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Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and *Kapunan, JJ.*, concur.

Francisco, J., took no part in the deliberations.

FIRST DIVISION

[G.R. No. 112573. February 9, 1995]

NORTHWEST ORIENT AIRLINES, INC., *petitioner, vs.* COURT OF APPEALS and C.F. SHARP & COMPANY, INC., *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FOREIGN JUDGMENT; EFFECT; RULE IN CASE OF AN ACTION *IN PERSONAM*.**— A foreign judgment is presumed to be valid and binding in the country from which it comes, until the contrary is shown. It is also proper to presume the regularity of the proceedings and the giving of due notice therein. Under Section 50, Rule 39 of the Rules of Court, a judgment in an action *in personam* of a tribunal of a foreign country having jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title. The judgment may, however, be assailed by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Also, under Section 3 of Rule 131, a court, whether of the Philippines or elsewhere, enjoys the presumption that it was acting in the lawful exercise of jurisdiction and has regularly performed its official duty. Consequently, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity.

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Being the party challenging the judgment rendered by the Japanese Court, SHARP had the duty to demonstrate the invalidity of such judgment. In an attempt to discharge that burden, it contends that the extraterritorial service of summons effected at its home office in the Philippines was not only ineffectual but also void, and the Japanese Court did not, therefore, acquire jurisdiction over it.

2. **ID.; ID.; ID.; ID.; ID.; DUTY OF THE PARTY ASSAILING THEREOF.**— It is settled that matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum. In this case, it is the procedural law of Japan where the judgment was rendered that determines the validity of the extraterritorial service of process on SHARP. As to what this law is is a question of fact, not of law. It may not be taken judicial notice of and must be pleaded and proved like any other fact. Sections 24 and 25, Rule 132 of the Rules of Court provide that it may be evidenced by an official publication or by a duly attested or authenticated copy thereof. It was then incumbent upon SHARP to present evidence as to what that Japanese procedural law is and to show that under it, the assailed extraterritorial service is invalid. It did not. Accordingly, the presumption of validity and regularity of the service of summons and the decision thereafter rendered by the Japanese Court must stand.

3. **ID.; ID.; SUMMONS; SERVICE UPON PRIVATE FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES; RULE; CASE AT BAR.**— Alternatively, in the light of the absence of proof regarding Japanese law, the presumption of identity or similarity or the so-called processual presumption may be invoked. Applying it, the Japanese law on the matter is presumed to be similar with the Philippine law on service of summons on a private foreign corporation doing business in the Philippines. Section 14, Rule 14 of the Rules of Court provides that if the defendant is a foreign corporation doing business in the Philippines, service may be made: (1) on

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its resident agent designated in accordance with law for that purpose, or, (2) if there is no such resident agent, on the government official designated by law to that effect, or (3) on any of its officers or agents within the Philippines. If the foreign corporation has designated an agent to receive summons, the designation is exclusive, and service of summons is without force and gives the court no jurisdiction unless made upon him. Where the corporation has no such agent, service shall be made on the government official designated by law, to wit: (a) the Insurance Commissioner, in the case of a foreign insurance company; (b) the Superintendent of Banks, in the case of a foreign banking corporation; and (c) the Securities and Exchange Commission, in the case of other foreign corporations duly licensed to do business in the Philippines. Whenever service of process is so made, the government office or official served shall transmit by mail a copy of the summons or other legal process to the corporation at its home or principal office. The sending of such copy is a necessary part of the service. SHARP contends that the laws authorizing service of process upon the Securities and Exchange Commission, the Superintendent of Banks, and the Insurance Commissioner, as the case may be, presuppose a situation wherein the foreign corporation doing business in the country no longer has any branches or offices within the Philippines. Such contention is belied by the pertinent provisions of the said laws. Thus, Section 128 of the Corporation Code and Section 190 of the Insurance Code clearly contemplate two situations: (1) if the corporation had left the Philippines or had ceased to transact business therein, and (2) if the corporation has no designated agent. Section 17 of the General Banking Act does not even speak of a corporation which had ceased to transact business in the Philippines. Nowhere in its pleadings did SHARP profess to having had a resident agent authorized to receive court processes in Japan. This silence could only mean, or at least create an impression, that it had none. Hence, service on the designated government official or on any of SHARP's officers or agents in Japan could be availed of. The respondent, however, insists that

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only service on any of its officers or employees in its branches in Japan could be resorted to. We do not agree. As found by the respondent court, two attempts at service were made at SHARP's Yokohama branch. Both were unsuccessful. On the first attempt, Mr. Dinozo, who was believed to be the person authorized to accept court process, was in Manila. On the second, Mr. Dinozo was present, but he refused to accept the summons because, according to him, he was no longer an employee of SHARP. While it may be true that service could have been made upon any of the officers or agents of SHARP at its three other branches in Japan, the availability of such a recourse would not preclude service upon the proper government official, as stated above. As found by the Court of Appeals, it was the Tokyo District Court which ordered that summons for SHARP be served at its head office in the Philippines after the two attempts of service had failed. The Tokyo District Court requested the Supreme Court of Japan to cause the delivery of the summons and other legal documents to the Philippines. Acting on that request, the Supreme Court of Japan sent the summons together with the other legal documents to the Ministry of Foreign Affairs of Japan which, in turn, forwarded the same to the Japanese Embassy in Manila. Thereafter, the court processes were delivered to the Ministry (now Department) of Foreign Affairs of the Philippines, then to the Executive Judge of the Court of First Instance (now Regional Trial Court) of Manila, who forthwith ordered Deputy Sheriff Rolando Balingit to serve the same on SHARP at its principal office in Manila. This service is equivalent to service on the proper government official under Section 14, Rule 14 of the Rules of Court, in relation to Section 128 of the Corporation Code. Hence, SHARP's contention that such manner of service is not valid under Philippine laws holds no water.

4. **ID.; ID.; ID.; SUBSTITUTED SERVICE; RULE; RATIONALE.**— The United States Supreme Court ruled in the 1940 case of *Milliken vs. Meyer* (311 U.S. 457) that domicile in the state is alone sufficient to bring an absent defendant

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within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service or personal service without the state. This principle is embodied in Section 18, Rule 14 of the Rules of Court which allows service of summons on residents temporarily out of the Philippines to be made out of the country. The rationale for this rule was explained in *Milliken* as follows: [T]he authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him.

5. **COMMERCIAL LAW; CORPORATION; DOMICILE OF CORPORATION FORMED IN ONE STATE BUT HAS OFFICES AND TRANSACTING BUSINESS IN OTHER STATE; RULE.**— The domicile of a corporation belongs to the state where it was incorporated. In a strict technical sense, such domicile as a corporation may have is single in its essence and a corporation can have only one domicile which is the state of its creation. Nonetheless, a corporation formed in one state may, for certain purposes, be regarded a resident in another state in which it has offices and transacts business. This is the rule in our jurisdiction and *apropos* thereto, it may be necessary to quote what we stated in *State Investment House, Inc. vs. Citibank, N.A.*, (203 SCRA 9, 18-20 [1991]) to wit: x x x This Court itself

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has already had occasion to hold [Claude Neon Lights, Fed. Inc. *vs.* Philippine Advertising Corp., 57 Phil. 607] that a foreign corporation licitly doing business in the Philippines, which is a defendant in a civil suit, may not be considered a *non-resident* within the scope of the legal provision authorizing attachment against a defendant *not residing in the Philippine Islands;* [Sec. 424, in relation to Sec. 412 of Act No. 190, the Code of Civil Procedure; Sec. 1(f), Rule 59 of the Rules of 1940; Sec. 1(f), Rule 57, Rules of 1964] in other words, a preliminary attachment may not be applied for and granted solely on the asserted fact that the defendant is a foreign corporation authorized to do business in the Philippines — and is consequently and necessarily, "a party who reside out of the Philippines." Parenthetically, if it may not be considered as a party not residing in the Philippines, or as a party who resides out of the country, then, logically, it must be considered a party who does reside in the Philippines, who is a resident of the country. Be this as it may, this Court pointed out that: "x x Our laws and jurisprudence indicate a purpose to assimilate foreign corporations, duly licensed to do business here, to the status of domestic corporations. (Cf. Section 73, Act No. 1459, and Marshall Wells Co. *vs.* Henry W. Elser & Co., 46 Phil. 70, 76; Yu Cong Eng *vs.* Trinidad, 47 Phil. 385, 411) We think it would be entirely out of line with this policy should we make a discrimination against a foreign corporation, like the petitioner, and subject its property to the harsh writ of seizure by attachment when it has complied not only with every requirement of law made specially of foreign corporations, but in addition with every requirement of law made of domestic corporations. x x x." Obviously, the assimilation of foreign corporations authorized to do business in the Philippines "to the status of *domestic* corporations," subsumes their being found and operating as corporations, hence, *residing,* in the country. The same principle is recognized in American law: that the "residence of a corporation, if it can be said to have a residence, is necessarily where it exercises corporate functions x x x"; that it is considered as dwelling "in the place where its business is

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done, x x x," as being "located where its franchises are exercised x x x," and as being "present where it is engaged in the prosecution of the corporate enterprises"; that a "foreign corporation licensed to do business in a state is a resident of any country where it maintains an office or agent for transaction of its usual and customary business for venue purposes"; and that the "necessary element in its signification is locality of existence." [Words and Phrases, Permanent Ed., vol. 37, pp. 394, 412, 403]. Inasmuch as SHARP was admittedly doing business in Japan through its four duly registered branches at the time the collection suit against it was filed, then in the light of the processual presumption, SHARP may be deemed a resident of Japan, and, as such, was amenable to the jurisdiction of the courts therein and may be deemed to have assented to the said courts' lawful methods of serving process. Accordingly, the extraterritorial service of summons on it by the Japanese Court was valid not only under the processual presumption but also because of the presumption of regularity of performance of official duty.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.

Singson Valdez & Associates for private respondent.

DECISION

DAVIDE, JR., *J.*:

This petition for review on *certiorari* seeks to set aside the decision of the Court of Appeals affirming the dismissal of the petitioner's complaint to enforce the judgment of a Japanese Court. The principal issue here is whether a Japanese Court can acquire jurisdiction over a Philippine corporation doing business in Japan by serving summons through diplomatic channels on the Philippine corporation at its

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principal office in Manila after prior attempts to serve summons in Japan had failed.

Petitioner Northwest Orient Airlines, Inc. (hereinafter *NORTHWEST*), a corporation organized under the laws of the State of Minnesota, U.S.A., sought to enforce in Civil Case No. 83-17637 of the Regional Trial Court (RTC), Branch 54, Manila, a judgment rendered in its favor by a Japanese Court against private respondent C.F. Sharp & Company, Inc., (hereinafter *SHARP*), a corporation incorporated under Philippine laws.

As found by the Court of Appeals in the challenged decision of 10 November 1993,[1] the following are the factual and procedural antecedents of this controversy:

On May 9, 1974, plaintiff Northwest Airlines and defendant C.F. Sharp & Company, through its Japan branch, entered into an International Passenger Sales Agency Agreement, whereby the former authorized the latter to sell its air transportation tickets. Unable to remit the proceeds of the ticket sales made by defendant on behalf of the plaintiff under the said agreement, plaintiff on March 25, 1980 sued defendant in Tokyo, Japan, for collection of the unremitted proceeds of the ticket sales, with claim for damages.

On April 11, 1980, a writ of summons was issued by the 36th Civil Department, Tokyo District Court of Japan against defendant at its office at the Taiheiyo Building, 3rd floor, 132, Yamashita-cho, Naka-ku, Yokohoma, Kanagawa Prefecture. The attempt to serve the summons was unsuccessful because the bailiff was advised by a person in the office that Mr. Dinozo, the person believed to be authorized to receive court processes was in Manila and would be back on April 24, 1980.

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[1] Annex "A" of Petition. Per Associate Justice Antonio M. Martinez; concurred in by Associate Justices Cancio C. Garcia and Ramon Mabutas, Jr.

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On April 24, 1980, bailiff returned to the defendant's office to serve the summons. Mr. Dinozo refused to accept the same claiming that he was no longer an employee of the defendant.

After the two attempts of service were unsuccessful, the judge of the Tokyo District Court decided to have the complaint and the writs of summons served at the head office of the defendant in Manila. On July 11, 1980, the Director of the Tokyo District Court requested the Supreme Court of Japan to serve the summons through diplomatic channels upon the defendant's head office in Manila.

On August 28, 1980, defendant received from Deputy Sheriff Rolando Balingit the writ of summons (p. 276, Records). Despite receipt of the same, defendant failed to appear at the scheduled hearing. Thus, the Tokyo Court proceeded to hear the plaintiff's complaint and on [January 29, 1981], rendered judgment ordering the defendant to pay the plaintiff the sum of 83,158,195 Yen and damages for delay at the rate of 6% per annum from August 28, 1980 up to and until payment is completed (pp. 12-14, Records).

On March 24, 1981, defendant received from Deputy Sheriff Balingit copy of the judgment. Defendant not having appealed the judgment, the same became final and executory.

Plaintiff was unable to execute the decision in Japan, hence, on May 20, 1983, a suit for enforcement of the judgment was filed by plaintiff before the Regional Trial Court of Manila, Branch 54.[2]

On July 16, 1983, defendant filed its answer averring that the judgment of the Japanese Court sought to be enforced is null and void and unenforceable in this jurisdiction having been rendered without due and proper notice to the defendant and/or with collusion or fraud and/or upon a clear mistake of law and fact (pp. 41-45, Rec.).

Unable to settle the case amicably, the case was tried on the merits. After the plaintiff rested its case, defendant on April 21, 1989, filed a Motion for Judgment on a Demurrer to Evidence

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[2] This is Civil Case No. 83-17637.

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based on two grounds: (1) the foreign judgment sought to be enforced is null and void for want of jurisdiction and (2) the said judgment is contrary to Philippine law and public policy and rendered without due process of law. Plaintiff filed its opposition after which the court *a quo* rendered the now assailed decision dated June 21, 1989 granting the demurrer motion and dismissing the complaint (Decision, pp. 376-378, Records). In granting the demurrer motion, the trial court held that:

> "The foreign judgment in the Japanese Court sought in this action is null and void for want of jurisdiction over the person of the defendant considering that this is an action *in personam*; the Japanese Court did not acquire jurisdiction over the person of the defendant because jurisprudence requires that the defendant be served with summons in Japan in order for the Japanese Court to acquire jurisdiction over it, the process of the Court in Japan sent to the Philippines which is outside Japanese jurisdiction cannot confer jurisdiction over the defendant in the case before the Japanese Court of the case at bar. Boudard *versus* Tait, 67 Phil. 170. The plaintiff contends that the Japanese Court acquired jurisdiction because the defendant is a resident of Japan, having four (4) branches doing business therein and in fact had a permit from the Japanese government to conduct business in Japan (citing the exhibits presented by the plaintiff); if this is so then service of summons should have been made upon the defendant in Japan in any of these alleged four branches; as admitted by the plaintiff the service of the summons issued by the Japanese Court was made in the Philippines thru a Philippine Sheriff. This Court agrees that if the defendant in a foreign court is a resident in the court of that foreign court such court could acquire jurisdiction over the person of the defendant but it must be served upon the defendant in the territorial jurisdiction of the foreign court. Such is not the case here because the defendant was served with summons in the Philippines and not in Japan."

Unable to accept the said decision, plaintiff on July 11, 1989 moved for reconsideration of the decision, filing at the same time a conditional Notice of Appeal, asking the court to treat the

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said notice of appeal "as in effect after and upon issuance of the court's denial of the motion for reconsideration."

Defendant opposed the motion for reconsideration to which a Reply dated August 28, 1989 was filed by the plaintiff.

On October 16, 1989, the lower court disregarded the Motion for Reconsideration and gave due course to the plaintiff's Notice of Appeal.[3]

In its decision, the Court of Appeals sustained the trial court. It agreed with the latter in its reliance upon *Boudard vs. Tait* wherein it was held that "the process of the court has no extraterritorial effect and no jurisdiction is acquired over the person of the defendant by serving him beyond the boundaries of the state." To support its position, the Court of Appeals further stated:

In an action strictly *in personam*, such as the instant case, personal service of summons within the forum is required for the court to acquire jurisdiction over the defendant (Magdalena Estate Inc. *vs.* Nieto, 125 SCRA 230). To confer jurisdiction on the court, personal or substituted service of summons on the defendant not extraterritorial service is necessary (Dial Corp. *vs.* Soriano, 161 SCRA 739).

But while plaintiff-appellant concedes that the collection suit filed is an action *in personam*, it is its theory that a distinction must be made between an action *in personam* against a resident defendant and an action *in personam* against a non-resident defendant. Jurisdiction is acquired over a non-resident defendant only if he is served personally within the jurisdiction of the court, and over a resident defendant if by personal, substituted or constructive service conformably to statutory authorization. Plaintiff-appellant argues that since the defendant-appellee maintains branches in Japan, it is considered a resident defendant. Corollarily, personal, substituted or constructive service of

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[3] *Rollo*, 28-31.

[4] 67 Phil. 170 [1939].

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summons when made in compliance with the procedural rules is sufficient to give the court jurisdiction to render judgment *in personam*.

Such an argument does not persuade.

It is a general rule that processes of the court cannot lawfully be served outside the territorial limits of the jurisdiction of the court from which it issues (Carter *vs.* Carter, 41 S.E. 2d 532, 201) and this is *regardless of the residence or citizenship* of the party thus served (Iowa-Rahr *vs.* Rahr, 129 NW 494, 150 Iowa 511, 35 LRC, NS, 292, Am. Case 1912 D680). There must be actual service within the proper territorial limits on defendant or someone authorized to accept service for him. Thus, a defendant, whether a resident or not in the forum where the action is filed, must be served with summons within that forum.

But even assuming a distinction between a resident defendant and non-resident defendant were to be adopted, such distinction applies only to natural persons and not to corporations. This finds support in the concept that "a corporation has no home or residence in the sense in which those terms are applied to natural persons" (Claude Neon Lights *vs.* Phil. Advertising Corp., 57 Phil. 607). Thus, as cited by the defendant-appellee in its brief:

> "Residence is said to be an attribute of a natural person, and can be predicated on an artificial being only by more or less imperfect analogy. Strictly speaking, therefore, a corporation can have no local residence or habitation. It has been said that a corporation is a mere ideal existence, subsisting only in contemplation of law - an invisible being which can have, in fact, no locality and can occupy no space, and therefore cannot have a dwelling place. (18 Am. Jur. 2d, p. 693 citing Kimmerle *vs.* Topeka, 88 370, 128 p. 367; Wood *v.* Hartfold F. Ins. Co., 13 Conn 202)"

Jurisprudence so holds that the foreign or domestic character of a corporation is to be determined by the place of its origin, where its charter was granted and not by the location of its business activities (Jennings *v.* Idaho Rail Light & P. Co., 26 Idaho 703, 146 p. 101). A corporation is a "resident" and an inhabitant of

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the state in which it is incorporated and no other (36 Am. Jur. 2d, p. 49).

Defendant-appellee is a Philippine Corporation duly organized under the Philippine laws. Clearly, its residence is the Philippines, the place of its incorporation, and not Japan. While defendant-appellee maintains branches in Japan, this will not make it a resident of Japan. A corporation does not become a resident of another by engaging in business there even though licensed by that state and in terms given all the rights and privileges of a domestic corporation (Galveston H. & S.A.R. Co. *vs.* Gonzales, 151 US 496, 38 L ed. 248, 4 S Ct. 401).

On this premise, defendant appellee is a non-resident corporation. As such, court processes must be served upon it at a place within the state in which the action is brought and not elsewhere (St. Clair *vs.* Cox, 106 US 350, 27 L ed. 222, 1 S. Ct. 354).[5]

It then concluded that the service of summons effected in Manila or beyond the territorial boundaries of Japan was null and did not confer jurisdiction upon the Tokyo District Court over the person of SHARP; hence, its decision was void.

Unable to obtain a reconsideration of the decision, NORTHWEST elevated the case to this Court contending that the respondent court erred in holding that SHARP was not a resident of Japan and that summons on SHARP could only be validly served within that country.

A foreign judgment is presumed to be valid and binding in the country from which it comes, until the contrary is shown. It is also proper to presume the regularity of the proceedings and the giving of due notice therein.[6]

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[5] *Rollo*, 32-34.

[6] 47 Am Jur 2d Judgments s. 1237 (1969).

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Under Section 50, Rule 39 of the Rules of Court, a judgment in an action *in personam* of a tribunal of a foreign country having jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title. The judgment may, however, be assailed by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Also, under Section 3 of Rule 131, a court, whether of the Philippines or elsewhere, enjoys the presumption that it was acting in the lawful exercise of jurisdiction and has regularly performed its official duty.

Consequently, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity.[7] Being the party challenging the judgment rendered by the Japanese Court, SHARP had the duty to demonstrate the invalidity of such judgment. In an attempt to discharge that burden, it contends that the extraterritorial service of summons effected at its home office in the Philippines was not only ineffectual but also void, and the Japanese Court did not, therefore, acquire jurisdiction over it.

It is settled that matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum.[8] In this case, it is the procedural law of Japan where the judgment was rendered that determines the validity of the extraterritorial service of process on SHARP. As to what this law is a question of fact, not of law. It may not be taken judicial notice of and must be pleaded and proved like any other fact.[9] Sections 24 and 25, Rule 132 of the

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[7] 47 Am Jur 2d Judgments 1237 (1969).

[8] JOVITO R. SALONGA, *Private International Law*, 100, 1967 3rd ed.; 16 Am Jur 2d Conflict of Laws 125 (1979).

[9] FLORENZ D. REGALADO, *Remedial Law Compendium*, vol. 2, 1989 ed., 526, citing In re Estate of Johnson, 39 Phil. 156 [1918]

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Rules of Court provide that it may be evidenced by an official publication or by a duly attested or authenticated copy thereof. It was then incumbent upon SHARP to present evidence as to what that Japanese procedural law is and to show that under it, the assailed extraterritorial service is invalid. It did not. Accordingly, the presumption of validity and regularity of the service of summons and the decision thereafter rendered by the Japanese Court must stand.

Alternatively, in the light of the absence of proof regarding Japanese law, the presumption of identity or similarity or the so-called processual presumption[10] may be invoked. Applying it, the Japanese law on the matter is presumed to be similar with the Philippine law on service of summons on a private foreign corporation doing business in the Philippines. Section 14, Rule 14 of the Rules of Court provides that if the defendant is a foreign corporation doing business in the Philippines, service may be made: (1) on its resident agent designated in accordance with law for that purpose, or, (2) if there is no such resident agent, on the government official designated by law to that effect, or (3) on any of its officers or agents within the Philippines.

If the foreign corporation has designated an agent to receive summons, the designation is exclusive, and service of summons is without force and gives the court no jurisdiction unless made upon him.[11]

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and Fluemer *vs.* Hix, 54 Phil. 610 [1930]; EDGARDO L. PARAS, *Philippine Conflict of Laws*, 1984 ed., 45, citing Adong *vs.* Cheong Seng Gee, 43 Phil. 43 [1922] and Sy Joc Lieng *vs.* Syquia, 16 Phil. 137 [1910].

[10] Lim *vs.* Collector of Customs, 36 Phil. 472 [1917]; International Harvester Co. *vs.* Hamburg-American Line, 42 Phil. 845 [1918]; Suntay *vs.* Suntay, 95 Phil. 500 [1954]; Beam *vs.* Yatco, 82 Phil. 30 [1948]; Collector of Internal Revenue *vs.* Fisher, 1 SCRA 93 [1961].

[11] Poizat *vs.* Morgan, 28 Phil. 597 [1914]; H.B. Zachry Co. *vs.* Court of Appeals, G.R. No. 106989, 10 May 1994.

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Where the corporation has no such agent, service shall be made on the government official designated by law, to wit: (a) the Insurance Commissioner, in the case of a foreign insurance company; (b) the Superintendent of Banks, in the case of a foreign banking corporation; and (c) the Securities and Exchange Commission, in the case of other foreign corporations duly licensed to do business in the Philippines. Whenever service of process is so made, the government office or official served shall transmit by mail a copy of the summons or other legal process to the corporation at its home or principal office. The sending of such copy is a necessary part of the service.[12]

SHARP contends that the laws authorizing service of process upon the Securities and Exchange Commission, the Superintendent of Banks, and the Insurance Commissioner, as the case may be, presuppose a situation wherein the foreign corporation doing business in the country no longer has any branches or offices within the Philippines. Such contention is belied by the pertinent provisions of the said laws. Thus, Section 128 of the Corporation Code[13] and Section 190 of

[12] Section 190, Insurance Code; Section 17, General Banking Act; Section 128, Corporation Code.

[13] It reads:

SEC. 128. Resident Agent; service of process. - xxx Any such foreign corporation shall likewise execute and file with the Securities and Exchange Commission an agreement or stipulation, executed by the proper authorities of said corporation, in form and substance as follows:

x x x if at any time said corporation shall cease to transact business in the Philippines, or shall *be without any resident agent in the Philippines* on whom any summons or other legal processes may be served, then in any action or proceeding arising out of any business or transaction which occurred in the Philippines, service of any summons or other legal process may be made upon the Securities and Exchange Commission and that such service shall have the same force and effect as if made upon the duly-authorized officers of the corporation at its home office. (Italics supplied).

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the Insurance Code[14] clearly contemplate two situations: (1) if the corporation had left the Philippines or had ceased to transact business therein, and (2) if the corporation has no designated agent. Section 17 of the General Banking Act[15] does not even speak of a corporation which had ceased to transact business in the Philippines.

Nowhere in its pleadings did SHARP profess to having had a resident agent authorized to receive court processes in Japan. This silence could only mean, or at least create an impression, that it had none. Hence, service on the designated

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[14] It reads:

SEC. 190. x x x Any such foreign corporation shall, as further condition precedent to the transaction of insurance business in the Philippines, make and file with the Commissioner an agreement or stipulation, executed by the proper authorities of said company in form and substance as follows:

x x x if at any time said company shall leave the Philippines, or cease to transact business therein, *or shall be without any agent in the Philippines* on whom any notice, proof of loss, summons, or legal process may be served, then in any action or proceeding out of any business or transaction which occurred in the Philippines, service of any notice provided by law, or insurance policy, proof of loss, summons or other legal process may be made upon the Insurance Commissioner, and that such service upon the Insurance Commissioner shall have the same force and effect as if made upon the company. (Italics supplied).

[15] It provides:

SEC. 17. x x x

x x x

Should there be *no person authorized* by the corporation upon whom service of summons, processes, and all legal notices may be made, service of summons, processes, and legal notices may be made upon the Superintendent of Banks and such service shall be as effective as if made upon the corporation or upon its duly authorized agent. (Italics supplied).

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government official or on any of SHARP's officers or agents in Japan could be availed of. The respondent, however, insists that only service on any of its officers or employees in its branches in Japan could be resorted to. We do not agree. As found by the respondent court, two attempts at service were made at SHARP's Yokohama branch. Both were unsuccessful. On the first attempt, Mr. Dinozo, who was believed to be the person authorized to accept court process, was in Manila. On the second, Mr. Dinozo was present, but he refused to accept the summons because, according to him, he was no longer an employee of SHARP. While it may be true that service could have been made upon any of the officers or agents of SHARP at its three other branches in Japan, the availability of such a recourse would not preclude service upon the proper government official, as stated above.

As found by the Court of Appeals, it was the Tokyo District Court which ordered that summons for SHARP be served at its head office in the Philippines after the two attempts of service had failed.[16] The Tokyo District Court requested the Supreme Court of Japan to cause the delivery of the summons and other legal documents to the Philippines. Acting on that request, the Supreme Court of Japan sent the summons together with the other legal documents to the Ministry of Foreign Affairs of Japan which, in turn, forwarded the same to the Japanese Embassy in Manila. Thereafter, the court processes were delivered to the Ministry (now Department) of Foreign Affairs of the Philippines, then to the Executive Judge of the Court of First Instance (now Regional Trial Court) of Manila, who forthwith ordered Deputy Sheriff Rolando Balingit to serve the same on SHARP at its principal office in Manila. This service is equivalent to service on the proper government official under Section 14, Rule 14 of the Rules of Court, in relation to Section 128 of the

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[16] Decision of the Court of Appeals, 2; *Rollo*, 29.

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Corporation Code. Hence, SHARP's contention that such manner of service is not valid under Philippine laws holds no water.[17]

In deciding against the petitioner, the respondent court sustained the trial court's reliance on *Boudard vs. Tait*[18] where this Court held:

"The fundamental rule is that jurisdiction *in personam* over non-residents, so as to sustain a money judgment, must be based upon personal service within the state which renders the judgment."

...

"The process of a court has no extraterritorial effect, and no jurisdiction is acquired over the person of the defendant by serving him beyond the boundaries of the state. Nor has a judgment of a court of a foreign country against a resident of this country having no property in such foreign country based on process served here, any effect here against either the defendant personally or his property situated here."

"Process issuing from the courts of one state or country cannot run into another, and although a non-resident defendant may have been personally served with such process in the state or country of his domicile, it will not give such jurisdiction as to authorize a personal judgment against him."

It further availed of the ruling in *Magdalena Estate, Inc. vs. Nieto*[19] and *Dial Corp. vs. Soriano*,[20] as well as the principle laid down by the Iowa Supreme Court in the 1911 case of *Raher vs. Raher*.[21]

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17 Appellee's Brief, 18.

18 *Supra* note 4 at 174-175 (citations omitted).

19 125 SCRA 758 [1983].

20 161 SCRA 737 [1988].

21 150 Iowa 511, 129 NW 494.

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The first three cases are, however, inapplicable. *Boudard* involved the enforcement of a judgment of the civil division of the Court of First Instance of Hanoi, French Indo-China. The trial court dismissed the case because the Hanoi court never acquired jurisdiction over the person of the defendant considering that "[t]he evidence adduced at the trial conclusively proves that neither the appellee [the defendant] nor his agent or employees were ever in Hanoi, French Indo-China; and that the deceased Marie Theodore Jerome Boudard had never, at any time, been his employee." In *Magdalena Estate*, what was declared invalid resulting in the failure of the court to acquire jurisdiction over the person of the defendants in an action *in personam* was the service of summons through publication against non-appearing resident defendants. It was claimed that the latter concealed themselves to avoid personal service of summons upon them. In *Dial*, the defendants were foreign corporations which were not domiciled and licensed to engage in business in the Philippines and which did not have officers or agents, places of business, or properties here. On the other hand, in the instant case, SHARP was doing business in Japan and was maintaining four branches therein.

Insofar as the Philippines is concerned, *Raher* is a thing of the past. In that case, a divided Supreme Court of Iowa declared that the principle that there can be no jurisdiction in a court of a territory to render a personal judgment against anyone upon service made outside its limits was applicable alike to cases of residents and non-residents. The principle was put at rest by the United States Supreme Court when it ruled in the 1940 case of *Milliken vs. Meyer*[22] that domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service or personal service without the state. This principle

[22] 311 U.S. 457.

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is embodied in Section 18, Rule 14 of the Rules of Court which allows service of summons on residents temporarily out of the Philippines to be made out of the country. The rationale for this rule was explained in *Milliken* as follows:

> [T]he authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him.[23]

The domicile of a corporation belongs to the state where it was incorporated.[24] In a strict technical sense, such domicile as a corporation may have is single in its essence and a corporation can have only one domicile which is the state of its creation.[25]

Nonetheless, a corporation formed in one state may, for certain purposes, be regarded a resident in another state in which it has offices and transacts business. This is the rule in our jurisdiction and *apropos* thereto, it may be necessary to quote what we stated in *State Investment House, Inc. vs. Citibank, N.A.*,[26] to wit:

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[23] *Id.* at 463-464 (citations omitted).

[24] 18 Am Jur 2d Corporations 159 (1965).

[25] 36 Am Jur 2d Foreign Corporations 32 (1968).

[26] 203 SCRA 9, 18-20 [1991].

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The issue is whether these Philippine branches or units may be considered "residents of the Philippine Islands" as that term is used in Section 20 of the Insolvency Law ... or residents of the state under the laws of which they were respectively incorporated. The answer cannot be found in the Insolvency Law itself, which contains no definition of the term, *resident*, or any clear indication of its meaning. There are however other statutes, albeit of subsequent enactment and effectivity, from which enlightening notions of the term may be derived.

The National Internal Revenue Code declares that the term "'resident foreign corporation' applies to a foreign corporation engaged in trade or business within the Philippines," as distinguished from a "'non-resident foreign corporation' xxx (which is one) not engaged in trade or business within the Philippines." [Sec. 20, pars. (h) and (i)].

The Offshore Banking Law, Presidential Decree No. 1034, states "that branches, subsidiaries, affiliation, extension offices or any other units of corporation or juridical person organized under the laws of any foreign country operating in the Philippines shall be considered residents of the Philippines." [Sec. 1(e)].

The General Banking Act, Republic Act No. 337, places "branches and agencies in the Philippines of foreign banks xxx (which are) called Philippine branches," in the same category as "commercial banks, savings associations, mortgage banks, development banks, rural banks, stock savings and loan associations" (which have been formed and organized under Philippine laws), making no distinction between the former and the latter in so far as the terms "banking institutions" and "bank" are used in the Act [Sec. 2], declaring on the contrary that in "all matters not specifically covered by special provisions applicable only to foreign banks, or their branches and agencies in the Philippines, said foreign banks or their branches and agencies lawfully doing business in the Philippines "shall be bound by all laws, rules, and regulations applicable to domestic banking corporations of the same class, except such laws, rules and regulations as provided for the creation, formation, organization, or dissolution of corporations or as fix the relation, liabilities, responsibilities, or duties of members, stockholders or officers of corporation." [Sec. 18].

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This Court itself has already had occasion to hold [Claude Neon Lights, Fed., Inc. *vs.* Philippine Advertising Corp., 57 Phil. 607) that a foreign corporation licitly doing business in the Philippines, which is a defendant in a civil suit, may not be considered a *non-resident* within the scope of the legal provision authorizing attachment against a defendant *not residing in the Philippine Islands*; [Sec. 424, in relation to Sec. 412 of Act No. 190, the Code of Civil Procedure; Sec. 1(f), Rule 59 of the Rules of 1940; Sec. 1(f), Rule 57, Rules of 1964] in other words, a preliminary attachment may not be applied for and granted solely on the asserted fact that the defendant is a foreign corporation authorized to do business in the Philippines—and is consequently and necessarily, "a party who resides out of the Philippines." Parenthetically, if it may not be considered as a party not residing in the Philippines, or as a party who resides out of the country, then, logically, it must be considered a party who does reside in the Philippines, who is a resident of the country. Be this as it may, this Court pointed out that:

> "x x x Our Laws and jurisprudence indicate a purpose to assimilate foreign corporations, duly licensed to do business here, to the status of domestic corporations. (Cf. Section 73, Act No. 1459, and Marshall Wells Co. *vs.* Henry W. Elser & Co., 46 Phil. 70, 76; Yu Cong Eng *vs.* Trinidad, 47 Phil. 385, 411) We think it would be entirely out of line with this policy should we make a discrimination against a foreign corporation, like the petitioner, and subject its property to the harsh writ of seizure by attachment when it has complied not only with every requirement of law made specially of foreign corporations, but in addition with every requirement of law made of domestic corporations. xxx."

Obviously, the assimilation of foreign corporations authorized to do business in the Philippines "to the status of *domestic* corporations," subsumes their being found and operating as corporations, hence, *residing*, in the country.

The same principle is recognized in American law: that the "residence of a corporation, if it can be said to have a residence, is necessarily where it exercises corporate functions xx"; that it is considered as dwelling "in the place where its business is

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done xx," as being "located where its franchises are exercised x x," and as being "present where it is engaged in the prosecution of the corporate enterprise"; that a "foreign corporation licensed to do business in a state is a resident of any country where it maintains an office or agent for transaction of its usual and customary business for venue purposes"; and that the "necessary element in its signification is locality of existence." [Words and Phrases, Permanent Ed., vol. 37, pp. 394, 412, 403].

Inasmuch as SHARP was admittedly doing business in Japan through its four duly registered branches at the time the collection suit against it was filed, then in the light of the processual presumption, SHARP may be deemed a resident of Japan, and, as such, was amenable to the jurisdiction of the courts therein and may be deemed to have assented to the said courts' lawful methods of serving process.[27]

Accordingly, the extraterritorial service of summons on it by the Japanese Court was valid not only under the processual presumption but also because of the presumption of regularity of performance of official duty.

We find NORTHWEST's claim for attorney's fees, litigation expenses, and exemplary damages to be without merit. We find no evidence that would justify an award for attorney's fees and litigation expenses under Article 2208 of the Civil Code of the Philippines. Nor is an award for exemplary damages warranted. Under Article 2234 of the Civil Code, before the court may consider the question of whether or not exemplary damages should be awarded, the plaintiff must show that he is entitled to moral, temperate, or compensatory damages. There being no such proof presented by NORTHWEST, no exemplary damages may be adjudged in its favor.

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[27] 36 Am Jur 2d Foreign Corporations s. 516 (1968).

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WHEREFORE, the **instant petition is partly GRANTED**, and the **challenged decision** is **AFFIRMED** insofar as it denied NORTHWEST's claims for attorney's fees, litigation expenses, and exemplary damages but **REVERSED** insofar as it sustained the trial court's dismissal of NORTHWEST's complaint in Civil Case No. 83-17637 of Branch 54 of the Regional Trial Court of Manila, and another in its stead is hereby rendered **ORDERING private respondent C.F. SHARP & COMPANY, INC. to pay to NORTHWEST the amounts adjudged in the foreign judgment** subject of said case, with interest thereon at the legal rate from the filing of the complaint therein until the said foreign judgment is fully satisfied.

Costs against the private respondent.

SO ORDERED.

Padilla (Chairman), *Bellosillo, Quiason*, and *Kapunan, JJ.*, concur.

SECOND DIVISION

[G.R. No. 113547. February 9, 1995]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ANITA BAUTISTA y LATOJA, *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL RECRUITMENT IN LARGE SCALE; ESSENTIAL ELEMENTS.**— The Labor Code defines *recruitment and placement* as referring to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided that