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Fernando, C.J., Teehankee, Makasiar, Aquino, Guerrero, Abad Santos, Plana, Escolin, Relova and *Gutierrez, Jr., JJ.*, concur.

De Castro, J., on sick leave.

Melencio-Herrera and *Vasquez, JJ.*, are on official leave.

FIRST DIVISION

[G.R. No. L-34382. July 20, 1983]

THE HOME INSURANCE COMPANY, petitioner, *vs.* EASTERN SHIPPING LINES and/or ANGEL JOSE TRANSPORTATION, INC. and HON. A. MELENCIO-HERRERA, Presiding Judge of the Manila Court of First Instance, Branch XVII, respondents.

[G.R. No. L-34383. July 20, 1983]

THE HOME INSURANCE COMPANY, petitioner, *vs.* N. V. NEDLLOYD LIJNEN; COLUMBIAN PHILIPPINES, INC., and/or GUACODS, INC., and HON. A. MELENCIO-HERRERA, Presiding Judge of the Manila Court of First Instance, Branch XVII, respondents.

SYLLABUS

1. COMMERCIAL LAW; FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES; EFFECT ON THE CONTRACT IT EXECUTED AND ITS CAPACITY TO SUE.— As early as 1924, this Court ruled in the leading case of *Marshall Wells Co. v. Henry W. Elser & Co.* (46 Phil. 70) that the object of Sections 68 and 69 of the Corporation Law was *to subject the foreign corporation doing business in the Philippines to the jurisdiction of our courts.* The *Marshall Wells Co.* decision referred to a litigation over an isolated act for the unpaid balance on a bill of goods but the philosophy behind the law applies to the factual circumstances of these cases. The objectives enunciated in the 1924 decision are even more relevant today when we view commercial relations in terms of a world economy, when the tendency is to re-examine the political boundaries

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separating one nation from another insofar as they define business requirements or restrict marketing conditions. We distinguish between the denial of a right to take remedial action and the penal sanction for non-registration. Insofar as transacting business without a license is concerned, Section 69 of the Corporation Law imposed a penal sanction -- imprisonment for not less than six months nor more than two years or payment of a fine not less than P200.00 nor more than P1,000.00 or both in the discretion of the court. There is a penalty for transacting business without registration. And insofar as litigation is concerned, the foreign corporation or its assignee may not maintain any suit for the recovery of any debt, claim, or demand whatever.

2. CIVIL LAW; CONTRACTS EXECUTED BY FOREIGN CORPORATION WITHOUT CAPACITY TO SUE; CORPORATION LAW SILENT ON THE ISSUE OF ITS NULLITY; CONFLICTING SCHOOLS OF THOUGHT.— The Corporation Law is silent on whether or not the contract executed by a foreign corporation with no capacity to sue is null and void *ab initio*. We are not unaware of the conflicting schools of thought both here and abroad which are divided on whether such contracts are void or merely voidable. Professor Sulpicio Guevarra in his book *Corporation Law* (Philippine Jurisprudence Series, U.P. Law Center, pp. 233-234) cites an Illinois decision which holds the contracts void and a Michigan statute and decision declaring them merely voidable.

3. ID.; ID.; ENFORCEABILITY FAVORED BY LOCAL JURISPRUDENCE.— The better reason, the wiser and fairer policy, and the greater weight lie with those decisions which hold that where, as here, there is a prohibition with a penalty, with no express or implied declarations respecting the validity of enforceability of contracts made by qualified foreign corporations, the contracts . . . are enforceable . . . upon compliance with the law. (Peter & Burghard Stone Co. *v.* Carper, 172 N.E. 319 [1930]). Our jurisprudence leans towards the later view. Apart from the objectives earlier cited from *Marshall Wells Co. v. Henry W. Elser & Co.* (supra), it has long been the rule that a foreign corporation actually doing business in the Philippines without license to do so may be sued in our courts.

4. CORPORATION LAW; AMBIGUITY CAUSED BY WORDING OF SECTION 69 OF THE OLD CORPORATION LAW; CORRECTED.— Significantly, Batas Pambansa Blg. 68, the Corporation Code of the Philippines has corrected the ambiguity caused by the wording of Section 69 of the Old Corporation Law.

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The old Section 69 has been reworded in terms of non-access to courts and administrative agencies in order to maintain or intervene in any action or proceeding. The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code. It is, therefore, not necessary to declare the contract null and void even as against the erring foreign corporation. The penal sanction for the violation and the denial of access to our courts and administrative bodies are sufficient from the viewpoint of legislative policy.

