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SECOND DIVISION

[G.R. No. 110610, October 08, 1998]

ARTURO R. MACAPAGAL, PETITIONER, VS. THE COURT OF APPEALS, HON. RAMON AM. TORRES, AND ESTEBAN YAU, RESPONDENTS.

[G.R. NO. 113851. OCTOBER 8, 1998]

RICARDO C. SILVERIO, SR. AND ARTURO MACAPAGAL, PETITIONERS, VS. THE COURT OF APPEALS AND ESTEBAN YAU, RESPONDENTS.

R E S O L U T I O N

MENDOZA, J.:

For resolution are two motions separately filed by petitioners in these cases, seeking reconsideration of our decision of April 18, 1997.

G.R. No. 110610

Petitioner Arturo Macapagal reiterates his claim that he found out about the case against him only when the writ of execution issued by the trial court was sought to be enforced against his properties. Prior to that he had absolutely no knowledge of the following actions taken against him and those undertaken in his behalf, to wit:

1. the filing of the complaint in CEB-2058;

2. the service of summons intended for him at Atty. Emerito Salva's law firm;

3. the filing by Atty. Salva of a "Manifestation and Motion to Declare Service of Summons Improper and/or Null and Void" dated July 24, 1984;

4. the filing of a petition for certiorari with the Court of Appeals, later docketed as AC-G.R. No. 04835;

5. the dismissal of the petition in AC-G.R. No. 04835;

6. his being declared in default by the Regional Trial Court in CEB-2058;

7. the decision rendered in CEB-2058 which ordered him and his co-defendants to pay over P12M in damages, excluding interest;

8. the filing of the appeal from CEB-2058, docketed as CA-G.R. CV No. 33496 and the dismissal thereof on March 27, 1991.

Petitioner claims that he was deprived of due process because he did not know of the proceedings taken against him and that, if given a chance to present his defense, he can prove that there is no basis for holding him liable under §31 of the Corporation Code. He points out that the trial court, in fact, could not make a factual finding on his liability as a one-share, non-management director, contenting itself with finding him liable solely on the ground that, as board member, he knew or should have known that Philfinance was not licensed to engage in quasi-banking functions such as the trading of commercial papers and securities.

For this reason, petitioner prays that the decision of the trial court be annulled. In the alternative, he prays that -

> (b) The Court order that evidence be received on whether the petitioner had authorized the law office of "Salva, Villanueva and Associates" to represent him in the case entitled "Esteban Yau vs. Philippine Underwriters Finance Corporation, et al.", Civil Case No. CEB-2058 of the Regional Trial Court of Cebu, before the Court of Appeals in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, through a commissioner designated by the Court or to remand the petition to the Court of Appeals for reception of evidence;
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> (c) After hearing, should the court find that the law office of "Salva, Villanueva and Associates" did not have authority to represent the petitioner in the case entitled "Esteban Yau vs. Philippine Underwriters Finance Corporation, et al.", Civil Case No. CEB-2058 of the Regional Trial Court of Cebu, before the Court of Appeals in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, to nullify the decision of the Regional Trial Court promulgated on March 27, 1991 in Civil Case No. CEB-2058 and all orders issued in implementation thereof, including writ of execution, the Court of Appeals' decision in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, for having been rendered in violation of the right of petitioner to due process of law.

As stated in our decision, the validity of service upon the petitioner had previously been settled in the decision of the Court of Appeals in AC-G.R. No. 04835, which held that the service of summons on the law firm of Villanueva and Associates at the Philfinance Building on Benavidez St., Makati, Metro Manila was valid for the purpose of acquiring jurisdiction not only over Philfinance but also on its officers and directors, among whom was petitioner. Indeed, it is undisputed that Atty. Emerito Salva's law firm had been counsel not only of Delta Motors Corporation and of Philfinance but also of their respective corporate officers and directors. Atty. Salva was not only the legal counsel of Philfinance but also its corporate secretary. Except for petitioner, not one of the officers and directors of Philfinance who were made defendants in the suit below denied that Atty. Salva was their counsel. Moreover, Atty. Salva entered a special appearance on their behalf for the purpose of contesting the jurisdiction of the trial court over the defendants not because he was not their counsel but simply on the ground that under Rule 14, §8 service of summons should have been made at their residences or offices.

Petitioner points out that he is only one among several defendants allegedly represented by Atty. Salva in the case. He contends that it would have been a different matter had he been the only defendant and yet claimed not to know about

the case. Then his claim would be dubious.

Petitioner likewise claims that at the time summons was served on the law firm of Salva, Villanueva and Associates on July 16, 1984, he was no longer connected with either Delta Motors Corporation or Philfinance, having resigned from Delta Motors on March 1, 1984 and from Philfinance on June 11, 1981. Petitioner thus contends that the summons should have been served at his residence instead of the Philfinance Building since he had always maintained the same residence at Valle Verde since 1977.

There is no merit to the aforementioned contentions. The only evidence offered by the petitioner to show that the service of summons at the Philfinance Building on Benavidez Street in Makati, Metro Manila was not sufficient to acquire jurisdiction over his person were his resignation letters from the two corporations. Such letters, however, are easily fabricated. Without more, it is hard put to believe the allegations of petitioner. Indeed, petitioner neither denies that he had held office at Philfinance or Delta Motors Corporation nor that at one time or other those places had been his regular place of business. He likewise does not deny that Atty. Salva had been counsel of the two corporations and their officials. As both the trial court and the appellate court held, Atty. Salva would not have sought affirmative relief from the trial court had he not been the defendants' attorney. Even after the proceedings resumed in the trial court after the Court of Appeals dismissed the petition for certiorari filed by Atty. Salva questioning the order of default, and judgment was rendered against the defendants, including herein petitioner, it was Atty. Salva's office which continued to represent defendants by filing a notice of appeal. If petitioner did not want to be represented by Atty. Salva any longer, petitioner should have so notified him.

Nor was it probable that petitioner did not know about the case against him because the fact is that petitioner was living in Manila and was moving in business circles. At the very least, he ought to have heard about Philfinance's legal problems from news reports. As a former member of its board of directors and a close associate of petitioner Ricardo C. Silverio, it is improbable that petitioner was completely oblivious of the developments in the insolvency proceedings and unaware of the cases filed against the directors of Philfinance in various courts. It is unbelievable that he never inquired about Philfinance, whether from Silverio or from his other associates and fellow members of the board (who were his co-defendants) during the eight years between the filing of the complaint and the issuance of the writ of execution. After all, this was not the only case filed by defrauded investors against Philfinance in which the latter was also represented by the Salva law firm.[1] Indeed, the Securities and Exchange Commission placed Philfinance under suspension of payments on June 18, 1981, took over the management thereof together with the Central Bank barely a week after Macapagal allegedly resigned therefrom, and subsequently approved a receivership committee two weeks later on August 7, 1981.[2] Could petitioner simply have ignored the news reports and not at all felt compelled to find out what was going on in his former company? Even this Court took judicial notice of the "Philfinance caper."[3]

Petitioner also claims that, contrary to our ruling that he should have filed a petition for annulment of judgment, a petition for certiorari is the proper remedy to annul a judgment which was rendered without the proper service of summons. In support of