

## FIRST DIVISION

[ G.R. No. 184197, February 11, 2010 ]

**RAPID CITY REALTY AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. ORLANDO VILLA AND LOURDES PAEZ-VILLA,<sup>[1]</sup>  
RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Sometime in 2004, Rapid City Realty and Development Corporation (petitioner) filed a complaint for declaration of nullity of subdivision plans . . . mandamus and damages against several defendants including Spouses Orlando and Lourdes Villa (respondents). The complaint, which was docketed at the Regional Trial Court of Antipolo City as Civil Case No. 04-7350, was lodged at Branch 71 thereof.

After one failed attempt at personal service of summons, Gregorio Zapanta (Zapanta), court process server, resorted to substituted service by serving summons upon respondents' househelp who did not acknowledge receipt thereof and refused to divulge their names. Thus Zapanta stated in the Return of Summons:

THIS IS TO CERTIFY that on September 24, 2004, the undersigned caused the service of summons together with a copy of the complaint with its annexes to defendant Spouses Lourdes Estudillo Paez-Cline and Orlando Villa at their given address at 905 Padre Faura Street, Ermita Manila, as per information given by two lady househelps who are also residing at the said address, **the defendant spouses are not around at that time. On the 27<sup>th</sup> of September, 2004, I returned to the same place to serve the summons. I served the summons and the copy of the complaint with its annexes to the two ladies (The same lady househelp I met on Sept. 24, 2004) but they refused to sign to acknowledge receipt and they refused to tell their name as per instruction of the defendants.** With me who can attest to the said incident is Mr. Jun Llanes, who was with me at that time.<sup>[2]</sup> x x x (emphasis and underscoring supplied)

Despite substituted service, respondents failed to file their Answer, prompting petitioner to file a "Motion to Declare Defendants[-herein respondents] in Default" which the trial court granted by Order of May 3, 2005.

More than eight months thereafter or on January 30, 2006, respondents filed a Motion to Lift Order of Default,<sup>[3]</sup> claiming that on January 27, 2006 they "**officially received** all pertinent papers such as Complaint and Annexes. Motion to Dismiss of the Solicitor General and the ORDER dated May 3, 2005 granting the Motion to

Declare [them] in Default." And they denied the existence of two women helpers who allegedly refused to sign and acknowledge receipt of the summons. In any event, they contended that assuming that the allegation were true, the helpers had no authority to receive the documents.<sup>[4]</sup>

By Order of July 17, 2006, the trial court set aside the Order of Default and gave herein respondents five days to file their Answer. Respondents just the same did not file an Answer, drawing petitioner to *again* file a Motion to declare them in default, which the trial court *again* granted by Order of February 21, 2007.

On April 18, 2007, respondents filed an Omnibus Motion for reconsideration of the second order declaring them in default and to vacate proceedings, this time claiming that the trial court did not acquire jurisdiction over their persons due to invalid service of summons.

The trial court denied respondents' Omnibus Motion by Order of May 22, 2007 and proceeded to receive *ex-parte* evidence for petitioner.

Respondents, via certiorari, challenged the trial court's February 21, 2007 and April 18, 2007 Orders before the Court of Appeals.

**In the meantime, the trial court, by Decision of September 4, 2007, rendered judgment in favor of petitioner.**

By Decision of April 29, 2008,<sup>[5]</sup> the appellate court annulled the trial court's Orders declaring respondents in default for the second time in this wise:

In assailing the orders of the trial court through their *Motion to Lift...* and later their *Omnibus Motion...* the petitioners [herein-respondents] never raised any other defense in avoidance of the respondents' [herein petitioners] claim, and instead focused all their energies on questioning the said court's jurisdiction. The **latter motion** clearly stated prefatorily their counsel's reservation or "special appearance to question jurisdiction" over the persons of the petitioners. "A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted himself to the jurisdiction of the court."<sup>[6]</sup> (citation omitted; italics, emphasis and underscoring supplied)

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of August 12, 2008, it comes to the Court via petition for review on certiorari, arguing in the main that respondents, in filing the *first* Motion to Lift the Order of Default, voluntarily submitted themselves to the jurisdiction of the court.

The petition is impressed with merit.

It is settled that if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. Thus Section 20 of Rule 14 of the Rules of Court provides: