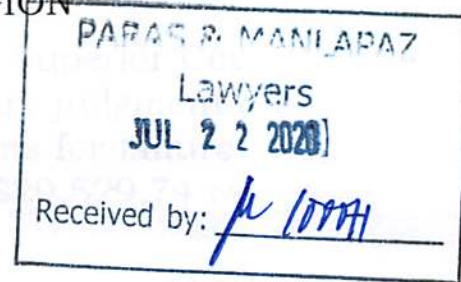


REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
PASIG CITY BRANCH 71



**KTT CORPORATION, SAKURA
KOBAYASHI and KAZUO
KOBAYASHI,**

Petitioners,

-versus-

CIVIL CASE No.
70951-PSG

**SHIGEKI YOSHIDA and ZENAIDA
TAGUIAM,**

Respondents.

x- - - - -x

DECISION

Before this Court is a Petition for Recognition and Enforcement of Foreign Judgment (with Application for Issuance of Preliminary Attachment and Attorney's Fees) filed by petitioners KTT Corporation¹, Sakura Kobayashi², and Kazuo Kobayashi³ to enforce two civil judgments issued by the Superior Court of the Commonwealth of the Northern Marianas Islands⁴ in their favor and against respondents Shigeki Yoshida⁵ and Zenaida Taguam⁶.

FACTUAL BACKGROUND

On February 5, 1996, respondent Yoshida commenced a Complaint and Demand for Jury Trial against the petitioners before the Superior Court of the Commonwealth of the Northern Marianas Islands. The case was titled *Shigeki Yoshida vs. KTT Corporation, Fukumoto Corporation, Sakura Kobayashi and Kazuo Kobayashi*, and numbered Civ. Act No. 96-162. This original lawsuit was initiated with the assistance of respondent Taguam. Petitioners moved to dismiss the complaint,

¹ KTT for brevity.
² Sakura for brevity.
³ Kazuo for brevity.
⁴ CNMI for brevity.
⁵ Yoshida for brevity.
⁶ Taguam for brevity.

contending that such was frivolous, malicious, and prosecuted without good cause.

In an Order dated December 3, 1999, the Superior Court of CNMI granted petitioners' motion for summary judgment on their counterclaim. It dismissed Yoshida's claims for failure to prosecute, and awarded petitioners the sum of \$29,529.74 with legal interest at 9% from entry of judgment.

Subsequently, on May 19, 2000, petitioners, claiming the wrongful use of civil proceedings in the original lawsuit, commenced against the respondents Yoshida and Taguam a Complaint and Demand for Jury Trial before the Superior Court of CNMI. The second case between the parties was entitled *KTT Corporation, Fukumoto Corporation, Sakura Kobayashi and Kazuo Kobayashi vs. Shigeki Yoshida and Zenaida Taguam*, and was docketed as Civ. Act. No. 00-0256A. During the proceedings of the case, an Entry of Default was made against the respondents.

Thereafter, on January 4, 2006, the Superior Court of CNMI issued an Order Calculating and Awarding Plaintiff's Damages. It awarded the aggregate sum of \$100,000 as general damages and another \$100,000 as punitive damages to Kazuo and Sakura Kobayashi, as well as attorney's fees and costs of the suit, and reasonable attorney's fees and costs in defending the original suit.

Petitioners then moved to amend or reconsider the award, calling into attention of the Superior Court evidentiary submissions previously made in 2004 but were overlooked by the latter. The Superior Court of CNMI thus issued an amended Order on February 6, 2006, whereby it granted additional damages, as follows: 1) the sum of \$118,865.69 against respondents Yoshida and Taguam, jointly and severally and in favor of the petitioners, as general damages, for legal fees in defending the previous action; 2) the sum of \$90,923.59, against respondents Yoshida and Taguam, jointly and severally and in favor of the petitioners, as additional punitive damage award based on attorney's fees and costs in bringing the second action; and 3) \$228,791.34 against respondents Yoshida and Taguam, jointly and severally and in favor of Kazuo Kobayashi, as general damages.

Unable to enforce the Superior Court of CNMI's judgments in Saipan and collect payment from respondents, the petitioners filed the present suit with this court to enforce the three foreign

judgments of the Superior Court of CNMI. Petitioners limited their claim for general damages and legal fees to \$477,186.77, and attorney's fees and legal expenses of not less than ₱400,000.00.

Simultaneous to the filing of the action, petitioners applied for a writ of preliminary attachment which the court granted after an *ex-parte* hearing. By virtue of the writ of preliminary attachment, the court sheriff levied upon various real and properties belonging to the Taguam, namely: a parcel of land located in E&L Subdivision, Barangay Sto. Domingo, Cainta, Rizal, and covered by Transfer Certificate of Title No. 569975; Unit 301 of the Alexis Condominium in Barangay Ugong, Pasig City, covered by Condominium Certificate of Title No. PT-18438, both registered under Taguam's name, and some personal properties enumerated in the annexes of the Sheriff's Return. The court sheriff also levied upon the condominium unit covered by CCT No. N-37070 and registered under Yoshida's name.

In her Amended Answer, respondent Taguam denied the material allegations in the petition and raised special and affirmative defenses. She stated, among others, that the Superior Court of CNMI did not acquire jurisdiction over her person due to failure of service of process, and that the judgments sought to be recognized and enforced were rendered by the Superior Court of CNMI upon a clear mistake of law or fact. She further stated that the judgments in Civ. Act. No. 00-256A were default judgments due to her failure to answer on account of the absence of service of process upon her.

Respondent Yoshida in his Answer claimed that the Superior Court of CNMI's had no personal jurisdiction over him. Furthermore, he assailed petitioners' filing of the second civil suit before the Superior Court of CNMI, alleging that the additional claims split a single cause of action which should have been included in the original suit.

Pre-Trial conference was held and thereafter, trial on the merits ensued.

ISSUES⁷

1. Whether the orders rendered by the Superior Court of CNMI in Civ. Act. No. 96-162 and Civ. Act

⁷ Issues framed during the pre-trial conference are reduced to the principal issues in this case.

No. 00-256A may be recognized and enforced in our jurisdiction?

2. Whether the recognition and enforcement of the Orders rendered by the Superior Court of CNMI may be precluded on the grounds that jurisdiction over respondents' persons was never acquired, that the Orders were rendered upon clear mistake of law or fact, and that the Orders are contrary to public policy or canon on ethics of the Republic of the Philippines and the Commonwealth of Northern Marianas Islands?

THE RULING OF THE COURT

The conditions for the recognition of foreign judgment is explicitly provided under Section 48, Rule 39 of the Rules of Court, to wit:

“SEC. 48. *Effect of foreign judgments or final orders.* – The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

- (a) In case of a judgment or a final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and
- (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.”

From the foregoing, a judgment in an action *in personam* of a tribunal of a foreign country having jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title⁸. Thus, in our jurisdiction, a judgment or final order of a foreign tribunal creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement.⁹ Moreover, in an action to

⁸ Northwest Orient Airlines, Inc., vs. Court of Appeals and C.F. Sharp & Company, Inc., G.R. No. 112573, February 9, 1995.

⁹ BPI Securities Corporation v. Guevara, 755 Phil 434 (2015).

enforce a foreign judgment, the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds¹⁰. The Supreme Court thus held in **MERCANTILE INSURANCE CO., INC., vs. SARA YI, also known as SARAH YI**¹¹ that the presentation of the foreign judgment itself is indispensable as it comprises both the evidence and the derivation of the cause of action.

