

SECOND DIVISION

[G.R. No. 110610, April 18, 1997]

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

[G.R. NO. 113851. APRIL 18, 1997]

**RICARDO C. SILVERIO, SR., PETITIONER, VS. THE COURT OF
APPEALS AND ESTEBAN YAU, RESPONDENTS.
D E C I S I O N**

MENDOZA, J.:

These are petitions for review of the decisions of the Court of Appeals in two related cases. The petition in G.R. No. 110610 is for review of the decision rendered by the Fourteenth Division of the Court of Appeals on March 12, 1993 in CA-G.R. SP No. 30175, dismissing Arturo R. Macapagal's petition to set aside the decision of the Regional Trial Court of Cebu City and the writ of execution issued to enforce it. On the other hand, the petition in G.R. No. 113851 seeks a review of the resolution rendered by the appellate court's Special Eleventh Division on July 6, 1993 in CA-G.R. CV No. 33496, denying the petition for reinstatement of the appeal from the same decision of the Cebu Regional Trial Court, which petitioners Ricardo C. Silverio, Sr. and Arturo Macapagal had filed. These cases were consolidated because they arose out of the same facts set forth below.

Private respondent in the two cases is Esteban Yau who filed a complaint on March 28, 1984 in the Regional Trial Court of Cebu, Branch 6, for recovery of the value of a promissory note and for damages. The case, docketed as Civil Case No. CEB-2058, was brought against the Philippine Underwriters Finance Corporation (Philfinance) and the members of its board of directors, among whom were Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr. and Miguel Angel Cano. Esteban Yau alleged that he purchased from Philfinance a promissory note purporting to have been issued by the Philippine Shares Corporation, Philfinance undertaking to return to him on March 24, 1981 his investment in the amount of P1,600,000.00, plus earnings in the total amount of P29,866.67. It was alleged that Philfinance issued three checks, all maturing on March 24, 1981, for P1,600,000.00, P24,177.78 and P5,688.89, but, when the checks matured and they were deposited in the bank, they were dishonored for insufficiency of funds. It was further alleged that when private respondent inquired from the Philippine Shares Corporation, the company denied that it had issued the promissory note in question.

Summons were issued to petitioners at the Delta Motors Corporation at 2285 Pasong Tamo Extension, Makati, Metro Manila, but the sheriff's attempts to serve them at that address were unsuccessful. He was referred instead to the law office of Salva, Villanueva and Associates at the Philfinance Building on Benavidez St., Makati, and it

was on that office that he was finally able to serve the summons on July 16, 1984.

On July 24, 1984, the several defendants, among whom were herein petitioners Ricardo C. Silverio, Sr. and Arturo Macapagal, asked the court to declare void the service of summons on them through the law office on the ground that they had not authorized the law office to receive the summons for them "as they have their own separate offices empowered to receive service of summons upon said defendants."

[1] The trial court denied petitioners' motion in its order dated August 13, 1984, after finding that the Salva law firm was the counsel of defendants and therefore was their agent for the purpose of service of summons.

Petitioners filed a motion for reconsideration which the trial court denied on October 8, 1984. On November 8, 1984, the trial court declared petitioners in default for failure to file their answer. On the other hand, upon private respondent's motion, the complaint was dismissed as to the other defendants because of failure to serve summons on them.

The defendants filed a petition for certiorari to set aside the August 13, October 8 and November 8, 1984 orders of the trial court on the ground that the court had not acquired jurisdiction over them and, therefore, the order of default which it had entered against them was void. The case was docketed as AC-G.R. No. 04835 in the Court of Appeals.

On March 10, 1986, the Second Special Cases Division of the Intermediate Appellate Court dismissed^[2] the petition, holding the service of summons on the counsel justified in view of the sheriff's failure to serve the summons on petitioners at their given address. The Court of Appeals noted that the Salva law office had accepted the summons together with copies of the complaint and held them for eight days before the defendants, including herein petitioners, complained of invalid service when the law firm could have returned the summons and complaint promptly or apprised the court of the error. The appellate court ruled that the filing by the Salva law office of a motion to declare the service on it invalid indicated that the defendants had been notified of the order to answer the complaint, otherwise they would be declared in default, so that for all intents and purposes the object of the summons had been accomplished.

As no appeal had been taken by the defendants, the decision of the appellate court became final and executory on June 17, 1986 and entry of judgment was made on July 4, 1986. Accordingly, trial proceeded in the lower court, during which only one of the defendants, Pablo Carlos, Jr., who had filed an answer, took part, although he did not present evidence in his defense.

On March 27, 1991 judgment was rendered for private respondent Esteban Yau. The trial court found the facts as follows:

On January 2, 1981, the plaintiff [Esteban Yau] was enticed into purchasing from PHILFINANCE Cebu City Branch, Promissory Note No. 3447 purportedly issued by the Philippine Shares Corporation. The plaintiff paid PHILFINANCE the amount of One Million Six Hundred Thousand (P1,600,000.00) Pesos (Exhs. A and B). PHILFINANCE delivered to the plaintiff Confirmation of Sale No. 20432 dated January 22, 1981 and a written undertaking, also dated January 22, 1981 (Exh.

D) in which PHILFINANCE guaranteed to return plaintiff's purchase or investment of P1,600,000.00 on March 24, 1981, plus earnings in the respective amounts of P21,911.11 and P5,158.56 on February 20, 1981, and, in the additional amounts of P24,177.78 and P5,688.89, respectively, on March 24, 1981. PHILFINANCE also delivered to the plaintiff the following post-dated checks: Check No. IBAA-10209324 for P1,600,000.00 dated March 24, 1981 (Exh. E) Check No. IBAA-11452715 for P5,688.89 dated March 24, 1981 (Exh. F), and Check No. IBAA-10209323 for P24,177.78 dated March 24, 1981 (Exh. G). However, the promissory note was never delivered to the plaintiff by PHILFINANCE on the pretext that it was allegedly in Manila, although Jose Amor Flores promised to deliver the same to the plaintiff upon its arrival from Manila. When the document still did not arrive, plaintiff's lawyer sent a letter of demand (Exh. H) on March 3, 1981, to PHILFINANCE in Makati, Metro Manila, without eliciting any reply. So, plaintiff sent two (2) telegrams (Exhs. I & J) to Philippine Shares Corporation. In its reply dated March 19, 1981 (Exh. K), Philippine Shares Corporation stated that the corporation has not issued or delivered to anyone the promissory note in question. On March 24, 1981, the plaintiff deposited in his account with the Pacific Banking Corporation, the three (3) checks (Exhs. E, F and G) issued and delivered to him by PHILFINANCE. Said checks were dishonored by the drawee bank for being drawn against insufficient funds (Exhs. E-6, F-6, and G-6). He re-deposited the same checks in his bank account but these were again dishonored for insufficient funds (Exhs. E-7, F-7 and G-7).

On the basis of these facts, the trial court ordered:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants Philippine Underwriters Finance Corporation, Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr. and Miguel Angel Caño, ordering the latter, jointly and severally, to pay the former the following:

(a) The principal amount of One Million, Six Hundred Thousand (P1,600,000.00) Pesos, representing the principal amount of the plaintiff's investment;

(b) The amount of Ten Million, Three Hundred Ninety Seven Thousand, Four Hundred Ninety Four Pesos and 03/100 (P10,397,494.03), representing the earnings which the plaintiff could have made on his investment, as of December 31, 1989, and thereafter, legal interest on the principal amount of P1,600,000.00, until fully paid;

(c) The amount of One Hundred Thousand (P100,000.00) Pesos as, and for moral damages;

(d) The amount of Fifty Thousand (P50,000.00) Pesos as, and for exemplary or corrective damages;

(e) The amount of One Hundred Thirty Seven Thousand, Two Hundred Seven Pesos and 28/100 (P137,207.28) as attorney's fees; Forty Four

Thousand, Eighteen Pesos and 33/100 (P44,018.33) as litigation expenses; and

(f) The costs of the suit.

The Counterclaims interposed by the defendant Pablo C. Carlos, Jr. in his Answer, are dismissed.^[3]

Petitioners appealed to the Court of Appeals, but their appeal (CA-G.R. CV No. 33496) was dismissed on November 27, 1991 because they did not pay the docket fees. The resolution^[4] of the Special Eleventh Division dismissing the appeal became final on December 26, 1991 and judgment was entered on April 21, 1992.

On July 31, 1992, the trial court ordered execution of its decision and, on September 17, 1992, issued the corresponding writ of execution.

In December, 1992, the bank deposits of the defendants were garnished by the sheriff. As the judgment was only partially satisfied with the sale of a Manila Golf and Country Club share belonging to Ricardo C. Silverio, Sr., the writ of execution was enforced against the other defendants, including petitioner Arturo Macapagal.

Silverio and Macapagal took two separate courses of action. On February 2, 1993, Macapagal filed through Atty. Renato J. Robles a petition for certiorari and prohibition, questioning the validity of the decision of the trial court, its order of execution and the writ of execution, while Silverio and Macapagal, through the law firm Quisumbing, Torres and Evangelista, asked the Court of Appeals to reinstate their appeal from the decision of the RTC of Cebu City and annul the writ of execution, on the ground that the dismissal of their appeal was due to the gross negligence of their former counsel.

Macapagal's petition was filed in this Court, but it was referred by the Court to the Court of Appeals, where it was docketed as CA-G.R. SP No. 30175. On March 12, 1993, the appellate court's Fourteenth Division^[5] dismissed the case. The court dismissed Macapagal's claim that he had not authorized the law office of Atty. Salva to represent him and that he only learned about the decision after the sheriff tried to enforce the writ of execution against him. The court could not believe that Macapagal did not authorize the Salva law firm to represent him considering that it had been doing so, rendering legal service to him for eight years, from July 24, 1984 up to Sept. 17, 1992, before the petition questioning Salva's authority was filed. The Court of Appeals held that the petition for *certiorari* and prohibition was barred, under the principle of *res judicata*, by its previous decision in AC-G.R. No. 04835, which upheld the validity of the service of summons on the Salva law office and the default order of the trial court.

On the other hand, in CA-G.R. CV No. 33496, Silverio's petition for the reinstatement of the appeal and annulment of the writ of execution was denied by the Special Eleventh Division of the Court of Appeals on the ground that its resolution of November 27, 1991, dismissing the appeal from the decision of the RTC of Cebu City, had become final more than a year before.