

## FIRST DIVISION

**[ G.R. No. 195619, September 05, 2012 ]**

**PLANTERS DEVELOPMENT BANK, PETITIONER, VS. JULIE  
CHANDUMAL, RESPONDENT.**

### DECISION

**REYES, J.:**

In this petition for review under Rule 45 of the Rules of Court, Planters Development Bank (PDB) questions the Decision<sup>[1]</sup> dated July 27, 2010 of the Court of Appeals (CA), as well as its Resolution<sup>[2]</sup> dated February 16, 2011, denying the petitioner's motion for reconsideration in CA-G.R. CV No. 82861. The assailed decision nullified the Decision<sup>[3]</sup> dated May 31, 2004 of the Regional Trial Court (RTC), Las Piñas City, Branch 255 in Civil Case No. LP-99-0137.

#### Antecedent Facts

The instant case stemmed from a contract to sell a parcel of land, together with improvements, between BF Homes, Inc. (BF Homes) and herein respondent Julie Chandumal (Chandumal). The property subject of the contract is located in Talon Dos, Las Piñas City and covered by Transfer Certificate of Title No. T-10779. On February 12, 1993, BF Homes sold to PDB all its rights, participations and interests over the contract.

Chandumal paid her monthly amortizations from December 1990 until May 1994 when she began to default in her payments. In a Notice of Delinquency and Rescission of Contract with Demand to Vacate<sup>[4]</sup> dated July 14, 1998, PDB gave Chandumal a period of thirty (30) days from receipt within which to settle her installment arrearages together with all its increments; otherwise, all her rights under the contract shall be deemed extinguished and terminated and the contract declared as rescinded. Despite demand, Chandumal still failed to settle her obligation.

On June 18, 1999, an action for judicial confirmation of notarial rescission and delivery of possession was filed by PDB against Chandumal, docketed as Civil Case No. LP-99-0137. PDB alleged that despite demand, Chandumal failed and/or refused to pay the amortizations as they fell due; hence, it caused the rescission of the contract by means of notarial act, as provided in Republic Act (R.A.) No. 6552.<sup>[5]</sup> According to PDB, it tried to deliver the cash surrender value of the subject property, as required under R.A. No. 6552, in the amount of P10,000.00; however, the defendant was unavailable for such purpose.<sup>[6]</sup>

Consequently, summons was issued and served by deputy sheriff Roberto T. Galing (Sheriff Galing). According to his return, Sheriff Galing attempted to personally

serve the summons upon Chandumal on July 15, 19 and 22, 1999 but it was unavailing as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons on August 5, 1999 by serving the same through Chandumal's mother who acknowledged receipt thereof.<sup>[7]</sup>

For her failure to file an answer within the prescribed period, PDB filed on April 24, 2000 an *ex parte* motion to declare Chandumal in default. On January 12, 2001, the RTC issued an Order granting the motion of PDB.<sup>8</sup>

On February 23, 2001, Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. She maintained that she did not receive the summons and/or was not notified of the same. She further alleged that her failure to file an answer within the reglementary period was due to fraud, mistake or excusable negligence. In her answer, Chandumal alleged the following defenses: (a) contrary to the position of PDB, the latter did not make any demand for her to pay the unpaid monthly amortization; and (b) PDB did not tender or offer to give the cash surrender value of the property in an amount equivalent to fifty percent (50%) of the actual total payment made, as provided for under Section 3(b) of R.A. No. 6552. Moreover, Chandumal claimed that since the total payment she made amounts to P782,000.00, the corresponding cash surrender value due her should be P391,000.00.<sup>[9]</sup>

Per Order<sup>[10]</sup> dated August 2, 2001, the RTC denied Chandumal's motion to set aside the order of default. Her motion for reconsideration was also denied for lack of merit.<sup>[11]</sup> Conformably, the RTC allowed PDB to present its evidence *ex parte*.<sup>[12]</sup> On May 31, 2004, the RTC rendered a Decision<sup>[13]</sup> in favor of PDB, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the plaintiff Planters Development Bank and against defendant Julie Chandumal as follows, to wit:

1. Declaring the notarial rescission of the Contract to Sell dated 03 January 1990 made by the plaintiff per the Notice of Delinquency and Rescission of Contract with Demand to Vacate dated 14 July 1998 as judicially confirmed and ratified;
2. Requiring the plaintiff to deposit in the name of the defendant the amount of [P]10,000.00 representing the cash surrender value for the subject property with the Land Bank of the Philippines, Las Piñas City Branch in satisfaction of the provisions of R.A. No. 6552; and,
3. Ordering the defendant to pay the plaintiff the amount of [P]50,000.00 as and by way of attorney's fees, including the costs of suit. SO ORDERED.<sup>[14]</sup>

From the foregoing judgment, Chandumal appealed to the CA.

On July 27, 2010, the CA, *without ruling on the propriety of the judicial confirmation*

*of the notarial rescission*, rendered the assailed decision nullifying the RTC decision due to invalid and ineffective substituted service of summons. The dispositive portion of the CA decision provides:

**WHEREFORE**, premises considered, the decision of Branch 255 of the Regional Trial Court of Las Piñas City, dated May 31, 2004, in Civil Case No. LP-99-0137 is hereby **NULLIFIED** and **VACATED**.

**SO ORDERED.**<sup>[15]</sup>

PDB filed a motion for reconsideration but it was denied by the CA in its Resolution dated February 16, 2011.

Hence, this petition based on the following assignment of errors:

I

The Honorable Court of Appeals erred in reversing the decision of the trial court on the ground of improper service of summons[;]

II

The decision of the trial court is valid as it duly acquired jurisdiction over the person of respondent Chandumal through voluntary appearance[; and]

III

The trial court did not err in confirming and ratifying the notarial rescission of the subject contract to sell.<sup>[16]</sup>

PDB contends that the RTC properly acquired jurisdiction over the person of Chandumal. According to PDB, there was proper service of summons since the sheriff complied with the proper procedure governing substituted service of summons as laid down in Section 7, Rule 14 of the Rules of Court. PDB alleges that it is clear from the sheriff's return that there were several attempts on at least three (3) different dates to effect personal service within a reasonable period of nearly a month, before he caused substituted service of summons. The sheriff likewise stated the reason for his failure to effect personal service and that on his fourth attempt, he effected the service of summons through Chandumal's mother who is unarguably, a person of legal age and with sufficient discretion. PDB also argues that Chandumal voluntarily submitted herself to the jurisdiction of the court when she filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer.

For her part, Chandumal asserts that she never received a copy of the summons or was ever notified of it and she only came to know of the case sometime in July or August 2000, but she was already in the United States of America by that time, and that the CA correctly ruled that there was no valid service of summons; hence, the

RTC never acquired jurisdiction over her person.

### Issues

1. Whether there was a valid substituted service of summons;
2. Whether Chandumal voluntarily submitted to the jurisdiction of the trial court; and
3. Whether there was proper rescission by notarial act of the contract to sell.

### Our Ruling

The fundamental rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the court acquires no jurisdiction over its person, and a judgment rendered against it is null and void.<sup>[17]</sup>

Where the action is *in personam*<sup>[18]</sup> and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him.<sup>[19]</sup> If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made.<sup>[20]</sup> Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.<sup>[21]</sup>

#### **No valid substituted service of summons**

In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In *Manotoc v. Court of Appeals*,<sup>[22]</sup> the Court detailed the requisites for a valid substituted service of summons, summed up as follows: (1) **impossibility of prompt personal service** – the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) **specific details in the return** – the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service; (3) **a person of suitable age and discretion** – the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) **a competent person in charge**, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons.<sup>[23]</sup> These were reiterated and applied in *Pascual v.*