

BANCO DO BRASIL, PETITIONER, VS. THE COURT OF APPEALS, HON. ARSENIO M. GONONG, AND CESAR S. URBINO, SR., RESPONDENTS.*G.R. Nos. 121576-78. June 16, 2000*

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-121576-78/>**DE LEON, JR., J.:**

Before us is a petition for review on certiorari of the Decision[1] and the Resolution[2] of the Court of Appeals[3] dated July 19, 1993 and August 15, 1995, respectively, which reinstated the entire Decision[4] dated February 18, 1991 of the Regional Trial Court of Manila, Branch 8, holding, among others, petitioner Banco do Brasil liable to private respondent Cesar Urbino, Sr. for damages amounting to \$300,000.00.[5]

At the outset, let us state that this case should have been consolidated with the recently decided case of Vlason Enterprises Corporation v. Court of Appeals and Duraproof Services, represented by its General Manager, Cesar Urbino Sr.[6], for these two (2) cases involved the same material antecedents, though the main issue proffered in the present petition vary with the Vlason case.

The material antecedents, as quoted from the Vlason[7] case, are:

Poro Point Shipping Services, then acting as the local agent of Omega Sea Transport Company of Honduras & Panama, a Panamanian Company (hereafter referred to as Omega), requested permission for its vessel M/V Star Ace, which had engine trouble, to unload its cargo and to store it at the Philippine Ports Authority (PPA) compound in San Fernando, La Union while awaiting transshipment to Hongkong. The request was approved by the Bureau of Customs.[8] Despite the approval, the customs personnel boarded the vessel when it docked on January 7, 1989, on suspicion that it was the hijacked M/V Silver Med owned by Med Line Philippines Co., and that its cargo would be smuggled into the country.[9] The district customs collector seized said vessel and its cargo pursuant to Section 2301, Tariff and Customs Code. A notice of hearing of SFLU Seizure Identification No. 3-89 was served on its consignee, Singkong Trading Co. of Hongkong, and its shipper, Dusit International Co., Ltd. of Thailand.

While seizure proceedings were ongoing, La Union was hit by three typhoons, and the vessel ran aground and was abandoned. On June 8, 1989, its authorized representative, Frank Cadacio, entered into salvage agreement with private respondent to secure and repair the vessel at the agreed consideration of \$1 million and "fifty percent (50%) [of] the cargo after all expenses, cost and taxes." [10]

Finding that no fraud was committed, the District Collector of Customs, Aurelio M. Quiray, lifted the warrant of seizure on July 1989.[11] However, in a Second Indorsement dated November 11, 1989, then Customs Commissioner Salvador M. Mison declined to issue a clearance for Quiray's Decision; instead, he forfeited the vessel and its cargo in accordance with Section 2530 of the Tariff and Customs Code.[12] Accordingly, acting District Collector of Customs John S. Sy issued a Decision decreeing the forfeiture and the sale of the cargo in favor of the government.[13]

To enforce its preferred salvor's lien, herein Private Respondent Duraproof Services filed with the Regional Trial Court of Manila a Petition for Certiorari, Prohibition and Mandamus[14] assailing the actions of

Commissioner Mison and District Collector Sy. Also impleaded as respondents were PPA Representative Silverio Mangaoang and Med Line Philippines, Inc.

On January 10, 1989, private respondent amended its Petition[15] to include former District Collector Quiray; PPA Port Manager Adolfo Ll. Amor, Jr.; x Vlasen Enterprises as represented by its president, Vicente Anglionto; Singkong Trading Company as represented by Atty. Eddie Tamondong; Banco Du Brasil; Dusit International Co.; Thai-Nan Enterprises Ltd., and Thai-United Trading Co., Ltd.[16] x x x

Summonses for the amended Petition were served on Atty. Joseph Capuyan for Med Line Philippines: Anglionto (through his secretary, Betty Bebero), Atty. Tamondong and Commissioner Mison.[17] Upon motion of the private respondent, the trial court allowed summons by publication to be served upon defendants who were not residents and had no direct representative in the country.[18]