Here, petitioners proved the existence of the final Orders rendered by the Superior Court of the Commonwealth of Northern Mariana Islands in Civ. Act. Nos. 96-162 and 00-256A. Michael Dotts as one of petitioners' witnesses, testified¹² to the effect that since 1987, he has been a practicing attorney and was admitted to the bars for the State of California and the Commonwealth of the Northern Mariana Islands. He represented petitioner KTT Corporation and a related company, Fukumoto Corporation, in various matters in the 1990s. He knew petitioner Kazuo Kobayashi as the principal owner of KTT and Sakura as his daughter. On the other hand, he knew respondent Yoshida as one of the KTT managers, and he was aware of the suit brought by Yoshida in 1996 against KTT. He recalled that in the original suit before the Superior Court of CNMI, Civ. Act. No. 96-162, Yoshida was the petitioner and Taguam assisted the latter in prosecuting the civil action. Three years from filing of the action, Yoshida's counsel withdrew, and at the same time it appeared that Yoshida already left CNMI. Subsequently, on December 3, 1999, the Superior Court of CNMI, upon petitioners' motion, ordered the dismissal of the case for failure to prosecute, and rendered judgment in favour of herein petitioners.

As to Civ. Act. No. 00-256A, Dotts testified that after an Entry of Default was made against respondents Yoshida and Taguam, the Superior Court of CNMI heard and received evidence on their malicious intent in prosecuting the second case. He averred that on January 4, 2006, the Superior Court issued an Order Calculating and Awarding Petitioners' Damages. This Order was revised upon petitioners' motion, and on February 6, 2006, the Superior Court issued its Order Amending the Court's Previous Order Calculating and Awarding Petitioners' Damages.

In both of these cases, Dotts declared that he was the one who secured the authenticated copies of the certified true copies

¹⁰ Mijares v. Ranada, 495 Phil 372 (2005).

¹¹ G.R. No. 234501, March 18, 2019.

¹² Judicial Affidavit of Michael Dotts.

of the Orders. Petitioners thus offered the following documentary evidence to establish the existence of the final orders issued by the Superior Court of CNMI:

1. Certified and authenticated copy of the Order issued by the Superior Court of CNMI, dated December 3, 1999, in Civ. Act. No. 96-162, granting petitioners' motion to dismiss for lack of prosecution and for summary judgment¹³;
2. Certified and authenticated copy of the Judgment in Civ. Act. No. 96-162¹⁴;
3. Certified and authenticated copy of the Order dated January 4, 2006 in Civ. Act. No. 00-256A, which calculated the award of damages to the petitioners¹⁵;
4. Certified and authenticated copy of the amended Order dated January 4, 2006 in Civ. Act. No. 00-256A, which granted additional damages to the petitioners¹⁶;

Petitioners, having established the existence and authenticity of the foreign judgments through the foregoing evidence, effectively transferred to the respondents to prove the contrary. As the Supreme Court held in **NORTHWEST**¹⁷, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity. Furthermore, Section 3(n) of Rule 131, of the Amended Rules on Evidence, provides the disputable presumption that a court, or judge acting as such, whether in the Philippines or elsewhere, enjoys the presumption that it was acting in the lawful exercise of jurisdiction and has regularly performed its official duty. Consequently, it was incumbent upon the respondents to assail the foreign judgments by evidence of want of jurisdiction, want of notice, collusion, fraud, or clear mistake of law or fact.

Respondents primarily argue that the foreign judgments may not be recognized and enforced in our jurisdiction on the ground of want of notice. Both of the respondents insist that the Superior Court of CNMI failed to acquire jurisdiction over them due to its failure to serve summons upon their persons.

¹³ Exh. A to A-3

¹⁴ Exh. B to B-3

¹⁵ Exh. C to C-3

¹⁶ Exh. D to D-3.

¹⁷ Supra, note 8.

Taguam, for her part, limited¹⁸ her participation in Civ. Act. No. 96-162 and averred that in the said case, she was merely called in an incomplete deposition proceedings by Theodore Mitchell, petitioner's previous attorney. As to Civ. Act. No. 00-256A, she only came to know of such when she was already in the Philippines as she never received any summons or legal process from the Superior Court of CNMI. She denied receiving any summons in relation to the second case from a certain Alejandro O. Loquinario, Sheriff IV of the Regional Trial Court of Pasig.

On the other hand, respondent Yoshida testified¹⁹ that sometime in September 1999 he terminated the services of his lawyer in Civ. Act. 96-162 because he could no longer afford the services of the latter. On the same month, he learned of the denial of his application for renewal of Visa in CNMI. He decided to close his business in CNMI and exited the state on October 13, 1999. He no longer received any Orders from the Superior Court of CNMI in the original suit. He averred that he only learned of the final Order in the original suit on October 2006 when he was served with the summons in this case. He also learned of the other Orders issued by the Superior Court of CNMI in Civ. Act. No. 00-256A at the same time. He insisted that petitioners commenced the second case when he and Taguam were no longer in CNMI, and that he was never served any summons from the Superior Court in that case.

Respondents' bare testimonies fail to overcome the presumptions of validity and regularity accorded in favour of the foreign judgments and its processes. Our Supreme Court in **MERCANTILE INSURANCE vs. SARA YI**²⁰ emphasized that "matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum," which in this case is the Commonwealth of Northern Mariana Islands. Hence, because foreign laws are not a matter of judicial notice, they must be alleged and proven. This duty falls upon the respondents, who must establish the procedural laws of CNMI and to show that under it, the service of process or the lack thereof was invalid. They failed to do so, hence, the presumptions must stand.

To obviate any doubt as to the regularity of processes of the Superior Court of CNMI, it was the petitioners themselves that established the procedural rules of the CNMI through the

¹⁸ Judicial Affidavit of Zenaida Taguam.

¹⁹ Judicial Affidavit of Shigeki Yoshida.

²⁰ *Supra*, note 11.

testimony of Atty. Michael W. Dotts. His testimony was allowed as an exception to the general rule provided in Section 24, Rule 132, of the Amended Rules on Evidence. In **MERCANTILE INSURANCE**²¹ the Supreme Court reiterated the exception to this rule, thus:

“An exception to this rule, however, is recognized in the cases of *Willamette Iron & Steel Works v. Muzzal*, and *Manufacturers Hanover Trust Co. v. Guerrero*, wherein we emphatically ruled that **the testimony under oath of an attorney-at-law of a foreign state, who quoted verbatim the applicable law and who stated that the same was in force at the time the obligations were contracted, was sufficient evidence to establish the existence of said law.** In *Manufacturers Hanover Trust*, we stated that it is necessary to state the specific law on which the claim was based.” (Internal citations omitted.)

Here, Atty. Michael W. Dotts testified as to the applicable law related to the acquisition of jurisdiction over persons in the CNMI, quoting²² the specific provision of CNMI’s long arm statute, found in Title 7 Civil Procedure of CNMI’s Commonwealth Code, thus²³:

§ 1102. Acts Submitting to Jurisdiction.

- (a) Any person, whether or not a citizen or resident of the Commonwealth, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, and, if not an individual, its personal representative, to the jurisdiction of the courts of the Commonwealth as to any cause of action arising from the doing of any of the following acts:
1. The transaction of any business within the Commonwealth;
 2. Contracting to supply goods or services within the Commonwealth;
 3. Contracting to insure any person, property, or risk located within the Commonwealth;
 4. Causing tortious injury or damage within the Commonwealth by an act or omission done within the Commonwealth;
 5. Causing tortious injury or damage within the Commonwealth by an act or omission done outside the Commonwealth by a person engaged in business or other acts having impact within the Commonwealth, or who derives income or

²¹ *Supra*, note 11.

²² A25 in the Judicial Affidavit of Michael W. Dotts.

²³ Exhibit T.

- revenue from supplying goods or services within the Commonwealth;
6. Holding or having interest in real property, including security or leasehold interests, within the Commonwealth, or using, possessing or owning real property within the Commonwealth;
 7. Any act done outside the Commonwealth which causes or results in any harmful impact, injury or damages, including pollution of air, land or water within the Commonwealth; or
 8. Any other act done within or outside the Commonwealth from which a cause of action arises and for which it would not be unreasonable, unfair or unjust to hold the person doing the act legally responsible in a court of the Commonwealth.

