

## SECOND DIVISION

[ G.R. NO. 148211, July 25, 2006 ]

**SINCERE Z. VILLANUEVA, PETITIONER, VS. MARLYN P. NITE,\*  
RESPONDENT.**

### D E C I S I O N

#### **CORONA, J.:**

In this petition for review on certiorari under Rule 45, petitioner submits that the Court of Appeals (CA) erred in annulling and setting aside the Regional Trial Court (RTC) decision on the ground of extrinsic fraud.

The facts follow.<sup>[1]</sup>

Respondent allegedly took out a loan of P409,000 from petitioner. To secure the loan, respondent issued petitioner an Asian Bank Corporation (ABC) check (Check No. AYA 020195) in the amount of P325,500 dated February 8, 1994. The date was later changed to June 8, 1994 with the consent and concurrence of petitioner.

The check was, however, dishonored due to a *material alteration* when petitioner deposited the check on due date. On August 24, 1994, respondent, through her representative Emily P. Abojada, remitted P235,000 to petitioner as partial payment of the loan. The balance of P174, 000 was due on or before December 8, 1994.

On August 24, 1994, however, petitioner filed an action for a sum of money and damages (Civil Case No. Q-94-21495) against ABC for the full amount of the dishonored check. And in a decision dated May 23, 1997, the RTC of Quezon City, Branch 101 ruled in his favor.<sup>[2]</sup> When respondent went to ABC Salcedo Village Branch on June 30, 1997 to withdraw money from her account, she was unable to do so because the trial court had ordered ABC to pay petitioner the value of respondent's ABC check.

On August 25, 1997, ABC remitted to the sheriff a manager's check amounting to P325,500 drawn on respondent's account. The check was duly received by petitioner on the same date.

Respondent then filed a petition in the CA seeking to annul and set aside the trial court's decision ordering ABC to pay petitioner the value of the ABC check.<sup>[3]</sup> The CA ruled:

**WHEREFORE**, premises considered, the petition is **GRANTED** and the Decision dated May 23, 1997 of the public respondent is hereby **ANNULLED** and **SET ASIDE** for extrinsic fraud.

[Petitioner] Villanueva is hereby ordered to pay [Nite] -

- 1) the sum of [P146,500] as actual damages plus interest at 12% per annum from August 25, 1997 until full payment;
- 2) the sum of [P75,000] as moral damages;
- 3) the sum of [P50,000] as exemplary damages; and
- 4) the sum of [P50,000] as attorney's fees and cost of suit.

**SO ORDERED.**<sup>[4]</sup>

Thus, this petition. We find for respondent.

Annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is promulgated. *It can be filed by one who was not a party to the case in which the assailed judgment was rendered.* Section 1 of Rule 47 provides:

Section 1. Coverage. - This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Respondent may avail of the remedy of annulment of judgment under Rule 47. *The ordinary remedies of new trial, appeal and petition for relief were not available to her for the simple reason that she was not made a party to the suit against ABC. Thus, she was neither able to participate in the original proceedings nor resort to the other remedies because the case was filed when she was abroad.*

Annulment of judgment may be based only on extrinsic fraud and lack of jurisdiction.<sup>[5]</sup> Extrinsic or collateral fraud pertains to such fraud which prevents the aggrieved party from having a trial or presenting his case to the court, or is used to procure the judgment without fair submission of the controversy.<sup>[6]</sup> This refers to acts intended to keep the unsuccessful party away from the courts as when there is a false promise of compromise or when one is kept in ignorance of the suit.<sup>[7]</sup>

We uphold the appellate court's finding of extrinsic fraud:

Barely 6 days after receipt of the partial payment of P235,000.00 and agreeing that the balance of P174,000.00 shall be paid on or before December 8, 1994, [Sincere] filed his complaint against [ABC] for the full amount of the dishonored check in the sum of P320,500.00 without impleading petitioner. The apparent haste by which [Sincere] filed his complaint and his failure to implead [Marlyn] clearly shows his intent to prevent [Marlyn] from opposing his action.

[A]t the time news about [Marlyn] having left the country was widespread, appearing even in print media as early as May 1994, [Marlyn] paid [Sincere] the amount of P235,000.00 as partial payment on [August 18, 1994], through a representative.

Notwithstanding the foregoing, **SIX** (6) days later or on [August 24, 1994, Sincere] instituted an action for collection with damages for the