On January 29, 1990, private respondent moved to declare respondents in default, but the trial court denied the motion in its February 23, 1990 Order[19], because Mangaoang and Amor had jointly filed a Motion to Dismiss, while Mison and Med Line had moved separately for an extension to file a similar motion.[20] Later it rendered an Order dated July 2, 1990, giving due course to the motions to dismiss filed by Mangaoang and Amor on the ground of *litis pendentia*, and by the commissioner and district collector of customs on the ground of lack of jurisdiction.[21] In another Order, the trial court dismissed the action against Med Line Philippines on the ground of *litis pendentia*. [22]

On two other occasions, private respondent again moved to declare the following in default: [Vlasen], Quiray, Sy and Mison on March 26, 1990;[23] and Banco [do] Bra[s]il, Dusit International Co., Inc., Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd. on August 24, 1990.[24] There is no record, however, that the trial court acted upon the motions. On September 18, 1990, [private respondent] filed another Motion for leave to amend the petition,[25] alleging that its counsel failed to include "necessary and/or indispensable parties": Omega represented by Cadacio; and M/V Star Ace represented by Capt. Nahon Rada, relief captain. Aside from impleading these additional respondents, private respondent also alleged in the Second (actually, third) Amended Petition[26] that the owners of the vessel intended to transfer and alienate their rights and interest over the vessel and its cargo, to the detriment of the private respondent.

The trial court granted leave to private respondent to amend its Petition, but only to exclude the customs commissioner and the district collector.[27] Instead, private respondent filed the "Second Amended Petition with Supplemental Petition" against Singkong Trading Company; and Omega and M/V Star Ace,[28] to which Cadacio and Rada filed a Joint Answer.[29]

Declared in default in an Order issued by the trial court on January 23, 1991, were the following: Singkong Trading Co., Commissioner Mison, M/V Star Ace and Omega.[30] Private respondent filed, and the trial court granted, an *ex parte* Motion to present evidence against the defaulting respondents.[31] Only private respondent, Atty. Tamondong, Commissioner Mison, Omega and M/V Star Ace appeared in the next pretrial hearing; thus, the trial court declared the other respondents in default and allowed private respondent to present evidence against them.[32] Cesar Urbino, general manager of private respondent, testified and adduced evidence against the other respondents, x x x.[33]

On December 29, 1990, private respondent and Rada, representing Omega, entered into a Memorandum of Agreement stipulating that Rada would write and notify Omega regarding the demand for salvage fees of private respondent; and that if Rada did not receive any instruction from his principal, he would assign the vessel in favor of the salvor.[34]

On February 18, 1991, the trial court disposed as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, based on the allegations, prayer and evidence adduced, both testimonial and documentary, the Court is convinced, that, indeed, defendants/respondents are liable to

[private respondent] in the amount as prayed for in the petition for which it renders judgment as follows:

1. Respondent M/V Star Ace, represented by Capt. Nahum Rada, [r]elief [c]aptain of the vessel and Omega Sea Transport Company, Inc., represented by Frank Cadacio[,] is ordered to refrain from alienating or [transferring] the vessel M/V Star Ace to any third parties;
2. Singkong Trading Company to pay the following:
 - a. Taxes due the government;
 - b. Salvage fees on the vessel in the amount of \$1,000,000.00 based on xxx Lloyd's Standard Form of Salvage Agreement;
 - c. Preservation, securing and guarding fees on the vessel in the amount of \$225,000.00;
 - d. Maintenance fees in the amount of P2,685,000.00;
 - e. Salaries of the crew from August 16, 1989 to December 1989 in the amount of \$43,000.00 and unpaid salaries from January 1990 up to the present;
 - f. Attorney's fees in the amount of P656,000.00;
3. [Vlason] Enterprises to pay [private respondent] in the amount of P3,000,000.00 for damages;
4. Banco [Du] Brasil to pay [private respondent] in the amount of \$300,000.00 in damages;[35] and finally,
5. Costs of [s]uit."

Subsequently, upon the motion of Omega, Singkong Trading Co., and private respondent, the trial court approved a Compromise Agreement[36] among the movants, reducing by 20 percent the amounts adjudged. For their part, respondents-movants agreed not to appeal the Decision.[37] On March 8, 1991, private respondent moved for the execution of judgment, claiming that the trial court Decision had already become final and executory. The Motion was granted and a Writ of Execution was issued. To satisfy the Decision, Sheriffs Jorge Victorino, Amado Sevilla and Dionisio Camañon were deputized on March 13, 1991 to levy and to sell on execution the defendants vessel and personal property.

x x x

On March 18, 1991, the Bureau of Customs also filed an ex parte Motion to recall the execution, and to quash the notice of levy and the sale on execution. Despite this Motion, the auction sale was conducted on March 21, 1991 by Sheriff Camañon, with private respondent submitting the winning bid. The trial court ordered the deputy sheriffs to cease and desist from implementing the Writ of Execution and from levying on the personal property of the defendants. Nevertheless, Sheriff Camañon issued the corresponding Certificate of Sale on March 27, 1991.

