

THIRD DIVISION

[G.R. Nos. 121662-64, July 06, 1999]

VLASON ENTERPRISES CORPORATION, PETITIONER, VS. COURT OF APPEALS AND DURAPROOF SERVICES, REPRESENTED BY ITS GENERAL MANAGER, CESAR URBINO SR., RESPONDENTS.

DECISION

PANGANIBAN, J.:

Summons to a domestic or resident corporation should be served on officers, agents or employees, who are responsible enough to warrant the presumption that they will transmit to the corporation notice of the filing of the action against it. Rules on the service of motions should be liberally construed in order to promote the ends of substantial justice. A rigid application that will result in the manifest injustice should be avoided. A default judgment against several defendants cannot affect the rights of one who was never declared in default. In any event, such judgment cannot include an award not prayed for in the complaint, even if proven *ex parte*.

The Case

These principles were used by this Court in resolving this Petition for Review on *Certiorari* before us, assailing the July 19, 1993 Decision^[1] and the August 15, 1995 Resolution,^[2] both promulgated by the Court of Appeals. The assailed Decision disposed as follows:^[3]

"ACCORDINGLY, in view of the foregoing disquisitions, all the three (3) consolidated petitions for certiorari are hereby GRANTED.

THE assailed Order of respondent Judge Arsenio Gonong of the Regional Trial Court of Manila, Branch 8, dated April 5, 1991, in the first petition for certiorari (CA-G.R. SP No. 24669); the assailed Order of Judge Bernardo Pardo, Executive Judge of the Regional Trial Court of Manila, Branch 8, dated July 6, 1992, in the second petition for certiorari (CA-G.R. SP No. 28387); and finally, the assailed order or Resolution en banc of the respondent Court of Tax Appeals Judges Ernesto Acosta, Ramon de Veyra and Manuel Gruba, under date of October 5, 1992, in the third petition for certiorari (CA-G.R. SP No. 29317) are all hereby NULLIFIED and SET ASIDE thereby giving way to the entire decision dated February 18, 1991 of the respondent Regional Trial Court of Manila, Branch 8, in Civil Case No. 89-51451 which remains valid, final and executory, if not yet wholly executed.

THE writ of preliminary injunction heretofore issued by this Court on March 6, 1992 and reiterated on July 22, 1992 and this date against the named respondents specified in the dispositive portion of the judgment of

the respondent Regional Trial Court of Manila, Branch 8 in the first petition for certiorari, which remains valid, existing and enforceable, is hereby MADE PERMANENT without prejudice (1) to the [private respondent's] remaining unpaid obligations to the herein party-intervenor in accordance with the Compromise Agreement or in connection with the decision of the respondent lower court in CA-G.R. SP No. 24669 and (2) to the government, in relation to the forthcoming decision of the respondent Court of Tax Appeals on the amount of taxes, charges, assessments or obligations that are due, as totally secured and fully guaranteed payment by the [private respondent's] bond, subject to the relevant rulings of the Department of Finance and other prevailing laws and jurisprudence."

The assailed Resolution ruled:

“ACCORDINGLY, in the light of the foregoing disquisitions, as well as considering these clarifications, the three (3) motions aforementioned are hereby DENIED.”

The Facts

Poro Point Shipping Services, then acting as the local agent of Omega Sea Transport Company of Honduras & Panama, a Panamanian company, (hereafter referred to as Omega), requested permission for its vessel *M/V Star Ace*, which had engine trouble, to unload its cargo and to store it at the Philippine Ports Authority (PPA) compound in San Fernando, La Union while awaiting transshipment to Hongkong. The request was approved by the Bureau of Customs.^[4] Despite the approval, the customs personnel boarded the vessel when it docked on January 7, 1989, on suspicion that it was the hijacked *M/V Silver Med* owned by Med Line Philippines Co., and that its cargo would be smuggled into the country.^[5] The district customs collector seized said vessel and its cargo pursuant to Section 2301, Tariff and Customs Code. A notice of hearing of SFLU Seizure Identification No. 3-89 was served on its consignee, Singkong Trading Co. of Hongkong, and its shipper, Dusit International Co., Ltd. of Thailand.

While seizure proceedings were ongoing, La Union was hit by three typhoons, and the vessel ran aground and was abandoned. On June 8, 1989, its authorized representative, Frank Cadacio, entered into a salvage agreement with private respondent to secure and repair the vessel at the agreed consideration of \$1 million and "fifty percent (50%) [of] the cargo after all expenses, cost and taxes."^[6]

Finding that no fraud was committed, the District Collector of Customs, Aurelio M. Quiray, lifted the warrant of seizure on July 16, 1989.^[7] However, in a Second Indorsement dated November 11, 1989, then Customs Commissioner Salvador M. Mison declined to issue a clearance for Quiray's Decision; instead, he forfeited the vessel and its cargo in accordance with Section 2530 of the Tariff and Customs Code.^[8] Accordingly, acting District Collector of Customs John S. Sy issued a Decision decreeing the forfeiture and the sale of the cargo in favor of the government.^[9]

To enforce its preferred salvor's lien, herein Private Respondent Duraproof Services

filed with the Regional Trial Court of Manila a Petition for *Certiorari*, Prohibition and *Mandamus*^[10] assailing the actions of Commissioner Mison and District Collector Sy. Also impleaded as respondents were PPA Representative Silverio Mangaoang and Med Line Philippines, Inc.

On January 10, 1989, private respondent amended its Petition^[11] to include former District Collector Quiray; PPA Port Manager Adolfo Ll. Amor Jr; Petitioner Vlason Enterprises as represented by its president, Vicente Angliongto; Singkong Trading Company as represented by Atty. Eddie Tamondong; Banco Du Brasil; Dusit International Co., Inc.; Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd.^[12] In both Petitions, private respondent plainly failed to include any allegation pertaining to petitioner, or any prayer for relief against it.

Summonses for the amended Petition were served on Atty. Joseph Capuyan for Med Line Philippines: Angliongto (through his secretary, Betty Bebero), Atty. Tamondong and Commissioner Mison.^[13] Upon motion of the private respondent, the trial court allowed summons by publication to be served upon the alien defendants who were not residents and had no direct representatives in the country.^[14]

On January 29, 1990, private respondent moved to declare respondents in default, but the trial court denied the motion in its February 23, 1990 Order,^[15] because Mangaoang and Amor had jointly filed a Motion to Dismiss, while Mison and Med Line had moved separately for an extension to file a similar motion.^[16] Later it rendered an Order dated July 2, 1990, giving due course to the motions to dismiss filed by Mangaoang and Amor on the ground of *litis pendentia*, and by the commissioner and district collector of customs on the ground of lack of jurisdiction.^[17] In another Order, the trial court dismissed the action against Med Line Philippines on the ground of *litis pendentia*.^[18]

On two other occasions, private respondent again moved to declare the following in default: petitioner, Quiray, Sy and Mison on March 26, 1990;^[19] and Banco Du Brazil, Dusit International Co., Inc., Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd. on August 24, 1990.^[20] There is no record, however, that the trial court acted upon the motions. On September 18, 1990, petitioner filed another Motion for leave to amend the petition,^[21] alleging that its counsel failed to include the following "necessary and/or indispensable parties": Omega represented by Cadacio; and *M/V Star Ace* represented by Capt. Nahon Rada, relief captain. Aside from impleading these additional respondents, private respondent also alleged in the Second (actually, third) Amended Petition^[22] that the owners of the vessel intended to transfer and alienate their rights and interests over the vessel and its cargo, to the detriment of the private respondent.

The trial court granted leave to private respondent to amend its Petition, but only to exclude the customs commissioner and the district collector.^[23] Instead, private respondent filed the "Second Amended Petition with Supplemental Petition" against Singkong Trading Company; and Omega and *M/V Star Ace*,^[24] to which Cadacio and Rada filed a Joint Answer.^[25]

Declared in default in an Order issued by the trial court on January 23, 1991, were

the following: Singkong Trading Co., Commissioner Mison, *M/V Star Ace* and Omega.

