

FEDERICO H. TOLENTINO, PETITIONER, VS. HON. RICARDO D. GALANO, COURT OF FIRST INSTANCE OF MANILA, BRANCH 13, AND SERVICEWIDE SPECIALISTS, INC., RESPONDENTS.

G.R. No. L-49008. April 15, 1988

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d6d4e1f4a10b/>

GUTIERREZ, JR., J.:

This litigation commenced in the then Court of First Instance of Manila, Branch XIII when private respondent Servicewise Specialists, Incorporated, filed a complaint for replevin and damages against petitioner Federico Tolentino and "John Doe". The case was docketed as Civil Case No. 111603.

The private respondent asked for the manual delivery of one 1975 VW 102 Brasilia, 2-door Sedan or in the event that manual delivery could not be effected, for the recovery of the amount of P49,189.35 plus interest, attorney's fees and costs. Attached to the complaint was an affidavit of merit alleging that the subject motor vehicle was in the possession of petitioner Federico Tolentino and that its actual value was P45,000.00; the promissory note executed by Tolentino (Annex "A"); the chattel mortgage (Annex "B"); the assignment of credit (Annex "C"); and the statement of account (Annex "D").

Since the verified complaint was sufficient in form and substance and after the private respondent put up a Replevin Bond in the amount of P98,000.00, the lower court issued a writ of seizure.

On November 11, 1977, Deputy Sheriff Emilio Reyes served summons together with a copy of the complaint to Tolentino. On the same date, Sheriff Reyes seized the subject motor vehicle pursuant to the writ of seizure.

In view of the failure of Tolentino to file a counterbond, Sheriff Reyes delivered the motor vehicle to the possession of the private respondent.

On the ground that Tolentino did not file an answer despite summons within the reglementary period, the private respondent filed a motion to declare Tolentino in default and to be allowed to present evidence ex-parte.

In an order dated January 13, 1978, the motion was granted and the lower court set the reception of private respondent's evidence on January 19, 1978.

On January 18, 1978, Tolentino filed an opposition to the motion to declare him in default. He alleged therein that he was not served summons with a copy of the complaint and that he only became aware of the existence of the case on January 6, 1978 upon receipt of the motion to declare defendant in default by the private respondent. The motion was denied.

The private respondent was then allowed to present its evidence ex-parte.

On January 25, 1978, the lower court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment in favor of the plaintiff and against the defendant Federico H.

Tolentino as follows:

"1.

Confirming the legality of the seizure by Deputy Sheriff Emilio Reyes of the motor vehicle described in the complaint and in the Writ of Seizure as well as the legality of his delivery of the same to the plaintiff herein;

"2.

Confirming the legal right of the plaintiff herein to take possession of the said motor vehicle which shall be disposed of in accordance with the terms and conditions of the chattel mortgage executed by the parties;

"3.

Ordering the said defendant to pay to the plaintiff the sum of P1,286.96 representing the bonding fee for the Replevin Bond and the expenses of repossession of the motor vehicle in question;

"4.

Ordering the said defendant to pay the costs of the suit." (pp. 88-89, Rollo)

The decision was based on the findings of the lower court which are as follows:

"On April 14, 1976, the defendant Federico Tolentino, for value received, executed in favor of the Karbayan, Inc. a promissory note for the principal sum of P60,000.00 payable in sixty (60) equal installments of P1,000.00 a month on the 20th day of each month starting May 20, 1976 thru and inclusive of April 20, 1981, provided that interest at 14% per annum shall be added on each unpaid installment from maturity until fully paid; that in the case of default in the payment of any of the installments or interest when the same becomes due and payable, the total principal sum then remaining unpaid, together with the accrued interest thereon, shall at once become due and payable; and that upon such default, an additional sum equal to 25% of the total sum due shall be paid an attorney's fees (Exhibit "A", "A-1", "A-2" and "A-3"). On the same date, April 14, 1976, the defendant Federico Tolentino executed in favor of Karbayan, Inc. a chattel mortgage over one (1) unit of 1975 Volkswagen 102 Brasilia, 2-door Sedan, bearing Engine No. BA-161847 and Serial No. FA-001936 (Exhibit "B") to secure the payment of the said promissory note, which deed of chattel mortgage was duly registered. On April 14, 1976, Karbayan, Inc., with notice to defendant Tolentino, assigned to Filinvest Credit Corporation all its rights, title and interest in the said promissory note and chattel mortgage (Exhibits "A-4", "B-1", "B-2" and "C"). Subsequently, or on September 12, 1976 Filinvest Credit Corporation assigned all its rights and interest in the promissory note, Exhibit "A", and in the chattel mortgage, Exhibit "B", to and in favor of the Servicewide Specialists, Inc., plaintiff herein (Exhibit "D"), with notice to defendant Federico Tolentino (Exhibit "E"). As of the date of the said assignment of credit on September 12, 1977, the defendant was in arrears of six (6) installments; so the plaintiff, thru its lawyer, sent to the defendant a letter informing him that the entire outstanding balance of his account amounting to P49,123.43 became due and payable, exclusive of interest and other charges, and demanding payment of the same, otherwise plaintiff will be constrained to institute the proper action against him (Exhibit "F"). The said demand letter was received by the defendant on September 20, 1977 (Exhibit "F-1"). The defendant, however, did not comply with the demand; hence, the present action was filed. At the time of the filing of the complaint on October 21, 1977, the defendant had a total outstanding balance, including interest, on the promissory note, of P49,189.35, exclusive of the stipulated attorney's fees in an amount equal to 25% of the total amount due of P12,297.33, and the cost of repossession of the motor vehicle amounting to P1,086.96 (Exhibits "G" and "G-1"). The motor vehicle,

subject of the chattel mortgage, was seized by the Sheriff and turned over to the possession of the plaintiff (Exhibit "H").

"From the foregoing established facts, the Court finds that the material allegations, with the exception of the claim for liquidated damages in the amount of P12,297.33 which is not expressly stipulated in the promissory note, have been substantiated." (pp. 87-88, Rollo)

On February 16, 1978, Tolentino filed a motion to set-aside the order of January 13, 1978 and decision dated January 25, 1978 and to allow the defendant to answer the plaintiff's complaint. He reiterated his position that he was not served summons and that the first time he became aware of the case was after receiving the motion to declare him in default on January 6, 1978. He also manifested that contrary to what was stated in the decision, he filed on January 9, 1978, or 4 days before he was declared in default a manifestation and opposition to the motion to declare him in default through his assistant Mr. Damaso R. Aguilar. According to him this motion was, however, erroneously filed by Mr. Aguilar at Branch XIII, City Court of Manila instead of Branch XIII, Court of First Instance attaching thereto an affidavit of merit of Mr. Damaso Aguilar and that for this reason, the Court of First Instance received the motion only on January 19, 1978 after the city court certified said motion to the former court. He also denied knowledge of the assignment of credit by Filinvest to the private respondent. The motion was denied.

A second motion to set aside the questioned order and decision and for leave to admit answer with third party complaint filed by Tolentino was denied.

Hence this petition.

The petitioner contends that the lower court did not have jurisdiction over the case on the ground that summons and copy of the complaint were not served on him. He alleges that the Sheriff's return showing that he was served summons and a copy of the complaint is "evidently and manifestly duvious (sic)." He states: "On November 11, 1977, the deputy sheriff of the respondent Court of First Instance of Manila, Emilio Z. Reyes, submitted in said Civil Case a sheriff's return wherein he made it appear that on the said date of November 11, 1977, he served summons and warrant of seizure upon the herein petitioner, and further certified and made it appear that on November 16, 1977, a date 5 days in the future, he has delivered the personal property, subject matter of litigation, to Servicewide Specialists, Inc. The truth of the matter is that the herein petitioner was neither served summons, warrant of seizure and copy of the complaint nor the said sheriff had seized and delivered the personal property to the plaintiff therein, respondent Servicewide Specialist, Inc."

The petitioner now capitalizes on the conflicting dates reflected in the sheriff's return and the private respondent's motion to declare him in default as to when summons was served on him. While the sheriff's return states that the summons was served on the petitioner on November 11, 1977, the private respondent's motion to declare petitioner in default states that summons was served on the petitioner on November 16, 1977.

The petitioner also states that he filed a charge of falsification of public and/or official document under Article 171, paragraph 4, Revised Penal Code) against Deputy Sheriff Reyes before the Fiscal's Office of Manila and that it was resolved therein that a prima facie case exists against said sheriff. He further states that Reyes after learning about the criminal case stopped reporting for work, went into hiding and that he could not be served with subpoena at CFI - Branch XIII nor at his known residence and address.

These circumstances allegedly show that the sheriff's return was dubious and that he was not served summons.

We find the petitioner's arguments without merit.

The fact that there was a discrepancy between the sheriff's return and the motion of the private respondent to

declare him in default as to the date when summons was served does not imply that the sheriff's return was dubious much less show that he was not served summons. Ruling on such discrepancy, the sheriff's return was rightly upheld by the lower court and the error in the private respondent's pleading considered merely a typographical error.

Moreover, we find inadequate the petitioner's argument that the mere filing of a falsification charge against the deputy sheriff and the resolution of the fiscal's office that there was a prima facie case is enough ground to show that the sheriff's return was falsified or incorrect. At any rate, the private respondent in its comment states that the reason why the deputy sheriff was not able to file his counter-affidavit was because he was then on vacation and the address furnished to the office of the city fiscal was his office address.

A deputy sheriff is a public officer and one of his official duties is to effect prompt and effective service of summons issued by the court. Hence in the absence of contrary evidence the presumption is that he has regularly performed his official duty (See *Penalosa v. Viscaya, Jr.*, 84 SCRA 298 in relation to Rule 131, Section 5 [m]). It should be stressed that the motor vehicle was seized on the same day that summons was served. When the petitioner failed to file a counterbond, his car was turned over to the private respondent. The petitioner was not ignorant of what was going on.

Finally, one of the requisites in order that an order of default may be lifted is that the movant must show that he has a meritorious defense.

The records show that the petitioner does not have any such defense. The petition itself is bereft of any allegation of valid defense to resist the complaint against him except stating that the assignment of credit done by Filinvest, his creditor in favor of the respondent was illegal. He does not even explain the reason why he believes that the transaction was illegal. He does not deny his obligations to Filinvest. There is no allegation that he has paid for the car that he purchased on an installment basis.

All in all, we agree with the respondent that the petitioner is resorting to technicalities of procedure in order to delay the speedy termination of the case and, in the process, delay the payment of his obligations to the respondent.

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit. The questioned order and decision of the Court of First Instance of Manila in Civil Case NO. 111603 are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Fernan, Feliciano, Bidin, and Cortes, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.