

*Davidson v. Office of the Special Prosecutor*, 16 ROP 214 (2009)  
**MORRIS DAVIDSON AND FELIX DAVIDSON,**  
**Appellants,**

v.

**OFFICE OF THE SPECIAL PROSECUTOR,**  
**Appellee.**

CIVIL APPEAL NO. 08-041  
Spec. Pro. 06-004

Supreme Court, Appellate Division  
Republic of Palau

Decided: July 8, 2009

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice

p.215

Appeal from the Trial Court, LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

Appellants Morris and Felix Davidson (“Appellants” or “Respondents”) appeal from a June 28, 2007, Order holding them in contempt of court, and a July 8, 2008, Order fining each of them \$1,000. Appellants argue that they had no notice of the underlying subpoena upon them, nor of the contempt proceedings against them. Appellee has failed to file a response brief in the matter. For the reasons set forth herein, we agree with Appellants and reverse the June 28, 2007, Order of Contempt as well as the July 8, 2008, Order fining them for their contempt.

### **BACKGROUND**

On August 26, 2005, UK Investment Holdings, Ltd (“UK”), a Malaysian corporation, applied to Palau’s Foreign Investment Board (“FIB”) for a foreign investment approval certificate (“FIAC”). At the time, Morris Davidson was the Chairman and Director of the company and Felix Davidson was the President and CEO, both are citizens and residents of Malaysia. Appellants hired Salvador Remoket as their local agent for the sole purpose of applying for the FIAC. In March, 2006, UK was granted a FIAC upon the completion of certain conditions, that never ended up being met. On August 25, 2006, the FIB revoked the FIAC after UK withdrew its application some time prior to June 20, 2006.

Prior to the FIB’s final revocation of the FIAC, the special prosecutor initiated an investigation of UK by obtaining an April 19, 2006, amended subpoena requesting documents and information from the corporation. This amended subpoena was served upon Mr. Remoket. Appellants were never given notice of the subpoena, nor were they served personally. UK failed

*Davidson v. Office of the Special Prosecutor*, 16 ROP 214 (2009)

to comply with the subpoena, was ordered to comply by the trial court, and failed a second time to comply. This failure led to a July 21, 2006, trial court Order requiring not only UK, but specifically Morris Davidson and Felix Davidson to comply with the subpoena “forthwith.” This Order was served upon Mr. Remoket on November 21, 2006. Appellants never received this Order, and again failed to comply with the subpoena.

On December 7, 2006, the trial court issued an Order requiring Appellants to appear for a hearing to show cause why they should not be held in contempt for failure to comply with the trial court’s orders. The hearing was continued several times and eventually occurred on June 27, 2007. On April 23, 2007, the trial court held a status conference with the Special Prosecutor and Mr. Remoket. Prior to the status conference, Mr. Remoket called the trial court’s chambers to inquire as to why his name appeared as attorney in this matter and was told that the court’s secretary put him down as attorney for Appellants. At the status conference, Mr. Remoket informed the court that he did not know why his name appeared as counsel, as he no longer had authority to represent UK, nor any individual board member, as the FIAC license had been revoked and UK’s application withdrawn.

The trial court issued an Order on May p.216 14, 2007, directing Mr. Remoket to notify the court by May 24, 2007, whether or not he intended to represent Appellants at the hearing, as the trial court stated that Mr. Remoket was “unsure of his status as attorney” for Appellants. The Order simultaneously presumed that he was Appellants’ attorney, and directed “Counsel for Respondents” to “fax copies of all motions and orders in this case together with the Amended Subpoena Duces Tecum to respondents forthwith at their last known fax number . . . or to any new fax number that counsel may retain.” “Counsel for Respondents” was additionally directed to mail such documents to Appellants at their last known address, and to furnish copies of the documents to Carolyn Ngiraingas, an alleged director of UK.

Mr. Remoket appeared again at the hearing on June 27, 2007, but informed the trial court in no uncertain terms that he was not representing UK, nor any of its individual members. He informed the court that he resigned as agent for Appellants “a couple months ago,” referring to a resignation letter he sent to the company on May 10, 2007. Mr. Remoket admitted at the hearing that he had failed to inform the court by May 24, 2007, whether he intended to represent Appellants, and was sanctioned \$50 for his failure to do so. Additionally, he informed the trial court that between May 14 and June 27, 2007, he attempted to email UK the information regarding court orders, the subpoena, and whether or not it wanted him as attorney, but the email failed. He did not mail the documents, and his secretary attempted but failed to find a working fax number for Appellants.

After the June 27, 2007, hearing, the trial court issued an Order of Contempt, dated June 28, 2007. The Order stated that Appellants were not represented at the hearing, and that they “had ample notice of this Court’s orders. The Court further finds that respondents’ failure to appear constitutes a knowing, voluntary and intentional waiver of respondents’ rights to appear.” Appellants were Ordered to be arrested and incarcerated until they complied with the terms of the amended subpoena, and UK was fined \$100 per day that it continued to fail to comply with the court’s orders.

*Davidson v. Office of the Special Prosecutor*, 16 ROP 214 (2009)

On May 27, 2008, Appellants, through new counsel Johnson Toribiong, filed a motion to quash the June 28, 2007, Order of Contempt and the accompanying arrest warrants, on the grounds that there was no notice, nor effective service of process upon them prior to the Order of Contempt and arrest warrants. On July 8, 2008, the trial court issued an Order modifying the terms of the Order of Contempt, quashing the arrest warrants, and stating that it could not overturn a prior trial court order of contempt, as the appeals process is the appropriate avenue for such relief. After quashing the arrest warrants, the trial court ordered Appellants to pay \$1,000 each as punishment for their contempt of court. It is this fine for which Appellants seek relief on appeal, as well as a reversal of the June 28, 2007, Order of Contempt.

### STANDARD OF REVIEW

The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Because this appeal addresses an issue p.217 of law as to the right to notice before a finding of contempt can be made, we review the Order of Contempt *de novo*.

### DISCUSSION

Appellants contend that their rights to due process of law were denied because the Order of Contempt and arrest warrants were issued without notice or proper service of process. They additionally argue that the Order should be held *void ab initio* because it was never served upon Appellants, leaving the trial court without personal jurisdiction. Moreover, Appellants assert that, because Mr. Remoket was not acting as attorney for them at the time service was to be rendered, service should have been effectuated in accordance with Palau's long-arm jurisdiction statute, 14 PNC § 143, and it was not.

Citing a 2001 trial court opinion authored by Justice Miller, Appellants argue that lack of proper service results in a lack of personal jurisdiction, rendering the trial court's orders void. *Koror State Government v. M/V Pacific Falcon*, 9 ROP Intrm. 252, 253 (Tr. Div. 2001). Appellants cite ROP R.Crim. Pro. 17(d) for the proposition that a subpoena must be served personally upon the person named.

It is true that proceedings against a party are void where the court lacks personal jurisdiction over the party for lack of proper service. *See Asanuma v. Sadang*, 13 ROP 13, 15 (2005) (“[o]f course, ‘in the absence of valid service of process, proceedings against a party are void’” (citing *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 5 (1999))). It is also true that Palau's long-arm statute requires personal service upon anyone over whom the Republic has jurisdiction, assuming that jurisdiction was established by UK's application for the FIAC. 14 PNC § 143 (personal service or service by mail is required of all persons who are within the jurisdiction of the courts, even if they are outside the Republic).

The Court need not extend its inquiry into whether service was proper, as it is undisputed that at the time the trial court issued its Order of Contempt and arrest warrants, Appellants had

*Davidson v. Office of the Special Prosecutor*, 16 ROP 214 (2009)

not received notice of either the amended subpoena, nor the orders issued thereafter. Palau's contempt statute states that "[a]ny person accused of committing any contempt, criminal or civil, shall have a right to notice of the charges and an opportunity to present defenses and mitigation." 14 PNC § 2205(a). While the trial court stated in its Order of Contempt that Respondents had "ample notice" of the subpoena and the contempt hearing, the transcript of the hearing held a day earlier shows otherwise. The transcript of the proceeding reads as follows:

**The Court:** [The Order of May 13, 2007] said 'Counsel for Respondents shall fax copies of all Motions and Orders in this case to respondents at their last known fax number, and shall also mail copies to the last known address,' which is stated in the Order. Did you fax the copies?

**Mr. Salvador Remoket:** Your honor, I tried to fax, I didn't mail, um, and I personally gave uh, documents to Carol p.218 Ngiraidis [sic], who is also Director of UK Investments, and asked her to scan the documents and email them to my office, so that I could email them to one of the Directors . . . and she did that. And I sent . . . Forwarded that email to Peter Moran, and it was rejected. But uh, no, I didn't uh, send them by mail.

Hr. Tr. at 3-4 (June 27, 2007). The trial court continued to find that the corporation had knowledge of both the subpoena and the court's orders, and therefore that Appellants individually should be held in contempt.

To the contrary, 14 PNC § 2205(a) requires that an individual "person" has a right to notice before being held in contempt. There is not now, nor was there at the time the Order of Contempt was issued, any proof that Respondents had any personal notice of the subpoena or the trial court's orders. There is only evidence to the contrary, in Mr. Remoket's testimony stating that he was unable to reach Respondents through any of the methods he attempted. Regardless of who is to blame for the lack of notice, it should have been clear to the trial court on June 27, 2007, one day prior to signing the Order of Contempt, that Respondents had no notice of any of the proceedings being held against them. We therefore hold that the June 28, 2007, Order of Contempt was issued in error. This conclusion renders the July 8, 2008, Order punishing Appellants for their contempt moot.

The Court need not reach the question of due process raised by Appellants in their opening brief. This Court has repeatedly held that "[c]ourts should avoid unnecessarily addressing and deciding constitutional issues." *Blanco v. ROP*, Crim. App. No. 08-004, slip. op. at 6 (July 7, 2009); *accord ROP v. Tmetuchl*, 1 ROP Intrm. 443, 511 (1988). Because we reverse the Order of Contempt, the arrest warrants and the July 8, 2008, Order fining Appellants \$1,000 each, we need not reach the question of due process.

## CONCLUSION

We hold that Appellants lacked personal notice of both the amended subpoena requiring them to produce documents, and the trial court's orders leading up to their being held in

*Davidson v. Office of the Special Prosecutor*, 16 ROP 214 (2009)  
contempt of court, in violation of 14 PNC § 2205 (a). The June 28, 2007, Order of Contempt  
and the July 8, 2008, Order fining Appellants each \$1,000 are all hereby **REVERSED**. To the  
extent that the July 8, 2008, Order quashed the arrest warrants against Appellants, it remains valid  
and affirmed.