

**GOLDEN FLAME SAWMILL, PETITIONER, VS. COURT OF APPEALS,
HON. MODESTO C. JUANSON, AS PRESIDING JUDGE OF RTC BRANCH
3 OF MANILA, AND MAXIMO B. PALARCA, RESPONDENTS.**

G.R. No. 115644. April 05, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Golden Flame Sawmill ("Sawmill") seeks reconsideration of the Resolution of the Court dated 27 July 1994 denying its Petition for Review for failure to show reversible error on the part of respondent Court of Appeals.

The background facts need to be set out in fairly extended form.

On 9 May 1991, Civil Case No. 91-57097 was instituted by private respondent Maximo B. Palarca against Captain Arturo Y. Capada in the latter's official capacity as Commander, First Coast Guard District, Philippine Coast Guard.[1] Civil Case No. 91-57097 was basically an action for recovery of personal property. In his complaint, Mr. Palarca alleged ownership over two (2) barges which had been sequestered and detained by the Coast Guard, i.e., the "Bangsi" and the "Dangsol."

Ten (10) days later, on 19 May 1991, petitioner Sawmill filed an "Urgent Motion for Intervention," in Civil Case No. 91-57097 claiming that it was owner of the two (2) barges involved.[2] On 30 May 1991, the trial court granted the Urgent Motion for Intervention.[3] Sawmill, as defendant-intervenor, filed an answer-in-intervention. It is noteworthy that defendant CG Captain Capada took the position that he was merely a formal party or forced defendant, and opted not to file an answer to the complaint.

The case was then set for pre-trial. At the pre-trial conference held on 15 October 1991, only plaintiff's (Palarca's) counsel with proper authority from his client, and defendant's (CG Captain Capada's) counsel, appeared. Neither defendant-intervenor Sawmill nor its counsel appeared. On the same day, defendant-intervenor Sawmill was declared as in default for failure "to appear despite due notice through its counsel." The trial court then ordered the ex-parte reception of plaintiff Palarca's evidence.

On 7 November 1991, the trial court rendered its decision declaring Palarca the owner of the two (2) barges.

On 15 November 1991, defendant-intervenor Sawmill and its counsel learned, for the first time, about the order of default and as well the judgment by default rendered by the trial court.

Sawmill filed on 18 November 1991 a motion for reconsideration of the order of default. The motion was denied by the trial court eleven (11) months later on 23 October 1992.

On 16 November 1992, a Petition for Certiorari was filed by Sawmill with the Court of Appeals assailing the order of default as well as the judgment by default rendered by the trial court.

On 22 January 1993, the Court of Appeals dismissed the Petition. In a Resolution dated 28 April 1994, the

appellate court denied petitioner Sawmill's motion for reconsideration.

Petitioner Sawmill then went to the Supreme Court on Petition for Review on 15 July 1994. On 27 July 1994, the Court denied this Petition for Review for failure of petitioner to show that a reversible error had been committed by the Court of Appeals. This Resolution was received by petitioner Sawmill on 12 August 1994.

As already noted, petitioner Sawmill moved for reconsideration of our Resolution of denial. The Court required private respondent Palarca to comment on Sawmill's motion for reconsideration and at the same time required petitioner Sawmill to submit a certified true copy of the "Pre-trial Order" of the respondent trial court. Sawmill complied by submitting a certified true copy of the Notice of Pre-trial dated 7 October 1991 issued by the Regional Trial Court, which was actually the document sought by this Court. On 19 October 1994, Palarca filed through counsel an "Opposition to Petitioner's Motion for Reconsideration."

Preliminarily, we note that in Sawmill's Petition for Review for Certiorari, it, on the one hand, assailed the entire proceedings had before the Regional Trial Court of Manila, Branch 3, in Civil Case No. 91-57097. Upon the other hand, Sawmill appealed the decision of the trial court on the merits of the case as well as of the ancillary matters brought before it. It appears to us that this two-pronged position of petitioner Sawmill, and the variety of unpersuasive arguments made in that connection, may be attributed to the fact that it was not only assailing the order of default, but was also, at the same time, seeking a review of the ensuing judgment against it by default. It may be recalled that petitioner Sawmill and counsel learned of both the trial court's order of default and its judgment by default on 15 November 1991[4] and thereafter assailed these before the Court of Appeals by Petition for Certiorari.

In its present Motion for Reconsideration, petitioner Sawmill has finally managed to focus its and our attention on its most important contention: that the court a quo had acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it issued an order of default against defendant-intervenor Sawmill for its failure to appear at the scheduled pre-trial conference in the Regional Trial Court. The Motion for Reconsideration states:

"This is the very crux of the matter. There was no notice sent to Petitioner directly, and there was even no separate notice sent to it through counsel. And this is evidenced by the notice of the pre-trial conference itself, x x x. One does not need to look further than this to determine whether there was any notice sent in any manner to Petitioner, whose name does not even appear on the face of the notice. The records do not show that separate notices were sent to Petitioner's counsel, one intended for the counsel and the other for the Petitioner, as in fact there was only one notice sent. In the absence of such separate notice therefore, there is in law and in fact no notice to the petitioner, and the Respondent Court committed grave abuse of discretion in so finding that there was due notice, contrary to the ruling laid down in the Taroma case it itself cited." [5] (Underscoring partly in the original and partly supplied)

Section 1 of Rule 20 of the Rules of Court reads:

"Section 1. Pre-trial mandatory. — In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider:

(a)

The possibility of an amicable settlement or of submission to arbitration;

(b)

The simplification of the issues;

(c)

The necessity or desirability of amendments to the pleadings;

(d)

The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e)

The limitation of the number of witnesses;

(f)

The advisability of a preliminary reference of issues to a commissioner;

(g)

Such other matters as may aid in the prompt disposition of the action." (Underscoring supplied)

In *Lim v. Animas*,^[6] the Court, interpreting the phrase "the court shall direct the parties and their attorneys to appear before it for a conference," held that

"x x x notice of the pre-trial must be served separately upon the party affected thereby and his counsel of record, stating therein the purpose, time and place of the pre-trial conference and requiring said party and his counsel to appear thereat. The service to the party may be made directly to him or through his counsel who shall be required to serve notice upon the party."^[7] (Underscoring supplied)

In *Taroma v. Sayo*,^[8] the mandatory requirement to serve separately notices of pre-trial upon the parties and counsel of record was amplified:

"x x x, the Court in reaffirming the ruling that notice of pre-trial must be served separately upon the party and his counsel of record, restates that while service of such notice to party may be made directly to the party, it is best that the trial courts uniformly serve such notice to party through or care of his counsel at counsel's address with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver to counsel a written authority to represent the party with power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared in default.

Thus, the notice of pre-trial stating the date, time and place thereof shall be addressed not only to counsels of record but also to the parties themselves who shall be expressly named, care of their counsel at counsels address of record. To take the present case as a model, the pre-trial notice to respondent and to counsel should read: 'Mr. Inocencio Crisostomo, defendant, c/o or through counsel, Atty. Castor Raval, Laoag City and Atty. Castor Raval, counsel for defendant, Laoag City' and should contain the express notice that counsel is charged with the obligation of notifying his client(s) (plaintiff/defendant) x x x of the date, time and place of the pre-trial and of assuring that is client(s) either appear at the pre-trial conference or deliver to him a written authority to represent his client(s) with power to compromise a case, with the warning that a party who fails to do so may be non-suited or considered as in default under Rule 20, section 2."^[9] (Underscoring partly in the original and partly supplied)

The rationale of the mandatory character of the service of separate notices of pre-trial upon (a) the parties and (b) their respective counsel of record is the recognition by the Court of the

"x x x importance of pre-trial as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, (or exploring the possibility of an amicable settlement or of submission to arbitration), and generally to do whatever may reasonably be necessary to facilitate and shorten the formal trial."^[10]

Furthermore, in *Pineda v. Court of Appeals*,^[11] the Court reasoned:

"Reason and justice ordain that the court a quo should have notified the parties in the case at bar. Otherwise, said parties without such notice would not know when to proceed or resume proceedings. With due notice of the proceedings, the fate of a party adversely affected would not be adjudged ex-parte and without due process, and he would have the opportunity of confronting the opposing party, and the paramount public interest which calls for a proper examination of the issues in any justiciable case would be subserved. x x x."

Prior to pre-trial therefore, in particular, before a party is considered non-suited or declared as in default, it must be shown that such party and his counsel were each duly served with a separate notice of pre-trial.^[12] Should an order declaring a party non-suited or as in default be issued notwithstanding failure to serve the required notice of pre-trial upon the party, or his counsel of record, or upon both, against whom the order of default is directed, the party declared in default is effectively denied his constitutional right to due process.^[13] The declaration of default without the requisite notices of pre-trial under Rule 20 of the Revised Rules of Court constitutes grave abuse of discretion.^[14] The absence, therefore, of the mandatory notices of pre-trial nullifies the order of default which suffers from a serious procedural vice. Under such circumstances, the grant of relief to the party declared in default becomes a matter of right; and the proceedings beginning from the order of default down to the default judgment itself should be considered null and void and of no effect.^[15] Thus, upon a showing that a separate notice of pre-trial was not served either upon a party or his counsel of record or upon both, the Court has consistently nullified and set aside the order of default. In addition, the Court remands the case for pre-trial and trial before the trial court, ordering the latter thereafter to render judgment accordingly.^[16] In, e.g., *Samson v. Court of Appeals*, *supra*, upon a showing that a party was not served a notice of pre-trial, the Court remanded the case for "a full-dress hearing on the merits" although the judgment by default had already been reviewed (and the petition dismissed) by the Court of Appeals.

The Notice of Pre-trial in Civil Case No. 91-57097 was addressed to, and only to, the following parties and counsel: (a) Max[imo] B. Palarca, plaintiff; (b) Atty. Felix E. Serina, counsel for plaintiff; (c) Atty. Juan Reynaldo, counsel for the Philippine Coast Guard; (d) Capt. Arturo Capada, Philippine Coast Guard; and (e) Atty. Datu Firdausi I. Y. Abbas, counsel for defendant-intervenor (herein petitioner) Sawmill.^[17] The Notice clearly shows that one Limboy Sangcoran received the Notice of Pre-trial for Atty. Abbas, counsel for defendant-intervenor. The Notice is likewise clear that no separate Notice of Pre-trial was served on defendant-intervenor Sawmill directly or through its counsel; for Sawmill was not among the listed addressees of the Notice. The patent absence of service of the Notice of Pre-trial upon defendant-intervenor Sawmill leaves the Court no other choice but to declare null and void the order of default of the court a quo as well as the proceedings beginning from that order of default up to the default judgment itself.

Moreover, we note that the Notice of Pre-trial actually sent out did not contain the express instruction required by Taroma when notice is served through or care of counsel, i.e., the express imposition upon counsel of the obligation to notify his client of the date, time and place of the pre-trial conference and to assure that his client either appear thereat or deliver to counsel a written authority to represent him with the power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared in default. In other words, the Notice of Pre-trial here fell very far short of the requirements laid down in Taroma and subsequent cases.

It seems scarcely necessary to note that the circumstance that petitioner Sawmill was defendant-intervenor rather than an original defendant in Civil Case No. 91-57097, is immaterial so far as our conclusion is concerned. Section 1 of Rule 20 of Rules of Court provides that the trial court "shall direct the parties and their attorneys to appear before it for a conference — ;" in doing so, Section 1 does not distinguish between the original parties and those who shall have been allowed to intervene by the trial court. Sawmill, having been granted leave to

intervene, was, as defendant-intervenor, as much a party to Civil Case No. 91-57097 as the original defendant therein, CG Captain Capada who, per his own admission, was merely a nominal party to the case.

In disposing of the issue of whether there was effective service of the Notice of Pre-trial on defendant--intervenor Sawmill, the Court of Appeals said:

"The Rules, however, do not require that separate notices be sent to client and to counsel. It is enough that a separate notice to the client is sent through counsel (citing *Taroma v. Sayo*, 67 SCRA 508 [1975])."

It is true enough that Section 1 of Rule 20 does not, in expressis verbis, require that separate notices be sent to client and to counsel. What *Taroma* did was to construe Section 1 of Rule 20 as requiring such separate notices to client and to counsel. *Taroma* did say that the separate notice intended for the client need not be sent directly to the client but could be sent through his counsel along, of course, with the separate notice to such counsel. What was lacking in the instant case is the separate notice to the Golden Flame Sawmill which, as already noted, was not an addressee of the Notice of Pre-trial.[18] This lack of a separate notice addressed to Sawmill was aggravated by the woefully deficient Notice which had been sent to Sawmill's counsel: that Notice did not explicitly require that counsel to inform his client of the details of the scheduled conference.

What the Court of Appeals apparently did here was to apply the general rule set out in Section 2 of Rule 13 of the Rules of Court that "notice to counsel is notice to parties." What *Taroma* and other cases in effect did was to render such general rule inapplicable to this specific case of notice of pre-trial conference and to require that separate notices of pre-trial be served on the parties and the counsel of record. Accordingly, in *Sagarino v. Pelayo*,[19] this Court said:

"We agree with the counsel of the plaintiff-appellant that notice of a pre-trial conference should be sent not only to the attorneys but also to the parties. The contention of the defendant-appellee is that notice to counsel is notice to the party, citing Section 2, Rule 13 of the Rules of Court. There is no question that under the cited Section and Rule, a notice to counsel is a notice to the party.

This Court, in a long line of decisions, has sustained this rule. This particular section is the general rule governing the filing and serving of papers and orders of courts upon parties affected thereby. However, since there is a specific provision of the Revised Rules of Court governing service of notice specifically for pre-trial conference, Section 1, Rule 20 thereof, there is no reason for applying the general rule as the court *a quo* had done." [20] (Citations omitted; emphases supplied)

The Court is not unaware of the "Affidavit of Service" dated 2 December 1994, i.e., shortly before filing of the present Motion for Reconsideration, executed by Antero S. Mariano as process server of Branch 3 of the Regional Trial Court of Manila. In that Affidavit, Mariano declared that in the official performance of his duties, he served

"2. x x x on October 8, 1991, two Notices of Pre-trial Conference set on October 15, 1991 at 8:30 A.M., x x x: one Notice for defendant-intervenor Golden Flame Sawmill Corporation c/o Atty. Datu Firdausi I.Y. Abbas, Suite 203 S. Medalla Bldg., Araneta Center, Quezon City; and another notice for said Atty. Datu Firdausi I. Y. Abbas, also at his address; and

3. that both these two separate notices were duly received at the same time on October 8, 1991, by the Law Office of said Atty. Datu Abbas at his said address."

The Affidavit obviously collides frontally with the Notice of Pre-trial, an official court document. As between the Notice of Pre-trial and the Affidavit of Mariano (a document first filed at this very late stage), we consider the Notice of Pre-trial as a much more reliable document. We note that the Notice of Pre-trial took pains expressly to indicate that notices were to be given to plaintiff Max[imo] B. Palarca and his counsel of record Atty. Serina while the same Notice did not even mention the defendant-intervenor nor name such party, although it named

(almost as an afterthought) petitioner Sawmill's attorney of record, Atty. Abbas, as an addressee of the Notice.

ACCORDINGLY, the Court Resolved to GRANT the Motion for Reconsideration and GIVE DUE COURSE to the Petition for Review. The Resolution of the Supreme Court dated 27 June 1994 is WITHDRAWN; the Decision and Resolution of the Court of Appeals dated 22 January 1993 and 28 April 1994, respectively, in CA-G.R. SP No. 29437 and the order of default of the Regional Trial Court of Manila, Branch 3 in Civil Case No. 91-57097 dated 15 October 1991, as well as subsequent proceedings and orders, including the default judgement dated 7 November 1991 are hereby SET ASIDE. The Regional Trial Court of Manila, Branch 3 is hereby ORDERED to direct the parties and their counsel of record in Civil Case No. 91-57097 to appear before it for a pre-trial conference in strict compliance with law and thereafter to proceed to trial in accordance with law.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, p. 50.

[2] Id., p. 83.

[3] Id.

[4] Rollo, p. 45.

[5] Motion for Reconsideration, Rollo, p. 99.

[6] 63 SCRA 408 (1975).

[7] That parties and their counsel should be served separate notices of pre-trial is essentially the thrust of the discussion in *Effective Pre-Trial Technique* written by Justice Josue N. Bellosillo, pp. 110-117; see also *International Harvester Macleod, Inc. v. Co Ban Ling and Sons Co.*, 25 SCRA 612 (1968); *Samson v. Court of Appeals*, 105 SCRA 781 (1981); *Barde v. Posiquit*, 164 SCRA 304 (1988).

[8] 67 SCRA 508 (1975).

[9] The Rules of Court does not provide any specific form for the notice of pre-trial. Justice Bellosillo, in *Effective Pre-Trial Technique*, supra, proposes certain matters that should be contained in a notice of pre-trial. He further provides a model "Notice of Pre-Trial Conference." See pp. 103-109.

[10] *Taroma v. Sayo*, 67 SCRA at 512, citing *Lim v. Animas*, supra.

[11] 67 SCRA 228 (1975).

[12] *Lim v. Animas*, supra.

[13] *Pineda v. Court of Appeals*, supra; see also *Loquias v. Rodriguez*, 65 SCRA 659 (1975) cited in *Effective Pre-Trial Technique*, supra, pp. 128-129.

[14] *Zenith Insurance Corp. v. Purisima*, 114 SCRA 62 (1982).

[15] *Pineda v. Court of Appeals*, supra, citing *Insurance Co. of North America v. Philippine Ports Terminal, Inc.*, 107 Phil. 626 (1960) and *Valerio v. Tan*, 97 Phil. 558 (1955).

[16] *Barde v. Posiquit*, supra; *Zenith Insurance Corporation v. Purisima*, supra; *Sagarino v. Pelayo*, 77 SCRA 402 (1977); *Lim v. Animas*, supra; *Pineda v. Court of Appeals*, supra; and *Taroma v. Sayo*, supra.

[17] Rollo, p. 106.

[18] Sagarino v. Pelayo, 77 SCRA 402 (1977).

[19] 77 SCRA 402 (1977).

[20] 77 SCRA at 407. See also Effective Pre-trial Technique, *supra*, p. 118.

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