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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

WESTERN SALES TRADING COMPANY, INC., WESTERN SALES TRADING COMPANY (PHILS.), INC., and JOHN DOES, **G.R. No. 233852**
Petitioners, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
GAERLAN, and
ROSARIO,* JJ.

- versus -

7D FOOD INTERNATIONAL, INC.,
Respondent.

Promulgated:

SEP 15 2021

X ----- X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules) assailing the Decision² dated April 27, 2017 and the Resolution³ dated August 16, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 05735. The assailed Decision reversed and set aside the Order⁴ dated April 10, 2013 of Branch 56, Regional Trial Court (RTC), Mandaue City in Civil Case No. MAN-6769; while the assailed Resolution denied the Motion for Reconsideration⁵ of the assailed Decision.

* Designated additional Member per Special Order No. 2835 dated July 15, 2021.

¹ *Rollo*, Vol. 1, pp. 9-31.

² *Id.* at 39-54; penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring.

³ *Id.* at 56-63; penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Geraldine C. Fiel-Macaraig and Gabriel T. Robeniol, concurring.

⁴ *Id.* at 232-235; penned by Presiding Judge Teresita A. Galanida.

⁵ *Id.* at 393-408.

The Antecedents

Western Sales Trading Company, Inc. (WSTC Guam) is a foreign corporation organized under the laws of Guam, U.S.A., with Western Sales Trading Company Philippines, Inc. (WSTC Philippines) as its wholly-owned subsidiary, a corporation duly organized and existing under and by virtue of the laws of the Philippines. WSTC Guam imports products from the Philippines for sale and distribution in Guam.⁶

7D Food International, Inc. (7D), on the other hand, is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the harvesting and processing of dried mangoes, juices, and candies.⁷

In 2012, 7D filed a Complaint⁸ for Breach of Contract, Judicial Confirmation of Rescission, Nullity of Instrument, and Damages (Complaint) against WSTC Guam and WSTC Philippines (collectively, petitioners) and several John Does. In the main, 7D alleged that petitioners violated their verbal exclusive distributorship agreement for the sale and distribution of 7D Mango Products in Guam and Hawaii. 7D further alleged that WSTC Guam purchased Star Sand Quality dried green mango products from ECJ Farms, 7D's competitor, and distributed them in Hawaii and Guam; and that petitioners, with several other John Does, tortiously interfered with 7D's new distributor in Guam and Hawaii, by filing different suits against them abroad.⁹

In response, petitioners filed an entry of special appearance and motion for extension of time *ad cautelam ex super abundantia* with express reservations of rights. They questioned the service of the summons on Bello Lumintigar, contending that he was not an officer or agent of WSTC Guam but the treasurer of WSTC Philippines.¹⁰

Subsequently, petitioners filed an Answer *Ad Cautelam* with Application for Hearing on the Affirmative Defenses and/or for the Outright Dismissal of the Complaint¹¹ (Answer *Ad Cautelam*). In their Answer *Ad Cautelam*, petitioners asserted the reservation of their right to

⁶ *Id.* at 80-81.

⁷ *Id.* at 79, 81.

⁸ *Id.* at 79-103.

⁹ *Id.* at 40.

¹⁰ *Id.*

¹¹ *Id.* at 108-145.

question the RTC's jurisdiction and/or to move for the dismissal of 7D's complaint. They averred that WSTC Guam cannot be sued in the Philippines because it is not doing business locally; that WSTC Philippines has a distinct and separate legal personality from, and is not a resident agent of, WSTC Guam; and that WSTC Philippines is not privity to the distributorship agreement. Thus, they claimed that the service of summons on WSTC Philippines was improper.¹²

As to the substantive aspect, petitioners contended that what WSTC Guam had with 7D was an isolated written contract for exclusive distributorship in Hawaii for a period of one year from July 2003 to June 2004. Further, they averred that WSTC Guam never sold competitor products and, assuming that it did, there was no prohibition from doing so. On the contrary, they claimed that it was 7D which terminated the distributorship contract, prompting the filing of Civil Case No. 1527-11 in the Superior Court of Guam and Civil Case No. 09-1-000351-02 in the Circuit Court of the First Circuit of the State of Hawaii by WSTC Guam against 7D, among others. They also pointed out 7D's failure to disclose the pending cases abroad in its Certificate of Non-Forum Shopping. Ultimately, they sought the dismissal of the Complaint under the principle of *forum non conveniens*.¹³

