

## SECOND DIVISION

[ G.R. No. 175334, March 26, 2008 ]

**SPS. DOMINGO M. BELEN AND DOMINGA P. BELEN, HEREIN REPRESENTED BY THEIR ATTORNEY- IN-FACT NERY B. AVECILLA, PETITIONERS, VS. HON. PABLO R. CHAVEZ, PRESIDING JUDGE, RTC-BRANCH 87, ROSARIO, BATANGAS AND ALL OTHER PERSONS ACTING UNDER HIS ORDERS AND SPS. SILVESTRE N. PACLEB AND PATRICIA A. PACLEB, REPRESENTED HEREIN BY THEIR ATTORNEY-IN-FACT JOSELITO RIOVEROS, RESPONDENTS.**

### D E C I S I O N

**TINGA, J,:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 88731. The appellate court's decision dismissed the petition for certiorari which sought to nullify the orders of the Regional Trial Court (RTC) of Rosario, Batangas, Branch 87, denying herein petitioners' motion to quash writ of execution and their motion for reconsideration. The Court of Appeals' resolution denied petitioners' motion for reconsideration of the decision.

The instant petition originated from the action for the enforcement of a foreign judgment against herein petitioners, spouses Domingo and Dominga Belen, filed by private respondent spouses Silvestre and Patricia Pacleb, represented by their attorney-in-fact, Joselito Rioveros, before the RTC of Rosario, Batangas.

The complaint alleged that private respondents secured a judgment by default in Case No. NC021205 rendered by a certain Judge John W. Green of the Superior Court of the State of California. The judgment ordered petitioners to pay private respondents the amount of \$56,204.69 representing loan repayment and share in the profits plus interest and costs of suit. The summons was served on petitioners' address in San Gregorio, Alaminos, Laguna, as was alleged in the complaint, and received by a certain Marcelo M. Belen.

On 5 December 2000, Atty. Reynaldo Alcantara entered his appearance as counsel for petitioners, stating that his legal services were retained at the instance of petitioners' relatives. Atty. Alcantara subsequently filed an answer, alleging that contrary to private respondents' averment, petitioners were actually residents of California, USA. The answer also claimed that petitioners' liability had been extinguished *via* a release of abstract judgment issued in the same collection case.

In view of petitioners' failure to attend the scheduled pre-trial conference, the RTC ordered the *ex parte* presentation of evidence for private respondents before the branch clerk of court. On 16 March 2001, before the scheduled *ex parte*

presentation of evidence, Atty. Alcantara filed a motion to dismiss, citing the judgment of dismissal issued by the Superior Court of the State of California, which allegedly dismissed Case No. NC021205. The RTC held in abeyance the *ex parte* presentation of evidence of private respondents and the resolution of Atty. Alcantara's motion pending the submission of a copy of the judgment of dismissal.

For failure to present a copy of the alleged judgment of dismissal, the RTC denied the motion to dismiss in an Order dated 19 February 2002. Through a motion, Atty. Alcantara sought the reinstatement of the motion to dismiss by attaching a copy of the said foreign judgment.

For their part, private respondents filed a motion for the amendment of the complaint. The amended complaint attached to the motion averred that private respondents were constrained to withdraw their complaint against petitioners from the California court because of the prohibitive cost of litigation, which withdrawal was favorably considered by said court. The amended complaint prayed for judgment ordering petitioners to satisfy their obligation to private respondents in the amount of P2,810,234.50.

The answer to the amended complaint raised the defenses of lack of cause of action, *res judicata* and lack of jurisdiction over the subject matter and over the persons of the defendants since the amended complaint had raised an entirely new cause of action which should have been ventilated in another complaint.

Petitioners and Atty. Alcantara failed to appear at the rescheduled pre-trial conference. Thus, the RTC declared petitioners in default and allowed private respondents to present evidence *ex parte*. On 15 March 2003, Atty. Alcantara passed away without the RTC being informed of such fact until much later.

On 5 August 2003, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the defendants are hereby directed to pay the plaintiffs the following, to wit:

- a) The amount of P656,688.00 (equivalent to \$27,362.00) in an exchange ratio of One (1) dollar is to P24.00 Philippine Currency;
- b) Plus 30% of P656,688.00 which is P197,006.40;
- c) Plus P1,576,051.20 (30% for eight (8) years, 1995-2003); and
- d) Plus 12% per annum as interest of the principal obligation (P656,688.00) from 1995 to 2003;

SO ORDERED.<sup>[3]</sup>

A copy of the RTC decision intended for Atty. Alcantara was returned with the notation "Addressee Deceased." A copy of the RTC decision was then sent to the purported address of petitioners in San Gregorio, Alaminos, Laguna and was received by a certain Leopoldo Avecilla on 14 August 2003. Meanwhile, immediately after the promulgation of the RTC decision, private respondents filed an *ex-parte*

motion for preliminary attachment which the RTC granted in its Order dated 15 September 2003.

On 24 November 2003, private respondents sought the execution of the RTC decision. In its Order dated 10 December 2003, the RTC directed the issuance of a writ of execution. Upon the issuance of a writ of execution, the real properties belonging to petitioners were levied upon and the public auction scheduled on 15 January 2004.

On 16 December 2003, Atty. Carmelo B. Culvera entered his appearance as counsel for petitioners. On 22 December 2003, Atty. Culvera filed a Motion to Quash Writ of Execution (With Prayer to Defer Further Actions). On 6 January 2004, he filed a Notice of Appeal from the RTC Decision averring that he received a copy thereof only on 29 December 2003.

In an Order dated 7 July 2004, the RTC denied the motion seeking the quashal of the writ of execution.<sup>[4]</sup> Subsequently, the RTC denied Atty. Culvera's motion for reconsideration of said order.

Thus, petitioners filed a Rule 65 petition before the Court of Appeals, imputing on the RTC grave abuse of discretion tantamount to lack or excess of jurisdiction (1) in rendering its decision although it had not yet acquired jurisdiction over their persons in view of the improper service of summons; (2) in considering the decision final and executory although a copy thereof had not been properly served upon petitioners; (3) in issuing the writ of execution before the decision had become final and executory and despite private respondents' failure to comply with the procedural requirements in filing the motion for the issuance of the said writ; and (4) in denying petitioners' motion to quash the writ of execution and notice of appeal despite sufficient legal bases in support thereof.

On 31 July 2006, the Court of Appeals rendered the assailed Decision dismissing the petition for certiorari. On 3 November 2006, it issued the assailed Resolution denying petitioners' motion for reconsideration.

Hence, the instant petition, attributing to the Court of Appeals the following errors:

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS [OF] LAW IN RULING THAT THE TRIAL COURT ACTED WITHIN ITS JURISDICTION OR DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED THE APPEARANCE OF THE COUNSEL AS THEIR SUBMISSION TO THE JURISDICTION OF THE TRIAL COURT ALTHOUGH SUCH APPEARANCE OF THE SAID COUNSEL WAS WITHOUT THEIR EXPRESS AUTHORITY BUT WAS DONE BY THEIR ALLEGED RELATIVES.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS [OF] LAW WHEN IT RULED THAT THE DECISION OF THE TRIAL COURT WAS DULY SERVED UPON THE PETITIONERS THROUGH THEIR ALLEGED RELATIVES ALTHOUGH THE RECORDS OF THIS CASE CLEARLY SHOWS THAT THE SAID PETITIONERS ARE RESIDENTS OF UNITED STATES OF AMERICA.<sup>[5]</sup>

In a Resolution dated 22 January 2007, the Court denied the petition because it is not accompanied by a valid verification and certification of non-forum shopping.

Petitioners sought reconsideration, which the Court granted in a Resolution dated 16 April 2007. The Court also ordered the reinstatement of the petition and the filing of a comment.

The instant petition raises two issues, thus: (1) whether the RTC acquired jurisdiction over the persons of petitioners through either the proper service of summons or the appearance of the late Atty. Alcantara on behalf of petitioners and (2) whether there was a valid service of the copy of the RTC decision on petitioners.

On one hand, courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority. As a rule, if defendants have not

been summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void. To be bound by a decision, a party should first be subject to the court's jurisdiction.<sup>[6]</sup>

In *Asiavest Limited v. Court of Appeals*,<sup>[7]</sup> the Court underscored the necessity of determining first whether the action is *in personam*, *in rem* or *quasi in rem* because the rules on service of summons under Rule 14 of the Rules of Court of the Philippines apply according to the nature of the action.<sup>[8]</sup> The Court elaborated, thus:

In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a resident defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of said Rule. If he is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient.

However, **in an action *in personam* wherein the defendant is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person. This method of service is possible if such defendant is physically present in the country. If he is**

**not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. An exception was laid down in *Gemperle v. Schenker* wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representative and attorney-in-fact in a prior civil case filed by**