On April 10, 1991, petitioner Banco do Brasil filed, by special appearance, an Urgent Motion to Vacate Judgement and to Dismiss Case[38] on the ground that the February 18, 1991 Decision of the trial court is void with respect to it for having been rendered without validly acquiring jurisdiction over the person of Banco do Brasil. Petitioner subsequently amended its petition[39] to specifically aver that its special appearance is solely for the purpose of questioning the Court's exercise of personal jurisdiction.

On May 20, 1991, the trial court issued an Order[40] acting favorably on petitioner's motion and set aside as against petitioner the decision dated February 18, 1991 for having been rendered without jurisdiction over Banco do Brasil's person. Private respondent sought reconsideration[41] of the Order dated May 20, 1991. However, the trial court in an Order[42] dated June 21, 1991 denied said motion.

Meanwhile, a certiorari petition[43] was filed by private respondent before public respondent Court of Appeals seeking to nullify the cease and desist Order dated April 5, 1991 issued by Judge Arsenio M. Gonong. Two (2) more separate petitions for certiorari were subsequently filed by private respondent. The second petition[44] sought to nullify the Order[45] dated June 26, 1992 setting aside the Deputy Sheriff's return dated April 1, 1991 as well as the certificate of sale issued by Deputy Sheriff Camañgon. The third petition[46] sought to nullify the Order dated October 5, 1992 of the Court of Tax Appeals directing the Commissioner of Customs to place Bureau of Customs and PNP officers and guards to secure the M/V Star Ace and its cargoes, make inventory of the goods stored in the premises as indicated to belong to the private respondent. Likewise challenged was the Order dated August 17, 1992 authorizing the sale of M/V Star Ace and its cargoes.

These three (3) petitions were consolidated and on July 19, 1993, the appellate court rendered its Decision[47] granting private respondent's petitions, thereby nullifying and setting aside the disputed orders and effectively "giving way to the entire [decision dated February 18, 1991 of the x x x Regional Trial Court of Manila, Branch 8, in Civil Case No. 89-51451 which remains valid, final and executory, if not yet wholly executed.]"[48]

Private respondent Urbino, Vlason Enterprises and petitioner Banco do Brasil filed separate motions for reconsideration. For its part, petitioner Banco do Brasil sought reconsideration, insofar as its liability for damages, on the ground that there was no valid service of summons as service was on the wrong party - the ambassador of Brazil. Hence, it argued, the trial court did not acquire jurisdiction over petitioner Banco do Brasil.[49] Nonetheless, the appellate court denied the motions for reconsideration in its Resolution[50] dated August 15, 1995.

Hence, the instant petition.

Petitioner Banco do Brasil takes exception to the appellate court's declaration that the suit below is in rem, not in personam,[51] thus, service of summons by publication was sufficient for the court to acquire jurisdiction over the person of petitioner Banco do Brasil, and thereby liable to private respondent Cesar Urbino for damages claimed, amounting to \$300,000.00. Petitioner further challenges the finding that the February 18, 1991 decision of the trial court was already final and thus, cannot be modified or assailed.[52]

Petitioner avers that the action filed against it is an action for damages, as such it is an action in personam which requires personal service of summons be made upon it for the court to acquire jurisdiction over it. However, inasmuch as petitioner Banco do Brasil is a non-resident foreign corporation, not engaged in business in the Philippines, unless it has property located in the Philippines which may be attached to convert the action into an action in rem, the court cannot acquire jurisdiction over it in respect of an action in personam.

The petition bears merit, thus the same should be as it is hereby granted.

First. When the defendant is a nonresident and he is not found in the country, summons may be served extraterritorially in accordance with Rule 14, Section 17[53] of the Rules of Court. Under this provision, there are only four (4) instances when extraterritorial service of summons is proper, namely: "(1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is property, within the Philippines, in which the defendant claims a lien or interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines." [54] In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[55]

Clear from the foregoing, extrajudicial service of summons apply only where the action is in rem, an action

against the thing itself instead of against the person, or in an action quasi in rem, where an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or loan burdening the property. This is so inasmuch as, in in rem and quasi in rem actions, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res.[56]

However, where the action is in personam, one brought against a person on the basis of his personal liability, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. When the defendant is a non-resident, personal service of summons within the state is essential to the acquisition of jurisdiction over the person.[57] This cannot be done, however, if the defendant is not physically present in the country, and thus, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him.[58]

In the instant case, private respondent's suit against petitioner is premised on petitioner's being one of the claimants of the subject vessel M/V Star Ace.[59] Thus, it can be said that private respondent initially sought only to exclude petitioner from claiming interest over the subject vessel M/V Star Ace. However, private respondent testified during the presentation of evidence that, for being a nuisance defendant, petitioner caused irreparable damage to private respondent in the amount of \$300,000.00.[60] Therefore, while the action is in rem, by claiming damages, the relief demanded went beyond the res and sought a relief totally alien to the action.

It must be stressed that any relief granted in rem or quasi in rem actions must be confined to the res, and the court cannot lawfully render a personal judgment against the defendant.[61] Clearly, the publication of summons effected by private respondent is invalid and ineffective for the trial court to acquire jurisdiction over the person of petitioner, since by seeking to recover damages from petitioner for the alleged commission of an injury to his person or property[62] caused by petitioner's being a nuisance defendant, private respondent's action became in personam. Bearing in mind the in personam nature of the action, personal or, if not possible, substituted service of summons on petitioner, and not extraterritorial service, is necessary to confer jurisdiction over the person of petitioner and validly hold it liable to private respondent for damages. Thus, the trial court had no jurisdiction to award damages amounting to \$300,000.00 in favor of private respondent and as against herein petitioner.

Second. We settled the issue of finality of the trial court's decision dated February 18, 1991 in the Vlason case, wherein we stated that, considering the admiralty case involved multiple defendants, "each defendant had a different period within which to appeal, depending on the date of receipt of decision." [63] Only upon the lapse of the reglementary period to appeal, with no appeal perfected within such period, does the decision become final and executory.[64]

In the case of petitioner, its Motion to Vacate Judgment and to Dismiss Case was filed on April 10, 1991, only six (6) days after it learned of the existence of the case upon being informed by the Embassy of the Federative Republic of Brazil in the Philippines, on April 4, 1991, of the February 18, 1991 decision.[65] Thus, in the absence of any evidence on the date of receipt of decision, other than the alleged April 4, 1991 date when petitioner learned of the decision, the February 18, 1991 decision of the trial court cannot be said to have attained finality as regards the petitioner.

WHEREFORE, the subject petition is hereby GRANTED. The Decision and the Resolution of the Court of Appeals dated July 19, 1993 and August 15, 1995, respectively, in CA-G.R. SP Nos. 24669, 28387 and 29317 are hereby REVERSED and SET ASIDE insofar as they affect petitioner Banco do Brasil. The Order dated May 20, 1991 of the Regional Trial Court of Manila, Branch 8 in Civil Case No. 89-51451 is REINSTATED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Jainal D. Rasul and concurred in by Associate Justices Segundino G. Chua and Consuelo Ynares-Santiago, now Associate Justice of the Supreme Court, in CA-G.R. S.P. Nos. 24669, 28387 & 29317, Rollo, pp. 33-47.

[2] *Id.*, pp. 49-53.

[3] Former Special Eighth Division.

[4] Penned by Judge Arsenio M. Gonong, Civil Case No. 89-51451, Records, Vol. 2, pp. 517-528.

[5] The Appellate Court erroneously declared in its decision that the amount of P300,000.00 was awarded by the trial court, Rollo, p. 36.

[6] G.R. Nos. 121662-64, July 6, 1999, Third Division, penned by Associate Justice Artemio V. Panganiban and concurred in by Associate Justices Jose C. Vitug, Fidel P. Purisima, and Minerva P. Gonzaga-Reyes.

[7] Decision in G.R. Nos. 121662-64, pp. 3-13.

[8] Records, Vol. 1, pp. 27-31.

[9] Records, Vol. 1, p. 32.

[10] Records, Vol. 1, pp. 36-39.

[11] Decision dated July 17, 1989, in SFLU Seizure Identification No. 3-89; Records, Vol. 1, pp. 54-68.

[12] 2nd Indorsement dated November 1989; Records, Vol. 1, pp. 70-71.

[13] Decision dated November 17, 1989, Records, Vol. 1, pp. 74-86.

[14] Docketed as Civil Case No. 89-51451 and raffled to Branch 8; Records, Vol. 1, pp. 1-26.

[15] *Ibid.*, pp. 122-145.

[16] Amended Petition, *id.*, pp. 122 & 128-129.

[17] Sheriff's Return, *id.*, pp. 160-164 & 171.

[18] *Id.*, pp. 153-156.

[19] *Id.*, pp. 214-215.

[20] Eventually, both separately filed their motions to dismiss.

[21] Records, Vol. 1, pp. 325-326.

[22] Order dated September 10, 1990; Records, Vol. 2, p. 359.

[23] Records, Vol. 1, pp. 237-238.

[24] *Ibid.*, pp. 351-352.

[25] Records, Vol. 2, pp. 370-371.

- [26] Motion for Leave to Admit Second Amended Petition and Supplemental Petition, *ibid.*, p. 370; Second Amended Petition with Supplemental Petition, *ibid.*, pp. 372-398.
- [27] Order dated September 28, 1990, Records, Vol. 2, p. 407.
- [28] Records, Vol. 2, pp. 414-415.
- [29] *Ibid.*, pp. 425-288.
- [30] *Id.*, p. 506.
- [31] Order dated December 10, 1990, *id.*, p. 492.
- [32] Order dated January 23, 1991, Records, Vol. 2, p. 506. The records (pp. 493-495), however, show that only Duraproof Service, Singkong Trading and M/V Star Ace were served summons.
- [33] RTC Decision, p. 7; Rollo, p. 92; penned by Judge Arsenio M. Gonong.
- [34] Memorandum of Agreement, *id.*, pp. 511-512.
- [35] Italics supplied.
- [36] Records, Vol. 2, pp. 535-538.
- [37] Order dated March 6, 1991, *ibid.*, pp. 539-541. Private respondent entered into two separate compromise agreements with Singkong Trading Co. (*id.*, pp. 535-536) and another with Omega (*id.*, pp. 537-538). Both agreements were dated March 4, 1991.
- [38] Rollo, pp. 67-73.
- [39] Rollo, pp. 74-80.
- [40] Rollo, pp. 81-82.
- [41] Records, Vol. 3, pp. 103-105.
- [42] Rollo, p. 83.
- [43] Docketed as CA-G.R. SP No. 24669.
- [44] Docketed as CA-G.R. SP No. 28387.
- [45] Penned by Judge Bernardo P. Pardo, then Executive Judge, and now Associate Justice of the Supreme Court.
- [46] Docketed as CA-G.R. SP No. 29317.
- [47] See Note 1, *supra*.
- [48] Rollo, p. 46.
- [49] Rollo, pp. 107.
- [50] See Note 2, *supra*.
- [51] Rollo, pp. 19-21.
- [52] Rollo, p. 22-23.
- [53] Section 17. Extraterritorial service - When the defendant does not reside and is not found in the Philippines

and the action affects the personal status of the plaintiff or relates to, or the subject of which, is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached in the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

[54] Ibid., now Sec. 15 of the 1997 Rules of Civil Procedure.

[55] Ibid..

[56] *Asiavest Limited v. Court of Appeals*, 296 SCRA 539, 552-554 [1998]; *Valmonte v. Court of Appeals*, 252 SCRA 92, 99-102 [1996].

[57] *The Dial Corporation v. Soriano*, 161 SCRA 737, 743 [1988] citing *Boudard v. Tait*, 67 Phil 170, 174 [1939].

[58] *Asiavest Limited v. Court of Appeals*, supra. at 554.

[59] Records, Vol. 1, pp. 128-129.

[60] Records, Vol. 2, p. 567.

[61] *Villareal v. Court of Appeals*, 295 SCRA 511, 525 [1998].

[62] *The Dial Corporation v. Soriano*, supra. at 742 citing *Hernandez v. Development Bank of the Phil.*, 71 SCRA 290, 292-293 [1976].

[63] Decision in G.R. Nos. 121662-64, p. 27.

[64] Ibid.

[65] Rollo, pp. 67-80.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.