

**VILLA REY TRANSIT, INC., AND HON. JESUS P. MORFE, IN HIS
CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF
MANILA, PETITIONERS, VS. FAR EAST MOTOR CORPORATION AND
THE HONORABLE...**

G.R. No. L-31339. January 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal by certiorari from the Decision of the Court of Appeals[1] and its Resolution denying petitioner's Motion for Reconsideration of said Decision in CA-G.R. No. 43144-R entitled "Far East Motor Corporation, Petitioner, versus Hon. Jesus P. Morfe, Judge of the Court of First Instance of Manila, et al., Respondents."

On April 25, 1968, respondent Far East Motor Corporation sued petitioner Villa Rey Transit, Inc. for various sums of money before the Court of First Instance of Manila, Branch XIII.

Summons was issued to petitioner and per return of the Sheriff, the summons was served on petitioner on June 16, 1968, the sheriff certifying: "Served thru Atty. Virgilio A. Reyes, Assistant General Mgr., but refused to sign."

Claiming failure of the petitioner to file answer within the reglementary period, respondent corporation filed on August 13, 1968 an ex-parte motion to declare the petitioner in default, which was granted on August 21, 1968.

On the other hand, claiming late receipt of the summons by its main office, petitioner filed an Urgent Motion to Extend Time to Answer, which was denied on October 2, 1968, the order of denial being served on petitioner's counsel on October 7, 1968.

Pursuant to the order of default, respondent Far East Motor Corporation then presented its evidence ex-parte, and based on the said evidence, the lower court adjudicated various sums of money to the respondent Far East Motor Corporation. Copy of the decision was received by the petitioner on October 25, 1968.

On November 6, 1968, petitioner then filed a Motion to Quash Service of Summons, to Lift the Order of Default, and to Set Aside Judgment, on the following grounds:

"a. The service of summons upon defendant was not in accordance with law and therefore this Honorable Court had not acquired a valid jurisdiction over said defendant;

b. Assuming for the sake of argument only that a valid substituted service of summons was made, failure of defendant to answer within the reglementary period was due to failure of Sheriff to properly serve summons and/or due to excusable negligence on the part of defendant's employee; and

c. Considering the huge claims of plaintiff which are incorrect and against which defendant has valid and genuine defense, it is in the interest of justice and truth to lift the order of default which defendant has not received, and to set aside judgment already rendered."

Petitioner's motion was denied on November 19, 1968 and copy of the denial was received by the corporation on November 21, 1968.

Hence, on December 3, 1968, respondent Far East Motor Corporation filed a Motion for Execution of the decision. Upon receipt of its copy of the said motion, petitioner Villa Rey Transit filed a motion dated December 5, 1968 asking for reconsideration of the court's order denying its Motion to Set Aside on the following grounds: (a) the sheriff's return is null and void and hence, the court has not acquired jurisdiction over it, and (b) defendant has valid defenses which will alter the decision rendered ex-parte if the defendant is given the opportunity to file its answer and present evidence in support thereof. The motion was set for hearing on December 14, 1968.

Acting on these last two motions, the lower court on December 27, 1968 denied plaintiff's motion for execution; granted defendant's motion for reconsideration; set aside its order of November 19, 1967; quashed the service of summons; and set aside the judgment already rendered.

On the claim that the judgment had already become final and unappealable on December 9, 1968, respondent moved to reconsider the above order of December 27, 1968 but was denied.

Respondent then filed a petition for certiorari, mandamus and prohibition before the Supreme Court. However, on the ground that the remedy sought in the petition was in aid of the appellate jurisdiction of the Court of Appeals, the case was certified to the appellate court whose decision, sustaining the petition and ordering the lower court to issue the writ of execution upon the judgment, is now subject of this appeal.

Emphasis is on the jurisdictional issue of service of summons.

To recount the facts surrounding the service of summons: Sometime in June, 1968, Deputy Sheriff Salita went to petitioner's sub-station at 853 M. Earnshaw St., Sampaloc, Manila; he handed some papers to Atty. Virgilio A. Reyes, Assistant General Manager for Operations; after reading the contents of the same, and noting that they were copies of a complaint filed by Far East Motor Corporation against petitioner involving some transactions made by him with the complainant as the then president of petitioner corporation, he suggested that service of the complaint and the corresponding summons be made directly on Dr. Jose M. Villarama, the present President and General Manager, at their main office at Ricafort Street, corner Sta. Elena Street, Tondo, Manila; instead, the sheriff left the papers with one of their night tellers, Juanito Vince Cruz; due to volume and pressure of his work, Cruz forgot all about the papers; hence, the papers were delivered to their main office only on September 27, 1968.

Based on the above facts, petitioner claims that service of summons on its mere Assistant General Manager holding office at its sub-station is not a valid service; - thus, the court did not acquire jurisdiction over its person.

We find the claim untenable. Service of process on a corporation is controlled by Section 13, Rule 14 of the Revised Rules of Court, thus –

"Sec. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors."

Petitioner claims that the foregoing enumeration is exclusive and service of summons is without force and effect

unless made upon any one of them. The focus of inquiry, then is whether an Assistant General Manager for Operations may properly be within the terms "manager" or "agent".

Petitioner relies on the Litton Mills case[2] where this Court held that a branch manager (sales manager) does not come within the enumeration in Sec. 13, Rule 14 of the Revised Rules of Court, "all of whom are top officers whose duties extend generally to overall transactions of the corporation, not merely to a particular branch or department thereof."

The above case is without application here.

Atty. Virgilio A. Reyes is the Assistant General Manager, and admittedly, the former President and General Manager of the petitioner corporation. As his present title implies, Atty. Virgilio A. Reyes is not one of the lesser officers of the petitioner corporation upon whom, service of summons is not authorized by law. That he is in charge of Operations, which "includes the incoming and outgoing buses, the arrangement of schedule, the appointment of drivers and conductors, the following of highway troubles, and generally affecting the running of buses,"[3] does not make him a mere branch manager so insistently pointed out by petitioner. We, take the opposite view, for precisely, as the Assistant General Manager for Operations, he is in charge of the main bulk of the corporate business of the petitioner transit corporation. "Operations" is the main concern, if not all, of a transit corporation.

More, We find petitioner's claim that Atty. Virgilio A. Reyes, holding office at their M. Earnshaw sub-station, is not the proper person upon whom summons may be served, inconsistent with their own admission that Atty. Reyes customarily receives summons at the same sub-station in behalf of the petitioner. To quote part of petitioner's motion for reconsideration of the CFI's denial of its motion to set aside judgment: "Records will show that Atty. Reyes has been receiving summons issued in cases wherein the Rey Transit, Inc. is a defendant, before and after June 18, 1968, the alleged date when the deputy sheriff allegedly served the summons and complaint in the above case. In all these occasions, Atty. Reyes signed having received said summons and in no occasion had he refused to sign. However, in connection with the service of summons in the above case, it is not true that Atty. Reyes refused to sign. What he did was to instruct the deputy sheriff to serve the same directly to Dr. Jose M. Villarama who is the President and General Manager of the Villa Rey Transit, Inc. and having offices at the Villa Rey Transit main compound located at Ricafort (corner Sta. Elena Street), Tondo, Manila. There was reason for Atty. Reyes to make such request upon the deputy sheriff because the promissory notes (Annexes B, C, D, E, F and G to complaint) were signed by him in his former capacity as President of the Villa Rey Transit, Inc. while in other cases, the attention of Dr. Villarama may not be imperative." [4] That the transactions alleged in the complaint involved him personally is no reason for his refusal to receive this particular summons. Indeed, with more reason that he should have received the summons because as the signatory to the promissory notes, he had an interest therein.

According to jurisprudence, the rationale of all rules for service of process on corporation is that service must be made on a representative so integrated with the corporation sued as to make it a priori supposable that he will realize his responsibilities and know what he should do with any legal papers served on him.[5] Based on the particular facts of this case, service of summons upon Atty. Virgilio A. Reyes has served the purpose of the law. And as he refused to receive the summons, tender unto him was sufficient to confer jurisdiction over the petitioner.

Since petitioner failed to answer within the reglementary period, even after denial of its motion to extend time to answer, the order of default was proper. So also with the hearing on the merits ex-parte resulting in the judgment by default. The decision was appealable, and as receipt of the same by petitioner was on October 25, 1968, the

30-day appeal period commenced from that date on. On November 6, 1968, petitioner filed a Motion to Quash Service of Summons, To Lift Order of Default and To Set Aside Judgment, and from that day on, the appeal period was deemed suspended, the remaining 18 days beginning to run again upon receipt of the denial of the motion. Receipt of such denial was on November 21, 1968; hence, by mathematical computation, the 30-day appeal period expired on December 9, 1968. There being no appeal interposed by the petitioner from the judgment of default on or before December 9, 1968, the lower court lost its jurisdiction to hear on December 14, 1968 petitioner's Motion for Reconsideration dated December 5, 1968, the judgment by default having become final and executory.

Of course, petitioner insists that on December 5, 1968 it filed a Motion for Reconsideration of the order denying its Motion to Quash, Lift Order of Default and to Set Aside Judgment, taking the position that it should have suspended the period to appeal. We do not agree. The records clearly show that there were no new arguments presented against the judgment on the merits, perforce the motion is pro forma and did not suspend the running of the period to appeal.

Petitioner then insists that the above motion should be considered a petition for relief. This again is untenable. As correctly pointed out by the appellate court, a petition for relief presupposes a final and unappealable judgment. In this case, judgment has not yet become final and unappealable at the time of the filing of the motion on December 5, 1968.

WHEREFORE, the decision appealed from is affirmed. Let execution issue do the lower court's judgment by default. Costs against petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Second Division: Gatmaitan, J., ponente; Enriquez, J. & Soriano, J., concurring.

[2] *Litton Mills, Inc. vs. Werner Management Consultants, Inc., et al.*, L-34164-R, November 25, 1964.

[3] *Rollo*, p. 31.

[4] *Rollo*, pp. 67-68.

[5] 19 C.J.S., p. 995.

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