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FIRST DIVISION

[G.R. No. 128803. September 25, 1998]

ASIAVEST LIMITED, *petitioner, vs.* **THE COURT OF APPEALS AND ANTONIO HERAS,** *respondents.*

SYNOPSIS

On December 3, 1987, petitioner sued private respondent Heras in Hong Kong for a sum of money based on the basis of his personal guarantee of the obligations of Compania Hermanos de Navegacion. S.A. Heras, however, has left Hong Kong in October 1984. The Hong Kong court authorized service of summons on Heras outside of its jurisdiction serving summons in the Philippines at Heras' residence through a security guard in Quezon City and through a lawyer in his office in Quezon City. The foreign court rendered judgment favorable to petitioner. Petitioner aimed to enforce the foreign judgment by suing in the Philippines. Heras moved to dismiss but was denied. At the pre-trial conference, both stipulated, among others, that the residence of Heras is in New Manila, Quezon City, Philippines. Petitioner presented only documentary evidence to show rendition, existence and authentication of such judgment by the proper officials concerned. Heras claimed that the foreign court did not acquire jurisdiction over his person when it resorted to substituted service. He presented Lousich, an expert on Hong Kong law, who testified that under the Hong Kong law the substituted service in the Philippines would be valid provided it was done in accordance with Philippine laws. The trial court rendered judgment in favor of petitioner. On appeal, the Court of Appeals reversed the decision of the lower court and dismissed petitioner's complaint without prejudice. It ruled that summons, according to Hong Kong laws, should have been personally served on Heras in Hong Kong pursuant to Philippine law. Aggrieved, petitioner resorted to this recourse.

Matters of remedy and procedure are governed by the *lex fori* or the law of the forum. Since Hong Kong laws provides that service of summons is valid if done according to Philippine law, Heras, being a non-resident of Hong Kong, should have been personally served in Hong Kong. The extraterritorial service in the Philippines was invalid and did not confer on

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the Hong Kong court jurisdiction over his person. It follows that the Hong Kong court judgment cannot be given force and effect here in the Philippines for having been rendered without jurisdiction. Section 17, Rule 14 of the Rules of Court providing for extraterritorial service will not apply because the suit against him was *in personam*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; VALIDITY OF FOREIGN JUDGMENTS. — Under paragraph (b) of Section 50, Rule 39 of the Rules of Court, which was the governing law at the time this case was decided by the trial court and respondent Court of Appeals, a foreign judgment against a person rendered by a court having jurisdiction to pronounce the judgment is presumptive evidence of a right as between the parties and their successors in interest by the subsequent title. However, the judgment may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Also, Section 3(n) of Rule 131 of the New Rules of Evidence provides that in the absence of proof to the contrary, a court, or judge acting as such, whether in the Philippines or elsewhere, is presumed to have acted in the lawful exercise of jurisdiction. Hence, once the authenticity of the foreign judgment is proved, the burden to repel it on grounds provided for in paragraph (b) of Section 50, Rule 39 of the Rules of Court is on the party challenging the foreign judgment.

2. ID.; ID.; ID.; ID.; CASE AT BAR. — At the pre-trial conference, HERAS admitted the existence of the Hong Kong judgment. On the other hand, ASIAVEST presented evidence to prove rendition, existence, and authentication of the judgment by the proper officials. The judgment is thus presumed to be valid and binding in the country from which it comes, until the contrary is shown. Consequently, the first ground relied upon by ASIAVEST has merit. The presumption of validity accorded foreign judgment would be rendered meaningless were the party seeking to enforce it be required to first establish its validity.

3. ID.; ACTIONS; MATTERS OF REMEDY AND PROCEDURE, GOVERNED BY THE LAW OF THE FORUM. — Matters of remedy and procedure such as those relating to the service of process upon the defendant are governed by the *lex fori* or the law of the forum.

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4. ID.; EVIDENCE; RECORD OF PUBLIC DOCUMENTS OF A SOVEREIGN AUTHORITY, TRIBUNAL, OFFICIAL BODY OR PUBLIC OFFICER, HOW PROVED. — Under Sections 24 and 25, Rule 132 of the New Rules of Evidence, the record of public documents of a sovereign authority, tribunal, official body, or public officer may be proved by (1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof, which must be accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. The certificate may be issued by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent, or any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer. Nevertheless, the testimony of an expert witness may be allowed to prove a foreign law.

5. ID.; ID.; ID.; HONGKONG LAW ON SERVICE OF SUMMONS PRESUMED SIMILAR TO PHILIPPINE LAW. — In the absence of proof of the Hong Kong law on service of summons, the presumption of identity or similarity or the so-called processual presumption shall come into play. It will thus be presumed that the Hong Kong law on the matter is similar to the Philippine law.

