

**PORTHOS P. ALMA JOSE AND MA. THERESA D. ALMA JOSE,
PETITIONERS, VS. INTRA STRATA ASSURANCE CORPORATION,
RESPONDENT.**

G.R. No. 155316. July 28, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On October 5, 1993, Anhui-Alma Jose Hydrogeologic and Well Drilling Co., Inc. (ANHUI) as principal, and herein respondent Intra Strata Assurance Corporation as surety, executed in favor of the Bureau of Customs an "Ordinary Re-Export Bond"[1] in the amount of P3,010,758.00 to guaranty the re-export of 68 pieces of tools and equipment for drilling and the payment of the corresponding duty, taxes and charges to be imposed by the Bureau of Customs. Porthos P. Alma Jose signed on behalf of ANHUI of which he is President.

On even date, herein petitioners Porthos P. Alma Jose and his wife Ma. Theresa D. Alma Jose, treasurer of ANHUI, together with Atty. Leonides Bernabe, Atty. Edgardo Alzate, Celia M. Bernabe and Juliet Alzate, all in their personal capacity, and ANHUI, executed an Indemnity Agreement[2] in favor of respondent "agree[ing] at all times to jointly and severally indemnify [respondent] and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the [respondent] shall or may at any time sustain or incur in consequence of having become surety upon the bond . . ."

In the Indemnity Agreement, petitioners indicated their address as "48 Guijo Street, TCEV,[3] Antipolo, Rizal."

Claiming that petitioners and the other signatories to the Indemnity Agreement "fail[ed] to comply with their obligations of re-exporting the goods and/or pay taxes, duties and penalties despite demands of the Bureau of Customs" and despite advisement, respondent filed on September 25, 1997 before the Regional Trial Court (RTC) of Makati a complaint[4] for collection of sum of money against ANHUI and the other signatories to the Indemnity Agreement, docketed as Civil Case No. 97-2200.

The complaint alleged that the following defendants may be served with summons and other court processes at the addresses[5] opposite their respective names, viz:

1. Anhui-Almajose
Hydrogeologic and Well
Drilling Co., Inc Rm. 304 Maligaya Bldg.,
111 430 E. Rodriguez
Avenue, Quezon City

2. Porthos P. Alma Jose Rm. 304 Maligaya Bldg.,
111 430 E. Rodriguez

Avenue, Quezon City

3. Ma. Theresa D. Alma Jose Rm. 304 Maligaya Bldg.,
111 430 E. Rodriguez
Avenue, Quezon City

x x x (Emphasis supplied)

Based on the Return[6] dated November 12, 1997 accomplished by Process Server Delfin P. Manga, Jr., substituted service was resorted to for the summons of ANHUI and spouses Alma Jose. The full text of the Return reads:

On 29 October 1997, I went to the office and place of business of defendants Anhui-Almajose Hydrogeologic and Well Drilling Co. Inc., Porthos Almajose and Ma. Theresa Almajose at no. 348 M.F. Jocson St., Sampaloc, Manila to serve them personally the summons, complaint and annexes but failed because they were not there.

Defendants Porthos Almajose and Ma. Theresa Almajose are the officers of defendant corporation.

Again on November 4, 1997 I tried again to serve the summons personally to the aforesaid defendants but I was informed that they were out of the office. I waited for them but my waiting proved futile.

Finally, on November 5, 1997, I went back again on the said address but defendants were again not around. Considering that this was the third time that I endeavor[e]d to serve the summons personally and due to the uncertainty of whether the defendants, who were also officers of defendant corporation, will report to their office, I left the summons together with the copies of the complaint and annexes at their office and place of business thru Shirley Cabangon, a competent person in-charge thereof, who affixed her signature for receipt thereof.

Substituted service availed for the reason above-stated.

The original copy of the summons is hereby returned to the Hon. Court of origin, FULLY SERVED, for its information and guidance. (Emphasis and underscoring supplied).

From the July 3, 2000 Resolution of Branch 141 of the Makati RTC to which the complaint was raffled, the following observations of the judge are noted:

. . . The record indicated that summons upon the defendants were served thru Atty. Leonides Bernabe who was the Corporate Secretary of defendant Anhui-Alma Jose Hydrogeologic and Well Drilling Co., Inc.. Atty. Leonides Bernabe filed a motion for extension of time to file answer for all the defendants on 9 December 1999. The motion was granted and therefore defendants were granted fifteen (15) days counted from 19 December 1997 to file a responsible pleading. x x x[7] (Emphasis and underscoring supplied)

From the same Resolution of the RTC, it is gathered that Atty. Edgardo Alzate, one of the defendants, by way of special appearance, moved to dismiss the complaint on the grounds of lack of jurisdiction over his person, lack of cause of action, lack of jurisdiction over the proceedings, and lack of condition precedent for filing the collection case. The motion was, by Order[8] dated January 26, 1998, denied, but the case against him was eventually dismissed on motion of the plaintiff.

For failure to file answer within the period specified by the trial court and on motion of the plaintiff-herein respondent, the defendants, with the exception of Atty. Alzate, were declared in default on March 6, 1998.

Respondent was thus allowed to present evidence ex parte.

By Decision[9] dated June 15, 1998, the trial court rendered judgment in favor of respondent and accordingly ordered the remaining defendants to jointly and severally pay respondent the sum of P3,010,758.00 plus attorney's fees equivalent to 25% of the amount due and the costs.

No appeal from the trial court's decision having been taken, it became final and executory. On respondent's motion, a Writ of Execution was issued on October 13, 1998.[10]

Petitioners, claiming that they received a copy of a Notice of the Sheriff's Sale[11] of their conjugal property covered by Transfer Certificate of Title (TCT) No. N-66602 located at their residential address at 48 Guijo St., Town and Country Executive Village, Antipolo City on September 23, 1999 and that it was only then that they were apprised of the complaint filed against them by respondent, filed before the trial court on September 30, 1999 a "Petition for Relief from Judgment with a Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order." [12]

In their petition, petitioners alleged that Atty. Bernabe's appearance in their behalf was without their consent and knowledge; that they were not properly served with summons, hence, the trial court did not acquire jurisdiction over their persons; and that if given the chance to be heard, they could controvert respondent's claim with good and strong evidence.

Apprehensive that their petition for relief from judgment "may have been filed out of time," petitioners nevertheless pleaded that given the flaw in the service of summons upon them and the unauthorized entry of Atty. Bernabe as their counsel, they were deprived of their day in court, hence, they prayed that in the interest of justice, their petition be given due course and judgment be rendered:

- setting aside the judgment rendered in [the] case, lifting or canceling the writ of execution and ordering the conduct of a new trial;
- immediately enjoining the Sheriff and the [respondent] from conducting the sale of [petitioners'] levied property;
- after trial, making the injunction above-mentioned permanent.[13]

By Resolution[14] of July 3, 2000, the trial court, noting that the petition for relief from judgment was filed out of time and the supporting affidavit did not state a valid defense to the complaint, and discrediting petitioners' claim that Atty. Bernabe's appearance as counsel was unauthorized in this wise:

[Petitioners] could not feign not know[ing] about the filing of this case during its early stage because Atty. Leonides Bernabe who lawyered for them and the defendant corporation was the corporate secretary of the corporation where petitioners were President and Treasurer, respectively. Defendant corporation did not disown the representation of Atty. Leonides Bernabe. This being so and considering that petitioners were key officers of the corporation, they were presumed to have authorized Atty. Bernabe to represent the corporation perforce they are presumed to have gained actual knowledge of the fact that they were sued in this case in their respective personal capacity (Emphasis and underscoring supplied),

denied the same.

Petitioners' Motion for Reconsideration[15] of the trial court's July 3, 2000 Resolution having been denied by Order dated December 4, 2000,[16] they filed a "Petition for Certiorari with Prayer for a Restraining Order and/or Preliminary Injunction"[17] with the Court of Appeals (CA), docketed as CA-G.R. SP No. 62789, faulting the trial court as follows:

A

THE RESPONDENT COURT, WITH DUE RESPECT, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF ITS JURISDICTION WHEN PETITIONERS' WERE DECLARED IN DEFAULT DESPITE THE FACT THAT IT HAS NOT ACQUIRED JURISDICTION OVER THEM.[18]

B

ASSUMING WITHOUT ADMITTING THAT ATTY. LEONIDES BERNABE WAS THE COUNSEL FOR THE REMIANING DEFENDANTS INCLUDING THE PETITIONERS HEREIN, THE RESPONDENT COURT, WITH DUE RESPECT, ACTED WITH GRAVE ABUSE OF ITS DISCRETION, AMOUNTING TO EXCESS OF ITS JURISDICTION WHEN IT DENIED THE LATTER'S PETITION FOR RELIEF FROM JUDGMENT AND DID NOT CONSIDER THE GROSS INACTION, AND/OR RECKLESSNESS OF THEIR COUNSEL AS TANTAMOUNT TO EXCUSABLE NEGLIGENCE.[19] (Emphasis and underscoring supplied).

By Decision[20] of July 31, 2001, the CA dismissed the petition for certiorari upon a finding that the trial court did not commit grave abuse of discretion when it denied the petition for relief from judgment because

x x x the Rules are very clear that such a petition [for certiorari] is not the proper remedy to resort to when a party alleges lack of jurisdiction over him and the remedy of a petition for relief from judgment is no longer available without his fault. If petitioners were deprived of due process when a decision was rendered against them [in]spite of the court a quo's lack of jurisdiction over them as they allege but a petition for relief from judgment is not anymore available, they were not without remedy. In other words, petitioners were not deprived of a remedy. But apparently, petitioners did not resort to the proper mode of procedure, though they could have very well resorted to it, to redress what they allege to be a violation of their right to due process. x x x (Underscoring supplied).

On February 4, 2002, petitioners filed with the CA a "Petition for Annulment of Judgment, Annulment of Sale and Damages with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction"[21] anchored on the following arguments:

- Respondent Regional Trial Court [h]ad no jurisdiction over the person of herein petitioners since they were not properly served with summons in accordance with the Rules of Court.[22]
- Atty. Leonides Bernabe is not the counsel of defendants-petitioners; he was never hired nor contracted to represent them. Neither did Atty. Bernabe inform the defendant-petitioners of the pendency of a case against them.[23]
- The petitioners have good a valid defense.
- The case against petitioners was prematurely filed.
- No cause of action since (1) The Bureau of Customs agreed that the drilling tools and equipment, subject matter of the bond be surrendered; and (2) it will not therefore go against the Bond.
- To grant the private respondent its claim of indemnity gives rise to unjust enrichment.[24] (Underscoring supplied)

By Resolution[25] of February 11, 2002, the CA, drawing attention to "(. . . Justice Jose Y. Feria, 1997 Rules of Civil Procedure, Philippine Legal Studies, Series No. 5 [Rule 47, Annulment of Judgment or Final Orders or Resolutions], 1999 Ed. (Reprinted), p. 186)," held that since petitioners had already availed of the remedy of petition for relief from judgment which was denied by the trial court as was their petition for certiorari by the CA assailing the trial court's denial, they may no longer institute a petition for annulment of judgment. It additionally held that since the trial court's judgment sought to be annulled had long become final and executory, it could no longer be set aside, absent any showing that a party had been deprived of due process or that the judgment was

procured by extrinsic or collateral fraud.

Their Motion for Reconsideration of the February 11, 2002 Resolution of the CA having been denied,[26] herein petitioners lodged the present Petition for Review faulting the CA in dismissing their petition for annulment of judgment in light of the following arguments:

- The respondent Regional Trial Court [h]ad no jurisdiction over the persons of herein petitioners since they were not properly served with summons. Hence the Court of Appeals erred in affirming the court a quo's Decision.[27]
- The enforcement of the indemnity agreement and consequently the subjection of the petitioners' conjugal home to the corporation's obligation is an action in personam as well as a personal action thus, personal service of summons is necessary to confer jurisdiction on the court.[28]
- Impropriety of the service of summons voided the default judgment. The same was not a judgment in the contemplation of law, hence, it never bec[a]me final and executory and any action to declare its nullity does not prescribe.[29]
- Atty. Leonides Bernabe is not the counsel of petitioners [as] he was never hired nor contracted to represent them. Neither did he inform petitioners of the pendency of the case against them.[30]
- To hold the petitioners liable to the respondent corporation for the amount herein sought to be recovered would result in undue enrichment to the benefit of Intra Strata but to the prejudice of the petitioners because the basis of their alleged liability was already cancelled.[31]

(Underscoring supplied)

The petition is meritorious.

Rule 47 of the Revised Rules on Civil Procedure provides for the remedy of annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. The grounds for annulment are extrinsic fraud and lack of jurisdiction.

In their petition for annulment of judgment, petitioners anchored it on the ground of lack of jurisdiction over their persons. As reflected above, the CA dismissed the petition on the ground that petitioners had already availed of the remedy of petition for relief from judgment.

Section 2, Rule 47 reads:

Section 2. Grounds for annulment. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (Emphasis and underscoring supplied).

As the 2[nd] paragraph of the above-quoted rule clearly provides, it is only extrinsic fraud, not lack of jurisdiction, which is excluded as a valid ground for annulment "if it was availed of, or could not have been availed of, in a motion for new trial or petition for relief."

Since petitioners anchored their Petition for Relief from Judgment filed before the trial court on the ground of lack of jurisdiction over their persons, they are not barred from filing a petition for annulment of judgment before the CA.

As for the CA's application of the doctrine of finality of judgment to bar annulment of the judgment, the same

does not lie. If petitioners can prove that they were indeed not duly served with summons, the trial court never acquired jurisdiction over them, hence, the decision against them is not "a decision" in contemplation of law and could never become final and executory.[32]

WHEREFORE, the assailed February 11, 2002 and September 13, 2002 Resolutions of the Court of Appeals are hereby SET ASIDE. Let the case be REMANDED to the Court of Appeals which is hereby ORDERED to take appropriate action thereon in line with the foregoing discussions.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Court of Appeals (CA) Rollo at 32-33.

[2] CA Rollo at 34-35.

[3] Acronym for Town and Country Executive Village.

[4] CA Rollo at 27-31.

[5] Id. at 27-28.

[6] Id. at 75.

[7] Id. at 45.

[8] Id. at 36-37.

[9] Id. at 23-25.

[10] Id. at 26.

[11] Ibid..

[12] Id. at 38-42.

[13] Id. at 42.

[14] Id. at 44-46.

[15] Id. at 47-51.

[16] Id. at 54.

[17] Id. at 54-64.

[18] Id. at 57-58.

[19] Id. at 59.

[20] Id. at 66-74.

[21] Id. at 4-22.

[22] Id. at 9.

[23] Id. at 13.

[24] Id. at 15-17.

[25] Rollo at 32-33.

[26] Id. at 35.

[27] Id. at 16.

[28] Id. at 18.

[29] Id. at 20.

[30] Id. at 22.

[31] Id. at 25.

[32] Arcelona v. Court of Appeals, 280 SCRA 20, 37 (1997)

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