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SECOND DIVISION

[G. R. No. 97642. August 29, 1997]

AVON INSURANCE PLC, BRITISH RESERVE INSURANCE. CO. LTD., CORNHILL INSURANCE PLC, IMPERIO REINSURANCE CO. (UK) LTD., INSTITUTE DE RESERGURROS DO BRAZIL, INSURANCE CORPORATION OF IRELAND PLC, LEGAL AND GENERAL ASSURANCE SOCIETY LTD., PROVINCIAL INSURANCE PLC, QBL INSURANCE (UK) LTD., ROYAL INSURANCE CO. LTD., TRINITY INSURANCE CO. LTD., GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORP. LTD., COOPERATIVE INSURANCE SOCIETY and PEARL ASSURANCE CO. LTD., *petitioners, vs.* **COURT OF APPEALS, REGIONAL TRIAL COURT OF MANILA, BRANCH 51, YUPANGCO COTTON MILLS, WORLDWIDE SURETY & INSURANCE CO., INC.,** *respondents.*

SYNOPSIS

This is a petition for *certiorari* filed by herein petitioners questioning the decision of respondent Court of Appeals dated October 11, 1990 finding that the summons were properly served to petitioners and whatever defects, if any, in the service of summons were cured by their voluntary appearance in the lower court, *via* a motion to dismiss. It appears in the records of the case that it all started when private respondent filed a collection suit against herein petitioners being the reinsurers of the property owned by private respondents. Petitioners, by way of a motion to dismiss, questioned the jurisdiction of the lower court alleging that being a foreign company not doing business in the Philippines, the court did not acquired jurisdiction on its person, even though the summons where served to the insurance commissioner. The lower court denied the motion. Thereafter, petitioner filed a petition to the Court of Appeals but likewise, respondent court denied the petition. Henceforth, petitioner brought the matter to the Supreme Court. In its petition, herein petitioners maintained that the trial court's jurisdiction does not extend to them, since they are foreign reinsurance companies that are not doing

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business in the Philippines. Moreover, petitioners assert that since the complaint for sum of money filed by private respondent was a personal action not affecting status or relating to property, extraterritorial service of summons on petitioners — all not doing business in the Philippines is null and void.

The Honorable Supreme Court ruled that there is no sufficient basis in the records which would merit the institution of this collection suit in the Philippines. More specifically, there is nothing to substantiate the private respondent's submission that petitioners had engaged in business activities in this country. This is not an instance where the erroneous service of summons upon the defendant can be cured by the issuance and service of alias summons, as in the absence of showing that petitioners had been doing business in the country, they cannot be summoned to answer for the charges leveled against them. Moreover, the fact that herein petitioners voluntarily appeared in the lower court does not mean that they voluntarily submitted to the jurisdiction of the court because petitioners, from time to time filed their motion to dismiss, their submissions have been consistently and unfailingly to object to the trial court's assumption of jurisdiction, anchored on the fact that they are all foreign corporations not doing business in the Philippines. Accordingly, the decision appealed from is set aside and the petition is hereby granted.

SYLLABUS

1. **COMMERCIAL LAW; OMNIBUS INVESTMENTS CODE OF 1987; DOING OR ENGAGING IN OR TRANSACTING BUSINESS IN THE PHILIPPINES; CONSTRUED.**— In Communication Materials and Design, Inc. et al. *vs.* Court of Appeals, G.R. No. 102223, August 22, 1996, it was observed that: "There is no exact rule or governing principle as to what constitutes doing or engaging in or transacting business. Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the language of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized. Article 44 of the Omnibus Investments Code of 1987 defines the phrase to include: 'soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in

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any calendar year stay in the Philippines for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity or commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.'" The term ordinarily implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of the functions normally incident to and in progressive prosecution of the purpose and object of its organization. A single act or transaction made in the Philippines, however, could qualify a foreign corporation to be doing business in the Philippines, if such singular act is not merely incidental or casual, but indicates the foreign corporation's intention to do business in the Philippines.

2. **ID.; CORPORATION CODE; FOREIGN CORPORATION; STATUS THEREOF, CONSTRUED.** — A foreign corporation, is one which owes its existence to the laws of another state, [Section 123, Corporation Code of the Philippines] and generally, has no legal existence within the state in which it is foreign. In Marshall Wells Co. *vs.* Elser, No. 22015, September 1, 1924, 46 Phil. 70, it was held that corporations have no legal status beyond the bounds of the sovereignty by which they are created. Nevertheless, it is widely accepted that foreign corporations are, by reason of state comity, allowed to transact business in other states and to sue in the courts of such *fora*. In the Philippines foreign corporations are allowed such privileges, subject to certain restrictions, arising from the state's sovereign right of regulation. Before a foreign corporation can transact business in the country, it must first obtain a license to transact business here [Section 125, 126, Corporation Code of the Philippines] and secure the proper authorizations under existing law. If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed to maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines. [Section 133, *id.*]

3. **ID.; ID.; ID.; WHEN REQUIRED TO BE LICENSED; RATIONALE.** — The purpose of the law in requiring that foreign

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corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts. The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty.

4. **REMEDIAL LAW; JURISDICTION OVER DEFENDANT; WHEN ACQUIRED.**— In civil cases, jurisdiction over the person of the defendant is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons. Fundamentally, the service of summons is intended to give official notice to the defendant or respondent that an action has been commenced against it. The defendant or respondent is thus put on guard as to the demands of the plaintiff as stated in the complaint. The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit. The Court is cognizant of the doctrine in Signetics Corp. *vs.* Court of Appeals, G.R. No. 105141, August 31, 1993, 225 SCRA 737, that for the purpose of acquiring jurisdiction by way of summons on a defendant foreign corporation, there is no need to prove first the fact that defendant is doing business in the Philippines. The plaintiff only has to allege in the complaint that the defendant has an agent in the Philippines for summons to be validly served thereto, even without prior evidence advancing such factual allegation.

5. **ID.; ID.; MAYBE ACQUIRED THRU VOLUNTARY APPEARANCE; EXCEPTION.**— When a defendant voluntarily

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appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction. In the case of foreign corporations, it has been held that they may seek relief against the wrongful assumption of jurisdiction by local courts. In Time, Inc. *vs.* Reyes, G.R. No. L-28882, May 31, 1971, 39 SCRA 303, it was held that the action of a court in refusing to rule or deferring its ruling on a motion to dismiss for lack or excess of jurisdiction is correctable by a writ of prohibition or *certiorari* sued out in the appellate court even before trial on the merits is had. The same remedy is available should the motion to dismiss be denied, and the court, over the foreign corporation's objections, threatens to impose its jurisdiction upon the same. If the defendant, besides setting up in a motion to dismiss his objection to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, or seeks an affirmative relief in the motion, he is deemed to have submitted himself to the jurisdiction of the court. As was consistently held, if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction.

APPEARANCES OF COUNSEL

Syquia Law Offices for petitioners.
O.F. Santos & P.C. Nolasco for Yupangco Cotton Mills.
Ricardo E. Reyes for World-Wide Insurance & Surety.

D E C I S I O N

TORRES, JR., *J.*:

Just how far can our court assert jurisdiction over the persons of foreign entities being charged with contractual liabilities by residents of the Philippines?

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Appealing from the Court of Appeals October 11, 1990 Decision[1] in CA-G.R. No. 22005, petitioners claim that the trial court's jurisdiction does not extend to them, since they are foreign reinsurance companies that are not doing business in the Philippines. Having entered into reinsurance contracts abroad, petitioners are beyond the jurisdictional ambit of our courts and cannot be served summons through extraterritorial service, as under Section 17, Rule 14 of the Rules of Court, nor through the Insurance Commissioner, under Section 14. Private respondent Yupangco Cotton Mills contend on the other hand that petitioners are within our courts' cognitive powers, having submitted voluntarily to their jurisdiction by filing motions to dismiss[2] the private respondent's suit below.

The antecedent facts, as found by the appellate court, are as follows:

"Respondent Yupangco Cotton Mills filed a complaint against several foreign reinsurance companies (among which are petitioners) to collect their alleged percentage liability under contract treaties between the foreign insurance companies and the international insurance broker C.J. Boatright, acting as agent for respondent Worldwide Surety and Insurance Company. Inasmuch as petitioners are not engaged in business in the Philippines with no offices, places of business or agents in the Philippines, the reinsurance treaties having been entered abroad, service of summons upon motion of respondent Yupangco, was made upon petitioners through the Office of the Insurance Commissioner. Petitioners, by counsel on special appearance, seasonably filed motions to dismiss disputing the jurisdiction of respondent Court and the extra-territorial service of summons. Respondent Yupangco filed its opposition to the motion to dismiss, petitioners filed their reply, and respondent Yupangco filed its rejoinder. In an Order dated April 30, 1990, respondent Court denied the motions to dismiss and directed petitioners to file their answer. On May 29, 1990, petitioners filed their notice of appeal. In an order dated June 4, 1990, respondent court denied due course to the appeal."[3]

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[1] Penned by Associate Justice Nicolas R. Lapena, Jr. and concurred into by Associate Justice Ricardo L. Pronove, Jr. and Salome A. Montoya.

