

THIRD DIVISION

[G.R. No. 111478, March 13, 1997]

**GEORGE F. SALONGA AND SOLID INTERTAIN CORPORATION,
PETITIONER, VS. COURT OF APPEALS, HON. JULIO R. LOGARTA,
AND PAUL GENEVE ENTERTAINMENT CORPORATION,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Are the professional lapses, inefficiency, carelessness and negligence of a lawyer enough to annul a default judgment? Do they constitute "extrinsic fraud"? Alternatively, do they amount to deprivation of due process? Is a motion (as distinguished from an independent and separate petition) sufficient to vest contempt jurisdiction on a trial court? These questions are answered by the Court as it resolves this petition assailing the Decision of respondent Court of Appeals^[1] in CA-G.R. SP No. 29138 promulgated on August 26, 1993, affirming with slight modification the judgment by default rendered by the trial court.

The Antecedent Facts

The court of origin (Regional Trial Court of Makati, Branch 63, presided by Judge Julio R. Logarta) narrated the facts it culled from the evidence, as follows:

"Astra Realty Development Corporation owned a property located at No. 32 Jupiter St., Bel-Air Village, Makati. This property is being leased to Alelie A. Montojima under a 'bilateral' contract of lease. Alelie Montojima constructed a building in the leased premises and opened a restaurant (sic) under the name and style Aquatic Chef Seafoods Restaurant which however, did not prosper. Alelie Montojima then came to transact with (herein private respondent) Paul Geneve Entertainment Corporation and with the consent of the lessor Astra Realty they agreed on a Joint Venture Agreement (JVA) with the following terms: that upon the signing and due execution of the JVA, Alelie Montojima will be selling all her existing rights and interests over the leased premises in favor of (herein private respondent) for P3 Million pesos. The JVA was executed and signed on September 1, 1989. (Herein private respondent) paid Alelie Montojima the total amount of P1,000,000.00. (Herein private respondent) took over the possession of the leased premises, but before (herein private respondent) could open her business, a complaint was lodged by Bel-Air Village Homeowner's Association for violation of some municipal ordinances. Astra was also informed by the Bel-Air Village Association of the complaint and Alelie Montojima demanded (herein private respondent) to vacate the premises. Meanwhile, (herein private

respondent), through Mrs. Milagros Izon, the president, was looking for a possible taker of the leased premises for a consideration, so she could recover the huge investments she had made. Thereafter, (herein private respondent) filed a civil case with prayer for preliminary injunction and writ of attachment against Montojima. A Temporary Restraining Order against Montojima was issued on March 22, 1990 while the writ of preliminary injunction was granted on November 29, 1991. Mrs. Milagros Izon was introduced by her friend, Ed Calveria, to (herein petitioner) George Salonga. (Herein petitioner) Salonga was supposed to buy-out all the leaseholding rights of the (herein private respondent) in the amount of P5.5 Million. Since (herein petitioner) Salonga did not have the sum of money(,) he proposed instead to Mrs. Izon a joint venture enterprise between (herein petitioner) Salonga's company (herein petitioner) Solid Intertain and (herein private respondent). The idea was that (herein petitioner) Solid Intertain Corporation and (herein private respondent) Paul Geneve Corporation will form a new corporation and the name Solidisque Inc. (sic). The documents all in seven (7) sets were drafted by both parties' respective counsels, Atty. Garlitos for (herein petitioners) and Atty. Sadili for (herein private respondent). (Herein private respondent) through Mrs. Izon has signed the joint venture agreement. The document with extra copies were then delivered to (herein petitioner) Salonga for his signature and for notarization. The document together with the extra copies remained unsigned and unexecuted. With the memorandum of agreement still unsigned, not notarized and in the possession of (herein petitioner) Salonga, the latter transferred all his equipments and properties from his former business site, Metro Disco, to the subject premises in question after informing Mrs. Izon that he did not have a place where he can transfer his things and asked that he be allowed to put it at No. 32 Jupiter St. Club Ibiza was thus opened and made operational on the leased premises in question under the name (of herein petitioner) Solid Intertain Corporation. No corporation under the name Solidisque (sic) Inc. was ever registered as agreed upon in the Securities and Exchange Commission. (Herein private respondent) was totally left out."^[2]

To continue the story, we now quote from the respondent Court of Appeals:

"It appears that on November 26, 1991 herein private respondent (Paul Geneve Entertainment Corporation) filed a complaint for specific performance with temporary restraining order and preliminary injunction with prayer for damages against herein petitioners (George Salonga and Solid Intertain Corporation) to enforce a memorandum of agreement that was supposedly perfected between the parties (Rollo, p. 157). On November 29, 1991 petitioners received a copy of the summons and complaint, including a copy of the restraining order issued in the said civil case by public respondent, enjoining 'petitioners from further operating club Ibiza,' which order was referred by petitioners to Atty. Onofre G. Garlito, Jr., the former counsel of record (Petition, p. 8 paragraph 16).

During the scheduled hearing for injunction on December 4, 1991, only private respondents appeared despite notice to petitioners (Rollo, p. 31 Annex 'A'). For disobeying the restraining order issued on November 29,

1991, private respondent sought to cite petitioner for indirect criminal contempt (Rollo, p. 217) during the hearing on the civil case whereby Atty. Garlito, Jr. presented George F. Salonga in support of the opposition to the issuance of the Writ of Preliminary Injunction (Rollo, p. 125, Comment).

On December 9, 1991, petitioners and their counsel failed to appear on the date set for hearing the motion for issuance of the writ of preliminary injunction (Rollo, p. 38). Acting on private respondent's motion to submit the application for the writ of preliminary injunction, the (Regional Trial Court a quo) resolved to grant the same on December 12, 1991 (Rollo, p. 38, Decision, Annex 'A').

In the meantime, and despite two motions for extension of time to file an answer, (Petition, paragraphs 21 and 22) no answer was filed (Rollo, p. 39). However, (the) trial court received on June 16, 1992 (Petition, p. 10) an answer purportedly dated January 14, 1992.

On January 15, 1992, petitioner's counsel move (sic) to dissolve the injunction (Rollo, p. 232) and set the hearing thereof on January 17, but on said latter date, only private respondent's counsel showed up (Rollo, p. 237).

Due to petitioner's failure to file an answer, private respondent submitted a third ex parte motion to declare petitioner, as defendant (before the Regional Trial Court), in default on March 4, 1992 (Rollo, p. 238) which was favorably acted upon on March 10, 1992 (Petition, paragraph 25).

On April 14, 1992, the impugned decision was handed down by (the Regional Trial Court) judge, thus:

"WHEREFORE, judgment is hereby rendered as follows:

1. The writ of preliminary injunction issued on December 12, 1991 is hereby made permanent;
2. Ordering defendants to sign, perform and execute the formalities of the Memorandum of Agreement (Exh. 'K'), pursuant to the Joint Venture Agreement (Exh. 'C');
3. Ordering defendants to undertake the creation and formation, organization and registration of a new corporation pursuant to and in accordance with Philippine Laws before the Securities and Exchange Commission, under the business name and style 'Solidisque Inc.' whose primary purpose shall be to operate a discotique (sic), club restaurant and/or other forms of business similar thereto on the aforesaid leased premises setting the authorized capital stock of the Joint Venture Corporation to be registered at PESOS TEN MILLION (P10,000,000.00), twenty five (25 %) per cent of the total subscription as paid-up capital, in compliance to paragraphs Nos. 1 and 2, page (3), of the Memorandum of Agreement;
4. Ordering defendants to perform and provide as its equity participation to SOLIDISQUE, INC. a total of SEVEN MILLION PESOS (P7,000,000.00), more or less

consisting of audio and lighting equipment, inclusive of electrical and construction materials, among others, and to prepare a list of the aforesaid equipment, materials together with their present value and cost of improvements to be introduced on the establishment to be operated on the leased premises and make such list available to the plaintiff the soonest possible time, in compliance to paragraph No. 3, of the Memorandum of Agreement;

5. Ordering defendants to faithfully and religiously perform, comply, fulfill and satisfy all the terms and conditions as embodied under paragraphs Nos. 4, 5, 5(a) and 5(b), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, pages (3) to (6), of the Memorandum of Agreement, Exh. 'K';

6. Ordering the defendants to pay the plaintiff, jointly and severally the cash amount of P500,000.00 plus legal interest, computed from November 1, 1990, for being in default, until fully paid, pursuant to paragraph No. 6, page (4) of the MOA as ACTUAL DAMAGES;

7. Ordering the defendants to pay the plaintiff, jointly and severally the amount of P100,000.00 as exemplary damages;

8. Ordering the defendants jointly (and) severally to pay the amount of P100,000.00 attorney's fees; and

9. Costs of Suit.

SO ORDERED." (PETITION, pp. 2-3)

Petitioner claims that he received a copy of the decision only on October 7, 1992 (Petition, par. 3). Yet, a Motion for Reconsideration was filed on July 28, 1992 by his counsel (Petition, par. 24).

On September 25, 1992, herein petitioner George F. Salonga was adjudged guilty of civil contempt, thus:

'IN VIEW THEREOF, plaintiff's motion are hereby GRANTED and defendant George F. Salonga, is hereby adjudged guilty of indirect contempt of court. Accordingly, the (Regional Trial Court) hereby orders defendant George F. Salonga jointly and severally with the corporation to pay a fine of TWO THOUSAND (P2,000.00) PESOS), a day reckoned from November 1991 until he complies with the orders of the Court aforementioned and the default judgment. Such fine shall pertain to the benefit of plaintiff.

Let a warrant of arrest issue on defendant George F. Salonga, who shall be placed under the custody of the law until such time that he obeys the orders and judgment of the Court afore-mentioned (sic).

SO ORDERED.' (Rollo, pp. 115-116)

Four days later, an order for issuance of a writ of execution was issued over petitioner's plea for a period of five days within which to submit an opposition. (Rollo, p. 300)

On October 13, 1992, (the Court of Appeals) issued a Temporary Restraining Order enjoining public respondent (trial court) from enforcing the Decision dated April 14, 1992 and the Order dated September 15, 1992 (Rollo, p. 45) and on November 3, 1992, a writ of preliminary injunction was issued by the (Court of Appeals) upon approval of the required bond (Rollo, p. 300)."[3]

Petitioners raised before the public respondent Court of Appeals the following arguments:

"1. The Judgment/Decision dated 14 April 1992 and the Order dated 25 September 1992 issued in Civil Case No. 91-3261 must be annulled on the ground of fraud on the part of petitioners' previous counsel.

2. The public respondent judge never acquired jurisdiction over the person of petitioner Salonga in hearing the criminal contempt proceedings, thereby depriving petitioner Salonga of his basic constitutional right to due process and justifying the annulment of the Order dated 25 September 1992."[4]

The respondent Court disagreed with these arguments and ruled that:

"WHEREFORE, IN THE LIGHT OF THE FOREGOING, the petition is hereby DENIED. The Writ of Preliminary Injunction earlier issued by this Court is hereby LIFTED and SET ASIDE. Insofar as the fine for contempt is concerned, the same is reduced to only P1,000.00, pursuant to and as provided under Section 6, Rule 71 of the Rules of Court."[5]

The Issues

Before us, petitioners allege the following "errors" in the challenged Decision of public respondent:

I

The public respondent Court of Appeals grievously erred in denying the Petition for Annulment of Default Judgment filed in CA-G.R. SP No. 29138 and disregarding the blatant, serious and culpable negligence and professional misconduct of petitioners' previous counsel amounting to deprivation of due process of law.

II

The public respondent Court of Appeals committed grave and serious reversible error in merely reducing the fine for the indirect contempt instead of nullifying the entire contempt proceedings as having no basis in law and procedure."[6]

In the main, the issue is whether extrinsic fraud and denial of due process obtain in this case to justify annulment of the default judgment rendered by the trial court against petitioners.

The Court's Ruling

The petition has no merit.