

**ELIODORO PONIO AND WECONS CONSTRUCTION SERVICES, INC.,
PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE
COURT, HONORABLE NICANOR E. SILVANO AS PRESIDING JUDGE OF
THE REGION...**

G.R. No. 66782. December 20, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision of the Intermediate Appellate Court.

On October 24, 1984, this Court resolved to dismiss the petition for lack of merit. The petitioners filed a timely motion for reconsideration which is impressed with merit.

The petitioners were sued in the Regional Trial Court at Pasay City for the payment of a sum of money - P27,611.65 plus damages and expenses of litigation. For failure to file their answer within the reglementary period they were declared in default, evidence ex-parte was introduced and judgment was rendered against them. A MOTION TO LIFT ORDER OF DEFAULT AND TO SET ASIDE DECISION WITH PRAYER TO ADMIT DEFENDANTS' ANSWER was denied by the trial court and the denial was sustained by the Intermediate Appellate Court which is the reason for the instant petition.

The petitioners (defendants below) state that there was no valid service of summons upon them so that the trial court never acquired jurisdiction over them and could not have declared them in default.

The Intermediate Appellate Court held that the substituted service upon petitioner Eliodoro Ponio was not valid; and that the service upon petitioner Wecons Construction Services was likewise not valid. This is what the Intermediate Appellate Court said:

"Petitioners' aforesaid submission appeared well supported by and deeply anchored on the jurisprudence on this point. In so far as the defendant, now petitioner corporation, is concerned, service of summons upon said defendant can be effected only upon any of the officers enumerated under Section 13, Rule 14 of the Rules of Court. The enumeration provided by the aforesaid rule is not successive but exclusive and it is of no moment whether said summons actually reached the defendant corporation (*Delta Motor Sales vs. Mangosing*, 70 SCRA 598; *AM Trucking vs. Buencamino*, G. R. No. 62445, August 3, 1983).

"With respect to the substituted service upon defendant Ponio, We likewise agree with the petitioners that the same does not constitute a valid service sufficient enough to confer jurisdiction over defendant (now petitioner) Ponio. Substituted service may be effected only when personal service cannot be effected within a reasonable time (Section 8, Rule 14 of the Rules of Court; *Litonjua vs. Court of Appeals, et al.*, 80 SCRA 245)." (Rollo, p. 135.)

However, the Intermediate Appellate Court also held that the trial court did not commit a grave abuse of discretion in denying the motion to lift the order of default because the motion was not accompanied by an

affidavit of merit. This is error.

We hold that where a motion to lift an order of default is grounded on the very root of the proceedings an affidavit of merit is not necessary nor essential. This is so where the court has not acquired jurisdiction over the defendants. Thus this Court has ruled:

"Courts acquire jurisdiction over the person of a party defendant and of the subject-matter of the action by virtue of the service of summons in the manner required by law. Where there is no service of summons or a voluntary general appearance by the defendant, the court acquires no jurisdiction to pronounce a judgment in the cause. (Syllabi, *Salmon and Pacific Commercial Co. vs. Tan Cuevo*, 36 Phil. 556).

"Consequently, the order of default, the judgment by default and the execution in x x x x are void and should be set aside." (*Delta Motor Sales Corp. vs. Mangosing*, L-41667, April 30, 1976, 70 SCRA 598, 603.)

WHEREFORE, the petition is granted; the decision of the Intermediate Appellate Court is set aside as well as the order of default issued by the trial court which is ordered to admit the answer filed by the petitioners. Costs against the private respondent.

SO ORDERED.

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

Cuevas, J., no part.

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