

TOMAS G. MAPA, PETITIONER, VS. COURT OF APPEALS, JUDGE MAXIMO A. SAVELLANO, JR., REGIONAL TRIAL COURT OF MANILA, BRANCH LIII, AND LAND BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 79374. October 02, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The validity of a substituted service of summons upon the petitioner is raised as the common issue in these two (2) cases. Since identical parties are involved in both, this Court ordered their consolidation.[1]

G.R. No. 79374 involves a petition filed under Rule 45 of the Rules of Court to review the 3 June 1987 Decision of public respondent Court of Appeals in C.A.-G.R. SP No. 08535[2] denying, for lack of merit, the petition therein which sought to set aside the decision of Branch 53 of the Regional Trial Court (RTC) of Manila.

A similar petition under Rule 45 of the Rules of Court was filed in G.R. No. 82986 to review the decision of public respondent Court of Appeals, dated 20 January 1988, in C.A.-G.R. SP No. 13252.[3] The said decision set aside (a) the 4 May 1987 Order of Branch 10 of the Regional Trial Court of Manila in Civil Case No. 82-13465 reversing its earlier decision of 18 September 1983 on the ground that the herein petitioner was not validly served with summons and (b) the 16 October 1987 Order denying the motion for reconsideration of the latter.

The antecedent facts as disclosed by the records in these cases are not disputed.

High Peak Mining Exploration Corporation (hereinafter referred to as High Peak), through its duly authorized corporate officers Encarnacion C. Tittel and Juergen Tittel, borrowed various sums of money from the private respondent Land Bank of the Philippines (LBP), the latter acting as trustee of Trust Account No. 01-139. The loans are evidenced by the following Promissory Notes executed on different dates, signed by the said officers and made payable to the Trust Account:

- (1) On 23 June 1980, the sum of Five Million Pesos (P5,000,000.00) for a term of 360 days, with interest at 16% per annum and with a maturity value of P5,800,000.00, under Promissory Note (SER No. 0001);
- (2) On 14 August 1980, the sum of Three Million Pesos (P3,000,000.00) for a term of 360 days, with interest at 17% per annum and with a maturity value of P3,510,000.00, under Promissory Note (SER No. 0002); and
- (3) On 9 September 1980, the sum of Three Million Pesos (P3,000,000.00) for a term of 360 days, with interest at 17% per annum and with a maturity value of P3,510,000.00, under Promissory Note (SER No. 0003).

No security being required, none was put up by High Peak for the faithful performance of its obligations under the Promissory Notes.

These three (3) Promissory Notes expressly provide that demand and dishonor are waived by High Peak and its officers.

High Peak failed to pay the said loans. Despite the waiver of notice of demand, the LBP nevertheless sent demand letters to the former which ignored the same. The LBP was thus constrained to take legal action based on the three (3) Promissory Notes.

The first note became the subject matter of a complaint for the recovery of a sum of money with an application for a writ of preliminary attachment filed solely against High Peak. The complaint was filed on 14 July 1981 with the then Court of First Instance (now Regional Trial Court) of Manila. It was docketed therein as Civil Case No. 82-6235 and was assigned to Branch 26 thereof. The case was later renumbered as Civil Case No. 142400 when Branch 26 became Branch 53 of the Regional Trial Court of Manila. The complaint was thereafter amended to implead as additional defendants the petitioner herein, in his personal capacity and as Chairman of High Peak's Board of Directors, and the abovenamed signatories to the promissory notes. The amended complaint was admitted by the court in its Order of 16 September 1982. This is the case involved in G.R. No. 79374.

The second and third Promissory Notes, on the other hand, became the subject matter of a complaint for the recovery of a sum of money filed against High Peak, the herein petitioner in his personal capacity and as Chairman of High Peak's Board of Directors and the aforementioned signatories to the three (3) Promissory Notes. This complaint was likewise filed on 29 October 1982 with the Court of First Instance of Manila. It was docketed as Civil Case No. 82-13465 and was assigned to Branch 10 thereof. This is the case involved in G.R. No. 82986.

The amended complaint in Civil Case No. 142400 and the complaint in Civil Case No. 82-13465 both allege that the defendants could be served with summons at the Second Floor, First Midland Condominium Bldg., Gamboa St., Legaspi Village Makati, Metro Manila.

The subsequent procedural antecedents in each case are hereunder summarized.

G.R. No. 79374

(re Civil Case No. 142400)

On 2 December 1982, Deputy Sheriff Romulo A. Flores of the Office of the Provincial Sheriff filed a return of service of summons in Civil Case No. 142400, reading as follows:

“SHERIFF'S RETURN

THIS IS TO CERTIFY that on the 10th day of November, 1982 I have served copies of herein summons with complaint and annexes attached thereto issued by the Court in the above entitled case upon the defendants High Peak Mining Exploration Corporation, Tomas G. Mapa, Encarnacion C. Tittel and Juergen Tittel, thru SUSAN O. DELA TORRE, a person of suitable age and discretion working therein, who claims to be the person authorized to receive processess (sic) of this nature and who acknowledged the receipt thereof at second (sic) floor, First Midland Condominium Bldg., Gamboa Street, Legaspi Village, Makati, Metro-Manila.

WHEREFORE, said summons is hereby returned to the Honorable Court of origin DULY SERVED, for its record and information.

Pasig, Metro-Manila, November 15, 1982.”[4]

No answer having been filed by the defendants, the trial court, upon motion of the LBP, issued an order on 15 April 1983 declaring the defendants in default and ordering the LBP to present its evidence ex-parte. On 20 September 1983, said court, per Judge Maximo Savellano, Jr., rendered a decision against the defendants; the latter's liability for the amount adjudged was made joint and several. Herein petitioner, as one of the defendants below, received a copy of the decision in his residence at No. 625 N.S. Amoranto Ave., Sta. Mesa Heights,

Quezon City on 10 December 1984.

On 21 December 1984, petitioner filed a Motion to Dismiss and Set Aside Judgment[5] on the ground that service of summons upon him and High Peak was fatally defective because it was not made in accordance with law. As to him, the sheriff's return did not show that the sheriff exerted efforts to personally serve the summons; thus, substituted service pursuant to Sections 7 and 8, Rule 14 of the Rules of Court was not warranted. Petitioner additionally postulates that even granting that the substituted service was proper, the actual service upon Susan O. dela Torre cannot be considered valid because "(a) it was left not at defendant Mapa's residence and dela Torre was not residing therein, and (b) that he (Mapa) was not holding office or regular place of business at the second floor, First Midland Condominium Bldg., Gamboa St., Legaspi Village, Makati, Metro Manila;" he holds office in his residence. The motion was denied by the trial court in its Order of 10 May 1985. A motion to reconsider the same was likewise denied in the Order of 31 January 1986.

Petitioner then sought redress from the respondent Court of Appeals through a petition for certiorari against Judge Savellano and the LBP. The case was docketed as C.A.-G.R. SP No. 08535. In its decision promulgated on 3 June 1987,[6] respondent Court of Appeals denied the petition on the ground that "x x x respondent Court was right in assuming jurisdiction over the defendants Tomas G. Mapa, Encarnacion C. Tittel and Juergen Tittel who were being sued in their personal capacities, on the basis of its finding that the substituted service of summons pursuant to Section 8, Rule 14 of the Rules of Court was properly affected (sic) by Deputy Sheriff Romulo A. Flores." Respondent Court further ruled that the service of summons upon Susan O. dela Torre, an employee of the corporation, may be regarded as service upon an agent of a corporation within the meaning of Section 13 of Rule 14. Finally, it took note of the trial court's observation in the latter's Order of 10 May 1985 that since petitioner Mapa has not even assailed the merits of the court's 30 September 1983 decision, justice and equity demanded that "the same should be left undisturbed."

His motion to reconsider the adverse decision having been denied in the respondent Court's resolution of 29 July 1987, petitioner filed the instant petition on 16 September 1987.

G.R. No. 82986

(re Civil Case No. 82-13465)

The duty to serve the summons in Civil Case No. 82-13465 also fell on the shoulders of Deputy Sheriff Romulo A. Flores. On 15 November 1982, he filed his return of service which reads:

"SHERIFF'S RETURN

THIS IS TO CERTIFY that on the 10th day of November, 1982, I have served copies of herein summons with complaint and annexes attached thereto issued by the Court in the above-entitled case upon defendants High Peak Mining Exploration Corporation, Tomas G. Mapa, Encarnacion C. Tittel and Juegen (sic) Tittel, thru SUSAN O. DELA TORRE, a person of suitable age and discretion working with said defendants, who claims to be the person authorized (sic) to receive process (sic) of this nature and who acknowledged the receipt thereof at 2nd Floor, First Midland Condominium Bldg., Gamboa St., Legaspi Vill., Makati, Metro-Manila.

WHEREFORE, said summons is hereby returned to the Honorable Court of origin DULY SERVED, for its record and information.

Pasig, Metro-Manila, November 15, 1982."[7]

No answer having been filed by the defendants therein, the LBP filed a motion to declare them in default, which the trial court granted. On 18 September 1983, said court, per then Judge Eduardo R. Bengzon, handed down a

decision against the defendants. The latter were adjudged joint and severally liable for the amounts to be paid.[8]

On 14 October 1986, petitioner filed a Motion to Dismiss and Set Aside Judgment[9] on the ground that service of summons to him and the corporation was fatally defective; he reiterated the same arguments he raised in the similar motion he filed in Civil Case No. 142400. Over the LBP's opposition, the trial court, this time per Judge Josefina Cruz Rodil, issued an Order on 4 May 1987[10] partly granting the said motion by setting aside the decision because no jurisdiction was acquired over both the petitioner and High Peak. The court held that there is no showing that efforts were exerted by the sheriff to serve the summons personally upon the petitioner; the former immediately resorted to substituted service upon Susan O. dela Torre who cannot be considered a competent person in charge of the office. With respect to High Peak, Miss dela Torre, a mere employee thereof, is not one of those explicitly authorized to receive summons in behalf of a corporation under Section 13, Rule 14 of the Rules of Court. It denied, however, the motion to dismiss; instead, it allowed the petitioner "to file his answer or responsive pleading within fifteen (15) days from receipt of this Order," and directed the issuance of summons on the other defendants.[11] On 15 June 1987, the LBP filed a motion to reconsider this Order[12] alleging therein that there was substantial compliance with the rule on service of summons. The LBP further invited the trial court's attention to the 3 June 1987 decision of the Court of Appeals in the aforementioned C.A.-G.R. SP. No. 08535. Petitioner consequently filed his opposition[13] thereto; he reiterates the arguments raised in his motion to dismiss and, with respect to the aforesaid decision of the Court of Appeals, contends that since the same is not final, it does not yet control. The trial court denied the motion in its Order of 16 October 1987.[14]

Unable to accept the above orders of the trial court, the LBP filed with the Court of Appeals a special civil action for certiorari, prohibition and mandamus which was docketed therein as C.A.-G.R. SP No. 13252.

On 20 January 1988, the Court of Appeals promulgated its decision in said C.A.-G.R. SP No. 13252[15] finding the trial court to have committed grave abuse of discretion amounting to lack of jurisdiction issuing the challenged orders, and resolving as follows:

"WHEREFORE, the petition for certiorari is hereby GRANTED and the decision[16] of the respondent court dated May 4, 1987 and October 16, 1987 are hereby set aside for being contrary to law. The restraining order issued on November 16, 1987 is likewise made permanent. x x x"[17]

His motion to reconsider the said decision having been denied on 13 April 1988,[18] the petitioner filed the instant petition.

On 20 May 1988, this Court gave due course to G.R. No. 79374.[19] After the petitioner filed his reply to the private respondent's comment in G.R. No. 82986, this Court, in the Resolution of 6 March 1989, ordered the latter's consolidation with the former.[20]

The parties in these cases, particularly the private respondent, as plaintiff below, should have striven to consolidate Civil Case No. 142400 and Civil Case No. 82-13465 while they were still pending before the trial court. Both involve identical parties, similar transactions made one after the other and the same trust account of the LBP. As a matter of fact, if the filing of Civil Case No. 142400 had only been delayed by just three (3) months, there would have been no need to file more than one (1) case. Moreover, summonses upon defendants in both cases were served on the same occasion. Valuable time of the parties, the two (2) branches of the trial court and eventually even of the Court of Appeals would have been saved had the said cases been consolidated pursuant to Section 1, Rule 31 of the Rules of Court. Parties should avail of this rule both for their own and the court's advantage and benefit. The purpose or object of consolidation is precisely to avoid multiplicity of suits, guard against oppression or abuse, prevent delay, declog congested dockets, simplify the work of the trial court and save unnecessary costs or expenses; in short, the aim is to attain justice with the least expense and vexation to the

parties litigants.[21]

As stated in the exordium of this ponencia, the basic issue raised in these petitions is whether or not there was a valid substituted service of summons in both Civil Case No. 142400 and Civil Case No. 82-13465. Both cases are unquestionably actions in personam. Jurisdiction over the petitioner, as defendant therein, can therefore be acquired either by his voluntary submission to such jurisdiction, as when he appears in court, or by service of summons upon him. Voluntary appearance is equivalent to service of summons;[22] in fact, it even cures the defect of summons.[23] Since petitioner did not voluntarily submit to the jurisdiction of the trial court in both cases, personal service became imperative.

Section 7, Rule 14 of the Rules of Court explicitly requires personal service of summons which is accomplished “by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him.” However, if personal service cannot be effected within a reasonable time, substituted service, as provided for in Section 8 of the abovementioned Rule 14, may suffice:

“SEC. 8. Substituted service. -- If the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.”

This provision is a reproduction of Section 8, Rule 7 of the 1940 Rules of Court except that, inter alia, the word “promptly” in the latter was changed to “within a reasonable time” in the former. Of course, “within a reasonable time” contemplates a period of time longer than that demarcated by the word “prompt”, and presupposes that a prior attempt at personal service, within a justifiable time frame as would be necessary to bring the defendant within the jurisdiction of the court, had failed.

It is not shown when the summonses in Civil Cases Nos. 142400 and 82-13465 were actually issued; what is clear to this Court is that the amended complaint in the first case was admitted by the trial court on 16 September 1982, while the complaint in Civil Case No. 82-13465 was filed on 29 October 1982. While the separate Sheriff's returns indicate that the summonses in both cases were served on 10 November 1982, these returns do not show that prior attempts at personal service were made by the Sheriff and that such attempts had failed, prompting the latter to resort to substituted service.

In *Keister vs. Navarro*,[24] this Court described how the impossibility of personal service should be shown:

“Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service (I Moran, Comments on the Rules of Court, 1970 Ed., p. 444). This is necessary because substituted service is in derogation of the usual method of service. It has been held that this method of service is ‘in derogation of the common law’; it is a method extraordinary in character, and hence may be ‘used only as prescribed and in the circumstances authorized by statute.’ x x x (72 C.J.S. 1053).”

The proof of service alluded to is the return required by Section 6 of Rule 14 which reads:

“SEC. 6. Return. -- When the service has been completed, the server shall give notice thereof, by registered mail, to the plaintiff or his counsel, and shall return the summons to the clerk who issued it, accompanied with the proof of service.”

In *Busuego vs. Court of Appeals*,[25] this Court also succinctly expressed how such impossibility is to be shown. Thus:

“x x x Perusal, however, of the sheriff's return reveals that the sheriff failed to specify therein what prior

efforts if any, had been exerted to serve summons upon the other defendants personally within a reasonable period of time, and the lack of success of such efforts, before proceeding to substituted service. x x x”

As earlier adverted to, the sheriff's returns in Civil Cases Nos. 142400 and 82-13465 are patently wanting in particulars that would justify the substituted service. Accordingly, it is fatally flawed and defective; on that basis alone, therefore, the trial court acquired no jurisdiction over the person of the petitioner.

It must nevertheless be emphasized that the absence in the sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Proof of prior attempts at personal service may be submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service. While the sheriff's return carries with it the presumption, albeit disputable, of regularity in the sense that *inter alia*, the entries therein are deemed correct, it does not necessarily follow that an act done in relation to the official duty for which the return is made was not done simply because it is not disclosed therein. Besides, the sheriff's neglect in making such a disclosure should not unduly prejudice the plaintiff if what was undisclosed was in fact done. Unfortunately in these instant cases, the private respondent failed to present evidence during the hearings of the petitioner's separate motions to dismiss and set aside judgment to prove that substituted service of summons was indeed effected in strict compliance with Section 8, Rule 14 of the Rules of Court. During such hearings, the private respondent could also have presented evidence to show that the petitioner did in fact receive from Susan O. dela Torre the summonses, together with copies of the complaints, in both cases. If indeed the petitioner received the same, the requirement of due process would have been complied with. Thus, in *Boticano vs. Chu*,^[26] this Court had the occasion to state:

“In the case at bar, there is no question that summons was timely issued and received by private respondent. In fact, he never denied actual receipt of such summons but confined himself to the argument that the Sheriff should prove that personal service was first made before resorting to substituted service.

This brings to the fore the question of procedural due process. In *Montalban vs. Maximo* (22 SCRA 1077 [1968]) the Court ruled that ‘The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.’

Indeed, such construction is but fair, and in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction desired by the defendant. (*Ibid.*, p. 1078).”

On the same matter, *Moran*^[27] has this to say:

“Irregularities of this kind may, however, be cured by proof that the copies have actually been delivered to the defendant, which is equivalent to personal service.”

While in his separate motions to dismiss and set aside judgment in the two (2) cases filed before the trial court and annexed to his pleadings in these petitions, petitioner never alleged that he did not in fact receive the summonses, such circumstance by itself cannot warrant the conclusion that he actually received from Susan dela Torre the said summonses and copies of the complaints. In the absence of a categorical admission similar to that made in *Boticano vs. Chu*, no such inference to the contrary could be drawn. It was thus incumbent upon the private respondent to prove that Susan dela Torre delivered to the petitioner copies of both the summonses and the complaints.

The conclusion then is inevitable that neither a valid personal nor substituted service of summons in Civil Cases Nos. 142400 and 82-13465 had been effected on the petitioner.

However, Branch 10 of the RTC of Manila gravely erred when, in its Order of 4 May 1987, it set aside the decision of 18 September 1983 because it was also of the opinion that there was no valid service of summons on High Peak and the other defendants. It entirely forgot that it was only the petitioner herein who filed a motion to dismiss and set aside the judgment. For reasons which remain undisclosed, petitioner did not include his co-defendants in the said motion. In any event, the validity of the service of summonses on Encarnacion Tittel and Juergen Tittel has not been raised in issue; moreover, based on the sheriff's return of service in said case, this Court is satisfied that there was a valid service of summons on High Peak. Section 13, Rule 14 of the Rules of Court provides for the manner in which service of summons upon a private domestic corporation shall be made. It reads:

“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.”

The rationale for the above rule is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such a person will know what to do with the legal papers served on him. In other words, the rule is meant to bring home to the corporation notice of the filing of the action.[28]

The summonses for High Peak in Civil Cases Nos. 142400 and 82-13465 were received by Susan O. dela Torre who is described in the separate sheriff's returns as “a person of suitable age and discretion working therein, who claims to be the person authorized to receive processess (sic) of this nature and who acknowledged the receipt thereof at second (sic) floor, First Midland Condominium Bldg., Gamboa Street, Legaspi Village, Makati, Metro Manila.” In his separate motions to dismiss, while petitioner categorically admits that this Susan O. dela Torre is an employee of the corporation, he does not disclose her specific duties and responsibilities. He does not even deny the statement, made in the said returns, that Susan is “authorized to receive processess (sic) of this nature.” Until rebutted by competent evidence, these returns would have to stand in the meantime for they enjoy the presumption of regularity. Susan O. dela Torre may thus be deemed an agent of High Peak for purposes of the aforesaid Section 13 of Rule 14. It is then logical to presume that she delivered the copies of the summonses and complaints to the corporation, considering especially the fact that she was working in the office of the said corporation as indicated in the complaints. This latter presumption has not likewise been rebutted. Accordingly, even if Miss dela Torre may not strictly be considered as the proper agent for purposes of the aforesaid Section 13, there was, nonetheless, substantial compliance therewith. In *G&G Trading Corporation vs. Court of Appeals*,[29] this Court stated:

“Although it may be true that the service of summons was made on a person not authorized to receive the same in behalf of the petitioner, nevertheless since it appears that the summons and complaint were in fact received by the corporation, through its said clerk, the Court finds that there was substantial compliance with the rule on service of summons. Indeed the purpose of said rule as above stated to assure service of summons on the corporation had thereby been attained. The need for speedy justice must prevail over a technicality.”

One final word. As stated earlier, the three (3) promissory notes involving, the original amounts of P5,000,000.00, P3,000,000.00 and P3,000,000.00, or a total of P11,000,000.00, were to be released as loans from a Trust Account of the LBP unsecured by mortgage or any other security. This Court is unable to understand how Eleven Million Pesos -- an enormous amount -- can be so easily released without any form of security. Unless allowed by the Trust Account itself or the rules and regulations of the LBP, the transactions appear to be highly questionable. In this regard, since private respondent LBP is a government-owned institution, an inquiry by appropriate agencies of the government is in order to determine who were responsible for the approval of said loans.

WHEREFORE, subject to the modifications as above indicated, the instant petitions are hereby partly GRANTED.

The decision of respondent Court of Appeals of 3 June 1987 in C.A.-G.R. SP No. 08535, subject of G.R. No. 79374, is AFFIRMED in all respects except insofar as it sustains the ruling of the trial court in Civil Case No. 142400 that the petitioner was validly served with summons in said case; the Decision of 20 September 1983 of Branch 53 of the Regional Trial Court of Manila in Civil Case No. 142400 (formerly R-82-6235) stands as to the other defendants but is hereby SET ASIDE as against the petitioner, and its Orders of 10 May 1985 and 31 January 1986 are accordingly MODIFIED. Said court shall cause alias summons to be served on the petitioner.

The Decision of respondent Court of Appeals of 20 January 1988 in C.A.-G.R. SP No. 13252, subject of G.R. No. 82986, is AFFIRMED in all respects except insofar as the petitioner is concerned. The Decision of 18 September 1983 of Branch 10 of the Regional Trial Court of Manila in said Civil Case No. 82-13465 stands as against the other defendants therein but is hereby SET ASIDE as against the petitioner, and the Orders therein of 4 May 1987 and 16 October 1987 are thus MODIFIED accordingly.

A separate trial is hereby ordered against the petitioner in Civil Case No. 142400 and Civil Case No. 82-13465, for which purpose the latter shall be consolidated with the former.

No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

[1] Rollo (G.R. No. 82986), 74.

[2] Per Associate Justice Arturo B. Buena, concurred in by Associate Justices Florelia Castro-Bartolome and Eduardo R. Bengzon; Rollo (G.R. No. 79374), 17-25.

[3] Per Associate Justice Justo P. Torres, Jr., concurred in by Associate Justices Bienvenido C. Ejercito and Oscar M. Herrera; Rollo (G.R. No. 82986), 57-66.

[4] Rollo of C.A.-G.R. SP No. 08535, 34.

[5] Rollo of C.A.-G.R. SP No. 08535, 35-38.

[6] Rollo (G.R. No. 79374), 17-25.

[7] Rollo (G.R. No. 82986), 23.

[8] Id., 24-27.

[9] Rollo (G.R. No. 82986), 28-31.

[10] Id., 32-34.

[11] Id., 34.

[12] Id., 35-45.

[13] Rollo, (G.R. No. 82986), 46-52.

[14] Id., 53-55.

[15] Id., 57-66.

[16] Should be order.

[17] Op. cit., 66.

[18] Rollo (G.R. No. 82986), 68.

[19] Rollo (G.R. No. 79374), 49.

[20] Op. cit., 116.

[21] Cojuangco, Jr. vs. Court of Appeals, 203 SCRA 619 [1991], citing 1 C.J.S., 1343.

[22] Section 23, Rule 14, Rules of Court.

[23] Infante vs. Toledo, 44 Phil. 834 [1918]; Republic vs. Ker & Co., 18 SCRA 207 [1966]; Aguilos vs. Sepulveda, 53 SCRA 269 [1973]; J.M. Tuason & Co. vs. Estabillo, 62 SCRA 1 [1975]; Boticano vs. Chu, 148 SCRA 541 [1987]; Busuego vs. Court of Appeals, 151 SCRA, 376 [1987].

[24] 77 SCRA 209, 215 [1977]; see also Paluwagan ng Bayan Savings Bank vs. King, 172 SCRA 60 [1989].

[25] Supra., 383-384.

[26] Supra.

[27] MORAN, M.V., Comments on the Rules of Court, vol. 1, 1979 ed., 444.

[28] Delta Motor Sales Corp. vs. Mangosing, 70 SCRA 598 [1976]; Villa Rey Transit, Inc. vs. Far East Motor Corp., 81 SCRA 298 [1978] citing 19 C.J.S. 995; ATM Trucking Inc. vs. Buencamino, 124 SCRA 434 [1983]; Far Corporation vs. Francisco, 146 SCRA 197 [1986]; G&G Trading Corp. vs. Court of Appeals, 158 SCRA 466 [1988]; Lee vs. Court of Appeals, 205 SCRA 752 [1992].

[29] Supra.; see also Rebolledo vs. Court of Appeals, 170 SCRA 800 [1989].

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