6. ID.; ACTIONS; ACTION *IN PERSONAM, IN REM* AND *QUASI IN REM*; DISTINGUISHED. — An action *in personam* is an action against a person on the basis of his personal liability. An action *in rem* is an action against the thing itself instead of against the person. An action *quasi in rem* is one wherein an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property.

7. ID.; ID.; ACTION *IN PERSONAM*; JURISDICTION OVER THE PERSON OF THE DEFENDANT, NECESSARY. — In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a *resident* defendant who does not voluntarily appear in court can be acquired by personal

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service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of said Rule. If he is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient. However, in an action *in personam* wherein the defendant is a *non-resident* who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person. This method of service is possible if such defendant is physically present in the country. If he is not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. An exception was laid down in *Gemperle v. Schenker* wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representative and attorney-in-fact in a prior civil case filed by him; moreover, the second case was a mere offshoot of the first case.

8. ID.; ID.; ACTION *IN REM;* JURISDICTION OVER THE PERSON OF DEFENDANT, NOT A PREREQUISITE; SUMMONS MUST BE SERVED UPON DEFENDANT TO SATISFY DUE PROCESS REQUIREMENT. — In a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the *res*. Nonetheless, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements. Thus, where the defendant is a non-resident who is not found in the Philippines and (1) the action affects the personal status of the plaintiff; (2) the action relates to, or the subject matter of which is property in the Philippines in which the defendant has or claims a lien or interest; (3) the action seeks the exclusion of the defendant from any interest in the property located in the Philippines; or (4) the property of the defendant has been attached in the Philippines — service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.

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9. ID.; ID.; ENFORCEMENT OF FOREIGN JUDGMENT; SUMMONS MUST BE SERVED ON DEFENDANT IN FOREIGN LAND; CASE AT BAR. — In the pre-trial conference, the parties came up with stipulations of facts, among which was that "the residence of defendant, Antonio Heras, is New Manila, Quezon City." We note that the residence of HERAS insofar as the action for the enforcement of the Hong Kong court judgment is concerned, was never in issue. He never challenged the service of summons on him through a security guard in his Quezon City residence and through a lawyer in his office in that city. In his Motion to Dismiss, he did not question the jurisdiction of the Philippine court over his person on the ground of invalid service of summons. What was in issue was his residence as far as the Hong Kong suit was concerned. We therefore conclude that the stipulated fact that HERAS "is a resident of New Manila, Quezon city, Philippines" refers to his residence at the time jurisdiction over his person was being sought by the Hong Kong court. With that stipulation of fact, ASIAVEST cannot now claim that HERAS was a resident of Hong Kong at the time. Accordingly, since HERAS was not a resident of Hong Kong and the action against him was, indisputably, one *in personam*, summons should have been personally served on him in Hong Kong. The extraterritorial service in the Philippines was therefore invalid and did not confer on the Hong Kong court jurisdiction over his person. It follows that the Hong Kong court judgment cannot be given force and effect here in the Philippines for having been rendered without jurisdiction. Even assuming that HERAS was formerly as resident of Hong Kong, he was no longer so in November 1984 when the extraterritorial service of summons was attempted to be made on him. As declared by his secretary, which statement was not disputed by ASIAVEST, HERAS left Hong Kong in October 1984 "for good." His absence in Hong Kong must have been the reason why summons was not served on him therein; thus, ASIAVEST was constrained to apply for leave to effect service in the Philippines, and upon obtaining a favorable action on the matter, it commissioned the Sycip Salazar Hernandez & Gatmaitan law firm to serve the summons here in the Philippines. HERAS, who was also an absentee, should have been served with summons in the same manner as a non-resident not found in Hong Kong. Section 17, Rule 14 of the Rules of Court providing for extraterritorial service will not apply because the suit against

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him was *in personam*. Neither can we apply Section 18, which allows extraterritorial service on a resident defendant who is temporarily absent from the country, because even if HERAS be considered as a resident of Hong Kong, the undisputed fact remains that he left Hong Kong not only "temporarily" but "for good."

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Ramon Quisumbing, Jr. Law Office for private respondent.

D E C I S I O N

DAVIDE, JR., *J.*:

In issue is the enforceability in the Philippines of a foreign judgment. The antecedents are summarized in the 24 August 1990 Decision[1] of Branch 107 of the Regional Trial Court of Quezon City in Civil Case No. Q-52452; thus:

The plaintiff Asiavest Limited filed a complaint on December 3, 1987 against the defendant Antonio Heras praying that said defendant be ordered to pay to the plaintiff the amounts awarded by the Hong Kong Court Judgment dated December 28, 1984 and amended on April 13, 1987, to wit:

1) US$1,810,265.40 or its equivalent in Hong Kong currency at the time of payment with legal interest from December 28, 1984 until fully paid;

2) interest on the sum of US$1,500.00 at 9.875% per annum from October 31, 1984 to December 28, 1984; and

3) HK$905.00 at fixed cost in the action; and

4) at least $80,000.00 representing attorney's fees, litigation expenses and cost, with interest thereon from the date of the judgment until fully paid.

