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THIRD DIVISION

[G.R. No. 175109. August 6, 2008]

PARAMOUNT INSURANCE CORP., *petitioner, vs.* **A.C. ORDOÑEZ CORPORATION and FRANKLIN SUSPINE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE UPON PRIVATE JURIDICAL ENTITIES; SERVICE OF SUMMONS TO SOMEONE OTHER THAN THE PERSONS MENTIONED IN SECTION 11, RULE 14, OF THE RULES OF COURT IS NOT VALID; SERVICE OF SUMMONS TO RESPONDENT CORPORATION'S RECEIVING SECTION IS DEFECTIVE AND NOT BINDING ON THE CORPORATION.— Section 11, Rule 14 sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid. The designation of persons or officers who are authorized to receive summons for a domestic corporation or partnership is limited and more clearly specified in the new rule. The phrase 'agent, or any of its directors' has been conspicuously deleted. Moreover, the argument of substantial compliance is no longer compelling. We have ruled that the new rule, as opposed to Section 13, Rule 14 of the 1964 Rules of Court, is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exlusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have done so in clear and concise language. Absent a manifest intent to liberalize the rule, strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure is required. Thus, the service of summons to respondent corporation's Receiving Section through Samuel D. Marcoleta is defective and not binding to said corporation.

2. ID.; ID.; ID.; ID.; ALTHOUGH THE ANSWER WAS FILED BEYOND THE EXTENSION PERIOD REQUESTED BY

Supreme Court E-Library

RESPONDENT, SECTION 11, RULE 11 OF THE RULES OF COURT GRANTS DISCRETION TO THE TRIAL COURT TO ALLOW AN ANSWER OR OTHER PLEADING TO BE FILED AFTER THE REGLEMENTARY PERIOD, UPON MOTION AND ON SUCH TERMS AS MAY BE JUST.— On its face, the return shows that the summons was received by an employee who is not among the responsible officers enumerated by law. Such being invalid, petitioner should have sought the issuance and proper service of new summons instead of moving for a declaration of default. Consequently, the motions for declaration of default filed on May 19, 2000 and June 30, 2000 were both premature. Thus, there was no grave abuse of discretion when the Metropolitan Trial Court admitted respondent corporation's Answer. Although it was filed beyond the extension period requested by respondent corporation, however, Sec. 11, Rule 11 grants discretion to the trial court to allow an answer or other pleading to be filed after the reglementary period, upon motion and on such terms as may be just. An answer should be admitted where it had been filed before the defendant was declared in default and no prejudice is caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.

3. ID.; ID.; THE DECISION TO REFER A CASE TO MEDIATION INVOLVES JUDICIAL DISCRETION; ANY PARTY WHO IS INTERESTED TO HAVE THE APPEALED CASE MEDIATED MAY ALSO SUBMIT A "WRITTEN REQUEST" TO THE COURT OF APPEALS.— The decision to refer a case to mediation involves judicial discretion. Although Sec. 9 B, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, requires the payment of ₱1,000.00 as mediation fee *upon the filing* of a mediatable case, petition, special civil action, comment/answer to the petition or action, and the appellee's brief, the final decision to refer a case to mediation still belongs to the *ponente*, subject to the concurrence of the other members of the division. As clarified by A.M. No. 04-3-15 (Revised Guidelines for the Implementation of Mediation in the Court of Appeals) dated March 23, 2004: II. SELECTION OF CASES Division Clerks of Court, with the assistance of the Philippine Mediation Center (PMC), shall identify the **pending cases** to be referred to mediation for the approval either of the *Ponente* for completion

Supreme Court E-Library

of records, or, the *Ponente* for decision. **Henceforth**, the petitioner or appellant shall specify - by writing or by stamping on the right side of the caption of the initial pleading (under the case number) that the case is mediatable. **Any party who is interested to have the appealed case mediated may also submit a written request in any form** to the Court of Appeals. If the case is eligible for mediation, the Ponente, with the concurrence of the other members of the Division, shall refer the case to the PMC. Thus, for cases pending at the time said guidelines were issued, the Division Clerks of Court, with the assistance of the Philippine Mediation Center, shall identify the cases to be referred to mediation. Thereafter, the petitioner or appellant shall specify, by writing or by stamping on the right side of the caption of the initial pleading (under the case number), that the case is mediatable. Further, any party who is interested to have the appealed case mediated may also submit a "written request in any form to the Court of Appeals." In the instant case, petitioner failed to write or stamp the notation "mediatable" on its Memorandum of Appeal. Moreover, it failed to submit any written request for mediation.

4. MERCANTILE LAW; CORPORATIONS; A CORPORATION WHOSE CORPORATE EXISTENCE IS TERMINATED IN ANY MANNER CONTINUES TO BE A BODY CORPORATE FOR THREE YEARS AFTER ITS DISSOLUTION FOR PURPOSES OF PROSECUTING AND DEFENDING SUITS BY AND AGAINST IT AND TO ENABLE IT TO SETTLE AND CLOSE ITS AFFAIRS.— There is likewise no merit in petitioner's claim that respondent corporation lacks legal personality to file an appeal. Although the cancellation of a corporation's certificate of registration puts an end to its juridical personality, Sec. 122 of the Corporation Code, however provides that a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three years after its dissolution for purposes of prosecuting and defending suits by and against it and to enable it to settle and close its affairs. Moreover, the rights of a corporation, which is dissolved pending litigation, are accorded protection by law pursuant to Sec. 145 of the Corporation Code. Dissolution or even the expiration of the three-year liquidation period should not be a bar to a corporation's enforcement of its rights as a corporation.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Cabantog-Ong & Associates for petitioner.
Karaan and Karaan Law Office for A.C. Ordoñez Corp.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* seeks to annul and set aside the July 17, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 93073, which reversed and set aside the September 21, 2005 Decision of the Regional Trial Court of Makati City, Branch 58[2] and reinstated the August 25, 2000 and September 26, 2000 Orders of the Metropolitan Trial Court of Makati City, Branch 66,[3] which admitted respondent's Answer and set the case for pre-trial, as well as its October 12, 2006 Resolution[4] denying the Motion for Reconsideration.

Petitioner Paramount Insurance Corp. is the subrogee of Maximo Mata, the registered owner of a Honda City sedan involved in a vehicular accident with a truck mixer owned by respondent corporation and driven by respondent Franklin A. Suspine on September 10, 1997, at Brgy. Panungyanan, Gen. Trias, Cavite.

On February 22, 2000, petitioner filed before the Metropolitan Trial Court of Makati City, a complaint for damages against respondents. Based on the Sheriff's Return of Service, summons remained unserved on respondent Suspine,[5] while it was served

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[1] *Rollo*, pp. 15-25; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Mariano C. Del Castillo and Vicente S.E. Veloso.

[2] *Id.* at 36-39; penned by Judge Eugene C. Paras.

[3] Penned by Judge Rommel O. Baybay.

[4] *Rollo*, pp. 34-35.

[5] Records, Process Server's Return dated April 4, 2000.

Supreme Court E-Library

on respondent corporation and received by Samuel D. Marcoleta of its Receiving Section on April 3, 2000.[6]

On May 19, 2000, petitioner filed a Motion to Declare Defendants in Default; however, on June 28, 2000, respondent corporation filed an Omnibus Motion (And Opposition to Plaintiff's Motion to Declare Defendant in Default) alleging that summons was improperly served upon it because it was made to a secretarial staff who was unfamiliar with court processes; and that the summons was received by Mr. Armando C. Ordoñez, President and General Manager of respondent corporation only on June 24, 2000. Respondent corporation asked for an extension of 15 days within which to file an Answer.

Pending resolution of its first motion to declare respondents in default, petitioner filed on June 30, 2000 a Second Motion to Declare Defendants in Default.

On July 26, 2000, respondent corporation filed a Motion to Admit Answer alleging honest mistake and business reverses that prevented them from hiring a lawyer until July 10, 2000, as well as justice and equity. The Answer with Counterclaim specifically denied liability, averred competency on the part of respondent Suspine, and due selection and supervision of employees on the part of respondent corporation, and argued that it was Maximo Mata who was at fault.

On August 25, 2000, the Metropolitan Trial Court of Makati City, Branch 66, issued an Order admitting the answer and setting the case for pre-trial, thus:

> When this case was called for the hearing of Motion, the Court's attention was brought to the Answer filed by the defendant.
>
> WHEREFORE, in order to afford the defendants a day in Court, defendant's answer is admitted and the pre-trial is set for October 17, 2000 at 8:30 in the morning.
>
> SO ORDERED.

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[6] *Id.*, *Sheriff's* Return dated April 4, 2000.

Supreme Court E-Library

Petitioner moved for reconsideration but it was denied. Thus, it filed a petition for *certiorari* and *mandamus* with prayer for preliminary injunction and temporary restraining order before the Regional Trial Court of Makati City. Petitioner claimed that the Metropolitan Trial Court gravely abused its discretion in admitting the answer which did not contain a notice of hearing, contrary to Sections 4 and 5, Rule 15 of the Rules of Court. It also assailed respondent corporation's Omnibus Motion for being violative of Section 9, Rule 15 because while it sought leave to file an answer, it did not attach said answer but only asked for a 15-day extension to file the same. Petitioner also averred that assuming the Omnibus Motion was granted, the Motion to Admit Answer and the Answer with Counterclaim were filed 26 days beyond the extension period it requested.

On October 16, 2000, the Regional Trial Court of Makati City, Branch 58 issued a temporary restraining order, and on May 22, 2001, issued a writ of preliminary injunction. On September 21, 2005, the Regional Trial Court rendered a Decision[7] granting the petition, thus:

> WHEREFORE, premises considered, the petition for *certiorari* and *mandamus* is hereby **GRANTED**. The Orders of public respondent dated August 25, 2000 and September 26, 2000 are hereby **SET ASIDE**. The writ of preliminary injunction issued by this Court on May 22, 2001 is hereby made permanent.
>
> The case is hereby remanded to the court *a quo* to act on petitioner's (plaintiff's) "Second motion to declare defendants in Default" dated June 29, 2000.
>
> SO ORDERED.

Respondent corporation moved for reconsideration but it was denied; hence, it appealed to the Court of Appeals which rendered the assailed Decision dated July 17, 2006, thus:

> By and large, We find no abuse of discretion committed by the first level court in the contested orders.

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[7] *Rollo,* pp. 36-39.

IN VIEW OF ALL THE FOREGOING, the instant appeal is hereby **GRANTED**, the challenged RTC Decision dated September 21, 2005 is hereby **REVERSED and SET ASIDE**, and a new one entered **REINSTATING** the Orders dated August 25, 2000 and September 26, 2000 of the Metropolitan Trial Court of Makati City. No pronouncement as to cost.

SO ORDERED.

Petitioner's motion for reconsideration was denied. Hence, the instant petition raising the following issues:

I. WHETHER THERE WAS VALID SERVICE OF SUMMONS ON DEFENDANT AC ORDONEZ CONSTRUCTION CORPORATION.

II. WHETHER A PARTY WITHOUT CORPORATE EXISTENCE MAY FILE AN APPEAL.

III. WHETHER THIS COURT ERRED IN NOT CALLING THE PARTIES INTO MEDIATION.

IV. WHETHER THERE WAS FRAUD COMMITTED BY THE PETITIONER IN ITS PLEADINGS.

The petition lacks merit.

Section 11, Rule 14 of the Rules of Court provides:

SEC. 11. Service upon domestic private juridical entity. — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

Section 11, Rule 14 sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid.

The designation of persons or officers who are authorized to receive summons for a domestic corporation or partnership is limited and more clearly specified in the new rule. The phrase

Supreme Court E-Library

'agent, or any of its directors' has been conspicuously deleted.[8] Moreover, the argument of substantial compliance is no longer compelling. We have ruled that the new rule, as opposed to Section 13, Rule 14 of the 1964 Rules of Court, is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have done so in clear and concise language. Absent a manifest intent to liberalize the rule, strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure is required.[9]

Thus, the service of summons to respondent corporation's Receiving Section through Samuel D. Marcoleta is defective and not binding to said corporation.

Moreover, petitioner was served with a copy of the Sheriff's Return which states:

> 3. MANNER OF SERVICE: DULY SERVED thru SAMUEL D. MARCOLETA (receiving section-A.C. Ordonez Construction Corp.,) and who was authorized by A. C. Ordonez Construction Corp., management to receive such court processes.

On its face, the return shows that the summons was received by an employee who is not among the responsible officers enumerated by law. Such being invalid, petitioner should have sought the issuance and proper service of new summons instead of moving for a declaration of default.

Consequently, the motions for declaration of default filed on May 19, 2000 and June 30, 2000 were both premature.

Thus, there was no grave abuse of discretion when the Metropolitan Trial Court admitted respondent corporation's Answer. Although it was filed beyond the extension period requested by respondent corporation, however, Sec. 11, Rule 11 grants discretion to the trial court to allow an answer or other

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[8] *Villarosa v. Benito*, 370 Phil. 921, 929 (1999).

[9] *Mason v. Court of Appeals*, 459 Phil. 689, 698 (2003).

Supreme Court E-Library

pleading to be filed after the reglementary period, upon motion and on such terms as may be just. An answer should be admitted where it had been filed before the defendant was declared in default and no prejudice is caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.[10]

There is likewise no merit in petitioner's claim that respondent corporation lacks legal personality to file an appeal. Although the cancellation of a corporation's certificate of registration puts an end to its juridical personality, Sec. 122 of the Corporation Code, however provides that a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three years after its dissolution for purposes of prosecuting and defending suits by and against it and to enable it to settle and close its affairs.[11] Moreover, the rights of a corporation, which is dissolved pending litigation, are accorded protection by law pursuant to Sec. 145 of the Corporation Code, to wit:

> Section 145. Amendment or repeal. **No right or remedy in favor of or against any corporation**, its stockholders, members, directors, trustees, or officers, nor any liability incurred by any such corporation, stockholders, members, directors, trustees, or officers, **shall be removed or impaired either by the subsequent dissolution of said corporation** or by any subsequent amendment or repeal of this Code or of any part thereof. (Emphasis ours)

Dissolution or even the expiration of the three-year liquidation period should not be a bar to a corporation's enforcement of its rights as a corporation.[12]

Finally, the decision to refer a case to mediation involves judicial discretion. Although Sec. 9 B, Rule 141 of the Rules of Court, as amended by A. M. No. 04-2-04-SC, requires the

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[10] *Delos Santos v. Carpio*, G.R. No. 153696, September 11, 2006, 501 SCRA 390, 403.

[11] *Pepsi-Cola Products Philippines, Inc. v. Court of Appeals*, G.R. No. 145855, November 24, 2004, 443 SCRA 580, 594.

[12] *Knecht v. United Cigarette Corporation*, 433 Phil. 380, 395 (2002).

Supreme Court E-Library

payment of ₱1,000.00 as mediation fee *upon the filing* of a mediatable case, petition, special civil action, comment/answer to the petition or action, and the appellee's brief, the final decision to refer a case to mediation still belongs to the *ponente*, subject to the concurrence of the other members of the division.

As clarified by A. M. No. 04-3-15 (Revised Guidelines for the Implementation of Mediation in the Court of Appeals) dated March 23, 2004:

> II. SELECTION OF CASES
>
> Division Clerks of Court, with the assistance of the Philippine Mediation Center (PMC), shall identify the **pending cases** to be referred to mediation for the approval either of the *Ponente* for completion of records, or, the *Ponente* for decision. **Henceforth**, the petitioner or appellant shall specify – by writing or by stamping on the right side of the caption of the initial pleading (under the case number) that the case is mediatable.
>
> **Any party who is interested to have the appealed case mediated** may also submit a **written request in any form** to the Court of Appeals. If the case is eligible for mediation, the *Ponente*, with the concurrence of the other members of the Division, shall refer the case to the PMC. (Emphasis ours)

Thus, for cases pending at the time the said guidelines were issued, the Division Clerks of Court, with the assistance of the Philippine Mediation Center, shall identify the cases to be referred to mediation. Thereafter, the petitioner or appellant shall specify, by writing or by stamping on the right side of the caption of the initial pleading (under the case number), that the case is mediatable. Further, any party who is interested to have the appealed case mediated may also submit a "written request in any form to the Court of Appeals." In the instant case, petitioner failed to write or stamp the notation "mediatable" on its Memorandum of Appeal. Moreover, it failed to submit any written request for mediation.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated July 17, 2006 reinstating the August 25, 2000 and September 26, 2000 Orders of the Metropolitan Trial Court of Makati City, Branch 66 which

admitted respondent corporation's Answer and set the case for pre-trial, as well as the Resolution dated October 12, 2006 denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178196. August 6, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUDY BUDUHAN *y* BULLAN and ROBERT BUDUHAN *y* BULLAN,** *defendants-appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A WITNESS IN OPEN COURT DESERVES MORE CREDENCE THAN THE STATEMENTS MADE DURING THE PRELIMINARY INVESTIGATION OF THE CASE.— As between statements made during the preliminary investigation of the case and the testimony of a witness in open court, the latter deserves more credence. Preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination, not of guilt beyond reasonable doubt, but of probable cause prior to the filing of an information in court. It is the statements of a witness in open court which deserve careful consideration.

2. ID.; ID.; ID.; HOW WITNESS IMPEACHED BY EVIDENCE OF INCONSISTENT STATEMENTS; THE RULE THAT REQUIRES A SUFFICIENT FOUNDATION TO BE FIRST LAID BEFORE INTRODUCING EVIDENCE OF INCONSISTENT STATEMENTS OF A WITNESS IS FOUNDED UPON COMMON SENSE AND IS ESSENTIAL