

BANQUE DE L' INDOCHINE ET DE SUEZ AND BANQUE FRANCAIS DU COMMERCE EXTERIEUR, PETITIONERS, VS. HONORABLE RAMON AM. TORRES, PRESIDING JUDGE, REGIONAL TRIAL COURT, CEBU CITY (BRANC...

G.R. Nos. 82405-06. July 10, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a Motion for Clarification and/or Reconsideration of Our decision promulgated November 24, 1988 where We dismissed the petition for being moot and academic. Finding the motion well taken, We hereby issue the following resolution.

Petitioners Banque de L'Indochine et de Suez (Banque Indosuez) and Banque Francais Du Commerce Exterieur (Banque Francais) are two (2) of the strongest commercial banks in France.

Banque Indosuez is licensed by our Central Bank to engage, as it is actually engaged, in offshore banking business in the Philippines.

Sometime in 1979, petitioners extended separate loans in the amounts of US\$2,520,000.00 and \$850,000.00, respectively, to Maritime Company Overseas, Inc. (MCO, for brevity) a Liberian corporation to finance its acquisition of the vessel MV "Mayon". To secure the payment thereof, MCO executed on July 5, 1979, a first preferred mortgage in favor of Banque Francais and a second preferred mortgage in favor of Banque Indosuez over MV "Mayon". MCO defaulted on its aforesaid loans so much so that at the time of the filing of this petition, it has an unpaid balance of US\$802,832.78 exclusive of interests.

In 1984, petitioners intervened in a court action in the Regional Trial Court of Cebu to protect their mortgage rights over MV "Mayon". That case was filed by Cebu Shipyard and Engineering Works, Inc. against Maritime Company of the Philippines for collection of a sum of money arising from alleged repairs and other expenses on several vessels including MV "Mayon". The Cebu court issued a writ of preliminary attachment against MV "Mayon", authorized the sale of the vessel and in the hotly contested auction sale in 1985, Seven Brothers Shipping Corporation was the winning bidder. It changed the name MV "Mayon" to MV "Diamond Elephant".

Petitioners challenged the validity of the sale in a petition filed with the Court of Appeals in August 1985. Two years later, the Court of Appeals rendered a decision annulling the sale and ordering the vessel returned to the Cebu court, the appellate court ruling that the vessel was owned not by Maritime Company of the Philippines but by Maritime Company Overseas Inc., which was not a party to the Cebu case. This decision of the Court of Appeals became final and executory on September 23, 1987.

The sale of the subject vessel having been annulled, petitioners subsequently withdrew their intervention in the Cebu case. But they filed with the Regional Trial Court of Makati a petition for the arrest of MV "Mayon" preparatory to extrajudicial foreclosure in accordance with PD 1521, otherwise known as the Ship Mortgage

Decree of 1978.

The Makati court issued on Sept. 25, 1987 an arrest order directing the Makati Sheriff to seize the MV "Mayon" now bearing the name MV "Diamond Elephant" and to transfer the same to the typhoon shelter of the Manila Yacht Club.

On September 28, 1987, the Makati Sheriff seized the vessel in Mariveles, Bataan and towed it to the Manila Yacht Club.

On September 30, 1987, Seven Brothers Shipping Corp. filed an Urgent Motion to Discharge Order of Arrest contending inter alia that (a) Seven Brothers was the owner of MV "Mayon" being the highest bidder at the public auction sale directed by the Cebu court; (b) this vessel was under preliminary attachment by the Cebu court, and (c) Seven Brothers allegedly incurred expenses "for rebuilding, repair and remodelling of the vessel in the amount of P30,000,000.00 for which it now asserts a claim (pp. 25-26, Rollo, Vol. I).

In an Order dated November 4, 1987, the Makati court denied the motion and ordered Deputy Sheriff Cristobal Jobson to deliver the possession of the vessel to petitioners to enable them to extrajudicially foreclose their mortgage thereon.

Banque Indosuez, acting pursuant to its express rights under the mortgage contract and realizing that the best possible price for the vessel could be obtained only if it were sold in Hongkong proceeded to tow MV "Mayon" to Hongkong. But just about the same time Banque Indosuez was preparing to tow the vessel to Hongkong, Cebu Shipyard, plaintiff in the Cebu case filed an Urgent Ex-parte motion praying for an order directing the Provincial sheriff of Cebu "to repossess the vessel MV "Mayon" ... and take said vessel into his custody and deliver the same to the custody and control of the Cebu court." (p. 31, Rollo, Vol. I)

Acting on this motion, the Cebu court issued an order dated November 6, 1987, stating that "per force of the decision (of the Court of Appeals dated September 23, 1987) the status of the vessel MV "Mayon" was necessarily reverted to its original one, that is, under attachment, per Order issued on May 18, 1984, and should remain therefore, attached, with the bond still subsisting in order to prevent a failure of justice." (p. 3, Rollo, Vol. I)

On November 7, 1987, the Cebu sheriff accompanied by Coast Guard escorts intercepted the MV "Mayon" near Zambales while it was being towed by a tugboat of the Malayan Towage and Salvage Inc. The Cebu sheriff then had the vessel towed to the Manila North Harbor by a tugboat of the Transpacific Towage, Inc.

However on November 12, 1987, Deputy Sheriff Arthur Flores, who was designated Special Sheriff by the Makati court recovered possession of MV "Mayon" on behalf of Banque Indosuez by posting on board two Coast Guard escorts deputized by him.

Then, on November 13, 1987, Seven Brothers filed a civil suit for damages, with the Regional Trial Court of Manila, Branch 27 presided over by Judge Ricardo Diaz, against Banque Indosuez, as well as Fredo Clemo and Malayan Towage the husbanding agent and tug company, respectively, of Banque Indosuez. This case, docketed as Civil Case No. 87-42758 (Manila case) was filed by Seven Brothers for reimbursement of expenses it allegedly incurred in engineering and coordinating the interception of MV "Mayon" by the Cebu sheriff on November 7, 1987. By way of provisional relief, Seven Brothers sought preliminary injunction to enjoin Banque Indosuez from foreclosing its mortgage on the vessel.

On the same day the complaint was filed, Judge Diaz issued a temporary restraining order enjoining Banque Indosuez from moving or relocating the vessel. After hearing on the motion the restraining order which would

expire on December 3, 1987 was extended to December 18, 1987.[1]

Meanwhile on November 27, 1987, Seven Brothers filed with the Manila Court an amended complaint impleading Jean Tirant, Banque Indosuez's General Manager, as party defendant. The same was admitted on December 2, 1987 and the temporary restraining order was accordingly amended to include said defendant. And in an Order dated December 17, 1987, Judge Diaz directed the issuance of a writ of preliminary injunction. The writ was actually issued on December 23, 1987.

Going back to the Cebu case, Cebu Shipyard, plaintiff therein, filed on November 12, 1987 an amended complaint to implead MV "Mayon" and Maritime Company Overseas (MCO) as party defendants. Seven Brothers also filed a motion to admit attached complaint in intervention with prayer for preliminary attachment.

On November 17, 1987, Judge Torres issued an order directing the issuance of a writ of preliminary attachment against the properties of MCO including the MV "Mayon".

However, on December 20, 1987, Cebu Shipyard filed a motion to lift preliminary attachment because it found it "unproductive and expensive to be paying for the premium of the attachment bond." (p. 41, Rollo, Vol. I)

Then, on December 27, 1987, Cebu Shipyard considering that no answer has yet been filed to its complaint, filed a notice of Dismissal, "withdrawing its complaint as well as the amended complaint, including the writ of attachment executed in its favor for which the vessel MV "Mayon" was consequently attached." (pp. 41-42, Rollo, Vol. I)

On January 5, 1988, the Cebu court issued an order declaring that "the interests of substantial justice transcend the technicalities of law, such as the notice of dismissal filed by plaintiff herein", reiterating that MV "Mayon" was still within "the jurisdiction of the Court," and directing the sheriff of Manila or any of its deputies "to take all measures necessary to put the vessel MV "Mayon" wherever found under attachment and prevent the same vessel from being taken away from Philippine waters." (p. 45, Rollo, Vol. I)

Thus, Banque Indosuez, apparently prejudiced by the Manila Court's interference with the jurisdiction previously acquired by the Makati court over MV "Mayon" filed on December 22, 1987 with the Court of Appeals a petition for certiorari with prayer for preliminary injunction, docketed therein as AC G.R. Sp. No. 13554, entitled "Banque Indosuez vs. Hon. Ricardo Diaz, Seven Brothers Shipping Co., Yu Hue and Johnny Yu."

On December 22, 1987, the Court of Appeals, in order to maintain the status quo resolved to issue a restraining order, restraining respondent Judge and private respondents and all persons acting under or through them from implementing his order dated December 17, 1987 directing the issuance of a writ of preliminary injunction and from further proceeding with Civil Case No. 87-42758 (Manila Case).

But when the sheriff of the Court of Appeals assisted by Coast Guard escorts tried twice on December 29 and 30, 1987 to board the vessel to implement the restraining order, the agents of Seven Brothers refused to lower the ladder.

Hence, petitioners were constrained to file the instant petition against Hon. Ramon A. Torres, presiding judge RTC Cebu; Hon. Ricardo Diaz, presiding judge RTC Manila; Cebu Shipyard & Engineering Works Inc.; Seven Brothers Shipping Corporation; Yu Hue; Johnny Yu; The Philippine Coast Guard; Bureau of Customs and Philippine Ports Authority. They pray that -

1. Upon filing of this petition, this Honorable Court issue a temporary restraining order enjoining respondent Judges Torres and Diaz from further proceeding with their respective cases, and directing Seven Brothers to deliver possession of the subject vessel to petitioners Banque Indosuez, or at the very least, to the Philippine

Coast Guard or the Bureau of Customs for safekeeping and maintenance of said vessel for the benefit of all parties subject to the outcome of case;

2. This Honorable Court give due course to this petition;

3. After notice and hearing, and the filing of such bond as may be required, this Honorable Court convert the temporary restraining order prayed for into a writ of preliminary injunction; and

4. After due proceeding, this Honorable Court issue a writ of certiorari and prohibition directing as follows:

- a) Nullifying and setting aside the questioned orders of respondent Judges Torres and Diaz;
- b) Directing respondents Judges Torres and Diaz to desist from further proceeding with the Cebu and Manila cases;
- c) Declaring the Cebu case dismissed in toto as of the filing by Cebu Shipyard of the notice of dismissal;
- d) Ordering the Manila case dismissed;
- e) Declaring petitioner Banque Indosuez entitled to the possession of the vessel, and directing whoever is in possession of the vessel, to deliver, or allow Banque Indosuez to take delivery of, the vessel, preparatory to Banque Indosuez's foreclosure of its preferred mortgage on the vessel; and
- f) Directing Seven Brothers and all other parties asserting claims on the vessel to litigate their claims in the Makati case.

On April 27, 1988, petitioners filed a pleading captioned "Urgent Motion to Cite for Contempt and for Protective Order". They alleged that on April 25, 1988, Banque Indosuez learned for the first time that in another case pending in the Regional Trial Court, Manila, Branch 31, presided over by Judge Veridiano II, entitled "Genstar Container Corporation et al. vs. Maritime Company of the Phil. ("MCP") Civil Case No. 85-30-134, (hereinafter referred to as the "Genstar case") a move was underway to spirit the MV "Mayon" out of the reach of this Court on the pretext that the vessel is MV "Puerto Princesa"; that MV "Puerto Princesa" was nonexistent. She had been arrested in Hongkong in May 1986 by virtue of a warrant issued by the Supreme Court of Hongkong on complaint of herein petitioner Banque Indosuez, was ordered sold at a bidding in Hongkong and was actually sold to the highest bidder Greenfield Shipping Limited in August 1984. She was later brought to Taiwan for breaking and disposition as scrap iron. It was formerly owned by Maritime Company Overseas Inc. which was not a party to the Genstar case.

It appears that in the Genstar case which according to petitioners provided setting for Seven Brothers scheme "to pass off MV "Mayon" as the MV "Puerto Princesa" (p. 1415 Rollo Vol. III) Genstar is a judgment creditor which obtained a valid, final and executory judgment against Maritime Company of the Phil. wayback on November 29, 1985. To satisfy said judgment, Genstar thru attorney-in-fact Jose C. Sison requested for an alias writ of execution last December 3, 1987 after the previous writs issued were returned partially satisfied. Accordingly, sheriff Enriquez issued a "Notice of Levy Upon Personal Properties etc." addressed to the Commanding Officer First Coast, Guard District PCG, Manila, covering the vessel MV "Puerto Princesa". Since the said vessel was apparently in the custody of another person who according to the sheriff was a certain Tseng Tao, Genstar thru Jose C. Sison filed an ex-parte Urgent Motion for the re-measurement of the vessel, to verify its true identity and ownership before any execution sale is conducted. This motion was granted by Judge Veridiano II. The findings of the coast guard shows that the vessel is MV "Puerto Princesa."

On December 16, 1987 sheriff Enriquez issued a Certificate of Sale attesting that the vessels MV "Balintawak", MV "Nasipit" -and MV "Puerto Princesa" were sold at public auction to Starship, for a total sum of

P4,200,000.00.

On February 8, 1988, Starship filed a "Motion to Direct the Deputy Sheriff Enriquez to take possession of the vessels mentioned in the Sheriff Certificate of Sale dated December 16, 1987."

Acting on said motion Judge Veridiano II issued an order the following day, February 9, 1988, directing sheriff Enriquez "to take possession of the aforementioned vessels and to sell the same at public auction, for the satisfaction of the writ of execution x x x."

On March 9, 1988, sheriff Enriquez issued a second Sheriff's Certificate of Sale attesting that on that day, the MV "Puerto Princesa" was sold at public auction to the highest bidder Starship for P4,262,000.00.

Then, on April 12, 1988 Enriquez issued a third Sheriff's Certificate of Sale attesting that on that day, the MV "Puerto Princesa" was sold at public auction to the highest bidder, Express for P2,500,000.00. The certificate bears the approval of Judge Veridiano II.

On the same day, Genstar issued a certification attesting receipt from Enriquez of the amount of P2,500,000.00.

On April 13, 1988, Judge Veridiano II issued an order confirming and approving the third sheriff's certificate of Sale, directing the PCG to register the sale and to assist the sheriff in placing the custody of the vessel to Express.

On April 14, 1988 Baylon of the PCG issued a Certificate of Ownership over MV "Puerto Princesa" in favor of Express.

On April 26, 1988, Banque Indosuez filed (in the Genstar case) an urgent manifestation and motion to withhold delivery of the vessel. Judge Veridiano granted the motion in his Order dated April 27, 1988.

Petitioners then alleged that the removal of MV "Mayon" through the above-described scheme involving Seven Brothers, Genstar, Starship and Deputy Sheriff Ramon Enriquez constitutes an improper conduct tending directly or indirectly, to impede, obstruct or degrade the administration of justice, and an abuse of process and unlawful interference with the proceedings of this Court, for which they should be punished for contempt (Sec. 3, Rule 71, Rules of Court). That in the meantime, as a protective remedy, Seven Brothers, Genstar Starship and Deputy Sheriff Ramon Enriquez should be ordered to withhold delivery of MV "Mayon" to any other entity or individual, immediately return or cause the return of the vessel to its previous location or to the Port of Manila and place the vessel under the custody and control of the Philippine Coast Guard or the Bureau of Customs.

On April 28, 1988, the Court resolved (1) to grant a temporary restraining order, enjoining the respondent Judges Torres and Diaz from further proceeding with their respective cases (2) to issue upon the posting by the petitioners of a bond, approved by this Court, in the amount of P3,000,000.00 a writ of Preliminary Mandatory Injunction ordering the private respondents herein to deliver to the Bureau of Customs as soon as notice hereof is received, the vessel which the private respondents tried to and actually seized (3) to require the private respondents to comment on petitioners' urgent motion to cite for contempt.

It turned out, however, that at 2:00 o'clock a.m. of April 27, 1988, the vessel had been removed from its anchorage at Limay, Bataan and towed out of the country. It is now in Kaoshiung, Taiwan.

On May 6, 1988, petitioners filed an Urgent Supplemental Petition alleging the foregoing events that transpired in the "Genstar case" and impleading as additional parties the following: Hon. Regino T. Veridiano II as Presiding Judge of the Regional Trial Court, Manila, Branch 31, Ramon G. Enriquez as Deputy Sheriff of Manila, Napoleon Baylon as officer of the Phil. Coast Guard (PCG), Genstar Container Corp., Atty. Jose C. Sison, Maritime Company of the Philippines, Starship Shipping Agencies Inc. and Express Transport Corporation.

Petitioners submit that being the preferred mortgagees of the MV "Mayon" with a right to take possession thereof, they are entitled to vindicate this right by filing the Urgent Supplemental Petition considering that -

- a) The levy and sale on execution of the MV "Mayon" were an absolute nullity and conferred no rights whatsoever;
- b) The ordinary remedy of appeal was inappropriate because petitioners were not parties in Civil Case No. 85-30134 and could not have made any appeal from respondent Judge Veridiano's decision or any of its final orders therein;
- c) This Court had already assumed jurisdiction of the MV "Mayon". Petitioner filed their Petition with this Court on March 23, 1988. Therefore, when petitioners filed their Urgent Supplemental Petition, they were merely seeking relief in connection with a new and supervening stage in the continuing conspiratorial act of fraud being committed by respondents. This Court having assumed jurisdiction over the Petition and all the issues raised therein, is thus the proper tribunal to take jurisdiction over the new issues raised in the Urgent Supplemental Petition, it appearing that the former and the latter issues invariably pertain to the disposition of the MV "Mayon".
- d) Any doubt about the technical propriety of vindicating petitioners' claim to the MV "Mayon" by means of the Urgent Supplemental Petition should be laid to rest by the well-settled principle that the wooden adherence to procedural form should never sacrifice the ends of justice.

Thus, petitioners pray that after due proceeding, this Court issue a writ of certiorari and prohibition directing as follows:

- a) Nullifying and setting aside the questioned acts, proceedings, reports and Certificates of Sale of respondent Sheriff;
- b) Nullifying and setting aside the levy and sale of public auction of the supposed MV "Mayon";
- c) Nullifying and setting aside the questioned orders and proceedings of respondent Judge Veridiano;
- d) Nullifying and setting aside the questioned acts and proceedings of respondent Baylon and the PCG;
- e) Declaring as null and void the delivery of the subject vessel to Express and any party claiming or tracing title from Express, and the removal of the vessel from its previous location at Limay, Bataan; and
- f) Ordering Express and any party claiming or tracing title from Express to surrender the vessel and/or to desist from taking or retaking delivery of the vessel. (p. 1429, Rollo, Vol. III)

In the Resolution dated May 16, 1988, the respondents were required to comment on the petition, within ten (10) days from notice.

Respondents Seven Brothers, Yu Hue and Johnny Yu blame the Philippine Coast Guard, respondents Deputy Sheriff Enriquez, Genstar, Starship and Baylon by claiming that the latter had intimidated them into giving up the MV "Mayon".

Respondents Genstar and Sison would pass the buck on to respondent Deputy Sheriff Enriquez, maintaining that it was the latter who located the MV "Mayon" and determined it to be the MV "Puerto Princesa".

Deputy Sheriff Enriquez, for his part, would appear to have relied solely on the determination of the Marine & Industrial Surveyors of the PCG and the Claimsmen Adjustment Corporation that the MV "Mayon" is the MV "Puerto Princesa".

The PCG, as well as respondent Baylon, would insist that they did nothing that was not expressly ordered to be

done by respondent Judge Veridiano.

Meanwhile, petitioners have filed a petition in Taiwan in order to prevent the scrapping of MV "Mayon". By virtue thereof, petitioners have secured an order of provisional seizure for the said vessel.

In Our Decision promulgated November 24, 1988 We dismissed the petition for being moot and academic.

On December 26, 1988, petitioners filed a Motion for Clarification and/or Reconsideration. They allege that a declaration that the present case has become moot and academic with the removal of the vessel would give the wrong and unjust impression that the taking of the vessel was lawful and that the vessel was MV "Puerto Princesa" and not MV "Mayon", and that respondent Judge Veridiano's orders that allowed the vessel to be taken out of the country are final, binding and conclusive. This would work grave injustice upon petitioners who are then left with no ordinary, speedy and adequate remedy.

Petitioners further allege that the present case, which involves original and supplemental petitions, is not limited to the issue of possession of the vessel. While the original petition seeks a declaration of petitioners' right to actual possession of the vessel the supplemental petition prays for the nullification of certain proceedings and orders relative to the fraudulent removal of the vessel. These challenged orders and proceedings, if not nullified and set aside, are presumed by comity to be valid and binding for all intents and purposes in all parts of the world, including Taiwan.

It appears that the adverse parties in the Taiwan case, one of which is respondent Starship herein, have put up as their defense the alleged validity of the levy and execution sale conducted by respondent Deputy Sheriff Enriquez and approved by respondent Judge Veridiano II. This makes it imperative for this Court to rule once and for all on the validity of the questioned execution and sale of the subject vessel.

Petitioners claim that the MV "Puerto Princesa" no longer existed at the time of the alleged sale and that the MV "Mayon" subject of this case was unlawfully taken by respondent Deputy Sheriff Enriquez from respondent Seven Brothers and smuggled out of the country as the MV "Puerto Princesa". In support thereof, petitioners attached as Annex A to their Manifestation and Urgent Motion for Restraining Order dated April 13, 1988, the duly authenticated affidavit of Mr. Jonathan Lyne dated May 10, 1988 which shows that -

(a) On 30 May 1984, the Supreme Court of Hongkong issued an admiralty writ of arrest on the MV "Puerto Princesa". (Exhibit WJCL-1 (b) of Lyne's Affidavit).

(b) On 10 August 1984, the M/V "Puerto Princesa" was sold at public auction to Greenfield Shipping Ltd., which sale was confirmed by the Supreme Court of Hongkong on 14 August 1984. (Exhibits WTCh-1(d) WJCL-1(f) of Lyne's Affidavit).

(c) On 27 September 1984, Greenfield Shipping Ltd. sold and delivered the MV "Puerto Princesa" to Chian Yu Steel Industrial Co. Ltd. of 593 Kuant Fu Road, Chao Chou Town, Ping Tung, Taiwan. (Exhibits WJCJ-1(a) and WJEL-1(h) of Lyne's Affidavit).

(d) According to Lloyds Confidential Index, the MV "Puerto Princesa" was broken up on 29 November 1984. In fact, the name MV "Puerto Princesa" does not appear in the list of vessels in the 1985/1986, 1986/1987 and 1987/1988 Lloyds Register of Ships.

To erase all doubts that the MV "Puerto Princesa" was scrapped in 1984, petitioners also submit as Annexes "C & D" (pp. 1643-1647 Rollo Vol. III) a copy each of the Original Records of Scrapped Vessels and the English translation thereof, clearly showing that the MV "Puerto Princesa" was demolished for scrap during the period starting November 10, 1984 until November 29, 1984 by Chien Yu Steel Industrial Co. Ltd. at Da Zen District Scrapping Pier No. 18 by virtue of Demolition Permit No. 3808. Also submitted in evidence is the official

certification of the Lloyds Registry of Shipping which states that the vessel was delisted from Lloyds Registry after 1985 because it had previously been broken up. (p. 1617 Rollo Vol. III)

The respondents have not rebutted the foregoing evidence. On the contrary, respondents Seven Brothers, Yu Hue and Johnny Yu admitted in their Manifestation (p. 1480, Rollo, Vol. III) that they cannot comply with the directive of this Court to surrender possession of the MV Mayon to petitioners because the vessel "Mayon" or "Diamond Elephant" was taken from their custody on April 23, 1988 at around 12:00 p.m.

More revealing is the sworn statement (Ang Aming Salaysay) dated April 24, 1988 (p. 1483 Rollo, Vol. III) of respondents Seven Brothers. In this sworn statement, they declared that those who boarded the vessel removed the name "Diamond Elephant" on the vessel and painted the name "Puerto Princesa". It should be recalled that Seven Brothers had painted the name "Diamond Elephant" on the MV "Mayon".

The foregoing is further confirmed by the findings of the Salvage Association, Hongkong, whose surveyor, Mr. Malcolm Bird, conducted a survey on May 13, 1988 on the subject vessel. This survey disclosed that the serial number plates were still attached to the main engine receivers. Prominently indicated on these plates is No. 277 which is the yacht number of the shipyard where the MV "Mayon" was built. (pp. 1630-1634, Rollo Vol. III)

WHEREFORE, this Court hereby issues the extraordinary writs of certiorari and prohibition, and:

- a) Nullifies and sets aside the questioned acts, proceedings, reports and Certificates of Sale of respondent Sheriff;
- b) Nullifies and sets aside the levy and sale of public auction of the supposed MV "Mayon";
- c) Nullifies and sets aside the questioned orders and proceedings of respondent Judge Veridiano;
- d) Nullifies and sets aside the questioned acts and proceedings of respondent Baylon and the PCG;
- e) Declares as null and void the delivery of the subject vessel to Express and any party claiming or tracing title from Express, and the removal of the vessel from its previous location at Limay, Bataan; and
- f) Orders Express and any party claiming or tracing title from Express to surrender the vessel and/or to desist from taking or retaking delivery of the vessel.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] The extension would ordinarily be disallowed. However here, an injunction was subsequently granted, therefore the defect has been cured.

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