



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PLANTERS DEVELOPMENT BANK, G.R. No. 195619
Petitioner,

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

JULIE CHANDUMAL,
Respondent.

Promulgated:

05 SEP 2012

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DECISION

REYES, J.:

In this petition for review under Rule 45 of the Rules of Court, Planters Development Bank (PDB) questions the Decision¹ dated July 27, 2010 of the Court of Appeals (CA), as well as its Resolution² dated February 16, 2011, denying the petitioner's motion for reconsideration in CA-G.R. CV No. 82861. The assailed decision nullified the Decision³ dated May 31, 2004 of the Regional Trial Court (RTC), Las Piñas City, Branch 255 in Civil Case No. LP-99-0137.

¹ Penned by Associate Justice Danton Q. Bueser, with Associate Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring; CA *rollo*, pp. 56-65.

² Id. at 96-97.

³ Under the sala of Judge Raul Bautista Villanueva; RTC records, pp. 174-179.

Antecedent Facts

The instant case stemmed from a contract to sell a parcel of land, together with improvements, between BF Homes, Inc. (BF Homes) and herein respondent Julie Chandumal (Chandumal). The property subject of the contract is located in Talon Dos, Las Piñas City and covered by Transfer Certificate of Title No. T-10779. On February 12, 1993, BF Homes sold to PDB all its rights, participations and interests over the contract.

Chandumal paid her monthly amortizations from December 1990 until May 1994 when she began to default in her payments. In a Notice of Delinquency and Rescission of Contract with Demand to Vacate⁴ dated July 14, 1998, PDB gave Chandumal a period of thirty (30) days from receipt within which to settle her installment arrearages together with all its increments; otherwise, all her rights under the contract shall be deemed extinguished and terminated and the contract declared as rescinded. Despite demand, Chandumal still failed to settle her obligation.

On June 18, 1999, an action for judicial confirmation of notarial rescission and delivery of possession was filed by PDB against Chandumal, docketed as Civil Case No. LP-99-0137. PDB alleged that despite demand, Chandumal failed and/or refused to pay the amortizations as they fell due; hence, it caused the rescission of the contract by means of notarial act, as provided in Republic Act (R.A.) No. 6552.⁵ According to PDB, it tried to deliver the cash surrender value of the subject property, as required under R.A. No. 6552, in the amount of ₱10,000.00; however, the defendant was unavailable for such purpose.⁶

⁴ Id. at 149.

⁵ Otherwise known as the "Realty Installment Buyers Protection Act," effective September 16, 1972, and more commonly known as the Maceda Law.

⁶ RTC records, p. 3.

Consequently, summons was issued and served by deputy sheriff Roberto T. Galing (Sheriff Galing). According to his return, Sheriff Galing attempted to personally serve the summons upon Chandumal on July 15, 19 and 22, 1999 but it was unavailing as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons on August 5, 1999 by serving the same through Chandumal's mother who acknowledged receipt thereof.⁷

For her failure to file an answer within the prescribed period, PDB filed on April 24, 2000 an *ex parte* motion to declare Chandumal in default. On January 12, 2001, the RTC issued an Order granting the motion of PDB.⁸

On February 23, 2001, Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. She maintained that she did not receive the summons and/or was not notified of the same. She further alleged that her failure to file an answer within the reglementary period was due to fraud, mistake or excusable negligence. In her answer, Chandumal alleged the following defenses: (a) contrary to the position of PDB, the latter did not make any demand for her to pay the unpaid monthly amortization; and (b) PDB did not tender or offer to give the cash surrender value of the property in an amount equivalent to fifty percent (50%) of the actual total payment made, as provided for under Section 3(b) of R.A. No. 6552. Moreover, Chandumal claimed that since the total payment she made amounts to ₱782,000.00, the corresponding cash surrender value due her should be ₱391,000.00.⁹

Per Order¹⁰ dated August 2, 2001, the RTC denied Chandumal's motion to set aside the order of default. Her motion for reconsideration was also denied for lack of merit.¹¹ Conformably, the RTC allowed PDB to

⁷ Id. at 24.

⁸ Under the sala of Judge Florentino M. Alumbres; id. at 70.

⁹ Id. at 71-98.

¹⁰ Under the sala of Judge Bonifacio Sanz Maceda; id. at 108.

¹¹ Id. at 121-123.

present its evidence *ex parte*.¹² On May 31, 2004, the RTC rendered a Decision¹³ in favor of PDB, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the plaintiff Planters Development Bank and against defendant Julie Chandumal as follows, to wit:

1. Declaring the notarial rescission of the Contract to Sell dated 03 January 1990 made by the plaintiff per the Notice of Delinquency and Rescission of Contract with Demand to Vacate dated 14 July 1998 as judicially confirmed and ratified;

2. Requiring the plaintiff to deposit in the name of the defendant the amount of [P]10,000.00 representing the cash surrender value for the subject property with the Land Bank of the Philippines, Las Piñas City Branch in satisfaction of the provisions of R.A. No. 6552; and,

3. Ordering the defendant to pay the plaintiff the amount of [P]50,000.00 as and by way of attorney's fees, including the costs of suit.