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[1] Annex "B" of Petition; *Rollo*, 66-74. Per Judge (now Associate Justice of the Court of Appeals) Delilah Vidallon Magtolis.

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On March 3, 1988, the defendant filed a Motion to Dismiss. However, before the court could resolve the said motion, a fire which partially razed the Quezon City Hall Building on June 11, 1988 totally destroyed the office of this Court, together with all its records, equipment and properties. On July 26, 1988, the plaintiff, through counsel filed a Motion for Reconstitution of Case Records. The Court, after allowing the defendant to react thereto, granted the said Motion and admitted the annexes attached thereto as the reconstituted records of this case per Order dated September 6, 1988. Thereafter, the Motion to Dismiss, the resolution of which had been deferred, was denied by the Court in its Order of October 4, 1988.

On October 19, 1988, defendant filed his Answer. The case was then set for pre-trial conference. At the conference, the parties could not arrive at any settlement. However, they agreed on the following stipulations of facts:

1. The defendant admits the existence of the judgment dated December 28, 1984 as well as its amendment dated April 13, 1987, but not necessarily the authenticity or validity thereof;

2. The plaintiff is not doing business and is not licensed to do business in the Philippines;

3. The residence of defendant, Antonio Heras, is New Manila, Quezon City.

The only issue for this Court to determine is, whether or not the judgment of the Hong Kong Court has been repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact, such as to overcome the presumption established in Section 50, Rule 39 of the Rules of Court in favor of foreign judgments.

In view of the admission by the defendant of the existence of the aforementioned judgment (Pls. See Stipulations of Facts in the Order dated January 5, 1989 as amended by the Order of January 18, 1989), as well as the legal presumption in favor of the plaintiff as provided for in paragraph (b), Sec. 50, (*Ibid.*), the plaintiff presented only documentary evidence to show rendition, existence, and authentication of such judgment by the proper officials concerned (Pls. See Exhibits "A" thru "B", with their submarkings). In addition, the plaintiff presented testimonial and documentary evidence to show its entitlement to attorney's fees and other expenses of litigation...

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On the other hand, the defendant presented two witnesses, namely, Fortunata dela Vega and Russel Warren Lousich.

The gist of Ms. dela Vega's testimony is to the effect that no writ of summons or copy of a statement of claim of Asiavest Limited was ever served in the office of the Navegante Shipping Agency Limited and/or for Mr. Antonio Heras, and that no service of the writ of summons was either served on the defendant at his residence in New Manila, Quezon City. Her knowledge is based on the fact that she was the personal secretary of Mr. Heras during his JD Transit days up to the latter part of 1972 when he shifted or diversified to shipping business in Hong Kong; that she was in-charge of all his letters and correspondence, business commitments, undertakings, conferences and appointments, until October 1984 when Mr. Heras left Hong Kong for good; that she was also the Officer-in-Charge or Office Manager of Navegante Shipping Agency LTD, a Hong Kong registered and based company acting as ships agent, up to and until the company closed shop sometime in the first quarter of 1985, when shipping business collapsed worldwide; that the said company held office at 34-35 Connaught Road, Central Hong Kong and later transferred to Caxton House at Duddel Street, Hong Kong, until the company closed shop in 1985; and that she was certain of such facts because she held office at Caxton House up to the first quarter of 1985.

Mr. Lousich was presented as an expert on the laws of Hong Kong, and as a representative of the law office of the defendant's counsel who made a verification of the record of the case filed by the plaintiff in Hong Kong against the defendant, as well as the procedure in serving Court processes in Hong Kong.

In his affidavit (Exh. "2") which constitutes his direct testimony, the said witness stated that:

> The defendant was sued on the basis of his personal guarantee of the obligations of Compania Hermanos de Navegacion S.A. There is no record that a writ of summons was served on the person of the defendant in Hong Kong, or that any such attempt at service was made. Likewise, there is no record that a copy of the judgment of the High Court was furnished or served on the defendant; anyway, it is not a legal requirement to do so under Hong Kong laws;

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a) The writ of summons or claim can be served by the solicitor (lawyer) of the claimant or plaintiff. In Hong Kong there are no Court personnel who serve writs of summons and/or most other processes.

b) If the writ of summons or claim (or complaint) is not contested, the claimant or the plaintiff is not required to present proof of his claim or complaint nor present evidence under oath of the claim in order to obtain a Judgment.

c) There is no legal requirement that such a Judgment or decision rendered by the Court in Hong Kong [to] make a recitation of the facts or the law upon which the claim is based.

d) There is no necessity to furnish the defendant with a copy of the Judgment or decision rendered against him.

e) In an action based on a guarantee, there is no established legal requirement or obligation under Hong Kong laws that the creditor must first bring proceedings against the principal debtor. The creditor can immediately go against the guarantor.

On cross examination, Mr. Lousich stated that before he was commissioned by the law firm of the defendant's counsel as an expert witness and to verify the records of the Hong Kong case, he had been acting as counsel for the defendant in a number of commercial matters; that there was an application for service of summons upon the defendant outside the jurisdiction of Hong Kong; that there was an order of the Court authorizing service upon Heras outside of Hong Kong, particularly in Manila or any other place in the Philippines (p. 9, TSN, 2/14/90); that there must be adequate proof of service of summons, otherwise the Hong Kong Court will refuse to render judgment (p. 10, *ibid.*); that the mere fact that the Hong Kong Court rendered judgment, it can be presumed that there was service of summons; that in this case, it is not just a presumption because there was an affidavit stating that service was effected in [*sic*] a particular man here in Manila; that such affidavit was filed by one Jose R. Fernandez of the firm Sycip Salazar on the 21st of December 1984, and stated in essence that "on Friday, the 23rd of November 1984 he served the 4th defendant at No. 6 First Street, Quezon City by leaving it at that address with Mr. Dionisio Lopez, the son-in-

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law of the 4th defendant the copy of the writ and Mr. Lopez informed me and I barely believed that he would bring the said writ to the attention of the 4th defendant" (pp. 11-12, *ibid.*); that upon filing of that affidavit, the Court was asked and granted judgment against the 4th defendant; and that if the summons or claim is not contested, the claimant of the plaintiff is not required to present proof of his claim or complaint or present evidence under oath of the claim in order to obtain judgment; and that such judgment can be enforced in the same manner as a judgment rendered after full hearing.

The trial court held that since the Hong Kong court judgment had been duly proved, it is a presumptive evidence of a right as between the parties; hence, the party impugning it had the burden to prove want of jurisdiction over his person. HERAS failed to discharge that burden. He did not testify to state categorically and under oath that he never received summons. Even his own witness Lousich admitted that HERAS was served with summons in his Quezon City residence. As to De la Vega's testimony regarding non-service of summons, the same was hearsay and had no probative value.

As to HERAS' contention that the Hong Kong court judgment violated the Constitution and the procedural laws of the Philippines because it contained no statements of the facts and the law on which it was based, the trial court ruled that since the issue related to procedural matters, the law of the forum, *i.e.*, Hong Kong laws, should govern. As testified by the expert witness Lousich, such legalities were not required under Hong Kong laws. The trial court also debunked HERAS' contention that the principle of excussion under Article 2058 of the Civil Code of the Philippines was violated. It declared that matters of substance are subject to the law of the place where the transaction occurred; in this case, Hong Kong laws must govern.

The trial court concluded that the Hong Kong court judgment should be recognized and given effect in this jurisdiction for failure of HERAS to overcome the legal presumption in favor of the foreign judgment. It then decreed; thus:

WHEREFORE, judgment is hereby rendered ordering defendant to pay to the plaintiff the following sums or their equivalents in

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Philippine currency at the time of payment: US$1,810,265.40 plus interest on the sum of US$1,500,000.00 at 9.875% per annum from October 31, 1984 to December 28, 1984, and HK$905 as fixed cost, with legal interests on the aggregate amount from December 28, 1984, and to pay attorney's fees in the sum of ₱80,000.00.

ASIAVEST moved for the reconsideration of the decision. It sought an award of judicial costs and an increase in attorney's fees in the amount of US$19,346.45 with interest until full payment of the said obligations. On the other hand, HERAS no longer opposed the motion and instead appealed the decision to the Court of Appeals, which docketed the appeal as CA-G.R. CV No. 29513.

In its order[2] of 2 November 1990, the trial court granted ASIAVEST's motion for reconsideration by increasing the award of attorney's fees to "US$19,345.65 OR ITS EQUIVALENT IN PHILIPPINE CURRENCY, AND TO PAY THE COSTS OF THIS SUIT," provided that ASIAVEST would pay the corresponding filing fees for the increase. ASIAVEST appealed the order requiring prior payment of filing fees. However, it later withdrew its appeal and paid the additional filing fees.

On 3 April 1997, the Court of Appeals rendered its decision[3] reversing the decision of the trial court and dismissing ASIAVEST's complaint without prejudice. It underscored the fact that a foreign judgment does not of itself have any extraterritorial application. For it to be given effect, the foreign tribunal should have acquired jurisdiction over the person and the subject matter. If such tribunal has not acquired jurisdiction, its judgment is void.

