



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

“G.R. No. 237326 (*Fern Realty Corporation v. Spouses Jose Rosete and Mamerta C. Rosete*). — This Petition for Review on *Certiorari* (Petition)¹ under Rule 45 of the Rules of Court (Rules) seeks to reverse and set aside the twin Resolutions dated 31 August 2017² and 07 February 2018³ of the Court of Appeals (CA) in CA-G.R. SP No. 151311. The CA dismissed, for lack of merit, the petition for annulment of judgment (annulment petition).

Antecedents

This case stems from a Complaint⁴ for damages filed on 06 November 2008 by the Spouses Jose Rosete and Mamerta C. Rosete (respondents) against Fern Realty Corporation (petitioner) and a certain Atty. Oscar Inocentes, claiming that their property, which was adjacent to the subdivision development of petitioner, was flooded by water coming from the huge drainage holes it introduced. Allegedly, the water that flowed from said holes caused massive soil erosion to the property of respondents, thus, reducing its commercial value.⁵ The complaint indicated petitioner's principal office address as Ground Floor, Makati Stock Exchange Building, Makati City.

On 22 April 2009, summons was served to “Fern [Realty] Corporation-Ayala Land Incorporated c/o Customer Relations Unit, Tower I, Ayala Triangle, Ayala Avenue, Makati City” and received by “Adm. Asst.” Jessiie Joyce Abainea (Abainea) of Ayala Land Premier, Customer Relations Unit.⁶

¹ *Rollo*, pp. 18-34.

² *Id.* at 7-10. Penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court) and concurred in by Associate Justices Elihu A. Ybañez and Jhosep Y. Lopez (now also a Member of this Court).

³ *Id.* at 12-13.

⁴ *Id.* at 35-40.

⁵ *Id.* at 7-8, 108.

⁶ *Id.* at 49-50, 52.

In its Order⁷ dated 18 September 2009, the Regional Trial Court (RTC) of Quezon City, Branch 224, declared Fern Realty Corporation-Ayala Land Incorporated in default for failure to file its Answer and allowed respondents to present their evidence *ex-parte*.

On 02 May 2014, the RTC rendered a Decision⁸ ordering petitioner to pay respondents (a) ₱50,000.00 as temperate damages; (b) ₱50,000.00 as moral damages; (c) ₱50,000.00 as exemplary damages; and (d) ₱50,000.00 as attorney's fees. The RTC subsequently issued a Writ of Execution on 14 January 2016 to implement the Decision.⁹ A Notice of Garnishment was likewise issued on 08 March 2017.¹⁰

On 10 March 2016, petitioner moved to quash the writ of execution alleging that the writ of execution was defective since the RTC never acquired jurisdiction over it. The RTC failed to properly serve the summons because it was served at the wrong address. Petitioner pointed out that under its 2008 to 2016 General Information Sheets filed before the Securities and Exchange Commission (SEC), its principal place of business is located at Nicanor Reyes Street,¹¹ Sampaloc, Manila and averred that it has never held office at Tower I, Ayala Triangle, Ayala Avenue, Makati City. Petitioner likewise stated that it only came to know of the fact that it was impleaded in the instant case when it received a copy of the writ of execution from Ayala Land on 03 March 2016.¹²

Ruling of the RTC

On 23 June 2016, the RTC rendered its Order¹³ denying the motion to quash, explaining, thus:

Records of this case show that the Writ of Execution was ordered issued in this case after judgment was rendered and the same had become final and executory. For failure to file its Answer after the service of summons on [April 22, 2009],¹⁴ movant was declared in default. Hence, this judgment by default against the defendant Fern Realty Corporation. Having adjudicated the rights of the parties in this case, including the right of the plaintiffs against the herein movant, who was declared in default, it is just fair that the winning party should be given the fruit of the verdict. Thus, the Writ issued in this case should be implemented as the

⁷ Id. at 52.

⁸ Id. at 108-113. Penned by RTC Presiding Judge Tita Marilyn Payoyo-Villordon.

⁹ Id. at 105-106.

¹⁰ Id. at 21, 107.

¹¹ Nicanor Garcia Street, in some parts of the record.

¹² *Rollo*, pp. 20, 53-55.

¹³ Id. at 64-65.

¹⁴ Id. at 52, 109; The RTC Order dated 23 June 2016 stated that summons was served on 29 April 2004. However, both the RTC Decision dated 02 May 2014 and Order dated 18 September 2009 provided 22 April 2009 as the date when summons was served.

same was issued pursuant to the Decision dated May 2, 2014, which had already attained finality.

