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VITUG, *J.*, *concurring opinion:*

I concur in the *ponencia* written by my esteemed colleague, Mr. Justice Josue N. Bellosillo. I only would like to stress that the 1988 opinion of the Commissioner of Internal Revenue cannot be considered void, considering that it evinces what the former Commissioner must have felt to be a real inconsistency between Section 127 and Section 142 of the Tax Code. The non-retroactivity proscription under Section 246 of the Tax Code can thus aptly apply. I reserve my vote, however, in a situation where, as the Solicitor General so points out, the revoked ruling is patently null and void in which case it could possibly be disregarded as being inexistent from the very beginning.

THIRD DIVISION

[G.R. No. 118843. February 6, 1997]

ERIKS PTE. LTD., *petitioner, vs.* **COURT OF APPEALS** and **DELFIN F. ENRIQUEZ, JR.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; FOREIGN CORPORATIONS; FOREIGN CORPORATIONS WITHOUT LICENSE, INCAPACITATED FROM FILING SUITS.**— Sec. 133 of the Corporation Code prohibits not merely absence of the prescribed license, but it also bars a foreign corporation "doing business" in the Philippines without such license access to our courts. A foreign corporation without such license is not *ipso facto* incapacitated from bringing an action. A license is necessary only if it is "*transacting or doing business*" in the country. Given the facts of this case, we cannot see how petitioner's business dealings will fit the category of "isolated transactions" considering that its intention to continue and pursue

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the corpus of its business in the country had been clearly established. It has not presented any convincing argument with equally convincing evidence for us to rule otherwise. Accordingly and ineluctably, petitioner must be held to be incapacitated to maintain the action *a quo* against private respondent.

2. **ID.; ID.; ID.; "DOING BUSINESS," CONSTRUED.**— In the durable case of *The Mentholatum Co. vs. Mangaliman,* this Court discoursed on the test to determine whether a foreign company is "doing business" in the Philippines, thus: "x x x The term implies a continuity of commercial dealings and arrangements, and contemplates, 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, the purpose and object of its organization."

3. **ID.; ID.; ID.; "DOING BUSINESS"; DETERMINED BY NATURE AND CHARACTER OF TRANSACTIONS.**— Thus, we hold that the series of transactions in question could not have been isolated or casual transactions. What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, *i.e.* a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the frequency of its transactions, but more upon the nature and character of the transactions.

4. **ID.; ID.; ID.; SUBSEQUENT ACQUISITION OF LICENSE WILL CURE LACK OF CAPACITY TO SUE.**— It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations. But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license,

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the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it. This Court has ruled that subsequent acquisition of the license will cure the lack of capacity at the time of the execution of the contract.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT OF THE TRIAL AND APPELLATE COURTS GENERALLY BINDING ON APPEAL.—** We find no reason to disagree with both lower courts. More than the sheer number of transactions entered into, a clear and unmistakable intention on the part of petitioner to continue the body of its business in the Philippines is more than apparent. As alleged in its complaint, it is engaged in the manufacture and sale of elements used in sealing pumps, valves, and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial use. Thus, the sale by petitioner of the items covered by the receipts, which are part and parcel of its main product line, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business, pure and simple. Further, its grant and extension of 90-day credit terms to private respondent for every purchase made, unarguably shows an intention to continue transacting with private respondent, since in the usual course of commercial transactions, credit is extended only to customers in good standing or to those on whom there is an intention to maintain long-term relationship. This being so, the existence of a distributorship agreement between the parties, as alleged but not proven by private respondent, would, if duly established by competent evidence, be merely corroborative, and failure to sufficiently prove said allegation will not significantly affect the finding of the courts below. Nor our own ruling. It is precisely upon the set of facts above-detailed that we concur with respondent Court that petitioner corporation was doing business in the country.

6. **REMEDIAL LAW; ACTIONS; MOTION TO DISMISS; *RES JUDICATA*; DOES NOT SET IN A CASE DISMISSED FOR LACK OF CAPACITY TO SUE.—** *Res judicata* does not set in a case dismissed for lack of capacity to sue, because there has been no determination on the merits.

APPEARANCES OF COUNSEL

Quasha Ancheta Pena & Nolasco for petitioner.
Roman S. Masangkay for private respondent.

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DECISION

PANGANIBAN, *J.*:

Is a foreign corporation which sold its products sixteen times over a five-month period to the same Filipino buyer without first obtaining a license to do business in the Philippines, prohibited from maintaining an action to collect payment therefor in Philippine courts? In other words, is such foreign corporation "doing business" in the Philippines without the required license and thus barred access to our court system?

This is the main issue presented for resolution in the instant petition for review, which seeks the reversal of the Decision[1] of the Court of Appeals, Seventh Division, promulgated on January 25, 1995, in CA-G.R. CV No. 41275 which affirmed, for want of capacity to sue, the trial court's dismissal of the collection suit instituted by petitioner.

The Facts

Petitioner Eriks Pte. Ltd. is a non-resident foreign corporation engaged in the manufacture and sale of elements used in sealing pumps, valves and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial uses. In its complaint, it alleged that:[2]

"(I)t is a corporation duly organized and existing under the laws of the Republic of Singapore with address at 18 Pasir Panjang Road #09-01, PSA Multi-Storey Complex, Singapore 0511. It is not licensed to do business in the Philippines and i(s) not so engaged and is suing on an isolated transaction for which it has capacity to sue x x x." (par. 1, Complaint; p. 1 Record)

On various dates covering the period January 17 — August 16, 1989, private respondent Delfin Enriquez, Jr., doing business under the name and style of Delrene EB Controls Center and/or EB Karmine Commercial, ordered and received from petitioner various

[1] Penned by *J.* Antonio M. Martinez and concurred in by *JJ.* Fermin A. Martin, Jr. and Delilah Vidallon-Magtolis.

[2] *Rollo*, p. 31.

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elements used in sealing pumps, valves, pipes and control equipment, PVC pipes and fittings. The ordered materials were delivered via airfreight under the following invoices:[3]

Date	*Invoice No.*	*AWB No.*	*Amount*
17 Jan 89	27065	618-7496-2941	S$ 5,010.59
24 Feb 89	27738	618-7553-6672	14,402.13
02 Mar 89	27855	(freight & handling charges per Inv. 27738)	1,164.18
03 Mar 89	27876	618-7553-7501	1,394.32
03 Mar 89	27877	618-7553-7501	1,641.57
10 Mar 89	28046	618-7578-3256/ 618-7578-3481	7,854.60
21 Mar 89	28258	618-7578-4634	27.72
14 Apr 89	28901	618-7741-7631	2,756.53
19 Apr 89	29001	Self-collect	458.80
16 Aug 89	31669	(handcarried by buyer)	1,862.00
			S$36,392.44
21 Mar 89	28257	618-7578-4634	415.50
04 Apr 89	28601	618-7741-7605	884.09
14 Apr 89	28900	618-7741-7631	1,269.50
25 Apr 89	29127	618-7741-9720	883.80
02 May 89	29232	(By seafreight)	120.00
05 May 89	29332	618-7796-3255	1,198.40
15 May 89	29497	(Freight & handling charges per Inv. 29127)	111.94
			S$ 4,989.29
31 May 89	29844	618-7796-5646	545.70
			S$ 545.70
		Total	S$41,927.43

[3] *Rollo*, pp. 12-13.

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The transfers of goods were perfected in Singapore, for private respondent's account, F.O.B. Singapore, with a 90-day credit term. Subsequently, demands were made by petitioner upon private respondent to settle his account, but the latter failed/refused to do so.

On August 28, 1991, petitioner corporation filed with the Regional Trial Court of Makati, Branch 138,[4] Civil Case No. 91-2373 entitled "*Eriks Pte. Ltd. vs. Delfin Enriquez, Jr.*" for the recovery of S$41,939.63 or its equivalent in Philippine currency, plus interest thereon and damages. Private respondent responded with a Motion to Dismiss, contending that petitioner corporation had no legal capacity to sue. In an Order dated March 8, 1993,[5] the trial court dismissed the action on the ground that petitioner is a foreign corporation doing business in the Philippines without a license. The dispositive portion of said order reads:[6]

"WHEREFORE, in view of the foregoing, the motion to dismiss is hereby GRANTED and accordingly, the above-entitled case is hereby DISMISSED.

SO ORDERED."

On appeal, respondent Court affirmed said order as it deemed the series of transactions between petitioner corporation and private respondent not to be an "isolated or casual transaction." Thus, respondent Court likewise found petitioner to be without legal capacity to sue, and disposed of the appeal as follows:[7]

"WHEREFORE, the appealed Order should be, as it is hereby AFFIRMED. The complaint is dismissed. No costs.

SO ORDERED."

Hence, this petition.

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[4] Presided by Judge Fernando P. Agdamag.

[5] *Rollo*, pp. 50-51.

[6] CA, *Rollo*, p. 29.

[7] *Rollo*, p. 35.

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The Issue

The main issue in this petition is whether petitioner-corporation may maintain an action in Philippine courts considering that it has no license to do business in the country. The resolution of this issue depends on whether petitioner's business with private respondent may be treated as isolated transactions.

Petitioner insists that the series of sales made to private respondent would still constitute isolated transactions despite the number of invoices covering several separate and distinct items sold and shipped over a span of four to five months, and that an affirmation of respondent Court's ruling would result in injustice and unjust enrichment.

Private respondent counters that to declare petitioner as possessing capacity to sue will render nugatory the provisions of the Corporation Code and constitute a gross violation of our laws. Thus, he argues, petitioner is undeserving of legal protection.

The Court's Ruling

The petition has no merit.

The Concept of Doing Business

The Corporation Code provides:

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

The aforementioned provision prohibits, not merely absence of the prescribed license, but it also bars a foreign corporation "doing business" in the Philippines without such license access to our courts.[8] A foreign corporation without such license is not *ipso facto*

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[8] *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.*, G.R. No. 110318, promulgated on August 28, 1996, p. 6.

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incapacitated from bringing an action. A license is necessary only if it is "*transacting or doing business*" in the country.

However, there is no definitive rule on what constitutes "doing," "engaging in," or "transacting" business. The Corporation Code itself does not define such terms. To fill the gap, the evolution of its statutory definition has produced a rather all-encompassing concept in Republic Act No. 7042[9] in this wise:

"SEC. 3. Definitions. — As used in this Act:

xxx xxx xxx

(d) the phrase 'doing business' shall include soliciting orders, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eight(y) (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and *any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization:* Provided, however, That the phrase 'doing business' shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account." (italics supplied)

In the durable case of *The Mentholatum Co. vs. Mangaliman,* this Court discoursed on the test to determine whether a foreign company is "doing business" in the Philippines, thus:[10]

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[9] "An Act to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in the Philippines, and for Other Purposes"; approved on June 13, 1991.

[10] *The Mentholatum Co., Inc., et al. vs. Mangaliman, et al.*, 72 Phil 524, 528-529 (1941).

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"x x x 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 or whether it has substantially retired from it and turned it over to another. (Traction Cos. *v.* Collectors of Int. Revenue [C.C.A., Ohio], 223 F. 984, 987.] The term implies a continuity of commercial dealings and arrangements, and contemplates, 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, the purpose and object of its organization.] (sic) (Griffin *v.* Implement Dealer's Mut. Fire Ins. Co., 241 N.W. 75, 77; Pauline Oil & Gas Co. *v.* Mutual Tank Line Co., 246 P. 851, 852, 118 Okl. 111; Automotive Material Co. *v.* American Standard Metal Products Corp., 158 N.E. 698, 703, 327 III. 367.)"

The accepted rule in jurisprudence is that each case must be judged in the light of its own environmental circumstances.[11] It should be kept in mind that the purpose of the law is to subject the foreign corporation doing business in the Philippines to the jurisdiction of our courts. It is not to prevent the foreign corporation from performing single or isolated acts, but to bar it from acquiring a domicile for the purpose of business without first taking the steps necessary to render it amenable to suits in the local courts.

The trial court held that petitioner-corporation was doing business without a license, finding that:[12]

"The invoices and delivery receipts covering the period of (sic) from January 17, 1989 to August 16, 1989 cannot be treated to mean a singular and isolated business transaction that is temporary in character. Granting that there is no distributorship agreement between herein parties, yet by the mere fact that plaintiff, each time that the defendant posts an order delivers the items as evidenced by the several invoices and receipts of various dates only indicates that plaintiff has the intention and desire to repeat the (sic) said transaction in the future in pursuit of its ordinary business. Furthermore, 'and if the corporation is doing that for which it was created, the amount or volume of the

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[11] *Op. cit.*, p. 7; *National Sugar Trading Corporation, et al. vs. Court of Appeals, et al.*, 246 SCRA 465, 469, July 17, 1995; and *The Mentholatum Co., Inc. vs. Mangaliman, supra*, p. 528.

[12] *Rollo*, pp. 50-51.

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business done is immaterial and a single act of that character may constitute doing business.' (See p. 603, Corp. Code, De Leon - 1986 Ed.)."

Respondent Court affirmed this finding in its assailed Decision with this explanation:[13]

"x x x Considering the factual background as laid out above, the transaction cannot be considered as an isolated one. Note that there were 17 orders and deliveries (only sixteen per our count) over a four-month period. The appellee (private respondent) made separate orders at various dates. The transactions did not consist of separate deliveries for one single order. In the case at bar, the transactions entered into by the appellant with the appellee are a series of commercial dealings which would signify an intent on the part of the appellant (petitioner) to do business in the Philippines and could not by any stretch of the imagination be considered an isolated one, thus would fall under the category of 'doing business.'

Even if We were to view, as contended by the appellant, that the transactions which occurred between January to August 1989, constitute a single act or isolated business transaction, this being the ordinary business of appellant corporation, it can be said to be illegally doing or transacting business without a license. x x x Here it can be clearly gleaned from the four-month period of transactions between appellant and appellee that it was a continuing business relationship, which would, without doubt, constitute doing business without a license. For all intents and purposes, appellant corporation is doing or transacting business in the Philippines without a license and that, therefore, in accordance with the specific mandate of Section 144 of the Corporation Code, it has no capacity to sue." (addition ours)

We find no reason to disagree with both lower courts. More than the sheer number of transactions entered into, a clear and unmistakable intention on the part of petitioner to continue the body of its business in the Philippines is more than apparent. As alleged in its complaint, it is engaged in the manufacture and sale of elements used in sealing pumps, valves, and pipes for industrial purposes, valves and control equipment used for industrial fluid control and PVC pipes and fittings for industrial use. Thus, the

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[13] *Rollo*, pp. 33-34.

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sale by petitioner of the items covered by the receipts, which are part and parcel of its main product line, was actually carried out in the progressive prosecution of commercial gain and the pursuit of the purpose and object of its business, pure and simple. Further, its grant and extension of 90-day credit terms to private respondent for every purchase made, unarguably shows an intention to continue transacting with private respondent, since in the usual course of commercial transactions, credit is extended only to customers in good standing or to those on whom there is an intention to maintain long-term relationship. This being so, the existence of a distributorship agreement between the parties, as alleged but not proven by private respondent, would, if duly established by competent evidence, be merely corroborative, and failure to sufficiently prove said allegation will not significantly affect the finding of the courts below. Nor our own ruling. It is precisely upon the set of facts above-detailed that we concur with respondent Court that petitioner corporation was doing business in the country.

Equally important is the absence of any fact or circumstance which might tend even remotely to negate such intention to continue the progressive prosecution of petitioner's business activities in this country. Had private respondent not turned out to be a bad risk, in all likelihood petitioner would have indefinitely continued its commercial transactions with him, and not surprisingly, in ever increasing volumes.

Thus, we hold that the series of transactions in question could not have been isolated or casual transactions. What is determinative of "doing business" is not really the number or the quantity of the transactions, but more importantly, the intention of an entity to continue the body of its business in the country. The number and quantity are merely evidence of such intention. The phrase "isolated transaction" has a definite and fixed meaning, *i.e.* a transaction or series of transactions set apart from the common business of a foreign enterprise in the sense that there is no intention to engage in a progressive pursuit of the purpose and object of the business organization. Whether a foreign corporation is "doing business" does not necessarily depend upon the

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frequency of its transactions, but more upon the nature and character of the transactions.[14]

Given the facts of this case, we cannot see how petitioner's business dealings will fit the category of "isolated transactions" considering that its intention to continue and pursue the corpus of its business in the country had been clearly established. It has not presented any convincing argument with equally convincing evidence for us to rule otherwise.

Incapacitated to Maintain Suit

Accordingly and ineluctably, petitioner must be held to be incapacitated to maintain the action *a quo* against private respondent.

It was never the intent of the legislature to bar court access to a foreign corporation or entity which happens to obtain an isolated order for business in the Philippines. Neither, did it intend to shield debtors from their legitimate liabilities or obligations.[15] But it cannot allow foreign corporations or entities which conduct regular business any access to courts without the fulfillment by such corporations of the necessary requisites to be subjected to our government's regulation and authority. By securing a license, the foreign entity would be giving assurance that it will abide by the decisions of our courts, even if adverse to it.

Other Remedy Still Available

By this judgment, we are not foreclosing petitioner's right to collect payment. *Res judicata* does not set in a case dismissed for lack of capacity to sue, because there has been no determination on the merits.[16] Moreover, this Court has ruled that subsequent

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[14] 13 *Words and Phrases*, Permanent Edition 195 citing *Brandtjen & Kluge vs. Nanson*, 115 P.2d 731, 733, 9 Wash.2d 362.

[15] *Marshall Wells Co. vs. Elser & Co.*, 46 Phil. 70, 75 (1924).

[16] *Licup vs. Manila Railroad Company*, 2 SCRA 267, 270, May 30, 1961.

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acquisition of the license will cure the lack of capacity at the time of the execution of the contract.[17]

The requirement of a license is not meant to put foreign corporations at a disadvantage. Rather, the doctrine of lack of capacity to sue is based on considerations of sound public policy.[18] Thus, it has been ruled in *Home Insurance* that:[19]

"'x x x The primary purpose of our statute is to compel a foreign corporation desiring to do business within the state to submit itself to the jurisdiction of the courts of this state. The statute was not intended to exclude foreign corporations from the state. x x x The better reason, the wiser and fairer policy, and the greater weight lie with those decisions which hold that where, as here, there is a prohibition with a penalty, with no express or implied declarations respecting the validity of enforceability of contracts made by qualified foreign corporations, the contracts x x x are enforceable x x x upon compliance with the law.' (Peter & Burghard Stone Co. *v.* Carper, 172 N.E. 319 [1930].)"

While we agree with petitioner that the country needs to develop trade relations and foster friendly commercial relations with other states, we also need to enforce our laws that regulate the conduct of foreigners who desire to do business here. Such strangers must follow our laws and must subject themselves to reasonable regulation by our government.

WHEREFORE, premises considered, the instant petition is hereby *DENIED* and the assailed Decision is *AFFIRMED.*

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.,* concur.

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[17] *Home Insurance Company vs. Eastern Shipping Lines*, 123 SCRA 424, 439, July 20, 1988.

[18] *National Sugar Trading Corp. vs. C.A., supra*, p. 470.

[19] *Home Insurance Co. vs. Eastern Shipping Lines, supra*, p. 437.