The Court of Appeals agreed with the trial court that matters of remedy and procedure such as those relating to service of summons upon the defendant are governed by the *lex fori*, which was, in this case, the law of Hong Kong. Relative thereto, it gave weight to Lousich's testimony that under the Hong Kong

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[2] Original Record (OR), 326.

[3] Annex "A" of Petition; *Rollo*, 49-65. Per Mabutas, R., Jr., *J.*, with the concurrence of Imperial, J., and Aliño-Hormachuelos, P., *JJ.*

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law, the substituted service of summons upon HERAS effected in the Philippines by the clerk of Sycip Salazar Hernandez & Gatmaitan firm would be valid provided that it was done in accordance with Philippine laws. It then stressed that where the action is *in personam* and the defendant is in the Philippines, the summons should be personally served on the defendant pursuant to Section 7, Rule 14 of the Rules of Court.[4] Substituted service may only be availed of where the defendant cannot be promptly served in person, the fact of impossibility of personal service should be explained in the proof of service. It also found as persuasive HERAS' argument that instead of directly using the clerk of the Sycip Salazar Hernandez & Gatmaitan law office, who was not authorized by the judge of the court issuing the summons, ASIAVEST should have asked for leave of the local courts to have the foreign summons served by the sheriff or other court officer of the place where service was to be made, or for special reasons by any person authorized by the judge.

The Court of Appeals agreed with HERAS that "notice sent outside the state to *a non-resident is unavailing to give jurisdiction* in an action against him personally for money recovery." Summons should have been personally served on HERAS in Hong Kong, for, as claimed by ASIAVEST, HERAS was physically present in Hong Kong for nearly 14 years. Since there was not even an attempt to serve summons on HERAS in Hong Kong, the Hong Kong Supreme Court did not acquire jurisdiction over HERAS. Nonetheless, it did not totally foreclose the claim of ASIAVEST; thus:

> While We are not fully convinced that [HERAS] has a meritorious defense against [ASIAVEST's] claims or that [HERAS] ought to be absolved of any liability, nevertheless, in view of the foregoing discussion, there is a need to deviate from the findings of the lower court in the interest of justice and fair play. This, however, is without

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[4] This section (now Section 6, Rule 14 of the 1997 Rules of Civil Procedure) provided:

> SEC. 7. *Personal Service of Summons.* — The summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him.

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prejudice to whatever action [ASIAVEST] might deem proper in order to enforce its claims against [HERAS].

Finally, the Court of Appeals also agreed with HERAS that it was necessary that evidence supporting the validity of the foreign judgment be submitted, and that our courts are not bound to give effect to foreign judgments which contravene our laws and the principle of sound morality and public policy.

ASIAVEST forthwith filed the instant petition alleging that the Court of Appeals erred in ruling that

I.

... IT WAS NECESSARY FOR [ASIAVEST] TO PRESENT EVIDENCE 'SUPPORTING THE VALIDITY OF THE JUDGMENT';

II.

... THE SERVICE OF SUMMONS ON [HERAS] WAS DEFECTIVE UNDER PHILIPPINE LAW;

III.

... SUMMONS SHOULD HAVE BEEN PERSONALLY SERVED ON HERAS IN HONG KONG;

IV.

... THE HONG KONG SUMMONS SHOULD HAVE BEEN SERVED WITH LEAVE OF PHILIPPINE COURTS;

V.

... THE FOREIGN JUDGMENT 'CONTRAVENES PHILIPPINE LAWS, THE PRINCIPLES OF SOUND MORALITY, AND THE PUBLIC POLICY OF THE PHILIPPINES.

Being interrelated, we shall take up together the assigned errors.

Under paragraph (b) of Section 50, Rule 39 of the Rules of Court,[5] which was the governing law at the time this case was

[5] This Section is now Section 48 of Rule 39 of the 1997 Rules of Civil Procedure with the following amendments: (1) inclusion of final orders of a tribunal of a foreign country; and (2) clarification that the grounds to

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decided by the trial court and respondent Court of Appeals, a foreign judgment against a person rendered by a court having jurisdiction to pronounce the judgment is presumptive evidence of a right as between the parties and their successors in interest by the subsequent title. However, the judgment may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

Also, Section 3(n) of Rule 131 of the New Rules of Evidence provides that in the absence of proof to the contrary, a court, or judge acting as such, whether in the Philippines or elsewhere, is presumed to have acted in the lawful exercise of jurisdiction.

Hence, once the authenticity of the foreign judgment is proved, the burden to repel it on grounds provided for in paragraph (b) of Section 50, Rule 39 of the Rules of Court is on the party challenging the foreign judgment — HERAS in this case.

