Supreme Court E-Library

SECOND DIVISION

[G.R. No. 152392. May 26, 2005]

EXPERTRAVEL & TOURS, INC., *petitioner, vs.* **COURT OF APPEALS and KOREAN AIRLINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE AGAINST FORUM SHOPPING; REQUISITE CERTIFICATION EXECUTED BY THE PLAINTIFF'S COUNSEL WILL NOT SUFFICE.** — It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that the failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals. Even his counsel may be unaware of such facts. Hence, the requisite certification executed by the plaintiff's counsel will not suffice.

2. **ID.; ID.; ID.; WHERE THE PLAINTIFF IS A PRIVATE CORPORATION, THE CERTIFICATION MAY BE SIGNED, FOR AND ON BEHALF OF THE SAID CORPORATION, BY A SPECIFICALLY AUTHORIZED PERSON.** — In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. The reason was explained by the Court in *National Steel Corporation v. Court of Appeals,* as follows: Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents. ... The corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises

Supreme Court E-Library

said powers through its board of directors and/or its duly-authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly-authorized for the purpose by corporate by-laws or by specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons." x x x For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.

3. **ID.; ID.; ID.; COMPLIANCE THEREWITH AFTER THE FILING OF THE COMPLAINT IS IMPERMISSIBLE EXCEPTION.** — Indeed, the certificate of non-forum shopping may be incorporated in the complaint or appended thereto as an integral part of the complaint. The rule is that compliance with the rule after the filing of the complaint, or the dismissal of a complaint based on its non-compliance with the rule, is impermissible. However, in exceptional circumstances, the court may allow subsequent compliance with the rule. If the authority of a party's counsel to execute a certificate of non-forum shopping is disputed by the adverse party, the former is required to show proof of such authority or representation.

4. **ID.; ID.; ID.; A RESIDENT AGENT OF A PRIVATE CORPORATION IS NOT AUTHORIZED TO EXECUTE THE REQUISITE CERTIFICATION AGAINST FORUM SHOPPING.** — While Atty. Aguinaldo is the resident agent of the respondent in the Philippines, this does not mean that he is authorized to execute the requisite certification against forum shopping. Under Section 127, in relation to Section 128 of the Corporation Code, the authority of the resident agent of a foreign corporation with license to do business in the Philippines is to receive, for and in behalf of the foreign corporation, services

Supreme Court E-Library

and other legal processes in all actions and other legal proceedings against such corporation[.] x x x Under the law, Atty. Aguinaldo was not specifically authorized to execute a certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. This is because while a resident agent may be aware of actions filed against his principal (a foreign corporation doing business in the Philippines), such resident may not be aware of actions initiated by its principal, whether in the Philippines against a domestic corporation or private individual, or in the country where such corporation was organized and registered, against a Philippine registered corporation or a Filipino citizen.

5. ID.; EVIDENCE; JUDICIAL NOTICE; THREE MATERIAL REQUISITES. — Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.

6. ID.; ID.; ID.; APPLICABLE TO THINGS OF "COMMON KNOWLEDGE." — Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed

Supreme Court E-Library

as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.*

7. ID.; ID.; ID.; BUSINESS TRANSACTIONS MAY BE MADE BY INDIVIDUALS THROUGH TELECONFERENCING. — In this age of modern technology, the courts may take judicial notice that business transactions may be made by individuals through teleconferencing. Teleconferencing is interactive group communication (three or more people in two or more locations) through an electronic medium. In general terms, teleconferencing can bring people together under one roof even though they are separated by hundreds of miles. This type of group communication may be used in a number of ways, and have three basic types: (1) video conferencing - television-like communication augmented with sound; (2) computer conferencing - printed communication through keyboard terminals, and (3) audio-conferencing-verbal communication *via* the telephone with optional capacity for telewriting or telecopying.

8. ID.; ID.; ID.; TELECONFERENCING CANNOT SATISFY THE INDIVIDUAL NEEDS OF EVERY TYPE OF MEETING. — Indeed, teleconferencing can only facilitate the linking of people; it does not alter the complexity of group communication. Although it may be easier to communicate *via* teleconferencing, it may also be easier to miscommunicate. Teleconferencing cannot satisfy the individual needs of every type of meeting. In the Philippines, teleconferencing and videoconferencing of members of board of directors of private corporations is a reality, in light of Republic Act No. 8792. The Securities and Exchange Commission issued SEC Memorandum Circular No. 15, on November 30, 2001, providing the guidelines to be complied with related to such conferences.

APPEARANCES OF COUNSEL

Purita Hontanosas-Cortes for petitioner.
Mario A. Aguinaldo for private respondent.

Supreme Court E-Library

DECISION

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61000 dismissing the petition for *certiorari* and *mandamus* filed by Expertravel and Tours, Inc. (ETI).

The Antecedents

Korean Airlines (KAL) is a corporation established and registered in the Republic of South Korea and licensed to do business in the Philippines. Its general manager in the Philippines is Suk Kyoo Kim, while its appointed counsel was Atty. Mario Aguinaldo and his law firm.

On September 6, 1999, KAL, through Atty. Aguinaldo, filed a Complaint[2] against ETI with the Regional Trial Court (RTC) of Manila, for the collection of the principal amount of ₱260,150.00, plus attorney's fees and exemplary damages. The verification and certification against forum shopping was signed by Atty. Aguinaldo, who indicated therein that he was the resident agent and legal counsel of KAL and had caused the preparation of the complaint.

ETI filed a motion to dismiss the complaint on the ground that Atty. Aguinaldo was not authorized to execute the verification and certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. KAL opposed the motion, contending that Atty. Aguinaldo was its resident agent and was registered as such with the Securities and Exchange Commission (SEC) as required by the Corporation Code of the Philippines. It was further alleged that Atty. Aguinaldo was also the corporate secretary of KAL. Appended to the said opposition was the identification card of Atty. Aguinaldo, showing that he was the lawyer of KAL.

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Romeo A. Brawner (now Presiding Justice) and Juan Q. Enriquez, Jr., concurring; *Rollo*, pp. 27-30.

[2] *Rollo*, pp. 53-56.

Supreme Court E-Library

During the hearing of January 28, 2000, Atty. Aguinaldo claimed that he had been authorized to file the complaint through a resolution of the KAL Board of Directors approved during a special meeting held on June 25, 1999. Upon his motion, KAL was given a period of 10 days within which to submit a copy of the said resolution. The trial court granted the motion. Atty. Aguinaldo subsequently filed other similar motions, which the trial court granted.

Finally, KAL submitted on March 6, 2000 an Affidavit[3] of even date, executed by its general manager Suk Kyoo Kim, alleging that the board of directors conducted a special teleconference on June 25, 1999, which he and Atty. Aguinaldo attended. It was also averred that in that same teleconference, the board of directors approved a resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping and to file the complaint. Suk Kyoo Kim also alleged, however, that the corporation had no written copy of the aforesaid resolution.

On April 12, 2000, the trial court issued an Order[4] denying the motion to dismiss, giving credence to the claims of Atty. Aguinaldo and Suk Kyoo Kim that the KAL Board of Directors indeed conducted a teleconference on June 25, 1999, during which it approved a resolution as quoted in the submitted affidavit.

ETI filed a motion for the reconsideration of the Order, contending that it was inappropriate for the court to take judicial notice of the said teleconference without any prior hearing. The trial court denied the motion in its Order[5] dated August 8, 2000.

ETI then filed a petition for *certiorari* and *mandamus*, assailing the orders of the RTC. In its comment on the petition, KAL appended a certificate signed by Atty. Aguinaldo dated January 10, 2000, worded as follows:

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[3] *Rollo*, p. 109.

[4] *Id.* at 47-50.

[5] *Rollo*, pp. 51-52.

Supreme Court E-Library

SECRETARY'S/RESIDENT AGENT'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

I, Mario A. Aguinaldo, of legal age, Filipino, and duly elected and appointed Corporate Secretary and Resident Agent of KOREAN AIRLINES, a foreign corporation duly organized and existing under and by virtue of the laws of the Republic of Korea and also duly registered and authorized to do business in the Philippines, with office address at Ground Floor, LPL Plaza Building, 124 Alfaro St., Salcedo Village, Makati City, HEREBY CERTIFY that during a special meeting of the Board of Directors of the Corporation held on June 25, 1999 at which a quorum was present, the said Board unanimously passed, voted upon and approved the following resolution which is now in full force and effect, to wit:

> RESOLVED, that Mario A. Aguinaldo and his law firm M.A. Aguinaldo & Associates or any of its lawyers are hereby appointed and authorized to take with whatever legal action necessary to effect the collection of the unpaid account of Expert Travel & Tours. They are hereby specifically authorized to prosecute, litigate, defend, sign and execute any document or paper necessary to the filing and prosecution of said claim in Court, attend the Pre-Trial Proceedings and enter into a compromise agreement relative to the above-mentioned claim.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 10th day of January, 1999, in the City of Manila, Philippines.

(Sgd.)

MARIO A. AGUINALDO
Resident Agent

SUBSCRIBED AND SWORN to before me this 10th day of January, 1999, Atty. Mario A. Aguinaldo exhibiting to me his Community Tax Certificate No. 14914545, issued on January 7, 2000 at Manila, Philippines.

(Sgd.)
ATTY. HENRY D. ADASA
Notary Public
Until December 31, 2000
PTR #889583/MLA 1/3/2000[6]

Doc. No. 119;
Page No. 25;
Book No. XXIV
Series of 2000.

[6] *Rollo*, p. 108.

Supreme Court E-Library

On December 18, 2001, the CA rendered judgment dismissing the petition, ruling that the verification and certificate of non-forum shopping executed by Atty. Aguinaldo was sufficient compliance with the Rules of Court. According to the appellate court, Atty. Aguinaldo had been duly authorized by the board resolution approved on June 25, 1999, and was the resident agent of KAL. As such, the RTC could not be faulted for taking judicial notice of the said teleconference of the KAL Board of Directors.

ETI filed a motion for reconsideration of the said decision, which the CA denied. Thus, ETI, now the petitioner, comes to the Court by way of petition for review on *certiorari* and raises the following issue:

DID PUBLIC RESPONDENT COURT OF APPEALS DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT RENDERED ITS QUESTIONED DECISION AND WHEN IT ISSUED ITS QUESTIONED RESOLUTION, ANNEXES A AND B OF THE INSTANT PETITION?[7]

The petitioner asserts that compliance with Section 5, Rule 7, of the Rules of Court can be determined only from the contents of the complaint and not by documents or pleadings outside thereof. Hence, the trial court committed grave abuse of discretion amounting to excess of jurisdiction, and the CA erred in considering the affidavit of the respondent's general manager, as well as the Secretary's/Resident Agent's Certification and the resolution of the board of directors contained therein, as proof of compliance with the requirements of Section 5, Rule 7 of the Rules of Court. The petitioner also maintains that the RTC cannot take judicial notice of the said teleconference without prior hearing, nor any motion therefor. The petitioner reiterates its submission that the teleconference and the resolution adverted to by the respondent was a mere fabrication.

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[7] *Id.* at 18.

Supreme Court E-Library

The respondent, for its part, avers that the issue of whether modern technology is used in the field of business is a factual issue; hence, cannot be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. On the merits of the petition, it insists that Atty. Aguinaldo, as the resident agent and corporate secretary, is authorized to sign and execute the certificate of non-forum shopping required by Section 5, Rule 7 of the Rules of Court, on top of the board resolution approved during the teleconference of June 25, 1999. The respondent insists that "technological advances in this time and age are as commonplace as daybreak." Hence, the courts may take judicial notice that the Philippine Long Distance Telephone Company, Inc. had provided a record of corporate conferences and meetings through FiberNet using fiber-optic transmission technology, and that such technology facilitates voice and image transmission with ease; this makes constant communication between a foreign-based office and its Philippine-based branches faster and easier, allowing for cost-cutting in terms of travel concerns. It points out that even the E-Commerce Law has recognized this modern technology. The respondent posits that the courts are aware of this development in technology; hence, may take judicial notice thereof without need of hearings. Even if such hearing is required, the requirement is nevertheless satisfied if a party is allowed to file pleadings by way of comment or opposition thereto.

In its reply, the petitioner pointed out that there are no rulings on the matter of teleconferencing as a means of conducting meetings of board of directors for purposes of passing a resolution; until and after teleconferencing is recognized as a legitimate means of gathering a quorum of board of directors, such cannot be taken judicial notice of by the court. It asserts that safeguards must first be set up to prevent any mischief on the public or to protect the general public from any possible fraud. It further proposes possible amendments to the Corporation Code to give recognition to such manner of board meetings to transact business for the corporation, or other related corporate matters; until then, the petitioner asserts, teleconferencing cannot be the subject of judicial notice.

Supreme Court E-Library

The petitioner further avers that the supposed holding of a special meeting on June 25, 1999 through teleconferencing where Atty. Aguinaldo was supposedly given such an authority is a farce, considering that there was no mention of where it was held, whether in this country or elsewhere. It insists that the Corporation Code requires board resolutions of corporations to be submitted to the SEC. Even assuming that there was such a teleconference, it would be against the provisions of the Corporation Code not to have any record thereof.

The petitioner insists that the teleconference and resolution adverted to by the respondent in its pleadings were mere fabrications foisted by the respondent and its counsel on the RTC, the CA and this Court.

The petition is meritorious.

Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary

Supreme Court E-Library

dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

It is settled that the requirement to file a certificate of non-forum shopping is mandatory[8] and that the failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals. Even his counsel may be unaware of such facts.[9] Hence, the requisite certification executed by the plaintiff's counsel will not suffice.[10]

In a case where the plaintiff is a private corporation, the certification may be signed, for and on behalf of the said corporation, by a specifically authorized person, including its retained counsel, who has personal knowledge of the facts required to be established by the documents. The reason was explained by the Court in *National Steel Corporation v. Court of Appeals,*[11] as follows:

> Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, its officers and/or agents.
>
> . . . . . .
>
> The corporation, such as the petitioner, has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a

[8] *Melo v. Court of Appeals*, G.R. No. 123686, 16 November 1999, 318 SCRA 94.

[9] *Digital Microwave Corporation v. Court of Appeals*, G.R. No. 128550, 16 March 2000, 328 SCRA 286.

[10] *United Residents Dominican Hill, Inc. v. COSLAP*, G.R. No. 135945, 7 March 2001, 353 SCRA 782.

[11] G.R. No. 134468, 29 August 2002, 388 SCRA 85.

Supreme Court E-Library

corporation exercises said powers through its board of directors and/or its duly-authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly-authorized for the purpose by corporate by-laws or by specific act of the board of directors. "All acts within the powers of a corporation may be performed by agents of its selection; and except so far as limitations or restrictions which may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons."

. . . . . .

. . . For who else knows of the circumstances required in the Certificate but its own retained counsel. Its regular officers, like its board chairman and president, may not even know the details required therein.

Indeed, the certificate of non-forum shopping may be incorporated in the complaint or appended thereto as an integral part of the complaint. The rule is that compliance with the rule after the filing of the complaint, or the dismissal of a complaint based on its non-compliance with the rule, is impermissible. However, in exceptional circumstances, the court may allow subsequent compliance with the rule.[12] If the authority of a party's counsel to execute a certificate of non-forum shopping is disputed by the adverse party, the former is required to show proof of such authority or representation.

In this case, the petitioner, as the defendant in the RTC, assailed the authority of Atty. Aguinaldo to execute the requisite verification and certificate of non-forum shopping as the resident agent and counsel of the respondent. It was, thus, incumbent upon the respondent, as the plaintiff, to allege and establish that Atty. Aguinaldo had such authority to execute the requisite verification and certification for and in its behalf. The respondent, however, failed to do so.

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[12] *Uy v. Land Bank of the Philippines*, G.R. No. 136100, 24 July 2000, 336 SCRA 419; and *National Steel Corporation v. Court of Appeals, supra.*

Supreme Court E-Library

The verification and certificate of non-forum shopping which was incorporated in the complaint and signed by Atty. Aguinaldo reads:

I, Mario A. Aguinaldo of legal age, Filipino, with office address at Suite 210 Gedisco Centre, 1564 A. Mabini cor. P. Gil Sts., Ermita, Manila, after having sworn to in accordance with law hereby deposes and say: THAT —

1. I am the Resident Agent and Legal Counsel of the plaintiff in the above entitled case and have caused the preparation of the above complaint;

2. I have read the complaint and that all the allegations contained therein are true and correct based on the records on files;

3. I hereby further certify that I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency. If I subsequently learned that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any tribunal or agency, I will notify the court, tribunal or agency within five (5) days from such notice/knowledge.

(Sgd.)
MARIO A. AGUINALDO
Affiant

CITY OF MANILA

SUBSCRIBED AND SWORN TO before me this 30th day of August, 1999, affiant exhibiting to me his Community Tax Certificate No. 00671047 issued on January 7, 1999 at Manila, Philippines.

(Sgd.)
ATTY. HENRY D. ADASA
Notary Public
Until December 31, 2000
PTR No. 320501 Mla 1/4/99[13]

Doc. No. 1005;
Page No. 198;
Book No. XXI
Series of 1999.

[13] *Rollo*, pp. 55-56.

Supreme Court E-Library

As gleaned from the aforequoted certification, there was no allegation that Atty. Aguinaldo had been authorized to execute the certificate of non-forum shopping by the respondent's Board of Directors; moreover, no such board resolution was appended thereto or incorporated therein.

While Atty. Aguinaldo is the resident agent of the respondent in the Philippines, this does not mean that he is authorized to execute the requisite certification against forum shopping. Under Section 127, in relation to Section 128 of the Corporation Code, the authority of the resident agent of a foreign corporation with license to do business in the Philippines is to receive, for and in behalf of the foreign corporation, services and other legal processes in all actions and other legal proceedings against such corporation, thus:

SEC. 127. *Who may be a resident agent.* — A resident agent may either be an individual residing in the Philippines or a domestic corporation lawfully transacting business in the Philippines: *Provided,* That in the case of an individual, he must be of good moral character and of sound financial standing.

SEC. 128. *Resident agent; service of process.* — The Securities and Exchange Commission shall require as a condition precedent to the issuance of the license to transact business in the Philippines by any foreign corporation that such corporation file with the Securities and Exchange Commission a written power of attorney designating some persons who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against such corporation, and consenting that service upon such resident agent shall be admitted and held as valid as if served upon the duly-authorized officers of the foreign corporation as its home office.[14]

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[14] These provisions are the basis of Section 12, Rule 14 of the Rules of Court, which reads:

SEC. 12. *Service upon foreign private juridical entity.* — When the defendant is a foreign private juridical entity which has transacted 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.

Supreme Court E-Library

Under the law, Atty. Aguinaldo was not specifically authorized to execute a certificate of non-forum shopping as required by Section 5, Rule 7 of the Rules of Court. This is because while a resident agent may be aware of actions filed against his principal (a foreign corporation doing business in the Philippines), such resident may not be aware of actions initiated by its principal, whether in the Philippines against a domestic corporation or private individual, or in the country where such corporation was organized and registered, against a Philippine registered corporation or a Filipino citizen.

The respondent knew that its counsel, Atty. Aguinaldo, as its resident agent, was not specifically authorized to execute the said certification. It attempted to show its compliance with the rule subsequent to the filing of its complaint by submitting, on March 6, 2000, a resolution purporting to have been approved by its Board of Directors during a teleconference held on June 25, 1999, allegedly with Atty. Aguinaldo and Suk Kyoo Kim in attendance. However, such attempt of the respondent casts veritable doubt not only on its claim that such a teleconference was held, but also on the approval by the Board of Directors of the resolution authorizing Atty. Aguinaldo to execute the certificate of non-forum shopping.

In its April 12, 2000 Order, the RTC took judicial notice that because of the onset of modern technology, persons in one location may confer with other persons in other places, and, based on the said premise, concluded that Suk Kyoo Kim and Atty. Aguinaldo had a teleconference with the respondent's Board of Directors in South Korea on June 25, 1999. The CA, likewise, gave credence to the respondent's claim that such a teleconference took place, as contained in the affidavit of Suk Kyoo Kim, as well as Atty. Aguinaldo's certification.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially

Supreme Court E-Library

known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.[15] Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.[16]

Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.*[17]

In this age of modern technology, the courts may take judicial notice that business transactions may be made by individuals through teleconferencing. Teleconferencing is interactive group communication (three or more people in two or more locations) through an electronic medium. In general terms, teleconferencing can bring people together under one roof even though they are separated by hundreds of miles.[18] This type of group communication

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[15] *State Prosecutors v. Muro,* A.M. No. RTJ-92-876, 19 September 1994, 236 SCRA 505.

[16] *Wood v. Astleford,* 412 N.W. 2d 753 (1987).

[17] *Trepanier v. Toledo & D. C. Ry, Co.,* 130 N.E. 558.

[18] J. Carroll, *Teleconferencing,* CIX Dun's Business Month, 1 (1982), pp. 130-34, cited in R. Rogan and G. Simons, *Teleconferencing,* 22 Journal of Extensions 5, 20 (September 1984) available at http://joe.org/joe/1984 September/a4 html. (last visited 20 May 2005).

Supreme Court E-Library

may be used in a number of ways, and have three basic types: (1) video conferencing — television-like communication augmented with sound; (2) computer conferencing — printed communication through keyboard terminals, and (3) audio-conferencing-verbal communication *via* the telephone with optional capacity for telewriting or telecopying.[19]

A teleconference represents a unique alternative to face-to-face (FTF) meetings. It was first introduced in the 1960's with American Telephone and Telegraph's Picturephone. At that time, however, no demand existed for the new technology. Travel costs were reasonable and consumers were unwilling to pay the monthly service charge for using the picturephone, which was regarded as more of a novelty than as an actual means for everyday communication.[20] In time, people found it advantageous to hold teleconferencing in the course of business and corporate governance, because of the money saved, among other advantages include:

1. People (including outside guest speakers) who wouldn't normally attend a distant FTF meeting can participate.

2. Follow-up to earlier meetings can be done with relative ease and little expense.

3. Socializing is minimal compared to an FTF meeting; therefore, meetings are shorter and more oriented to the primary purpose of the meeting.

4. Some routine meetings are more effective since one can audio-conference from any location equipped with a telephone.

5. Communication between the home office and field staffs is maximized.

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[19] *Ibid.*

[20] R. Johansen, J. Vallee, and K. Spangler, *Electronic Meetings: Utopian Dreams and Complex Realities, The Futurist,* XII (No. 5, 1978), 313-19, *supra.*

Supreme Court E-Library

6. Severe climate and/or unreliable transportation may necessitate teleconferencing.

7. Participants are generally better prepared than for FTF meetings.

8. It is particularly satisfactory for simple problem-solving, information exchange, and procedural tasks.

9. Group members participate more equally in well-moderated teleconferences than an FTF meeting.[21]

On the other hand, other private corporations opt not to hold teleconferences because of the following disadvantages:

1. Technical failures with equipment, including connections that aren't made.

2. Unsatisfactory for complex interpersonal communication, such as negotiation or bargaining.

3. Impersonal, less easy to create an atmosphere of group rapport.

4. Lack of participant familiarity with the equipment, the medium itself, and meeting skills.

5. Acoustical problems within the teleconferencing rooms.

6. Difficulty in determining participant speaking order; frequently one person monopolizes the meeting.

7. Greater participant preparation time needed.

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[21] *J. Bartlett, Interesting Highlights of the Growing Teleconferencing Boom,* XVII Communication News 12 (1980), 42; Sonneville, Teleconferencing Enters Its Growth Stage; Stu Sutherland, *Extension Teleconferencing in the 1980's,* LII *Extension Service Review* 2 (1981), 12-16; L. Parker, M. Baird, and M. Monson, *Introduction to Teleconferencing* (Madison: University of Wisconsin-Extension, Center for Interactive Programs, 1982); and Rogan and others, *Audioconferencing, supra.*

Supreme Court E-Library

8. Informal, one-to-one, social interaction not possible.[22]

Indeed, teleconferencing can only facilitate the linking of people; it does not alter the complexity of group communication. Although it may be easier to communicate *via* teleconferencing, it may also be easier to miscommunicate. Teleconferencing cannot satisfy the individual needs of every type of meeting.[23]

In the Philippines, teleconferencing and videoconferencing of members of board of directors of private corporations is a reality, in light of Republic Act No. 8792. The Securities and Exchange Commission issued SEC Memorandum Circular No. 15, on November 30, 2001, providing the guidelines to be complied with related to such conferences.[24] Thus, the Court agrees with the RTC that persons in the Philippines may have a teleconference with a group of persons in South Korea relating to business transactions or corporate governance.

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[22] Johansen, Vallee, and Spangler, *Electronic Meetings;* Parker, Baird, and Monson, *Introduction to Teleconferencing;* Rogan and others, *Audioconferencing;* and Sonneville, *Teleconferencing Enters its Growth Stage, supra.*

[23] *Ibid.*

[24] The Court also approved the Rule on Examination of a child witness which allows live-link television testimony in criminal cases where the child is a victim or a witness (Section 25), which took effect on December 15, 2000.

The early applications of videoconferencing in the States in the United States courts primarily focused on video arraignments and probable cause hearings. As courts began to appreciate the costs savings and the decreased security risks of the technology, other uses became apparent. Videoconferencing is an effective tool for parole interviews, juvenile detention hearings, mental health hearings, domestic violence hearings, pretrial conferences, remote witness testimony, and depositions — to name a few. The technology will prove even more valuable in an age of international terrorist trials with witnesses from around the world. Videoconferencing has become quite commonplace in State Courts per the Report. The last comprehensive report: "*Use of Interactive Video for Court Proceedings: Legal Status and Use Nationwide.*" Published in 1995, by the National Institute of Corrections, is that videoconferencing is used in 50 states in the United States of America.

Supreme Court E-Library

Even given the possibility that Atty. Aguinaldo and Suk Kyoo Kim participated in a teleconference along with the respondent's Board of Directors, the Court is not convinced that one was conducted; even if there had been one, the Court is not inclined to believe that a board resolution was duly passed specifically authorizing Atty. Aguinaldo to file the complaint and execute the required certification against forum shopping.

The records show that the petitioner filed a motion to dismiss the complaint on the ground that the respondent failed to comply with Section 5, Rule 7 of the Rules of Court. The respondent opposed the motion on December 1, 1999, on its contention that Atty. Aguinaldo, its resident agent, was duly authorized to sue in its behalf. The respondent, however, failed to establish its claim that Atty. Aguinaldo was its resident agent in the Philippines. Even the identification card[25] of Atty. Aguinaldo which the respondent appended to its pleading merely showed that he is the company lawyer of the respondent's Manila Regional Office.

The respondent, through Atty. Aguinaldo, announced the holding of the teleconference only during the hearing of January 28, 2000; Atty. Aguinaldo then prayed for ten days, or until February 8, 2000, within which to submit the board resolution purportedly authorizing him to file the complaint and execute the required certification against forum shopping. The court granted the motion.[26] The respondent, however, failed to comply, and instead prayed for 15 more days to submit the said resolution, contending that it was with its main office in Korea. The court granted the motion per its Order[27] dated February 11, 2000. The respondent again prayed for an extension within which to submit the said resolution, until March 6, 2000.[28] It was on the said date that the respondent submitted an affidavit of its general manager Suk Kyoo Kim, stating, *inter alia,* that he and Atty. Aguinaldo attended the said teleconference on June 25, 1999,

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[25] *Rollo*, p. 68.

[26] *Id.* at 86.

[27] *Id.* at 87.

[28] *Rollo*, pp. 90-91.

Supreme Court E-Library

where the Board of Directors supposedly approved the following resolution:

> RESOLVED, that Mario A. Aguinaldo and his law firm M.A. Aguinaldo & Associates or any of its lawyers are hereby appointed and authorized to take with whatever legal action necessary to effect the collection of the unpaid account of Expert Travel & Tours. They are hereby specifically authorized to prosecute, litigate, defend, sign and execute any document or paper necessary to the filing and prosecution of said claim in Court, attend the Pre-trial Proceedings and enter into a compromise agreement relative to the above-mentioned claim.[29]

But then, in the same affidavit, Suk Kyoo Kim declared that the respondent "do[es] not keep a written copy of the aforesaid Resolution" because no records of board resolutions approved during teleconferences were kept. This belied the respondent's earlier allegation in its February 10, 2000 motion for extension of time to submit the questioned resolution that it was in the custody of its main office in Korea. The respondent gave the trial court the impression that it needed time to secure a copy of the resolution kept in Korea, only to allege later (*via* the affidavit of Suk Kyoo Kim) that it had no such written copy. Moreover, Suk Kyoo Kim stated in his affidavit that the resolution was embodied in the Secretary's/Resident Agent's Certificate signed by Atty. Aguinaldo. However, no such resolution was appended to the said certificate.

The respondent's allegation that its board of directors conducted a teleconference on June 25, 1999 and approved the said resolution (with Atty. Aguinaldo in attendance) is incredible, given the additional fact that no such allegation was made in the complaint. If the resolution had indeed been approved on June 25, 1999, long before the complaint was filed, the respondent should have incorporated it in its complaint, or at least appended a copy thereof. The respondent failed to do so. It was only on January 28, 2000 that the respondent claimed, for the first time, that there was such a meeting of the Board of Directors held on June 25, 1999; it even represented to the Court that a copy of its resolution was with its main office in Korea, only to allege later that no

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[29] *Id.* at 93.

Supreme Court E-Library

written copy existed. It was only on March 6, 2000 that the respondent alleged, for the first time, that the meeting of the Board of Directors where the resolution was approved was held *via* teleconference.

Worse still, it appears that *as early as January 10, 1999,* Atty. Aguinaldo had signed a Secretary's/Resident Agent's Certificate alleging that the board of directors *held a teleconference on June 25, 1999.* No such certificate was appended to the complaint, which was filed on September 6, 1999. More importantly, the respondent did not explain why the said certificate was signed by Atty. Aguinaldo as early as January 9, 1999, and yet was notarized one year later (on January 10, 2000); it also did not explain its failure to append the said certificate to the complaint, as well as to its Compliance dated March 6, 2000. It was only on January 26, 2001 when the respondent filed its comment in the CA that it submitted the Secretary's/Resident Agent's Certificate[30] dated January 10, 2000.

The Court is, thus, more inclined to believe that the alleged teleconference on June 25, 1999 never took place, and that the resolution allegedly approved by the respondent's Board of Directors during the said teleconference was a mere concoction purposefully foisted on the RTC, the CA and this Court, to avert the dismissal of its complaint against the petitioner.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 61000 is *REVERSED* and *SET ASIDE*. The Regional Trial Court of Manila is hereby *ORDERED* to dismiss, without prejudice, the complaint of the respondent.

SO ORDERED.

Puno (Chairman), Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

Tinga, J., out of the country.

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[30] *Rollo*, p. 108.