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SO ORDERED.

Melencio-Herrera (Chairperson), Paras, and *Regalado, JJ.*, concur.

Sarmiento, J., on leave.

THIRD DIVISION

[G.R. No. 73765. August 26, 1991]

HANG LUNG BANK, LTD., *petitioner, vs.* **HON. FELINTRIYE G. SAULOG, Presiding Judge, Regional Trial Court, National Capital Judicial Region, Branch CXLII, Makati, Metro Manila and CORDOVA CHIN SAN,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; PRIVATE CORPORATIONS; FOREIGN CORPORATIONS; A FOREIGN CORPORATION NOT LICENSED TO DO BUSINESS IN THE PHILIPPINES MAY NOT BE DENIED THE RIGHT TO FILE AN ACTION IN OUR COURTS FOR AN ISOLATED TRANSACTION IN THIS COUNTRY.**— Indeed, the phraseologies of Section 14 of the General Banking Act and its almost identical counterpart Section 69 of the old Corporation Code are misleading in that they seem to require a foreign corporation, including a foreign bank or banking corporation, not licensed to do business and not doing business in the Philippines to secure a license from the Securities and Exchange Commission before it can bring or maintain an action in Philippine courts. To avert such misimpression, Section 133 of the Corporation Code is now more plainly worded thus: "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." Under this provision, we have ruled that a foreign corporation may

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sue in this jurisdiction for infringement of trademark and unfair competition although it is not doing business in the Philippines because the Philippines was a party to the Convention of the Union of Paris for the Protection of Industrial Property. We even went further to say that a foreign corporation not licensed to do business in the Philippines may not be denied the right to file an action in our courts for an isolated transaction in this country.

2. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; FOREIGN JUDGMENT; MAY NOT BE ENFORCED IF IT IS NOT RECOGNIZED IN THE JURISDICTION WHERE AFFIRMATIVE RELIEF IS BEING SOUGHT.— However, a foreign judgment may not be enforced if it is not recognized in the jurisdiction where affirmative relief is being sought. Hence, in the interest of justice, the complaint should be considered as a petition for the recognition of the Hongkong judgment under Section 50 (b), Rule 39 of the Rules of Court in order that the defendant, private respondent herein, may present evidence of lack of jurisdiction, notice, collusion, fraud or clear mistake of fact and law, if applicable.

APPEARANCES OF COUNSEL

Belo, Abiera & Associates for petitioner.
Castelo Law Office for private respondent.

D E C I S I O N

FERNAN, C.*J.*:

Challenged in this petition for *certiorari* which is anchored on grave abuse of discretion, are two orders of the Regional Trial Court, Branch CXLII of Makati, Metro Manila dismissing the complaint for collection of a sum of money and denying the motion for reconsideration of the dismissal order on the ground that petitioner, a Hongkong-based bank, is barred by the General Banking Act from maintaining a suit in this jurisdiction.

The records show that on July 18, 1979, petitioner Hang Lung Bank, Ltd., which was not doing business in the Philippines,

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entered into two (2) continuing guarantee agreements with Cordova Chin San in Hongkong whereby the latter agreed to pay on demand all sums of money which may be due the bank from Worlder Enterprises to the extent of the total amount of two hundred fifty thousand Hongkong dollars (HK $250,000).[1]

Worlder Enterprises having defaulted in its payment, petitioner filed in the Supreme Court of Hongkong a collection suit against Worlder Enterprises and Chin San. Summonses were allegedly served upon Worlder Enterprises and Chin San at their addresses in Hongkong but they failed to respond thereto.

Consequently, the Supreme Court of Hongkong issued the following:

"J U D G M E N T

"THE 14th DAY OF JUNE, 1984

"No notice of intention to defend having been given by the 1st and 2nd Defendants herein, IT IS THIS DAY ADJUDGED that: —

"(1) the 1st Defendant (Ko Ching Chong Trading otherwise known as the Worlder Enterprises) do pay the Plaintiff the sum of HK$1,117,968.36 together with interest on the respective principal sums of HK$196,591.38, HK$200,216.29, HK$526,557.63, HK$49,350.00 and HK$3,965.50 at the rates of 1.7% per month (or HK$111.40 per day), 18.5% per annum (or HK$101.48 per day), 1.85% per month (or HK$324.71 per day), 1.55% per month (or HK$25.50 per day) and 1.7% per month (or HK$2.25 per day) respectively from 4th May 1984 up to the date of payment; and

"(2) the 2nd Defendant (Cordova Chin San) do pay the Plaintiff the sum of HK$279,325.00 together with interest on the principal sum of HK$250,000.00 at the rate of 1.7% per month (or HK$141.67 per day) from 4th May 1984 up to the date of payment.

