

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

JOHNSON & JOHNSON (PHILS.) INC.
Petitioner,

-versus-

**G.R. No. 99434
September 24, 1991**

**THE COURT OF APPEALS (Ninth
Division) and ALEJO M. VINLUAN,**
Respondents.

X-----X

DECISION

CRUZ, J.:

The petitioner is questioning the Resolution issued by the respondent court on March 12, 1991, reading as follows:

Considering that the copy of the resolution dated November 29, 1990 served upon counsel for respondent was returned unclaimed on January 3, 1991, and afterwards the same copy sent to the private respondent itself at given address was likewise returned unclaimed on February 28, 1991, the Court RESOLVED to DECLARE service of the said resolution upon the private respondent complete as of February 28, 1991, pursuant to Sec. 8, Rule 13, Rules of Court.

and its resolution dated May 10, 1991, declaring that:

Acting upon private respondent's "Motion for Reconsideration" of Resolution of March 12, 1991, the Court RESOLVED:

"Finding the ground relied upon by private respondent in their motion for reconsideration dated March 21, 1991, to be without merit, as the records show that indeed three (3) notices were sent as reflected in the mailing envelope on file, and that the same was returned unclaimed, said motion is hereby DENIED."

The petitioner's counsel submits there was no reason why he could not have claimed the registered mail containing the copy of the resolution dated November 29, 1990, had he been properly sent the notice to claim them. In fact, he says, to ensure prompt receipt of all registered mail addressed to him, his law office has assign and authorized Arnold R. de Francisco, one of its employees, to regularly claim such mail from the post office.

He has also attached a copy of the listing in his office of the notices and registered letters received by it from November 23, 1990, to March 21, 1991, covering the date of the resolution contained in the supposedly unclaimed mail dated November 29, 1990, the date when it was returned on January 3, 1991, and the date he received the questioned order on March 21, 1991. The list does not include any notice regarding the said registered letter of November 29, 1990, or the letter itself.

Refuting these contentions, the private respondent submits that the petitioner was correctly deemed to have been properly served with the copy of the resolution dated November 29, 1990, after its counsel failed to claim his mail from the post office within 5 days from the date of the first registry notice. Under Section 8, of Rule 13 of the Rules of Court:

Sec. 8. Completeness of service. — Personal service is complete upon delivery service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete

upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within 5 days from the date of the first notice of the postmaster, in which case the service takes effect upon the expiration of such period.

Inasmuch as the exception refers to only constructive and not actual service, such exception must be applied only upon conclusive proof that a first notice was duly sent by the postmaster to the addressee. The presumption that official duty has been regularly performed is not applicable where there is evidence to the contrary, as in the case at bar.

A certification from the postmaster would be the best evidence to prove that the notice has been validly sent.^[1] The mailman may also testify that the notice was actually delivered, as we held in *Aldecoa vs. Hon. Arellano and Siquenza*.^[2] The postmaster should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made.

In *Hernandez vs. Navarro*,^[3] where Justice Barredo made a masterly analysis of Section 8, Rule 13, including an exhaustive review of earlier pertinent cases, this Court held as follows:

Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made. Accordingly, the certification in the case at bar that the first and second notices addressed to Atty. Narvasa had been “issued” can hardly suffice to requirements of equity and justice. It was incumbent upon the post office to further certify that said notices were reportedly received. When there are several related acts supposed to be performed by a public officer

or employee in regard to a particular matter, the presumption of regularity in the performance of official functions would not arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them have been performed is available under the law or office regulations to the officer making the certification. In other words, the omission of some of the acts in the certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed.

There is nothing in the records of the present case showing how, when and to whom the delivery of the registry notices of the subject registered mail of petitioner was made and whether said notices were received by the petitioner. The envelope containing the unclaimed mail merely bore the notation “RETURN TO SENDER: UNCLAIMED” on the face thereof and “Return to: Court of Appeals” at the back. The respondent court should not have relied on these notations to support the presumption of constructive service.

We hold that the Court of Appeals erred in ruling that the petitioner had been duly served with a copy of the questioned resolution despite the lack of sufficient evidence to support this conclusion. Accordingly, its resolutions dated March 12, 1991, and May 10, 1991, are **SET ASIDE**, and the respondent court is ordered to properly serve on the petitioner its resolution dated November 29, 1990.

SO ORDERED.

Narvasa, Griño Aquino and Medialdea, JJ., concur.

[1] Barrameda vs. Castillo, 78 SCRA 1.

[2] 113 Phil. 75.

[3] 48 SCRA 44.