Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SAUDI ARABIAN AIRLINES (SAUDIA) and BRENDA J. BETIA,	**G.R. No. 198587**
Petitioners,	
	Present:
-versus-	CARPIO, *J.*, *Chairperson,*
	VELASCO, JR.,*
	DEL CASTILLO,
MA. JOPETTE M. REBESENCIO, MONTASSAH B. SACAR-ADIONG, ROUEN RUTH A. CRISTOBAL and LORAINE S. SCHNEIDER-CRUZ,	MENDOZA, and
	LEONEN, *JJ.*
Respondents.	**Promulgated:**
	14 JAN 2015

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DECISION

LEONEN, *J.*:

All Filipinos are entitled to the protection of the rights guaranteed in the Constitution.

This is a Petition for Review on Certiorari with application for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 45 of the 1997 Rules of Civil Procedure praying that judgment be rendered reversing and setting aside the June 16, 2011 Decision[1] and September 13, 2011 Resolution[2] of the Court of Appeals in CA-G.R. SP. No. 113006.

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* Designated acting member per S.O. No. 1910 dated January 12, 2015.

1 *Rollo*, pp. 61–75.

2 Id. at 106–108.

Petitioner Saudi Arabian Airlines (Saudia) is a foreign corporation established and existing under the laws of Jeddah, Kingdom of Saudi Arabia. It has a Philippine office located at 4/F, Metro House Building, Sen. Gil J. Puyat Avenue, Makati City.[3] In its Petition filed with this court, Saudia identified itself as follows:

> 1. Petitioner SAUDIA is a foreign corporation established and existing under the Royal Decree No. M/24 of 18.07.1385H (10.02.1962G) in Jeddah, Kingdom of Saudi Arabia ("KSA"). *Its Philippine Office is located at 4/F Metro House Building, Sen. Gil J. Puyat Avenue, Makati City (Philippine Office).* It may be served with orders of this Honorable Court through undersigned counsel at 4th and 6th Floors, Citibank Center Bldg., 8741 Paseo de Roxas, Makati City.[4] (Emphasis supplied)

Respondents (complainants before the Labor Arbiter) were recruited and hired by Saudia as Temporary Flight Attendants with the accreditation and approval of the Philippine Overseas Employment Administration.[5] After undergoing seminars required by the Philippine Overseas Employment Administration for deployment overseas, as well as training modules offered by Saudia (e.g., initial flight attendant/training course and transition training), and after working as Temporary Flight Attendants, respondents became Permanent Flight Attendants. They then entered into Cabin Attendant contracts with Saudia: Ma. Jopette M. Rebesencio (Ma. Jopette) on May 16, 1990;[6] Montassah B. Sacar-Adiong (Montassah) and Rouen Ruth A. Cristobal (Rouen Ruth) on May 22, 1993;[7] and Loraine Schneider-Cruz (Loraine) on August 27, 1995.[8]

Respondents continued their employment with Saudia until they were separated from service on various dates in 2006.[9]

Respondents contended that the termination of their employment was illegal. They alleged that the termination was made solely because they were pregnant.[10]

As respondents alleged, they had informed Saudia of their respective pregnancies and had gone through the necessary procedures to process their maternity leaves. Initially, Saudia had given its approval but later on informed respondents that its management in Jeddah, Saudi Arabia had

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3 Id. at 9.
4 Id.
5 Id. at 633.
6 Id. at 596.
7 Id. at 604 and 614.
8 Id. at 625.
9 Id. at 62.
10 Id. at 635.

disapproved their maternity leaves. In addition, it required respondents to file their resignation letters.[11]

Respondents were told that if they did not resign, Saudia would terminate them all the same. The threat of termination entailed the loss of benefits, such as separation pay and ticket discount entitlements.[12]

Specifically, Ma. Jopette received a call on October 16, 2006 from Saudia's Base Manager, Abdulmalik Saddik (Abdulmalik).[13] Montassah was informed personally by Abdulmalik and a certain Faisal Hussein on October 20, 2006 after being required to report to the office one (1) month into her maternity leave.[14] Rouen Ruth was also personally informed by Abdulmalik on October 17, 2006 after being required to report to the office by her Group Supervisor.[15] Loraine received a call on October 12, 2006 from her Group Supervisor, Dakila Salvador.[16]

Saudia anchored its disapproval of respondents' maternity leaves and demand for their resignation on its "Unified Employment Contract for Female Cabin Attendants" (Unified Contract).[17] Under the Unified Contract, the employment of a Flight Attendant who becomes pregnant is rendered void. It provides:

> (H) Due to the essential nature of the Air Hostess functions to be physically fit on board to provide various services required in normal or emergency cases on both domestic/international flights beside her role in maintaining continuous safety and security of passengers, and since *she will not be able to maintain the required medical fitness while at work in case of pregnancy, accordingly,* ***if the Air Hostess becomes pregnant at any time during the term of this contract, this shall render her employment contract as void and she will be terminated due to lack of medical fitness.***[18] (Emphasis supplied)

In their Comment on the present Petition,[19] respondents emphasized that the Unified Contract took effect on September 23, 2006 (the first day of Ramadan),[20] well after they had filed and had their maternity leaves approved. Ma. Jopette filed her maternity leave application on September 5,

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11 Id. at 600, 607–608, 618–619, and 627.
12 Id. at 600, 608, 620, and 627.
13 Id. at 600.
14 Id. at 607–608.
15 Id. at 618–619.
16 Id. at 627.
17 Id. at 736–740. The Unified Contract is attached to Respondents' Comment as Annex "ZZ."
18 Id. at 739.
19 Id. at 593–670.
20 Id. at 608.

2006.[21] Montassah filed her maternity leave application on August 29, 2006, and its approval was already indicated in Saudia's computer system by August 30, 2006.[22] Rouen Ruth filed her maternity leave application on September 13, 2006,[23] and Loraine filed her maternity leave application on August 22, 2006.[24]

Rather than comply and tender resignation letters, respondents filed separate appeal letters that were all rejected.[25]

Despite these initial rejections, respondents each received calls on the morning of November 6, 2006 from Saudia's office secretary informing them that their maternity leaves had been approved. Saudia, however, was quick to renege on its approval. On the evening of November 6, 2006, respondents again received calls informing them that it had received notification from Jeddah, Saudi Arabia that their maternity leaves had been disapproved.[26]

Faced with the dilemma of resigning or totally losing their benefits, respondents executed handwritten resignation letters. In Montassah's and Rouen Ruth's cases, their resignations were executed on Saudia's blank letterheads that Saudia had provided. These letterheads already had the word "RESIGNATION" typed on the subject portions of their headings when these were handed to respondents.[27]

On November 8, 2007, respondents filed a Complaint against Saudia and its officers for illegal dismissal and for underpayment of salary, overtime pay, premium pay for holiday, rest day, premium, service incentive leave pay, 13th month pay, separation pay, night shift differentials, medical expense reimbursements, retirement benefits, illegal deduction, lay-over expense and allowances, moral and exemplary damages, and attorney's fees.[28] The case was initially assigned to Labor Arbiter Hermino V. Suelo and docketed as NLRC NCR Case No. 00-11-12342-07.