Lastly, as counterclaim, petitioners sought the award of actual and exemplary damages, attorney's fees and litigation expenses.¹⁴

The Ruling of the RTC

In an Order¹⁵ dated April 10, 2013, the RTC dismissed the complaint on the grounds of forum shopping and *litis pendentia*.¹⁶ On account of the dismissal of the complaint, the RTC found it unnecessary to rule on the matters raised in petitioners' Answer *Ad Cautelam*.¹⁷

According to the RTC, *litis pendentia* and forum shopping are present in view of the pendency of the cases involving the distributorship agreement subject of this case before the Guam and

¹² *Id.* at 41.

¹³ *Id.* at 41-42.

¹⁴ *Id.* at 140-141.

¹⁵ *Id.* at 232-235.

¹⁶ *Id.* at 234-235.

¹⁷ *Id.* at 235.

Hawaii courts.¹⁸ It ruled that the main issue in the cases is the alleged breach of contract, regardless of the invocation of other causes of action, such as fraud, misrepresentation, breach of implied warranty of good faith and fair dealing, unfair business practice, tortious interference of existing business relationship, and claim for damages.¹⁹ Considering that 7D's causes of action in the Complaint are similar to those that it raised in its answer to the complaint filed against it before the Hawaii court, the RTC held that a judgment in the Hawaii court would constitute *res judicata* in the instant case or *vice versa*.²⁰

On the alleged improper service of summons, the RTC ruled that petitioners' filing of a motion for extension of time *ad cautelam ex super abundanti* with express reservations of rights was a voluntary appearance tantamount to the trial court's acquisition of jurisdiction over their persons.²¹

7D moved for a reconsideration while petitioners filed a partial motion for reconsideration of the dismissal of their counterclaim.²² The RTC denied both motions in an Order²³ dated April 13, 2015.

7D appealed to the CA.²⁴

The Ruling of the CA

In the assailed Decision²⁵ dated April 27, 2017, the CA reversed the RTC Orders and ordered the remand of the case to the RTC for the conduct of further proceedings.

In contrast to the findings of the RTC, the CA concluded that the unverified allegations found in 7D's Complaint and in petitioners' Answer *Ad Cautelam* are insufficient as evidentiary basis to prove the existence and authenticity of the documents filed by the parties in the

¹⁸ *Id.* at 234.

¹⁹ *Id.* at 235.

²⁰ *Id.*

²¹ *Id.* at 233-234.

²² See Motion for Partial Reconsideration dated May 18, 2013 of Western Sales Trading Company, Inc. and Western Sales Trading Company Philippines, Inc., *id.* at 236-243, and Motion for Reconsideration of 7D Food International, Inc., *id.* at 244-262.

²³ *Rollo*, Vol. 2, pp. 702-703.

²⁴ See Notice of Appeal dated June 8, 2015, *rollo*, Vol. 1, pp. 279-282.

²⁵ *Id.* at 39-54.

pending civil suits abroad.²⁶ Although petitioners attached the complaints filed in the Hawaii and Guam courts by WSTC Guam, including the summons to answer with a request to the Executive Judge of the RTC of Mandaue City for service of process upon 7D, the CA observed that these documents were machine copies that are inadequate to prove the veracity of the allegation with regard to the pendency of these actions filed abroad.²⁷ Citing Sections 19 to 33 of Rule 132 of the Rules, the CA held that the documents failed to meet the requirements of authentication and proof.²⁸

The CA also held that the RTC should not abdicate its function of ascertaining factual controversies in its determination of the existence of the elements of *litis pendentia* and *res judicata* through mere allegations of the parties.²⁹ According to the CA, although certified true copies of the decisions allegedly rendered by the Guam and Hawaii courts were presented by petitioners on appeal, the documents cannot be given due weight and consideration in the absence of a showing that a petition for recognition of such foreign judgments was filed by the interested party and granted by the court in which the petition was filed.³⁰

The CA concluded that, in the interest of substantial justice, the remand of the case to the court of origin is proper for the conduct of further proceedings to afford both parties the full opportunity to substantiate their allegations as to the pendency of the other civil suits abroad.³¹ The CA observed, among others, that the case involves the application of the principle of *forum non conveniens*, a conflict of law problem requiring the presentation of evidence to weigh private and public factors in ascertaining the most convenient forum.³²

Petitioners filed a Motion for Reconsideration³³ but the CA denied it for lack of merit in the assailed Resolution³⁴ dated August 16, 2017.

