

THIRD DIVISION

[G.R. No. 171916, December 04, 2009]

**CONSTANTINO A. PASCUAL, SUBSTITUTED BY HIS HEIRS,
REPRESENTED BY ZENAIDA PASCUAL, PETITIONER, VS.
LOURDES S. PASCUAL, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Due process dictates that jurisdiction over the person of a defendant can only be acquired by the courts after a strict compliance with the rules on the proper service of summons.

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, seeking to annul the Decision^[1] dated June 29, 2005 and the Resolution^[2] dated March 14, 2006 of the Court of Appeals (CA) nullifying and vacating the Decision^[3] dated December 3, 2002 and Order^[4] dated April 4, 2003 of the Regional Trial Court (RTC), Branch 12, Malolos, Bulacan.

The facts, as found in the records, are the following:

Petitioner filed a Complaint for Specific Performance with Prayer for Issuance of Preliminary Mandatory Injunction with Damages before the RTC of Malolos, Bulacan against respondent. The process server, in his Return of Service^[5] dated May 21, 2002, reported, among others that:

The undersigned Process Server of this Honorable Court went at defendant's given address at No. 4 Manikling St., Talayan Village, Quezon City on May 20, 2002 to serve the summons and copy of the Complaint together with the annexes thereto in connection with the above-entitled case.

At the time of the service of the said summons, the defendant was not at her home and only her maid was there who refused to receive the said summons [in spite] of the insistence of the undersigned.

The undersigned, upon his request with the Brgy. Clerk at the said place, was given a certification that he really exerted effort to effect the service of the said summons but failed due to the above reason. (Annex "A").

The following day, May 21, 2002, the undersigned went back at defendant's residence to have her receive the subject summons but again the above defendant was not at her house.

WHEREFORE, the original summons and copy of the complaint is hereby returned to the Honorable Court NOT SERVED.

Malolos, Bulacan, May 21, 2002.

Thereafter, an alias summons was issued by the RTC and, on May 29, 2002, the following report was submitted:

The undersigned, on May 29, 2002, made a 3rd attempt to serve the alias summons issued by the Hon. Court relative with the above-entitled case at the given address of the defendant.

The undersigned, accompanied by the barangay officials of the said place, proceeded at defendant's residence but the undersigned was not permitted to go inside her house and was given information by her maid that the defendant was not there.

The defendant's car was parked inside her house and inquiries/verification made on her neighbors revealed that the defendant was inside her house at the time of service of said summons and probably did not want to show-up when her maid informed her of undersigned's presence.

WHEREFORE, the undersigned court process server respectfully returned the alias summons dated May 29, 2002 issued by the Hon. Court "UNSERVED" for its information and guidance.

Malolos, Bulacan, May 30, 2002.^[6]

Subsequently, on August 14, 2002, the process server returned with the following report,^[7] stating that a substituted service was effected:

This is to certify that on the 14th day of August, 2002, I personally went at Dr. Lourdes Pascual's residence at #4 Manikling Street, Talayan Village, Quezon City, to serve the copy of the Summons dated August 12, 2002, together with a copy of the Complaint and its annexes thereto.

Defendant Dr. Lourdes Pascual was out during the time of service of the said summons and only her housemaid was present. The undersigned left a copy of the same to the latter who is at the age of reason but refused to sign the same.

WHEREFORE, the undersigned respectfully return the service of summons duly served for information and guidance of the Honorable Court.

Malolos, Bulacan, August 14, 2002.

For failure of the respondent to file a responsive pleading, petitioner, on September 17, 2002, filed a Motion to Declare Defendant in Default^[8] to which the petitioner filed an Opposition/Comment to Plaintiff's Motion to Declare Defendant in Default^[9] dated October 1, 2002, claiming that she was not able to receive any summons and copy of the complaint. The RTC, in its Order^[10] dated October 30, 2002, declared respondent in default and allowed petitioner to file his evidence *ex-parte*.

Respondent filed a Motion for Reconsideration^[11] dated November 18, 2002 seeking to set aside the above-mentioned Order dated October 30, 2002. However, the said motion was denied by the RTC in its Order^[12] dated November 27, 2002.

Consequently, on December 3, 2002, the RTC, in its Decision,^[13] found in favor of the petitioner. The dispositive portion of the said Decision reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered in favor of the plaintiff, Constantino A. Pascual, and against Lourdes S. Pascual, ordering the latter as follows:

- a. to CEASE AND DESIST from further intervening with the corporate and internal affairs of Rosemoor Mining Corporation, consisting of acts and omissions prejudicial and detrimental to the interest of the said corporation resulting to irreparable injury to herein plaintiff;
- b. to pay plaintiff the sum of One Hundred Thousand Pesos (P100,000.00), for and by way of moral damages;
- c. to pay the sum of Thirty Thousand Pesos (P30,000.00) for and by way of Attorney's fees; and
- d. to pay the costs of this suit.

SO ORDERED.

Respondent then filed a Motion to Set Aside Order of Default^[14] dated December 13, 2002, with the argument of non-service of summons upon her. This was denied by the RTC in its Order^[15] dated April 4, 2003; and on the same day, a Certificate of Finality and Entry of Judgment was issued. Eventually, respondent, on April 28, 2003, filed a Motion for Reconsideration^[16] of the Order dated April 4, 2003, which was denied by the RTC in its Order^[17] dated June 23, 2003. Finally, on June 26, 2003, a Writ of Execution was issued to enforce the Decision dated December 3, 2002 of the RTC.

Aggrieved, respondent filed with the CA a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court which was granted by the same Court in its Decision^[18] dated June 29, 2005, the dispositive portion of which reads:

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The said Decision, as well as the Orders and the processes on which this is premised, are NULLIFIED and VACATED.

SO ORDERED.

Petitioner comes now to this Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS AN INVALID SERVICE OF SUMMONS UPON THE RESPONDENT AND, HENCE, THE COURT (REGIONAL TRIAL COURT) DID NOT ACQUIRE JURISDICTION OVER THE RESPONDENT.

II

THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE PETITION WHEN FROM THE UNDISPUTED FACTS, THE RESPONDENT'S FAILURE TO INTERPOSE AN APPEAL OR TO FILE A MOTION FOR RECONSIDERATION OR A PETITION FOR RELIEF FROM JUDGMENT CLEARLY BARS THE INSTITUTION OF THE SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65, 1997 RULES OF CIVIL PROCEDURE.

Petitioner insists that there was a valid substituted service of summons and that there should be a presumption of regularity in the performance of official functions. He also avers that *certiorari*, which was filed by the respondent with the CA, does not lie when the remedy of appeal has been lost.

In her Comment with Motion to Cite for Contempt^[19] dated August 29, 2006, respondent raises the following issues:

1. SHOULD THE PETITION BE DISMISSED FOR HAVING BEEN FILED IN VIOLATION REPUBLIC ACT NO. 6713 IN RELATION TO ART. 5 OF THE CIVIL CODE?
2. ARE THE PETITIONER AND HIS COUNSEL PUNISHABLE FOR CONTEMPT OF COURT FOR KNOWINGLY MISLEADING THIS HONORABLE COURT?
3. WAS THE ALLEGED SERVICE OF SUMMONS ON THE ILLITERATE MAID EFFECTIVE TO CONFER JURISDICTION OVER THE DEFENDANT BEFORE THE RTC OF MALOLOS, BULACAN?
4. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE SERVICE OF SUMMONS WAS VALID, WAS THE ORDER DECLARING THE DEFENDANT

IN DEFAULT RENDERED WITH GRAVE ABUSE OF DISCRETION?

5. WAS THE ORDER DENYING THE MOTION TO LIFT AND SET ASIDE THE ORDER OF DEFAULT RENDERED WITH GRAVE ABUSE OF DISCRETION?

6. IS THE PETITIONER GUILTY OF FORUM SHOPPING?

7. WILL THIS HONORABLE COURT ALLOW THE NULL AND VOID DECEMBER 3, 2002 DECISION OF THE RTC TO BECOME FINAL AND EXECUTORY AND OBLITERATE THE CRIMINAL ACT OF FALSIFICATION, THEREBY REWARDING THE AUTHOR OF THE CRIMINAL OFFENSE?

In addressing the above issues, the respondent argues that the CA decision became final by operation of law because the present petition is null and void for being a violation of the provisions of Republic Act No. 6712, in relation to Article 5 of the Civil Code, the counsel for petitioner having filed a Motion for Extension of Time to File Petition for Review and, thereafter, the Petition for Review itself. She also claims that there was no proper service of summons as the maid who was purportedly served a copy thereof was illiterate and has denied being served in a sworn statement executed before a notary public and, thus, the RTC never acquired jurisdiction over her person. According to her, assuming that the summons were indeed served, the RTC was guilty of grave abuse of discretion for declaring her in default and for refusing to lift the order of default because it deprived her of her right to present evidence in support of her defense. She further disputes the argument of the petitioner that the Decision dated December 3, 2002 became final because it did not become the subject of appeal by stating that the said principle can only be applied to valid judgments that were rendered in accordance with law and not to void judgments rendered without jurisdiction or in excess thereof. In addition, she avers that petitioner made a deliberate and malicious concealment of the fact that at the time he filed the case for specific performance, as well as during the time it was being heard, he was already being investigated in administrative proceedings before the National Bureau of Investigation, the Department of Justice and the Municipal Trial Court of Malolos, Bulacan, Branch 2, involving the same subject matter, issues and parties; hence, he violated the law against forum shopping. Lastly, respondent points out that the CA Decision dated June 29, 2005 is a permanent injunction against the implementation of the contested Orders and Decisions of the RTC; therefore, there is an urgent necessity to enforce the said judgment.

On June 30, 2008, this Court granted^[20] the substitution of the respondent by his heirs as represented by his wife Zenaida Pascual, after the Manifestation^[21] dated June 12, 2008 was filed informing this Court of the demise of the same respondent.

After a careful study of the records of this case, this Court finds the petition bereft of any merit.

Clearly, the main, if not the only issue that needs to be resolved is whether or not there was a proper and valid substituted service of summons, the resolution of which, will determine whether jurisdiction was indeed acquired by the trial court over the person of the petitioner.