Saudia assailed the jurisdiction of the Labor Arbiter.[29] It claimed that all the determining points of contact referred to foreign law and insisted that the Complaint ought to be dismissed on the ground of *forum non*

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21 Id. at 600.
22 Id. at 607.
23 Id. at 618.
24 Id. at 626.
25 Id. at 601, 608–609, 619, and 628.
26 Id. at 601–602, 609–610, 621, and 630.
27 Id. at 610. *See also* pp. 715 and 750, Annexes "FF" and "EEE" of Respondents' Comment.
28 Id. at 16, 372–373.
29 Id. at 297–307.

conveniens.[30] It added that respondents had no cause of action as they resigned voluntarily.[31]

On December 12, 2008, Executive Labor Arbiter Fatima Jambaro-Franco rendered the Decision[32] dismissing respondents' Complaint. The dispositive portion of this Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the instant complaint for lack of jurisdiction/merit.[33]

On respondents' appeal, the National Labor Relations Commission's Sixth Division reversed the ruling of Executive Labor Arbiter Jambaro-Franco. It explained that "[c]onsidering that complainants-appellants are OFWs, the Labor Arbiters and the NLRC has [sic] jurisdiction to hear and decide their complaint for illegal termination."[34] On the matter of *forum non conveniens*, it noted that there were no special circumstances that warranted its abstention from exercising jurisdiction.[35] On the issue of whether respondents were validly dismissed, it held that there was nothing on record to support Saudia's claim that respondents resigned voluntarily.

The dispositive portion of the November 19, 2009 National Labor Relations Commission Decision[36] reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding the appeal impressed with merit. The respondents-appellees are hereby directed to pay complainants-appellants the aggregate amount of SR614,001.24 corresponding to their backwages and separation pay plus ten (10%) percent thereof as attorney's fees. The decision of the Labor Arbiter dated December 12, 2008 is hereby VACATED and SET ASIDE. Attached is the computation prepared by this Commission and made an integral part of this Decision.[37]

In the Resolution dated February 11, 2010,[38] the National Labor Relations Commission denied petitioners' Motion for Reconsideration.

In the June 16, 2011 Decision,[39] the Court of Appeals denied petitioners' Rule 65 Petition and modified the Decision of the National

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30 Id. at 307-–312.
31 Id. at 184–201.
32 Id. at 372–383.
33 Id. at 383.
34 Id. at 163.
35 Id. at 164.
36 Id. at 159–167.
37 Id. at 166.
38 Id. at 170–172.
39 Id. at 61–75.

Labor Relations Commission with respect to the award of separation pay and backwages.

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, the instant petition is hereby **DENIED**. The Decision dated November 19, 2009 issued by public respondent, Sixth Division of the National Labor Relations Commission – National Capital Region is **MODIFIED** only insofar as the computation of the award of separation pay and backwages. For greater clarity, petitioners are ordered to pay private respondents separation pay which shall be computed from private respondents' first day of employment up to the finality of this decision, at the rate of one month per year of service and backwages which shall be computed from the date the private respondents were illegally terminated until finality of this decision. Consequently, the ten percent (10%) attorney's fees shall be based on the total amount of the award. The assailed Decision is affirmed in all other respects.
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> The labor arbiter is hereby **DIRECTED** to make a recomputation based on the foregoing.[40]

In the Resolution dated September 13, 2011,[41] the Court of Appeals denied petitioners' Motion for Reconsideration.

Hence, this Appeal was filed.

The issues for resolution are the following:

First, whether the Labor Arbiter and the National Labor Relations Commission may exercise jurisdiction over Saudi Arabian Airlines and apply Philippine law in adjudicating the present dispute;

Second, whether respondents voluntarily resigned or were illegally terminated; and

Lastly, whether Brenda J. Betia may be held personally liable along with Saudi Arabian Airlines.

I

Summons were validly served on Saudia and jurisdiction over it validly acquired.

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40 Id. at 74.
41 Id. at 106–108.

There is no doubt that the pleadings and summons were served on Saudia through its counsel.[42] Saudia, however, claims that the Labor Arbiter and the National Labor Relations Commission had no jurisdiction over it because summons were never served on it but on "Saudia Manila."[43] Referring to itself as "Saudia Jeddah," it claims that "Saudia Jeddah" and not "Saudia Manila" was the employer of respondents because:

First, "Saudia Manila" was never a party to the Cabin Attendant contracts entered into by respondents;

Second, it was "Saudia Jeddah" that provided the funds to pay for respondents' salaries and benefits; and

Lastly, it was with "Saudia Jeddah" that respondents filed their resignations.[44]

Saudia posits that respondents' Complaint was brought against the wrong party because "Saudia Manila," upon which summons was served, was never the employer of respondents.[45]

Saudia is vainly splitting hairs in its effort to absolve itself of liability. Other than its bare allegation, there is no basis for concluding that "Saudia Jeddah" is distinct from "Saudia Manila."

What is clear is Saudia's statement in its own Petition that what it has is a "Philippine Office . . . located at 4/F Metro House Building, Sen. Gil J. Puyat Avenue, Makati City."[46] Even in the position paper that Saudia submitted to the Labor Arbiter,[47] what Saudia now refers to as "Saudia Jeddah" was then only referred to as "Saudia Head Office at Jeddah, KSA,"[48] while what Saudia now refers to as "Saudia Manila" was then only referred to as "Saudia's office in Manila."[49]

By its own admission, Saudia, while a foreign corporation, has a Philippine office.

Section 3(d) of Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991, provides the following:

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42 Id. at 9.
43 Id. at 21.
44 Id. at 22.
45 Id. at 21–23.
46 Id. at 9.
47 Id. at 173–203. Saudia's position paper, attached as Annex "C" in the Petition for Certiorari before the Court of Appeals, is attached to the Petition for Review on Certiorari before this court as Annex "D."
48 Id. at 176.
49 Id. at 177–181.

> **The phrase "*doing business*" shall include** . . . **opening offices, whether called "liaison" offices or branches**; . . . and any other act or acts that imply a continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or of the purpose and object of the business organization. (Emphasis supplied)

A plain application of Section 3(d) of the Foreign Investments Act leads to no other conclusion than that Saudia is a foreign corporation doing business in the Philippines. As such, Saudia may be sued in the Philippines and is subject to the jurisdiction of Philippine tribunals.

Moreover, since there is no real distinction between "Saudia Jeddah" and "Saudia Manila" — the latter being nothing more than Saudia's local office — service of summons to Saudia's office in Manila sufficed to vest jurisdiction over Saudia's person in Philippine tribunals.

II

Saudia asserts that Philippine courts and/or tribunals are not in a position to make an intelligent decision as to the law and the facts. This is because respondents' Cabin Attendant contracts require the application of the laws of Saudi Arabia, rather than those of the Philippines.[50] It claims that the difficulty of ascertaining foreign law calls into operation the principle of *forum non conveniens,* thereby rendering improper the exercise of jurisdiction by Philippine tribunals.[51]

A choice of law governing the validity of contracts or the interpretation of its provisions does not necessarily imply *forum non conveniens*. Choice of law and *forum non conveniens* are entirely different matters.

Choice of law provisions are an offshoot of the fundamental principle of autonomy of contracts. Article 1306 of the Civil Code firmly ensconces this:

> Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

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50 Id. at 23.
51 Id.

In contrast, *forum non conveniens* is a device akin to the rule against forum shopping. It is designed to frustrate illicit means for securing advantages and vexing litigants that would otherwise be possible if the venue of litigation (or dispute resolution) were left entirely to the whim of either party.

Contractual choice of law provisions factor into transnational litigation and dispute resolution in one of or in a combination of four ways: (1) procedures for settling disputes, e.g., arbitration; (2) forum, i.e., venue; (3) governing law; and (4) basis for interpretation. *Forum non conveniens* relates to, but is not subsumed by, the second of these.

Likewise, contractual choice of law is not determinative of jurisdiction. Stipulating on the laws of a given jurisdiction as the governing law of a contract does not preclude the exercise of jurisdiction by tribunals elsewhere. The reverse is equally true: The assumption of jurisdiction by tribunals does not *ipso facto* mean that it cannot apply and rule on the basis of the parties' stipulation. In *Hasegawa v. Kitamura*:[52]

> Analytically, jurisdiction and choice of law are two distinct concepts. Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The power to exercise jurisdiction does not automatically give a state constitutional authority to apply forum law. While jurisdiction and the choice of the *lex fori* will often coincide, the "minimum contacts" for one do not always provide the necessary "significant contacts" for the other. The question of whether the law of a state can be applied to a transaction is different from the question of whether the courts of that state have jurisdiction to enter a judgment.[53]

As various dealings, commercial or otherwise, are facilitated by the progressive ease of communication and travel, persons from various jurisdictions find themselves transacting with each other. Contracts involving foreign elements are, however, nothing new. Conflict of laws situations precipitated by disputes and litigation anchored on these contracts are not totally novel.

Transnational transactions entail differing laws on the requirements for the validity of the formalities and substantive provisions of contracts and their interpretation. These transactions inevitably lend themselves to the

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52 563 Phil. 572 (2007) [Per J. Nachura, Third Division].

53 Id. at 585, *citing* COQUIA AND AGUILING-PANGALANGAN, CONFLICT OF LAWS 64 (1995 ed.); SCOLES, HAY, BORCHERS, SYMEONIDES, CONFLICT OF LAWS 162 (3rd ed., 2000); and *Shaffer v. Heitner*, 433 U.S. 186, 215; 97 S.Ct. 2569, 2585 (1977), *citing* Justice Black's Dissenting Opinion in *Hanson v. Denckla*, 357 U.S. 235, 258; 78 S. Ct. 1228, 1242 (1958).

possibility of various fora for litigation and dispute resolution. As observed by an eminent expert on transnational law:

> The more jurisdictions having an interest in, or merely even a point of contact with, a transaction or relationship, the greater the number of potential fora for the resolution of disputes arising out of or related to that transaction or relationship. In a world of increased mobility, where business and personal transactions transcend national boundaries, the jurisdiction of a number of different fora may easily be invoked in a single or a set of related disputes.[54]

Philippine law is definite as to what governs the formal or extrinsic validity of contracts. The first paragraph of Article 17 of the Civil Code provides that "[t]he forms and solemnities of contracts . . . shall be governed by the laws of the country in which they are executed"[55] (i.e., *lex loci celebrationis*).

In contrast, there is no statutorily established mode of settling conflict of laws situations on matters pertaining to substantive content of contracts. It has been noted that three (3) modes have emerged: (1) *lex loci contractus* or the law of the place of the making; (2) *lex loci solutionis* or the law of the place of performance; and (3) *lex loci intentionis* or the law intended by the parties.[56]

Given Saudia's assertions, of particular relevance to resolving the present dispute is *lex loci intentionis.*

An author observed that Spanish jurists and commentators "favor *lex loci intentionis*."[57] These jurists and commentators proceed from the Civil Code of Spain, which, like our Civil Code, is silent on what governs the intrinsic validity of contracts, and the same civil law traditions from which we draw ours.

In this jurisdiction, this court, in *Philippine Export and Foreign Loan Guarantee v. V.P. Eusebio Construction, Inc.*,[58] manifested preference for "allow[ing] the parties to select the law applicable to their contract":

> No conflicts rule on essential validity of contracts is expressly provided for in our laws. The rule followed by most legal systems,

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54 GEORGE A. BERMANN, TRANSNATIONAL LITIGATION IN A NUTSHELL 86 (2003).

55 CIVIL CODE, art. 17.

56 JORGE R. COQUIA AND ELIZABETH AGUILING-PANGALANGAN, CONFLICT OF LAWS: CASES, MATERIALS AND COMMENTS, 331 (2000).

57 JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 355 (1995 ed.), *citing* Trias de Bes, Conception de Droit International Prive, Rescueil 1930:657; Repert. 257 No. 124.

58 478 Phil. 269 (2004) [Per C.J. Davide, Jr., First Division].

> however, is that the intrinsic validity of a contract must be governed by the *lex contractus* or "proper law of the contract." This is the law voluntarily agreed upon by the parties (the *lex loci voluntatis*) or the law intended by them either expressly or implicitly (the *lex loci intentionis*). The law selected may be implied from such factors as substantial connection with the transaction, or the nationality or domicile of the parties. Philippine courts would do well to adopt the first and most basic rule in most legal systems, namely, *to allow the parties to select the law applicable to their contract, subject to the limitation that it is not against the law, morals, or public policy of the forum and that the chosen law must bear a substantive relationship to the transaction*.[59] (Emphasis in the original)

Saudia asserts that stipulations set in the Cabin Attendant contracts require the application of the laws of Saudi Arabia. It insists that the need to comply with these stipulations calls into operation the doctrine of *forum non conveniens* and, in turn, makes it necessary for Philippine tribunals to refrain from exercising jurisdiction.

As mentioned, contractual choice of laws factors into transnational litigation in any or a combination of four (4) ways. Moreover, *forum non conveniens* relates to one of these: choosing between multiple possible fora.

Nevertheless, the possibility of parallel litigation in multiple fora — along with the host of difficulties it poses — is not unique to transnational litigation. It is a difficulty that similarly arises in disputes well within the bounds of a singe jurisdiction.

When parallel litigation arises strictly within the context of a single jurisdiction, such rules as those on forum shopping, *litis pendentia*, and *res judicata* come into operation. Thus, in the Philippines, the 1997 Rules on Civil Procedure provide for willful and deliberate forum shopping as a ground not only for summary dismissal with prejudice but also for citing parties and counsels in direct contempt, as well as for the imposition of administrative sanctions.[60] Likewise, the same rules expressly provide that a

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[59] Id. at 288–289, *citing* EDGARDO L. PARAS, PHILIPPINE CONFLICT OF LAWS 414 (6th ed., 1984); and JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 356 (1995 ed.).

[60] 1997 RULES OF CIV. PROC., Rule 7, sec. 5:
Section 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or

party may seek the dismissal of a Complaint or another pleading asserting a claim on the ground "[t]hat there is another action pending between the same parties for the same cause," i.e., *litis pendentia*, or "[t]hat the cause of action is barred by a prior judgment,"[61] i.e., *res judicata*.

Forum non conveniens, like the rules of forum shopping, *litis pendentia*, and *res judicata*, is a means of addressing the problem of parallel litigation. While the rules of forum shopping, *litis pendentia*, and *res judicata* are designed to address the problem of parallel litigation within a single jurisdiction, *forum non conveniens* is a means devised to address parallel litigation arising in multiple jurisdictions.

Forum non conveniens literally translates to "the forum is inconvenient."[62] It is a concept in private international law and was devised to combat the "less than honorable" reasons and excuses that litigants use to secure procedural advantages, annoy and harass defendants, avoid overcrowded dockets, and select a "friendlier" venue.[63] Thus, the doctrine of *forum non conveniens* addresses the same rationale that the rule against forum shopping does, albeit on a multijurisdictional scale.

Forum non conveniens, like *res judicata*,[64] is a concept originating in common law.[65] However, unlike the rule on *res judicata*, as well as those on *litis pendentia* and forum shopping, *forum non conveniens* finds no textual anchor, whether in statute or in procedural rules, in our civil law system. Nevertheless, jurisprudence has applied *forum non conveniens* as basis for a

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his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

61 1997 RULES OF CIV. PROC., Rule 16, sec. 1:
Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
. . . .
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations[.]

