

THIRTEENTH DIVISION

[CA-G.R. SP No. 109203, February 28, 2014]

WORLD PRECISION GAS CORPORATION, NELSON ANG, MARIA LUISA ANG, NENA C. ANG, GUILLERMO SY, ALLISON ANG-SY, RENATO C. ANG, MELINDA ANG AND RICKY ANG, PETITIONERS, VS. HON. EDWIN SORONGON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 214, MANDALUYONG CITY AND BANCO DE ORO UNIVERSAL BANK, RESPONDENTS.

D E C I S I O N

YBAÑEZ, J.:

Because public respondent Judge Edwin Sorongon rendered a Decision on 16 March 2009^[1] ordering them to pay private respondent Banco de Oro Universal Bank (BDO) actual damages in the amount of One Hundred Forty Nine Million One Hundred Eighty One Thousand Seven Hundred Pesos (P149,181,700.00) plus interest and liquidated damages, exemplary damages in the amount of One Hundred Thousand Pesos (P100,000.00), attorney's fees in the amount of One Million Pesos (P1,000,000.00) and cost of suit, petitioners filed this Petition for Certiorari and Prohibition (with prayer for Temporary Restraining Order and/or Preliminary Injunction)^[2] to reverse and set aside the aforesaid decision on the ground that the public respondent judge, in rendering the same, acted with grave abuse of discretion amounting to lack or excess of jurisdiction due to the lack of proper service of summons to them.

The Facts

Petitioner World Precision Gas Corporation ("World Precision"), formerly known as Nation Petroleum Gas Inc., is engaged in the business of trading, distribution and retailing of petroleum, liquefied petroleum gas (LPG) and related products. In order to expand its business by constructing an oil depot in Sariaya, Quezon, it applied for a credit line with BDO in 2003. On 2004, BDO and World Precision executed a Facility Agreement^[3] for the sum of One Hundred Fifty Million Pesos (P150,000,000.00). This was followed by the execution of several documents like the Conforme Letter^[4] that was signed by Allison Sy and Renato Ang; Continuing Suretyship Agreement,^[5] which was signed by World Precision's Board of Directors and Officers (Nena, Nelson, Renato, Ricky, Alison and Melinda, all surnamed Ang) including three of their spouses (Maria Luisa Ang, Mario Ang and Guillermo Sy); and several irrevocable letters of credit^[6] and trust receipts.^[7] Thereafter, World Precision's suppliers (NLG-Transman Brokerage and Freight Services, Inc. and Melinph Marketing) delivered the goods subject of the trust receipts to World Precision which BDO paid upon presentment of their proofs of delivery. In consideration thereof, World Precision obligated itself to hold the goods in trust for BDO, with permission to sell them and to remit the proceeds thereof and if not, to

return the goods to the bank. When three of the trust receipts fell due, BDO demanded that the petitioner company hand over the proceeds of the sale or surrender the subject goods.^[8] Unfortunately, World Precision failed and continuous to fail to comply with this obligation as they were having financial difficulties and even resorted for a rehabilitation proceedings before the Regional Trial Court in Lucena City, who in turn issued a Stay Order on 18 December 2006.^[9]

As a consequence of petitioners' inability to pay, BDO filed several suits against them, among which is the instant complaint for damages in the Regional Trial Court of Mandaluyong City. The complaint, docketed as Civil Case No. MC-06-3164, sought to collect the total amount of One Hundred Forty Nine Million One Hundred Eighty One Thousand Seven Hundred Pesos (P149,181,700.00) representing the proceeds of the sale of the subject goods or value of unsold goods held in trust by World Precision under the matured trust receipts.

Public respondent judge issued the writ of attachment^[10] prayed for by BDO and directed the service of summons and copies of the instant complaint upon the petitioners. However, personal service of summons to them failed because the court personnel were unable to locate them as they were told by the persons found at their respective addresses that the petitioners moved without leaving any forwarding addresses.^[11] Subsequently, on BDO's motion,^[12] public respondent judge allowed service of summons by publication in its Order dated 11 May 2007.^[13]

BDO then caused the publication of summons in Weekly Insider News, a newspaper of general circulation on 26 June 2007^[14] and sent to petitioners the same by registered mail at their last known addresses.^[15] The bank also submitted the affidavit of publication of Weekly Insider's publisher.^[16]

After more than sixty (60) days from the date of publication and when petitioners still failed to file their answers within the prescribed period, BDO moved to declare them in default and prayed that it be allowed to present its evidence *ex parte*.^[17] Public respondent granted the same in his Order dated 26 October 2007.^[18]

BDO then proceeded with the *ex parte* presentation and formal offer of its evidence.^[19] Thereafter, public respondent judge rendered the assailed Decision^[20] on 16 March 2009.

Alleging that they only discovered the instant suit on 20 April 2009 and raising the Stay Order, petitioners now institute the present petition interposing the following grounds,^[21] to wit:

I.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING THE ISSUANCE OF SUMMONS BY PUBLICATION WHEN THE

WHEREABOUTS OF PETITIONERS ARE NOT UNKNOWN AND CAN BE ASCERTAINED BY DILIGENT INQUIRY.

II.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING DEFENDANT'S IN DEFAULT AND ALLOWING RECEPTION OF EVIDENCE EX PARTE DESPITE LACK OF PROPER SERVICE OF SUMMONS TO PETITIONERS.

III.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING A DECISION IN CIVIL CASE NO. MC-06-3164 DESPITE LACK OF PROPER SERVICE OF SUMMONS TO PETITIONERS; and

IV.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING A DECISION IN CIVIL CASE NO. MC-06-3164 AGAINST PETITIONER WORLD PRECISION GAS CORPORATION (NATION PETROLEUM GAS, INC.) DESPITE THE STAY ORDER ISSUED BY THE REGIONAL TRIAL COURT OF LUCENA CITY, BRANCH 57.

The Issue

The errors presented could be summarized to the sole issue of whether or not petitioners could be validly served with summons by publication.

The Ruling of this Court

This petition lacks merit.

At the outset, we reiterate the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order or decision.^[22] A careful perusal of the