[26] Private respondent filed, and the trial court granted, an *ex parte* Motion to present evidence against the defaulting respondents. [27] Only private respondent, Atty. Tamondong, Commissioner Mison, Omega and *M/V Star Ace* appeared in the next pretrial hearing; thus, the trial court declared the other respondents in default and allowed private respondent to present evidence against them. [28] Cesar Urbino, general manager of private respondent, testified and adduced evidence against the other respondents, including herein petitioner. As regards petitioner, he declared: "Vlason Enterprises represented by Atty. Sy and Vicente Angliongto thru constant intimidation and harassment of utilizing the PPA Management of San Fernando, La Union x x x further delayed, and [private respondent] incurred heavy overhead expenses due to direct and incidental expenses xxx causing irreparable damages of about P3,000,000 worth of ship tackles, rigs, and appurtenances including radar antennas and apparatuses, which were taken surreptitiously by persons working for Vlason Enterprises or its agents[.]" [29]

On December 29, 1990, private respondent and Rada, representing Omega, entered into a Memorandum of Agreement stipulating that Rada would write and notify Omega regarding the demand for salvage fees of private respondent; and that if Rada did not receive any instruction from his principal, he would assign the vessel in favor of the salvor. [30]

On February 18, 1991, the trial court disposed as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, based on the allegations, prayer and evidence adduced, both testimonial and documentary, the Court is convinced, that, indeed, defendants/respondents are liable to [private respondent] in the amount as prayed for in the petition for which it renders judgment as follows:

1. Respondent *M/V Star Ace*, represented by Capt. Nahum Rada, [r]elief [c]aptain of the vessel and Omega Sea Transport Company, Inc., represented by Frank Cadacio[,], is ordered to refrain from alienating or [transferring] the vessel *M/V Star Ace* to any third parties;
2. Singkong Trading Company to pay the following:
 - a. Taxes due the government;
 - b. Salvage fees on the vessel in the amount of \$1,000,000.00 based on xxx Lloyd's Standard Form of Salvage Agreement;
 - c. Preservation, securing and guarding fees on the vessel in the amount of \$225,000.00;
 - d. Maintenance fees in the amount of P2,685,000.00;
 - e. Salaries of the crew from August 16, 1989 to December 1989 in the amount of \$43,000.00 and unpaid salaries from January

1990 up to the present;

f. Attorney's fees in the amount of P656,000.00;

3. [Vlason] Enterprises to pay [private respondent] in the amount of P3,000,000.00 for damages;
4. Banco [Du] Brazil to pay [private respondent] in the amount of \$300,000.00 in damages; and finally,
5. Costs of [s]uit."

Subsequently, upon the Motion of Omega, Singkong Trading Co. and private respondent, the trial court approved a Compromise Agreement^[31] among the movants, reducing by 20 percent the amounts adjudged. For their part, respondents-movants agreed not to appeal the Decision.^[32] On March 8, 1991, private respondent moved for the execution of judgment, claiming that the trial court Decision had already become final and executory.^[33] The Motion was granted^[34] and a Writ of Execution was issued.^[35] To satisfy the Decision, Sheriffs Jorge Victorino, Amado Sevilla and Dionisio Camañon were deputized on March 13, 1991 to levy and to sell on execution the defendant's vessel and personal property.

On March 14, 1991, petitioner filed, by special appearance, a Motion for Reconsideration, on the grounds that it was allegedly not impleaded as a defendant, served summons or declared in default; that private respondent was not authorized to present evidence against it in default; that the judgment in default was fatally defective, because private respondent had not paid filing fees for the award; and that private respondent had not prayed for such award.^[36] Private respondent opposed the Motion, arguing that it was a mere scrap of paper due to its defective notice of hearing.

On March 18, 1991, the Bureau of Customs also filed an *ex parte* Motion to recall the execution, and to quash the notice of levy and the sale on execution.^[37] Despite this Motion, the auction sale was conducted on March 21, 1991 by Sheriff Camañon, with private respondent submitting the winning bid.^[38] The trial court ordered the deputy sheriffs to cease and desist from implementing the Writ of Execution and from levying on the personal property of the defendants.^[39] Nevertheless, Sheriff Camañon issued the corresponding Certificate of Sale on March 27, 1991.^[40]

On April 12, 1991,^[41] private respondent filed with the Court of Appeals (CA) a Petition for *Certiorari* and Prohibition to nullify the cease and desist orders of the trial court.^[42] Respondent Court issued on April 26, 1991 a Resolution which reads:
^[43]

"MEANWHILE, in order to preserve the status quo and so as not to render the present petition moot and academic, a TEMPORARY RESTRAINING ORDER is hereby ISSUED enjoining the respondent Judge, the Honorable Arsenio M. Gonong, from enforcing and/or implementing the Orders dated 22 March 1991 and 5 April 1991 which ordered respondent Sheriff