

**PATRICIA S. VILLAREAL, FOR HERSELF AND AS GUARDIAN OF HER MINOR CHILDREN, CLAIRE HOPE AND TRICIA, BOTH SURNAMED VILLAREAL, PETITIONER, VS. THE COURT OF APPEALS, ELISEO SEVILLA, ...**

*G.R. No. 107314. September 17, 1998*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

Petitioners seek a review of the decision,[1] dated December 23, 1991, of the Court of Appeals nullifying the decision and orders of the Regional Trial Court in Civil Case No. 16194 and remanding the said case to the court a quo for further proceedings as well as the resolution of the Court of Appeals denying reconsideration of its decision.

The complaint in this case was filed by petitioner Patricia Villareal to recover damages in the total amount of P1,944,000.00 from private respondents Eliseo and Erna Sevilla and certain John Does for the killing on June 6, 1986 of petitioner's husband Jose Villareal. The complaint, docketed as Civil Case No. 16194, was filed with the Regional Trial Court of Makati, Metro Manila. It was found that prior to the filing of the complaint on March 2, 1987, the Sevillas had abruptly left the country (at least two months after the murder) and had started disposing of their properties in the Philippines.[2]

On March 11, 1987, after a hearing, during which witness Deborah Alamares gave private respondents' address in the United States as allegedly divulged to her by private respondent Erna Sevilla herself,[3] the trial court ordered the Sevillas' properties in the Philippines attached,[4] upon the posting of a bond in the amount of P500,000.00. Pursuant to this, Deputy Sheriff Eulalio C. Juanson attached private respondents' personal and real properties on March 17, 18, and 19, 1987.[5]

On July 21, 1987, petitioners filed a Motion for Leave for Extraterritorial Service pursuant to Rule 14, §17 alleging that private respondents were non-residents. The judge granted the motion[6] and authorized the service of summons by registered mail at private respondents' address in California, U.S.A. This mail was received on August 17, 1987 by a certain "D. Pyle," whose signature appears on the registry return card.[7]

Petitioners then moved to declare private respondents in default for failure to answer notwithstanding service of summons. However, petitioners' motion was denied[8] on October 12, 1987 by the judge for the reason that "perhaps the address given by the plaintiff (petitioners herein) is not the correct address of the defendants (private respondents herein) or that they have already moved out."

On October 13, 1987, the trial court *motu proprio* set aside its order of March 11, 1987[9] on the ground that the attachment of property was improper because petitioners' claims were unliquidated. Accordingly, all properties garnished and attached pursuant to the writ of attachment were ordered released. Petitioners moved for reconsideration of the court's order. On December 21, 1987, the trial court modified its order[10] by allowing

attachment in the amount of P30,000.00 to answer for actual damages for the death of Jose Villareal. The amount represents the value of human life as then fixed by this Court.

On August 29, 1988, petitioners filed a Motion for Leave to Serve Summons by Publication which was granted by the trial court in an order dated August 31, 1988.[11]

Accordingly, copies of the order, summons, complaint, and the affidavit of merit were published in the Manila Times on November 29, December 6, and 13, 1988.[12] In addition, copies of the aforesaid order, summons, complaint, and affidavit of merit were sent by registered mail to the last known address of private respondents in the United States.[13] On January 17, 1989, the mail matter were returned to the Branch Clerk of Court with a notation which said, "Moved, left no address." [14]

Meanwhile, at the instance of petitioner Patricia Villareal, an Information[15] charging private respondents with murder was filed on October 10, 1988 with the Regional Trial Court of Makati, where it was docketed as Criminal Case No. 555.

On March 7, 1989, petitioners filed a Motion to Declare Defendants in Default for failure to file their Answer within the 60-day period counted from the last day of publication. Private respondents were declared in default on April 11, 1989, and petitioners were then allowed to present evidence ex-parte.[16]

After presenting their evidence, petitioners amended their complaint to make it conform to the evidence.[17] On the supposition that they had proven damages in a much bigger amount than that prayed for in the original complaint, they increased the amount of damages prayed for to P13,082,888.00 plus 50% of this amount as attorney's fees. In addition, Patricia Villareal's children were included as plaintiffs.

On August 29, 1989, the trial court admitted the Amended Complaint and granted petitioners' Motion for Extra-territorial Service of Summons.[18] Accordingly, summons were published once a week[19] for three consecutive weeks in the newspaper Abante. Copies of the Amended Complaint, the summons, and the order were sent by registered mail to the last known addresses of private respondents at Parañaque, Metro Manila and the United States. However, the summons and the accompanying papers mailed were returned to the court with the notation "MOVED" for the letter addressed to the Parañaque residence, and "REFUSED TO RECEIVE" for the letter addressed to the United States residence.[20]

On December 27, 1989, Attorney Teresita Marbibi filed a formal request in court seeking photocopies of all the pleadings and orders pertinent to the case, including the summons and the Amended Complaint.[21] In her letter, she stated that she was making the request "for the purpose of protecting the interest of the defendants whose sister contracted our services." [22]

On January 24, 1990, upon motion of the petitioners, the trial court declared the private respondents in default for the second time[23] for having failed to file their Answer to the Amended Complaint within 60 days after publication of the summons. It also declared the case submitted for decision, upon being informed by the petitioners that the very same evidence earlier presented would be reproduced and adopted in support of the Amended Complaint.[24]

On February 7, 1990, counsel for private respondents, Teresita Marbibi, filed a Notice of Appearance[25] on their behalf.

On February 14, 1990, again through counsel, private respondents filed a verified Motion to Lift Order of Default with Motion for Reconsideration[26] claiming that they were totally unaware of the existence of the case at bar; that their inability to come forth promptly with responsive pleading was due to accident, mistake, or excusable

neglect; and, that the allegation of petitioners that they were the killers of Jose Villareal was not true. Petitioners filed an Opposition to the Motion, to which private respondents filed a Reply.

On March 27, 1990, the trial court issued an order[27] denying the Motion to Lift Order of Default with Motion for Reconsideration, on the ground that private respondents herein failed to comply with the requirements of Rule 18, §3.

On April 2, 1990, the trial court rendered a decision[28] finding private respondents liable for the killing of Jose Villareal and ordering them jointly and severally to pay petitioners more than P10 million in damages. The trial court found that private respondent Erna Sevilla and the victim Jose Villareal were lovers; that private respondent Eliseo Sevilla, Erna's husband, is a very jealous husband who inflicts physical injuries upon his wife; that apparently, private respondent Eliseo discovered his wife's infidelity; and, that in conspiracy with several other persons, including his wife Erna whom he seemed to have threatened, private respondent Eliseo hatched a plan whereby Erna was to lure Jose Villareal to a carpark near the latter's office where Eliseo and his companions were to attack and kill Jose. The trial court found that after the killing, private respondents lost no time in disposing of their properties in the Philippines, pulling out their children from school, and escaping to the United States.

Copies of the order dated March 27, 1990 denying the Motion to Lift Order of Default with Motion for Reconsideration and the decision dated April 2, 1990 were received by private respondents on the same day, April 7, 1990. Private respondents filed a Motion for Reconsideration with Motion to Set Aside Decision asking the court to reconsider and/or set aside the decision dated April 2, 1990 and the order of March 27, 1990.[29] On May 17, 1990, they filed a Supplemental Motion for Reconsideration with Reply of the order dated March 27, 1990 and the decision dated April 2, 1990, asserting for the first time that the court did not acquire jurisdiction over their persons. On July 16, 1990, they filed a Consolidated Memorandum[30] in support of their aforesaid Motion for Reconsideration with Reply.

On August 10, 1990, the trial court issued an order[31] denying private respondents' Motion for Reconsideration with Motion to Set Aside Decision and the Supplemental Motion for Reconsideration with Reply. The trial court simultaneously granted petitioners' Motion for Execution Pending Appeal. Consequently, on August 14, 1990, a Writ of Execution Pending Appeal was issued.[32]

On August 15, 1990, the Deputy Sheriff of the court served and registered with the Register of Deeds of Parañaque a Notice of Levy over the properties said to be owned by private respondents and covered by TCT Nos. 36350 (now 41338) and 36351 (now 41335) in their names.[33] On August 16, 1990, the Deputy Sheriff served upon private respondents' counsel the Notice of Levy with supporting papers, one of which was a photocopy of the denial order dated August 10, 1990.[34]

On August 21, 1990, private respondents' counsel received by mail a duplicate original copy of the denial order of August 10, 1990.[35] On the same date, counsel filed a Notice of Appeal of the denial order dated August 10, 1990 and the decision dated April 2, 1990.[36]

Petitioners filed a Motion to Dismiss Notice of Appeal, contending that the Notice was filed out of time, which private respondents opposed. Petitioners then filed a Supplemental Comment to Motion to Dismiss dated October 4, 1990.

On October 2, 1990, the trial court issued an order[37] denying due course to the Notice of Appeal on the ground that private respondents had only a day from August 16, 1990 (the day they received a photocopy of the order denying their Motion for Reconsideration with Motion to Set Aside Decision and their Supplemental Motion for

Reconsideration with Reply), not from August 21, 1990 (the day on which they received the duplicate original of the said order) to perfect their appeal. As the Notice of Appeal was filed only on August 21, 1990, the trial court ruled that it was late. This order was received by private respondents' counsel on October 18, 1990.

On October 25, 1990, private respondents, through counsel, filed a Motion to Set Aside/Reconsider Order Dated October 2, 1990.[38]

This was denied by the trial court in its order dated December 17, 1990,[39] a copy of which was received by private respondents' counsel on January 16, 1991.[40]

On January 16, 1991, private respondents then filed a Notice of Appeal[41] from the orders dated December 17, 1990 and October 2, 1990 and again from the order dated August 10, 1990.

On January 29, 1991, the trial court issued an Entry of Judgment,[42] a copy of which was received by counsel for private respondents on February 13, 1991. On February 15, 1991, the private respondents filed a Motion for Reconsideration with Motion to Elevate Records to the Court of Appeals and Motion to Quash Entry of Judgment,[43] but the motions were denied by the trial court in its order of August 1, 1991.[44]

On September 11, 1991, private respondents filed in the Court of Appeals a petition for certiorari, prohibition, and mandamus with preliminary injunction,[45] alleging that the trial court had acted without or in excess of jurisdiction and with grave abuse of discretion in issuing the aforesaid orders and decisions and that there was neither appeal nor any plain, speedy and adequate remedy open to them in the ordinary course of law. Private respondents contended (1) that the trial court never acquired jurisdiction over them since they are non-resident defendants and petitioners' action is purely in personam and (2) that they were denied due process of law.[46]

On December 23, 1991,[47] the Court of Appeals granted the petition, ruling that the trial court was guilty of grave abuse of discretion. The dispositive portion of its decision reads:

WHEREFORE, the writs prayed for in the petition are GRANTED. The orders of default, the hearing ex-parte, the default judgment, the execution pending appeal, the respective orders denying the motions for reconsideration, and all subsequent orders related thereto are hereby declared null and void and are set aside. The attachment on the properties of petitioners [private respondents here] shall remain in force. The trial court is ordered to require petitioners to file their answer within fifteen (15) days from notice, and thence to proceed in the disposition of the case in accordance with the ordinary civil procedure.

Petitioners moved for a reconsideration,[48] but their motion was denied[49] by the appellate court in a resolution dated September 30, 1992. Hence, this petition for review.

First. The Court of Appeals nullified the several orders and the decision rendered by the trial court against private respondents on the ground that the trial court did not acquire jurisdiction over them. It ruled that the extraterritorial service of summons did not confer on the trial court jurisdiction to render and enforce a money judgment against the private respondents who are non-residents. On the authority of *Banco Español-Filipino v. Palanca*,[50] it held that the only effect of the conversion of an action in personam filed against non-resident defendants into one quasi-in rem by virtue of the attachment of their properties in the country was to subject such properties to the payment of the demand which the court might find to be due petitioners, the plaintiffs below. Otherwise, the trial court could not render a personal judgment against the private respondents, as it did in this case, and enforce it against them. The Court of Appeals concluded that in doing so, the trial court committed grave abuse of discretion.[51]

It is true that where the defendant in an action in personam is a non-resident, as in this case, and refuses to appear and submit to the jurisdiction of the court, the jurisdiction of the latter is limited to the property within the country

which the court may have ordered attached. In such a case, the property itself is "the sole thing which is impleaded and is the responsible object which is the subject of the judicial power." [52] Accordingly, "the relief must be confined to the res, and the court cannot lawfully render a personal judgment against him." [53]

But this Court also acknowledged in *Banco Español-Filipino* that if property is attached and later the defendant appears, "the cause becomes mainly a suit in personam, with the added incident that the property attached remains liable, under the control of the court, to answer to any demand which may be established against the defendant by the final judgment of the court." [54] This rule was affirmed in *Mabanag v. Gallemore* [55] in which it was held:

The main action in an attachment or garnishment suit is in rem until jurisdiction of the defendant is secured. Thereafter, it is in personam and also in rem, unless jurisdiction of the res is lost as by dissolution of the attachment. If jurisdiction of the defendant is acquired but jurisdiction of the res is lost, it is then purely in personam. . . . a proceeding against property without jurisdiction of the person of the defendant is in substance a proceeding in rem; and where there is jurisdiction of the defendant, but the proceeding against the property continues, that proceeding is none the less necessarily in rem, although in form there is but a single proceeding. (4 Am. Jur., 556-557.)

As the remedy is administered in some states, the theory of an attachment, whether it is by process against or to subject the property or effects of a resident or non-resident of the state, is that it partakes essentially of the nature and character of a proceeding in personam and not a proceeding in rem. And if the defendant appears the action proceeds in accordance with the practice governing proceedings in personam. But where the defendant fails to appear in the action, the proceeding is to be considered as one in the nature of a proceeding in rem. And where the court acts directly on the property, the title thereof being charged by the court without the intervention of the party, the proceeding unquestionably is one in rem in the fullest meaning of the term.

In attachment proceedings against a non-resident defendant where personal service on him is lacking, it is elementary that the court must obtain jurisdiction of the property of the defendant. If no steps have been taken to acquire jurisdiction of the defendant's person, and he has not appeared and answered or otherwise submitted himself to the jurisdiction of the court, the court is without jurisdiction to render judgment until there has been a lawful seizure of property owned by him within the jurisdiction of the court. (2 R. C. L., 800-804.) [56]

In this case, not only was property in the Philippines of private respondents attached, but, what is more, private respondents subsequently appeared in the trial court and submitted to its jurisdiction. Consequently, the jurisdiction of the trial court to render a judgment in personam against them is undoubted.

Private respondents contend that the claims for which their property was attached are unliquidated and, therefore, the attachment is totally invalid. While below they conceded that the attachment was valid at least to the extent of P30,000.00 (then considered the value of human life), they now contend that even this amount is unliquidated.

As private respondents thus admit, this point was not raised in the Court of Appeals by them. It is only now that it is being urged. However, this point is now largely immaterial inasmuch as the jurisdiction of the trial court to render a personal judgment against private respondents derived not so much from the validity of the attachment as from the voluntary submission of private respondents to its authority.

There can be no question regarding the trial court's acquisition of jurisdiction over the persons of respondents when the latter's counsel entered her appearance on their behalf on February 7, 1990. Through counsel, private respondents voluntarily appeared by filing a Notice of Appearance without qualification and a Motion to Lift Order of Default with Motion for Reconsideration, in which they prayed for affirmative reliefs, thus submitting to the jurisdiction of the court. The following instances have been considered voluntary submission to the jurisdiction of the court: the filing by defendant of a motion to admit answer; [57] the filing of a motion for reconsideration of the judgment by default; [58] and the filing of a petition to set aside the judgment of

default.[59]

Not only did private respondents voluntarily submit themselves to the jurisdiction of the trial court, they never questioned the validity of the mode of service of summons, that is, by extraterritorial service upon them.

As already stated, private respondents filed a notice of appearance without qualification.

In *Flores v. Zurbito*, it was held:[60]

He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person. When the appearance is by motion objecting to the jurisdiction of the court over his person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. (*Handy vs. Insurance Co.*, 37 Ohio St., 366; *Elliott vs. Lawhead*, 43 Ohio St., 171; *New Jersey vs. New York*, 6 Peters [U.S.], 323; *Livingston vs. Gibbons*, 4 Johnson's Chancery [N.Y.], 94; . . . ). An appearance in court, either in person or by counsel, for any purpose other than to expressly object to the jurisdiction of the court over the person, waives want of process and service of notice. Such an appearance gives the court jurisdiction over the person. (*Henderson vs. Carbondale etc., Co.*, 140 U.S., 25; *Rhode Island vs. Massachusetts*, 12 Peters, [U.S.], 657.). . . His appearance without objecting to the jurisdiction of the court waives all objections to the form and manner of service of notice. (*Provident etc. Association v. Ford*, 114 U.S., 635, 639.)

In *La Naval Drug Corp. v. Court of Appeals*,[61] it was held:

Jurisdiction over the person must be seasonably raised, i.e., that it is pleaded in a motion to dismiss or by way of an affirmative defense in an answer. Voluntary appearance shall be deemed a waiver of this defense.

In *Boticano v. Chu, Jr.*,[62] it was stated:

. . . one of the circumstances considered by the Court as indicative of waiver by the defendant-appellant of any alleged defect of jurisdiction over his person arising from defective or even want of process, is his failure to raise the question of jurisdiction in the Court of First Instance and at the first opportunity. It has been held that upon general principles, defects in jurisdiction arising from irregularities in the commencement of the proceedings, defective process or even absence of process may be waived by a failure to make seasonable objections. (*Castro v. Cebu Portland Cement Co.*, 71 Phil. 481 [1941] citing *Machan v. De la Trinidad*, 3 Phil. 684; *Vergara v. Laciapag*, 28 Phil. 439; *U.S. v. Inductivo*, 40 Phil. 84; *Soriano v. Ramirez*, 44 Phil. 519).

Private respondents thus waived any defect in service of summons or even want of process because for the court to validly decide their plea, it necessarily had to acquire jurisdiction upon their persons.[63]

Second. The Court of Appeals found the trial court to have committed grave abuse of discretion in denying private respondents' Motion to Lift Order of Default with Motion for Reconsideration for the following reasons: Private respondents resided in the United States which local newspapers do not reach and they came to know of the case against them only on January 5, 1990 from well-meaning friends. These circumstances, it was held, constituted accident, mistake, or excusable neglect excusing private respondents' failure to answer the complaint and justifying the lifting of the default order under Rule 18, §3.

In addition, the appellate court maintains that the trial court's observation that the Motion contains no specific facts or statements showing petitioner's meritorious defense is not accurate. It points out that it is clearly stated in the said Motion that they did not kill petitioner's husband. Indeed, according to the Court of Appeals, the defense is meritorious because if proved, such circumstance will defeat petitioner's claim for damages.[64]

Under Rule 18, §3, a motion to lift an order of default must allege with particularity the facts constituting the fraud, accident, mistake, or excusable neglect which caused his failure to answer.[65] In this case, the private respondents' motion merely alleged that private respondents were residents of the United States which local newspapers do not reach and that they did not know about the case filed against them until January 5, 1990 when well-meaning friends informed them about the matter.[66]

There are factual considerations in this case which belie private respondents' allegations of good faith. In his Special Power of Attorney,[67] which was submitted to the trial court as an annex of private respondents' Supplemental Motion for Reconsideration with Reply, private respondent Eliseo Sevilla gave as their residential address in the United States the same address to which summons had been sent three times before by the trial court.[68] The last summons sent to private respondents by registered mail was returned to the court with the notation "REFUSED TO RECEIVE." This was long before January 5, 1990 when, according to private respondents, they were informed by friends of the case pending against them. That private respondents refused to receive the summons is of no moment. As has been held, the refusal of a defendant (in this case private respondents) to receive summons is a technicality resorted to by those who attempt to frustrate the service upon them.[69] The trial court was justified in thinking that private respondents were trying to deceive it by claiming that they did not know about the case until they were told about it on January 5, 1990 by well-meaning friends.

Indeed, private respondents did not dispute the trial court's finding of deception on their part, nor did they ever offer any explanation for this in any of their numerous pleadings. For as early as December 27, 1989 and thus prior to the second declaration of default, private respondents' counsel, Atty. Marbibí, made a formal written request to the trial court for permission to photocopy all pleadings and orders relating to the case "for the purpose of protecting the interest of the defendants whose sister contracted our services." Among the papers photocopied were the Amended Complaint and Summons pursuant thereto.[70] This fact gives the lie to the allegation in the Motion to Set Aside the Order of Default that private respondents did not know of the case against them until January 5, 1990. Private respondents could have at least asked for an extension of time to file their answer before they were declared in default for the second time if it was really their intention in good faith to participate in the case. They cannot claim that the reason they could not do so was because they had appeared only to question jurisdiction over their persons because they had already asked for affirmative reliefs prior to their raising the issue of jurisdiction over their persons.

Private respondents have thus failed to show good faith which is central to the concept of "excusable neglect" justifying failure to answer.

[W]hat must be shown is that the failure to respond was attributable to mishap and not indifference or deliberate disregard of the notice. In the case of ordinary individuals, the test is in essence one of good faith.[71]

In our opinion, the trial court correctly slammed the blatant attempt of private respondents to foist a falsehood upon it.

The motion to lift order of default, aside from the requirements in Rule 18, §3, must show that the defendant has a meritorious defense or that something would be gained by having the order of default set aside.[72] Otherwise, and if the motion is not accompanied by affidavits of merits, it may properly be denied.[73]

As regards this requirement, private respondents contented themselves with just one statement that they "have absolutely no knowledge, much less any hand, in the incident falsely imputed to them." [74] Such allegation is a conclusion rather than a statement of facts showing a meritorious defense. The affidavit must controvert the facts alleged by the petitioners.

[The term meritorious defense] may imply that the applicant has the burden of proving such a defense in order to have the judgment set aside. The cases usually do not require such a strong showing. The test employed appears to be essentially the same as used in considering summary judgment, i.e., whether there is enough evidence to present an issue for submission to the trier of fact, or a showing that on the undisputed facts it is not clear that the judgment is warranted as a matter of law.[75]

. . . The defendant must show that she has a meritorious defense otherwise the grant of her motion will prove to be a useless exercise. Thus, her motion must be accompanied by a statement of the evidence which she intends to present if the motion is granted and which is such as to warrant a reasonable belief that the result of the case would probably be otherwise if a new trial is granted.[76]

Since private respondents' failure to file an answer or any other responsive pleading was not due to fraud, accident, mistake, or excusable neglect and they failed to show they had a valid and meritorious defense, we think the trial court did not commit an abuse of discretion in refusing to lift its order of default. "Grave abuse of discretion," it bears repeating, means capricious, arbitrary, despotic, and whimsical exercise of judgment and is rightly treated as equivalent to lack of jurisdiction.[77] Here, it cannot justly be said that, in issuing its disputed order denying private respondents' Motion to Lift the Order of Default and Motion for Reconsideration, the trial court acted in this fashion so as to call for the annulment of its orders and its decision. The Court of Appeals seriously erred in holding otherwise and setting aside the order of the trial court.

Third. We agree with the Court of Appeals, however, that the trial court is guilty of grave abuse of discretion in denying due course to private respondents' appeal. The trial court held that its decision had become final on the basis of the following facts:[78] that the private respondents received the judgment by default on April 7, 1990, one day later than the petitioners; that on April 21, 1990, they filed a Motion for Reconsideration with Motion to Set Aside Decision through registered mail; that on August 10, 1990, the trial court issued an order denying said Motion; that on August 16, 1990, a photocopy of the said order was served along with the Writ of Execution Pending Appeal (granted upon Motion for Execution Pending Appeal) and Notice of Levy of Real Properties by its Sheriff; that on August 21, 1990, the duplicate original copy of the order of August 10, 1990 sent by registered mail to the private respondents' counsel was received; and, that on the same day, August 21, 1990, said counsel filed a Notice of Appeal. On the basis of these findings, the trial court concluded:[79]

. . . While it may be true that they received copy of the August 10 order which was sent to their counsel thru registered mail on August 13, 1990 only on August 21, 1990 as they claimed in the opposition to motion to dismiss appeal, however defendants forgot the fact that on August 16, 1990, the Sheriff of this Court served upon them, thru counsel, a copy of said August 10 order, together with the Writ of Execution Pending Appeal and Notice of Levy. This is certified to by the Sheriff in his "Report."

When the defendants therefore filed their Notice of Appeal on August 21, 1990, they were already late and the period to appeal had expired as the period started to run again on the 17th day of August and it is the last day to perfect appeal.

The question is from which date the period for filing an appeal should be counted: from August 16, 1990, when private respondents received a photocopy of the order denying their Motion for Reconsideration of the decision, or from August 21, 1990, when they received by registered mail the duplicate original of the same order? It is to be recalled that the photocopy of the order was given to private respondents by the sheriff in connection with his service of the Writ of Execution and Notice of Levy on Real Properties. It was one of the supporting documents attached to the Notice of Levy on Real Properties.

We hold that the period for filing an appeal commenced to run again - after it had been interrupted by the filing of private respondents' Motion for Reconsideration of the decision - only on August 21, 1990. It cannot be from

August 16, 1990 when private respondents' counsel was given a mere photocopy of the court's order. Such copy lacks assurance of its genuineness, considering that photocopies can easily be tampered with, for the purpose of enabling private respondents to determine whether or not to appeal and, in the event they choose to do so, what issues to raise on appeal. It was not in fact intended to be a substitute for the copy of the order which was served only on August 21, 1990. The trial court, therefore, should have given due course to private respondents' appeal. Denied the right to appeal, private respondents perforce had to resort to a petition for certiorari, prohibition, and mandamus.

Petitioners contend, however, that private respondents' petition for certiorari in the Court of Appeals was not filed within a reasonable time and therefore should have been denied. They claim that private respondents received the trial court's order denying their motion for a reconsideration of the court's refusal to give due course to the first Notice of Appeal on January 16, 1991 and that from such date until September 11, 1991 when the petition for certiorari was filed, almost eight months had already elapsed, clearly exceeding the benchmark of 90 days considered as "reasonable time" for filing petitions of this nature.

This contention has no merit. The relevant date for purposes of determining whether the petition for certiorari was filed within a reasonable time is August 13, 1991, when private respondents received the trial court's order denying their motion to quash the entry of judgment which the trial court had issued earlier. It is to be noted that the trial court did not act on the second Notice of Appeal. It simply entered judgment on January 29, 1991. The private respondents had a right to be notified of the action on their second Notice of Appeal. They were not guilty of dilatory tactics. Indeed, the moment the trial court entered judgment, they immediately moved to quash the entry of judgment. When their Motion to Quash was denied in an order which also commented on their second Notice of Appeal, they filed the petition for certiorari. From August 13, 1991 to September 11, 1991 is a period of only 29 days.

It is also important to note that petitioners questioned the timeliness of private respondents' action (their filing of the petition for certiorari, prohibition, and mandamus) only after the Court of Appeals had rendered a decision. They filed a comment on private respondents' petition, but they did not question the timeliness of its filing by alleging that the petition was filed more than 90 days then considered to be a "reasonable time" for filing petitions for certiorari (It is now 60 days under Rule 65, §4 of the Rules of Civil Procedure). It was only after the Court of Appeals rendered judgment against them that petitioners raised the question in their Motion for Reconsideration. Petitioners thus waived their objection to the timeliness of the filing of the petition in the Court of Appeals.

To recapitulate, we hold: (1) that the trial court acquired jurisdiction over the persons of private respondents; (2) that it validly declared them in default; (3) that consequently, its decision is valid and private respondents' remedy was to appeal from the decision; (4) that private respondents' appeal was timely and therefore it was grave abuse of discretion for the trial court to hold that private respondents' notice of appeal was filed late and for that reason deny due course to it.

WHEREFORE, the decision of the Court of Appeals is REVERSED insofar as it nullified and set aside the orders of default, the hearing ex-parte, the default judgment, the execution pending appeal, and all other orders related thereto issued prior to the order refusing to give due course to the appeal of private respondents of the Regional Trial Court of Makati, Branch 132, and AFFIRMED insofar as it set aside the orders refusing to give due course to private respondents' appeal and ordering the entry of the judgment by default and insofar as it ordered that the attachment on the properties of private respondents be maintained. The Regional Trial Court of Makati, Branch 132, is hereby ORDERED to give due course to the appeal of private respondents.

**SO ORDERED.**

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

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[1] Per Justice Alfredo Marigomen, concurred in by Justices Lorna S. Lombos-de la Fuente and Jainal D. Rasul.

[2] CA Rollo, pp. 66-67, & 69.

[3] Id., p. 204.

[4] Id., pp. 202-204.

[5] Id., p. 205.

[6] Rollo, p. 31.

[7] Ibid.

[8] Ibid.

[9] CA Rollo, pp. 387-388.

[10] Id., p. 390.

[11] Rollo, p. 31.

[12] Rollo, p. 31.

[13] Ibid.

[14] Ibid.

[15] CA Rollo, p. 31.

[16] Id., p. 59.

[17] Id., pp. 32-40, & 59.

[18] Rollo, p. 32.

[19] Ibid.

[20] Ibid.

[21] CA Rollo, p. 212.

[22] Ibid.

[23] Rollo, p. 32.

[24] CA Rollo, pp. 146-147.

[25] Id., p. 46.

[26] Id., pp. 47-52.

[27] Id., pp. 53-57.

[28] Id., pp. 58-80.

- [29] Id., pp. 81-89.
- [30] Id., pp. 93-101.
- [31] Id., pp. 102-112.
- [32] Rollo, p. 34.
- [33] Ibid.
- [34] Ibid.
- [35] Ibid.
- [36] Ibid.
- [37] CA Rollo, pp. 118-119.
- [38] Id., pp. 120-122.
- [39] Id., p. 123.
- [40] Rollo, p. 35.
- [41] CA Rollo, pp. 124-125.
- [42] Rollo, p. 35.
- [43] Ibid.
- [44] CA Rollo, pp. 126-127.
- [45] Id., pp. 1-22.
- [46] Id., pp. 9-14 & 14-15.
- [47] Id., pp. 286-298.
- [48] Id., pp. 299-343.
- [49] Rollo, p. 43.
- [50] 37 Phil. 921 (1918).
- [51] Rollo, pp. 37-38.
- [52] Banco Español-Filipino v. Palanca, 37 Phil. 921, 930 (1918).
- [53] Id. at 932.
- [54] Id. at 929.
- [55] 81 Phil. 254 (1948).
- [56] Id. at 257-258.
- [57] Europa v. Hunter, 175 SCRA 394 (1989).
- [58] Navale v. Court of Appeals, 253 SCRA 705 (1996) citing Soriano v. Palacio, 12 SCRA 447 (1964).
- [59] Immaculata v. Navarro, 146 SCRA 5 (1986).

- [60] 37 Phil. 746, 750-752 (1918) (emphasis added).
- [61] 236 SCRA 78 (1994) (emphasis added).
- [62] 148 SCRA 541, 548-549 (1987) (emphasis added).
- [63] See *Republic v. Ker*, 18 SCRA 207 (1966).
- [64] *Rollo*, p. 40.
- [65] See *Manila Electric Company v. La Campana Food Products, Inc.*, 247 SCRA 77 (1995).
- [66] *CA Rollo*, pp. 47-48.
- [67] *Id.*, p. 224.
- [68] *Id.*, p. 108.
- [69] See *Far Corp. v. Francisco*, 146 SCRA 197 (1986).
- [70] *CA Rollo*, p. 56.
- [71] RESTATEMENT OF THE LAW 2d, ON JUDGMENTS, §67, Comment. (Emphasis added)
- [72] *Carandang v. Cabatuando*, 53 SCRA 383 (1973).
- [73] *Phil. British Co., Inc. v. delos Angeles*, 63 SCRA 50 (1975).
- [74] *CA Rollo*, p. 49.
- [75] RESTATEMENT OF THE LAW, 2d, ON JUDGMENTS, §67, Comment. (Emphasis added)
- [76] *Group Developers & Financiers v. Lumen Policarpio*, 168 SCRA 154 (1988). (Emphasis added)
- [77] *Purefoods Corp. v. NLRC*, 171 SCRA 415 (1989).
- [78] *CA Rollo*, pp. 118-119.
- [79] *Id.*, p. 119.

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