

THIRD DIVISION

[G.R. No. 183802, September 17, 2009]

ALEXANDER TAM WONG, PETITIONER, VS. CATHERINE FACTOR-KOYAMA, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

For Review on *Certiorari*, under Rule 45 of the Revised Rules of Court, are the Resolutions dated 17 January 2008^[1] and 18 July 2008^[2] of the Court of Appeals dismissing outright the Petition for *Certiorari*, under Rule 65 of the same Rules, of Alexander Tam Wong (Wong) in CA-G.R. SP No. 101860, for being the wrong remedy. Wong intended to assail before the appellate court the Orders dated 25 September 2007^[3] and 18 December 2007^[4] of the Regional Trial Court (RTC), Branch 121 of Caloocan City, which, respectively, declared him in default in Civil Case No. C-21860 and denied his Motion to Dismiss the Complaint in said case.

The present controversy originates from a Complaint^[5] dated 17 July 2007, for specific performance, sum of money, and damages, filed with the RTC by private respondent Catherine Factor-Koyama (Koyama) against Wong, docketed as Civil Case No. C-21860. Koyama alleged in her Complaint that Wong deliberately refused to execute and deliver a deed of absolute sale, and to surrender the condominium certificate of title (CCT) pertaining to a condominium unit, particularly described as A3-4B California Garden Square, with an area of 57.5 square meters and located at Libertad Street corner Calbayog Street, Mandaluyong City, Metro Manila (subject property), which she had already bought from him. Koyama further averred that she had been renting out the subject property to foreign tourists, but Wong padlocked the same while she was in Japan attending to her business. When she requested him to open the subject property, he reportedly mauled her, causing her physical injuries, and also took her personal belongings.

On 24 July 2007, the RTC issued summons^[6] addressed to Wong at his residence, No. 21 West Riverside Street, San Francisco Del Monte, Quezon City. However, the original summons and the accompanying copy of the Complaint and its Annexes were eventually returned to the RTC by Sheriff IV Renebert B. Baloloy (Sheriff Baloloy), who indicated in his Sheriff's Return dated 14 August 2007 that said court process should already be deemed "DULY SERVED." According to his Return,^[7] Sheriff Baloloy had repeatedly attempted to serve the summons at Wong's residential address on 27 July 2007, 8 August 2007, and 10 August 2007, but Wong was always not around according to the latter's housemaids, Marie Sandoval (Sandoval) and Loren Lopez (Lopez). Sheriff Baloloy then attempted to leave the summons with Criz Mira (Mira), Wong's caretaker, who is of legal age, and residing at the same address for two and a half years, but Mira refused to acknowledge or receive the same.

On 25 September 2007, after the lapse of the 15-day reglementary period^[8] without Wong filing an answer to the Complaint in Civil Case No. C-21860, Koyama moved for the RTC to declare him in default, and to allow her to present her evidence *ex parte* and/or to render judgment in her favor. The RTC set Koyama's Motion for hearing on 25 October 2007 at 8:30 in the morning or as soon as counsel and the matter may be heard.^[9]

On 25 September 2007, the RTC, presided by public respondent Hon. Adoracion Angeles, issued an Order^[10] declaring Wong in default.

Wong subsequently filed with the RTC, by registered mail sent on 5 October 2007, a Manifestation^[11] claiming that he did not receive any summons from said court. According to him, he was only informed unofficially by a tricycle driver on 27 September 2007 regarding papers from a court in Caloocan City, which the tricycle driver returned to the court after failing to locate Wong. This prompted Wong to file an inquiry^[12] dated 28 September 2007 with the Office of the Clerk of Court of the RTC of Caloocan City as regards any case that might have been filed against him. In response, the Office of the Clerk of Court of the RTC of Caloocan City issued a Certification^[13] dated 3 October 2007 bearing the details of Civil Case No. C-21860, which Koyama had instituted against him. Wong asserted that he would not hesitate to submit himself to the jurisdiction of the RTC, should the proper procedure be observed.

In its Order^[14] dated 9 October 2007, the RTC stressed that, as early as 25 September 2007, Wong had been declared in default.

Wong, by special appearance of counsel, then filed with the RTC on 22 October 2007 a Motion to Dismiss^[15] Civil Case No. C-21860, asserting, among other grounds, that there was no service of summons upon him, hence, the RTC did not acquire jurisdiction over his person; and that he was not given the opportunity to oppose Koyama's Motion to have him declared in default.

In her Opposition^[16] to the Motion to Dismiss, filed on 5 November 2007, Koyama maintained that there was a proper substituted service of the summons, consequently, the RTC acquired jurisdiction over the person of Wong; and that Wong was served a copy of the Motion to have him declared in default on 3 October 2007, as evidenced by the Registry Return Card.^[17]

Wong filed a Reply^[18] on 7 November 2007 to Koyama's aforementioned Opposition, denying that a Loren Lopez or Criz Mira resided at his home address. Said housemaids were fictitious, as proven by the Certificate^[19] issued by Junn L. Sta. Maria, *Punong Barangay* of San Francisco Del Monte, Quezon City on 7 November 2007, stating that Loren Lopez and Criz Mira were not residents of 21-B Westriverside St., San Francisco Del Monte, Quezon City.

The RTC denied Wong's Motion to Dismiss for lack of merit. In its Order^[20] dated 18 December 2007, the RTC declared that Sheriff Baloloy validly resorted to a substituted service of the summons, pursuant to Section 7, Rule 14 of the Revised

Rules of Court.^[21] Sheriff Baloloy's performance of his official duty enjoyed the presumption of regularity, and Wong failed to rebut the same by merely presenting the *Barangay* Certificate, which is "not a role model of accuracy," especially when referring to mere transient residents in the area, such as lessees, housemaids or caretakers.

Wong went before the Court of Appeals via a Petition for *Certiorari*^[22] under Rule 65 of the Revised Rules of Court contending that the RTC committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing its Orders dated 25 September 2007 and 18 October 2007 in which it, respectively, declared Wong in default in Civil Case No. C-21860 and denied his Motion to Dismiss the Complaint in the same case. Wong insisted that there was no valid service of summons upon him, and that he was not notified of Koyama's Motion to have him declared in default.

The Court of Appeals, in a Resolution^[23] dated 17 January 2008, dismissed Wong's Petition for *Certiorari* outright for being the improper remedy.

According to the Court of Appeals, Wong should have availed himself of the following remedies for RTC Order dated 25 September 2007, declaring him in default:

As to the first assailed Order declaring [Wong] in default, the remedies available to a party declared in default were reiterated in *Cerezo v. Tuazon*, viz:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for *certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.^[24]

As for the 18 December 2007 Order of the RTC denying Wong's Motion to Dismiss,

the appellate court held:

As to the second assailed Order denying petitioner's Motion to Dismiss, the said Order is interlocutory and is not a proper subject of a petition for *certiorari*. Even in the face of an error of judgment on the part of a judge denying the motion to dismiss, *certiorari* will not lie. *Certiorari* is not a remedy to correct errors of procedure.

Let it be stressed at this point that basic rule that when a motion to dismiss is denied by the trial court, the remedy is not to file a petition for *certiorari*, but to appeal after a decision has been rendered. An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts--acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts.^[25]

Ultimately, the Court of Appeals decreed:

WHEREFORE, premises considered, the Petition is **DISMISSED** outright.
^[26]

Wong filed a Motion for Reconsideration^[27] of the foregoing Resolution on 6 February 2008, but the Court of Appeals denied the same for lack of merit in a Resolution^[28] dated 18 July 2008.

Hence, Wong filed the instant Petition before this Court.

In the meantime, since neither the Court of Appeals nor this Court issued a Temporary Restraining Order (TRO) or writ of preliminary injunction enjoining the proceedings in Civil Case No. C-21860, the RTC continued hearing the said case. In an Order^[29] dated 20 November 2008, the RTC *motu proprio* allowed Wong to cross-examine Koyama during the hearing on 23 January 2009, even though it did not lift its 25 September 2007 Order, which had declared him in default. The RTC reasoned:

The Court believes that the interest of justice and fair play would be better served if the [herein petitioner Wong] would be given the chance to cross examine the witness, and for which reason the Court suspends the proceedings and resets the continuation of the hearing of this case on January 23, 2009 at 8:30 a.m.

Wong, through counsel, actively participated in the hearing held on 23 January 2009

by extensively cross-examining Koyama.^[30] After said hearing, he filed before this Court, on 18 February 2009, a Motion for Clarification^[31] as to the validity of the RTC Order dated 20 November 2008 allowing him to cross-examine Koyama, but without lifting the Order of Default.

On 8 July 2009, the RTC rendered its Decision^[32] in Civil Case No. C-21860, the dispositive of which reads:

WHEREFORE, premises considered, the contract of sale between the parties relative to the sale of the condominium unit is hereby RESCINDED and the [herein petitioner Wong] is ordered to pay the [herein respondent Koyama] the sum of TWO MILLION TWO HUNDRED FOUR THOUSAND (Php2,204,000.00) PESOS with legal rate of interest from the date of demand on May 25, 2007; to pay the plaintiff the sum of TWO HUNDRED THOUSAND (Php200,000.00) PESOS as and for attorney's fees; to pay another sum of TWO THOUSAND FIVE HUNDRED (Php2,500.00) PESOS per court appearance for six (6) times and to pay the costs of suit.

Wong avers herein that the RTC did not acquire jurisdiction over his person since he was not served the summons.

Summons is a writ by which the defendant is notified of the action brought against him or her. In a civil action, jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant, is null and void.^[33]

Where the action is *in personam*, i.e., one that seeks to impose some responsibility or liability directly upon the person of the defendant through the judgment of a court,^[34] and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner described in Sections 6 and 7, Rule 14 of the Revised Rules of Court, which provide:

SEC. 6. *Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or if he refuses to receive and sign for it, by tendering it to him.

SEC. 7. *Substituted service.* - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof.

It is well-established that a summons upon a respondent or a defendant must be