Aggrieved, petitioners elevated the case to the Court *via* the present Petition for Review on *Certiorari*, raising both procedural and

²⁶ *Id.* at 49.

²⁷ *Id.* at 49-50.

²⁸ *Id.* at 50.

²⁹ *Id.* at 50-51.

³⁰ *Id.* at 53.

³¹ *Id.* at 52-53.

³² *Id.* at 52.

³³ *Id.* at 393-408.

³⁴ *Id.* at 56-64.

substantive issues.

As to procedure, petitioners argue that the RTC Order dated April 10, 2013 is already final and executory because 7D filed its Motion for Reconsideration beyond the reglementary period of 15 days from receipt of a copy thereof. They contend that, as a consequence, the CA should have dismissed outright 7D's appeal for being filed out of time. In addition, they aver that 7D's Appellant's Brief³⁵ is fatally defective as it did not make proper references to the records of the case as explicitly required under the Rules.³⁶

On the merits, petitioners harp on the RTC's dismissal of the complaint on account of *litis pendentia*. They aver that the CA erred in ruling that the existence and authenticity of the documents relating to the pending cases before the Guam and Hawaii courts were not sufficiently established.³⁷ For petitioners, the requirement of authentication may be dispensed with because there was judicial admission on the part of 7D.³⁸

In its Comment,³⁹ 7D expounds that the appeal was timely filed as the period to file it was correctly reckoned from the date of receipt of the RTC Order dated April 10, 2013 by its main counsel, Alvarez Nuez Galang Espina & Lopez (the Law Office), and not by its other counsel.⁴⁰ Further, it denies noncompliance with the required contents of an appellant's brief because it contained no page references to the record.⁴¹

7D also emphasizes the need for authentication of documents under the Rules, and the exigency of further presentation of evidence to resolve the presence or absence of forum shopping, *litis pendentia*, and *forum non conveniens*.⁴² Moreover, 7D contradicts petitioners' claim that its allegations as to the existence of the cases filed abroad constitute judicial admission, claiming that these allegations were taken out of context.⁴³ For 7D, the statements were made to show that the elements of *litis pendentia* are not present: (1) there was no identity of parties; (2) the cases were not founded on the same facts; (3) the rights and reliefs

³⁵ *Id.* at 294-324.

³⁶ *Id.* at 16-23.

³⁷ *Id.* at 25-26.

³⁸ *Id.*

³⁹ *Id.* at 433-461.

⁴⁰ *Id.* at 438-442.

⁴¹ *Id.* at 442-448.

⁴² *Id.* at 448-461.

⁴³ *Id.* at 451-452.

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asserted are not identical; and (4) the resolution of the foreign cases would not amount to *res judicata*.⁴⁴

Thereafter, petitioners filed their Reply⁴⁵ insisting that the RTC Order lapsed into finality on May 21, 2013 because 7D's Motion for Reconsideration was belatedly filed.⁴⁶ They rely on Section 2,⁴⁷ Rule 13 of the Rules where the phrase "*or one of them*" mandates that service upon any of 7D's counsel is service upon the party.⁴⁸ They maintain that both counsel of 7D were served copies of the RTC Order dated April 10, 2013, one receiving it on May 6, 2013 while the other on May 17, 2013. Thus, 7D had 15 days from the earlier receipt on May 6, 2013, or until May 21, 2013 to move for a reconsideration or file an appeal, rendering late the filing of the undated Motion for Reconsideration on May 31, 2018.⁴⁹

With respect to the assertion of 7D in its Appellant's Brief before the CA that the RTC Order dated October 1, 2012 recognized the Law Office as the main counsel, petitioners aver that there is nothing in this RTC Order which indicated that only service upon the Law Office, as the main counsel, shall be binding on 7D.⁵⁰ They likewise disagree with the relaxation of the rules to favor 7D as to the contents of its Appellant's Brief.⁵¹

Petitioners also anchor on 7D's admission of the existence of the Hawaii and Guam proceedings, particularly in its Comment and Opposition⁵² dated April 30, 2012 before the RTC as well as in its Appellant's Brief and Reply before the CA.⁵³ By reason of the alleged judicial admissions, petitioners raise that authentication should be

⁴⁴ *Id.* at 450-455.

⁴⁵ *Rollo*, Vol. 2, pp. 729-746.

⁴⁶ *Id.* at 735.

⁴⁷ Section 2, Rule 13 of the Rules of Court provides:

Section 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

⁴⁸ *Rollo*, Vol. 2, p. 730.

⁴⁹ *Id.*

⁵⁰ *Id.* at 732-733.

⁵¹ *Id.* at 736-740.

⁵² *Id.* at 553-602.

⁵³ *Id.* at 740-743.

dispensed with.⁵⁴ They add that 7D is bound by its admissions, in the absence of any showing that they were made through palpable mistake, or that no such admissions were made.⁵⁵

The Issue

The arguments and issues raised by the parties before the Court boil down to the lone issue of whether the CA correctly ordered the remand of the case to the RTC for the reception of evidence relative to the parties' allegations on the cases pending before the Guam and Hawaii courts involving the same distributorship agreement subject of 7D's complaint.

Our Ruling

The petition lacks merit.

The Court first discusses the procedural issues raised by petitioners: (1) the alleged belated filing by 7D of its Motion for Reconsideration of the RTC Order dated April 10, 2013 which affected the reglementary period for the filing of its appeal before the CA; and (2) the alleged infirmity in 7D's Appellant's Brief before the CA due to lack of proper references to the records of the case.

Under Section 2,⁵⁶ Rule 13 of the 2019 Revised Rules,⁵⁷ a party represented by several counsel shall be entitled to only one copy of any pleading or paper which shall be served upon the lead counsel, if one is designated, or upon any of them, if none was designated. When a party is represented by a counsel of record, service of notices and orders shall be made upon said attorney.

⁵⁴ *Id.* at 743-744.

⁵⁵ *Id.* at 744.

⁵⁶ Section 2, Rule 13 of the Revised Rules of Court provides:

Section 2. *Filing and Service, Defined.* — Filing is the act of submitting the pleading or other paper to the court.

Service is the act of providing a party with a copy of the pleading or any other court submission. If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court. Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served by the opposite side.

Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel.

⁵⁷ A.M. No. 19-10-20-SC, approved on October 15, 2019.

Before this amendment took effect, the Rules did not specify that service should be made to the designated lead counsel in case a party is represented by several counsels, *viz.*:

SECTION 2. *Filing and Service, Defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

As far as the present case is concerned, the old Rules will apply considering that the RTC Order dated April 10, 2013 was served upon 7D's counsel prior to the amendment. Under the former Rules, receipt of a copy of the order or decision by one of several counsels of record is notice to all, and the period to appeal commences on such date even if the other counsel has not yet received a copy of the decision.⁵⁸

7D was represented by both Atty. Mary Gane V. Flores-Balagtas (Atty. Flores-Balagtas) and the Law Office. Assuming that the Law Office was designated as the main counsel, the fact remains that Atty. Flores-Balagtas, with office in Quezon City, was still a counsel of record and was the first to be notified of the RTC Order dated April 10, 2013, having received it on May 6, 2013.⁵⁹ As such, it is from this date that the 15-day period to file the motion for reconsideration before the RTC started to run. The period should not be reckoned from May 17, 2013⁶⁰ or the date when the Law Office, with office address in Cebu, received a copy of the RTC Order dated April 10, 2013 because notice to Atty. Flores-Balagtas is deemed notice to 7D and its other counsel.

Notably, from the records of the case, it was the Law Office, and not Atty. Flores-Balagtas, which filed both the Motion for Reconsideration⁶¹ and the Appellant's Brief.⁶² The name of Atty. Flores-Balagtas as collaborating counsel was also dropped in the mentioned pleadings, although 7D was silent on the matter. This explains why 7D's Motion for Reconsideration was filed on May 31, 2013, which is within

⁵⁸ *Albano v. Court of Appeals*, 415 Phil. 76, 85 (2001).

⁵⁹ *Rollo*, Vol. 1, p. 17.

⁶⁰ *Id.*

⁶¹ *Id.* at 244-262.

⁶² *Id.* at 289-324.

the 15-day reglementary period to file it, if counted from May 17, 2013 or the date when the Law Offices's received a copy of the RTC Order dated April 10, 2013. This could also be the reason that the CA did not find it necessary to resolve the question regarding the timeliness of petitioners' Motion for Reconsideration.

The foregoing notwithstanding, without Atty. Flores-Balagtas' formal withdrawal as counsel for 7D, service upon her remained binding upon 7D and its other counsel.

Nevertheless, the Court deems that a relaxation of the procedural rules is more prudent, considering that the case presents strong concerns of substantial justice on a matter involving honor and property. "Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice would be better served, the application of technical rules of procedure may be relaxed."⁶³

As a matter of fact, the cause is not entirely attributable to the fault or negligence of 7D, the party in whose favor the rules will be suspended.⁶⁴ After all, circumspect leniency in this respect allows the parties to have the fullest opportunity to ventilate the merits of their respective causes, rather than have them lose property on sheer technicalities.⁶⁵

The same principle should apply to the formal defect on 7D's Appellant's Brief, particularly the failure to make proper references to the records of the case. Petitioners view the defect as a cause for the outright dismissal of the appeal of 7D. In its Appellant's Brief, 7D cited, without proper reference to the court records, the RTC Order dated October 1, 2012 and used it as basis to show that the Law Office was recognized by the RTC as 7D's main counsel to receive papers on its behalf.

⁶³ *Atty. Uy v. Villanueva*, 553 Phil. 69, 80 (2007), citing *Tres Reyes v. Maxim's Tea House*, 446 Phil. 388, 396 (2003), *Samahan ng Manggagawa sa Moldex Products, Inc. v. NLRC*, 381 Phil. 254, 264 (2000).

⁶⁴ See *Barnes v. Judge Padilla*, 482 Phil. 903 (2004).

⁶⁵ *MCC Industrial Sales Corp. v. Ssangyong Corporation*, 562 Phil. 390, 408 (2007), citing *Yuchengco v. Court of Appeals*, 536 Phil. 578, 586 (2006).

In *De Leon v. Court of Appeals*,⁶⁶ the Court elucidated on the discretionary character of the dismissal of an appeal:

Worth stressing, the grounds for dismissal of an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the Court of Appeals. This can be seen from the very wording of the Rules which uses the word 'may' instead of 'shall.' This Court has held in *Philippine National Bank vs. Philippine Milling Co., Inc.* that Rule 50, Section 1 which provides specific grounds for dismissal of appeal manifestly "confers a power and does not impose a duty." "What is more, it is directory, not mandatory." With the exception of Sec. 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal. The discretion, however, must be a sound one to be exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.⁶⁷

Indeed, the CA rightly exercised its discretion in brushing aside technicalities as the failure to cite page references is a minor and negligible defect, not jurisdictional in character. Ultimately, the content of the RTC Order dated October 1, 2012 which petitioners put in issue is immaterial pursuant to the Court's earlier pronouncement that receipt on May 6, 2013 of a copy of the RTC Order dated April 10, 2013 by Atty. Flores-Balagtas as one of 7D's counsel of record is already sufficient notice to all of its counsel.

Technicalities aside, the Court proceeds to the issue of whether the requirement of authentication of the pleadings and papers on the cases filed in the courts of Hawaii and Guam could be dispensed with in view of the alleged judicial admissions made by 7D in its pleadings filed below.

Pleadings filed in courts and other quasi-judicial tribunals or adjudicative bodies within our jurisdiction are public documents covered by the judicial notice rule pursuant to Section 1, Rule 129 of the Rules.⁶⁸ No further presentation of evidence is required to prove the authenticity

⁶⁶ 432 Phil. 775 (2002).

⁶⁷ *Id.* at 789-790. Citations omitted.

⁶⁸ Section 1, Rule 129 of the Rules of Court provides:

Section 1. *Judicial Notice, When Mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, official acts of the legislative, executive and judicial departments of the National Government of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Underscoring supplied.)

of these pleadings as long as they are certified by the proper officer of the court, tribunal, board, commission, or office involved.

In contrast, pleadings filed in courts abroad are treated differently. As much as Philippine courts can not take judicial notice of foreign judgments and laws, pleadings filed in foreign jurisdiction must similarly be proven as a fact under our rules on evidence.⁶⁹ This means that the sovereign cannot take judicial cognizance of proceedings and judgments of foreign courts.⁷⁰ Parties must first establish that the proceedings and the pleadings filed abroad duly exist and that the cited allegations rooted from these foreign pleadings were duly executed, neither spurious nor counterfeit, nor executed by mistake or under duress.

Pleadings filed in courts outside of the Philippines are akin to private documents as defined under Section 20⁷¹ of Rule 132 of the Revised Rules on Evidence.⁷² Even if they were attached by the parties in the proceedings below,⁷³ their due execution and authenticity must

⁶⁹ *Arreza v. Toyo*, G.R. No. 213198, July 1, 2019.

⁷⁰ On May 14, 2019, the Philippines became a member of the Hague Apostille Convention which effectively simplified the authentication of public foreign documents pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. Further, the Revised Rules on Evidence (*A.M. No. 19-08-15-SC*) likewise recognized the Hague Apostille Convention as a method for proving official record under Section 24 Rule 132 on Authentication and Proof of Documents:

SECTION 24. *Proof of Official Record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

⁷¹ Section 20, Rule 132 of the Revised Rules of Evidence provides:

SECTION. 20. *Proof of Private Documents.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

- (a) By anyone who saw the document executed or written;
- (b) By evidence of the genuineness of the signature or handwriting of the maker; or
- (c) By other evidence showing its due execution and authenticity.

Any other private document need only be identified as that which it is claimed to be.

⁷² *A.M. No. 19-08-15-SC*, approved on October 8, 2019.

⁷³ Pleadings filed in the Circuit Court of the First Circuit State of Hawaii: First Amended Complaint,

first be proven as a fact which the adverse party could dispute before they could be admitted as evidence.

In the case, the pleadings allegedly filed in the Guam and Hawaii courts are classified as private documents. Thus, for the parties herein to validly adduce these documents, they must first prove their genuineness and authenticity by presenting the best proof available. Moreover, the Court cannot simply deduce from 7D's assertions in its pleadings before the lower courts that 7D admits the genuineness and authenticity of the documents.

Nevertheless, petitioners insist that the requirement for authentication had been fully met, if not already dispensed with, because of 7D's alleged judicial admission of the pendency of the cases before the Guam and Hawaii courts.

A judicial admission is a formal statement, either by a party or his or her attorney, in the course of judicial proceeding which removes an admitted fact from the field of controversy.⁷⁴ It is a substitute for legal evidence at trial conceding for the purpose of litigation that the proposition of the fact alleged by the opponent is true and waives or dispenses with the production of actual proof of facts.⁷⁵ To be a judicial admission, it must be a deliberate, clear, unequivocal statement of a party about a concrete fact within that party's peculiar knowledge and not a matter of law.⁷⁶

The Court is not convinced that the allegations made by 7D in its pleadings filed below as to the existence of the cases before the Guam and Hawaii courts in response to petitioners' assertions on the presence of *litis pendentia* and forum shopping are in the category of judicial admissions which could excuse the presentation of evidence, including proof of the authenticity of the foreign pleadings. On the contrary, 7D refutes the application of *litis pendentia* and forum shopping to warrant the dismissal of its complaint in the RTC despite the pendency of the

rollo, Vol. 1, pp. 157-163; Defendant 7D Food International, Inc.'s Motion to Set Aside Entry of Default, *id.* at 165; Memorandum in Support of Motion, *id.* at 166-169; Defendant 7D Food International, Inc.'s Answer to First Amended Complaint, *id.* at 170-174; Certificate of Service, *id.* at 175; Pleadings filed/Issuances by the Superior Court of Guam: Complaint, *id.* at 176-178; Notice of Motion to Withdraw as Counsel of Record and for Related Relief, *id.* at 179-180; Notice of Hearing, *id.* at 181.

⁷⁴ *Aghayani v. Lupa Realty Holding Corp.*, G.R. No. 201193, June 10, 2019.

⁷⁵ *Id.*

⁷⁶ *Id.*

foreign cases as it argues the absence of the identity of parties, the rights asserted, and the facts on which the relief were based on the subject cases.

Nowhere in the subject pleadings did 7D categorically admit that the pendency of the foreign cases in Guam and Hawaii constitutes *litis pendentia* and forum shopping that would merit the dismissal of 7D's complaint. Although the Court agrees that 7D admitted the existence of the cases filed in the Guam and Hawaii courts, this could not be deemed as a blanket admission of the contents of the subject foreign pleadings. 7D neither admitted the veracity and authenticity of the foreign pleadings attached by petitioners in their Answer. Nor was there any admission made by 7D as to the correctness of petitioners' version of the contents of these attachments

As correctly ruled by the CA, a determination as to whether a party violated the rule against forum shopping requires a determination of the presence of the elements of *litis pendentia* or *res judicata* which necessarily demands a review of the matters and incidents taken up in the cases filed in the Guam and Hawaii courts, including the foreign pleadings. But before the foreign pleadings could be given evidentiary weight, petitioners must first comply with the rules on authentication and proof of documents provided under Sections 19-33, Rule 132-B of the Rules. It is not enough that the pleadings pertaining to the Guam and Hawaii cases were simply attached in petitioners' answer.

Indeed, the Court is not convinced that authentication could be dispensed with and that the mere admission of 7D of the existence of the cases in the Guam and Hawaii courts is sufficient to rule on the presence of *litis pendentia* and forum shopping.

As earlier discussed, the determination of the presence of *litis pendentia* and *res judicata* which would merit the outright dismissal of the complaint filed before the RTC necessitates a reference to the pleadings in the foreign courts. The issues between the parties cannot be limited to a simple determination of the mere *existence* and *pendency* of the cases filed abroad.

In *Zamora v. Quinan, et al.*,⁷⁷ the Court explained *litis pendentia* and *res judicata*, as follows:

x x x *litis pendentia* “refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.” For *litis pendentia* to exist, three (3) requisites must concur:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is *final*; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits*; (4) there is — between the first and the second actions — *identity* of parties, of subject matter, and of causes of action.

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.⁷⁸

Without proper authentication of the copies of the subject pleadings filed abroad, the Court cannot exhaustively discuss or properly decide on the existence of the elements of *litis pendentia* and *res judicata* in relation to forum shopping. The due execution and authenticity of the pleadings, and more importantly, the assertions therein must be proven as a fact, concomitant to the duty of the judge to rest his/her findings of facts and judgment only and strictly upon the evidence presented by the parties.

⁷⁷ 821 Phil. 1009 (2017).

⁷⁸ *Id.* at 1017-1018. Citations omitted.

Notably, the RTC failed to give the parties the opportunity to ventilate their claims and substantiate their allegations as to the pendency of the other civil suits abroad by its premature dismissal of the complaint. Petitioners were deprived of the opportunity to authenticate and prove the pleadings filed in the Guam and Hawaii courts in the same way that 7D was not afforded the chance to contest the contents of these attached pleadings.

Significantly, petitioners claim that the Guam court already rendered its judgment in Civil Case No. 1527-11 in favor of WSTC Guam on February 25, 2013.⁷⁹ Similarly, the Hawaii court allegedly ruled in favor of WSTC Guam in its judgment dated September 10, 2013 in Civil Case No. 09-1-000351-02.⁸⁰ However, as earlier established, courts cannot take judicial notice of these foreign judgments without the appropriate court proceedings for their proper recognition.

Additionally, as correctly observed by the CA, a remand of the case to the court of origin for the conduct of further proceedings is proper to likewise settle the choice of forum. Although petitioners did not raise the issue on the applicability of the principle of *forum non conveniens* in the instant petition, this was part of petitioners' Answer below in support of their stance for the outright dismissal of the complaint. The application of the principle of *forum non conveniens* as a ground for dismissal of an action requires a factual determination which is more properly considered a matter of defense.⁸¹ While the trial court has the discretion to abstain from assuming jurisdiction on this ground, it should do so only after "vital facts are established, to determine whether special circumstances" require the court's desistance.⁸²

In view of the foregoing, the Court finds no compelling reason to reverse the conclusion of the CA remanding the case to the RTC for further reception of evidence.

WHEREFORE, the petition is **DENIED**. The Decision dated April 27, 2017 and the Resolution dated August 16, 2017 of the Court of Appeals in CA-G.R. CV No. 05735 are hereby **AFFIRMED**.

⁷⁹ *Rollo*, Vol. 1, pp. 73-77.


⁸⁰ *Id.* at 70-72.

⁸¹ *Philsec Investment Corp. v. CA*, 340 Phil. 232, 242 (1997).


⁸² *Id.*, citing *K.K. Shell Sekiyu Osaka Hatsubaisho v. Court of Appeals*, 266 Phil. 156, 165 (1990) and *Hongkong and Shanghai Banking Corporation v. Sherman*, 257 Phil. 340 (1989).

M


SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

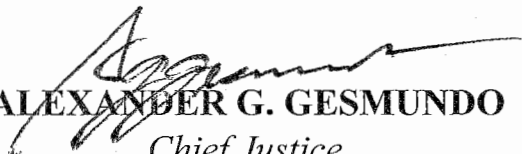
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice