

VICTORIA ABLAZA, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS, ASSOCIATIONS OF DEMOCRATIC LABOR ORGANIZATION (ADLO) AND ITS MEMBERS, ROSA LEONARDO, VIRGINIA ESPADILLA, THELMA Y...

G.R. No. L-33906. December 21, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to declare null and void the decision, the order, and the resolution as well as any and all proceedings of the respondent Court of Industrial Relations in CIR Case No. 2794-V entitled "Association of Democratic Labor Organizations, Bernardita Oracion, et al., v. Cerisco Blackcat Trading." There are 36 workers or laborers as private respondents.

The Association of Democratic Labor Organizations (hereinafter referred to as ADLO), Bernardita Oracion, and others filed a complaint before the Court of Industrial Relations against Cerisco Blackcat Trading for salary differentials pursuant to the statutory minimum wage law, overtime pay, and reinstatement with backwages.

The records show that summons with a copy of the complaint attached thereto were served on defendant Cerisco Blackcat Trading. Subsequently, the respondent Court of Industrial Relations caused the service of the required notice of hearing upon defendant Cerisco Blackcat Trading.

Cerisco Blackcat Trading failed to file its answer or any responsive pleading within the reglementary period provided by law. Hence, the respondent Court of Industrial Relations declared Cerisco Blackcat Trading in default and private respondents ADLO, et al., were allowed to present their evidence ex-parte.

After trial, respondent Court of Industrial Relations rendered its decision, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the Chief of the Examining Division of this Court is hereby ordered to make a computation of the amount of salary differentials, overtime pay for work rendered in excess of 8 hours, Sunday premiums for work performed on Sundays and legal holidays as well as overtime compensation for work performed by petitioners for the period August 25, 1966 up to the date of their respective dismissals due to the petitioners in this case, based at P6.00 a day in accordance with the award and disposition of the Court as above stated, and upon termination to submit a report to the Court immediately for further disposition."

Acting on the following report of the Chief of the Examining Division -

"1. The total salary differentials, overtime and night time premiums still due the petitioners for their services rendered from August 25, 1966 up to their respective date of dismissals amount to TWO HUNDRED TWENTY THREE THOUSAND NINETY EIGHT AND 4/100 (P223,098.04) PESOS distributed as follows:"

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the respondent Court of Industrial Relations issued an order which reads:

"It appearing in the aforesaid Report of Examiner that the computation of the overtime compensation, night time premiums and salary differentials was based on the amount actually received by the petitioners and appearing in their testimonies incorporated in the decision and there being no objection filed thereto by respondents, let said Report of Examiner be, as it is hereby, APPROVED."

The private respondents moved for the issuance of a writ of execution which the respondent Court of Industrial Relations granted against defendant Cerisco Blackcat Trading owned and operated by petitioner Victoria Ablaza Uy and one Chuan Uy in the amount of P223,098.04 representing the money value of the private respondents' wage differentials, overtime pay for work rendered in excess of eight (8) hours, premiums for work performed on Sundays and legal holidays as well as overtime compensation for work performed by private respondents for the period August 25, 1966 up to the date of their respective dismissals in accordance with the award and disposition of the Court.

After Gilbert Lorenzo, authorized deputy sheriff of the Court of Industrial Relations levied upon petitioner Victoria Ablaza's personal properties, the latter filed an urgent petition for relief alleging inter alia - (1) that herein petitioner was completely and totally unaware of the existence of any suit for a sum of money against her as she has not been lawfully summoned and informed of any such case; (2) that Cerisco Trading is a mere trade name belonging to herein petitioner, and this tradename is not a juridical person nor entity capable of suing or being sued in any court pursuant to sections 1 and 2 of Rule 3 of the Revised Rules of Court; (3) that the jurisdictional requirement of Sections 7 and 8 of Rule 14, Rules of Court were not met as petitioner was not made a party-defendant in CIR Case No. 2794-V; (4) that petitioner was unjustifiably included in the writ of execution since she was never made a party thereto nor duly summoned as aforesaid; (5) that respondent Court of Industrial Relations never acquired jurisdiction over the person of defendant Cerisco Blackcat Trading; (6) that petitioner was never served with and thereby was never duly informed of, any orders of respondent Court of Industrial Relations declaring her in default; and (7) that petitioner was never duly served with any copy of any decision against her in this case.

The Court of Industrial Relations denied the petition for relief. A motion for reconsideration was also denied.

Petitioner Ablaza now raises the following issues in her brief:

I

WHETHER OR NOT THE RESPONDENT COURT OF INDUSTRIAL RELATIONS EVER ACQUIRED JURISDICTION OVER THE PERSON OF PETITIONER HEREIN VICTORIA ABLAZA WHO WAS NEVER IMPEADED AS A PARTY RESPONDENT IN CIR CASE NO. 2794-V.

II

WHETHER OR NOT THE MERE COMBINATION OF A TRADEMARK 'BLACKCAT' AND A BUSINESS NAME 'CERISCO TRADING' WITHOUT IMPEADING ANY NATURAL OR JURIDICAL PERSON CAN CONSTITUTE THE REAL PARTY IN INTEREST CAPABLE OF SUING OR BEING SUED IN A CIVIL ACTION AS REQUIRED UNDER THE RULES OF COURT.

III

WHETHER OR NOT A PETITION OR COMPLAINT CAN BE AMENDED ORALLY TO INCLUDE NEW CAUSES OF ACTION WITHOUT ANY FORMAL AMENDED PETITION OR COMPLAINT BEING FILED AND NO NEW SUMMONS BEING ISSUED ON THE AMENDED PETITION OR COMPLAINT.

IV

WHETHER OR NOT FRAUD AND FATAL IRREGULARITIES IN SERVICES OF SUMMONS, COURT PROCESSES AND ORDERS WHICH DEPRIVE A PARTY OF DUE NOTICE AND RIGHT TO BE HEARD CONSTITUTE VIOLATION OF DUE PROCESS OF LAW GUARANTY OF THE CONSTITUTION.

V

WHETHER OR NOT RESPONDENT COURT OF INDUSTRIAL RELATIONS COMMITTED GRAVE ABUSE OF DISCRETION OR ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN ISSUING A WRIT OF EXECUTION AGAINST PETITIONER VICTORIA ABLAZA WHO WAS NOT IMPEADED AS A PARTY RESPONDENT IN CIR CASE NO. 2794-V.

The main issue raised is jurisdiction. The petitioner maintains that since the complaint filed with the respondent court was against Cerisco Blackcat Trading as sole respondent and the body of the complaint makes no mention whatsoever of Victoria Ablaza, the petitioner was not duly served with summons.

Jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons.

Petitioner Ablaza relies on the case of *Heath v. Steamer San Nicolas* (7 Phil. 532) where we held that it is absolutely indispensable for the maintenance of a contentious action in the courts of justice to have as defendant some natural or juridical person. Petitioner argues that since the name "CERISCO TRADING" is a mere business name while "BLACKCAT" is a mere trademark, the combination CERISCO BLACKCAT TRADING is neither a natural or a juridical person, and as such, can neither sue nor be sued.

The petitioner's contentions have no merit. Section 9, Rule 14 of the Revised Rules of Court provides that when persons associated in business are sued under a common name, service may be effected upon all the defendants by serving upon any one of them or upon the person in charge of the office or place of business maintained the common name. Since petitioner Ablaza Uy and Chuan Uy were doing business under the common name Cerisco Blackcat Trading, the service of summons made upon the person in charge of the office or place of business maintained in the common name was adequate. This is specially true in this case where the plaintiffs are poor laborers who are entitled under the Constitution to State protection and who are only seeking the legitimate fruits of their employment from an employer.

The petitioner always transacted business as Cerisco Blackcat Trading. All papers, documents, products, and receipts issued by the petitioner's business bore the name Cerisco Blackcat Trading. Since the laborers were working for a firm known as Cerisco Blackcat Trading, it was natural and understandable why they should sue their employer through the common name used by the owners in their business. The controlling principle in the interpretation of procedural rules is one of liberality that they may promote their object and assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. (Section 2, Rule 1, Rules of Court.) When the rules are applied to labor cases, the interpretation must proceed in accordance with the liberal spirit of the labor laws. (See *Malate Taxicab and Garage, Inc. v. Court of Industrial Relations, et al.*, 99 Phil. 41). The Court of Industrial Relations was created as an instrument to carry out the legislative policies embodied in the Industrial Peace Act pursuant to the constitutional mandates in Section 5, Article II on social justice and Section 6, Article XIV on protection to labor, both sections in the then applicable 1935 Constitution. Without in any way depriving the employer of his legal rights, the thrust of statutes and rules governing CIR cases has been to benefit laborers and workers and avoid subjecting them to greater delays and hardships. (*Permanent Concrete Products Inc., et al., v. Frivaldo*, 109 Phil. 404).

The purpose of summons is to give notice to the defendant or respondent that an action has been commenced against him. The defendant or respondent is thus put on guard as to the demands of the plaintiffs or petitioners.

The records indicate beyond doubt that the respondent in the case before the CIR was adequately given the necessary notice and that the owners of Cerisco Blackcat Trading deliberately avoided acknowledgment of the service of summons. The officer's return at the back of the summons reads:

"On Sept. 8, 1969 a.m. the undersigned went to the given address to serve this Summon to the President/Owner/and Gen. Manager of the Cerisco Blackcat Trading, I met a certain Mr. R. Cruz (Mechanic of the respondent company) and I introduced myself as representative of the Court (CIR) and I asked the whereabouts of the president/manager/owner of the respondent company. He (R. Cruz) told me that Miss/Mrs. Ablaza is out. And also I asked him (Mr. R. Cruz) who is taking over just in case the owner/president/gen. manager is out and he told me that he is the one taking over, and I gave this Summons to him (Mr. R. Cruz) for and in behalf of the president/owner/gen. manager of the Cerisco Blackcat Trading." (Rollo, p. 68)

The officer's return annotated at the back of the Notice of Hearing reads:

"On November 13, 1969 undersigned went at Cerisco Blackcat Trading at 2956 Jose Abad Santos, Manila to serve this Notice of Hearing but nobody wants to receive. A certain Mr. Rodolfo Cruz alleged that the President and/or Manager of the company is out of the town and the incharge of said company is out of the office, he also refused to receive said notice. Undersigned left Notice of Hearing at the table inside the company in the presence of Mr. Rodolfo Cruz to be given to the President and/or Manager or the officer incharge but Mr. Rodolfo Cruz threw said notice outside the company." (Rollo, p. 69;

The officer's return annotated at the back of the notice of the order of default reads:

"1. THE PRESIDENT/MANAGER, CERISCO BLACKCAT TRADING served last November 29, 1969 undersigned have refused to enter premises people inside Establishment refused to receive said order, for the reason that said Gen. Manager is in Bulacan province, Return for further disposition of the Sala Concerned." (Rollo, p. 119)

The officer's return annotated at the back of the notice of the decision of the Court of Industrial Relations reads:

"1. THE OWNER OR GENERAL MANAGER, CERISCO BLACKCAT TRADING rec'd. by MR. ERNESTO K. CALUB on July 11, 1970, Bldg., Caretaker at J. Abad Santos Ave., Tondo." (Rollo, p. 129)

The officer's return annotated at the back of the notice of the Examiner's Report reads:

"BAILIFF'S RETURN

"DULY SERVED TO:

"1. The Owner or Manager, Cerisco Blackcat Trading, copy given to the building caretaker who refused to sign and give his name this 27th day of July, 1970.

xxx xxx xxx

"NOTE: NO LONGER STAYING AT ABAD SANTOS, TONDO, MANILA. SERVED AT ITS NEW ADDRESS, 14 CHRISTIAN ST., GRACE VILLAGE, QUEZON CITY." (Rollo, p. 134)

The officer's return annotated at the back of the order approving the examiner's report reads:

"BAILIFF'S RETURN

"Duly Served to:

"1. The owner or General Manager, Cerisco Quezon City, copy of Order given to Mr. Reyes this 2nd day of December 1970;

"2. The Owner or General Manager, Cerisco J. Abad Santos, copy of order given to Mr. Murillo this 2nd day of December 1970;" (Rollo, p. 141).

And the officer's return annotated at the back of the notice of the order approving the issuance of a writ of execution reads:

"RETURN OF SERVICE

XXX XXX XXX

"Note: the copy for the Owner & Gen. Manager of the CERISCO BLACKCAT TRADING, was returned for further disposition of the sala, on the ground that the undersigned Bailiff of this court did not allow by the Gen. Manager itself (Mrs. Ablaza), to enter inside the premises of the company, & denying that she is the Manager of the firm, but according to one of the personnel of the company she is Mrs. Ablaza, that after she read the foregoing order of the court which the undersigned tender to her (infront of the gate of the compound), threw the court processes outside the door gate of the compound and she verbally told to the undersigned they don't care about this and the Gen. Manager of the firm is not Mrs. Ablaza; This court processes was brought to them for proper service but they refused; This was served to them last December 24, 1970, December 29, 1970; & January 4, 1971;" (Rollo, p. 145).

No less than seven returns of the Sheriff clearly show that there was service of the necessary processes. It is evident from a perusal of the records of the case at bar that efforts were made to serve summons personally to the President/General Manager and/or Owner of defendant Cerisco Blackcat Trading. In fact the notice of the order approving the issuance of the writ of execution was served December 24, December 29 and January 4 or three times upon defendant Cerisco Blackcat Trading. At no time did petitioner Ablaza, owner of Cerisco, condescend to honor or respect the summons. On the contrary, she had a contemptuous regard for judicial process. At one instance, she verbally told the bailiff that "they don't care about this", after throwing the court process outside the gate of the compound. Since personal service of summons was made impossible by the refusal of the owner/general manager of the defendant company to accept the same, substituted service was availed of by the bailiff by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

In the execution of the lower court's judgment, it is natural that the persons doing business under the common name should be the ones made to answer. Victoria Ablaza cannot claim that since Cerisco Blackcat Trading is the respondent, she has no responsibility whatsoever to answer for the judgment in favor of the laborers working for her. As owner and general manager of Cerisco, Ablaza was properly bound.

The refusal to accept service of processes was due to reasons other than an apparent desire to make it difficult for the workers. As stated by the private respondents, Ablaza was the wife of Chuan Uy. The two had several children. Neither Ablaza or Chuan Uy could appear openly in business because of statutory enactments prohibiting aliens from engaging in the retail trade. Cerisco Blackcat Trading engaged in retail trade.

The other issue raised refers to the alleged inclusion of new causes of action. The petitioner's arguments in this respect have no merit.

The complaint asked Cerisco Blackcat Trading to:

- a. Pay petitioners the difference of their wages pursuant to the statutory minimum wage law;
- b. Pay overtime work performed by petitioners beyond the eight hours;
- c. Reinstatement of petitioners to their former or equivalent positions with backwages from the date of their dismissals up to the time of their actual reinstatement without loss of seniority and other privileges; and
- d. Granting petitioners such other relief which this Honorable Court may deem just and equitable under the premises.

The prayer asked for wage differentials pursuant to the statutory minimum wage law, overtime pay, reinstatement, and backwages. The payment for services rendered on Sundays or on legal holidays is necessarily included in the prayer for overtime pay beyond the eight hours. Likewise, payment for maternity leave may be deemed included in the abovesited prayer. In fact, there was no amendment to speak of in the case at bar. All that private respondents did was to introduce evidence tending to prove claims which were necessarily included in their prayer.

WHEREFORE, the instant petition for certiorari is hereby DISMISSED for lack of merit. The decision appealed from is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Plana and Relova, JJ., concur.

Teehankee, J., (Chairman), in the result.

Melencio-Herrera, J., see separate opinion concurring in the result.

Ablaza vs CIR : L-33906 : December 21, 1983 : J. Melencio-Herrera : First Division : Concurring in the Result
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CONCURRING IN THE RESULT

MELENCIO-HERRERA, J.:

I concur in the result.

The summons directed to Cerisco Blackcat Trading was defective in that it did not include petitioner as defendant in the Court below. The defect, however, could have been cured by amending the name of the defendant in the title to read "Victoria Ablaza, doing business under the name and trademark Cerisco Blackcat Trading", since the intention was to sue the owner of the business enterprise. Amendment is allowed in cases where it appears that the plaintiff intended, in fact, to act against the individual doing business rather than against the business entity which the individual was operating (ALR Fed 513, 516, 530). The ownership of Cerisco Blackcat Trading could have been verified from the proper government agency.

Nonetheless, under Section 9, Rule 14, service of summons upon the person in charge of the place of business in the common name, as was done in this case, was adequate.

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