5. REMEDIAL LAW; CIVIL PROCEDURE; GENERAL DENIALS AS TO THE TRUTH OF THE AVERMENTS; HELD INADEQUATE.— The Supreme Court finds the general denials inadequate to attack the foreign corporations lack of capacity to sue in the light of its positive averment that it is authorized to do so. Section 4, Rule 8 requires that "a party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity shall do so by specific denial, which shall include such supporting particulars as are particularly within the pleader's knowledge. At the very least, the private respondents should have stated particulars in their answers upon which a specific denial of the petitioner's capacity to sue could have been based or which could have supported its denial for lack of knowledge. And yet, even if the plaintiff's lack of capacity to sue was not properly raised as an issue by the answers, the petitioner introduced documentary evidence that it had the authority to engage in the insurance business at the time it filed the complaints.

APPEARANCES OF COUNSEL

B. V. Zapa for petitioner.

Ross, Salcedo & Gregorio T. Ortega for private respondents.

DECISION

GUTIERREZ, JR., *J.*:

Questioned in these consolidated petitions for review on certiorari are the decisions of the Court of First Instance of Manila, Branch XVII, dismissing the complaints in Civil Case No. 71923 and in Civil Case No. 71694, on the ground that plaintiff therein, now appellant, had failed to prove its capacity to sue.

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There is no dispute over the facts of these cases for recovery of maritime damages. In L-34382, the facts are found in the decision of the respondent court which stated:

"On or about January 13, 1967, S. Kajita & Co., on behalf of Atlas Consolidated Mining & Development Corporation, shipped on board the SS 'Eastern Jupiter' from Osaka, Japan, 2,361 coils of 'Black Hot Rolled Copper Wire Rods.' The said VESSEL is owned and operated by defendant Eastern Shipping Lines (CARRIER). The shipment was covered by Bill of Lading No. O-MA-9, with arrival notice to Phelps Dodge Copper Products Corporation of the Philippines (CONSIGNEE) at Manila. The shipment was insured with plaintiff against all risks in the amount of P1,580,105.06 under its Insurance Policy No. AS-73633.

. . . . . .

"The coils discharged from the VESSEL numbered 2,361, of which 53 were in bad order. What the CONSIGNEE ultimately received at its warehouse was the same number of 2,361 coils, with 73 coils loose and partly cut, and 28 coils entangled, partly cut, and which had to be considered as scrap. Upon weighing at CONSIGNEE's warehouse, the 2,361 coils were found to weight 263,940.85 kilos as against its invoiced weight of 264,534.00 kilos or a net loss/shortage of 593.15 kilos, according to Exhibit 'A', or 1,209,56 lbs., according to the claims presented by the consignee against the plaintiff (Exhibit 'D-1'), the CARRIER (Exhibit 'J-1'), and the TRANSPORTATION COMPANY (Exhibit 'K-1').

'For the loss/damage suffered by the cargo, plaintiff paid the consignee under its insurance policy the amount of P3,260.44, by virtue of which plaintiff became subrogated to the rights and actions of the CONSIGNEE. Plaintiff made demands for payment against the CARRIER and the TRANSPORTATION COMPANY for reimbursement of the aforesaid amount but each refused to pay the same. . . ."

The facts of L-34383 are found in the decision of the lower court as follows:

"On or about December 22, 1966, the Hansa Transport Kontor shipped from Bremen, Germany, 30 packages of Service Parts of Farm Equipment and Implements on board the VESSEL, SS 'NEDER RIJN' owned by the defendant, N.V, Nedlloyd Lijnen, represented in the Philippines by its local agent, the defendant Columbian Philippines, Inc. (CARRIER). The shipment was covered by Bill of Lading No. 22 for transportation to, and delivery at, Manila, in favor of the consignee, International Harvester

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Macleod, Inc. (CONSIGNEE). The shipment was insured with plaintiff company under its Cargo Policy No. AS-73735 'with average terms' for P98,567.79.

. . . . . .

