

VLASON ENTERPRISES CORPORATION, PETITIONER, VS. COURT OF APPEALS AND DURAPROOF SERVICES, REPRESENTED BY ITS GENERAL MANAGER, CESAR URBINO SR., RESPONDENTS.

G.R. Nos. 121662-64. July 06, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Summons to a domestic or resident corporation should be served on officers, agents or employees, who are responsible enough to warrant the presumption that they will transmit to the corporation notice of the filing of the action against it. Rules on the service of motions should be liberally construed in order to promote the ends of substantial justice. A rigid application that will result in the manifest injustice should be avoided. A default judgment against several defendants cannot affect the rights of one who was never declared in default. In any event, such judgment cannot include an award not prayed for in the complaint, even if proven *ex parte*.

The Case

These principles were used by this Court in resolving this Petition for Review on Certiorari before us, assailing the July 19, 1993 Decision[1] and the August 15, 1995 Resolution,[2] both promulgated by the Court of Appeals. The assailed Decision disposed as follows:[3]

"ACCORDINGLY, in view of the foregoing disquisitions, all the three (3) consolidated petitions for certiorari are hereby GRANTED.

THE assailed Order of respondent Judge Arsenio Gonong of the Regional Trial Court of Manila, Branch 8, dated April 5, 1991, in the first petition for certiorari (CA-G.R. SP No. 24669); the assailed Order of Judge Bernardo Pardo, Executive Judge of the Regional Trial Court of Manila, Branch 8, dated July 6, 1992, in the second petition for certiorari (CA-G.R. SP No. 28387); and finally, the assailed order or Resolution en banc of the respondent Court of Tax Appeals Judges Ernesto Acosta, Ramon de Veyra and Manuel Gruba, under date of October 5, 1992, in the third petition for certiorari (CA-G.R. SP No. 29317) are all hereby NULLIFIED and SET ASIDE thereby giving way to the entire decision dated February 18, 1991 of the respondent Regional Trial Court of Manila, Branch 8, in Civil Case No. 89-51451 which remains valid, final and executory, if not yet wholly executed.

THE writ of preliminary injunction heretofore issued by this Court on March 6, 1992 and reiterated on July 22, 1992 and this date against the named respondents specified in the dispositive portion of the judgment of the respondent Regional Trial Court of Manila, Branch 8 in the first petition for certiorari, which remains valid, existing and enforceable, is hereby MADE PERMANENT without prejudice (1) to the [private respondent's] remaining unpaid obligations to the herein party-intervenor in accordance with the Compromise Agreement or in connection with the decision of the respondent lower court in CA-G.R. SP No. 24669 and (2) to the government, in relation to the forthcoming decision of the respondent Court of Tax Appeals on the amount of taxes, charges, assessments or obligations that are due, as totally secured and fully guaranteed payment by the [private respondent's] bond, subject to the relevant rulings of the Department of Finance and other prevailing laws and jurisprudence."

The assailed Resolution ruled:

“ACCORDINGLY, in the light of the foregoing disquisitions, as well as considering these clarifications, the three (3) motions aforementioned are hereby DENIED.”

The Facts

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.[4] 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.[5] 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 a 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.”[6]

Finding that no fraud was committed, the District Collector of Customs, Aurelio M. Quiray, lifted the warrant of seizure on July 16, 1989.[7] 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.[8] 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.[9]

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[10] 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[11] to include former District Collector Quiray; PPA Port Manager Adolfo Ll. Amor Jr; Petitioner Vlasen Enterprises as represented by its president, Vicente Angliongto; Singkong Trading Company as represented by Atty. Eddie Tamondong; Banco Du Brasil; Dusit International Co., Inc.; Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd.[12] In both Petitions, private respondent plainly failed to include any allegation pertaining to petitioner, or any prayer for relief against it.

Summonses for the amended Petition were served on Atty. Joseph Capuyan for Med Line Philippines; Angliongto (through his secretary, Betty Bebero), Atty. Tamondong and Commissioner Mison.[13] Upon motion of the private respondent, the trial court allowed summons by publication to be served upon the alien defendants who were not residents and had no direct representatives in the country.[14]

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,[15] 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.[16] 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 pendencia*, and by the commissioner and district collector of customs on the ground of lack of

jurisdiction.[17] In another Order, the trial court dismissed the action against Med Line Philippines on the ground of *litis pendentia*. [18]

On two other occasions, private respondent again moved to declare the following in default: petitioner, Quiray, Sy and Mison on March 26, 1990; [19] and Banco Du Brazil, Dusit International Co., Inc., Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd. on August 24, 1990. [20] There is no record, however, that the trial court acted upon the motions. On September 18, 1990, petitioner filed another Motion for leave to amend the petition, [21] alleging that its counsel failed to include the following "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 [22] that the owners of the vessel intended to transfer and alienate their rights and interests 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. [23] Instead, private respondent filed the "Second Amended Petition with Supplemental Petition" against Singkong Trading Company; and Omega and M/V Star Ace, [24] to which Cadacio and Rada filed a Joint Answer. [25]

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. [26] Private respondent filed, and the trial court granted, an *ex parte* Motion to present evidence against the defaulting respondents. [27] 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. [28] Cesar Urbino, general manager of private respondent, testified and adduced evidence against the other respondents, including herein petitioner. As regards petitioner, he declared: "Vlason Enterprises represented by Atty. Sy and Vicente Angliongto thru constant intimidation and harassment of utilizing the PPA Management of San Fernando, La Union x x x further delayed, and [private respondent] incurred heavy overhead expenses due to direct and incidental expenses xxx causing irreparable damages of about P3,000,000 worth of ship tackles, rigs, and appurtenances including radar antennas and apparatuses, which were taken surreptitiously by persons working for Vlason Enterprises or its agents[.]" [29]

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. [30]

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:

- 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;
- Singkong Trading Company to pay the following:
- Taxes due the government;
- Salvage fees on the vessel in the amount of \$1,000,000.00 based on xxx Lloyd's Standard Form of Salvage

Agreement;

- Preservation, securing and guarding fees on the vessel in the amount of \$225,000.00;
- Maintenance fees in the amount of P2,685,000.00;
- 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;
- Attorney's fees in the amount of P656,000.00;
- [Vlason] Enterprises to pay [private respondent] in the amount of P3,000,000.00 for damages;
- Banco [Du] Brazil to pay [private respondent] in the amount of \$300,000.00 in damages; and finally,
- Costs of [s]uit."

Subsequently, upon the Motion of Omega, Singkong Trading Co. and private respondent, the trial court approved a Compromise Agreement[31] among the movants, reducing by 20 percent the amounts adjudged. For their part, respondents-movants agreed not to appeal the Decision.[32] On March 8, 1991, private respondent moved for the execution of judgment, claiming that the trial court Decision had already become final and executory.[33] The Motion was granted[34] and a Writ of Execution was issued.[35] 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 defendant's vessel and personal property.

On March 14, 1991, petitioner filed, by special appearance, a Motion for Reconsideration, on the grounds that it was allegedly not impleaded as a defendant, served summons or declared in default; that private respondent was not authorized to present evidence against it in default; that the judgment in default was fatally defective, because private respondent had not paid filing fees for the award; and that private respondent had not prayed for such award.[36] Private respondent opposed the Motion, arguing that it was a mere scrap of paper due to its defective notice of hearing.

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.[37] Despite this Motion, the auction sale was conducted on March 21, 1991 by Sheriff Camañon, with private respondent submitting the winning bid.[38] 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.[39] Nevertheless, Sheriff Camañon issued the corresponding Certificate of Sale on March 27, 1991.[40]

On April 12, 1991,[41] private respondent filed with the Court of Appeals (CA) a Petition for Certiorari and Prohibition to nullify the cease and desist orders of the trial court.[42] Respondent Court issued on April 26, 1991 a Resolution which reads:[43]

"MEANWHILE, in order to preserve the status quo and so as not to render the present petition moot and academic, a TEMPORARY RESTRAINING ORDER is hereby ISSUED enjoining the respondent Judge, the Honorable Arsenio M. Gonong, from enforcing and/or implementing the Orders dated 22 March 1991 and 5 April 1991 which ordered respondent Sheriff to cease and desist from implementing the writ of execution and the return thereof, the quashing of the levy xxx on [the] execution [and sale] of the properties levied upon and sold at public auction by the Sheriff, for reason of grave abuse of discretion and in excess of jurisdiction, until further orders from this Court.

"WITHIN ten (10) days from notice hereof, respondents [petitioner included] are also required to SHOW CAUSE why the prayer for a writ of preliminary injunction should not be granted."

On May 8, 1991, petitioner received from Cerna a notice to pay private respondent P3 million to satisfy the trial court Decision. Not having any knowledge of the CA case to which it was not impleaded, petitioner filed with the trial court a Motion to Dismiss ex abutandi ad cautelam on the grounds that (1) the Petition of private respondent stated no cause of action against it, (2) the trial court had no jurisdiction over the case, and (3) litis pendentia barred the suit.[44]

On May 10, 1991, Cerna levied on petitioner's properties, which were scheduled for auction later on May 16, 1991. Specific descriptions of the properties are as follows:[45]

"a) Motor Tugboat - "DEN DEN" ex Emerson-I

Length: 35.67 ms. Breadth: 7.33 ms.

Depth: 3.15 ms. Gross Tons: 205.71

Net tons: 67.78 Official Number 213551

Material: Steel Class License: CWL

License No. 4424"

b) Barge - "FC99" ex YD-153

Length: 34.15 ms. Breadth: 15.85 m.s.

Depth: 2.77 m.s. Gross Tons: 491.70

Net Tons: 491.70 Official Number 227236

Material: Steel Class License: CWL

License No. 83-0012

c) Barge - "LAWIN" ex "Sea Lion 2"

Length: 66.92 ms. Breadth: 11.28 ms.

Depth: 4.52 m.s. Gross Tons: 1,029.56

Net Tons: 1,027/43 Official Number 708069

Material: Steel

Class License: Coastwise

License No. 81-0059"

Petitioner also filed a special appearance before the CA. It prayed for the lifting of the levy on its properties or, alternatively, for a temporary restraining order against their auction until its Motion for Reconsideration was resolved by the trial court.[46]

Acting on petitioner's Motion for Reconsideration, the trial court reversed its Decision of February 18, 1991, holding in its May 22, 1991 Resolution as follows:[47]

"xxx [T]hat xxx Motion For Reconsideration [of the petitioner] was filed on March 14, 1991 (See: page 584, records, Vol.2) indubitably showing that it was seasonably filed within the 15-day time-frame. Therefore, xxx said default-judgment ha[d] not yet become final and executory when the Writ of Execution was issued on March 13, 1991 xxx The rules [provide] that [the e]xecution shall issue as a matter of right upon the expiration of the period of appeal from a judgment if no appeal has been duly perfected (Sec. 1, R-39, RRC). That being the case, VEC has all the right to file as it did xxx the aforementioned reconsideration motion calling [the] attention of the Court and pointing therein its supposed error and its correction if, indeed, any [error was] committed. It is in this light that this Court made an in-depth reflection and assessment of the premises or reasons raised by [petitioner], and after a re-examination of the facts and evidence spread on the records, it has come to the considered conclusion that the questioned default-judgment has been improvidently issued. By the records, the claim of [private respondent] that his January 29, 1990 Ex-Parte Motion To Declare Defendants In Default (pp. 174-177, records, Vol. 1) including VEC had been granted is belied by the February 23, 1990 Order (pp. 214-215, records, *ibid*) par. 2, thereof, reading to wit:

'By the foregoing, for reasons stated thereunder respectively, this Court, in the exercise of its judicious discretion, in the sense that the rules should be liberally construed in order to promote their object and to assist the parties, resolves to DENY petitioner's Motion to have the Commissioner of Customs AND OTHER ENUMERATED RESPONDENTS DECLARED IN DEFAULT.' [Emphasis ours].

Not even [private respondent's] November 23, 1990 'Ex-Parte Motion To Present [Evidence] Against Defaulting Defendants' (page 489, records, Vol.2) [can] be deemed as a remedy of the fact that there never was issued an order of default against respondents including [petitioner] VEC. Having thus established that there [had] been no order of default against VEC as contemplated by Sec. 1, Rule 18, in relation to Sec. 9, Rule 13, Revised Rules of Court, there could not have been any valid default-judgment rendered against it. The issuance of an order of default is a condition sine qua non in order [that] a judgment by default be clothed with validity. Further, records show that this Court never had authorized [private respondent] to adduce evidence ex-parte against [petitioner] VEC. In sum, the February 18, 1991 decision by default is null and void as against [petitioner] VEC. With this considered conclusion of nullity of said default judgment in question, this Court feels there is no more need for it to resolve Arguments I-A & I-B, as well as III-A & III-B, of the March 14, 1991 Motion for Reconsideration. The Court agrees, however, with said discussions on the non-compliance [with] Sec. 2, Rule 7 (Title of Complaint) and Sec. I, Rule 8 on the requirement of indicating in the complaint the ultimate facts on which the party pleading relies for his claim of defense [--] which is absent in the January 9, Amended Petition (pp. 122-141, records, Vol. I) [--] for it merely mentioned [petitioner] VEC in par. 5 thereof and no more. It abides, likewise, with [Argument] III-B that the Decision in suit award[ed] amounts never asked for in instant petition as regards VEC (Sec. 5, Rule 18, RRC). xxx.

WHEREFORE, in view of the foregoing consideration, and as prayed for, the February 18, 1991 Judgment by Default is hereby reconsidered and SET ASIDE."

On June 26, 1992, then Executive Judge Bernardo P. Pardo[48] of the Regional Trial Court of Manila issued an Order[49] annulling the Sheriff's Report/Return dated April 1, 1991, and all proceedings taken by Camañon.

The CA granted private respondent's Motion to file a Supplemental Petition impleading petitioner in CA-GR 24669.[50] In view of the rampant pilferage of the cargo deposited at the PPA compound, private respondent

obtained from the appellate court a Writ of Preliminary Injunction dated March 6, 1992. The Writ reads:[51]

"ACCORDINGLY, in view of the foregoing disquisitions, the urgent verified motion for preliminary injunction dated February 11, 1992 is hereby GRANTED. Therefore, let a writ of preliminary injunction forthwith issue against the respondents and all persons or agents acting in their behalf, enjoining them not to interfere in the transferring of the aforementioned vessel and its cargoes, or in removing said cargoes xxx from [the] PPA compound."

On September 15, 1992, Sheriff Amado Sevilla seized petitioner's motor tugboat Den Den by virtue of the Order[52] dated April 3, 1992, issued by the RTC of Manila, Branch 26.[53]

On August 6, 1992, the CA consolidated CA-GR SP No. 28387[54] with CA-GR SP No. 24669.[55] The Court of Tax Appeals issued on October 5, 1992, a Resolution in CTA Case Nos. 4492, 4494 and 4500, which disposed as follows:

"Confirming the order in open court on October 5, 1992, the Court hereby RESOLVES to:

- Order Respondent Commissioner of Customs to assign or detail [a] sufficient number of customs police and guards aboard, and around the vicinity of, the vessel 'M/V Star Ace' now in anchor at Mariveles, Bataan or elsewhere, in order to ensure its safety during the pendency of these cases;
- Direct him to assign personnel and/or representatives to conduct an inventory of part of the vessel's cargo now in the possession of Mr. Cesar S. Urbino, Sr. at 197 Heroes del '96 Street, Caloocan City, which inventory may be participated in by all the parties interested in said cargo."

To enjoin the CTA from enforcing said Order, private respondent filed before the Court of Appeals another Petition for Certiorari,[56] which was later also consolidated with CA-GR SP No. 24669.

On July 19, 1993, the CA rendered the assailed Decision. Petitioner filed (1) a Motion for Clarification, praying for a declaration that the trial court Decision against it was not valid; and (2) a partial Motion for Reconsideration, seeking to set aside the assailed Decision insofar as the latter affected it.

On July 5, 1995, the Court of Appeals issued the following Resolution:[57]

"Pending resolution of the motions for reconsideration, filed by Vlason Enterprises Corporation and Banco [Du] Brazil, and considering [private respondent's] Motion for Entry of Judgment with respect to respondent PPA having already been granted by this Court as far back as June 17, 1994, pursuant to the resolution of the Supreme Court dated December 8, 1993 in G.R. No. 111270-72 (Philippine Ports Authority vs. Court of Appeals, et al.) informing the parties in said case that the judgment sought to be reviewed has now become final and executory, the lower court may now take appropriate action on the urgent ex-parte motion for issuance of a writ of execution, filed by [private respondent] on July 15, 1994."

On August 28, 1995, the Regional Trial Court of Manila, Branch 26, issued a Writ of Possession which resulted in private respondent taking possession of petitioner's barge Lawin (formerly Sea Lion 2) on September 1, 1995.[58]

Hence, this Petition.[59]

Ruling of the Respondent Court

As already adverted to, Respondent Court granted the Petition for Certiorari of the private respondent, which was consolidated with the latter's two other Petitions. The court a quo issued the following rulings:

- The trial court had jurisdiction over the salvor's claim or admiralty case pursuant to Batas Pambansa Bilang 129.
- Since the Decision of the trial court became final and executory, never having been disputed or appealed to a

higher court, the trial judge committed grave abuse of discretion in recalling the Writ of Execution and in quashing the levy and the execution of the sale of M/V Star Ace and its cargo.

- Such acts constituted an alteration or a modification of a final and executory judgment and could never be justified under law and jurisprudence.

- Civil Case 59-51451 dealt only with the salvor's claim without passing upon the legality or the validity of the undated Decision of the Commissioner of Customs in the seizure proceeding.

- Petitioner and his co-respondents could not invoke the jurisdiction of a court to secure affirmative relief against their opponent and, after failing to obtain such relief, question the court's jurisdiction.

- Petitioner had no recourse through any of the following judicially accepted means to question the final judgment:

- a petition for relief from judgment under Rule 38,

- a direct action to annul and enjoin the enforcement of the questioned judgment, and

- a collateral attack against the questioned judgment which appears void on its face.

- A court which has already acquired jurisdiction over a case cannot be ousted by a coequal court; the res in this case--the vessel and its cargo--were placed under the control of the trial court ahead of the CTA.

- The admiralty Decision had attained finality while the issue of the validity of the seizure proceedings was still under determination.

In the assailed Resolution, Respondent Court clarified that there was no need to serve summons anew on petitioner, since it had been served summons when the Second Amended Petition (the third) was filed; and that petitioner's Motion for Reconsideration was defective and void, because it contained no notice of hearing addressed to the counsel of private respondent in violation of Rule 16, Section 4 of the Rules of Court.

"To this second motion, [private respondent] contends that there was no need to serve summons anew to VEC when the second amended petition was filed impleading VEC, pursuant to the ruling of the Supreme Court in *Asiatic Travel Corp. vs. CA* (164 SCRA 623); and that finally, the decision of the court a quo o[n] February 18, 1991 became final and executory, notwithstanding the timely filing of the motion for reconsideration of VEC for the reason that the said motion for reconsideration was defective or void, there being no notice of hearing addressed to the counsel of petitioner. In fact, no motion such as this instant one can be acted upon by the Court without proof of service of the notice thereof, pursuant to Rule 16, Section 4 of the Rules of Court.

x x x x x x x x

"Finally, we should never lose sight of the fact that the instant petition for certiorari is proper only to correct errors of jurisdiction committed by the lower court, or grave abuse of discretion which is tantamount to lack of jurisdiction. Where the error is not one of jurisdiction but an error of law or of fact which is a mistake of judgment, appeal is the remedy (*Salas vs. Castro*, 216 SCRA 198). Here, respondents failed to appeal. Hence, the decision dated February 18, 1991 of the lower court has long become final, executory and unappealable. We do not and cannot therefore review the instant case as if it were on appeal and direct actions on these motions. While the proper remedy is appeal, the action for certiorari will not be entertained. Indeed, certiorari is not a substitute for lapsed appeal.

"At any rate, the decision dated July 19, 1993 of this Court on the main petition for certiorari is not yet final (except with respect to respondent PPA), the Bureau of Customs having filed a petition for certiorari and prohibition, under Rule 65 of the Rules of Court, with the Supreme Court, necessitating prudence on Our part to await its final verdict." [60]

Assignment of Errors

Before us, petitioner submits the following assignment of errors on the part of Respondent Court:[61]

"I

The Court of Appeals committed serious error in ruling that the entire decision of the trial court in Civil Case No. 89-51451 dated 18 February 1991 became final and executory because it 'was never disputed or appealed'.

"A. VEC filed a motion for reconsideration of the said decision two days before deadline, which motion was granted by the trial court.

"B. The trial court correctly granted VEC's motion for reconsideration and set aside the 18 February 1991 decision xxx against VEC, for:

"1. The trial court never acquired jurisdiction over the person of VEC as to enable it to render any judgment against it:

"(i) VEC was not impleaded as a respondent in Civil Case No. 89-51451;

"(ii) Summons was not served on VEC;

"2. The trial court improperly rendered judgment by default against VEC;

"(i) The trial court never issued an order of default against VEC;

"(ii) The trial court never authorized ex-parte presentation of evidence against VEC.

"3. The Judgment by default was fatally defective because:

"(i) No filing fee was paid by [private respondent] for the staggering amount of damages awarded by the trial court.

"(ii) The 18 February 1991 decision violates the Revised Rules of Court, which prescribe that a judgment by default cannot decree a relief not prayed for.

"II

Since the 18 February 1991 Decision in Civil Case No. 89-51451 is void as against VEC, the recall of the writ of execution was valid, as far as VEC is concerned."

The Court believes that the issues can be simplified and restated as follows:

- Has the February 18, 1991 RTC Decision become final and executory in regard to petitioner?
- Did the trial court acquire jurisdiction over the petitioner?
- Was the RTC default judgment binding on petitioner?
- Was the grant of damages against petitioner procedurally proper?
- Was private respondent entitled to a writ of execution?

This Court's Ruling

The petition is meritorious.

First Issue: Finality of the RTC Decision

A judgment becomes "final and executory" by operation of law. Its finality becomes a fact when the reglementary period to appeal lapses, and no appeal is perfected within such period.[62] The admiralty case filed by private

respondent with the trial court involved multiple defendants. This being the case, it necessarily follows that the period of appeal of the February 18, 1991 RTC Decision depended on the date a copy of the judgment was received by each of the defendants. Elsewise stated, each defendant had a different period within which to appeal, depending on the date of receipt of the Decision.[63]

Omega, Singkong Trading Co. and M/V Star Ace chose to enter into a compromise agreement with private respondent. As to these defendants, the trial court Decision had become final, and a writ of execution could be issued against them.[64] Doctrinally, a compromise agreement is immediately final and executory.[65]

Petitioner, however, is not in the same situation. Said Decision cannot be said to have attained finality as to the petitioner, which was not a party to the compromise. Moreover, petitioner filed a timely Motion for Reconsideration with the trial court, thirteen days after it received the Decision or two days before the lapse of the reglementary period to appeal. A motion for reconsideration tolls the running of the period to appeal.[66] Thus, as to petitioner, the trial court Decision had not attained finality.

Exception to the Rule on Notice of Hearing

Respondent Court and private respondent argue that, although timely filed, petitioner's Motion for Reconsideration was a mere scrap of paper, because (1) it did not contain a notice of hearing addressed to the current counsel of private respondent, and (2) the notice of hearing addressed to and served on private respondent's deceased counsel was not sufficient. Admittedly, this Motion contained a notice of hearing sent to Atty. Jesus C. Concepcion who, according to private respondent, had already died and had since been substituted by its new counsel, Atty. Domingo Desierto. Therefore, the appellate court ruled that the said Motion did not toll the reglementary period to appeal and that the trial court Decision became final.

This Court disagrees. Rule 15 of the Rules of Court states:

"SEC. 4. Notice.--Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

SEC. 5. Contents of notice.--The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion." [67]

Ideally, the foregoing Rule requires the petitioner to address and to serve on the counsel of private respondent the notice of hearing of the Motion for Reconsideration. The case at bar, however, is far from ideal. First, petitioner was not validly summoned and it did not participate in the trial of the case in the lower court; thus, it was understandable that petitioner would not be familiar with the parties and their counsels. Second, Atty. Desierto entered his appearance only as collaborating counsel,[68] who is normally not entitled to notices even from this Court. Third, private respondent made no manifestation on record that Atty. Concepcion was already dead. Besides, it was Atty. Concepcion who signed the Amended Petition, wherein petitioner was first impleaded as respondent and served a copy thereof. Naturally, petitioner's attention was focused on this pleading, and it was within its rights to assume that the signatory to such pleading was the counsel for private respondent.

The Court has consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these

requirements renders their motions fatally defective.[69] However, there are exceptions to the strict application of this rule. These exceptions are as follows:[70]

"xxx Liberal construction of this rule has been allowed by this Court in cases (1) where a rigid application will result in a manifest failure or miscarriage of justice;[71] especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served;[72] (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court;[73] and (4) where the injustice to the adverse party is not commensurate [to] the degree of his thoughtlessness in not complying with the procedure prescribed." [74]

The present case falls under the first exception. Petitioner was not informed of any cause of action or claim against it. All of a sudden, the vessels which petitioner used in its salvaging business were levied upon and sold in execution to satisfy a supposed judgment against it. To allow this to happen simply because of a lapse in fulfilling the notice requirement - which, as already said, was satisfactorily explained - would be a manifest failure or miscarriage of justice.

A notice of hearing is conceptualized as an integral component of procedural due process intended to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is permitted time to study and answer the arguments in the motion.

Circumstances in the case at bar show that private respondent was not denied procedural due process, and that the very purpose of a notice of hearing had been served. On the day of the hearing, Atty. Desierto did not object to the said Motion for lack of notice to him; in fact, he was furnished in open court with a copy of the motion and was granted by the trial court thirty days to file his opposition to it. These circumstances clearly justify a departure from the literal application of the notice of hearing rule.[75] In other cases, after the trial court learns that a motion lacks such notice, the prompt resetting of the hearing with due notice to all the parties is held to have cured the defect.[76]

Verily, the notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanistic and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding.[77] For the foregoing reasons, we believe that Respondent Court committed reversible error in holding that the Motion for Reconsideration was a mere scrap of paper.

Second Issue: Jurisdiction Over Petitioner

Service of Summons on a Corporation

The sheriff's return shows that Angliongto who was president of petitioner corporation, through his secretary Betty Bebero, was served summons on January 18, 1990.[78] Petitioner claims that this service was defective for two reasons: (1) Bebero was an employee of Vlasons Shipping, Inc., which was an entity separate and distinct from Petitioner Vlason Enterprises Corporation (VEC); and (2) the return pertained to the service of summons for the amended Petition, not for the "Second Amended Petition with Supplemental Petition," the latter pleading having superseded the former.

A corporation may be served summons through its agents or officers who under the Rules are designated to accept service of process. A summons addressed to a corporation and served on the secretary of its president binds that corporation.[79] This is based on the rationale that service must be made on a representative so integrated with the corporation sued, that it is safe to assume that said representative had sufficient responsibility and discretion to

realize the importance of the legal papers served and to relay the same to the president or other responsible officer of the corporation being sued.[80] The secretary of the president satisfies this criterion. This rule requires, however, that the secretary should be an employee of the corporation sought to be summoned. Only in this manner can there be an assurance that the secretary will "bring home to the corporation [the] notice of the filing of the action" against it.

In the present case, Bebero was the secretary of Angliongto, who was president of both VSI and petitioner, but she was an employee of VSI, not of petitioner. The piercing of the corporate veil cannot be resorted to when serving summons.[81] Doctrinally, a corporation is a legal entity distinct and separate from the members and stockholders who compose it. However, when the corporate fiction is used as a means of perpetrating a fraud, evading an existing obligation, circumventing a statute, achieving or perfecting a monopoly or, in generally perpetrating a crime, the veil will be lifted to expose the individuals composing it. None of the foregoing exceptions has been shown to exist in the present case. Quite the contrary, the piercing of the corporate veil in this case will result in manifest injustice. This we cannot allow. Hence, the corporate fiction remains.

Effect of Amendment of Pleadings on Jurisdiction

Petitioner claims that the trial court did not acquire jurisdiction over it, because the former had not been served summons anew for the Second Amended Petition or for the Second Amended Petition with Supplemental Petition. In the records, it appears that only Atty. Tamondong, counsel for Singkong Trading, was furnished a copy of the Second Amended Petition.[82] The corresponding sheriff's return indicates that only Omega, M/V Star Ace and Capt. Rada were served summons and copies of said Petition.[83]

We disagree. Although it is well-settled that an amended pleading supersedes the original one, which is thus deemed withdrawn and no longer considered part of the record, it does not follow ipso facto that the service of a new summons for amended petitions or complaints is required. Where the defendants have already appeared before the trial court by virtue of a summons on the original complaint, the amended complaint may be served upon them without need of another summons, even if new causes of action are alleged.[84] After it is acquired, a court's jurisdiction continues until the case is finally terminated. Conversely, when defendants have not yet appeared in court and no summons has been validly served, new summons for the amended complaint must be served on them.[85] It is not the change of cause of action that gives rise to the need to serve another summons for the amended complaint, but rather the acquisition of jurisdiction over the persons of the defendants. If the trial court has not yet acquired jurisdiction over them, a new service of summons for the amended complaint is required.

In this case, the trial court obviously labored under the erroneous impression that petitioner had already been placed under its jurisdiction since it had been served summons through the secretary of its president. Thus, it dispensed with the service on petitioner of new summons for the subsequent amendments of the Petition. We have already ruled, however, that the first service of summons on petitioner was invalid. Therefore, the trial court never acquired jurisdiction, and the said court should have required a new service of summons for the amended Petitions.

Impleading a Party in the Title of the Complaint

Petitioner further claims that the trial court failed to acquire jurisdiction to render judgment against it because (1) the title of the three Petitions filed by private respondent never included petitioner as a party-defendant, in violation of Rule 7; and (2) the Petitions failed to state any allegation of ultimate facts constituting a cause of

action against petitioner.

We disagree with petitioner on the first ground. The judicial attitude has always been favorable and liberal in allowing amendments to pleadings. Pleadings shall be construed liberally so as to render substantial justice to the parties and to determine speedily and inexpensively the actual merits of the controversy with the least regard to technicalities.[86]

The inclusion of the names of all the parties in the title of a complaint is a formal requirement under Section 3, Rule 7. However, the rules of pleadings require courts to pierce the form and go into the substance, and not to be misled by a false or wrong name given to a pleading. The averments in the complaint, not the title, are controlling. Although the general rule requires the inclusion of the names of all the parties in the title of a complaint, the non-inclusion of one or some of them is not fatal to the cause of action of a plaintiff, provided there is a statement in the body of the petition indicating that a defendant was made a party to such action.

Private respondent claims that petitioner has always been included in the caption of all the Petitions it filed, which included Antonio Sy, field manager of petitioner. We checked and noted that in the caption and the body of the Amended Petition and Second Amended Petition with Supplemental Petition, Antonio Sy was alleged to be representing Med Line Philippines, not petitioner. Because it was private respondent who was responsible for the errors, the Court cannot excuse it from compliance, for such action will prejudice petitioner, who had no hand in the preparation of these pleadings. In any event, we reiterate that, as a general rule, mere failure to include the name of a party in the title of a complaint is not fatal by itself.

Stating a Cause of Action in the Complaint

The general rule is *allegata et probata* -- a judgment must conform to the pleadings and the theory of the action under which the case was tried.[87] But a court may also rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, so long as no surprise or prejudice to the adverse party is thereby caused.[88]

In the case at bar, the liability of petitioner was based not on any allegation in the four Petitions filed with the trial court, but on the evidence presented *ex parte* by the private respondent. Since the trial court had not validly acquired jurisdiction over the person of petitioner, there was no way for the latter to have validly and knowingly waived its objection to the private respondent's presentation of evidence against it.

Third Issue: Judgment By Default

The trial court Decision holding petitioner liable for damages is basically a default judgment. In Section 18, judgment by default is allowed under the following condition:[89]

"SEC. 1. Judgment by default.--If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. xxxx."

Thus, it becomes crucial to determine whether petitioner was ever declared in default, and whether the reception of evidence *ex parte* against it was procedurally valid.

Petitioner Was Never Declared In Default

Petitioner insists that the trial court never declared it in default.

We agree. The trial court denied the January 29, 1990 Motion of private respondent to declare all the defendants in default, but it never acted on the latter's subsequent Motion to declare petitioner likewise. During the pretrial on January 23, 1993, the RTC declared in default only "Atty. Eddie Tamondong, as well as the other defendants Hon. Salvador Mison, M/V Star Ace, Omega Sea Transport Co., Inc. of Panama and Sinkong Trading Co., [but] despite xxx due notice to them, [they] failed to appear." [90] Even private respondent cannot pinpoint which trial court order held petitioner in default.

More important, the trial court, in its Resolution dated May 22, 1991, admitted that it never declared petitioner in default, viz.:

"xxx It is in this light that this [c]ourt made an in-depth reflection and assessment of the premises or reasons raised by [petitioner] VEC[;] and after a re-examination of the facts and evidence spread on the records, it has come to the considered conclusion that the questioned default-judgment has been improvidently issued. [Based on] the records, the claim of [private respondent] that [its] January 29, 1990 Ex-Parte Motion to Declare Defendants In Default (pp. 174-177, records, Vol. 1) including VEC had been granted is belied by the February 23, 1990 Order (pp. 214-215, records, ibid) par. 2, thereof, xxx

x x x x x x x x

Not even petitioner's November 23, 1990 "Ex-Parte Motion To Present Evidence Against Defaulting Defendants" (page 489, records, Vol. 2) [can] be deemed as a remedy [for] the fact that there never was issued an order of default against respondents including [petitioner] VEC. Having thus established that there ha[d] been no order of default against VEC as contemplated by Sec. 1, Rule 18, in relation to Sec. 9, Rule 13, Revised Rules of Court, there could not have been any valid default-judgment rendered against it. The issuance of an order [o]f default is a condition sine qua non in order [that] a judgment by default be clothed with validity. Further, records show that this [c]ourt never had authorized [private respondent] to adduce evidence ex-parte against [Petitioner] VEC. In sum, the February 18, 1991 decision by default is null and void as against [Petitioner] VEC. xxxx."

The aforementioned default judgment refers to the February 18, 1989 Decision, not to the Order finding petitioner in default as contended by private respondent. Furthermore, it is a legal impossibility to declare a party-defendant to be in default before it was validly served summons.

Trial Court Did Not Allow
Presentation of Evidence
Ex Parte Against Petitioner

The Order of December 10, 1990, which allowed the presentation of evidence ex parte against the defaulting defendants, could not have included petitioner, because the trial court granted private respondent's motion praying for the declaration of only the foreign defendants in default. So too, private respondent's ex parte Motion to present evidence referred to the foreign defendants only.[91]

Furthermore, the reception of evidence ex parte against a non-defaulting party is procedurally indefensible. Without a declaration that petitioner is in default as required in Section 1, Rule 18, the trial court had no authority to order the presentation of evidence ex parte against petitioner to render judgment against it by default. The trial judge must have thought that since it failed to appear despite summons and was in default, it effectively waived any objection to the presentation of evidence against it. This rule, however, would have applied only if petitioner had submitted itself to the jurisdiction of the trial court. The latter correctly declared, in the Resolution just cited, that the default judgment against the former had been improvidently rendered.

Fourth Issue: Awards Not Paid and Prayed For
Additional Filing Fees as

Lien on the Judgment

Had the trial court validly acquired jurisdiction over petitioner, nonpayment of docket fees would not have prevented it from holding petitioner liable for damages. The Court, in *Manchester Development Corporation v. Court of Appeals*,^[92] ruled that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee, not upon the amendment of the complaint or the payment of the docket fees based on the amount sought in the amended pleading. This ruling, however, was modified in *Sun Insurance Office, Ltd. v. Asuncion*,^[93] which added:

"3. Where the trial court acquires jurisdiction over a claim [through] the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee."

Filing fees for damages and awards that cannot be estimated constitute liens on the awards finally granted by the trial court. Their nonpayment alone is not a ground for the invalidation of the award.

Judgment by Default Cannot Grant Relief Not Prayed For

A declaration or order of default is issued as a punishment for unnecessary delay in joining issues. In such event, defendants lose their standing in court, they cannot expect the trial court to act upon their pleadings, and they are not entitled to notice of the proceeding until the final termination of the case.^[94] Thus, the trial court proceeds with the reception of the plaintiff's evidence upon which a default judgment is rendered.

Section 1 of Rule 18 provides that after the defendant has been declared in default, "the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant." The reliefs that may be granted, however, are restricted by Section 5, which provides that a judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for.

In other words, under Section 1, a declaration of default is not an admission of the truth or the validity of the plaintiff's claims.^[95] The claimant must still prove his claim and present evidence. In this sense the law gives defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint. The judgment of default against defendants who have not appeared or filed their answers does not imply a waiver of all their rights, except their right to be heard and to present evidence in their favor. Their failure to answer does not imply their admission of the facts and the causes of action of the plaintiffs, because the latter are required to adduce evidence to support their allegations.

Moreover, the trial court is not allowed by the Rules to receive evidence that tends to show a relief not sought or specified in the pleadings.^[96] The plaintiff cannot be granted an award greater than or different in kind from that specified in the complaint.^[97]

This case should be distinguished, however, from that of defendants, who filed an answer but were absent during trial. In that case, they can be held liable for an amount greater than or different from that originally prayed for, provided that the award is warranted by the proven facts. This rule is premised on the theory that the adverse party failed to object to evidence relating to an issue not raised in the pleadings.

The latter rule, however, is not applicable to the instant case. Admittedly, private respondent presented evidence that would have been sufficient to hold petitioner liable for damages. However, it did not include in its amended

Petitions any prayer for damages against petitioner. Therefore, the trial court could not have validly held the latter liable for damages even if it were in default.

Fifth Issue: Execution of Final Judgment

Section 1 of Rule 39 provides that execution shall issue only upon a judgment that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal it, if no appeal has been duly perfected.[98]

In the present case, however, we have already shown that the trial court's Decision has not become final and executory against petitioner. In fact, the judgment does not even bind it. Obviously, Respondent Court committed serious reversible errors when it allowed the execution of the said judgment against petitioner.

WHEREFORE, the appeal is hereby GRANTED, and the assailed Decision and Resolution of the Court of Appeals are REVERSED and SET ASIDE insofar as they affect petitioner. The levy and the sale on execution of petitioner's properties are declared NULL and VOID. Said properties are ordered RESTORED to petitioner. No pronouncement as to cost.

SO ORDERED.

Purisima, and Gonzaga-Reyes, JJ., concur.

Romero, J., (Chairman), on official business abroad.

Vitug, J., concur in the result.

[1] Penned by J. Jinal D. Rasul and concurred in by JJ. Segundino G. Chua and Consuelo Ynares-Santiago (now an associate justice of the Supreme Court); Rollo, pp. 65-79.

[2] Rollo, pp. 81-85.

[3] Rollo, pp. 78-79.

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

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

[6] Records, Vol. 1, pp. 36-39. (Exh. B)

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

[8] 2nd Indorsement dated November 1989; Records, Vol. 1, pp. 70-71.

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

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

[11] Ibid., pp. 122-145.

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

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

[14] Id., pp. 153-156.

[15] Id., pp. 214-215.

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

- [17] Records, Vol. 1, pp. 325-326.
- [18] Order dated September 10, 1990; Records, Vol. 2, p. 359.
- [19] Records, Vol. 1, pp. 237-238.
- [20] Ibid., pp. 351-352.
- [21] Records, Vol. 2, pp. 370-371.
- [22] Motion for Leave to Admit Second Amended Petition and Supplemental Petition, *ibid.*, p. 370; Second Amended Petition with Supplemental Petition, *ibid.*, pp. 372-398.
- [23] Order dated September 28, 1990, Records, Vol. 2, p. 407.
- [24] Records, Vol. 2, pp. 414-415.
- [25] Ibid., pp. 425-488.
- [26] *Id.*, p. 506.
- [27] Order dated December 10, 1990, *id.*, p. 492.
- [28] Order of 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.
- [29] RTC Decision, p. 7; Rollo, p. 92; penned by Judge Arsenio M. Gonong .
- [30] Memorandum of Agreement, *id.*, pp. 511-512.
- [31] Records, Vol. 2, pp. 535-538.
- [32] 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.
- [33] *Id.*, p. 576.
- [34] *Id.*, p. 579.
- [35] *Id.*, pp. 580-581.
- [36] Records, Vol. 2, pp. 584-596.
- [37] Ibid., pp. 604-607.
- [38] Annex "I"; CA Rollo, pp. 51 & 817.
- [39] Order dated March 22, 1991, *id.*, pp. 611-612; and Order dated April 5, 1991, *id.*, pp. 654-655.
- [40] CA Rollo, p. 52.
- [41] In CA Decision dated July 19, 1993, this petition was filed sometime in December 1991. CA Decision, p. 4; Rollo, p. 68.
- [42] Docketed as CA-GR SP No. 24669. The respondents in this case were the RTC of Manila, Br. 8; Bureau of Customs and PPA.
- [43] CA Rollo, pp. 93-94.

[44] Records, Vol. 3, pp. 31-40.

[45] Receipt, *ibid.*, p. 59.

[46] CA Rollo, pp. 100-110; Rollo, pp. 116-126.

[47] Records, Vol. 3, pp. 100-101.

[48] Now a member of this Court.

[49] CA-GR SP No. 28387; Rollo, p. 82.

[50] CA Rollo, pp. 199-200.

[51] *Ibid.*, pp. 593-596 & 621-622.

[52] CA Rollo, p. 106.

[53] Presided by then Judge Corona Ibay-Somera (now Associate Justice of the Court of Appeals). Private respondent filed with said court a motion to appoint Sevilla as special sheriff to implement the Writ of Preliminary Injunction issued by the CA.

[54] Private respondent filed on July 15, 1992, a Petition for Certiorari, Prohibition & Mandamus from the Order dated June 26, 1992 of then Executive Judge Bernardo P. Pardo, nullifying all the acts of Sheriff Camañon including the auction sale of the vessel M/V Star Ace.

[55] CA Rollo, pp. 1061-1063

[56] Docketed as CA-GR SP No. 29317.

[57] Rollo, pp. 208-209.

[58] It was only at that time that petitioner learned of private respondent's urgent *ex parte* motion for the issuance of a writ of execution, and of the writ of possession filed with the RTC of Manila, Branch 26.

[59] This case was deemed submitted for decision upon receipt by this Court of the Memorandum for the Private Respondent on September 22, 1997. Petitioner's memorandum was received earlier on August 26, 1997.

[60] *Ibid.*, pp. 82-83 & 84-85.

[61] Memorandum; Rollo, pp. 311-312.

[62] *City of Manila v. Court of Appeals*, 204 SCRA 362, 366, November 29, 1991; and *Teodoro v. Court of Appeals*, 258 SCRA 603, 607-608, July 11, 1996.

[63] *Bank of the Philippine Islands v. Far East Molasses Corp.*, 198 SCRA 689, 703-704, July 2, 1991.

[64] *Litton v. Court of Appeals*, 263 SCRA 40, 45, October 9, 1996.

[65] *Inaldo v. Balagot*, 203 SCRA 650, 654, November 18, 1991.

[66] *Rubio v. MTCC*, Branch 4, Cagayan de Oro City; 252 SCRA 172, 183, January 24, 1996.

[67] The corresponding sections of the 1997 Rules of Court simply provide:

"SEC. 4. Hearing of motion.--Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

"Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.(4a)

"SEC. 5. Notice of hearing.--The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing, which must not be later than ten (10) days after the filing of the motion. (5a)

"SEC. 6. Proof of service necessary.--No written motion set for hearing shall be acted upon by the court without proof of service thereof."

[68] RTC Records, Vol. 2, p. 369.

[69] Tan v. Bloomberry Mfg., Inc., GR No. 130314, September 22, 1998, pp. 8-11; People v. Court of Appeals, GR No. 126065, January 21, 1999, pp. 21-22.

[70] Id., p. 14.

[71] Goldloop Properties, Inc. vs. Court of Appeals, 212 SCRA 498, 504-505, August 11, 1992; Legarda v. Court of Appeals, 195 SCRA 418, 426-427, March 18, 1991.

[72] Tamargo v. Court of Appeals, 209 SCRA 518, 522, June 3, 1992.

[73] Galvez v. Court of Appeals, 237 SCRA 685, 696-702, October 24, 1994.

[74] Galang v. Court of Appeals, 199 SCRA 683, 689, July 29, 1991.

[75] Villanueva Transport Co., Inc. v. Moya, 42 SCRA 157, 161-162, October 29, 1971.

[76] Sunga v. Lacson, 23 SCRA 393, 397, April 29, 1968; De Rapisura v. Nicolas, 16 SCRA 378, 800, April 29, 1966; E & L Mercantile, Inc. v. Intermediate Appellate Court, 142 SCRA 386, 392, June 25, 1986.

[77] E & L Mercantile, Inc. v. IAC; supra, p. 392.

[78] RTC Records, Vol. 1, p. 164.

[79] G & G Trading Corp. v. Court of Appeals, 158 SCRA 466, 468, February 29, 1988; Far Corporation v. Francisco, 146 SCRA 197, 203, December 12, 1986; ATM Trucking Incorporated v. Buencamino, 124 SCRA 434, 436, August 31, 1983; and Summit Trading & Development Corp. v. Avendaño, 135 SCRA 397, 400, March 18, 1985.

[80] Kanlaon Construction Enterprises Co., Inc. v. National Labor Relations Commission, 279 SCRA 337, 346, September 18, 1997; G & G Trading Corp. v. CA, supra; ATM Trucking Incorporated v. Buencamino, supra; Villa Rey Transit, Inc. v. Far East Motor Corp., 81 SCRA 298, 303, January 31, 1978; and Delta Motor Sales Corporation v. Mancosing, 70 SCRA 598, 603, April 30, 1976.

[81] Filmerco Commercial Co., Inc. v. Intermediate Appellate Court, 149 SCRA 194, 203-204, April 9, 1987.

[82] Compliance; Records, Vol. 2, p. 413.

[83] Ibid., p. 423.

[84] Ong Peng v. Custodio, 1 SCRA 780, 783, March 25, 1961; Atkins, Kroll & Co. v. Domingo, 44 Phil. 680, 683, March 24, 1923; and Pan-Asiatic Travel Corp. v. Court of Appeals, 164 SCRA 623, 627, August 19, 1988.

[85] De Dios v. Court of Appeals, 212 SCRA 519, 524-525, August 12, 1992; and Ong Peng v. Custodio, supra.

[86] Contech Construction Technology & Development Corp. v. Court of Appeals, 211 SCRA 692, 695-697, July 23, 1992.

[87] Lazo v. Republic Surety & Ins. Co., Inc., 31 SCRA 329, 334, January 30, 1970.

[88] Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc., 247 SCRA 361, 375-378, August 15, 1995; Northern Cement Corporation v. Intermediate Appellate Court, 158 SCRA 408, 416-417, February 29, 1988; Jacinto v. Court of Appeals, 198 SCRA 211, 218, June 6, 1991; Pilapil v. Court of Appeals, 216 SCRA 33, 49, November 26, 1992; Universal Motors Corporation v. Court of Appeals, 205 SCRA 449, 456, January 27, 1992.

[89] The corresponding provision in the 1997 Rules of Court reads:

"SEC. 3. Default; declaration of.--If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. xxx."

[90] Order dated January 23, 1991; Records, Vol. II, p. 506.

[91] Records, Vol. 2, p. 490.

[92] 149 SCRA 562, 569, May 7, 1987.

[93] 170 SCRA 274, 285, February 13, 1989; per Gancayco, J.

[94] Tan v. Dimayuga et al., 5 SCRA 712, 715, July 31, 1962; and Lim Toco v. Go Fay, 80 Phil 166, 168-169, January 31, 1948.

[95] Macondray & Co. v. Eustaquio, 64 Phil 446, 449, July 16, 1937.

[96] Javelona v. Yulo, 31 Phil 388, 391-392, September 3, 1915; and Molina v. De la Riva, 6 Phil 12, 17, March 22, 1906.

[97] Lim Toco v. Go Fay, *supra*, p. 176.

[98] Rubio v. MTCC, *supra*, pp. 183-184.

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