

ATM TRUCKING INCORPORATED, PETITIONER, VS. JUDGE FELIPE V. BUENCAMINO, COURT OF FIRST INSTANCE OF PAMPANGA; VICTORIA VDA. DE SANTOS, DR. ERNESTO P. SANTOS, EDUARDO P. SANTOS AND...

G.R. No. 62445. August 31, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the validity of the summons served on a corporation and the propriety of granting relief from a judgment by default.

In the evening of May 21, 1980, Doctor Librado Santos was killed when the car, wherein he was riding as a passenger, bumped the cargo truck of ATM Trucking Incorporated, which truck had turned turtle and was a traffic hazard on the expressway at Lubao, Pampanga.

Doctor Santos' heirs sued for damages ATM Trucking on October 3, 1980 in Civil Case No. G-974 of the Court of First Instance of Pampanga. Summons was served on Elsa Soza, a clerk whom the sheriff erroneously thought was the corporate secretary.

For failure to answer the complaint within the reglementary period, ATM Trucking was declared in default. The plaintiffs presented their evidence ex parte. On January 10, 1981, the lower court rendered judgment ordering ATM Trucking to pay damages to the heirs of Doctor Santos in the total amount of P349,352.25.

On March 13, 1981, ATM Trucking filed a petition for relief from judgment with an affidavit of merits. It alleged that there was no valid service of summons and that it had good defenses to the action. The Santos heirs opposed the petition.

After hearing, the lower court set aside its judgment and gave ATM Trucking fifteen days from notice within which to file its answer. It found that the summons was not served on the corporate secretary. ATM Trucking alleged in its answer that the accident was due to the negligence of the driver of Doctor Santos' car.

The Santos heirs filed a motion for the reconsideration of the order setting aside the judgment. The lower court in its order of October 15, 1982 granted the motion for reconsideration on the ground that no corporate officer held office at 551 Cabildo Street, Intramuros, Manila, the supposed place of business of ATM Trucking, that the general manager was always out and that Elsa Soza may be regarded as "agent" of the corporation.

ATM Trucking assailed that order of October 15, 1982 by means of a petition for certiorari which was treated as an appeal under Republic Act No. 5440.

We hold that ATM Trucking was not properly served with summons. Section 13, Rule 14 of the Rules of Court provides that if the defendant is a corporation organized under Philippine laws, "service may be made on the president, manager, secretary, cashier, agent, or any of its directors". In the instant case Elsa Soza cannot be

regarded as an "agent" of the corporation, She was a mere clerk. Service on a mere employee of the corporation or on the housemaid of the corporation's general manager is not sufficient (19 C.J.S. 999; 19 Am. Jur. 2nd 853; *Filoil Marketing Corporation vs. Marine Development Corporation of the Philippines*, L-29636, September 30, 1982, 117 SCRA 86).

The purpose of the rule is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him or, in other words, to bring home to the corporation notice of the filing of the action (*Delta Motor Sales Corporation vs. Mangosing*, L-41667, April 30, 1976, 70 SCRA 598, 603).

ATM Trucking was, therefore, denied due process. Fundamental fairness demands that it be heard and that it be allowed to present its evidence.

WHEREFORE, the lower court's order of October 15, 1982 is reversed and set aside. Its order of February 25, 1982, granting relief from judgment, is affirmed. It is directed to receive the evidence of ATM Trucking Incorporated. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Abad Santos, J., no part.

De Castro, J., on sick leave.

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