"The packages discharged from the VESSEL numbered 29, of which seven packages were found to be in bad order. What the CONSIGNEE ultimately received at its warehouse was the same number of 29 packages with 9 packages in bad order. Out of these 9 packages, 1 package was accepted by the CONSIGNEE in good order due to the negligible damages sustained. Upon inspection at the consignee's warehouse, the contents of 3 out of the 8 cases were also found to be complete and intact, leaving 5 cases in bad order. The contents of these 5 packages showed several items missing in the total amount of $131.14; while the contents of the undelivered 1 package were valued at $394.66, or a total of $525.80 or P2,426.98.

"For the short-delivery of 1 package and the missing items in 5 other packages, plaintiff paid the CONSIGNEE under its Insurance Cargo Policy the amount of P2,426.98, by virtue of which plaintiff became subrogated to the rights and actions of the CONSIGNEE. Demands were made on defendants CARRIER and CONSIGNEE for reimbursement thereof but they failed and refused to pay the same."

In both cases, the petitioner-appellant made the following averment regarding its capacity to sue:

The plaintiff is a foreign insurance company duly authorized to do business in the Philippines through its agent, Mr. VICTOR H. BELLO, of legal age and with office address at Oledan Building, Ayala Avenue, Makati, Rizal.

In L-34382, the respondent-appellee Eastern Shipping Lines, Inc., filed its answer and alleged that it:

Denies the allegations of Paragraph I which refer to plaintiff's capacity to sue for lack of knowledge or information sufficient to form a belief as to the truth thereof.

Respondent-appellee, Angel Jose Transportation, Inc., in turn filed its answer admitting the allegations of the complaint, regarding the capacity of plaintiff-appellant. The pertinent paragraph of this answer reads as follows:

Angel Jose Admits the jurisdictional averments in paragraphs 1, 2, and 3 of the heading Parties.

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In L-34383, the respondents-appellees N.V. Nedlloyd Linjen, Columbian Philippines, Inc. and Guacods, Inc., filed their answers. They denied the petitioner-appellant's capacity to sue for lack of knowledge or information sufficient to form a belief as to the truth thereof.

As earlier stated, the respondent court dismissed the complaints in the two cases on the same ground, that the plaintiff failed to prove its capacity to sue. The court reasoned as follows:

"In the opinion of the Court, if plaintiff had the capacity to sue, the Court should hold that a) defendant Eastern Shipping Lines should pay plaintiff the sum of P1,630.22 with interest at the legal rate from January 5, 1968, the date of the institution of the Complaint, until fully paid; b) defendant Angel Jose Transportation, Inc. should pay plaintiff the sum of P1,630.22 also with interest at the legal rate from January 5, 1968 until fully paid; c) the counterclaim of defendant Angel Jose Transportation, Inc. should be ordered dismissed; and d) each defendant to pay one-half of the costs.

"The Court is of the opinion that Section 68 of the Corporation Law reflects a policy designed to protect the public interest. Hence, although defendants have not raised the question of plaintiff's compliance with that provision of law, the Court has resolved to take the matter into account.

"A suing foreign corporation, like plaintiff, has to plead affirmatively and prove either that the transaction upon which it bases its complaint is an isolated one, or that it is licensed to transact business in this country, failing which, it will be deemed that it has no valid cause of action (Atlantic Mutual Ins. Co. *vs.* Cebu Stevedoring Co., Inc., 17 SCRA 1037). In view of the number of cases filed by plaintiff before this Court, of which judicial cognizance can be taken, and under the ruling in Far East International Import and Export Corporation *vs.* Hankai Koayo Co., 6 SCRA 725, it has to be held that plaintiff is doing business in the Philippines. Consequently, it must have a license under Section 68 of the Corporation Law before it can be allowed to sue.

"The situation of plaintiff under said Section 68 has been described as follows in Civil Case No. 71923 of this Court, entitled 'Home Insurance Co. *vs.* N. V. Nedlloyd Lijnen,' of which judicial cognizance can also be taken:

> " 'Exhibit 'R', presented by plaintiff, is a certified copy of a license, dated July 1, 1967, issued by the Office of the Insurance Commissioner authorizing plaintiff to transact insurance business in this country.

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By virtue of Section 176 of the Insurance Law, it has to be presumed that a license to transact business under Section 68 of the Corporation Law had previously been issued to plaintiff. No copy thereof, however, was submitted for a reason unknown. The date of that license must not have been much anterior to July 1, 1967. The preponderance of the evidence would therefore call for the finding that the insurance contract involved in this case, which was executed at Makati, Rizal, on February 8, 1967, was contracted before plaintiff was licensed to transact business in the Philippines.

" 'This Court views Section 68 of the Corporation Law as reflective of a basic public policy. Hence, it is of the opinion that, in the eyes of Philippine law, the insurance contract involved in this case must be held void under the provisions of Article 1409 (1) of the Civil Code, and could not be validated by subsequent procurement of the license. That view of the Court finds support in the following citation.

" 'According to many authorities, a constitutional or statutory prohibition against a foreign corporation doing business in the state, unless such corporation has complied with conditions prescribed, is effective to make the contracts of such corporation void, or at least unenforceable, and prevents the maintenance by the corporation of any action on such contracts. Although the usual construction is to the contrary, and to the effect that only the remedy for enforcement is affected thereby, a statute prohibiting a non-complying corporation from suing in the state courts on any contract has been held by some courts to render the contract void and unenforceable by the corporation, even after it has complied with the statute.' (36 Am. Jur. 2d 299-300).

. . . . . .

The said Civil Case No. 71923 was dismissed by this Court. As the insurance contract involved herein was executed on January 20, 1967, the instant case should also be dismissed."

We resolved to consolidate the two cases when we gave due course to the petition.

The petitioner raised the following assignments of errors:

First Assignment of Error

THE HONORABLE TRIAL COURT ERRED IN CONSIDERING AS AN ISSUE THE LEGAL EXISTENCE OR CAPACITY OF PLAINTIFF-APPELLANT.

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Second Assignment of Error

THE HONORABLE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT ON THE FINDING THAT PLAINTIFF-APPELLANT HAS NO CAPACITY TO SUE.

On the basis of factual and equitable considerations, there is no question that the private respondents should pay the obligations found by the trial court as owing to the petitioner. Only the question of validity of the contracts in relation to lack of capacity to sue stands in the way of the petitioner being given the affirmative relief it seeks. Whether or not the petitioner was engaged in single acts or solitary transactions and not engaged in business is likewise not in issue. The petitioner was engaged in business without a license. The private respondents' obligation to pay under the terms of the contracts has been proved.

When the complaints in these two cases were filed, the petitioner had already secured the necessary license to conduct its insurance business in the Philippines. It could already file suits.

Petitioner was, therefore, telling the truth when it averred in its complaints that it was a foreign insurance company duly authorized to do business in the Philippines through its agent Mr. Victor H. Bello. However, when the insurance contracts which formed the basis of these cases were executed, the petitioner had not yet secured the necessary licenses and authority. The lower court, therefore, declared that pursuant to the basic public policy reflected in the Corporation Law, the insurance contracts executed before a license was secured must be held null and void. The court ruled that the contracts could not be validated by the subsequent procurement of the license.

The applicable provisions of the old Corporation Law, Act 1459, as amended are:

"Sec. 68. No foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the chief of the *Mercantile Register of the Bureau of Commerce and Industry,* (Now Securities and Exchange Commission. See RA 5455) upon order of the Secretary of Finance

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(Now Monetary Board) in case of banks, savings, and loan banks, trust corporations, and banking institutions of all kinds, and upon order of the Secretary of Commerce and *Communications* (Now Secretary of Trade. See 5455, section 4 for other requirements) in case of all other foreign corporations. . . ."

. . . . . .

"Sec. 69. No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, director, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, of by both such imprisonment and fine, in the discretion of the court."

As early as 1924, this Court ruled in the leading case of *Marshall Wells Co. v. Henry W. Elser & Co.* (46 Phil. 70) that the object of Sections 68 and 69 of the Corporation Law was *to subject the foreign corporation doing business in the Philippines to the jurisdiction of our courts.* The *Marshall Wells Co.* decision referred to a litigation over an isolated act for the unpaid balance on a bill of goods but the philosophy behind the law applies to the factual circumstances of these cases. The Court stated:

. . . . . .

"Defendant isolates a portion of one sentence of Section 69 of the Corporation Law and asks the court to give it a literal meaning, Counsel would have the law read thus: 'No foreign corporation shall be permitted to maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in Section 68 of the law.' Plaintiff, on the contrary, desires for the court to consider the particular point under discussion with reference to all the law, and thereafter to give the law a common sense interpretation.

