ABOITIZ INTERNATIONAL FORWARDERS, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PHILIPPINE CHARTER INSURANCE CORPORATION, RESPONDENTS.

G.R. NO. 142272. May 02, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petition for review on certiorari filed by Aboitiz International Forwarders, Inc. (petitioner AIFI) of the Decision dated November 16, 1999 of the Court of Appeals (CA) in CA-G.R. CV No. 57892 dismissing its appeal from the Order of the Regional Trial Court of Manila, Branch 4 (court a quo) in Civil Case No. 92-62951 denying the petition for relief from judgment of petitioner AIFI.

The Antecedents

On October 3, 1992, respondent Philippine Charter Insurance Corporation (PCIC), as plaintiff, filed a complaint against petitioner AIFI, Accord Container Lines (Philippines), Inc. and Accord Shipping PTE Ltd. for the collection of the principal amount of P269,349.54, with interests thereon. Respondent PCIC alleged in its complaint that:

> - On or about 25 February 1991, I.S. Parts International, Inc. of New Jersey, USA, engaged the services of the defendant ABOITIZ [herein petitioner AIFI] as forwarder/consolidator to deliver from Philadelphia, USA, one (1) box containing Glass Making Machine Parts for Hold/Open/Close Operating Linkage[s] with invoice value of P8,283.60 C & F Manila to Union Glass & Container Corp. in Manila;
>
> - Defendant ABOITIZ loaded the above cargo of one (1) box containing Glass Making Machine Parts for Hold/Open/Close Operating Linkage on or about 25 February 1991 at the port of Philadelphia, USA, on board the vessel "COOL Fortune" for transportation to Manila and delivery thereat to Union Glass & Container Corp. as ultimate consignee covered by bill of lading No. MNLO29110609, x x x;
>
> - The consignee insured with plaintiff the above cargo under the terms and conditions of its MRN-31131 for the sum of P269,349.54;
>
> x x x x
>
> - On April 10, 1991, the vessel MS "QUEENSWAY BRIDGE" arrived at the port of Manila and subsequently discharged the said Container No. AKLU2066382; upon stripping of the container, however, subject cargo was not among its contents and/or was found shorthanded, x x x;
>
> - Defendants misdelivered or misappropriated the subject cargo thereby failing to deliver the same to the consignee in violation of their obligations to forward and deliver the same to the consignee;
>
> - Claims were filed with the defendants for the value of the undelivered cargo but defendants declined payment without any valid or justifiable ground; plaintiff, having received similar claim under the insurance coverage, settled and paid the consigned-assured the sum of P269,349.54 after proper assessment and thereby become

> subrogated to the consigneeï¿½s rights of recovery against the defendants.[1]

Respondent PCIC prayed that judgment be rendered in its favor, thus:

> Wherefore, it is most respectfully prayed of the Honorable Court to render judgment ordering the defendants, jointly and severally, to pay plaintiff the sum of P269,349.54 with interest thereon at the legal rate computed from the filing hereof plus cost of suit.[2]

Based on the return of the process server of the court a quo, copies of the complaint and summons were served by him on October 22, 1992 on Lita Apostol, who informed the process server that she was a documentary clerk of petitioner AIFI. Only defendant Accord Container Lines (Philippines), Inc. filed its answer to the complaint.

On November 24, 1992, respondent PCIC filed an ex parte motion to declare the other defendants, petitioner AIFI and Accord Shipping PTE Ltd., in default and for it (respondent PCIC) to be allowed to adduce its evidence ex parte. The court a quo granted the motion in an Order issued on November 27, 1992.[3] However, respondent PCIC failed to adduce its evidence. Instead, it filed on September 1, 1992, a motion to admit the amended complaint, the amendment consisting in the inclusion of a plea for attorney's fees equivalent to 25% of its principal claim. Appended thereto was its proffered amended complaint.[4] However, petitioner AIFI was not served with a copy of the said motion. The court a quo failed to act on and resolve the motion.

Respondent PCIC adduced its testimonial and documentary evidence on April 24, 1994. On the other hand, defendant Accord Container Lines (Philippines), Inc. failed to present its evidence.

On July 11, 1995, the court a quo rendered judgment in favor of respondent PCIC and against petitioner AIFI and its co-defendants. Although respondent PCIC did not specifically pray for attorney's fees in its complaint, the court a quo awarded in its favor the amount of P10,000.00 as attorney's fees. The fallo of the decision reads:

> WHEREFORE, with all the foregoing, the court hereby renders judgment in favor of the plaintiff and against the defendants, ordering the latter to jointly and severally pay the plaintiff the amount of P269,349.54, with the legal rate of interest thereon from the date of filing of the complaint until fully paid and to pay the plaintiff attorney's fees in the amount of P10,000.00 with costs.
>
> SO ORDERED.[5]

A copy of the said decision was served on petitioner AIFI on July 24, 1996.[6] However, petitioner AIFI failed to appeal the same. On respondent PCIC's motion, the court a quo issued an Order on August 20, 1996 for the issuance of a writ of execution.[7] On the same day, it issued a writ of execution.[8] On September 23, 1996, the sheriff issued a Notice of Garnishment and served a copy thereof on petitioner AIFI's bank.

On October 11, 1996, petitioner AIFI filed with the court a quo a petition for relief from judgment in the same case. It alleged therein that the court a quo did not acquire jurisdiction over it because a copy each of the complaint and summons was served on Lita Apostol who, contrary to the statement in the return of the process server, was merely its customer service representative and not its documentary clerk. She had not been allegedly authorized to receive the complaint and summons in its behalf. Further, the motion of respondent PCIC to admit its amended complaint was not granted by the court a quo; hence, there can never be a judgment for attorney's fees based on the amended complaint.

Petitioner AIFI claimed that it had a meritorious defense because it exercised and observed extraordinary diligence in its vigilance over the goods consigned to Union Glass & Container Corp., which insured the same with respondent PCIC. It was allegedly due to the fault and negligence of petitioner AIFI's co-defendants that the said goods were lost. As such, petitioner AIFI's co-defendants must be the ones held liable to respondent PCIC, which paid the consignee-assured (Union Glass & Container Corp.) the sum of P269,349.54 and thereby became

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subrogated to the latter's right of recovery against petitioner AIFI's co-defendants.[9]

Petitioner AIFI prayed that, after due proceedings, it be granted reliefs, as follows:

> WHEREFORE, premises considered, it is respectfully prayed that upon the filing of this Petition, a restraining order and/or writ of preliminary injunction be issued enjoining the plaintiff and/or the Sheriff of this Honorable Court from proceeding with the execution of the Judgment dated 11 July 1995; and that this Petition for Relief from Judgment be granted, dismissing this case, setting aside of the Judgment dated 11 July 1995 for being null and void, quashing the Writ of Execution dated 30 August 1996 and the Notice of Garnishment dated 23 September 1996.
>
> AIFI prays for such other relief as may be deemed just and equitable under the premises.[10]

Appended to its petition was the affidavit of merit of its Treasurer, Ramonito E. De La Cruz.[11] Petitioner AIFI claimed that it had not been officially served with a copy of the decision of the court a quo nor of copies of the writs of execution and garnishment.

Petitioner AIFI likewise moved that it be allowed to present Lita Apostol as its witness to prove that, contrary to the statement in the return of the process server, she was merely petitioner AIFI's customer service representative and not authorized to receive the complaint and summons in its behalf. The court a quo granted the said motion. However, petitioner AIFI failed to present Apostol as witness.[12]

On February 3, 1997, the court a quo issued an Order denying the petition for relief from judgment on the following grounds:

First. As between the self-serving contention of petitioner AIFI and the return of the process server, the latter's determination of Lita Apostol as documentary clerk is accorded greater weight in view of the presumption that he had regularly performed his functions.[13] The court a quo took note of the fact that it granted petitioner AIFI's motion to present Lita Apostol in the hearing of November 8, 1996, however, it failed to do so.

Second. As documentary clerk, Lita Apostol is considered an agent of petitioner AIFI insofar as service of court processes is concerned since she is a representative so integrated with the corporation sued as to make it a priori supposable that she ought to know what to do with the legal papers served on her, consistent with the doctrine laid down in Villa Rey Transit, Inc. v. Far East Motor Corporation[14] and Golden Country Farms, Inc. v. Sanvar Development Corporation.[15]

Third. The court a quo relied on the original complaint in the conduct of its proceedings and rendition of decision. It awarded attorney's fees although there was no prayer for the same in the original complaint because it may nevertheless award attorney's fees "when (it) deems it just and equitable."[16]

Fourth. There was a valid service of the court a quo's decision on petitioner AIFI. The certificate of service shows that the same was served on Lilia Nebris, a security guard of the building. The security guard represented to the process server of the court a quo, Thieron Johnston, Jr., that she was duly authorized to receive papers pertaining to the corporation, as reflected in the certificate of service filed by the said process server.

Fifth. Petitioner AIFI failed to show that it had a meritorious defense. Its liability as a common carrier has been well-established in the decision subject of the petition for relief.[17]

Petitioner AIFI filed a motion for reconsideration of the court a quo's order denying its petition for relief from judgment.[18] However, the same was denied in the Order of June 5, 1997.[19] Petitioner AIFI appealed the said orders to the CA in which it alleged that:

- THE COURT A QUO NEVER ACQUIRED JURISDICTION OVER DEFENDANT-APPELLANT

INASMUCH AS THERE WAS NO VALID SERVICE OF SUMMONS UPON DEFENDANT-APPELLANT ON THE ORIGINAL COMPLAINT DATED 30 SEPTEMBER 1992.

- NEITHER DID THE COURT A QUO ACQUIRE JURISDICTION [OVER THE] COMPLAINT DATED 24 AUGUST 1993 AS THERE WAS ABSOLUTELY NO SERVICE OF SUMMONS UPON DEFENDANT-APELLANT.

- EVEN ASSUMING IN GRATIA ARGUMENTI THAT SUMMONS WAS VALIDLY SERVED UPON DEFENDANT-APPELLANT ON THE ORIGINAL COMPLAINT AND, AS SUCH, DEFENDANT-APPELLANT WAS PROPERLY DECLARED IN DEFAULT. THERE WAS NO SERVICE OF SUMMONS UPON DEFENDANT-APPELLANT OF EITHER THE AMENDED COMPLAINT, THE JUDGMENT AND/OR THE FINAL ORDER OF THE HONORABLE COURT DATED 11 OCTOBER 1993 DISMISSING THE CASE FOR FAILURE TO PROSECUTE, IN COMPLETE VIOLATION OF RULE 13, SECTION 9 OF THE REVISED RULES OF COURT, NOW RULE 9, SECTION 3(A) OF THE 1997 RULES OF CIVIL PROCEDURE.

- THE COURT A QUO ERRED IN FINDING THAT DEFENDANT-APPELLANT FAILED TO SHOW A MERITORIOUS DEFENSE.[20]

Petitioner AIFI reiterated the arguments in its petition for relief from judgment and motion for reconsideration filed with the court a quo in support of its appeal before the appellate court.

On November 16, 1999, the appellate court rendered the Decision affirming the appealed orders of the court a quo. The CA declared, inter alia, that: (a) the petition for relief was grounded on lack of jurisdiction of the court a quo over the person of petitioner, the defendant below, and not grounded on extrinsic fraud, accident, mistake or excusable negligence as provided in Rule 38 of the Rules of Court; (b) the complaint and summons were validly served on petitioner AIFI through Lita Apostol, its documentary clerk; and (c) it had the remedy of a motion for reconsideration of the decision of the court a quo or an appeal therefrom but petitioner AIFI failed to avail any of the said remedies; hence, it was proscribed from filing a petition for relief from the judgment of the court a quo.

Petitioner AIFI sought to reconsider the above decision but the CA denied its motion for reconsideration. Hence, petitioner AIFI filed the present petition for review on certiorari alleging that:

- THE PUBLIC RESPONDENT COMMITTED MANIFEST ERROR IN HOLDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF PETITIONER SUCH THAT SERVICE OF SUMMONS ON THE ORIGINAL COMPLAINT DATED 30 SEPTEMBER 1992 AND/OR ON THE AMENDED COMPLAINT DATED 24 AUGUST 1993 WAS VALIDLY MADE UPON THE PETITIONER.

- THE PUBLIC RESPONDENT COMMITTED MANIFEST ERROR IN NOT FINDING THAT EVEN ASSUMING IN GRATIA ARGUMENTI THAT SUMMONS WAS VALIDLY SERVED UPON PETITIONER ON THE ORIGINAL COMPLAINT AND, AS SUCH, PETITIONER WAS PROPERLY DECLARED IN DEFAULT, THERE WAS NO SERVICE OF SUMMONS UPON PETITIONER ON EITHER THE AMENDED COMPLAINT, THE JUDGMENT AND/OR THE FINAL ORDER OF THE TRIAL COURT DATED 11 OCTOBER 1993 DISMISSING THE CASE FOR FAILURE TO PROSECUTE, IN COMPLETE VIOLATION OF RULE 13, SECTION 9 OF THE REVISED RULES OF COURT, NOW RULE 9, SECTION 3(A) OF THE 1997 RULES OF CIVIL PROCEDURE.

- THE PUBLIC RESPONDENT COMMITTED MANIFEST ERROR IN HOLDING THAT PETITIONER'S FILING OF PETITION FOR RELIEF FROM JUDGMENT WITH THE TRIAL COURT WAS AVAILED OF AS A SUBSTITUTE FOR PETITIONER'S RIGHT TO APPEAL.[21]

Petitioner AIFI insists that Lita Apostol was merely one of its customer service representatives, not its president, manager, cashier, director, or agent, hence, not authorized to receive the complaint and summons addressed to it.

It avers that the declaration of the process server of the court a quo that Apostol was its documentary clerk has no factual basis. It concedes that in Golden Country Farms, Inc. v. Sanvar Development Corporation,[22] the Court ruled that the service of the complaint and summons on the clerk-typist of the petitioners therein was a substantial compliance with the Rules of Court. However, petitioner AIFI posits that unlike in those cases, the complaint and summons were never turned over by Lita Apostol to any of its officers authorized to receive the complaint and summons. Hence, the rulings of this Court in said cases were not allegedly applicable. Petitioner AIFI maintains that its petition for relief from judgment was the proper remedy in the court a quo.

In its comment on the petition, respondent PCIC avers that the judgment of the court a quo had long became final and executory and had been satisfied as early as 1996; consequently, this case must be considered closed and terminated. It further contends that the assailed orders of the court a quo and the decision of the appellate court are in accord with the Rules of Court and the law. According to respondent PCIC, as documentary clerk of petitioner AIFI, Lita Apostol was its agent authorized to receive the complaint and summons in its behalf. Further, petitioner AIFI received a copy of the decision of the court a quo on July 24, 1996 but failed to file a motion for new trial or reconsideration thereof within the prescribed period. Hence, the said decision had become final and executory when petitioner AIFI filed its petition for relief from judgment. Petitioner AIFI was, in fact, guilty of grave inexcusable negligence. Finally, respondent PCIC asserts that petitioner AIFI had no meritorious defense against its action in the court a quo.

In reply, petitioner AIFI does not deny the contention of respondent PCIC that the decision of the court a quo had already been fully satisfied as early as 1996. However, petitioner AIFI insists that, since it was not validly served with the summons and complaint, the court a quo had no jurisdiction over it, hence, all proceedings before the court a quo and its decision, writ of execution, and writ of garnishment are null and void. Petitioner AIFI claims that its only remedy was to file a petition for relief from judgment and not a motion for new trial or an appeal from the decision of the court a quo to the CA.

Based on the arguments and counter-arguments of the parties, the issues for the Court's resolution are: (a) whether the petition is moot and academic with the satisfaction of the decision of the court a quo as early as 1996; and (b) whether petitioner AIFI had a cause of action for relief from the decision of the court a quo under Rule 38 of the Rules of Court.

The petition is denied for lack of merit.

On the first issue, the petition at bar has not been mooted by the satisfaction of the decision of the court a quo. There is no evidence on record that the award in favor of respondent PCIC under the decision of the court a quo was satisfied by the deputy sheriff's garnishment of petitioner AIFI's deposits with its bank. Even then, petitioner AIFI is not proscribed from assailing the decision of the court a quo and the writs of execution and garnishment of its funds with its bank in the Court of Appeals and in this Court.

On the second issue, the Court finds and so declares that, based on the allegations of petitioner AIFI in its petition before the court a quo, it had no cause of action for relief from judgment under Rule 38 of the Rules of Court.

Section 1 thereof provides that a petition for relief from judgment may be filed only on the grounds of fraud, accident, mistake or excusable negligence:

> SECTION 1. Petition for relief from judgment, order, or other proceedings. - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

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Even a cursory reading of the petition for relief filed by petitioner AIFI with the court a quo will readily show that it failed to allege therein that the decision of the court a quo was entered or the proceedings was taken against it through fraud, accident, mistake or excusable negligence. The only ground for its petition was the lack of jurisdiction of the court a quo over it on its claim that the process server of the court a quo failed to serve the summons and complaint on it through any of its officers or agent enumerated in Section 13, Rule 14 of the Rules of Court which reads:

> SEC. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors.

Moreover, a petition for relief under Rule 38 of the Rules of Court is only available against a final and executory judgment.[23] Since petitioner AIFI claims that the court a quo had no jurisdiction over it, then all the proceedings therein, including its decision are null and void. Hence, recourse by petitioner AIFI to a petition for relief from judgment under Rule 38 of the Rules of Court was inappropriate.

Even on the assumption that the court a quo had no jurisdiction over petitioner AIFI on account of the non-service on it of the summons and complaint, the remedy of petitioner AIFI from notice of the decision by default on July 24, 1996 was to file a motion for the reconsideration of said decision or for new trial within fifteen days from said date. This is without prejudice to its right to file a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the order of default of the court a quo and the proceedings thereafter held including its decision, the writ of execution and the writ of garnishment issued by the court a quo on the ground that it acted without jurisdiction.[24] However, petitioner AIFI opted to file a petition for relief from judgment of the court a quo.

The issue of whether or not Lita Apostol was petitioner AIFIï¿½s documentary clerk or a customer service representative is one of fact. Petitioner AIFI is proscribed from raising the issue in this Court under Rule 45 of the Rules of Court which specifically provides that only questions of law may be raised in this Court for the simple reason that it is not a trier of facts.

Moreover, the certificate of service of the process server of the court a quo is prima facie evidence of the facts as set out therein.[25] The records show that despite being allowed to present Lita Apostol as witness to prove that she was its customer service representative and not its documentary clerk, petitioner AIFI failed to do so. This omission rendered the certification of the process server of the court a quo conclusive on petitioner AIFI.

The court a quo and the appellate court held that Lita Apostol, as the documentary clerk of petitioner AIFI, was deemed to be an agent thereof because her employment with petitioner AIFI and the nature of her duties as such are so integrated with its business as to make it a priori supposable that she brought the complaint to petitioner and knew what she ought to do with any legal papers served on her. The Court is bound by the findings of facts of these courts absent evidence on record to the contrary.

In Pabon v. NLRC,[26] the Court elucidated on the definition of agent under Section 13, Rule 14 of the Rules of Court, thus:

> Black's Law Dictionary defines an "agent" as "a business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third person." To this extent, an "agent" may also be shown to represent his principal in some one or more of his relations to others, even though he may not have the power to enter into contracts. The rules on service of process make service on "agent" sufficient. It does not, in any way, distinguish whether the "agent" be general or special, but is complied with even by a service upon an agent having limited authority to represent his

> principal. As such, it does not necessarily connote an officer of the corporation. x x x[27]

One may be an agent of a private domestic corporation although he is not an officer thereof. However, an employee of a corporation may not be deemed an agent of the corporation under the above rule unless his or her duties are so integrated to the business of the corporation that his or her absence or presence will not toll the entire operation of the business.

It can be supposed a priori absent any evidence to the contrary that Lita Apostol as documentary clerk was tasked to receive the complaint and the summons for petitioner AIFI and to pass on these legal documents to any of its responsible officers. She worked in the same building as the officers of petitioner AIFI and, thus, had easy access to them.

The case for petitioner AIFI was debilitated by the absence of any meritorious defense as against the claim of respondent PCIC. The contention of petitioner AIFI that it acted and observed extraordinary diligence in its vigilance over the shipment insured by respondent PCIC, without any factual basis for such allegation, is merely a conclusion. Neither did petitioner AIFI offer any factual basis for its claim that the loss of the cargo was caused by the negligence of its co-defendants.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, and Austria-Martinez, JJ., concur.
Chico-Nazario, J., on official leave.

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[1] Rollo, pp. 35-36.

[2] Id. at 36.

[3] Rollo, p. 42.

[4] Id. at 73-79.

[5] Id. at 53.

[6] Rollo, p. 58.

[7] Id.

[8] Id. at 59.

[9] Id. at 66-67.

[10] Rollo, pp. 67-68.

[11] Id. at 60-72.

[12] Id. at 74.

[13] Section 5(m), Rule 131, Rules of Court.

[14] No. L-31339, 31 January 1978, 81 SCRA 303.

[15] G.R. No. 58027, 28 September 1992, 214 SCRA 395.

[16] Article 2208(11), Civil Code of the Philippines.

[17] Rollo, p. 74-78.

[18] Rollo, pp. 77-85.

[19] Id. at 85.

[20] Id. at 23.

[21] Rollo, p. 7.

[22] Supra note 15.

[23] Valencia v. Court of Appeals, G.R. No. 119118, 19 February 2001, 352 SCRA 72, 81; Sanastino v. Raon, G.R. No. 131482, 3 July 2002, 383 SCRA 664.

[24] Indiana Aerospace University v. Commission on Higher Education, G.R. No. 139371, 4 April 2001, 356 SCRA 367; Cerezo v. Tuazon, G.R. No. 141538, 23 March 2004, 426 SCRA 167.

[25] Rubia v. GSIS, G.R. No. 151439, 21 June 2004, 432 SCRA 529.

[26] G.R. No. 120457, 24 September 1998, 296 SCRA 7.

[27] Id. at 15.

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