SO ORDERED.¹⁴

From the foregoing judgment, Chandumal appealed to the CA.

On July 27, 2010, the CA, *without ruling on the propriety of the judicial confirmation of the notarial rescission*, rendered the assailed decision nullifying the RTC decision due to invalid and ineffective substituted service of summons. The dispositive portion of the CA decision provides:

WHEREFORE, premises considered, the decision of Branch 255 of the Regional Trial Court of Las Piñas City, dated May 31, 2004, in Civil Case No. LP-99-0137 is hereby **NULLIFIED** and **VACATED**.

SO ORDERED.¹⁵

PDB filed a motion for reconsideration but it was denied by the CA in its Resolution dated February 16, 2011.

¹² Id.

¹³ Id. at 174-179.

¹⁴ Id. at 178-179.

¹⁵ CA Decision dated July 27, 2010, p. 10; CA *rollo*, p. 65.

Hence, this petition based on the following assignment of errors:

I

The Honorable Court of Appeals erred in reversing the decision of the trial court on the ground of improper service of summons[;]

II

The decision of the trial court is valid as it duly acquired jurisdiction over the person of respondent Chandumal through voluntary appearance[; and]

III

The trial court did not err in confirming and ratifying the notarial rescission of the subject contract to sell.¹⁶

PDB contends that the RTC properly acquired jurisdiction over the person of Chandumal. According to PDB, there was proper service of summons since the sheriff complied with the proper procedure governing substituted service of summons as laid down in Section 7, Rule 14 of the Rules of Court. PDB alleges that it is clear from the sheriff's return that there were several attempts on at least three (3) different dates to effect personal service within a reasonable period of nearly a month, before he caused substituted service of summons. The sheriff likewise stated the reason for his failure to effect personal service and that on his fourth attempt, he effected the service of summons through Chandumal's mother who is unarguably, a person of legal age and with sufficient discretion. PDB also argues that Chandumal voluntarily submitted herself to the jurisdiction of the court when she filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer.

¹⁶

Rollo, p. 12.

For her part, Chandumal asserts that she never received a copy of the summons or was ever notified of it and she only came to know of the case sometime in July or August 2000, but she was already in the United States of America by that time, and that the CA correctly ruled that there was no valid service of summons; hence, the RTC never acquired jurisdiction over her person.

Issues

1. Whether there was a valid substituted service of summons;
2. Whether Chandumal voluntarily submitted to the jurisdiction of the trial court; and
3. Whether there was proper rescission by notarial act of the contract to sell.

Our Ruling

The fundamental rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the court acquires no jurisdiction over its person, and a judgment rendered against it is null and void.¹⁷

Where the action is *in personam*¹⁸ and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him.¹⁹ If the defendant cannot be personally served with summons within a

¹⁷ An action *in personam* is one which seeks to enforce personal rights and obligations against a defendant and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. (See *Belen v. Chavez*, G.R. No. 175334, March 26, 2008, 549 SCRA 479, 481.)

¹⁸ *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36.

¹⁹ RULES OF COURT, Rule 14, Section 6.

reasonable time, it is then that substituted service may be made.²⁰ Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.²¹

No valid substituted service of summons

In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In *Manotoc v. Court of Appeals*,²² the Court detailed the requisites for a valid substituted service of summons, summed up as follows: (1) **impossibility of prompt personal service** – the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) **specific details in the return** – the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service; (3) **a person of suitable age and discretion** – the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient’s relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) **a competent person in charge**, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons.²³ These were reiterated and applied in *Pascual v. Pascual*,²⁴ where the substituted service of summon made was invalidated due to the sheriff’s failure to

²⁰ Section 7, Rule 14 of the Rules of Court on substituted service provides: “If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant’s residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at the defendant’s office or regular place of business with some competent person in charge thereof.”

²¹ *Pascual v. Pascual*, G.R. No. 171916, December 4, 2009, 607 SCRA 288, 298.

²² 530 Phil. 454 (2006).

²³ Id. at 468-471.

²⁴ Supra note 21.

specify in the return the necessary details of the failed attempts to effect personal service which would justify resort to substituted service of summons.

In applying the foregoing requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons. According to the CA, the Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof.²⁵ Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective.²⁶

**Respondent voluntarily submitted
to the jurisdiction of the trial court**

Despite that there was no valid substituted service of summons, the Court, nevertheless, finds that Chandumal voluntarily submitted to the jurisdiction of the trial court.

Section 20, Rule 14 of the Rules of Court states:

Sec. 20. *Voluntary appearance.* – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of

²⁵ CA rollo, p. 63.