"AND IT IS ADJUDGED that the 1st and 2nd Defendants do pay the Plaintiff the sum of HK$970.00 fixed costs.

"N.J. BARNETT
Registrar"

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[1] *Rollo*, pp. 24-29.

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Thereafter, petitioner through counsel sent a demand letter to Chin San at his Philippine address but again, no response was made thereto. Hence, on October 18, 1984, petitioner instituted in the court below an action seeking "the enforcement of its just and valid claims against private respondent, who is a local resident, for a sum of money based on a transaction which was perfected, executed and consummated abroad."[2]

In his answer to the complaint, Chin San raised as affirmative defenses: lack of cause of action, incapacity to sue and improper venue.[3]

Pre-trial of the case was set for June 17, 1985 but it was postponed to July 12, 1985. However, a day before the latter pre-trial date, Chin San filed a motion to dismiss the case and to set the same for hearing the next day. The motion to dismiss was based on the grounds that petitioner had no legal capacity to sue and that venue was improperly laid.

Acting on said motion to dismiss, on December 20, 1985, the lower court[4] issued the following order:

"On defendant Chin San Cordova's motion to dismiss, dated July 10, 1985; plaintiff's opposition, dated July 12, 1985; defendant's reply, dated July 22, 1985; plaintiff's supplemental opposition, dated September 13, 1985; and defendant's rejoinder filed on September 23, 1985, said motion to dismiss is granted.

"Section 14, General Banking Act provides:

> 'No foreign bank or banking corporation formed, organized or existing under any laws other than those of the Republic of the Philippines, shall be permitted to transact business in the Philippines, or maintain by itself any suit for the recovery of any debt, claims or demands whatsoever until after it shall have obtained, upon order of the Monetary Board, a license for that purpose.'

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[2] Civil Case No. 8762. Petitioner's Reply, pp. 2-3; *Rollo*, pp. 56 & 58.

[3] *Rollo*, p. 7.

[4] Presided by Judge Felintriye G. Saulog.

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"Plaintiff Hang Lung Bank, Ltd. with business and postal address at the 3rd Floor, United Centre, 95 Queensway, Hongkong, does not do business in the Philippines. The continuing guarantee, Annexes 'A' and 'B' appeared to have been transacted in Hongkong. Plaintiff's Annex 'C' shows that it had already obtained judgment from the Supreme Court of Hongkong against defendant involving the same claim on June 14, 1984.

"The cases of *Mentholatum Company, Inc. versus Mangaliman*, 72 Phil. 524 and *Eastern Seaboard Navigation, Ltd. versus Juan Ysmael & Company, Inc.*, 102 Phil. 1-8, relied upon by plaintiff, deal with isolated transaction in the Philippines of foreign corporation. Such transaction though isolated is the one that conferred jurisdiction to Philippine courts, but in the instant case, the transaction occurred in Hongkong.

"Case dismissed. The instant complaint not the proper action.

"SO ORDERED."[5]

Petitioner filed a motion for the reconsideration of said order but it was denied for lack of merit.[6] Hence, the instant petition for *certiorari* seeking the reversal of said orders "so as to allow petitioner to enforce through the court below its claims against private respondent as recognized by the Supreme Court of Hongkong."[7]

Petitioner asserts that the lower court gravely abused its discretion in: (a) holding that the complaint was not the proper action for purposes of collecting the amount guaranteed by Chin San "as recognized and adjudged by the Supreme Court of Hongkong"; (b) interpreting Section 14 of the General Banking Act as precluding petitioner from maintaining a suit before Philippine courts because it is a foreign corporation not licensed to do business in the Philippines despite the fact that it does not do business here, and (c) impliedly sustaining private respondent's allegation of improper venue.

We need not detain ourselves on the issue of improper venue. Suffice it to state that private respondent waived his right to

[5] *Rollo*, p. 21.

[6] *Ibid.*, p. 23.

[7] Petition, p. 4.

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invoke it when he forthwith filed his answer to the complaint thereby necessarily implying submission to the jurisdiction of the court.[8]

The resolution of this petition hinges on a determination of whether petitioner foreign banking corporation has the capacity to file the action below.

Private respondent correctly contends that since petitioner is a bank, its capacity to file an action in this jurisdiction is governed by the General Banking Act (Republic Act No. 337), particularly Section 14 thereof which provides:

"SEC. 14. No foreign bank or banking corporation formed, organized or existing under any laws other than those of the Republic of the Philippines shall be permitted to transact business in the Philippines, or maintain by itself or assignee any suit for the recovery of any debt, claims, or demand whatsoever, until after it shall have obtained, upon order of the Monetary Board, a license for that purpose from the Securities and Exchange Commissioner. Any officer, director or agent of any such corporation who transacts business in the Philippines without the said license shall be punished by imprisonment for not less than one year nor more than ten years and by a fine of not less than one thousand pesos nor more than ten thousand pesos." (45 O.G. No. 4, 1647, 1649-1650).

In construing this provision, we adhere to the interpretation given by this Court to the almost identical Section 69 of the old Corporation Law (Act No. 1459) which reads:

"SEC. 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippines shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, director or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years

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[8] *Pangasinan Transportation Co., Inc. v. Yatco*, L-23090, October 31, 1967, 21 SCRA 658.

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or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the Court."

In a long line of cases, this Court has interpreted this last quoted provision as not altogether prohibiting a foreign corporation not licensed to do business in the Philippines from suing or maintaining an action in Philippine courts.[9] What it seeks to prevent is a foreign corporation doing business in the Philippines without a license from gaining access to Philippine courts. As elucidated in *Marshall-Wells Co. vs. Elser & Co.*, 46 Phil. 70.

"The object of the statute was to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object of the statute was not to prevent it from performing single acts but to prevent it from acquiring a domicile for the purpose of business without taxing the steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines from securing redress from Philippine courts, and thus, in effect, to permit persons to avoid their contract made with such foreign corporation. The effect of the statute preventing foreign corporations from doing business and from bringing actions in the local courts, except on compliance with elaborate requirements, must not be unduly extended or improperly applied. It should not be construed to extend beyond the plain meaning of its terms, considered in connection with its object, and in connection with the spirit of the entire law."

The fairly recent case of *Universal Shipping Lines vs. Intermediate Appellate Court*,[10] although dealing with the

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[9] *Atlantic Mutual Ins. Co. v. Cebu Stevedoring Co., Inc.*, G.R. No. L-18961, August 31, 1966, 17 SCRA 1037; *Pacific Vegetable Oil Corporation v. Singson*, 96 Phil. 986; *The Swedish East Asia Co., Ltd. v. Manila Port Service, et al.*, G.R. No. L-26332, October 26, 1968, 25 SCRA 633; *Central Bank & Trust Co. v. Bustamante*, 71 Phil. 359; *Eastboard Navigation Ltd. v. Ysmael & Co.*, 102 Phil. 1.

[10] G.R. No. 74125, July 31, 1990, 188 SCRA 170.

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amended version of Section 69 of the old Corporation Code, Section 133 of the Corporation Code (Batas Pambansa Blg. 68), but which is nonetheless *apropos*, states the rule succinctly: "it is not the lack of the prescribed license (to do business in the Philippines) but doing business without license, which bars a foreign corporation from access to our courts."

Thus, we have ruled that a foreign corporation not licensed to do business in the Philippines may file a suit in this country due to the collision of two vessels at the harbor of Manila[11] and for the loss of goods bound for Hongkong but erroneously discharged in Manila.[12]

Indeed, the phraseologies of Section 14 of the General Banking Act and its almost identical counterpart Section 69 of the old Corporation Code are misleading in that they seem to require a foreign corporation, including a foreign bank or banking corporation, not licensed to do business and not doing business in the Philippines to secure a license from the Securities and Exchange Commission before it can bring or maintain an action in Philippine courts. To avert such misimpression, Section 133 of the Corporation Code is now more plainly worded thus:

"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."

Under this provision, we have ruled that a foreign corporation may sue in this jurisdiction for infringement of trademark and unfair competition although it is not doing business in the Philippines[13] because the Philippines was a party to the

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[11] *Dampfschiefs Rhederei Union v. La Campania Transatlantica*, 8 Phil. 766 (1907).

[12] *The Swedish East Asia Co Ltd. v. Manila Port Service, supra.*

[13] *Puma Sportschuhfabriken Rudolf Dassler, K.G. v. Intermediate Appellate Court*, G.R. No. 75067, February 26, 1988, 158 SCRA 233.

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Convention of the Union of Paris for the Protection of Industrial Property.[14]

We even went further to say that a foreign corporation not licensed to do business in the Philippines may not be denied the right to file an action in our courts for an isolated transaction in this country.[15]

Since petitioner foreign banking corporation was not doing business in the Philippines, it may not be denied the privilege of pursuing its claims against private respondent for a contract which was entered into and consummated outside the Philippines. Otherwise we will be hampering the growth and development of business relations between Filipino citizens and foreign nationals. Worse, we will be allowing the law to serve as a protective shield for unscrupulous Filipino citizens who have business relationships abroad.

In its pleadings before the court, petitioner appears to be in a quandary as to whether the suit below is one for *enforcement* or *recognition* of the Hongkong judgment. Its complaint states:

"COMES NOW Plaintiff, by undersigned counsel, and to this Honorable Court, most respectfully alleges that:

"1. Plaintiff is a corporation duly organized and existing under and by virtue of the laws of Hongkong with business and postal address at the 3rd Floor, United Centre, 95 Queensway, Hongkong, not doing business in the Philippines, but is suing for this isolated transaction, but for purposes of this complaint may be served with summons and legal processes of this Honorable Court, at the 6th Floor, Cibeles Building, 6780 Ayala Avenue, Makati, Metro Manila, while defendant Cordova Chin San, may be served with summons and other legal processes of this Honorable Court at the Municipality of Moncada, Province of Tarlac, Philippines;

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[14] *Converse Rubber Corporation v. Universal Rubber Products, Inc.*, L-27906, January 8, 1987, 147 SCRA 155.

[15] *Commissioner of Customs v. K.M.K Gani*, G.R. No. 73760, February 26, 1990, 182 SCRA 591 citing *Bulakbidas v. Navarro*; L-49695, April 7, 1986, 142 SCRA 1.

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"2. On July 18, 1979 and July 25, 1980, the defendant executed Continuing Guarantees, in consideration of plaintiff's from time to time making advances, or coming to liability or discounting bills or otherwise giving credit or granting banking facilities from time to time to, or on account of the Wolder Enterprises (sic), photocopies of the Contract of Continuing Guarantees are hereto attached as Annexes 'A' and 'B', respectively, and made parts hereof;

"3. In June 1984, a complaint was filed by plaintiff against the Wolder Enterprises (sic) and defendant Cordova Chin San, in The Supreme Court of Hongkong, under Case No. 3176, and pursuant to which complaint, a judgment dated 14th day of July, 1984 was rendered by The Supreme Court of Hongkong ordering to (sic) defendant Cordova Chin San to pay the plaintiff the sum of HK$279,325.00 together with interest on the principal sum of HK$250,000.00 at the rate of HK$1.7% per month or (HK$141.67) per day from 4th May, 1984 up to the date the said amount is paid in full, and to pay the sum of HK$970.00 as fixed cost, a photocopy of the Judgment rendered by The Supreme Court of Hongkong is hereto attached as Annex 'C' and made an integral part hereof;

"4. Plaintiff has made demands upon the defendant in this case to pay the aforesaid amount the last of which is by letter dated July 16, 1984 sent by undersigned counsel, a photocopy of the letter of demand is hereto attached as Annex 'D' and the Registry Return Card hereto attached as Annex 'E' respectively, and made parts hereof. However, this notwithstanding, defendant failed and refused and still continue to fail and refuse to make any payment to plaintiff on the aforesaid amount of HK$279,325.00 plus interest on the principal sum of HK$250,000.00 at the rate of (HK$141.67) per day from May 4, 1984 up to the date of payment;

"5. In order to protect and safeguard the rights and interests of herein plaintiff, it has engaged the services of undersigned counsel, to file the suit at bar, and for whose services it has agreed to pay an amount equivalent to 25% of the total amount due and owing, as of and by way of attorney's fees plus costs of suit.

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that judgment be rendered ordering the defendant:

"a) To pay plaintiff the sum of HK$279,325.00 together with interest on the principal sum of HK$250,000.00 at the rate of

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HK$1.7% (sic) per month (or HK$141.67 per day) from May 4, 1984 until the aforesaid amount is paid in full;

"b) To pay an amount equivalent to 25% of the total amount due and demandable as of and by way of attorney's fees, and

"c) To pay costs of suit, and

"Plaintiff prays for such other and further reliefs, to which it may by law and equity, be entitled."[16]

The complaint therefore appears to be one of the enforcement of the Hongkong judgment because it prays for the grant of the affirmative relief given by said foreign judgment.[17] Although petitioner asserts that it is merely seeking the recognition of its claims based on the contract sued upon and not the enforcement of the Hongkong judgment,[18] it should be noted that in the prayer of the complaint, petitioner simply copied the Hongkong judgment with respect to private respondent's liability.

However, a foreign judgment may not be enforced if it is not recognized in the jurisdiction where affirmative relief is being sought. Hence, in the interest of justice, the complaint should be considered as a petition for the recognition of the Hongkong judgment under Section 50 (b), Rule 39 of the Rules of Court in order that the defendant, private respondent herein, may present evidence of lack of jurisdiction, notice, collusion, fraud or clear mistake of fact and law, if applicable.

WHEREFORE, the questioned orders of the lower court are hereby set aside. Civil Case No. 8762 is reinstated and the lower court is directed to proceed with dispatch in the disposition of said case. This decision is immediately executory. No costs.

SO ORDERED.

Gutierrez, Jr., Bidin, and *Davide, Jr., JJ.*, concur.

Feliciano, J., on leave.

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[16] Record of Civil Case No. 8762, pp. 2-3.

[17] Salonga, *Private International Law*, 1979 ed., p. 429.

[18] Petition, p. 10.