(b) Service of process upon any person who is subject to the jurisdiction of the courts of the Commonwealth, as provided in this section, may be made as provided by 7 CMC § 1104, if the person cannot be found in the Commonwealth, with the same force and effect as if process had been personally served within the Commonwealth.

xxx
xxx
xxx”

On the manner of service of summons upon the respondents, Atty. Dotts stated²⁴ that the applicable provision was Chapter 1, Division 1, Title 7 of the CNMI Commonwealth Code²⁵, to wit:

“§ 1104. Manner of Service.

(a) When service of process is provided by 7 CMC §§ 1102 and 1103, service shall be made by leaving a certified copy with the Attorney General, who shall keep a record of each such process and the day and hour of service; provided, that notice of the service and a copy of the summons and of the complaint are served upon the respondent personally by any person authorized to serve process in the place in which he or she may be found or appointed by the court for the purpose; or sent by certified or registered mail, postage prepaid, with return receipt requested, by the petitioner or the petitioner's attorney to the respondent. The petitioner or his or her attorney shall file an affidavit of service with the clerk of courts showing that copies of the summons and complaint were served or sent by certified or registered mail, and in the latter case, the return receipt signed by the respondent shall be filed

²⁴ A26 in the Judicial Affidavit of Michael W. Dotts.

²⁵ Exh. T.

with the affidavit. The service shall be deemed complete upon delivery of the required papers to the respondent outside the Commonwealth, personally or by mail as provided.

(b) After service on the Attorney General, if the respondent cannot be personally served by mail the summons and the complaint, and if by affidavit or otherwise the court is satisfied that with reasonable diligence the respondent cannot be served, and that a cause of action arises against the party upon whom service is to be made, or he is a necessary and proper party to the action, the court may order that service be made by publication of the summons in at least one newspaper published and having a general circulation in the Commonwealth. Publication shall be made once each week for four successive weeks, and the last publication shall be not less than 21 days prior to the return date stated herein.”

Pursuant to the above-proven law in CNMI, petitioners complied with the service of summons in Civ. Act. 00-256A upon respondents. Atty. Dotts testified based on records available that efforts were exerted to serve summons and a copy of the complaint to the respondents last known mailing address in Saipan by first class mail. Certified copies of the summons and complaint were subsequently left with the Attorney General. Moreover, Certified copies of the summons and the complaint stamped with notice of leaving copies with the Attorney General, were separately sent by registered mail, postage prepaid and with return receipt requested, each to respondent Yoshida’s address in Ogaki, Japan, and Osaka, Japan, and to respondent Zenaida Taguam’s address at 114 Diamond St, Cainta, Rizal and Unit 301 Alexis Condominium in Valle Verde VI, Pasig City. Summons was then served by publication in compliance with the Order of the Superior Court, and thereafter, an Entry of Default of defendants Shigeki Yoshida and Zenaida Taguam was issued on February 1, 2002.

He further averred that during the initial stages of Civ. Act. No. 00-256A, one Jeanne Rayphand on behalf of the petitioners submitted to the Superior Court on April 26, 2001 an Ex-Parte Motion for Order that Service be Made by Publication and declaration and that this was authorized by the Superior Court. Moreover, certified copies of the Summons and Complaint were personally delivered in Yoshida’s addresses in Japan. As to Taguam, an Affidavit of Service of Alejandro O. Loquinario and Affidavit of Sianita Madlang-awa were submitted to the Superior Court, both of which showed efforts to locate and personally serve the court processes upon Taguam. The Superior Court of CNMI then ordered the service of summons by publication, which resulted in an Entry of Default against the respondents. Thereafter, judgment was rendered in Civ. Act. No. 00-256A.

Thus, the foregoing contradicts respondents' bare allegations of want of notice and lack of personal jurisdiction. Petitioners in this case adequately proved that respondents were given reasonable notice and opportunity to be heard.

On respondents' allegations that the Orders of the Superior Court of CNMI are tainted by mistake of fact and law, and that these were issued against due process and are contrary to public policy, this Court finds such allegations to be unsubstantiated by evidence.

Moving on to the attorney's fees and litigation expenses claimed by the petitioners, the evidence²⁶ adduced shows that they incurred **US\$10,677.69** in costs. Nevertheless, as there was no sufficient showing of bad faith on respondent's part, the amount claimed cannot be awarded. Insofar as attorney's fees is concerned, the Supreme Court in the decided case of **DEVELOPMENT BANK OF THE PHILIPPINES VS. TRAVERSE DEVELOPMENT CORPORATION AND CENTRAL SURETY AND INSURANCE COMPANY**²⁷ ruled in this wise:

"The award of attorney's fees is the exception rather than the rule and the court must state explicitly the legal reason for such award. As we held in *ABS-CBN Broadcasting Corporation v. Court of Appeals*:

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. **The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.** Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, **still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.**"(Emphasis supplied).

Applying the foregoing jurisprudence to the case at bar, in the absence of any evidence sufficiently showing bad faith on the part of defendants and there being no legal reason for the awarding payment of attorney's fees, the same is hereby denied.

²⁶ Exh. BB to BB-11, Proposed Retainer Agreement, Statement of Accounts, and Acknowledgment Receipts.

²⁷ G.R. No. 169293, October 5, 2011.

WHEREFORE, the Petition for Recognition and Enforcement of Foreign Judgment is **GRANTED**. Judgment is hereby rendered:

1. **RECOGNIZING** the foreign judgments rendered by the Superior Court of the Commonwealth of Mariana Island, specifically: the ORDER GRANTING DEFENDANT'S MOTIONS TO DISMISS FOR LACK OF PROSECUTION AND FOR SUMMARY JUDGMENT dated 3 December 1999, issued in Civ. Act. No. 96-162, the ORDER CALCULATING AND AWARDING PLAINTIFF'S DAMAGES dated 4 January 2006, and the ORDER AMENDING THIS COURT'S PREVIOUS ORDER CALCULATING AND AWARDING PLAINTIFFS' DAMAGES dated 6 February 2006, both issued in Civ. Act. No. 00-0256A; and
2. **ORDERING** respondents Shigeki Yoshida and Zenaida Taguiam to pay herein petitioners the amount of **US\$477,186.77** and **ADJUDGING** respondents to be jointly and severally liable for such amount.

SO ORDERED.

Pasig City, June 30, 2020.


ELISA R. SARMIENTO-FLORES
Presiding Judge

/ERSF-ovb.

Copy furnished:

SIDDHARTA JP III S. PEÑAREDONDO

Paras and Manlapaz Lawyers
Counsel for the Petitioners
14th Floor BDO Equitable Tower
8751 Paseo de Roxas, Makati City

ANGELITO D. BERNARDINO

Counsel for the respondent Yoshida
709 Cityland Shaw Tower
Shaw Blvd., corner St. Francis St.
Mandaluyong City

DAVID MICHAEL O. GABRIEL

Gabriel and Mendoza Law Offices
Counsel for respondent Taguiam
Suite 601, Fil-Garcia Tower,
140 Kalayaan Ave. cor. Mayaman St.
Diliman, Quezon City

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ATTY. SIDDHARTA JP III S. PEÑAREDONDO
PARAS and MANLAPAZ LAWYERS
Unit 1402, 14th Floor BDO Equitable Bank Tower
8751 Paseo de Roxas, Makati City

PARAS & MANLAPAZ
Lawyers
JUL 27 2020
Received by: *[Signature]*

RECEIVED
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PARAS & MANLAPAZ

CIVIL CASE NO. 70951
Decision: June 30, 2020

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