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WHEREFORE, we *DENY* the petition. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 62900 is *AFFIRMED.* Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

SECOND DIVISION

[G.R. No. 156848. October 11, 2007]

PIONEER INTERNATIONAL, LTD., *petitioner, vs.* **HON. TEOFILO GUADIZ, JR., in his capacity as Presiding Judge of Regional Trial Court, Branch 147, Makati City, and ANTONIO D. TODARO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; PRESENCE THEREOF RESTS ON SUFFICIENCY AND NOT ON THE VERACITY, OF THE ALLEGATION IN THE COMPLAINT; VERACITY OF ALLEGATIONS WILL HAVE TO BE EXAMINED DURING THE TRIAL ON THE MERITS.— Section 2, Rule 2 of the 1997 Rules of Civil Procedure states that a cause of action is the act or omission by which a party violates a right of another. In the present case, the summary of Todaro's allegations states that PIL, PCPI, PPHI, McDonald, and Klepzig did not fulfill their contractual obligation to employ Todaro on a permanent basis in PIL's Philippine office. Todaro's allegations are thus sufficient to establish a cause of action. It should be emphasized that the presence of a cause of action rests on the sufficiency, and not on the veracity, of the allegations in the complaint. The veracity of the allegations will have to be examined during

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the trial on the merits. In resolving a motion to dismiss based on lack of cause of action, the trial court is limited to the four corners of the complaint and its annexes. It is not yet necessary for the trial court to examine the truthfulness of the allegations in the complaint. Such examination is proper during the trial on the merits.

2. ID.; ID.; ID.; DOCTRINE OF FORUM *NON CONVENIENS*; REQUIRES AN EXAMINATION OF TRUTHFULNESS OF THE ALLEGATIONS IN THE COMPLAINT.— The doctrine of *forum non-conveniens* requires an examination of the truthfulness of the allegations in the complaint. Section 1, Rule 16 of the 1997 Rules of Civil Procedure does not mention *forum non-conveniens* as a ground for filing a motion to dismiss. The propriety of dismissing a case based on *forum non-conveniens* requires a factual determination; hence, it is more properly considered a matter of defense. While it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, the trial court should do so only after vital facts are established to determine whether special circumstances require the court's desistance.

3. ID.; ID.; SUMMONS; SERVICE UPON FOREIGN PRIVATE JURIDICAL ENTITY; "TRANSACTING" OR "DOING BUSINESS" IN THE PHILIPPINES; PETITIONER IS CONSIDERED DOING BUSINESS IN THE PHILIPPINES WHEN IT NEGOTIATED PRIVATE RESPONDENT'S EMPLOYMENT WITH ITS HOLDING COMPANY.— PIL insists that its sole act of "transacting" or "doing business" in the Philippines consisted of its investment in PPHI. Under Philippine law, PIL's mere investment in PPHI does not constitute "doing business." However, we affirm the lower courts' ruling and declare that, based on the allegations in Todaro's complaint, PIL was doing business in the Philippines when it negotiated Todaro's employment with PPHI. Section 3(d) of Republic Act No. 7042, Foreign Investments Act of 1991, states: *The phrase* ***"doing business"*** **shall include soliciting** *orders,* **service contracts**, opening offices, whether called "*liaison"* offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty [180] days or more; participating in the management, supervision or control of any domestic business,

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firm, entity or corporation in the Philippines; **and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or of the purpose and object of the business organization:** *Provided, however*, That the phrase "*doing business*" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;

4. ID.; ID.; ID.; ID.; PETITIONER'S ALLEGED ACTS IN ACTIVELY NEGOTIATING TO EMPLOY PRIVATE RESPONDENT TO RUN ITS PRE-MIXED CONCRETE OPERATIONS IN THE PHILIPPINES, ARE NOT MERE ACTS OF A PASSIVE INVESTOR IN A DOMESTIC CORPORATION; SUCH ARE MANAGERIAL AND OPERATIONAL ACTS IN DIRECTING AND ESTABLISHING COMMERCIAL OPERATIONS IN THE PHILIPPINES.— PIL's alleged acts in actively negotiating to employ Todaro to run its pre-mixed concrete operations in the Philippines, which acts are hypothetically admitted in PIL's motion to dismiss, are not mere acts of a passive investor in a domestic corporation. Such are managerial and operational acts in directing and establishing commercial operations in the Philippines. The annexes that Todaro attached to his complaint give us an idea on the extent of PIL's involvement in the negotiations regarding Todaro's employment. In Annex "E", McDonald of Pioneer Concrete Group HK confirmed his offer to engage Todaro as a consultant of PIL. In Annex "F", Todaro accepted the consultancy. In Annex "H", Klepzig of PPHI stated that PIL authorized him to tell Todaro about the cessation of his consultancy. Finally, in Annex "I", Folwell of PIL wrote to Todaro to confirm that "Pioneer" no longer wishes to be associated with Todaro and that Klepzig is authorized to terminate this association. Folwell

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further referred to a Dr. Schubert and to Pioneer Hong Kong. These confirmations and references tell us that, in this instance, the various officers and companies under the Pioneer brand name do not work independently of each other. It cannot be denied that PIL had knowledge of and even authorized the non-implementation of Todaro's alleged permanent employment. In fact, in the letters to Todaro, the word "Pioneer" was used to refer not just to PIL alone but also to all corporations negotiating with Todaro under the Pioneer name. As further proof of the interconnection of the various Pioneer corporations with regard to their negotiations with Todaro, McDonald of Pioneer Concrete Group HK confirmed Todaro's engagement as consultant of PIL (Annex "E") while Folwell of PIL stated that Todaro rendered consultancy services to Pioneer HK (Annex "I"). In this sense, the various Pioneer corporations were not acting as separate corporations. The behavior of the various Pioneer corporations shoots down their defense that the corporations have separate and distinct personalities, managements, and operations. The various Pioneer corporations were all working in concert to negotiate an employment contract between Todaro and PPHI, a domestic corporation. Finally, the phrase "doing business in the Philippines" in the former version of Section 12, Rule 14 now reads "has transacted business in the Philippines." The scope is thus broader in that it is enough for the application of the Rule that the foreign private juridical entity "has transacted business in the Philippines."

5. ID.; ID.; ID.; ID.; THE REQUIREMENTS OF THE RULE ON SUMMONS MUST BE STRICTLY FOLLOWED, OTHERWISE, THE TRIAL COURT WILL NOT ACQUIRE JURISDICTION OVER THE DEFENDANT.— The purpose of summons is not only to acquire jurisdiction over the person of the defendant, but also to give notice to the defendant that an action has been commenced against it and to afford it an opportunity to be heard on the claim made against it. The requirements of the rule on summons must be strictly followed; otherwise, the trial court will not acquire jurisdiction over the defendant. When summons is to be served on a natural person, service of summons should be made in person on the defendant. Substituted service is resorted to only upon the concurrence of two requisites: (1) when the defendant cannot

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be served personally within a reasonable time and (2) when there is impossibility of prompt service as shown by the statement in the proof of service in the efforts made to find the defendant personally and that such efforts failed. The statutory requirements of substituted service must be followed strictly, faithfully, and fully, and any substituted service other than by the statute is considered ineffective. Substituted service is in derogation of the usual method of service. It is a method extraordinary in character and may be used only as prescribed and in the circumstances authorized by the statute. The need for strict compliance with the requirements of the rule on summons is also exemplified in the exclusive enumeration of the agents of a domestic private juridical entity who are authorized to receive summons.

6. ID.; ID.; ID.; ID.; SUMMONS WAS IMPROPERLY SERVED IN CASE AT BAR; THE SUMMONS WAS NOT SERVED PERSONALLY ON THE PETITIONER'S AGENT WITHIN THE PHILIPPINES BUT WITH THE LATTER'S EXECUTIVE ASSISTANT WHO IS A MERE EMPLOYEE OF THE AUTHORIZED AGENT.— Section 11 of Rule 14 provides that when the defendant is a domestic private juridical entity, service may be made on the "president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel." The previous version of Section 11 allowed for the service of summons on the "president, manager, secretary, cashier, agent, or any of its directors." The present Section 11 qualified "manager" to "general manager" and "secretary" to "corporate secretary." The present Section 11 also removed "cashier, agent, or any of its directors" from the exclusive enumeration. When summons is served on a foreign juridical entity, there are three prescribed ways: (1) service on its resident agent designated in accordance with law for that purpose, (2) service on the government official designated by law to receive summons if the corporation does not have a resident agent, and (3) service on any of the corporation's officers or agents within the Philippines. In the present case, service of summons on PIL failed to follow any of the prescribed processes. PIL had no resident agent in the Philippines. Summons was not served on the Securities and Exchange Commission (SEC), the designated government agency, since PIL is not registered with the SEC.

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Summons for PIL was served on De Leon, Klepzig's Executive Assistant. Klepzig is PIL's "agent within the Philippines" because PIL authorized Klepzig to notify Todaro of the cessation of his consultancy (Annexes "H" and "I"). The authority given by PIL to Klepzig to notify Todaro implies that Klepzig was likewise authorized to receive Todaro's response to PIL's notice. Todaro responded to PIL's notice by filing a complaint before the trial court. However, summons was not served personally on Klepzig as agent of PIL. Instead, summons was served on De Leon, Klepzig's Executive Assistant. In this instance, De Leon was not PIL's agent but a mere employee of Klepzig. In effect, the sheriff resorted to substituted service. For symmetry, we apply the rule on substituted service of summons on a natural person and we find that no reason was given to justify the service of PIL's summons on De Leon. Thus, we rule that PIL transacted business in the Philippines and Klepzig was its agent within the Philippines. However, there was improper service of summons on PIL since summons was not served personally on Klepzig.

7. ID.; ID.; ID.; PETITIONER'S LIABILITY FOR THE NON-IMPLEMENTATION OF THE ALLEGED EMPLOYMENT AGREEMENT IS A CIVIL DISPUTE PROPERLY BELONGING TO THE REGULAR COURTS AND NOT WITH THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).— Todaro's employment in the Philippines would not be with PIL but with PPHI as stated in the 20 October 1997 letter of Folwell. Assuming the existence of the employment agreement, the employer-employee relationship would be between PPHI and Todaro, not between PIL and Todaro. PIL's liability for the non-implementation of the alleged employment agreement is a civil dispute properly belonging to the regular courts. Todaro's causes of action as stated in his complaint are, in addition to breach of contract, based on "violation of Articles 19 and 21 of the New Civil Code" for the "clear and evident bad faith and malice" on the part of defendants. The NLRC's jurisdiction is limited to those enumerated under Article 217 of the Labor Code.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Singson Valdez and Associates for private respondent.

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D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] of the Decision[2] dated 27 September 2001 and of the Resolution[3] dated 14 January 2003 of the Court of Appeals (appellate court) in CA-G.R. SP No. 54062. The Decision affirmed the Orders[4] dated 4 January 1999[5] and 3 June 1999[6] of Branch 147 of the Regional Trial Court of Makati City (trial court) in Civil Case No. 98-124. The trial court denied the motion to dismiss filed by Pioneer International, Ltd. (PIL)[7] in its special appearance.

The Facts

On 16 January 1998, Antonio D. Todaro (Todaro) filed a complaint for sum of money and damages with preliminary attachment against PIL, Pioneer Concrete Philippines, Inc. (PCPI), Pioneer Philippines Holdings, Inc. (PPHI), John G. McDonald (McDonald), and Philip J. Klepzig (Klepzig). PIL and its co-defendants were served copies of the summons and of the complaint at PPHI and PCPI's office in Alabang, Muntinlupa, through Cecille L. De Leon (De Leon), who was Klepzig's Executive Assistant.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 86-95. Penned by Associate Justice Bennie A. Adefuin-Dela Cruz with Associate Justices Andres B. Reyes, Jr. and Amelita G. Tolentino, concurring.

[3] *Id*. at 102-103.

[4] Penned by Judge Teofilo L. Guadiz, Jr.

[5] *Rollo*, pp. 96-100.

[6] *Id*. at 101.

[7] *Id*. at 70-85. Pioneer International, Ltd. stated in the Verification and Certification of Non-Forum Shopping and Secretary's Certificate attached to its petition that its name is now Hanson Australia Pty Limited. However, to avoid confusion in the names of the parties, Hanson Australia Pty Limited will still be referred to as PIL in the present case.

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Todaro alleged that PIL is a corporation duly organized under Australian laws, while PCPI and PPHI are corporations duly organized under Philippine laws. PIL is engaged in the ready-mix and concrete aggregates business and has established a presence worldwide. PIL established PPHI as the holding company of the stocks of its operating company in the Philippines, PCPI. McDonald is the Chief Executive Officer of PIL's Hong Kong office while Klepzig is the President and Managing Director of PPHI and PCPI. For his part, Todaro further alleged that he was the managing director of Betonval Readyconcrete, Inc. (Betonval) from June 1975 up to his resignation in February 1996.

Before Todaro filed his complaint, there were several meetings and exchanges of letters between Todaro and the officers of Pioneer Concrete (Hong Kong) Limited, Pioneer Concrete Group HK, PPHI, and PIL. According to Todaro, PIL contacted him in May 1996 and asked if he could join it in establishing a pre-mixed concrete plant and in overseeing its operations in the Philippines. Todaro confirmed his availability and expressed interest in joining PIL. Todaro met with several of PIL's representatives and even gave PIL the names of three of his subordinates in Betonval whom he would like to join him in PIL.

Todaro attached nine letters, marked as Annexes "A" to "I", to his complaint. Annex "A"[8] shows that on 15 July 1996, Todaro, under the letterhead of Ital Tech Distributors, Inc., sent a letter to Max Lindsay (Lindsay) of Pioneer Concrete (Hong Kong) Limited. Todaro wrote that "[m]y aim is to run again a ready-mix concrete company in the Philippines and not to be a part-time consultant. Otherwise, I could have charged your company with a much higher fee."

Annex "B"[9] shows that on 4 September 1996, Lindsay, under the letterhead of Pioneer Concrete (Hong Kong) Limited,

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[8] *Id*. at 160-161.

[9] *Id*. at 162-163.

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responded by fax to Todaro's faxed letter to McDonald and proposed that Todaro "join Pioneer on a retainer basis for 2 to 3 months on the understanding that [Todaro] would become a permanent employee if as we expect, our entry proceeds." The faxed letter to McDonald referred to by Lindsay is not found in the *rollo* and was not attached to Todaro's complaint.

Annex "C"[10] shows that on the same date as that of Annex "B", Todaro, under the letterhead of Ital Tech Distributors, Inc., faxed another letter to Lindsay of Pioneer Concrete (Hong Kong) Limited. Todaro asked for a formal letter addressed to him about the proposed retainer. Todaro requested that the letter contain a statement on his remuneration package and on his permanent employment "with PIONEER once it has established itself on a permanent basis in the Philippines."

Annex "D"[11] shows that Todaro, under the letterhead of Ital Tech Distributors, Inc., sent a letter to McDonald of PIL. Todaro confirmed the following to McDonald:

1. That I am accepting the proposal of PIONEER INT'L. as a consultant for three (3) months, starting October 1, 1996, with a retainer fee of U.S. $15,000.00 per month;

2. That after three (3) months consultancy, I should be employed by PIONEER INT'L., on a permanent basis, as its Managing Director or CEO in the Philippines. Remuneration package will be mutually agreed upon by PIONEER and the undersigned;

3. That Gino Martinel and the Sales Manager – Jun Ong, will be hired as well, on a permanent basis, by PIONEER as soon as the company is established. Salary, likewise, will be accepted by both PIONEER and the respective parties.

Annex "E"[12] is a faxed letter dated 18 November 1996 of McDonald, under the letterhead of Pioneer Concrete Group

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[10] *Id*. at 164.

[11] *Id*. at 165-166.

[12] *Id*. at 167-168.

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HK, to Todaro of Ital Tech Distributors, Inc. The first three paragraphs of McDonald's letter read:

Further to our recent meeting in Hong Kong, I am now able to confirm my offer to engage you as a consultant to Pioneer International Ltd. Should Pioneer proceed with an investment in the Philippines, then Pioneer would offer you a position to manage the premixed concrete operations.

Pioneer will probably be in a position to make a decision on proceeding with an investment by mid January '97.

The basis for your consultancy would be:

- Monthly fee USD 15,000 per month billed on monthly basis and payable 15 days from billing date.
- Additional pre-approved expenses to be reimbursed.
- Driver and secretarial support-basis for reimbursement of this to be agreed.
- Arrangement to commence from 1st November '96, reflecting your contributions so far and to continue until Pioneer makes a decision.

Annex "F"[13] shows Todaro's faxed reply, under the letterhead of Ital Tech Distributors, Inc., to McDonald of Pioneer Concrete Group HK dated 19 November 1996. Todaro confirmed McDonald's package concerning the consultancy and reiterated his desire to be the manager of Pioneer's Philippine business venture.

Annex "G"[14] shows Todaro's faxed reply, under the letterhead of Ital Tech Distributors, Inc., to McDonald of PIL dated 8 April 1997. Todaro informed McDonald that he was willing to extend assistance to the Pioneer representative from Queensland. The tenor of the letter revealed that Todaro had not yet occupied his expected position.

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[13] *Id*. at 169.

[14] *Id*. at 170.

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Annex "H"[15] shows Klepzig's letter, under the letterhead of PPHI, to Todaro dated 18 September 1997. Klepzig's message reads:

It has not proven possible for this company to meet with your expectations regarding the conditions of your providing Pioneer with consultancy services. This, and your refusal to consider my terms of offer of permanent employment, leave me no alternative but to withdraw these offers of employment with this company.

As you provided services under your previous agreement with our Pioneer Hong Kong office during the month of August, I will see that they pay you at the previous rates until the end of August. They have authorized me on behalf of Pioneer International Ltd. to formally advise you that the agreement will cease from August 31st as per our previous discussions.

Annex "I"[16] shows the letter dated 20 October 1997 of K.M. Folwell (Folwell), PIL's Executive General Manager of Australia and Asia, to Todaro. Folwell confirmed the contents of Klepzig's 18 September 1997 letter. Folwell's message reads:

Thank you for your letter to Dr. Schubert dated 29th September 1997 regarding the alleged breach of contract with you. Dr. Schubert has asked me to investigate this matter.

I have discussed and examined the material regarding your association with Pioneer over the period from mid 1996 through to September 1997.

Clearly your consultancy services to Pioneer Hong Kong are well documented and have been appropriately rewarded. However, in regard to your request and expectation to be **given permanent employment with Pioneer Philippines Holdings, Inc**. I am informed that negotiations to reach agreement on appropriate terms and conditions have not been successful.

The employment conditions you specified in your letter to John McDonald dated 11th September are well beyond our expectations.

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[15] *Id.* at 171.

[16] *Id.* at 172.

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Mr. Todaro, I regret that we do not wish to pursue our association with you any further. Mr. Klepzig was authorized to terminate this association and the letter he sent to you dated 18th September has my support.

Thank you for your involvement with Pioneer. I wish you all the best for the future. (Emphasis added)

PIL filed, by special appearance, a motion to dismiss Todaro's complaint. PIL's co-defendants, PCPI, PPHI, and Klepzig, filed a separate motion to dismiss.[17] PIL asserted that the trial court has no jurisdiction over PIL because PIL is a foreign corporation not doing business in the Philippines. PIL also questioned the service of summons on it. Assuming *arguendo* that Klepzig is PIL's agent in the Philippines, it was not Klepzig but De Leon who received the summons for PIL. PIL further stated that the National Labor Relations Commission (NLRC), and not the trial court, has jurisdiction over the subject matter of the action. It claimed that assuming that the trial court has jurisdiction over the subject matter of the action, the complaint should be dismissed on the ground of *forum non-conveniens.* Finally, PIL maintained that the complaint does not state a cause of action because there was no perfected contract, and no personal judgment could be rendered by the trial court against PIL because PIL is a foreign corporation not doing business in the Philippines and there was improper service of summons on PIL.

Todaro filed a Consolidated Opposition dated 26 August 1998 to refute PIL's assertions. PIL filed, still by special appearance, a Reply on 2 October 1998.

The Ruling of the Trial Court

On 4 January 1999, the trial court issued an order[18] which ruled in favor of Todaro. The trial court denied the motions to dismiss filed by PIL, PCPI, PPHI, and Klepzig.

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[17] This Court rendered its Decision in G.R. No. 154830, *Pioneer Concrete Philippines, Inc., Pioneer Philippines Holdings, Inc., and Philip J. Klepzig v. Antonio D. Todaro,* on 8 June 2007.

[18] *Rollo,* pp. 96-100.

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The trial court stated that the merits of a motion to dismiss a complaint for lack of cause of action are tested on the strength of the allegation of facts in the complaint. The trial court found that the allegations in the complaint sufficiently establish a cause of action. The trial court declared that Todaro's cause of action is based on an alleged breach of a contractual obligation and an alleged violation of Articles 19 and 21 of the Civil Code. Therefore, the cause of action does not lie within the jurisdiction of the NLRC but with the trial court.

The trial court also asserted its jurisdiction over PIL, holding that PIL did business in the Philippines when it entered into a contract with Todaro. Although PIL questions the service of summons on Klepzig, whom PIL claims is not its agent, the trial court ruled that PIL failed to adduce evidence to prove its contention. Finally, on the issue of *forum non-conveniens*, the trial court found that it is more convenient to hear and decide the case in the Philippines because Todaro resides in the Philippines and the contract allegedly breached involves employment in the Philippines.

PIL filed an urgent omnibus motion for the reconsideration of the trial court's 4 January 1999 order and for the deferment of filing its answer. PCPI, PPHI, and Klepzig likewise filed an urgent omnibus motion. Todaro filed a consolidated opposition, to which PIL, PCPI, PPHI, and Klepzig filed a joint reply. The trial court issued an order[19] on 3 June 1999 denying the motions of PIL, PCPI, PPHI, and Klepzig. The trial court gave PIL, PCPI, PPHI, and Klepzig 15 days within which to file their respective answers.

PIL did not file an answer before the trial court and instead filed a petition for *certiorari* before the appellate court.

The Ruling of the Appellate Court

The appellate court denied PIL's petition and affirmed the trial court's ruling *in toto*. The dispositive portion of the appellate court's decision reads:

[19] *Id*. at 101.

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WHEREFORE, premises considered, the present petition for *certiorari* is hereby DENIED DUE COURSE and accordingly DISMISSED. The assailed Orders dated January 4, 1999 and June 3, 1999 of the Regional Trial Court of Makati City, Branch 147, in Civil Case No, 98-124 are hereby AFFIRMED *in toto*.

SO ORDERED.[20]

On 14 January 2003, the appellate court dismissed[21] PIL's motion for reconsideration for lack of merit. The appellate court stated that PIL's motion raised no new substantial or weighty arguments that could impel the appellate court from departing or overturning its previous decision. PIL then filed a petition for review on *certiorari* before this Court.

The Issues

PIL raised the following issues before this Court:

A. [The trial court] did not and cannot acquire jurisdiction over the person of [PIL] considering that:

   A.1. [PIL] is a foreign corporation "not doing business" in the Philippines.

   A.2. Moreover, the complaint does not contain appropriate allegations of ultimate facts showing that [PIL] is doing or transacting business in the Philippines.

   A.3. Assuming *arguendo* that jurisdiction may be acquired over the person of [PIL], [the trial court] still failed to acquire jurisdiction since summons was improperly served on [PIL].

B. [Todaro] does not have a cause of action and the complaint fails to state a cause of action. Jurisprudence is settled in that in resolving a motion to dismiss, a court can consider all the pleadings filed in the case, including annexes, motions and all evidence on record.

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[20] *Id*. at 86-95.

[21] *Id*. at 102-103.

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C. [The trial court] did not and cannot acquire jurisdiction over the subject matter of the complaint since the allegations contained therein indubitably show that [Todaro] bases his claims on an alleged breach of an employment contract. Thus, exclusive jurisdiction is vested with the [NLRC].

D. Pursuant to the principle of *forum non-conveniens*, [the trial court] committed grave abuse of discretion when it took cognizance of the case.[22]

The Ruling of the Court

The petition has partial merit. We affirm with modification the rulings of the trial and appellate courts. Apart from the issue on service of summons, the rulings of the trial and appellate courts on the issues raised by PIL are correct.

Cause of Action

Section 2, Rule 2 of the 1997 Rules of Civil Procedure states that a cause of action is the act or omission by which a party violates a right of another.

The general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendants if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[23]

In the present case, the summary of Todaro's allegations states that PIL, PCPI, PPHI, McDonald, and Klepzig did not

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[22] *Id.* at 25-26.

[23] *Santos v. De Leon*, G.R. No. 140892, 21 September 2005, 470 SCRA 455, 459.

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fulfill their contractual obligation to employ Todaro on a permanent basis in PIL's Philippine office. Todaro's allegations are thus sufficient to establish a cause of action. We quote with approval the trial court's ruling on this matter:

> On the issue of lack of cause of action — It is well-settled that the merits of a motion to dismiss a complaint for lack of cause of action is tested on the strength of the allegations of fact contained in the complaint and no other (*De Jesus, et al. vs. Belarmino, et al.*, 95 Phil. 366 [1954]). This Court finds that the allegations of the complaint, specifically paragraphs 13-33 thereof, paragraphs 30-33 alleging as follows:
>
> > "30. All of the acts set forth in the foregoing have been done with the knowledge, consent and/or approval of the defendants who acted in concert and/or in conspiracy with one another.
> >
> > 31. Under the circumstances, there is a valid contract entered into between [Todaro] and the Pioneer Group, whereby, among others, the Pioneer Group would employ [Todaro], on a permanent basis, to manage and operate the ready-mix concrete operations, if the Pioneer Group decides to invest in the Philippines.
> >
> > 32. The Pioneer Group has decided to invest in the Philippines. The refusal of the defendants to comply with the Pioneer Group's undertaking to employ [Todaro] to manage their Philippine ready-mix operations, on a permanent basis, is a direct breach of an obligation under a valid and perfected contract.
> >
> > 33. Alternatively, assuming without conceding, that there was no contractual obligation on the part of the Pioneer Group to employ [Todaro] on a permanent basis, in their Philippine operations, the Pioneer Group and the other defendants did not act with justice, give [Todaro] his due and observe honesty and good faith and/or they have willfully caused injury to [Todaro] in a manner that is contrary to morals, good customs, and public policy, as mandated under Arts. 19 and 21 of the New Civil Code."

sufficiently establish a cause of action for breach of contract and/or violation of Articles 19 and 21 of the New Civil Code. Whether

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or not these allegations are true is immaterial for the court cannot inquire into the truth thereof, the test being whether, given the allegations of fact in the complaint, a valid judgment could be rendered in accordance with the prayer in the complaint.[24]

It should be emphasized that the presence of a cause of action rests on the sufficiency, and not on the veracity, of the allegations in the complaint. The veracity of the allegations will have to be examined during the trial on the merits. In resolving a motion to dismiss based on lack of cause of action, the trial court is limited to the four corners of the complaint and its annexes. It is not yet necessary for the trial court to examine the truthfulness of the allegations in the complaint. Such examination is proper during the trial on the merits.

Forum Non-Conveniens

The doctrine of *forum non-conveniens* requires an examination of the truthfulness of the allegations in the complaint. Section 1, Rule 16 of the 1997 Rules of Civil Procedure does not mention *forum non-conveniens* as a ground for filing a motion to dismiss. The propriety of dismissing a case based on *forum non-conveniens* requires a factual determination; hence, it is more properly considered a matter of defense. While it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, the trial court should do so only after vital facts are established to determine whether special circumstances require the court's desistance.[25]

Jurisdiction over PIL

PIL questions the trial court's exercise of jurisdiction over it on two levels. First, that PIL is a foreign corporation not doing business in the Philippines and because of this, the service of summons on PIL did not follow the mandated procedure. Second, that Todaro's claims are based on an alleged breach of

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[24] *Rollo,* pp. 99-100.

[25] See *Bank of America NT & SA v. Court of Appeals,* 448 Phil. 181 (2003).

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an employment contract so Todaro should have filed his complaint before the NLRC and not before the trial court.

Transacting Business in the Philippines and Service of Summons

The first level has two sub-issues: PIL's transaction of business in the Philippines and the service of summons on PIL. Section 12, Rule 14 of the 1997 Rules of Civil Procedure provides the manner by which summons may be served upon a foreign juridical entity which has transacted business in the Philippines. Thus:

> *Service upon foreign private juridical entity.*— When the defendant is a foreign juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or any of its officers or agents within the Philippines.

As to the first sub-issue, PIL insists that its sole act of "transacting" or "doing business" in the Philippines consisted of its investment in PPHI. Under Philippine law, PIL's mere investment in PPHI does not constitute "doing business." However, we affirm the lower courts' ruling and declare that, based on the allegations in Todaro's complaint, PIL was doing business in the Philippines when it negotiated Todaro's employment with PPHI. Section 3(d) of Republic Act No. 7042, Foreign Investments Act of 1991, states:

> **The phrase *"doing business"* shall include soliciting** orders**, service contracts**, opening offices, whether called "*liaison*" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty [180] days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; **and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution**

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of commercial gain or of the purpose and object of the business organization: *Provided, however*, That the phrase "*doing business*" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account; (Emphases added)

PIL's alleged acts in actively negotiating to employ Todaro to run its pre-mixed concrete operations in the Philippines, which acts are hypothetically admitted in PIL's motion to dismiss, are not mere acts of a passive investor in a domestic corporation. Such are managerial and operational acts in directing and establishing commercial operations in the Philippines. The annexes that Todaro attached to his complaint give us an idea on the extent of PIL's involvement in the negotiations regarding Todaro's employment. In Annex "E", McDonald of Pioneer Concrete Group HK confirmed his offer to engage Todaro as a consultant of PIL. In Annex "F", Todaro accepted the consultancy. In Annex "H", Klepzig of PPHI stated that PIL authorized him to tell Todaro about the cessation of his consultancy. Finally, in Annex "I", Folwell of PIL wrote to Todaro to confirm that "Pioneer" no longer wishes to be associated with Todaro and that Klepzig is authorized to terminate this association. Folwell further referred to a Dr. Schubert and to Pioneer Hong Kong. These confirmations and references tell us that, in this instance, the various officers and companies under the Pioneer brand name do not work independently of each other. It cannot be denied that PIL had knowledge of and even authorized the non-implementation of Todaro's alleged permanent employment. In fact, in the letters to Todaro, the word "Pioneer" was used to refer not just to PIL alone but also to all corporations negotiating with Todaro under the Pioneer name.

As further proof of the interconnection of the various Pioneer corporations with regard to their negotiations with Todaro, McDonald of Pioneer Concrete Group HK confirmed Todaro's

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engagement as consultant of PIL (Annex "E") while Folwell of PIL stated that Todaro rendered consultancy services to Pioneer HK (Annex "I"). In this sense, the various Pioneer corporations were not acting as separate corporations. The behavior of the various Pioneer corporations shoots down their defense that the corporations have separate and distinct personalities, managements, and operations. The various Pioneer corporations were all working in concert to negotiate an employment contract between Todaro and PPHI, a domestic corporation.

Finally, the phrase "doing business in the Philippines" in the former version of Section 12, Rule 14 now reads "has transacted business in the Philippines." The scope is thus broader in that it is enough for the application of the Rule that the foreign private juridical entity "has transacted business in the Philippines."[26]

As to the second sub-issue, the purpose of summons is not only to acquire jurisdiction over the person of the defendant, but also to give notice to the defendant that an action has been commenced against it and to afford it an opportunity to be heard on the claim made against it. The requirements of the rule on summons must be strictly followed; otherwise, the trial court will not acquire jurisdiction over the defendant.

When summons is to be served on a natural person, service of summons should be made in person on the defendant.[27] Substituted service is resorted to only upon the concurrence of two requisites: (1) when the defendant cannot be served personally within a reasonable time and (2) when there is impossibility of prompt service as shown by the statement in the proof of service in the efforts made to find the defendant personally and that such efforts failed.[28]

The statutory requirements of substituted service must be followed strictly, faithfully, and fully, and any substituted service

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[26] OSCAR M. HERRERA, I *REMEDIAL LAW* 686 (2000).

[27] Section 6, Rule 14 of the 1997 Rules of Civil Procedure.

[28] See *Keister v. Judge Navarro*, 167 Phil. 567 (1977).

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other than by the statute is considered ineffective. Substituted service is in derogation of the usual method of service. It is a method extraordinary in character and may be used only as prescribed and in the circumstances authorized by the statute.[29] The need for strict compliance with the requirements of the rule on summons is also exemplified in the exclusive enumeration of the agents of a domestic private juridical entity who are authorized to receive summons.

At present, Section 11 of Rule 14 provides that when the defendant is a domestic private juridical entity, service may be made on the "president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel." The previous version of Section 11 allowed for the service of summons on the "president, manager, secretary, cashier, agent, or any of its directors." The present Section 11 qualified "manager" to "general manager" and "secretary" to "corporate secretary." The present Section 11 also removed "cashier, agent, or any of its directors" from the exclusive enumeration.

When summons is served on a foreign juridical entity, there are three prescribed ways: (1) service on its resident agent designated in accordance with law for that purpose, (2) service on the government official designated by law to receive summons if the corporation does not have a resident agent, and (3) service on any of the corporation's officers or agents within the Philippines.[30]

In the present case, service of summons on PIL failed to follow any of the prescribed processes. PIL had no resident agent in the Philippines. Summons was not served on the Securities and Exchange Commission (SEC), the designated government agency,[31] since PIL is not registered with the SEC.

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[29] *Toyota Cubao, Inc. v. Court of Appeals,* 346 Phil. 181 (1997); *Laus v. Court of Appeals,* G.R. No. 101256, 8 March 1993, 219 SCRA 688.

[30] Section 12, Rule 14 of the 1997 Rules of Civil Procedure.

[31] Section 128, The Corporation Code of the Philippines; *Northwest Orient Airlines, Inc. v. Court of Appeals*, 311 Phil. 203 (1995).

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Summons for PIL was served on De Leon, Klepzig's Executive Assistant. Klepzig is PIL's "agent within the Philippines" because PIL authorized Klepzig to notify Todaro of the cessation of his consultancy (Annexes "H" and "I").[32] The authority given by PIL to Klepzig to notify Todaro implies that Klepzig was likewise authorized to receive Todaro's response to PIL's notice. Todaro responded to PIL's notice by filing a complaint before the trial court.

However, summons was not served personally on Klepzig as agent of PIL. Instead, summons was served on De Leon, Klepzig's Executive Assistant. In this instance, De Leon was not PIL's agent but a mere employee of Klepzig. In effect, the sheriff[33] resorted to substituted service. For symmetry, we apply the rule on substituted service of summons on a natural person and we find that no reason was given to justify the service of PIL's summons on De Leon.

Thus, we rule that PIL transacted business in the Philippines and Klepzig was its agent within the Philippines. However, there was improper service of summons on PIL since summons was not served personally on Klepzig.

NLRC Jurisdiction

As to the second level, Todaro prays for payment of damages due him because of PIL's non-implementation of Todaro's alleged employment agreement with PPHI. The appellate court stated its ruling on this matter, thus:

> It could not be denied that there was no existing contract yet to speak of between PIONEER INTL. and [Todaro]. Since there was an absence of an employment contract between the two parties, this Court is of the opinion and so holds that no employer-employee relationship actually exists. Record reveals that all that was agreed upon by [Todaro] and the Pioneer Concrete, acting in behalf of PIONEER INTL., was the confirmation of the offer to engage the services of the former as consultant of PIONEER INTL.

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[32] *Rollo,* pp. 171-172.

[33] Section 3, Rule 14 of the 1997 Rules of Civil Procedure.

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(*Rollo*, p. 132). The failure on the part of PIONEER INTL. to abide by the said agreement, which was duly confirmed by PIONEER INTL., brought about a breach of an obligation on a valid and perfected agreement. There being no employer-employee relationship established between [PIL] and [Todaro], it could be said that the instant case falls within the jurisdiction of the regular courts of justice as the money claim of [Todaro] did not arise out of or in connection with [an] employer-employee relationship.[34]

Todaro's employment in the Philippines would not be with PIL but with PPHI as stated in the 20 October 1997 letter of Folwell. Assuming the existence of the employment agreement, the employer-employee relationship would be between PPHI and Todaro, not between PIL and Todaro. PIL's liability for the non-implementation of the alleged employment agreement is a civil dispute properly belonging to the regular courts. Todaro's causes of action as stated in his complaint are, in addition to breach of contract, based on "violation of Articles 19 and 21 of the New Civil Code" for the "clear and evident bad faith and malice"[35] on the part of defendants. The NLRC's jurisdiction is limited to those enumerated under Article 217 of the Labor Code.[36]

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[34] *Rollo*, p. 93.

[35] *Id.* at 155.

[36] Article 217 of the Labor Code, as amended, reads:

Art. 217. Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

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WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision dated 27 September 2001 and the Resolution dated 14 January 2003 of the appellate court are *AFFIRMED* with the *MODIFICATION* that there was improper service of summons on Pioneer International, Ltd. The case is remanded to the trial court for proper service of summons and trial. No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.