62 *Pioneer Concrete Philippines, Inc. v. Todaro*, 551 Phil. 589, 599 (2007) [Per J. Austria-Martinez, Third Division], *citing Bank of America, NT&SA, Bank of America International, Ltd. v. Court of Appeals,* 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].

63 *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 303 (1996) [Per J. Panganiban, Third Division].

64 *See Malayang Samahan ng Manggagawa sa Balanced Food v. Pinakamasarap Corporation*, 464 Phil. 998, 1000–1001 (2004) [Per J. Sandoval-Gutierrez, Third Division], *citing Arenas vs. Court of Appeals*, 399 Phil. 372 (2000) [Per J. Pardo, First Division]:
"The doctrine of res judicata is a rule which pervades every well regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity which makes it to the interest of the State that there should be an end to litigation, *interest reipublicae ut sit finis litumi*; and (2) the hardship on the individual that he should be vexed twice for the same cause, *memo debet bis vexari et eadem causa*."

65 GEORGE A. BERMANN, TRANSNATIONAL LITIGATION IN A NUTSHELL 87 (2003).
"Most civil law jurisdictions are quite unfamiliar with, and find odd, the notion of dismissals or stays for *forum non conveniens*; they tend to address problems of parallel litigation, if at all, through other instruments. . . . But, in the US, as in numerous other common law jurisdictions, the discretionary doctrine of *forum non conveniens* is well established and frequently applied."

court to decline its exercise of jurisdiction.[66]

Forum non conveniens is soundly applied not only to address parallel litigation and undermine a litigant's capacity to vex and secure undue advantages by engaging in forum shopping on an international scale. It is also grounded on principles of comity and judicial efficiency.

Consistent with the principle of comity, a tribunal's desistance in exercising jurisdiction on account of *forum non conveniens* is a deferential gesture to the tribunals of another sovereign. It is a measure that prevents the former's having to interfere in affairs which are better and more competently addressed by the latter. Further, *forum non conveniens* entails a recognition not only that tribunals elsewhere are *better suited to rule on and resolve* a controversy, but also, that these tribunals are *better positioned to enforce judgments* and, ultimately, to dispense justice. *Forum non conveniens* prevents the embarrassment of an awkward situation where a tribunal is rendered incompetent in the face of the greater capability — both analytical and practical — of a tribunal in another jurisdiction.

The wisdom of avoiding conflicting and unenforceable judgments is as much a matter of efficiency and economy as it is a matter of international courtesy. A court would effectively be neutering itself if it insists on adjudicating a controversy when it knows full well that it is in no position to enforce its judgment. Doing so is not only an exercise in futility; it is an act of frivolity. It clogs the dockets of a tribunal and leaves it to waste its efforts on affairs, which, given transnational exigencies, will be reduced to mere academic, if not trivial, exercises.

Accordingly, under the doctrine of *forum non conveniens*, "a court, in conflicts of law cases, *may* refuse impositions on its jurisdiction where it is not the most 'convenient' or available forum and the parties are not precluded from seeking remedies elsewhere."[67] In *Puyat v. Zabarte,*[68] this court recognized the following situations as among those that may warrant a court's desistance from exercising jurisdiction:

> 1) The belief that the matter can be better tried and decided elsewhere, either because the main aspects of the case transpired in a foreign jurisdiction or the material witnesses have their residence there;
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> 2) The belief that the non-resident plaintiff sought the forum[,] a practice known as *forum shopping*[,] merely to secure

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66 *By way of example, see The Manila Hotel Corporation v. National Labor Relations Commission,* 397 Phil. 1 (2000) [Per J. Pardo, First Division].

67 *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 303 (1996) [Per J. Panganiban, Third Division].

68 405 Phil. 413 (2001) [Per J. Panganiban, Third Division].

procedural advantages or to convey or harass the defendant;

3) The unwillingness to extend local judicial facilities to non-residents or aliens when the docket may already be overcrowded;

4) The inadequacy of the local judicial machinery for effectuating the right sought to be maintained; and

5) The difficulty of ascertaining foreign law.[69]

In *Bank of America, NT&SA, Bank of America International, Ltd. v. Court of Appeals*,[70] this court underscored that a Philippine court may properly assume jurisdiction over a case if it chooses to do so to the extent: "(1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine Court has or is likely to have power to enforce its decision."[71]

The use of the word "may" (i.e., "*may* refuse impositions on its jurisdiction"[72]) in the decisions shows that the matter of jurisdiction rests on the sound discretion of a court. Neither the mere invocation of *forum non conveniens* nor the averment of foreign elements operates to automatically divest a court of jurisdiction. Rather, a court should renounce jurisdiction only "after 'vital facts are established, to determine whether special circumstances' require the court's desistance."[73] As the propriety of applying *forum non conveniens* is contingent on a factual determination, it is, therefore, a matter of defense.[74]

The second sentence of Rule 9, Section 1 of the 1997 Rules of Civil Procedure is exclusive in its recital of the grounds for dismissal that are exempt from the omnibus motion rule: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription. Moreover, dismissal on account of *forum non conveniens* is a fundamentally discretionary matter. It is, therefore, not a matter for a defendant to foist upon the court at his or her own convenience; rather, it must be pleaded at the earliest possible opportunity.

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69 Id. at 432, *citing* JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 47 (1979 ed.).

70 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].

71 Id. at 196, *citing Communication Materials and Design, Inc. v. Court of Appeals*, 329 Phil. 487 (1996) [Per J. Torres, Jr., Second Division].

72 *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 303 (1996) [Per J. Panganiban, Third Division].

73 *Philsec Investment Corporation v. Court of Appeals*, 340 Phil. 232, 242 (1997) [Per J. Mendoza, Second Division], *citing K.K. Shell Sekiyu Osaka Hatsubaisho v. Court of Appeals*, 266 Phil. 156, 165 (1990) [Per J. Cortes, Third Division]; *Hongkong and Shanghai Banking Corp. v. Sherman*, 257 Phil. 340 (1989) [Per J. Medialdea, First Division].

74 *Pacific Consultants International Asia, Inc. v. Schonfeld*, 545 Phil. 116, 136 (2007) [Per J. Callejo, Sr., Third Division], *citing Philsec Investment Corporation v. Court of Appeals*, 340 Phil. 232, 242 (1997) [Per J. Mendoza, Second Division].

On the matter of pleading *forum non conveniens,* we state the rule, thus: *Forum non conveniens must not only be clearly pleaded as a ground for dismissal; it must be pleaded as such at the earliest possible opportunity. Otherwise, it shall be deemed waived.*

This court notes that in *Hasegawa*,[75] this court stated that *forum non conveniens* is not a ground for a motion to dismiss. The factual ambience of this case however does not squarely raise the viability of this doctrine. Until the opportunity comes to review the use of motions to dismiss for parallel litigation, *Hasegawa* remains existing doctrine.

Consistent with *forum non conveniens* as fundamentally a factual matter, it is imperative that it proceed from a *factually established basis*. It would be improper to dismiss an action pursuant to *forum non conveniens* based merely on a perceived, likely, or hypothetical multiplicity of fora. Thus*, a defendant must also plead and show that a prior suit has, in fact, been brought in another jurisdiction.*

The existence of a prior suit makes real the vexation engendered by duplicitous litigation, the embarrassment of intruding into the affairs of another sovereign, and the squandering of judicial efforts in resolving a dispute already lodged and better resolved elsewhere. As has been noted:

> A case will not be stayed or dismissed on *[forum] non conveniens* grounds unless the plaintiff is shown to have an available alternative forum elsewhere. On this, the moving party bears the burden of proof.
>
> A number of factors affect the assessment of an alternative forum's adequacy. The statute of limitations abroad may have run, of the foreign court may lack either subject matter or personal jurisdiction over the defendant. . . . Occasionally, doubts will be raised as to the integrity or impartiality of the foreign court (based, for example, on suspicions of corruption or bias in favor of local nationals), as to the fairness of its judicial procedures, or as to is operational efficiency (due, for example, to lack of resources, congestion and delay, or interfering circumstances such as a civil unrest). In one noted case, [it was found] that delays of 'up to a quarter of a century' rendered the foreign forum... inadequate for these purposes.[76]

We deem it more appropriate and in the greater interest of prudence that a defendant not only allege supposed dangerous tendencies in litigating in this jurisdiction; the defendant must also show that such danger is real and present in that litigation or dispute resolution has commenced in another jurisdiction ***and*** *that a foreign tribunal has chosen to exercise jurisdiction.*

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77 CIVIL CODE, art. 1306.

77 CIVIL CODE, art. 1306.

III

Forum non conveniens finds no application and does not operate to divest Philippine tribunals of jurisdiction and to require the application of foreign law.

Saudia invokes *forum non conveniens* to supposedly effectuate the stipulations of the Cabin Attendant contracts that require the application of the laws of Saudi Arabia.

Forum non conveniens relates to forum, not to the choice of governing law. That *forum non conveniens* may ultimately result in the application of foreign law is merely an incident of its application. In this strict sense, *forum non conveniens* is not applicable. It is not the primarily pivotal consideration in this case.

In any case, even a further consideration of the applicability of *forum non conveniens* on the incidental matter of the law governing respondents' relation with Saudia leads to the conclusion that it is improper for Philippine tribunals to divest themselves of jurisdiction.

Any evaluation of the propriety of contracting parties' choice of a forum and its incidents must grapple with two (2) considerations: first, the availability and adequacy of recourse to a foreign tribunal; and second, the question of where, as between the forum court and a foreign court, the balance of interests inhering in a dispute weighs more heavily.

The first is a pragmatic matter. It relates to the viability of ceding jurisdiction to a foreign tribunal and can be resolved by juxtaposing the competencies and practical circumstances of the tribunals in alternative fora. Exigencies, like the statute of limitations, capacity to enforce orders and judgments, access to records, requirements for the acquisition of jurisdiction, and even questions relating to the integrity of foreign courts, may render undesirable or even totally unfeasible recourse to a foreign court. As mentioned, we consider it in the greater interest of prudence that a defendant show, in pleading *forum non conveniens,* that litigation has commenced in another jurisdiction and that a foreign tribunal has, in fact, chosen to exercise jurisdiction.

Two (2) factors weigh into a court's appraisal of the balance of interests inhering in a dispute: first, the vinculum which the parties and their relation have to a given jurisdiction; and second, the public interest that must animate a tribunal, in its capacity as an agent of the sovereign, in choosing to assume or decline jurisdiction. The first is more concerned with the parties,

their personal circumstances, and private interests; the second concerns itself with the state and the greater social order.

In considering the vinculum, a court must look into the preponderance of linkages which the parties and their transaction may have to either jurisdiction. In this respect, factors, such as the parties' respective nationalities and places of negotiation, execution, performance, engagement or deployment, come into play.

In considering public interest, a court proceeds with a consciousness that it is an organ of the state. It must, thus, determine if the interests of the sovereign (which acts through it) are outweighed by those of the alternative jurisdiction. In this respect, the court delves into a consideration of public policy. Should it find that public interest weighs more heavily in favor of its assumption of jurisdiction, it should proceed in adjudicating the dispute, any doubt or contrary view arising from the preponderance of linkages notwithstanding.

Our law on contracts recognizes the validity of contractual choice of law provisions. Where such provisions exist, Philippine tribunals, acting as the forum court, generally defer to the parties' articulated choice.

This is consistent with the fundamental principle of autonomy of contracts. Article 1306 of the Civil Code expressly provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient."[77] Nevertheless, while a Philippine tribunal (acting as the forum court) is called upon to respect the parties' choice of governing law, such respect must not be so permissive as to lose sight of considerations of law, morals, good customs, public order, or public policy that underlie the contract central to the controversy.

Specifically with respect to public policy, in *Pakistan International Airlines Corporation v. Ople*,[78] this court explained that:

> counter-balancing the principle of autonomy of contracting parties is the equally general rule that provisions of applicable law, especially *provisions relating to matters affected with public policy, are deemed written into the contract.* Put a little differently, the governing principle is that parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest.[79] (Emphasis supplied)

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77 CIVIL CODE, art. 1306.
78 268 Phil. 92 (1990) [Per J. Feliciano, Third Division].
79 Id. at 101.

Article II, Section 14 of the 1987 Constitution provides that "[t]he State . . . shall ensure the fundamental equality before the law of women and men." Contrasted with Article II, Section 1 of the 1987 Constitution's statement that "[n]o person shall . . . be denied the equal protection of the laws," Article II, Section 14 exhorts the State to "ensure." This does not only mean that the Philippines shall not countenance nor lend legal recognition and approbation to measures that discriminate on the basis of one's being male or female. It imposes an obligation to *actively engage* in securing the fundamental equality of men and women.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), signed and ratified by the Philippines on July 15, 1980, and on August 5, 1981, respectively,[80] is part of the law of the land. In view of the widespread signing and ratification of, as well as adherence (in practice) to it by states, it may even be said that many provisions of the CEDAW may have become customary international law. The CEDAW gives effect to the Constitution's policy statement in Article II, Section 14. Article I of the CEDAW defines "discrimination against women" as:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[81]

The constitutional exhortation to ensure fundamental equality, as illumined by its enabling law, the CEDAW, must inform and animate all the actions of all personalities acting on behalf of the State. It is, therefore, the bounden duty of this court, in rendering judgment on the disputes brought before it, to ensure that no discrimination is heaped upon women on the mere basis of their being women. This is a point so basic and central that all our discussions and pronouncements — regardless of whatever averments there may be of foreign law — must proceed from this premise.

So informed and animated, we emphasize the glaringly discriminatory nature of Saudia's policy. As argued by respondents, Saudia's policy entails the termination of employment of flight attendants who become pregnant. At the risk of stating the obvious, *pregnancy is an occurrence that pertains specifically to women*. Saudia's policy excludes from and restricts employment on the basis of no other consideration but sex.

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[80] Also signed and ratified by the Kingdom of Saudi Arabia. *See* United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetails.aspx?src= TREATY&mtdsg_no=IV-8&chapter=4&lang=en>.

[81] Convention on the Elimination of all Forms of Discrimination Against Women, July 15, 1980 (1981), I-1 U.N.T.S. 16 <https://treaties.un.org/doc/Publication/UNTS/Volume%201249/ v1249.pdf>.

We do not lose sight of the reality that pregnancy does present physical limitations that may render difficult the performance of functions associated with being a flight attendant. Nevertheless, it would be the height of iniquity to view pregnancy as a disability so permanent and immutable that it must entail the termination of one's employment. It is clear to us that any individual, regardless of gender, may be subject to exigencies that limit the performance of functions. However, we fail to appreciate how pregnancy could be such an impairing occurrence that it leaves no other recourse but the complete termination of the means through which a woman earns a living.

Apart from the constitutional policy on the fundamental equality before the law of men and women, it is settled that contracts relating to labor and employment are impressed with public interest. Article 1700 of the Civil Code provides that "[t]he relation between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good."

Consistent with this, this court's pronouncements in *Pakistan International Airlines Corporation*[82] are clear and unmistakable:

> Petitioner PIA cannot take refuge in paragraph 10 of its employment agreement which specifies, firstly, the law of Pakistan as the applicable law of the agreement and, secondly, lays the venue for settlement of any dispute arising out of or in connection with the agreement "*only* [in] courts of Karachi, Pakistan". The first clause of paragraph 10 cannot be invoked to prevent the application of Philippine labor laws and regulations to the subject matter of this case, *i.e.*, the employer-employee relationship between petitioner PIA and private respondents. *We have already pointed out that the relationship is much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship.* . . . Under these circumstances, paragraph 10 of the employment agreement cannot be given effect so as to oust Philippine agencies and courts of the jurisdiction vested upon them by Philippine law.[83] (Emphasis supplied)

As the present dispute relates to (what the respondents allege to be) the illegal termination of respondents' employment, this case is immutably a matter of public interest and public policy. Consistent with clear pronouncements in law and jurisprudence, Philippine laws properly find application in and govern this case. Moreover, as this premise for Saudia's insistence on the application *forum non conveniens* has been shattered, it follows that Philippine tribunals may properly assume jurisdiction over the

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82 268 Phil. 92 (1990) [Per J.Feliciano, Third Division].
83 Id. at 104–105.

present controversy.

Philippine jurisprudence provides ample illustrations of when a court's renunciation of jurisdiction on account of *forum non conveniens* is proper or improper.

In *Philsec Investment Corporation v. Court of Appeals*,[84] this court noted that the trial court failed to consider that one of the plaintiffs was a domestic corporation, that one of the defendants was a Filipino, and that it was the extinguishment of the latter's debt that was the object of the transaction subject of the litigation. Thus, this court held, among others, that the trial court's refusal to assume jurisdiction was not justified by *forum non conveniens* and remanded the case to the trial court.

In *Raytheon International, Inc. v. Rouzie, Jr.*,[85] this court sustained the trial court's assumption of jurisdiction considering that the trial court could properly enforce judgment on the petitioner which was a foreign corporation licensed to do business in the Philippines.

In *Pioneer International, Ltd. v. Guadiz, Jr.*,[86] this court found no reason to disturb the trial court's assumption of jurisdiction over a case in which, as noted by the trial court, "it is more convenient to hear and decide the case in the Philippines because Todaro [the plaintiff] resides in the Philippines and the contract allegedly breached involve[d] employment in the Philippines."[87]

In *Pacific Consultants International Asia, Inc. v. Schonfeld*,[88] this court held that the fact that the complainant in an illegal dismissal case was a Canadian citizen and a repatriate did not warrant the application of *forum non conveniens* considering that: (1) the Labor Code does not include *forum non conveniens* as a ground for the dismissal of a complaint for illegal dismissal; (2) the propriety of dismissing a case based on *forum non conveniens* requires a factual determination; and (3) the requisites for assumption of jurisdiction as laid out in *Bank of America, NT&SA*[89] were all satisfied.

In contrast, this court ruled in *The Manila Hotel Corp. v. National Labor Relations Commission*[90] that the National Labor Relations Commission was a seriously inconvenient forum. In that case, private

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84 340 Phil. 232 (1997) [Per J. Mendoza, Second Division].
85 570 Phil. 151 (2008) [Per J. Tinga, Second Division].
86 561 Phil. 688 (2007) [Per J. Carpio, Second Division].
87 Id. at 700.
88 545 Phil. 116 (2007) [Per J. Callejo, Sr., Third Division].
89 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].
90 397 Phil. 1 (2000) [Per J. Pardo, First Division].

respondent Marcelo G. Santos was working in the Sultanate of Oman when he received a letter from Palace Hotel recruiting him for employment in Beijing, China. Santos accepted the offer. Subsequently, however, he was released from employment supposedly due to business reverses arising from political upheavals in China (i.e., the Tiananmen Square incidents of 1989). Santos later filed a Complaint for illegal dismissal impleading Palace Hotel's General Manager, Mr. Gerhard Schmidt, the Manila Hotel International Company Ltd. (which was responsible for training Palace Hotel's personnel and staff), and the Manila Hotel Corporation (which owned 50% of Manila Hotel International Company Ltd.'s capital stock).

In ruling against the National Labor Relations Commission's exercise of jurisdiction, this court noted that the main aspects of the case transpired in two (2) foreign jurisdictions, Oman and China, and that the case involved purely foreign elements. Specifically, Santos was directly hired by a foreign employer through correspondence sent to Oman. Also, the proper defendants were neither Philippine nationals nor engaged in business in the Philippines, while the main witnesses were not residents of the Philippines. Likewise, this court noted that the National Labor Relations Commission was in no position to conduct the following: first, determine the law governing the employment contract, as it was entered into in foreign soil; second, determine the facts, as Santos' employment was terminated in Beijing; and third, enforce its judgment, since Santos' employer, Palace Hotel, was incorporated under the laws of China and was not even served with summons.

Contrary to *Manila Hotel*, the case now before us does not entail a preponderance of linkages that favor a foreign jurisdiction.

Here, the circumstances of the parties and their relation do not approximate the circumstances enumerated in *Puyat*,[91] which this court recognized as possibly justifying the desistance of Philippine tribunals from exercising jurisdiction.

First, there is no basis for concluding that the case can be more conveniently tried elsewhere. As established earlier, Saudia is doing business in the Philippines. For their part, all four (4) respondents are Filipino citizens maintaining residence in the Philippines and, apart from their previous employment with Saudia, have no other connection to the Kingdom of Saudi Arabia. It would even be to respondents' inconvenience if this case were to be tried elsewhere.

Second, the records are bereft of any indication that respondents filed their Complaint in an effort to engage in forum shopping or to vex and

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[91] 405 Phil. 413 (2001) [Per J. Panganiban, Third Division].

inconvenience Saudia.

Third, there is no indication of "unwillingness to extend local judicial facilities to non-residents or aliens."[92] That Saudia has managed to bring the present controversy all the way to this court proves this.

Fourth, it cannot be said that the local judicial machinery is inadequate for effectuating the right sought to be maintained. Summons was properly served on Saudia and jurisdiction over its person was validly acquired.

Lastly, there is not even room for considering foreign law. Philippine law properly governs the present dispute.

As the question of applicable law has been settled, the supposed difficulty of ascertaining foreign law (which requires the application of *forum non conveniens*) provides no insurmountable inconvenience or special circumstance that will justify depriving Philippine tribunals of jurisdiction.

Even if we were to assume, for the sake of discussion, that it is the laws of Saudi Arabia which should apply, it does not follow that Philippine tribunals should refrain from exercising jurisdiction. To recall our pronouncements in *Puyat,*[93] as well as in *Bank of America, NT&SA,*[94] it is not so much the mere applicability of foreign law which calls into operation *forum non conveniens*. Rather, what justifies a court's desistance from exercising jurisdiction is "[t]he difficulty of ascertaining foreign law"[95] or the inability of a "Philippine Court . . . to make an intelligent decision as to the law[.]"[96]

Consistent with *lex loci intentionis*, to the extent that it is proper and practicable (i.e., "to make an intelligent decision"[97]), Philippine tribunals may apply the foreign law selected by the parties. In fact, (albeit without meaning to make a pronouncement on the accuracy and reliability of respondents' citation) in this case, respondents themselves have made averments as to the laws of Saudi Arabia. In their Comment, respondents write:

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92 *Puyat v. Zabarte*, 405 Phil. 413, 432 (2001) [Per J. Panganiban, Third Division], *citing* JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 47 (1979 ed.).

93 405 Phil. 413 (2001) [Per J. Panganiban, Third Division].

94 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].

95 405 Phil. 413, 432 (2001) [Per J. Panganiban, Third Division], *citing* JOVITO R. SALONGA, PRIVATE INTERNATIONAL LAW 47 (1979 ed.). (Underscoring supplied)

96 448 Phil. 181, 196 (2003) [Per J. Austria-Martinez, Second Division], *citing Communication Materials and Design, Inc. v. Court of Appeals*, 329 Phil. 487 (1996) [Per J. Torres, Jr., Second Division].

97 Id.

> Under the Labor Laws of Saudi Arabia and the Philippines[,] it is illegal and unlawful to terminate the employment of any woman by virtue of pregnancy. The law in Saudi Arabia is even more harsh and strict [sic] in that no employer can terminate the employment of a female worker or give her a warning of the same while on Maternity Leave, the specific provision of Saudi Labor Laws on the matter is hereto quoted as follows:
>
> > "An employer may not terminate the employment of a female worker or give her a warning of the same while on maternity leave." (Article 155, Labor Law of the Kingdom of Saudi Arabia, Royal Decree No. M/51.)[98]

All told, the considerations for assumption of jurisdiction by Philippine tribunals as outlined in *Bank of America, NT&SA*[99] have been satisfied. First, all the parties are based in the Philippines and all the material incidents transpired in this jurisdiction. Thus, the parties may conveniently seek relief from Philippine tribunals. Second, Philippine tribunals are in a position to make an intelligent decision as to the law and the facts. Third, Philippine tribunals are in a position to enforce their decisions. There is no compelling basis for ceding jurisdiction to a foreign tribunal. Quite the contrary, the immense public policy considerations attendant to this case behoove Philippine tribunals to not shy away from their duty to rule on the case.

IV

Respondents were illegally terminated.

In *Bilbao v. Saudi Arabian Airlines,*[100] this court defined voluntary resignation as "the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment."[101] Thus, essential to the act of resignation is voluntariness. It must be the result of an employee's exercise of his or her own will.

In the same case of *Bilbao*, this court advanced a means for determining whether an employee resigned voluntarily:

> As the intent to relinquish must concur with the overt act of relinquishment, *the acts of the employee before and after the*

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98 *Rollo*, p. 637.
99 448 Phil. 181 (2003) [Per J. Austria-Martinez, Second Division].
100 G.R. No. 183915, December 14, 2011, 662 SCRA 540 [Per J. Leonardo-De Castro, First Division].
101 Id. at 549, *citing BMG Records (Phils.), Inc. v. Aparecio*, 559 Phil. 80 [Per J. Azcuna, First Division].

> *alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.*[102] (Emphasis supplied)

On the other hand, constructive dismissal has been defined as "cessation of work because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."[103]

In *Penaflor v. Outdoor Clothing Manufacturing Corporation,*[104] constructive dismissal has been described as tantamount to "involuntarily [sic] resignation due to the harsh, hostile, and unfavorable conditions set by the employer."[105] In the same case, it was noted that "[t]he gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances."[106]

Applying the cited standards on resignation and constructive dismissal, it is clear that respondents were constructively dismissed. Hence, their termination was illegal.

The termination of respondents' employment happened when they were pregnant and expecting to incur costs on account of child delivery and infant rearing. As noted by the Court of Appeals, pregnancy is a time when they need employment to sustain their families.[107] Indeed, it goes against normal and reasonable human behavior to abandon one's livelihood in a time of great financial need.

It is clear that respondents intended to remain employed with Saudia. All they did was avail of their maternity leaves. Evidently, the very nature of a maternity leave means that a pregnant employee will not report for work *only temporarily* and that she will resume the performance of her duties as soon as the leave allowance expires.

It is also clear that respondents exerted all efforts to remain employed with Saudia. Each of them repeatedly filed appeal letters (as much as five [5] letters in the case of Rebesencio[108]) asking Saudia to reconsider the

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102 Id. at 549.

103 *Morales v. Harbour Centre Port Terminal,* G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117 [Per J. Perez, Second Division], *citing Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 766 (2002) [Per J. Bellosillo, Second Division].

104 632 Phil. 221 (2010) [Per J. Brion, Second Division].

105 Id. at 226.

106 Id., *citing Siemens Philippines, Inc. v. Domingo*, 582 Phil. 86 (2008) [Per J. Nachura, Third Division].

107 *Rollo*, p. 72.

108 Id. at 684–688, 714, 749, and 823–828. These letters are attached as Annexes "F" to "J," "EE," "DDD," "GGGG" to "JJJJ" of Respondents' Comment.

ultimatum that they resign or be terminated along with the forfeiture of their benefits. Some of them even went to Saudia's office to personally seek reconsideration.[109]

Respondents also adduced a copy of the "Unified Employment Contract for Female Cabin Attendants."[110] This contract deemed void the employment of a flight attendant who becomes pregnant and threatened termination due to lack of medical fitness.[111] The threat of termination (and the forfeiture of benefits that it entailed) is enough to compel a reasonable person in respondents' position to give up his or her employment.

Saudia draws attention to how respondents' resignation letters were supposedly made in their own handwriting. This minutia fails to surmount all the other indications negating any voluntariness on respondents' part. If at all, these same resignation letters are proof of how any supposed resignation did not arise from respondents' own initiative. As earlier pointed out, respondents' resignations were executed on Saudia's blank letterheads that Saudia had provided. These letterheads already had the word "RESIGNATION" typed on the subject portion of their respective headings when these were handed to respondents.[112]

"In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer."[113] In this case, Saudia makes much of how respondents supposedly completed their exit interviews, executed quitclaims, received their separation pay, and took more than a year to file their Complaint.[114] If at all, however, these circumstances prove only the fact of their occurrence, nothing more. The voluntariness of respondents' departure from Saudia is *non sequitur*.

Mere compliance with standard procedures or processes, such as the completion of their exit interviews, neither negates compulsion nor indicates voluntariness.

As with respondent's resignation letters, their exit interview forms even support their claim of illegal dismissal and militates against Saudia's arguments. These exit interview forms, as reproduced by Saudia in its own Petition, confirms the unfavorable conditions as regards respondents' maternity leaves. Ma. Jopette's and Loraine's exit interview forms are particularly telling:

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109 Id. at 609 and 617.
110 Id. at 736–740. The Unified Contract is attached as Annex "ZZ" of Respondents' Comment.
111 Id. at 739.
112 Id. at 610, 715, and 750.
113 *Dusit Hotel Nikko v. Gatbonton*, 523 Phil. 338, 344 (2006) [Per J. Quisumbing, Third Division], *citing Sameer Overseas Placement Agency, Inc. v. NLRC*, 375 Phil. 535 (1999) [Per J. Pardo, First Division].
114 *Rollo*, pp. 28, 32, and 35.

a. From Ma. Jopette's exit interview form:

> 3. In what respects has the job met or failed to meet your expectations?
>
> THE SUDDEN TWIST OF DECISION REGARDING THE MATERNITY LEAVE.[115]

b. From Loraine's exit interview form:

> 1. What are your main reasons for leaving Saudia? What company are you joining?
>
> x x x x x x x x x
>
> Others
>
> CHANGING POLICIES REGARDING MATERNITY LEAVE (PREGNANCY)[116]

As to respondents' quitclaims, in *Phil. Employ Services and Resources, Inc. v. Paramio,*[117] this court noted that "[i]f (a) there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (b) the terms of the settlement are unconscionable, and on their face invalid, such quitclaims must be struck down as invalid or illegal."[118] Respondents executed their quitclaims after having been unfairly given an ultimatum to resign or be terminated (and forfeit their benefits).

V

Having been illegally and unjustly dismissed, respondents are entitled to full backwages and benefits from the time of their termination until the finality of this Decision. They are likewise entitled to separation pay in the amount of one (1) month's salary for every year of service until the finality of this Decision, with a fraction of a year of at least six (6) months being counted as one (1) whole year.

Moreover, "[m]oral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a

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115 Id. at 28.
116 Id. at 31.
117 471 Phil. 753 (2004) [Per J. Callejo, Sr., Second Division].
118 Id. at 780, *citing Dole Philippines, Inc. v. Court of Appeals*, 417 Phil. 428 (2001) [Per J. Kapunan, First Division].

manner contrary to morals, good customs or public policy."[119] In this case, Saudia terminated respondents' employment in a manner that is patently discriminatory and running afoul of the public interest that underlies employer-employee relationships. As such, respondents are entitled to moral damages.

To provide an "example or correction for the public good"[120] as against such discriminatory and callous schemes, respondents are likewise entitled to exemplary damages.

In a long line of cases, this court awarded exemplary damages to illegally dismissed employees whose "dismissal[s were] effected in a wanton, oppressive or malevolent manner."[121] This court has awarded exemplary damages to employees who were terminated on such frivolous, arbitrary, and unjust grounds as membership in or involvement with labor unions,[122] injuries sustained in the course of employment,[123] development of a medical condition due to the employer's own violation of the employment contract,[124] and lodging of a Complaint against the employer.[125] Exemplary damages were also awarded to employees who were deemed illegally dismissed by an employer in an attempt to evade compliance with statutorily established employee benefits.[126] Likewise, employees dismissed for supposedly just causes, but in violation of due process requirements, were awarded exemplary damages.[127]

These examples pale in comparison to the present controversy. Stripped of all unnecessary complexities, respondents were dismissed for no other reason than simply that they were pregnant. This is as wanton, oppressive, and tainted with bad faith as any reason for termination of employment can be. This is no ordinary case of illegal dismissal. This is a case of manifest gender discrimination. It is an affront not only to our statutes and policies on employees' security of tenure, but more so, to the Constitution's dictum of fundamental equality between men and women.[128]

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119 *San Miguel Properties Philippines, Inc. v. Gucaban,* G.R. No. 153982, July 18, 2011, 654 SCRA 18, 33 [Per J. Peralta, Third Division], *citing Mayon Hotel and Restaurant v. Adana,* 497 Phil. 892, 922 (2005) [Per J. Puno, Second Division]; *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643 (2001) [Per J. Gonzaga-Reyes, Third Division]; *Equitable Banking Corp. v. NLRC*, 339 Phil. 541, 565 (1997) [Per J. Vitug, First Division]; *Airline Pilots Association of the Philippines v. NLRC*, 328 Phil. 814, 830 (1996) [Per J. Francisco, Third Division]; and *Maglutac v. NLRC*, G.R. Nos. 78345 and 78637, September 21, 1990, 189 SCRA 767. [Per J. Peralta, Third Division].

120 CIVIL CODE. Art. 2229.

121 *Quadra v. Court of Appeals*, 529 Phil. 218 (2006) [Per J. Puno, Second Division].

122 Id.; *Nueva Ecija I Electric Cooperative, Inc. Employees Association, et al. v. NLRC*, 380 Phil. 45 (2000) [Per J. Quisumbing, Second Division].

123 *U-Bix Corporation v. Bandiola*, 552 Phil. 633 (2007) [Per J. Chico-Nazario, Third Division].

124 *Triple Eight Integrated Services, Inc. v. NLRC*, 359 Phil. 955 (1998) [Per J. Romero, Third Division].

125 *Estiva v. NLRC*, G.R. No. 95145, August 5, 1993, 225 SCRA 169 [Per J. Bidin, Third Division].

126 *Kay Lee v. Court of Appeals*, 502 Phil. 783 (2005) [Per J. Callejo, Sr., Second Division].

127 *Montinola v. PAL*, G.R. No. 198656, September 8, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/198656.pdf > [Per J. Leonen, Second Division].

128 CONST., art. II, sec. 14: The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

The award of exemplary damages is, therefore, warranted, not only to remind employers of the need to adhere to the requirements of procedural and substantive due process in termination of employment, but more importantly, to demonstrate that gender discrimination should in no case be countenanced.

Having been compelled to litigate to seek reliefs for their illegal and unjust dismissal, respondents are likewise entitled to attorney's fees in the amount of 10% of the total monetary award.[129]

VI

Petitioner Brenda J. Betia may not be held liable.

A corporation has a personality separate and distinct from those of the persons composing it. Thus, as a rule, corporate directors and officers are not liable for the illegal termination of a corporation's employees. It is only when they acted in bad faith or with malice that they become solidarily liable with the corporation.[130]

In *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical,*[131] this court clarified that "[b]ad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud."[132]

Respondents have not produced proof to show that Brenda J. Betia acted in bad faith or with malice as regards their termination. Thus, she may not be held solidarily liable with Saudia.

WHEREFORE, with the **MODIFICATIONS** that first, petitioner Brenda J. Betia is not solidarily liable with petitioner Saudi Arabian Airlines, and second, that petitioner Saudi Arabian Airlines is liable for moral and exemplary damages. The June 16, 2011 Decision and the September 13, 2011 Resolution of the Court of Appeals in CA-G.R. SP. No.

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129 *Aliling v. Manuel*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220 [Per J. Velasco, Third Division], *citing Exodus International Construction Corporation v. Biscocho,* 659 Phil. 142 (2011) [Per J. Del Castillo, First Division] and *Lambert Pawnbrokers and Jewelry Corporation* G.R. No. 170464, July 12, 2010, 624 SCRA 705, 721 [Per J. Del Castillo, First Division].

130 *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical*, G.R. No. 194795, June 13, 2012, 672 SCRA 562, 572 [Per J. Mendoza, Third Division], *citing Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, 409 Phil. 75, 83 (2001) [Per J. Gonzaga-Reyes, Third Division].

131 Id.

132 Id.

113006 are hereby **AFFIRMED** in all other respects. Accordingly, petitioner Saudi Arabian Airlines is ordered to pay respondents:

(1) Full backwages and all other benefits computed from the respective dates in which each of the respondents were illegally terminated until the finality of this Decision;

(2) Separation pay computed from the respective dates in which each of the respondents commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year;

(3) Moral damages in the amount of ₱100,000.00 per respondent;

(4) Exemplary damages in the amount of ₱200,000.00 per respondent; and

(5) Attorney's fees equivalent to 10% of the total award.

Interest of 6% per annum shall likewise be imposed on the total judgment award from the finality of this Decision until full satisfaction thereof.

This case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to respondents which petitioner Saudi Arabian Airlines should pay without delay.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

PRESBITERO J. VELASCO, JR.
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice