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THIRD DIVISION

[G.R. No. 81123. February 28, 1989]

CRISOSTOMO REBOLLIDO, FERNANDO VALENCIA and EDWIN REBOLLIDO, *petitioners, vs.* **HONORABLE COURT OF APPEALS and PEPSICO, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; REAL PARTY-IN-INTEREST, DEFINED; SERVICE OF COMPLAINT AND SUMMONS, VALIDLY MADE IN CASE AT BAR. — It is Pepsi Cola which is the real party in the case before the trial court because when the accident happened on March 1, 1984 or one day before the date of legal dissolution, Pepsi Cola was still the *registered owner* of the truck involved. Being solidarily liable with its driver for damages under Articles 2176 and 2180 of the Civil Code, there appears to be no question that the complaint and summons were correctly filed and served on Pepsi Cola. The Court has defined the real party-in-interest in the recent case of *Samahan ng mga Nangungupahan sa Azcarraga Textile Market, Inc., et al. v. Court of Appeals* (G.R. No. 68357, Sept. 26, 1988), as follows: "The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. 'Interest' within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest x x x." For purposes of valid summons, the dissolved Pepsi Cola was the real party in interest-defendant in the civil case filed by the petitioners not only because it is the registered owner of the truck involved but also because, when the cause of action accrued, Pepsi Cola still existed as a corporation and was the party involved in the acts violative of the legal right of another.

2. ID.; CIVIL PROCEDURE; CAUSE OF ACTION, DEFINED. — The petitioners had a valid cause of action for damages against Pepsi Cola. A cause of action is defined as "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are a legal right of the plaintiff,

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correlative obligation of the defendants and an act or omission of the defendant in violation of said legal right."

3. **CORPORATION LAW; CORPORATE EXISTENCE OF A DISSOLVED CORPORATION MAY BE EXTENDED; RATIONALE.** — The law provides that a corporation whose corporate term has ceased can still be made a party to a suit. Under paragraph 1, Section 122 of the Corporation Code, a dissolved corporation: "x x x shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established." The rationale for extending the period of existence of a dissolved corporation is explained in *Castle's Administrator v. Acrogen Coal, Co.* (145 Ky 591, 140 SW 1034 [1911]) as follows: "This continuance of its legal existence for the purpose of enabling it to close up its business is necessary to enable the corporation to collect the demands due it as well as to allow its creditors to assert the demands against it. If this were not so, then a corporation that became involved in liabilities might escape the payment of its just obligations by merely surrendering its charter, and thus defeat its creditors or greatly hinder and delay them in the collection of their demands. This course of conduct on the part of corporations the law in justice to persons dealing with them does not permit. *The person who has a valid claim against a corporation, whether it arises in contract or tort, should not be deprived of the right to prosecute an action for the enforcement of his demand by the action of the stockholders of the corporation in agreeing to its dissolution. The dissolution of a corporation does not extinguish obligations or liabilities due by or to it.*"

4. **REMEDIAL LAW; CIVIL PROCEDURE; ACCRUAL OF CAUSE OF ACTION.** — In the case at bar, the right of action of the petitioners against Pepsi Cola and its driver arose not at the time when the complaint was filed but when the acts or omission constituting the cause of action accrued, *i.e.* on March 1, 1984 which is the date of the accident and when Pepsi Cola allegedly committed the wrong.

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5. ID.; CIVIL ACTIONS; SERVICE OF SUMMONS TO DISSOLVED CORPORATIONS; ALLOWED THROUGH ANY OF THE PERSONS ENUMERATED UNDER SEC. 13, RULE 14 OF THE REVISED RULES OF COURT. — At the time of the issuance and receipt of the summons, Pepsi Cola was already dissolved. The Court is of the opinion that service is allowed in such a situation. In the American case of *Crawford v. Refiners Co-operative Association, Incorporation* (71 NM 1, 375 P 2d 212 [1962]), it was held that a "defendant corporation is subject to suit and service of process even though dissolved." Nowhere in the Corporation Code is there any special provision on how process shall be served upon a dissolved defendant corporation. The absence of any such provision, however, should not leave petitioners without any remedy, unable to pursue recovery for wrongs committed by the corporation before its dissolution. Since our law recognizes the liability of a dissolved corporation to an aggrieved creditor, it is but logical for the law to allow service of process upon a dissolved corporation. Otherwise, substantive rights would be lost by the mere lack of explicit technical rules. The Rules of Court on service of summons upon a private domestic corporation is also applicable to a corporation which is no longer a going concern. Section 13, Rule 14 mandates: "*Service upon private domestic corporation or partnership.* — If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors."

6. ID.; ID.; ID.; ID.; SERVICE ON MERE EMPLOYEE OR CLERK, HELD NOT SUFFICIENT; EXCEPTION; CASE OF *G & G TRADING CORPORATION V. COURT OF APPEALS* (158 SCRA 466), CITED. — To be sure, this Court has ruled that service on a mere employee or clerk of a corporation is not sufficient. The persons who should receive the summons should be those named in the statute; otherwise, those who have charge or control of the operations of the company or who may be relied upon to deliver the papers served upon them. A liberal interpretation of Section 13, Rule 14 has been adopted in the case of *G & G Trading Corporation v. Court of Appeals* (158 SCRA 466 [1988]): "Although it maybe true that the service of summons was made on a person not authorized to receive the same x x x, nevertheless since *it appears that the summons and complaint were in fact received by the corporation* through

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its said clerk, the Court finds that there was *substantial compliance*, with the rule on service of summons. Indeed the purpose of said rule as above stated to assure service of summons on the corporation had thereby been attained. The need for speedy justice must prevail over a technicality."

7. **ID.; ID.; ID.; TECHNICAL DEFECT OF "IMPROPER SERVICE" CANNOT BE INVOKED TO DEFEAT SUBSTANTIVE RIGHTS; CASE AT BAR.** — It is clear that private respondent is aware that the liabilities of Pepsi Cola are enforceable against it upon the dissolution of Pepsi Cola. As correctly stated by the Court of Appeals, by virtue of the assumption of the debts, liabilities and obligations of Pepsi Cola, "any judgment rendered against Pepsi Cola after its dissolution is a 'liability' of PEPSICO, Inc., within the contemplation of the undertaking." Hence it was incumbent upon respondent PEPSICO, Inc., to have defended the civil suit against the corporation whose liabilities it had assumed. Failure to do so after it received the notice by way of summons amounts to gross negligence and bad faith. The private respondent cannot now invoke a technical defect involving improper service upon Pepsi Cola and alleged absence of service of summons upon it. There is the substantive right of the petitioners to be considered over and above the attempt of the private respondent to avoid the jurisdiction of the lower court. Even assuming that jurisdiction over the private respondent can be acquired only by way of service of summons in literal compliance with Section 14, Rule 14, the petitioners cannot be faulted for having brought the case naming Pepsi Cola as one of the defendants so that the summons was addressed only to the defendants named therein and not to the private respondent. At the time of the commencement of the suit below, the petitioners had no knowledge of the legal dissolution and the undertaking assumed by PEPSICO. The publication of the notice of dissolution and the assumption of liabilities, done in June 1983 or eight months before the vehicular accident, cannot serve as a notice to the petitioners who were not yet creditors having a claim upon a quasi-delict.

APPEARANCES OF COUNSEL

Erlinda S. Carolino for petitioners.
Acaban, Corvera, Del Castillo for private respondent.

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DECISION

GUTIERREZ, JR., *J.*:

The issues raised in this petition for review on *certiorari* in an action for damages arising from a vehicular accident are lack of jurisdiction over the defendant and absence of due process.

On August 7, 1984, the petitioners filed Civil Case No. 8113 for damages against Pepsi Cola Bottling Company of the Philippines, Inc. (hereinafter referred to as Pepsi Cola) and Alberto Alva before the Regional Trial Court of Makati.

The case arose out of a vehicular accident on March 1, 1984, involving a Mazda Minibus used as a schoolbus with Plate Number NWK-353 owned and driven by petitioners Crisostomo Rebollido and Fernando Valencia, respectively and a truck trailer with Plate Number NRH-522 owned at that time by Pepsi Cola and driven by Alberto Alva. (p. 37, *Rollo*)

On September 21, 1984, the sheriff of the lower court served the summons addressed to the defendants. It was received by one Nenette Sison who represented herself to be the authorized person receiving court processes as she was the secretary of the legal department of Pepsi Cola. (pp. 33, 75, *Rollo*)

Pepsi Cola failed to file an answer and was later declared in default. The lower court heard the case *ex-parte* and adjudged the defendants jointly and severally liable for damages in a decision rendered on June 24, 1985. The dispositive portion of the decision reads:

> WHEREFORE, judgment is rendered in favor of plaintiffs, ordering defendants Pepsi Cola Bottling Company of the Philippines, Inc., and its driver Fernando (should be Alberto) G. Alva to jointly and severally pay plaintiffs the following amounts:
>
> "1) ₱12,126.10, for the hospitalization and medical expenses of plaintiff Fernando Valencia;
>
> "2) ₱326.35 as expenses for the medical treatment of plaintiff Edwin Rebollido;

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"3) ₱9,922.00, for the repair of and cost of replacement parts of the Mazda Minibus belonging to plaintiff Crisostomo Rebollido;

"4) ₱16,200.00, for the expenses incurred by plaintiff Crisostomo Rebollido in hiring another vehicle to transport school pupils;

"5) ₱102,261.90, as unrealized monthly net income due plaintiff from June 1984 to March 30, 1985;

"6) ₱10,800.00, representing the unpaid salaries of plaintiff Fernando Valencia for the period from March to December 1984;

"7) ₱20,000.00, as moral damages due plaintiff Fernando Valencia;

"8) ₱20,000.00, as moral damages due plaintiff Crisostomo Rebollido;

"9) A sum equivalent to ten (10%) per cent of the total amount due, as and for attorney's fees; and

"10) The costs of suit." (pp. 38-39, *Rollo*)

On August 5, 1985, when the default judgment became final and executory, the petitioners filed a motion for execution, a copy of which was received no longer by the defendant Pepsi Cola but by private respondent PEPSICO, Inc., on August 6, 1985. At that time, the private respondent was already occupying the place of business of Pepsi Cola at Ricogen Building, Aguirre Street, Legaspi Village, Makati, Metro Manila. Private respondent, a foreign corporation organized under the laws of the State of Delaware, USA, held offices here for the purpose, among others, of settling Pepsi Cola's debts, liabilities and obligations which it assumed in a written undertaking executed on June 11, 1983, preparatory to the expected dissolution of Pepsi Cola.

The dissolution of Pepsi Cola as approved by the Securities and Exchange Commission materialized on March 2, 1984, one day after the accident occurred. (p. 45, *Rollo*)

Earlier or in June 1983, the Board of Directors and the stockholders of Pepsi Cola adopted its amended articles of incorporation to shorten its corporate term in accordance with Section 120 of the Corporation Code following the procedure laid down by Section 37 (power to extend or shorten the corporate term) and Section 16 (amendment of the articles of incorporation)

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of the same Code. Immediately after such amendment or on June 16, 23 and 30, 1983, Pepsi Cola caused the publication of a notice of dissolution and the assumption of liabilities by the private respondent in a newspaper of general circulation. (p. 77, *Rollo*)

Realizing that the judgment of the lower court would eventually be executed against it, respondent PEPSICO, Inc., opposed the motion for execution and moved to vacate the judgment on the ground of lack of jurisdiction. The private respondent questioned the validity of the service of summons to a mere clerk. It invoked Section 13, Rule 14 of the Rules of Court on the manner of service upon a private domestic corporation and Section 14 of the same rule on service upon a private foreign corporation. (p. 82, *Rollo*)

On August 14, 1985, the lower court denied the motion of the private respondent holding that despite the dissolution and the assumption of liabilities by the private respondent, there was proper service of summons upon defendant Pepsi Cola. The lower court said that under Section 122 of the Corporation Code, the defendant continued its corporate existence for three (3) years from the date of dissolution. (p. 87, *Rollo*)

On August 27, 1985, the private respondent filed a special civil action for *certiorari* and prohibition with the respondent court to annul and set aside the judgment of the lower court and its order denying the motion to vacate the judgment, for having been issued without jurisdiction.

On December 29, 1986, the Court of Appeals granted the petition on the ground of lack of jurisdiction ruling that there was no valid service of summons. The appellate court stated that any judgment rendered against Pepsi Cola after its dissolution is a "liability" of the private respondent within the contemplation of the undertaking, but service of summons should be made upon the private respondent itself in accordance with Section 14, Rule 14 of the Rules of Court. It remanded the case to the lower court and ordered that the private respondent be summoned and be given its day in court.

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On November 27, 1987, a motion for reconsideration was denied.

Hence, this petition.

The issues raised are two-fold: (1) whether or not Pepsi Cola, the dissolved corporation, is the real party in interest to whom summons should be served in the civil case for damages; and (2) whether or not there was valid service of summons through Nenette Sison, allegedly the secretary of the legal department of Pepsi Cola. If there was valid service of summons upon Pepsi Cola, the issue arises as to whether or not such service validly vested jurisdiction on the lower court over the person of respondent corporation.

On the first issue, the petitioners maintain that it is Pepsi Cola which is the real party in the case before the trial court because when the accident happened on March 1, 1984 or one day before the date of legal dissolution, Pepsi Cola was still the *registered owner* of the truck involved. Being solidarily liable with its driver for damages under Articles 2176 and 2180 of the Civil Code, there appears to be no question that the complaint and summons were correctly filed and served on Pepsi Cola.

Section 2, Rule 3 of the Revised Rules of Court mandates that:

"*Parties in interest* — Every action must be prosecuted and defended in the name of the real party in interest. x x x."

The Court has defined the real party-in-interest in the recent case of *Samahan ng mga Nangungupahan sa Azcarraga Textile Market, Inc., et al. v. Court of Appeals* (G.R. No. 68357, Sept. 26, 1988), as follows:

"The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit. 'Interest' within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest x x x (Francisco, the Revised Rules of Court in the Phil., Vol.

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I, p. 126 cited in *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, 151 SCRA 705)."

Furthermore, the Court in *Walter Ascona Lee, et al. v. Hon. Manuel Romillo, Jr., et al.* (G.R. No. 60937, May 28, 1988) said:

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"x x x A real party in interest-plaintiff is one who has a legal right while a *real party in interest-defendant* is one who has a correlative legal obligation whose act or omission violates the legal rights of the former." (Italics supplied)

For purposes of valid summons, the dissolved Pepsi Cola was the real party in interest-defendant in the civil case filed by the petitioners not only because it is the registered owner of the truck involved but also because, when the cause of action accrued, Pepsi Cola still existed as a corporation and was the party involved in the acts violative of the legal right of another.

The petitioners had a valid cause of action for damages against Pepsi Cola. A cause of action is defined as "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are a legal right of the plaintiff, correlative obligation of the defendants and an act or omission of the defendant in violation of said legal right." (*Santos v. Intermediate Appellate Court*, 145 SCRA 248 [1986] citing *Ma-ao Sugar Central Co. v. Barrios, et al.*, 79 Phil. 666 [1947]; See also *Republic Planters Bank v. Intermediate Appellate Court*, 131 SCRA 631 [1984]).

The law provides that a corporation whose corporate term has ceased can still be made a party to suit. Under paragraph 1, Section 122 of the Corporation Code, a dissolved corporation:

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"x x x shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey

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its property and to distribute its assets, but not for the purpose of continuing the business for which it was established."

In American jurisprudence, a similar provision in the Corporate Act of 1896 was construed with respect to the kinds of suits that can be prosecuted against dissolved corporations:

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"x x x The words 'defending suits against them' mean suits at law or in equity, in contract or tort, or of what nature soever, and whether begun before or after dissolution." (*Hould v. John P. Squire and Co.* [1911] 81 NJL 103, 79 A 282)

The rationale for extending the period of existence of a dissolved corporation is explained in *Castle's Administrator v. Acrogen Coal Co.* (145 Ky 591, 140 SW 1034 [1911]) as follows:

"This continuance of its legal existence for the purpose of enabling it to close up its business is necessary to enable the corporation to collect the demands due it as well as to allow its creditors to assert the demands against it. If this were not so, then a corporation that became involved in liabilities might escape the payment of its just obligations by merely surrendering its charter, and thus defeat its creditors or greatly hinder and delay them in the collection of their demands. This course of conduct on the part of corporations the law in justice to persons dealing with them does not permit. *The person who has a valid claim against a corporation, whether it arises in contract or tort, should not be deprived of the right to prosecute an action for the enforcement of his demand by the action of the stockholders of the corporation in agreeing to its dissolution. The dissolution of a corporation does not extinguish obligations or liabilities due by or to it.*" (Italics supplied)

In the case at bar, the right of action of the petitioners against Pepsi Cola and its driver arose not at the time when the complaint was filed but when the acts or omission constituting the cause of action accrued (*Deter v. City of Delta* 217 P 67, 73 Colo, 589, *Keister v. Keister*, 96 SE 315 123 Va 157, ALR 439), *i.e.*, on March 1, 1984 which is the date of the accident and when Pepsi Cola allegedly committed the wrong.

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On the second and main issue of whether or not the service of summons through Ms. Nenette C. Sison, upon Pepsi Cola operates to vest jurisdiction upon private respondent, it is important to know the circumstances surrounding the service. At the time of the issuance and receipt of the summons, Pepsi Cola was already dissolved. The Court is of the opinion that service is allowed in such a situation. In the American case of *Crawford v. Refiners Cooperative Association, Incorporation* (71 NM 1, 375 P 2d 212 [1962]), it was held that a "defendant corporation is subject to suit and service of process even though dissolved."

Nowhere in the Corporation Code is there any special provision on how process shall be served upon a dissolved defendant corporation. The absence of any such provision, however, should not leave petitioners without any remedy, unable to pursue recovery for wrongs committed by the corporation before its dissolution. Since our law recognizes the liability of a dissolved corporation to an aggrieved creditor, it is but logical for the law to allow service of process upon a dissolved corporation. Otherwise, substantive rights would be lost by the mere lack of explicit technical rules.

The Rules of Court on service of summons upon a private domestic corporation is also applicable to a corporation which is no longer a going concern.

Section 13, Rule 14 mandates:

"*Service upon private domestic corporation or partnership.* — If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent or any of its directors."

The case of *Castle's Administrator v. Acrogen Coal Co.* (*supra*), is illustrative of the manner by which service can nevertheless be made despite the death of the entity:

"[W]hen an action that might have been instituted against a foreign or domestic corporation while it was a going concern is instituted after its dissolution, process in the action may be served upon the

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same person upon whom the process could be served before the dissolution." (p. 1036)

Therefore, service upon a dissolved corporation may be made through any of the persons enumerated in Section 13, Rule 14.

To be sure, this Court has ruled that service on a mere employee or clerk of a corporation is not sufficient. (*Delta Motor Sales Corp. v. Mangosing*, 70 SCRA 598 [1976]; *ATM Trucking, Inc. v. Buencamino*, 124 SCRA 434 [1983]; *Filoil Marketing Corp. v. Marine Development Corp. of the Phil.*, 117 SCRA 86 [1982]). The persons who should receive the summons should be those named in the statute; otherwise, those who have charge or control of the operations of the company or who may be relied upon to deliver the papers served upon them. (*Villa Rey Transit, Inc. v. Far East Motor Corp.*, 81 SCRA, 298 [1978]; and *Summit Trading and Development Corp. v. Avendano*, 135 SCRA 397 [1985]).

A liberal interpretation of Section 13, Rule 14 has been adopted in the case of *G & G Trading Corporation v. Court of Appeals* (158 SCRA 466 [1988]):

"Although it maybe true that the service of summons was made on a person not authorized to receive the same x x x, nevertheless since *it appears that the summons and complaint were in fact received by the corporation* through its said clerk, the Court finds that there was *substantial compliance*, with the rule on service of summons. Indeed the purpose of said rule as above stated to assure service of summons on the corporation had thereby been attained. The need for speedy justice must prevail over a technicality." (at p. 469; Italics supplied)

The rationale for the rule on service of summons upon a defendant corporation as explained in *Delta Motors Sales v. Mangosing (supra)*, is as follows:

"The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. In other words, 'to bring home to the

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corporation notice of the filing of the action.' (35A C.J.S. 288 citing *Jenkins v. Lykes Bros. S.S. Co.*, 48 F. Supp. 848; *MacCarthy v. Langston, D.C. Fla.*, 23 F.R.D. 249)." (at p. 603)

The fact that the summons was received through Miss Sison is not disputed by the parties. For which corporation was she acting? After the dissolution and during the pendency of the case below, private respondent PEPSICO held office at the same address of Pepsi Cola where Miss Sison was working. The petitioners argue that summons was served through the secretary of the legal department who acted as agent of Pepsi Cola. On the other hand, it is contended by private respondent PEPSICO that Miss Sison works for its legal department and not of Pepsi Cola. So that, private respondent avers, there was no valid service upon Pepsi Cola since Miss Sison acted in PEPSICO's behalf (p. 64, *Rollo*) Even assuming this contention to be true, the private respondent had the obligation to act upon the summons received and to defend Pepsi Cola pursuant to the undertaking it executed on June 11, 1983.

Whomsoever, Miss Sison was acting for in receiving the summons there is no question that the notice of the action was promptly delivered either to Pepsi Cola or PEPSICO with whom she is admittedly connected. We rule, as in *G & G Trading Corporation v. Court of Appeals (supra)*, that there was substantial compliance with Section 13, Rule 14 because the purpose of notice was satisfied. Contrary to the decision of the Court of Appeals, we, therefore, hold that there was proper service of summons to bind Pepsi Cola and that the decision of the lower court against Pepsi Cola rendered on June 24, 1985 is valid and enforceable against the private respondent.

According to the undertaking executed in favor of Pepsi Cola, private respondent assumed:

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"x x x [A]ll the debts, liabilities and obligations (collectively, the 'Liabilities') of PBC, whether firm or contingent, contractual or otherwise, express or implied, wherever located, and of whatever nature and description (including, but without limiting the generality

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of the foregoing, liabilities for damages and taxes), hereby agrees and undertakes (i) to pay or cause to be paid or otherwise discharge or cause to be discharged all of the Liabilities of PBC, *which Liabilities may be enforced against the Corporation to the same extent as if the said Liabilities had been incurred or contracted originally by the Corporation* x x x and (iv) not to prejudice in any way the rights of creditors of PBC." (p. 46, *Rollo*; Italics supplied)

It is clear that private respondent is aware that the liabilities of Pepsi Cola are enforceable against it upon the dissolution of Pepsi Cola. As correctly stated by the Court of Appeals, by virtue of the assumption of the debts, liabilities and obligations of Pepsi Cola, "any judgment rendered against Pepsi Cola after its dissolution is a 'liability' of PEPSICO, Inc., within the contemplation of the undertaking." Hence it was incumbent upon respondent PEPSICO, Inc., to have defended the civil suit against the corporation whose liabilities it had assumed. Failure to do so after it received the notice by way of summons amounts to gross negligence and bad faith. The private respondent cannot now invoke a technical defect involving improper service upon Pepsi Cola and alleged absence of service of summons upon it. There is the substantive right of the petitioners to be considered over and above the attempt of the private respondent to avoid the jurisdiction of the lower court.

Even assuming that jurisdiction over the private respondent can be acquired only by way of service of summons in literal compliance with Section 14, Rule 14, the petitioners cannot be faulted for having brought the case naming Pepsi Cola as one of the defendants so that the summons was addressed only to the defendants named therein and not to the private respondent. At the time of the commencement of the suit below, the petitioners had no knowledge of the legal dissolution and the undertaking assumed by PEPSICO. The publication of the notice of dissolution and the assumption of liabilities, done in June 1983 or eight months before the vehicular accident, cannot serve as a notice to the petitioners who were not yet creditors having a claim upon a quasi-delict.

In view of the above, the valid service of summons upon Pepsi Cola operated as a sufficient service of summons upon the

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private respondent. The lower court can enforce judgment against the private respondent.

Therefore, we rule that the private respondent is bound to satisfy the judgment by default which has become final and executory. The lower court did not abuse its discretion in denying the motion of the private respondent to vacate judgment.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals is REVERSED and SET ASIDE. The judgment of the lower court and its order denying the motion to vacate judgment are *REINSTATED.*

SO ORDERED.

Fernan, C.J. (Chairman), Feliciano, Bidin, and *Cortes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 82252. February 28, 1989]

SEAGULL MARITIME CORP. AND PHILIMARE SHIPPING & EQUIPMENT SUPPLY, *petitioners, vs.* **NERRY D. BALATONGAN, NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT CONTRACT; MUST BE SUBMITTED TO THE POEA FOR APPROVAL; REASON; "SUPPLEMENTARY CONTRACT" *PROVIDING FOR MORE BENEFITS* TO THE WORKERS, DECLARED VALID AND ENFORCEABLE EVEN WITHOUT