At the pre-trial conference, HERAS admitted the existence of the Hong Kong judgment. On the other hand, ASIAVEST presented evidence to prove rendition, existence, and authentication of the judgment by the proper officials. The judgment is thus presumed to be valid and binding in the country from which it comes, until the contrary is shown.[6] Consequently, the first ground relied upon by ASIAVEST has merit. The presumption of validity accorded foreign judgment would be rendered meaningless were the party seeking to enforce it be required to first establish its validity.

The main argument raised against the Hong Kong judgment is that the Hong Kong Supreme Court did not acquire jurisdiction over the person of HERAS. This involves the issue of whether summons was properly and validly served on HERAS. It is settled that matters of remedy and procedure such as those relating to the service of process upon the defendant are governed

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repel a foreign judgment or final order are applicable to both judgment or final order upon a title to a specific thing and one against a person.

[6] *Northwest Orient Airlines, Inc. v. Court of Appeals*, 241 SCRA 192, 199 [1995].

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by the *lex fori* or the law of the forum,[7] *i.e.*, the law of Hong Kong in this case. HERAS insisted that according to his witness Mr. Lousich, who was presented as an expert on Hong Kong laws, there was no valid service of summons on him.

In his counter-affidavit,[8] which served as his direct testimony per agreement of the parties,[9] Lousich declared that the record of the Hong Kong case failed to show that a writ of summons was served upon HERAS in Hong Kong or that any such attempt was made. Neither did the record show that a copy of the judgment of the court was served on HERAS. He stated further that under Hong Kong laws (a) a writ of summons could be served by the solicitor of the claimant or plaintiff; and (b) where the said writ or claim was not contested, the claimant or plaintiff was not required to present proof under oath in order to obtain judgment.

On cross-examination by counsel for ASIAVEST, Lousich testified that the Hong Kong court authorized service of summons on HERAS outside of its jurisdiction, particularly in the Philippines. He admitted also the existence of an affidavit of one Jose R. Fernandez of the Sycip Salazar Hernandez & Gatmaitan law firm stating that he (Fernandez) served summons on HERAS on 13 November 1984 at No. 6, 1st St., Quezon City, by leaving a copy with HERAS's son-in-law Dionisio Lopez.[10] On redirect examination, Lousich declared that such service of summons would be valid under Hong Kong laws provided that it was in accordance with Philippine laws.[11]

We note that there was no objection on the part of ASIAVEST on the qualification of Mr. Lousich as an expert on the Hong Kong law. Under Sections 24 and 25, Rule 132 of the New

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[7] *Ibid.*

[8] Exhibit "2", OR, Civil Case No. Q-52452, 197-200.

[9] TSN, 14 February 1990, 5.

[10] *Id.*, 11-12.

[11] *Id.*, 13-15.

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Rules of Evidence, the record of public documents of a sovereign authority, tribunal, official body, or public officer may be proved by (1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof, which must be accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. The certificate may be issued by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent, or any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

Nevertheless, the testimony of an expert witness may be allowed to prove a foreign law. An authority[12] on private international law thus noted:

> Although it is desirable that foreign law be proved in accordance with the above rule, however, the Supreme Court held in the case of *Willamette Iron and Steel Works v. Muzzal*,[13] that Section 41, Rule 123 (Section 25, Rule 132 of the Revised Rules of Court) does not exclude the presentation of other competent evidence to prove the existence of a foreign law. In that case, the Supreme Court considered the testimony under oath of an attorney-at-law of San Francisco, California, who quoted verbatim a section of California Civil Code and who stated that the same was in force at the time the obligations were contracted, as sufficient evidence to establish the existence of said law. Accordingly, in line with this view, the Supreme Court in the *Collector of Internal Revenue v. Fisher, et al.*,[14] upheld the Tax Court in considering the pertinent law of California as proved by the respondents' witness. In that case, the counsel for respondent "testified that as an active member of the California Bar since 1951, he is familiar with the revenue and taxation laws of the State of

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[12] JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 101-102 [1995].

[13] 61 Phil. 471 [1935].

[14] 1 SCRA 93 [1961].

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California. When asked by the lower court to state the pertinent California law as regards exemption of intangible personal properties, the witness cited Article 4, Sec. 13851 (a) & (b) of the California Internal and Revenue Code as published in Derring's California Code, a publication of Bancroft-Whitney Co., Inc. And as part of his testimony, a full quotation of the cited section was offered in evidence by respondents." Likewise, in several naturalization cases, it was held by the Court that evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice, may be allowed and used as basis for favorable action, if, in the light of all the circumstances, the Court is "satisfied of the authenticity of the written proof offered."[15] Thus, in a number of decisions, mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila was held to be competent proof of that law.[16]

There is, however, nothing in the testimony of Mr. Lousich that touched on the specific law of Hong Kong in respect of service of summons either in actions *in rem* or *in personam*, and where the defendant is either a resident or nonresident of Hong Kong. In view of the absence of proof of the Hong Kong law on this particular issue, the presumption of identity or similarity or the so-called processual presumption shall come into play. It will thus be presumed that the Hong Kong law on the matter is similar to the Philippine law.[17]

As stated in *Valmonte vs. Court of Appeals*,[18] it will be helpful to determine first whether the action is *in personam*, *in rem*, or *quasi in rem* because the rules on service of summons under Rule 14 of the Rules of Court of the Philippines apply according to the nature of the action.

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[15] *Citing Pardo v. Republic*, 85 Phil. 323 [1950]; *Delgado v. Republic*, G.R. No. L-2546, January 28, 1950.

[16] *Citing Yap v. Solicitor General*, 81 Phil. 468; *Yee Bo Mann v. Republic*, 83 Phil. 749; *Go v. Anti-Chinese League*, 47 O.G. 716; *Leelin v. Republic*, 47 O.G. 694.

[17] *Northwest Orient Airlines, Inc. v. Court of Appeals*, *supra* note 6, at 200.

[18] 252 SCRA 92, 99 [1996].

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An action *in personam* is an action against a person on the basis of his personal liability. An action *in rem* is an action against the thing itself instead of against the person.[19] An action *quasi in rem* is one wherein an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property.[20]

In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a *resident* defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of said Rule. If he is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 8;[21] (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court;[22] or (4) any other manner the court may deem sufficient.[23]

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[19] *Dial Corp. v. Soriano*, 161 SCRA 737 [1988].

[20] *Brown v. Brown*, 3 SCRA 451, 456 [1961].

[21] *Montalban v. Maximo*, 22 SCRA 1070, 1078-1081 [1968]; *Valmonte v. Court of Appeals*, *supra* note 18, at 100; 1 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 459 [1979] (hereafter 1 MORAN).

[22] Section 18 in relation to Section 17, Rule 14 of the Rules of Court; *Montalban v. Maximo*, *supra* note 21 at 1080-1081; *Valmonte v. Court of Appeals*, *supra* note 18, at 100; 1 MORAN 459.

[23] Section 18 in relation to Section 17, Rule 14 of the Rules of Court. These provisions read:

> SEC. 18. *Residents temporarily out of the Philippines.* — When an action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be effected out of the Philippines, as under the preceding section.
>
> SEC. 17. *Extraterritorial service.* — When the defendant does not reside and is not found in the Philippines and the action affects

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However, in an action *in personam* wherein the defendant is a *non-resident* who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person.[24] This method of service is possible if such defendant is physically present in the country. If he is not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him.[25] An exception was laid down in *Gemperle v. Schenker*[26] wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representative and attorney-in-fact in a prior civil case filed by him; moreover, the second case was a mere offshoot of the first case.

On the other hand, in a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the *res*. Nonetheless, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements.[27] Thus, where the defendant is a non-resident

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the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

[24] *Boudart v. Tait*, 67 Phil. 170, 174-175 1 [1939].

[25] 1 MORAN 456.

[26] 19 SCRA 45 [1967].

[27] *Valmonte v. Court of Appeals*, *supra* note 18 at 100-101.

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who is not found in the Philippines and (1) the action affects the personal status of the plaintiff; (2) the action relates to, or the subject matter of which is property in the Philippines in which the defendant has or claims a lien or interest; (3) the action seeks the exclusion of the defendant from any interest in the property located in the Philippines; or (4) the property of the defendant has been attached in the Philippines — service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[28]

In the case at bar, the action filed in Hong Kong against HERAS was *in personam*, since it was based on his personal guarantee of the obligation of the principal debtor. Before we can apply the foregoing rules, we must determine first whether HERAS was a resident of Hong Kong.

Fortunata de la Vega, HERAS's personal secretary in Hong Kong since 1972 until 1985,[29] testified that HERAS was the President and part owner of a shipping company in Hong Kong during all those times that she served as his secretary. He had in his employ a staff of twelve.[30] He had "business commitments, undertakings, conferences, and appointments until October 1984 when [he] left Hong Kong for good."[31] HERAS's other witness, Russel Warren Lousich, testified that he had acted as counsel for HERAS "for a number of commercial matters."[32] ASIAVEST then infers that HERAS was a resident of Hong Kong because he maintained a business there.

It must be noted that in his Motion to Dismiss,[33] as well as in his Answer[34] to ASIAVEST's complaint for the enforcement

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[28] Section 17, Rule 14 of the Rules of Court.

[29] TSN, 5 July 1989, 7, 13-14, 23.

[30] *Id.*, 13-14, 20-23.

[31] Exhibit, "1", OR, 189.

[32] TSN, 14 February 1990, 7.

[33] OR, 31-40.

[34] *Id.*, 101-110.

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of the Hong Kong court judgment, HERAS maintained that the Hong Kong court did not have jurisdiction over him because the fundamental rule is that jurisdiction *in personam* over *non-resident* defendants, so as to sustain a money judgment, must be based upon personal service of summons within the state which renders the judgment.[35]

For its part, ASIAVEST, in its Opposition to the Motion to Dismiss[36] contended: "The question of Hong Kong court's 'want of jurisdiction' is therefore a triable issue if it is to be pleaded by the defendant to 'repel' the foreign judgment. Facts showing jurisdictional lack (*e.g.* that the Hong Kong suit was *in personam*, that *defendant was not a resident of Hong Kong* when the suit was filed or that he did not voluntarily submit to the Hong Kong court's jurisdiction) should be alleged and proved by the defendant."[37]

In his Reply (to the Opposition to Motion to Dismiss),[38] HERAS argued that the lack of jurisdiction over his person was corroborated by ASIAVEST's allegation in the complaint that he "has his residence at No. 6, 1st St., New Manila, Quezon City, Philippines." He then concluded that such judicial admission amounted to evidence that he was and is not a resident of Hong Kong.

Significantly, in the pre-trial conference, the parties came up with stipulations of facts, among which was that "the residence of defendant, Antonio Heras, is New Manila, Quezon City."[39]

We note that the residence of HERAS insofar as the action for the enforcement of the Hong Kong court judgment is concerned, was never in issue. He never challenged the service

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[35] Citing *Boudart v. Tait*, *supra* note 24.

[36] OR, 47-53.

[37] *Id.*, 52. Italics supplied.

[38] OR, 61-69.

[39] OR, 127.

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of summons on him through a security guard in his Quezon City residence and through a lawyer in his office in that city. In his Motion to Dismiss, he did not question the jurisdiction of the Philippine court over his person on the ground of invalid service of summons. What was in issue was his residence as far as the Hong Kong suit was concerned. We therefore conclude that the stipulated fact that HERAS "is a resident of New Manila, Quezon City, Philippines" refers to his residence at the time jurisdiction over his person was being sought by the Hong Kong court. With that stipulation of fact, ASIAVEST cannot now claim that HERAS was a resident of Hong Kong at the time.

Accordingly, since HERAS was not a resident of Hong Kong and the action against him was, indisputably, one *in personam*, summons should have been personally served on him in Hong Kong. The extraterritorial service in the Philippines was therefore invalid and did not confer on the Hong Kong court jurisdiction over his person. It follows that the Hong Kong court judgment cannot be given force and effect here in the Philippines for having been rendered without jurisdiction.

Even assuming that HERAS was formerly a resident of Hong Kong, he was no longer so in November 1984 when the extraterritorial service of summons was attempted to be made on him. As declared by his secretary, which statement was not disputed by ASIAVEST, HERAS left Hong Kong in October 1984 "for good."[40] His absence in Hong Kong must have been the reason why summons was not served on him therein; thus, ASIAVEST was constrained to apply for leave to effect service in the Philippines, and upon obtaining a favorable action on the matter, it commissioned the Sycip Salazar Hernandez & Gatmaitan law firm to serve the summons here in the Philippines.

In *Brown v. Brown*,[41] the defendant was previously a resident of the Philippines. Several days after a criminal action for

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[40] Exhibit "1".

[41] *Supra* note 20.

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concubinage was filed against him, he abandoned the Philippines. Later, a proceeding *quasi in rem* was instituted against him. Summons in the latter case was served on the defendant's attorney-in-fact at the latter's address. The Court held that under the facts of the case, it could not be said that the defendant was "still a resident of the Philippines because he ha[d] escaped to his country and [was] therefore an absentee in the Philippines." As such, he should have been "summoned in the same manner as one who does not reside and is not found in the Philippines."

Similarly, HERAS, who was also an absentee, should have been served with summons in the same manner as a non-resident not found in Hong Kong. Section 17, Rule 14 of the Rules of Court providing for extraterritorial service will not apply because the suit against him was *in personam*. Neither can we apply Section 18, which allows extraterritorial service on a resident defendant who is temporarily absent from the country, because even if HERAS be considered as a resident of Hong Kong, the undisputed fact remains that he left Hong Kong not only "temporarily" but "for good."

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered *DENYING* the petition in this case and *AFFIRMING* the assailed judgment of the Court of Appeals in CA-G.R. CV No. 29513.

No costs.

SO ORDERED.

Bellosillo, Vitug, and *Panganiban, JJ.,* concur.

Quisumbing, J., no part, former partner of a counsel.