WHEREFORE, premises considered, the defendant-Fern Realty Corporation's Motion to Quash is hereby DENIED for lack of merit.

SO ORDERED.¹⁵

Aggrieved, petitioner filed its Motion for Reconsideration, which the RTC denied in its Resolution¹⁶ dated 13 September 2016. Petitioner, thereafter, sought recourse before the CA by filing the annulment petition.

Ruling of the CA

In its Resolution¹⁷ dated 31 August 2017, the CA dismissed the petition for annulment of judgment for lack of merit. It held that Section 11, Rule 14 of the Rules found no applicability in the instant case "because of the absence of any plausible means that summons could be served to [petitioner]."¹⁸

Dissatisfied with the findings of the CA, petitioner subsequently moved for reconsideration, but the CA denied the motion in its Resolution¹⁹ dated 07 February 2018. Hence, the filing of the instant petition before this Court.

Issue

The issue is whether the CA erred in dismissing the annulment petition.

Ruling of the Court

The Court finds it fit to determine whether or not the petition for annulment of judgment has *prima facie* merit.²⁰

A petition for annulment of judgment is defined as a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order, or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic

¹⁵ Id. at 64-65.

¹⁶ Id. at 21.

¹⁷ Id. at 7-10.

¹⁸ Id. at 9-10.

¹⁹ Id. at 12-13.

²⁰ See *Carreon v. Aguillon*, G.R. No. 240108, 29 June 2020.

fraud.²¹ A defective service of summons negates the Court's jurisdiction and is recognized as a ground for an action for annulment of judgment.²²

Under Section 11, Rule 14 of the Rules of Court, when the defendant is a corporation, partnership, or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. The service of summons on a domestic corporation is restricted, limited, and exclusive to the persons enumerated above following the rule on statutory construction that *expressio unios est exclusio alterius*.²³ If the service of summons is made upon persons other than those enumerated, the same is invalid.²⁴

The CA, however, held that this rule does not apply in this case because it was not possible for petitioner to be served with summons. The address it gave, *i.e.*, Nicanor Reyes Street, Sampaloc, Manila, was too general and too broad to be made a corporation's postal address wherein receipt of important notices such as court summons could be ensured. Had petitioner intended to actually be accountable to third persons for any acts committed by it or its officers and members, it should have stated its exact office address bearing the unit number, building name, building number along with the street name and name of the city wherein its principal place of business was located.²⁵

A perusal of the records will show that in their complaint, respondents named petitioner as the defendant with office address at Ground Floor, Makati Stock Exchange Building, Makati City.²⁶ Nevertheless, the summons was served to Tower I, Ayala Triangle, Ayala Avenue, Makati City.²⁷ Moreover, Ayala Land Incorporated (Ayala Land) was not a party to the case. Yet, Ayala Land was appended to the name of petitioner and, thus, was made to appear as if it was a party to the case. Notably, in the decision rendered by the RTC, only petitioner's name appears as defendant, and it alone was adjudged liable to respondents. No mention was ever made of Ayala Land.

Petitioner staunchly denies that it has its office in Makati City and avers that it has consistently declared that its principal office is located at Nicanor Reyes Street, Sampaloc, Manila, adding that Nicanor Reyes Street, formerly known as Morayta, is home to Far Eastern University, which is Fern Realty Corporation.²⁸

²¹ *Spouses Hofer v. Yu*, G.R. No. 231452, 01 July 2020.

²² *Carreon v. Aguillon*, *Supra*.

²³ *Nation Petroleum Gas, Inc. v. Rizal Commercial Banking Corp.*, 766 Phil. 696, 697 (2015).

²⁴ *Interlink Movie Houses, Inc. v. Court of Appeals*, 823 Phil. 1032, 1033 (2018).

²⁵ *Rollo*, pp. 09-10.

²⁶ *Id.* at 35.

²⁷ *Id.* at 49.

²⁸ *Id.* at 25.

Although the address given by petitioner appears to be incomplete, this is not to say that it “is indicative of its intention to defeat any possible legal action against [it].”²⁹ However, We cannot make such a declaration without evidence to support such a claim. It is but speculation at this point.

To be sure, petitioner is a domestic corporation duly organized and existing under the laws of the Philippines.³⁰ Thus, for the RTC to acquire jurisdiction over the person of the petitioner, service of summons must have been made upon its president or to its other officers. Granting *arguendo* that petitioner was served summons at the correct address, notably, it was Abainea, an “Adm. Asst.”³¹ who received the summons. An “Adm. Asst.” is not among the corporate officers of Fern to whom service of summons may be made pursuant to Sec. 11³² of Rule 14 of the Rules.

Even if We are to consider the service of summons upon Abainea as a substituted service of summons upon petitioner, such must still be shown to comply faithfully, strictly, and fully with all the requirements of substituted service³³ under Sec. 7, Rule 14 of the Rules, as well as the ruling in the case of *Manotoc v. Court of Appeals (Manotoc)*,³⁴ for effecting a valid substituted service. It is well-settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. In such cases, substituted service may be effected by: (a) leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) leaving the copies at defendant's office or regular place of business with a competent person in charge.³⁵ Since substituted service is in derogation of the usual method of service, and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons.³⁶

In *Manotoc*, it was held that before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To establish such impossibility, there must be at least three attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one month which eventually resulted in failure. Also, the sheriff must cite why such efforts were unsuccessful.³⁷ Finally, if substituted service is made at the defendant's office or regular place of

²⁹ Id. at 10.

³⁰ Id. at 19.

³¹ Id. at 50.

³² Section 11. Service upon domestic private juridical entity. — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

³³ Supra note 23 at 699.

³⁴ 530 Phil 454, 468-471 (2006).

³⁵ See Section 7 of Rule 14 of the Rules.

³⁶ Supra note 24.

³⁷ Id.

business, the sheriff must instead leave a copy of the summons with a “competent person in charge thereof” or the person managing the office or the business of the defendant, such as the president or the manager.³⁸

From the foregoing, it is apparent that petitioner's claim of defective summons has *prima facie* merit. A defective service of summons negates the Court's jurisdiction and is recognized as a ground for an action for annulment of judgment.³⁹ The CA, thus, erred in dismissing the annulment petition. Pursuant to Secs. 5 and 6, Rule 47, the CA is required to give due course to the annulment petition, cause the service of summons, and conduct trial to determine its merits:⁴⁰

SECTION 5. *Action by the Court.* – Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.

SECTION 6. *Procedure.* – The procedure in ordinary civil cases shall be observed. Should a trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court.

Further, the CA should also be guided by the provisions of Secs. 7 and 9 of Rule 47 of the Rules which state:

SECTION 7. *Effect of Judgment.* – A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

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SECTION 9. *Relief Available.* – The judgment of annulment may include the award of damages, attorney's fees and other relief.

If the questioned judgment or final order or resolution had already been executed, the court may issue such orders of restitution or other relief as justice and equity may warrant under the circumstances.

In sum, the CA erred in dismissing the petition for annulment of judgment. The present petition seeking the grant of the annulment petition and other related reliefs should, however, only be partly granted, considering that

³⁸ *Ang v. Chinatrust (Philippines) Commercial Bank Corp.*, 784 Phil. 791, 792 (2016).

³⁹ *Supra* note 22.

⁴⁰ *Id.*

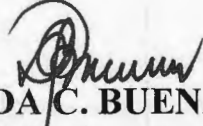
the CA must still conduct a trial on its merits and issue the corresponding judgment in accordance with the parameters of Rule 47 of the Rules.⁴¹

WHEREFORE, the instant petition is hereby **PARTLY GRANTED**. The twin Resolutions dated 31 August 2017 and 07 February 2018 of the Court of Appeals in CA-G.R. SP No. 151311 are **REVERSED** and **SET ASIDE**. A new one is **ENTERED** directing the remand of petitioner Fern Realty Corporation's Petition for Annulment of Judgment to the Court of Appeals, which is hereby **DIRECTED** to give due course to the same, issue the necessary summons, and conduct trial for the reception of evidence pursuant to Rule 47 of the Rules of Court.

The Letter dated December 14, 2021 of Ms. Jane G. Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, in compliance with the Resolution dated March 3, 2021, transmitting the rollo of CA-G.R. SP No. 151311 with 219 useful pages, is **NOTED**; the Notice of Withdrawal of Atty. Desiderio A. Pagui as counsel for spouses respondents, with conformity of Ms. Arsenia E. Cruz, Attorney-in-Fact, for reasons stated therein, is **NOTED** and **GRANTED**; and the respondents are required to **INFORM** the Court of their new counsel, and the **LATTER TO FILE ENTRY OF APPEARANCE**, within five (5) days from notice hereof.

SO ORDERED." *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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FEB 14 2023

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⁴¹ Id.

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**For this Resolution only.*

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