[2] Annexes "A" and "B", CA-Petition, pp. 15 and 17, CA-Record.

[3] Court of Appeals Decision, pp. 124-125, *Rollo*.

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To this day, trial on the merits of the collection suit has not proceeded as in the present petition, petitioners continue vigorously to dispute the trial court's assumption of jurisdiction over them.

It will be remembered that in the plaintiff's complaint,[4] it was contended that on July 6, 1979 and on October 1, 1980, Yupangco Cotton Mills engaged to secure with Worldwide Security and Insurance Co. Inc., several of its properties for the periods July 6, 1979 to July 6, 1980 as under Policy No. 20719 for a coverage of ₱100,000,000.00 and from October 1, 1980 to October 1, 1981, under Policy No. 25896, also for ₱100,000,000.00. Both contracts were covered by reinsurance treaties between Worldwide Surety and Insurance and several foreign reinsurance companies, including the petitioners. The reinsurance arrangements had been made through international broker C.J. Boatright and Co. Ltd., acting as agent of Worldwide Surety and Insurance.

As fate would have it, on December 16, 1979 and May 2, 1981, within the respective effectivity periods of Policies 20719 and 25896, the properties therein insured were razed by fire , thereby giving rise to the obligation of the insurer to indemnify the Yupangco Cotton Mills. Partial payments were made by Worldwide Surety and Insurance and some of the reinsurance companies.

On May 2, 1983, Worldwide Surety and Insurance, in a Deed of Assignment, acknowledged a remaining balance of ₱19,444,447.75 still due Yupangco Cotton Mills, and assigned to the latter all reinsurance proceeds still collectible from all the foreign reinsurance companies. Thus, in its interest as assignee and original insured, Yupangco Cotton Mills instituted this collection suit against the petitioners.

Service of summons upon the petitioners was made by notification to the Insurance Commissioner, pursuant to Section 14, Rule 14 of the Rules of Court.[5]

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[4] Filed with the Regional Trial Court of Manila, Branch 51, docketed as Civil Case No. 86-37392, CA-Record, p. 14.

[5] Sec. 14. Service upon private foreign corporations. — If the defendant is a foreign corporation, or a nonresident joint stock company or association,

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In a Petition for *Certiorari* filed with the Court of Appeals, petitioners submitted that respondent Court has no jurisdiction over them, being all foreign corporations not doing business in the Philippines with no office, place of business or agents in the Philippines. The remedy of *Certiorari* was resorted to by the petitioners on the premise that if petitioners had filed an answer to the complaint as ordered by the respondent court, they would risk abandoning the issue of jurisdiction. Moreover, extra-territorial service of summons on petitioners is null and void because the complaint for collection is not one affecting plaintiff's status and not relating to property within the Philippines.

The Court of Appeals found the petition devoid of merit, stating that:

1. Petitioners were properly served with summons and whatever defect, if any, in the service of summons were cured by their voluntary appearance in court, *via* motion to dismiss.

2. Even assuming that petitioners have not yet voluntarily appeared as co-defendants in the case below even after having filed the motions to dismiss adverted to, still the situation does not deserve dismissal of the complaint as far as they are concerned, since as held by this Court in *Lingner Fisher GMBH vs. IAC*, 125 SCRA 523;

"A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive for example, that when a defendant personally appears before a court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An alias summons can be actually served on said defendant."

3. Being reinsurers of respondent Worldwide Surety and Insurance of the risk which the latter assumed when it issued the fire insurance policies in dispute in favor of respondent Yupangco, petitioners cannot now validly argue that they do not do business

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doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines,

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in this country. At the very least, petitioners must be deemed to have engaged in business in the Philippines no matter how isolated or singular such business might be, even on the assumption that among the local domestic insurance corporations of this country, it is only in favor of Worldwide Surety and Insurance that they have ever reinsured any risk arising from reinsurance within the territory.

4. The issue of whether or not petitioners are doing business in the country is a matter best referred to a trial on the merits of the case, and so should be addressed there.

Maintaining its submission that they are beyond the jurisdiction of Philippine Courts, petitioners are now before us, stating:

"Petitioners, being foreign corporations, as found by the trial court, not doing business in the Philippines with no office, place of business or agents in the Philippines, are not subject to the jurisdiction of the Philippine courts.

The complaint for sum of money being a personal action not affecting status or relating to prooerty, extraterritorial service of summons on petitioners — all not doing business in the Philippines -— is null and void.

The appearance of counsel for petitioners being explicitly 'by special appearance without waiving objections to the jurisdiction over their persons or the subject matter' and the motions do dismiss having excluded non-jurisdictional grounds, there is no voluntary submission to the jurisdiction of the trial court."[6]

For its part, private respondent Yupangco counter-submits:

"1. Foreign corporations, such as petitioners, not doing business in the Philippines, can be sued in the Philippine Courts, not withstanding petitioners' claim to the contrary.

2. While the complaint before the Honorable Trial Court is for a sum of money, not affecting status or relating to property, petitioners (then defendants) can submit themselves voluntarily to the jurisdiction of Philippine Courts, even if there is no extra-judicial (sic) service of summons upon them.

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[6] Memorandum for Petitioners, p. 256, *Rollo*.

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3. The voluntary appearance of the petitioners (then defendants) before the Honorable Trial Court amounted, in effect, to voluntary submission to its jurisdiction over their persons."[7]

In the decisions of the courts below, there is much left to speculation and conjecture as to whether or not the petitioners were determined to be "doing business in the Philippines" or not.

To qualify the petitioners' business of reinsurance within the Philippine forum, resort must be made to established principles in determining what is meant by "doing business in the Philippines." In *Communication Materials and Design, Inc. et.al vs. Court of Appeals,*[8] it was observed that:

"There is no exact rule or governing principle as to what constitutes doing or engaging in or transacting business. Indeed, such case must be judged in the light of its peculiar circumstances, upon its peculiar facts and upon the languange of the statute applicable. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized.

Article 44 of the Omnibus Investments Code of 1987 defines the phrase to include:

> "Soliciting orders, purchases, service contracts, opening offices, whether called 'liason' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply a continuity or commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the pupose and object of the business organization.'"

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[7] Memorandum for Private Respondent, pp. 226-227, *Rollo*.

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

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The term ordinarily implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.[9]

A single act or transaction made in the Philippines, however, could qualify a foreign corporation to be doing business in the Philippines, if such singular act is not merely incidental or casual, but indicates the foreign corporation's intention to do business in the Philippines.[10]

There is no sufficient basis in the records which would merit the institution of this collection suit in the Philippines. More specifically, there is nothing to substantiate the private respondent's submission that the petitioners had engaged in business activities in this country. This is not an instance where the erroneous service of summons upon the defendant can be cured by the issuance and service of alias summons, as in the absence of showing that petitioners had been doing business in the country, they cannot be summoned to answer for the charges leveled against them.

The Court is cognizant of the doctrine in *Signetics Corp. vs. Court of Appeals*[11] that for the purpose of acquiring jurisdiction by way of summons on a defendant foreign corporation, there is no need to prove first the fact that defendant is doing business in the Philippines. The plaintifff only has to allege in the complaint that the defendant has an agent in the Philippines for summons to be validly served thereto, even without prior evidence advancing such factual allegation.

As it is, private respondent has made no allegation or demonstration of the existence of petitioners' domestic agent, but avers simply that they are doing business not only abroad but in the Philippines as well. It does not appear at all that the

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[9] Mentholatum Co. Inc., *vs.* Mangaliman, G.R. No. 47701, June 27, 1941, 72 Phil 524.

[10] Far East International Import and Export Corporation *vs.* Nankai Kogyo Co., G.R. No. 13525, November 30, 1962, 6 SCRA 725.

[11] G.R. No. 105141, August 31, 1993, 225 SCRA 737.