"The object of the statute was to subject the foreign corporation doing business in the Philippines to the jurisdiction of its courts. The object of the statute was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local

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courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations. The effect of the statute preventing foreign corporations from doing business and from bringing actions in the local courts, except on compliance with elaborate requirements, must not be unduly extended or improperly applied. It should not be construed to extend beyond the plain meaning of its terms, considered in connection with its object, and in connection with the spirit of the entire law. (State *vs.* American Book Co. [1904], 69 Kan., 1; American De Forest Wireless Telegraph Co. *vs.* Superior Court of City & Country of San Francisco and Hebbard [1908]' 153 Cal., 533; 5 Thompson on Corporations, 2d ed., chap. 184.)

"Confronted with the option of giving to the Corporation Law a harsh interpretation, which would disastrously embarrass trade, or of giving to the law a reasonable interpretation, which would markedly help in the development of trade; confronted with the option of barring from the courts foreign litigants with good causes of action or of assuming jurisdiction of their cases; confronted with the option of construing the law to mean that any corporation in the United States, which might want to sell to a person in the Philippines must send some representative to the Islands before the sale, and go through the complicated formulae provided by the Corporation Law with regard to the obtaining of the license, before the sale was made, in order to avoid being swindled by Philippine citizens, or of construing the law to mean that no foreign corporation doing business in the Philippines can maintain any suit until it shall possess the necessary license,—confronted with these options, can anyone doubt what our decision will be? The law simply means that no foreign corporation shall be permitted 'to transact business in the Philippine Islands,' as this phrase is known in corporation law, unless it shall have the license required by law, and, until it complies with the law, shall not be permitted to maintain any suit in the local courts. A contrary holding would bring the law to the verge of unconstitutionality, a result which should be and can be easily avoided. (Sioux Remedy Co. *vs.* Cope and Cope, *supra*; Perkins, Philippine Business Law, pp. 264.)"

To repeat, the objective of the law was to subject the foreign corporation to the jurisdiction of our courts. The Corporation Law must be given a reasonable, not an unduly harsh, interpretation which does not hamper the development of trade relations and which fosters friendly commercial intercourse among countries.

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The objectives enunciated in the 1924 decision are even more relevant today when we view commercial relations in terms of a world economy, when the tendency is to re-examine the political boundaries separating one nation from another insofar as they define business requirements or restrict marketing conditions.

We distinguish between the denial of a right to take remedial action and the penal sanction for non-registration.

Insofar as transacting business without a license is concerned, Section 69 of the Corporation Law imposed a penal sanction — imprisonment for not less than six months nor more than two years or payment of a fine not less than P200.00 nor more than P1,000.00 or both in the discretion of the court. There is a penalty for transacting business without registration.

And insofar as litigation is concerned, the foreign corporation or its assignee may not maintain any suit for the recovery of any debt, claim, or demand whatever. The Corporation Law is silent on whether or not the contract executed by a foreign corporation with no capacity to sue is null and void *ab initio*.

We are not unaware of the conflicting schools of thought both here and abroad which are divided on whether such contracts are void or merely voidable. Professor Sulpicio Guevarra in his book *Corporation Law* (Philippine Jurisprudence Series, U.P. Law Center, pp. 233-234) cites an Illinois decision which holds the contracts void and a Michigan statute and decision declaring them merely voidable:

. . . . . .

"Where a contract which is entered into by a foreign corporation without complying with the local requirements of doing business is rendered void either by the express terms of a statute or by statutory construction, a subsequent compliance with the statute by the corporation will not enable it to maintain an action on the contract. (Perkins Mfg. Co. *v.* Clinton Const. Co., 295 P. 1 [1930]. See also Diamond Glue Co. *v.* U.S. Glue Co., *supra* see note 18.) But where the statute merely prohibits the maintenance of a suit on such contract (without expressly declaring the contract 'void'), it was held that a failure to comply with the statute rendered the contract *voidable* and not void, and compliance at any time before suit was sufficient.

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(Perkins Mfg. Co. *v.* Clinton Const. Co., *supra.*) Notwithstanding the above decision, the Illinois statute provides, among other things that a foreign corporation that fails to comply with the conditions of doing business in that state cannot maintain a suit or action, etc. The court said: 'The contract upon which this suit was brought, having been entered into in this state when appellant was not permitted to transact business in this state, is in violation of the plain provisions of the statute, and is therefore null and void, and no action can be maintained thereon at any time, even if the corporation shall, at some time after the making of the contract, qualify itself to transact business in this state by a compliance with our laws in reference to foreign corporations that desire to engage in business here. (United Lead Co. *v.* J. M. Ready Elevator Mfg. Co., 222 Ill. 199, 73 N.N. 567 [1906].

"A Michigan statute provides: 'No foreign corporation subject to the provisions of this Act, shall maintain any action in this state upon any contract made by it in this state after the taking effect of this Act, *until* it shall have fully complied with the requirement of this Act, and procured a certificate to that effect from the Secretary of State,' It was held that the above statute does not render contracts of a foreign corporation that fails to comply with the statute void, but they may be enforced only after compliance therewith. (Hastings Industrial Co. *v.* Moral, 143 Mich. 679, 107 N.E. 706 [1906]; Kuennan *v.* U.S. Fidelity & G. Co., Mich. 122, 123 N.W. 799 [1909]; Despres, Bridges & Noel *v.* Zierleyn, 163 Mich. 399, 128 N.W. 769 [1910].

"It has also been held that where the law provided that a corporation which has not complied with the statutory requirements 'shall not maintain any action until such compliance': 'At the commencement of this action the plaintiff had not filed the certified copy with the country clerk of Madera county, but it did file with the officer several months before the defendant filed his amended answer, setting up this defense, as that at the time this defense was pleaded by the defendant the plaintiff had complied with the statute. The defense pleaded by the defendant was therefore unavailable to him to prevent the plaintiff from thereafter maintaining the action. Section 299 does not declare that the plaintiff shall not commence an action in any county unless it has filed a certified copy in the office of the county clerk, but merely declares that it shall not maintain an action until it has filled it. To *maintain* an action is not the same as to *commence* an action, but implies that the action has already been commenced.' (See also Kendrick & Roberts Inc. *v.* Warren Bros. Co., 110 Md. 47, 72 A. 461 [1909].

"In another case, the court said: 'The very fact that the prohibition against maintaining an action in the courts of the state was inserted in the statute ought to be conclusive proof that the legislature did not intend or understand

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that contracts made without compliance with the law were void. The statute does not fix any time within which foreign corporations shall comply with the Act. If such contracts were void, no suits could be prosecuted on them in any court. . . . The primary purpose of our statute is to compel a foreign corporation desiring to do business within the state to submit itself to the jurisdiction of the courts of this state. The statute was not intended to exclude foreign corporations from the state. It does not, in terms, render invalid contracts made in this state by non-complying corporations. The better reason, the wiser and fairer policy, and the greater weight lie with those decisions which hold that where, as here, there is a prohibition with a penalty, with no express or implied declarations respecting the validity of enforceability of contracts made by qualified foreign corporations, the contracts . . . are enforceable . . . upon compliance with the law.' (Peter & Burghard Stone Co. *v.* Carper, 172 N.E. 319 [1930].

Our jurisprudence leans towards the later view. Apart from the objectives earlier cited from *Marshall Wells Co. v. Henry W. Elser & Co.* (supra), it has long been the rule that a foreign corporation actually doing business in the Philippines without license to do so may be sued in our courts. The defendant American corporation in *General Corporation of the Philippines v. Union Insurance Society of Canton Ltd. et al.* (87 Phil. 313) entered into insurance contracts without the necessary license or authority. When summons was served on the agent, the defendant had not yet been registered and authorized to do business. The registration and authority came a little less than two months later. This Court ruled:

"Counsel for appellant contends that at the time of the service of summons, the appellant had not yet been authorized to do business. But, as already stated, Section 14, Rule 7 of the Rules of Court makes no distinction as to corporations with or without authority to do business in the Phlippines. The test is whether a foreign corporation was actually doing business here. Otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the corresponding license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts. It would indeed be anomalous and quite prejudicial, even disastrous, to the citizens in this jurisdiction who in all good faith and in the regular course of business accept and pay for shipments of goods from America, relying for their protection on duly executed foreign marine

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insurance policies made payable in Manila and duly endorsed and delivered to them, that when they go to court to enforce said policies, the insurer who all along has been engaging in this business of issuing similar marine policies, serenely pleads immunity to local jurisdiction because of its refusal or neglect to obtain the corresponding license to do business here thereby compelling the consignees or purchasers of the goods insured to go to America and sue in its courts for redress."

There is no question that the contracts are enforceable. The requirement of registration affects only the remedy.

Significantly, Batas Pambansa Blg. 68, the Corporation Code of the Philippines has corrected the ambiguity caused by the wording of Section 69 of the old Corporation Law.

Section 133 of the present Corporation Code provides:

"SEC. 133. *Doing business without a license.*— No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency in the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws."

The old Section 69 has been reworded in terms of non-access to courts and administrative agencies in order to maintain or intervene in any action or proceeding.

The prohibition against doing business without first securing a license is now given penal sanction which is also applicable to other violations of the Corporation Code under the general provisions of Section 144 of the Code.

It is, therefore, not necessary to declare the contract null and void even as against the erring foreign corporation. The penal sanction for the violation and the denial of access to our courts and administrative bodies are sufficient from the viewpoint of legislative policy.

Our ruling that the lack of capacity at the time of the execution of the contracts was cured by the subsequent registration is also strengthened by the procedural aspects of these cases.

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The petitioner averred in its complaints that it is a foreign insurance company, that it is authorized to do business in the Philippines, that its agent is Mr. Victor H. Bello, and that its office address is the Oledan Building at Ayala Avenue, Makati. These are all the averments required by Section 4, Rule 8 of the Rules of Court. The petitioner sufficiently alleged its capacity to sue. The private respondents countered either with *an admission* of the plaintiff's jurisdictional averments or with a *general denial* based on lack of knowledge or information sufficient to form a belief as to the truth of the averments.

We find the general denials inadequate to attack the foreign corporations lack of capacity to sue in the light of its positive averment that it is authorized to do so. Section 4, Rule 8 requires that "a party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity shall do so by specific denial, which shall include such supporting particulars as are particularly within the pleader's knowledge. At the very least, the private respondents should have stated particulars in their answers upon which a specific denial of the petitioner's capacity to sue could have been based or which could have supported its denial for lack of knowledge. And yet, even if the plaintiff's lack of capacity to sue was not properly raised as an issue by the answers, the petitioner introduced documentary evidence that it had the authority to engage in the insurance business at the time it filed the complaints.

WHEREFORE, the petitions are hereby granted. The decisions of the respondent court are reversed and set aside.

In L-34382, respondent Eastern Shipping Lines is ordered to pay the petitioner the sum of P1,630.22 with interest at the legal rate from January 5, 1968 until fully paid and respondent Angel Jose Transportation Inc. is ordered to pay the petitioner the sum of P1,630.22 also with interest at the legal rate from January 5, 1968 until fully paid. Each respondent shall pay one-half of the costs. The counterclaim of Angel Jose Transportation Inc. is dismissed.

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In L-34383, respondent N. V. Nedlloyd Lijnen or its agent Columbian Phil. Inc. is ordered to pay the petitioner the sum of ₱2,426.98 with interest at the legal rate from February 1, 1968 until fully paid, the sum of P500.00 attorney's fees, and costs. The complaint against Guacods, Inc. is dismissed.

SO ORDERED.

Teehankee (Chairman), Plana Escolin and *Relova, JJ.*, concur. *Melencio-Herrera* and *Vasquez, JJ.*, are on leave.

FIRST DIVISION

[G.R. No. L-36847. July 20, 1983]

SERAFIN B. YNGSON, plaintiff-appellant, *vs.* THE HON. SECRETARY OF AGRICULTURE and NATURAL RESOURCES, ANITA V. DE GONZALES and JOSE M. LOPEZ, defendants-appellees.

SYLLABUS

1. ADMINISTRATIVE LAW; DISPOSITION OF PUBLIC LANDS OF THE PUBLIC DOMAIN; HELD IN ABEYANCE UNTIL RELEASED AS DISPOSABLE OR ALIENABLE.— It is elementary in the law governing the disposition of lands of the public domain that until timber or forest lands are released as disposable and alienable neither the Bureau of Lands nor the Bureau of Fisheries has authority to lease, grant, sell, or otherwise dispose of these lands for homesteads, sales patents, leases for grazing or other purposes, fishpond leases, and other modes of utilization. The Bureau of Fisheries has no jurisdiction to administer and dispose of swamplands or mangrove lands forming part of the public domain while such lands are still classified as forest land or timberland and not released for fishery or other purposes.

2. ID.; ADMINISTRATIVE AGENCY HAVING JURISDICTION OVER LEASES OF PUBLIC LANDS FOR DEVELOPMENT INTO FISHPONDS; PREFERENTIAL RIGHT AMONG APPLICANTS, NOT FEASIBLE WHERE FILING OF APPLICATIONS PREMATURE.— All the applications being premature, not one of