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SECOND DIVISION

[G.R. No. 97816. July 24, 1992]

MERRILL LYNCH FUTURES, INC., *petitioner*, *vs*. **HON. COURT OF APPEALS, and the SPOUSES PEDRO M. LARA and ELISA G. LARA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; RULE.— The Lara Spouses' motion to dismiss was founded on two (2) grounds: (a) that the plaintiff has no legal capacity to sue, and (b) that the complaint states no cause of action (Sec. 1 [d], and [g], Rule 16, Rules of Court). As regards the second ground, *i.e*., that the complaint states no cause of action, the settled doctrine of course is that said ground must appear on the face of the complaint, and its existence may be determined only by the allegations of the complaint, consideration of other facts being proscribed, and any attempt to prove extraneous circumstances not being allowed. The test of the sufficiency of the facts alleged in a complaint as constituting a cause of action is whether or not, admitting the facts alleged, the court might render a valid judgment upon the same in accordance with the prayer of the complaint. Indeed, it is error for a judge to conduct a preliminary hearing and receive evidence on the affirmative defense of failure of the complaint to state a cause of action.

2. ID.; ID.; ID.; NO LEGAL CAPACITY TO SUE AS A GROUND; CONSTRUED.— The other ground for dismissal relied upon, *i.e*., that the plaintiff has no legal capacity to sue — may be understood in two senses: one, that the plaintiff is prohibited or otherwise incapacitated by law to institute suit in Philippine Courts, or two, although not otherwise incapacitated in the sense just stated, that it is not a real party in interest.

3. ID.; ID.; ID.; ID.; RULE WHEN SAID GROUND CANNOT BE FOUND IN THE AVERMENTS OF THE COMPLAINT. — The Lara Spouses contend that ML Futures has no capacity to sue them because the transactions subject of the complaint

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were had by them, not with the plaintiff ML FUTURES, but with *Merrill Lynch Pierce Fenner & Smith, Inc.* Evidence is quite obviously needed in this situation, for it is not to be expected that said ground, or any facts from which its existence may be inferred, will be found in the averments of the complaint. When such a ground is asserted in a motion to dismiss, the general rule governing evidence on motions applies. The rule is embodied in Section 7, Rule 133 of the Rules of Court. "SEC. 7. *Evidence on motion*. — When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

4. ID.; ID.; ID.; ID.; APPLICATION TO FOREIGN CORPORATIONS DOING BUSINESS IN THE PHILIPPINES WITHOUT LICENSE; CASE AT BAR.— There was, to be sure, no affidavit or deposition attached to the Lara Spouses' motion to dismiss or thereafter proffered in proof of the averments of their motion. The motion itself was not verified. What the spouses did do was to refer in their motion to documents which purported to establish that it was not with ML FUTURES that they had therefore been dealing, but another, distinct entity, Merril Lynch, Pierce, Fenner & Smith, Inc., copies of which documents were attached to the motion. It is significant that ML FUTURES raised no issue relative to the authenticity of the documents thus annexed to the Laras' motion. In fact, its arguments subsumed the genuineness thereof and even adverted to one or two of them. Its objection was centered on the propriety of taking account of those documents as evidence, considering the established principle that no evidence should be received in the resolution of a motion to dismiss based on an alleged failure of the complaint to state a cause of action. There being otherwise no question respecting the genuineness of the documents, nor of their relevance to at least one of the grounds for dismissal — *i.e.*, the prohibition on suits in Philippine Courts by foreign corporations doing business in the country without license — it would have been a superfluity for the Court to require prior proof of their authenticity, and no error may be ascribed to the Trial Court in taking account of them in the determination of the motion *on the ground, not that the complaint fails to*

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state a cause of action — as regards which evidence is improper and impermissible — but that the plaintiff has no legal capacity to sue — respecting which proof may and should be presented. Neither may ML FUTURES argue with any degree of tenability that it had been denied due process in the premises. As just pointed out, it was very clear from the outset that the claim of lack of its capacity to sue was being made to rest squarely on the documents annexed thereto, and ML FUTURES had more than ample opportunity to impugn those documents and require their authentication, but did not do so. To sustain its theory that there should have been identification and authentication, and formal offer, of those documents in the Trial Court pursuant to the rules of evidence would be to give unwarranted importance to technicality and make it prevail over the substance of the issue.

5. ID.; ID.; PARTIES IN CIVIL ACTIONS; FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES WITHOUT LICENSE; CASE AT BAR. — The first question then, is, as ML FUTURES formulates it, whether or not the annexes, assuming them to be admissible, establish that (a) ML FUTURES is prohibited from suing in Philippine Courts because doing business in the country without a license, and that (b) it is not a real party in interest since the Lara Spouses had not been doing business with it, but with another corporation, Merrill Lynch, Pierce, Fenner & Smith, Inc. The Court is satisfied that the facts on record adequately establish that ML FUTURES, operating in the United States, had indeed done business with the Lara Spouses in the Philippines over several years, had done so at all times through Merrill Lynch Philippines, Inc. (MLPI), a corporation organized in this country, and had executed all these transactions without ML FUTURES being licensed to so transact business here, and without MLPI being authorized to operate as a commodity futures trading advisor. These are the factual findings of both the Trial Court and the Court of Appeals. These, too, are the conclusions of the Securities & Exchange Commission which denied MLPI's application to operate as a commodity futures trading advisor, a denial subsequently affirmed by the Court of Appeals. Prescinding from the proposition that factual findings of the Court of Appeals are generally conclusive, this Court has been cited to no circumstance of substance to warrant

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reversal of said Appellate Court's findings or conclusions in this case. The Court is satisfied, too, that the Laras did transact business with ML FUTURES through its agent corporation organized in the Philippines, it being unnecessary to determine whether this domestic firm was MLPI (Merrill Lynch Philippines, Inc.) or Merrill Lynch Pierce Fenner & Smith (MLPI's alleged predecessor). The fact is that ML FUTURES did deal with futures contracts in exchanges in the United States in behalf and for the account of the Lara Spouses, and that on several occasions the latter received account documents and money in connection with those transactions. Given these facts, if indeed the last transaction executed by ML FUTURES in the Laras's behalf had resulted in a loss amounting to US $160,749.69; that in relation to this loss, ML FUTURES had credited the Laras with the amount of US $75,913.42 — which it (ML FUTURES) then admittedly owed the spouses — and thereafter sought to collect the balance, US $84,836.27, but the Laras had refused to pay (for the reasons already above stated), the crucial question is whether or not ML FUTURES may sue in Philippine Courts to establish and enforce its rights against said spouses, in light of the undeniable fact that it had transacted business in this country without being licensed to do so.

6. ID.; ID.; ID.; ONE WHO HAS DEALT WITH A CORPORATION OF FOREIGN ORIGIN AS A CORPORATE ENTITY IS ESTOPPED TO DENY ITS CORPORATE EXISTENCE AND CAPACITY TO SUE; CASE AT BAR.— In other words, if it be true that during all the time that they were transacting with ML FUTURES, the Laras were fully aware of its lack of license to do business in the Philippines, and in relation to those transactions had made payments to, and received money from it for several years, the question is whether or not the Lara Spouses are now estopped to impugn ML FUTURES capacity to sue them in the courts of the forum. The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. [SEE *Ohta Development Co. v. Steamship 'Pompey,' et al.*, 49 Phil. 117 120 (1926); *Asia Banking Corporation v. Standard Products Co.*, 46 Phil. 144 (1924)] And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;" [14 C.J. 227] "one who has dealt with a corporation of foreign origin as a

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corporate entity is estopped to deny its corporate existence and capacity." [36 Am Jur 2d, pp. 296-297, although there is authority that said doctrine "does not, by analogy, require that such person be held estopped to deny that the corporation has complied with the local statutes imposing conditions, restrictions, and regulations on foreign corporations and that it has acquired thereby the right to do business in the state."] The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract (*Sherwood v. Alvis*, 83 Ala 115, 3 So 307, limited and distinguished in *Dudley v. Collier*, 87 Ala 431, 6 So 304; *Spinney v. Miller* 114 Iowa 210, 86 NW 317), where such person has acted as agent for the corporation and has violated his fiduciary obligations as such, and where the statute does not provide that the contract shall be void, but merely fixes a special penalty for violation of the statute." The doctrine was adopted by this Court as early as 1924 in *Asia Banking Corporation v. Standard Products Co.*, in which the following pronouncement was made: "The general rule that in the absence of fraud a person who has contracted or otherwise dealt with an association in such a way as to recognize and in effect admit its legal existence as corporate body is thereby estopped to deny its corporate existence in any action leading out of or involving such contract or dealing, unless its existence is attacked for causes which have arisen since making the contract or other dealing relied on as an estoppel and *this applies to foreign as well as domestic corporations*. (14 C.J. 227; *Chinese Chamber of Commerce vs. Pua Te Ching*, 14 Phil. 222)." There would seem to be no question that the Laras received benefits generated by their business relations with ML FUTURES. Those business relations, according to the Laras themselves, spanned a period of seven (7) years; and they evidently found those relations to be of such profitability as warranted their maintaining them for that not insignificant period of time; otherwise, it is reasonably certain that they would have terminated their dealings with ML FUTURES much, much earlier. In fact, even as regards their last transaction, in which the Laras allegedly suffered a loss in the sum of US$160,749.69, the Laras nonetheless still received some monetary advantage, for ML FUTURES credited them with the amount of US $75,913.42 then due to them,

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thus reducing their debt to US $84,836.27. Given these facts, and assuming that the Lara Spouses were aware from the outset that ML FUTURES had no license to do business in this country and MLPI, no authority to act as broker for it, it would appear quite inequitable for the Laras to evade payment of an otherwise legitimate indebtedness due and owing to ML FUTURES upon the plea that it should not have done business in this country in the first place, or that its agent in this country, MLPI, had no license either to operate as a "commodity and/or financial futures broker."

APPEARANCES OF COUNSEL

Sycip, Salazar, Hernandez & Gatmaitan for petitioner.

Renato T. Paguio for private respondent.

D E C I S I O N

NARVASA, *C.J.*:

The capacity of a foreign corporation to maintain an action in the Philippines against residents thereof, is the principal question in the appellate proceedings at bar. The issue arises from the undisputed facts now to be briefly narrated.

On November 23, 1987, Merrill Lynch Futures, Inc. (hereafter, simply ML FUTURES) filed a complaint with the Regional Trial Court at Quezon City against the Spouses Pedro M. Lara and Elisa G. Lara for the recovery of a debt and interest thereon, damages, and attorney's fees.[1] In its complaint ML FUTURES described itself as —

a) "a non-resident foreign corporation, not doing business in the Philippines, duly organized and existing under and by virtue of the laws of the state of Delaware, U.S.A.;" as well as

b) "a 'futures commission merchant' duly licensed to act as such in the futures markets and exchanges in the United States,

[1] The case was docketed as Civil Case No. Q-52360 and assigned to Branch 84, presided over by Hon. Teodoro P. Regino.

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xxx essentially functioning as a broker xxx (executing) orders to buy and sell futures contracts received from its customers on U.S. futures exchanges."

It also defined a "futures contract" as a "contractual commitment to buy and sell a standardized quantity of a particular item at a specified future settlement date and at a price agreed upon, with the purchase or sale being executed on a regulated futures exchange."

In its complaint ML FUTURES alleged the following:

1) that on September 28, 1983 it entered into a Futures Customer Agreement with the defendant spouses (Account No. 138-12161), in virtue of which it agreed to act as the latter's broker for the purchase and sale of futures contracts in the U.S.;

2) that pursuant to the contract, orders to buy and sell futures contracts were transmitted to ML FUTURES by the Lara Spouses "through the facilities of Merrill Lynch Philippines, Inc., a Philippine corporation and a company servicing plaintiff's customers;"[2]

3) that from the outset, the Lara Spouses "knew and were duly advised that Merrill Lynch Philippines, Inc. was not a broker in futures contracts," and that it "did not have a license from the Securities and Exchange Commission to operate as a commodity trading advisor (*i.e.*, 'and entity which, not being a broker, furnishes advice on commodity futures to persons who trade in futures contracts');

4) that in line with the above mentioned agreement and through said Merill Lynch Philippines, Inc., the Lara Spouses actively traded in futures contracts, including "stock index futures" for four years or so, *i.e.*, from 1983 to October, 1987,[3] there being more or less regular accounting and corresponding remittances of money (or crediting or debiting) made between

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[2] It appears that *Merrill Lynch Philippines, Inc*. was formerly registered and known as *Merrill Lynch, Pierce, Fenner & Smith Philippines, Inc.* - SEE footnote 5, *infra*.

[3] The Laras say the trading was carried on for seven (7) years.

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the spouses and ML FUTURES;

5) that because of a loss amounting to US $160,749.69 incurred in respect of three (3) transactions involving "index futures," and after setting this off against an amount of US $75,913.42 then owing by ML FUTURES to the Lara Spouses, said spouses became indebted to ML FUTURES for the ensuing balance of US $84,836.27, which the latter asked them to pay;

6) that the Lara Spouses however refused to pay this balance, "alleging that the transactions were null and void because Merrill Lynch Philippines, Inc., the Philippine company servicing accounts of plaintiff, xxx had no license to operate as a 'commodity and/or financial futures broker.'"

On the foregoing essential facts, ML FUTURES prayed (1) for a preliminary attachment against defendant spouses' properties "up to the value of at least ₱2,267,139.50," and (2) for judgment, after trial, sentencing the spouses to pay ML FUTURES:

a) the Philippine peso equivalent of $84,836.27 at the applicable exchange rate on date of payment, with legal interest from the date of demand until full payment;

b) exemplary damages in the sum of at least ₱500,000,00; and

c) attorney's fees and expenses of litigation as may be proven at the trial.

Preliminary attachment issued *ex parte* on December 2, 1987, and the defendant spouses were duly served with summons.

They then filed a motion to dismiss dated December 18, 1987 on the grounds that:

(1) plaintiff ML FUTURES had "no legal capacity to sue" and

(2) its "complaint states no cause of action since xxx (it) is not the real party in interest."

In that motion to dismiss, the defendant spouses averred that:

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a) although not licensed to do so, ML FUTURES had been doing business in the Philippines "at least for the last four (4) years," this being clear from the very allegations of the complaint; consequently, ML FUTURES is prohibited by law "to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines;" and

b) they had never been informed that Merrill Lynch Philippines, Inc. was not licensed to do business in this country; and contrary to the allegations of the complaint, all their transactions had actually been with MERRILL LYNCH PIERCE FENNER & SMITH, INC., and *not with ML FUTURES* (Merrill Lynch Futures, Inc.), in proof of which they attached to their motion to dismiss copies of eight (8) agreements, receipts or reminders, *etc*., executed on standard printed forms of said Merrill Lynch Pierce Fenner & Smith Inc.[4]

ML FUTURES filed an OPPOSITION to the defendant spouses' motion to dismiss. In that motion —

a) it drew attention to paragraph 4 of its complaint, admitted by defendants, that the latter "have been actively trading in futures contracts xxx in U.S. futures exchanges from 1983 to 1987," and ask, "If the trading xxx (was) made in U.S., how could plaintiff be doing business in the Philippines?"

b) it also drew attention to a printed form of "Merrill Lynch Futures, Inc." filled out and signed by defendant spouses when they opened an account with ML FUTURES, in order to supply information about themselves, including their bank's name —

(1) in which appear the following epigraph: "Account introduced by Merrill Lynch International, Inc.," and the following statements, to wit:

"This Commodity Trading Advisor (Merrill Lynch, Pierce, Fenner & Smith Philippines, Inc.) is prohibited by the Philippine Securities and Exchange Commission from accepting funds in the trading advisor's name from a client of Merrill Lynch Futures, Inc. for trading

[4] Annexes A to H.

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commodity interest. All funds in this trading program must be placed with Merrill Lynch Futures, Inc.;"

and

"** It is agreed between MERRILL LYNCH, PIERCE, FENNER & SMITH INC., and other account carrying MERRILL LYNCH entities and their customers that all legal relationships between them will be governed by applicable laws in countries outside the Philippines where sale and purchase transactions take place."

c) and it argued that —

(1) it is not permitted for defendant spouses to present "evidence" in connection with a motion to dismiss based on failure of the complaint to state a cause of action;

(2) even if the documents appended to the motion to dismiss be considered as admissible "evidence," the same would be immaterial since the documents refer to a different account number: *138-12136*, the defendants' account number with ML FUTURES being *138-12161*;

(3) it is a lie for the defendant spouses to assert that they were never informed that Merrill Lynch Philippines, Inc. had not been licensed to do business in the Philippines; and

(4) defendant spouses should not be allowed to "invoke the aid of the court with unclean hands."

The defendant spouses filed a REPLY reaffirming their lack of awareness that Merrill Lynch Philippines, Inc. (*formerly registered as Merrill Lynch, Pierce, Fenner & Smith Philippines, Inc.*)[5] did not have a license, claiming that they learned of this only from inquiries with the Securities & Exchange Commission which elicited the information that it had denied said corporation's application to operate as a commodity futures trading advisor — a denial subsequently affirmed by the Court of Appeals (*Merrill Lynch Philippines, Inc. v. Securities & Exchange Commission, CA-G.R. No. 10821-SP*, Nov. 19, 1987). The spouses also submitted additional documents (Annexes J to R) involving

[5] SEE footnote 2, *supra*.

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transactions with Merrill Lynch Pierce Fenner & Smith, Inc., dating back to 1980, stressing that all but one of the documents "refer to Account No. 138-12161 which is the very account that is involved in the instant complaint."

ML FUTURES filed a Rejoinder alleging it had given the spouses a disclosure statement by which the latter were made aware that the transactions they were agreeing on would take place outside of the Philippines, and that "all funds in the trading program must be placed with Merrill Lynch Futures, Inc."

On January 12, 1988, the Trial Court promulgated an Order sustaining the motion to dismiss, directing the dismissal of the case and discharging the writ of preliminary attachment. It later denied ML FUTURES's motion for reconsideration, by Order dated February 29, 1988. ML FUTURES appealed to the Court of Appeals.[6]

In its own decision promulgated on November 27, 1990,[7] the Court of Appeals affirmed the Trial Court's judgment. It declared that the Trial Court had seen "through the charade in the representation of MLPI and the plaintiff that MLPI is only a trading advisor and in fact it is a conduit in the plaintiff's business transactions in the Philippines as a basis for invoking the provisions of Section 133 of the Corporation Code,"[8] *viz*.:

"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

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[6] The appeal was docketed as CA-G.R. CV No. 16478.

[7] Written for the Seventh Division by Francisco, *C. J.*, with whom concurred Lombos-de la Fuente, *Chairman,* and Aldecoa, Jr., *J.*

[8] The counterpart provision (Sec. 69) of the prior law, Act No. 1459, stated that "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. **" (italics supplied) (although, it may be added, it may be sued [*General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd*., 87 Phil. 313 (1950)]).

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in any action, suit or proceeding in any court or administrative agency in 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."

It also declared that the evidence established that plaintiff had in fact been "doing business" in this country in legal contemplation, adverting to *Mentholatum v. Mangaliman*, 72 Phil. 524, 528-530, and Section 1 of Republic Act No. 5455 reading as follows:[9]

"SEC. 1. *Definition and scope of this ACT* . (1) As used in this Act, the term `investment' shall mean equity participation in any enterprise formed, organized, or existing under the laws of the Philippines; and the phrase 'doing business' *shall INCLUDE soliciting orders, purchases, service contracts, opening offices*, whether called 'liaison' offices or branches; *appointing representatives* or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines *for a period or periods totalling one hundred eighty 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 FUNCTIONS NORMALLY INCIDENT TO, AND IN PROGRESSIVE PROSECUTION OF COMMERCIAL GAIN OR OF THE PURPOSE AND OBJECT OF THE BUSINESS ORGANIZATION*."

As regards the claim that it was error for the Trial Court to place reliance on the decision of the Court of Appeals in CA-G.R. No. 10821-SP — sustaining the finding of the Securities & Exchange Commission that ML FUTURES was doing business in the Philippines — since that judgment was not yet final and ML FUTURES was not a party to that proceeding, the Court of Appeals ruled that there was no need to belabor the point considering that there was, in any event, "adequate proof of the activities of MLPI *** which manifestly show that the plaintiff (ML FUTURES) performed a series of business acts, consummated contracts and undertook transactions for the period

[9] Italics supplied by Francisco, *C.J.*, *ponente*.

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from 1983 to October 1987," and because ML FUTURES had done so without license, it consequently had "no legal personality to bring suit in Philippine courts."

Its motion for reconsideration having been denied,[10] ML FUTURES has appealed to this Court on *certiorari*. Here, it submits the following issues for resolution:

"(a) Whether or not the annexes appended by the Laras to their Motion to Dismiss and Reply filed with the Regional Trial Court, but never authenticated or offered, constitute admissible evidence.

(b) Whether or not in the proceedings below, ML FUTURES has been accorded procedural due process.

(c) Whether or not the annexes, assuming them to be admissible, established that ML FUTURES was doing business in the Philippines without a license."

As just stated, the Lara Spouses' motion to dismiss was founded on two (2) grounds: (a) that the plaintiff has no legal capacity to sue, and (b) that the complaint states no cause of action (Sec. 1 [d], and [g], Rule 16, Rules of Court).

As regards the second ground, *i.e.*, that the complaint states no cause of action, the settled doctrine of course is that said ground must appear on the face of the complaint, and its existence may be determined only by the allegations of the complaint, consideration of other facts being proscribed, and any attempt to prove extraneous circumstances not being allowed.[11] The test

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[10] Per Resolution dated March 7, 1991, which also "*directed (the Trial Court) to hear and resolve appellees' application for damages on the appellant's attachment bond*."

[11] SEE Feria, *Civil Procedure*, 1969 ed., pp. 342-344, citing *Paminsan v. Costales*, 28 Phil. 487, 489; *De Jesus, et al. v. Belarmino, et al.*, 95 Phil. 365; *Worldwide Insurance & Surety Co., Inc. vs. Manuel*, 98 Phil. 47); *Worldwise Insurance & Surety Co. v. Macrohon, et al.*, G.R. No. L-12365, Feb. 28, 1989; *Dimayuga v. Dimayuga*, 96 Phil. 859, 862; *Ma-ao Sugar Central v. Barrios*, 79 Phil. 666; *Uy Hoo v. Yuseco*, 89 Phil. 944; *Aranzanso v. Martinez*, 88 Phil. 536; SEE, also, Moran, *Comments on the Rules of Court*, 1979 ed., Vol. 1, pp. 490-493, with voluminous citations.

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of the sufficiency of the facts alleged in a complaint as constituting a cause of action is whether or not, admitting the facts alleged, the court might render a valid judgment upon the same in accordance with the prayer of the complaint.[12] Indeed, it is error for a judge to conduct a preliminary hearing and receive evidence on the affirmative defense of failure of the complaint to state a cause of action.[13]

The other ground for dismissal relied upon, *i.e.*, that the plaintiff has no legal capacity to sue — may be understood in two senses: one, that the plaintiff is prohibited or otherwise incapacitated by law to institute suit in Philippine Courts,[14] or two, although not otherwise incapacitated in the sense just stated, that it is not a real party in interest.[15] Now, the Lara Spouses contend that ML Futures has no capacity to sue them because the transactions subject of the complaint were had by them, not with the plaintiff ML FUTURES, but with *Merrill Lynch Pierce Fenner & Smith, Inc*. Evidence is quite obviously needed in

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[12] Feria, *op. cit.*, p. 342.

[13] Moran, *op cit*., pp. 491-492, citing *Heirs of Juliana Clavano v. Genato*, G.R. No. L-45837, Oct. 28, 1977; cf., *Arazanso v. Martinez*, 88 Phil. 536, cited in Feria, *op cit.*, p. 344.

[14] *I.e.*, Section 133 of the Corporation Code, *supra* (SEE *General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd*., 87 Phil. 313); or he does not have the necessary qualifications to appear at the trial, such as when he is not in the full exercise of his civil rights (*Lunsod v. Ortega*, 46 Phil. 664, cited in Feria, Civil Procedure, 1969 ed., 316-317.

[15] SEC 2, Rule 3 of the Rules of Court provides that "Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy adverse to the plaintiff or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendants." "The real party in interest is the party who would be benefited or injured by the judgment, or the 'party entitled to the avails of the suit' (1 Sutherland, Code Pleading Practice & Forms, p. 11) (*Salonga v. Warner, Barnes & Co., Ltd*., 88 Phil. 125, cited in Feria, *op. cit.*, p. 139). SEE, also, Moran, *op. cit*., p. 154; and *Lunsod v. Ortega, supra*, holding *inter alia* that a plaintiff has no legal capacity to sue when he does not have the character or representation he claims, which is a matter of evidence.

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this situation, for it is not to be expected that said ground, or any facts from which its existence may be inferred, will be found in the averments of the complaint. When such a ground is asserted in a motion to dismiss, the general rule governing evidence on motions applies. The rule is embodied in Section 7, Rule 133 of the Rules of Court.

"SEC. 7. *Evidence on motion*. — When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

There was, to be sure, no affidavit or deposition attached to the Lara Spouses' motion to dismiss or thereafter proffered in proof of the averments of their motion. The motion itself was not verified. What the spouses did do was to refer in their motion to documents which purported to establish that it was not with ML FUTURES that they had therefore been dealing, but another, distinct entity, Merril Lynch, Pierce, Fenner & Smith, Inc., copies of which documents were attached to the motion. It is significant that ML FUTURES raised no issue relative to the authenticity of the documents thus annexed to the Laras' motion. In fact, its arguments subsumed the genuineness thereof and even adverted to one or two of them. Its objection was centered on the propriety of taking account of those documents as evidence, considering the established principle that no evidence should be received in the resolution of a motion to dismiss based on an alleged failure of the complaint to state a cause of action.

There being otherwise no question respecting the genuineness of the documents, nor of their relevance to at least one of the grounds for dismissal — *i.e.*, the prohibition on suits in Philippine Courts by foreign corporations doing business in the country without license — it would have been a superfluity for the Court to require prior proof of their authenticity, and no error may be ascribed to the Trial Court in taking account of them in the determination of the motion *on the ground, not that the complaint fails to state a cause of action — as regards which evidence is improper and impermissible — but that the plaintiff has no*

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legal capacity to sue — respecting which proof may and should be presented.

Neither may ML FUTURES argue with any degree of tenability that it had been denied due process in the premises. As just pointed out, it was very clear from the outset that the claim of lack of its capacity to sue was being made to rest squarely on the documents annexed thereto, and ML FUTURES had more than ample opportunity to impugn those documents and require their authentication, but did not do so. To sustain its theory that there should have been identification and authentication, and formal offer, of those documents in the Trial Court pursuant to the rules of evidence would be to give unwarranted importance to technicality and make it prevail over the substance of the issue.

The first question then, is, as ML FUTURES formulates it, whether or not the annexes, assuming them to be admissible, establish that (a) ML FUTURES is prohibited from suing in Philippine Courts because doing business in the country without a license, and that (b) it is not a real party in interest since the Lara Spouses had not been doing business with it, but with another corporation, Merrill Lynch, Pierce, Fenner & Smith, Inc.

The Court is satisfied that the facts on record adequately establish that ML FUTURES, operating in the United States, had indeed done business with the Lara Spouses in the Philippines over several years, had done so at all times through Merrill Lynch Philippines, Inc. (MLPI), a corporation organized in this country, and had executed all these transactions without ML FUTURES being licensed to so transact business here, and without MLPI being authorized to operate as a commodity futures trading advisor. These are the factual findings of both the Trial Court and the Court of Appeals. These, too, are the conclusions of the Securities & Exchange Commission which denied MLPI's application to operate as a commodity futures trading advisor, a denial subsequently affirmed by the Court of Appeals. Prescinding from the proposition that factual findings of the Court of Appeals are generally conclusive, this Court has been cited to no circumstance of substance to warrant reversal of said Appellate Court's findings or conclusions in this case.

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The Court is satisfied, too, that the Laras did transact business with ML FUTURES through its agent corporation organized in the Philippines, it being unnecessary to determine whether this domestic firm was MLPI (Merrill Lynch Philippines, Inc.) or Merrill Lynch Pierce Fenner & Smith (MLPI's alleged predecessor). The fact is that ML FUTURES did deal with futures contracts in exchanges in the United States in behalf and for the account of the Lara Spouses, and that on several occasions the latter received account documents and money in connection with those transactions.

Given these facts, if indeed the last transaction executed by ML FUTURES in the Laras's behalf had resulted in a loss amounting to US $160,749.69; that in relation to this loss, ML FUTURES had credited the Laras with the amount of US $ 75,913.42 — which it (ML FUTURES) then admittedly owed the spouses — and thereafter sought to collect the balance, US $84,836.27, but the Laras had refused to pay (for the reasons already above stated), the crucial question is whether or not ML FUTURES may sue in Philippine Courts to establish and enforce its rights against said spouses, in light of the undeniable fact that it had transacted business in this country without being licensed to do so. In other words, if it be true that during all the time that they were transacting with ML FUTURES, the Laras were fully aware of its lack of license to do business in the Philippines, and in relation to those transactions had made payments to, and received money from it for several years, the question is whether or not the Lara Spouses are now estopped to impugn ML FUTURES capacity to sue them in the courts of the forum.

The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it.[16] And the "doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations;"[17] "one who has dealt with a corporation of foreign

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[16] SEE *Ohta Development Co. v. Steamship 'Pompey,' et al.*, 49 Phil. 117, 120 (1926); *Asia Banking Corporation v. Standard Products Co.*, 46 Phil. 144 (1924).

[17] 14 C.J. 227.

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origin as a corporate entity is estopped to deny its corporate existence and capacity."[18] The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract (*Sherwood v. Alvis*, 83 Ala 115, 3 So 307, limited and distinguished in *Dudley v. Collier*, 87 Ala 431, 6 So 304; *Spinney v. Miller* 114 Iowa 210, 86 NW 317), where such person has acted as agent for the corporation and has violated his fiduciary obligations as such, and where the statute does not provide that the contract shall be void, but merely fixes a special penalty for violation of the statute. **."[19]

The doctrine was adopted by this Court as early as 1924 in *Asia Banking Corporation v. Standard Products Co.*, [20] in which the following pronouncement was made:[21]

"The general rule that in the absence of fraud a person who has contracted or otherwise dealt with an association in such a way as to recognize and in effect admit its legal existence as corporate body is thereby estopped to deny its corporate existence in any action leading out of or involving such contract or dealing, unless its existence is attacked for causes which have arisen since making the contract or other dealing relied on as an estoppel and *this applies to foreign as well as domestic corporations.* (14 C.J. 227; *Chinese Chamber of Commerce vs. Pua Te Ching*, 14 Phil. 222)."

There would seem to be no question that the Laras received benefits generated by their business relations with ML FUTURES. Those business relations, according to the Laras themselves, spanned a period of seven (7) years; and they evidently found those relations to be of such profitability as warranted their maintaining them for

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[18] 36 Am Jur 2d, pp. 296-297, although there is authority that said doctrine "does not, by analogy, require that such person be held estopped to deny that the corporation has complied with the local statutes imposing conditions, restrictions, and regulations on foreign corporations and that it has acquired thereby the right to do business in the state."

[19] *Ibid.*

[20] 46 Phil. 144 (1924), *supra*.

[21] Italics supplied.

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that not insignificant period of time; otherwise, it is reasonably certain that they would have terminated their dealings with ML FUTURES much, much earlier. In fact, even as regards their last transaction, in which the Laras allegedly suffered a loss in the sum of US$160,749.69, the Laras nonetheless still received some monetary advantage, for ML FUTURES credited them with the amount of US $75,913.42 then due to them, thus reducing their debt to US $84,836.27. Given these facts, and assuming that the Lara Spouses were aware from the outset that ML FUTURES had no license to do business in this country and MLPI, no authority to act as broker for it, it would appear quite inequitable for the Laras to evade payment of an otherwise legitimate indebtedness due and owing to ML FUTURES upon the plea that it should not have done business in this country in the first place, or that its agent in this country, MLPI, had no license either to operate as a "commodity and/or financial futures broker."

Considerations of equity dictate that, at the very least, the issue of whether the Laras are in truth liable to ML FUTURES and if so in what amount, and whether they were so far aware of the absence of the requisite licenses on the part of ML FUTURES and its Philippine correspondent, MLPI, as to be estopped from alleging that fact as a defense to such liability, should be ventilated and adjudicated on the merits by the proper trial court.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 16478 dated November 27, 1990 and its Resolution of March 7, 1991 are *REVERSED* and *SET ASIDE*, and the Regional Trial Court at Quezon City, Branch 84, is *ORDERED* to reinstate Civil Case No. Q-52360 and forthwith conduct a hearing to adjudicate the issues set out in the preceding paragraph on the merits.

SO ORDERED.

Padilla, Regalado, and *Nocon, JJ.,* concur.

Paras[*]*, J.*, no part (retired).

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[*] RETIRED as of July 4, 1992.