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petitioners had performed any act which would give the general public the impression that it had been engaging, or intends to engage in its ordinary and usual business undertakings in the country. The reinsurance treaties between the petitioners and Worldwide Surety and Insurance were made through an international insurance brokers, and not through any entity or means remotely connected with the Philippines. Moreover, there is authority to the effect that a reinsurance company is not doing business in a certain state merely because the property or lives which are insured by the original insurer company are located in that state.[12] The reason for this is that a contract or reinsurance is generally a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement.[13] Hence, the original insured has generally no interest in the contract of reinsurance.[14]

A foreign corporation, is one which owes its existence to the laws of another state,[15] and generally has no legal existence within the state in which it is foreign. In *Marshall Wells Co. vs. Elser,*[16] it was held that corporations have no legal status beyond the bounds of sovereignty by which they are created. Nevertheless, it is widely accepted that foreign corporations are, by reason of state comity, allowed to transact business in other states and to sue in the courts of such *fora.* In the Philippines foreign corporations are allowed such privileges, subject to certain restrictions, arising from the state's sovereign right of regulation.

Before a foreign corporation can transact business in the country, it must first obtain a license to transact business here[17] and secure the proper authorizations under existing law.

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[12] Moris & Co. *vs.* Scandinavia Ins. Co., 279 U.S. 405 (1929), cited in Vance, p. 1074.

[13] Section 95. A conrtact of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance. (Presidential Decree No. 1460, otherwise known as the Insurance Code of the Philippines).

[14] Section 98, P.D. 1460.

[15] Section 123, Corporation Code of the Philippines.

[16] No. 22015, September 1, 1924, 46 Phil 70.

[17] Section 125, 126, Corporation Code of the Philippines.

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If a foreign corporation engages in business activities without the necessary requirements, it opens itself to court actions against it, but it shall not be allowed to maintain or intervene in an action, suit or proceeding for its own account in any court or tribunal or agency in the Philippines.[18]

The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts,[19] otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.

The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty.

In the alternative, private respondent submits that foreign corporations not doing business in the Philippines are not exempt from suits leveled against them in courts, citing the case of *Facilities Management Corporation vs. Leonardo Dela Osa, et al.*[20] where we ruled "that indeed, if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from Courts in the Philippines, *a fortiori*, that same corporation cannot claim exemption from being sued in Philippine Courts for acts done against a person or persons in the Philippines."

We are not persuaded by the position taken by the private respondent. In Facilities Management case, the principal issue presented was whether the petitioner had been doing business in

[18] Section 133, *Id.*

[19] Marshall Wells Co. *vs.* Elser, *supra.*

[20] G.R. No. L-38649, March 26, 1979, 89 SCRA 131.

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the Philippines, so that service of summons upon its agent as under Section 14, Rule 14 of the Rules of Court can be made in order that the Court of First Instance could assume jurisdiction over it. The Court ruled that the petitioner was doing business in the Philippines, and that by serving summons upon its resident agent, the trial court had effectively acquired jurisdiction. In that case, the court made no prescription as the absolute suability of foreign corporations not doing business in the country, but merely discounts the absolute exemption of such foreign corporations from liabilities particularly arising from acts done against a person or persons in the Philippines.

As we have found, there is no showing that petitioners had performed any act in the country that would place it within the sphere of the court's jurisdiction. A general allegation standing alone, that a party is doing business in the Philippines does not make it so. A conclusion of fact or law cannot be derived from the unsubstantiated assertions of parties, notwithstanding the demands of convenience or dispatch in legal actions, otherwise, the Court would be guilty of sorcery; extracting substance out of nothingness. In addition, the assertion that a resident of the Philippines will be inconvenienced by an out-of-town suit against a foreign entity, is irrelevant and unavailing to sustain the continuance of a local action, for jurisdiction is not dependent upon the convenience or inconvenience of a party.[21]

It is also argued that having filed a motion to dismiss in the proceedings before the trial court, petitioners have thus acquiesced to the court's jurisdiction, and they cannot maintain the contrary at this juncture.

This argument is at the most, flimsy.

In civil cases, jurisdiction over the person of the defendant is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons.[22]

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[21] Time, Inc. *vs.* Reyes, G.R. No. L-28882, May 31, 1971, 39 SCRA 303.

[22] Minucher *vs.* Court of Appeals, G.R. No. 97765, September 24, 1992, 214 SCRA 242.

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Fundamentally, the service of summons is intended to give official notice to the defendant or respondent that an action had been commenced against it. The defendant or respondent is thus put guard as to the demands of the plaintiff as stated in the complaint.[23] The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person.[24] Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void,[25] unless the defendant waives the service of summons by voluntarily appearing and answering the suit.[26]

When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court.[27] This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall de deemed to have submitted himself to that jurisdiction.[28] In the case of foreign corporations, it has been held that they may seek relief against the wrongful assumption of jurisdiction by local courts. In *Time, Inc. vs. Reyes,*[29] it was held that the action of a court in refusing to rule or deferring its ruling on a motion to

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[23] Munar *vs.* Court of Appeals, G.R. No. 100740, November 25, 1994, 238 SCRA 372.

[24] Vda. de Macoy *vs.* Court of Appeals, G.R. No. 95871, February 13, 1992, 206 SCRA 244.

[25] C.E. Salmon *vs.* Tan Cueco, No. 12286, March 27, 1917, 36 Phil 556.

[26] Gov't *vs.* Rotor, No. 46438, November 7, 1939, 69 Phil 130.

[27] Paramount Insurance Corporation *vs.* Japson, G.R. No. 68037, July 29, 1992, 211 SCRA 879.

[28] La Naval Drug Corporation *vs.* Court of Appeals, G.R. No. 103200, August 31, 1994, 236 SCRA 78.

[29] *Supra.*

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dismiss for lack or excess of jurisdiction is correctable by a writ of prohibition or *certiorari* sued out in the appellate court even before trial on the merits is had. The same remedy is available should the motion to dismiss be denied, and the court, over the foreign corporation's objections, threatens to impose its jurisdiction upon the same.

If the defendant, besides setting up in a motion to dismiss his objections to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, or seeks an affirmative relief in the motion,[30] he is deemed to have submitted himself to the jurisdiction of the court.

In this instance, however, the petitioners from the time they filed their motions to dismiss, their submissions have been consistently and unfailingly to object to the trial court's assumption of jurisdiction, anchored on the fact that they are all foreign corporations not doing business in the Philippines.

As we have consistently held, if the appearance of a party in a suit is precisely to question the jurisdiction of the said tribunal over the person of the defendant, then this appearance is not equivalent to service of summons, nor does it constitute an acquiescence to the court's jurisdiction.[31] Thus, it cannot be argued that the petitioners had abandoned their objections to the jurisdiction of the court, as their motions to dismiss in the trial court, and all their subsequent posturings, were all in protest of the private respondent's insistence on holding them so answer a charge in a forum where they believe they are not subject to. Clearly, to continue the proceedings in a case such as those before Us would just "be useless and a waste of time."[32]

ACCORDINGLY, the decision appealed from dated October 11, 1990, is SET ASIDE and the instant petition is hereby

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[30] Wang Laboratories *vs.* Mendoza, G.R. No. 72147, December 1, 1987, 156 SCRA 44.

[31] Delos Santos *vs.* Montesa, Jr., G.R. No. 73531, April 6, 1993, 221 SCRA 15.

[32] Philippine International Fair, Inc., et al. *vs.* Ibañez, et al., 50 Off. Gaz. 1036.

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GRANTED. The respondent Regional Trial Court of Manila, Branch 51 is declared without jurisdiction to take cognizance of Civil Case No. 86-37932, and all its orders and issuances in connection therewith are hereby ANNULLED and SET ASIDE. The respondent court is hereby ORDERED to DESIST from maintaining further proceeding in the case aforestated.

SO ORDERED.

Romero, Puno, and *Mendoza, JJ.,* concur.
Regalado (Chairman), J., on leave.

SECOND DIVISION

[G.R. No. 115581. August 29, 1997]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VACITA LATURA JONES,** *accused-appellant.*

SYNOPSIS

Accused-appellant Vacita Jones, an American national, appeals from her conviction for violation of Section 4, Article II of the Dangerous Drugs Act of 1972, i.e., Republic Act 6425, as embodied in the decision of the Regional Trial Court of Pasay City, Branch 111 in Criminal Case No. 91-2026, dated January 24, 1994. The records disclose that the accused was charged on December 16, 1991 for transporting 1.6 kilograms of heroin at Ninoy Aquino International Airport, Pasay City. In her appeal, accused posits that the trial court erred in giving credence to the prosecution's version that she was caught in flagrante possessing five packs of heroin and for holding her liable of unlawful transportation thereof under Section 4, Article II because there was no evidence indicating the point of origin of said packs of prohibited drugs and they were not found to in transit or being transported.

The Supreme Court ruled that the allegations of the accused appellant are untenable and that the accused is guilty of transporting