer an existing corporation based on a Certification issued by the Director of Insolvency and Liquidation Department for Official Receiver, Malaysia.[126] Petitioner adds that the appointed liquidators declared that there were no more debts or claims existing for or against respondent in their Account of Receipts and Payments and Statement of the Position in the Winding Up dated August 3, 1995 and submitted on April 4, 2006.

Respondent denies this allegation. It argues that this was not raised before the lower courts and, in any case, respondent already acquired a decision in its favor.[127]

The Petition did not attach a copy of the alleged liquidators' declaration that respondent had no more existing claims. Based on petitioner's allegation, this declaration was dated August 3, 1995, an earlier date than petitioner's Notice of Appeal[128] to the Court of Appeals dated August 31, 1995. However, petitioner only mentioned this declaration in its Petition before this court.

It is consistent with fair play that new issues cannot be raised for the first time before this court if these could have been raised earlier before the lower courts.[129] Justice and due process demand that this rule be followed.

In any event, respondent is a Malaysian corporation. Petitioner has not proven the relevant foreign law provisions to support its allegations that respondent has ceased to exist and that all its claims are consequently extinguished.

WHEREFORE, the Petition is **DENIED** for lack of merit.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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[126] Id. at 72, Petition, and 223, Certification issued by the Director of Insolvency and Liquidation Department for Official Receiver, Malaysia.

[127] Id. at 237, Asiavest Merchant's Comment.

[128] Id. at 152–153.

[129] *See Reburiano v. Court of Appeals*, 361 Phil. 294, 304 (1999) [Per J. Mendoza, Second Division].

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice