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the unserved portion of his contract plus attorney's fees, in view of the Administrator's finding that Bunyog did not sign the letter of the other defendants to ITF, hence, "he is deemed not to have committed any offense or act to warrant his dismissal."

WHEREFORE, the petition for *certiorari* is denied for lack of merit. The temporary restraining order which We issued is hereby set aside.

SO ORDERED.

Narvasa, Cruz, Gancayco, and *Medialdea, JJ.*, concur.

FIRST DIVISION

[G.R. No. 82330. May 31, 1988]

THE DIAL CORPORATION, C & T REFINERY INC., NALIN Sdn. Bhb. BERISFORD COMMODITIES, LTD., and PACIFIC MOLASSES COMPANY, *petitioners, vs.* **THE HON. CLEMENTE M. SORIANO, Presiding Judge, Regional Trial Court, Branch 3, MANILA PUBLIC RESPONDENT and IMPERIAL VEGETABLE OIL COMPANY, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; EXTRA-TERRITORIAL SERVICE THEREOF; INSTANCES.—** *Only in four (4) instances is extraterritorial* service of summons proper, namely: "(1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines".

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2. ID.; ID.; ID.; IN PERSONAL ACTIONS, EXTRA-TERRITORIAL SERVICE DOES NOT CONFER JURISDICTION.— The action is purely an action for injunction to restrain the defendants from enforcing against Imperial Vegetable Oil Company, Inc. ("abusing and harassing") its contracts for the delivery of coconut oil to the defendants, and to recover from the defendants ₱21 million in damages for such "harassment." It is clearly a personal action as well as an action *in personam*, not an action *in rem* or *quasi in rem*. As Civil Case No. 87-40166 is a personal action, personal or substituted service of summons on the defendants, not extraterritorial service, is necessary to confer jurisdiction on the court.

3. ID.; ID.; ACTION *IN PERSONAM* AND PERSONAL ACTION, BOTH DEFINED.— *An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person.* A personal action is one brought for the recovery of personal property, for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.

4. ID.; PROVISIONAL REMEDIES; INJUNCTION.— In an action for injunction, extraterritorial service of summons and complaint upon the non-resident defendants cannot subject them to the processes of the regional trial courts which are powerless to reach them outside the region over which they exercise their authority. Extraterritorial service of summons will not confer on the court jurisdiction or power to compel them to obey its orders.

APPEARANCES OF COUNSEL

Guerrero & Torres Law Office for petitioners.

Abad & Associates for respondents.

D E C I S I O N

GRIÑO-AQUINO, *J.*:

The petitioners are foreign corporations organized and existing under the laws of the United States, the United Kingdom, and Malaysia, are not domiciled in the Philippines, nor do they have

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officers or agents, place of business, or property in the Philippines; they are not licensed to engage, and are not engaged, in business here. The respondent Imperial Vegetable Oil Company, Inc. (or "IVO" for brevity) is a Philippine corporation which through its president, Dominador Monteverde, had entered into several contracts for the delivery of coconut oil to the petitioners. Those contracts stipulate that any dispute between the parties will be settled through arbitration under the rules of either the Federation of Oils Seeds and Fats Association (FOSFA) or the National Institute of Oil Seed Products (NIOP). Because IVO defaulted under the contracts, the petitioners and 15 others, initiated arbitration proceedings abroad, and some have already obtained arbitration awards against IVO.

On April 8, 1987, IVO filed a complaint for injunction and damages against nineteen (19) foreign coconut oil buyers including the petitioners, with whom its president, Dominador Monteverde, had entered into contracts for the delivery of coconut oil (Civil Case No. 87-40166, RTC Manila entitled "*Imperial Vegetable Oil Co., Inc. vs. Dial Corporation et al.*"). IVO repudiated Monteverde's contracts on the grounds that they were mere "paper trading in futures" as no actual delivery of the coconut oil was allegedly intended by the parties; that the Board of Directors of IVO convened in a special meeting on March 21, 1987 and removed Dominador Monteverde from his position as president of the corporation, named in his place, Rodrigo Monteverde, and disowned Dominador Monteverde's allegedly illegal and unauthorized acts; that the defendants have allegedly "harassed" IVO to comply with Dominador's contracts and to come to a settlement with them. IVO prayed for the issuance of a temporary restraining order or writ of preliminary injunction to stop the defendants from harassing IVO with their insistent demands to recognize the contracts entered into by Dominador Monteverde and from portraying the IVO as one that defaults on its contracts and obligations and has fallen into bad times and from interfering with IVO's normal conduct of business. IVO also prayed that the defendants pay it moral damages of ₱5 million, actual damages of ₱10 million, exemplary damages of ₱5 million, attorney's fees of ₱1 million, ₱3,000 per appearance of counsel, and litigation expenses.

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On motion of IVO, respondent Judge authorized it to effect extraterritorial service of summons to all the defendants through DHL Philippines corporation (Annex B). Pursuant to that order, the petitioners were served with summons and copy of the complaint by DHL courier service.

On April 25, 1987, without submitting to the court's jurisdiction and only for the purpose of objecting to said jurisdiction over their persons, the petitioners filed motions to dismiss the complaint against them on the ground that the extraterritorial service of summons to them was improper and that hence the court did not acquire jurisdiction over them. On December 15, 1987, the court denied their motions to dismiss and upheld the validity of the extraterritorial service of summons to them on the ground that "the present action relates to property rights which he in contracts within the Philippines, or which defendants claim liens or interests, actual or inchoate, legal or equitable (par. 2, complaint). And one of the reliefs demanded consists, wholly or in part, in excluding the defendants from any interest in such property for the reason that their transactions with plaintiff's former president are *ultra vires*." Furthermore, "as foreign corporations doing business in the Philippines without a license, they opened themselves to suit before Philippine courts, pursuant to Sec. 133 of the Corporation Code of the Philippines." (Annex H) The petitioners' motions for reconsideration of that order were also denied by the court (Annex M), hence this petition for *certiorari* with a prayer for the issuance of a temporary retraining order which We granted.

The petition is meritorious.

Section 17, Rule 14 of the Rules of Court provides:

Section 17. Extraterritorial service. — When the defendant does not recide and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims alien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section

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7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer."

Only in four (4) instances is extraterritorial service of summons proper, namely: "(1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines" (*De Midgely vs. Ferandos*, 64 SCRA 23).

The complaint in this case does not involve the personal status of the plaintiff, nor any property in the Philippines in which the defendants have or claim an interest, or which the plaintiff has attached. The action is purely an action for injunction to restrain the defendants from enforcing against IVO ("abusing and harassing") its contracts for the delivery of coconut oil to the defendants, and to recover from the defendants ₱21 million in damages for such "harassment." It is clearly a personal action as well as an action *in personam*, not an action *in rem* or *quasi in rem*. "*An action in personam is an action against a person on the basis of his personal liability, while an action in rem is an action against the thing itself, instead of against the person.*" (*Hernandez vs. Rural Bank of Lucena, Inc.*, 76 SCRA 85). A personal action is one brought for the recovery of personal property, for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property (*Hernandez vs. Development Bank of the Philippines*, 71 SCRA 292).

As Civil Case No. 87-40166 is a personal action, personal or substituted service of summons on the defendants, not extraterritorial service, is necessary to confer jurisdiction on

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the court. The rule is explained in Moran's Comments on the Rules of Court thus:

"As a general rule, when the defendant is not residing and is not found in the Philippines, the Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. But, when the action affects the personal status of the plaintiff residing in the Philippines, or is intended to seize or dispose of any property, real or personal, of the defendant located in the Philippines, it may be validly tried by the Philippines courts, for then, they have jurisdiction over the *res, i.e.*, the personal status of the plaintiff or the property of the defendant and their jurisdiction over the person of the non-resident defendant is not essential. Venue in such cases may be laid in the province where the property of the defendant or a part thereof involved in the litigation is located." (5 Moran's Comments on the Rules of Court, 2nd Ed., p. 105.)

In an action for injunction, extraterritorial service of summons and complaint upon the non-resident defendants cannot subject them to the processes of the regional trial courts which are powerless to reach them outside the region over which they exercise their authority (Sec. 3-a, Interim Rules of Court; Sec. 21, subpar. 1, B.P. Blg. 129). Extraterritorial service of summons will not confer on the court jurisdiction or power to compel them to obey its orders.

Neither may the court by extraterritorial service of summons acquire jurisdiction to render and enforce a money judgment against a non-resident defendant who has no property in the Philippines for "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*" (*Boudard vs. Tait*, 67 Phil. 170, 174).

Respondents' contention that "the action below is related to property within the Philippines, specifically contractual rights that petitioners are enforcing against IVO" is specious for the "contractual rights" of the petitioners are not property found in the Philippines for the petitioners have not filed an action in the local courts to enforce said rights. They have not submitted to the jurisdiction of our courts.

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The lower court invoked Section 33 of the Corporation Code which provides that a "foreign corporation transacting business in the Philippines without a license may be sued or proceeded against before Philippine courts or administrative tribunal on any valid cause of action recognized under Philippine laws." It assumed that the defendants (herein petitioners) are doing business in the Philippines, which allegation the latter denied. Even if they can be considered as such, the Corporation Code did not repeal the rules requiring proper service of summons to such corporations as provided in Rule 14 of the Rules of Court and Section 128 of the Corporation Code.

The respondent court's finding that, by filing motions to dismiss, the petitioners hypothetically admitted the allegations of the complaint that they are doing business in the Philippines without any license, and that they may be served with summons and other court processes through their agents or representatives enumerated in paragraph 2 of the complaint, is contradicted by its order authorizing IVO to summon them by extraterritorial service, a mode of service which is resorted to when the defendant is not found in the Philippines, does not transact business here, and has no resident agent on whom the summons may be served.

WHEREFORE, We hold that the extraterritorial service of summons on the petitioners was improper, hence null and void.

The petition for *certiorari* is granted. The orders dated April 24, 1987 (Annex B) and December 15, 1987 (Annex II) of the respondent Judge are hereby set aside. The complaint in Civil Case No. 87-40166 is hereby dismissed as against the petitioners for failure of the court to acquire jurisdiction over them.

SO ORDERED.

Narvasa, Cruz, and *Gancayco, JJ.,* concur.