²⁶ *Afdal v. Carlos*, G.R. No. 173379, December 1, 2010, 636 SCRA 389, 398.

jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

When Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person. Thus, it was ruled that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.²⁷ The Court notes that aside from the allegation that she did not receive any summons, Chandumal's motion to set aside order of default and to admit attached answer failed to positively assert the trial court's lack of jurisdiction. In fact, what was set forth therein was the substantial claim that PDB failed to comply with the requirements of R.A. No. 6552 on payment of cash surrender value,²⁸ which already delves into the merits of PDB's cause of action. In addition, Chandumal even appealed the RTC decision to the CA, an act which demonstrates her recognition of the trial court's jurisdiction to render said judgment.

Given Chandumal's voluntary submission to the jurisdiction of the trial court, the RTC, Las Piñas City, Branch 255, had all authority to render its Decision dated May 31, 2004. The CA, therefore, erred in nullifying said RTC decision and dispensing with the resolution of the substantial issue raised herein, *i.e.*, validity of the notarial rescission. Instead, however, of remanding this case to the CA, the Court will resolve the same considering that the records of the case are already before us and in order to avoid any further delay.²⁹

²⁷ *Rapid City Realty and Development Corporation v. Villa*, G.R. No. 184197, February 11, 2010, 612 SCRA 302, 306.

²⁸ RTC records, pp. 71-72.

²⁹ *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 241.

There is no valid rescission of the contract to sell by notarial act pursuant to Section 3(b), R.A. No. 6552

That the RTC had jurisdiction to render the decision does not necessarily mean, however, that its ruling on the validity of the notarial rescission is in accord with the established facts of the case, the relevant law and jurisprudence.

PDB claims that it has validly rescinded the contract by notarial act as provided under R.A. No. 6552. Basically, PDB instituted Civil Case No. LP-99-0137 in order to secure judicial confirmation of the rescission and to recover possession of the property subject of the contract.

In *Leaño v. Court of Appeals*,³⁰ it was held that:

R. A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. The law also provides for the rights of the buyer in case of cancellation. Thus, Sec. 3 (b) of the law provides that:

“If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made and, after five years of installments, an additional five percent every year but not to exceed ninety percent of the total payments made: *Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.*”³¹ (Citation omitted and emphasis ours)

R.A. No. 6552 recognizes the right of the seller to cancel the contract but any such cancellation must be done in conformity with the requirements therein prescribed. In addition to the notarial act of rescission, the seller is

³⁰ 420 Phil. 836, (2001).

³¹ Id. at 846-847.

required to refund to the buyer the cash surrender value of the payments on the property. The actual cancellation of the contract can only be deemed to take place upon the expiry of a thirty (30)-day period following the receipt by the buyer of the notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value.³²

In this case, it is an admitted fact that PDB failed to give Chandumal the full payment of the cash surrender value. In its complaint,³³ PDB admitted that it tried to deliver the cash surrender value of the subject property as required under R.A. No. 6552 but Chandumal was “unavailable” for such purpose. Thus, it prayed in its complaint that it be ordered to “deposit with a banking institution in the Philippines, for the account of Defendants (sic), the amount of Ten Thousand Pesos (₱10,000.00), Philippine Currency, representing the cash surrender value of the subject property; x x x.”³⁴ The allegation that Chandumal made herself unavailable for payment is not an excuse as the twin requirements for a valid and effective cancellation under the law, *i.e.*, notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value, is **mandatory**.³⁵ Consequently, there was no valid rescission of the contract to sell by notarial act undertaken by PDB and the RTC should not have given judicial confirmation over the same.

WHEREFORE, the petition is **DENIED**. The Decision dated July 27, 2010 of the Court of Appeals, as well as its Resolution dated February 16, 2011, denying the Motion for Reconsideration in CA-G.R. CV No. 82861 are **AFFIRMED** in so far as there was no valid service of summons. Further, the Court **DECLARES** that there was no valid rescission of contract pursuant to R.A. No. 6552. Accordingly, the Decision dated May 31, 2004 of the Regional Trial Court, Las Piñas City, Branch 255 in Civil

³² *Olympia Housing, Inc. v. Panasiatic Travel Corp.*, 443 Phil. 385, 398-399 (2003).

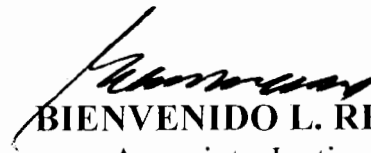
³³ RTC records, p. 3.

³⁴ Id. at p. 4.


³⁵ *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753, 761-762 (2002).

Case No. LP-99-0137 is **REVERSED** and **SET ASIDE**, and is therefore, **DISMISSED** for lack of merit.

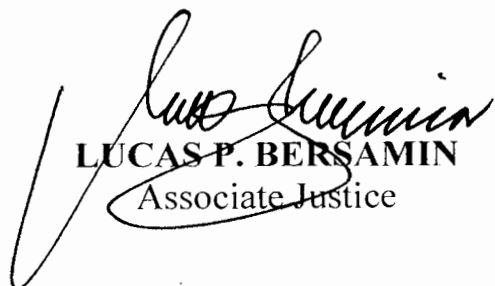
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

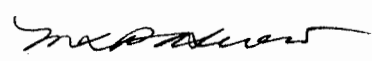

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice