

SECOND DIVISION

[G.R. No. 205249, October 15, 2014]

**SPOUSES BENEDICT AND SANDRA MANUEL, PETITIONERS, VS.
RAMON ONG, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

This resolves a petition^[1] for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, praying that the June 28, 2012 decision^[2] and the December 19, 2012 resolution^[3] of the Court of Appeals in CA-G.R. SP No. 119270 be reversed and set aside.

The assailed June 28, 2012 decision dismissed for lack of merit the petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by petitioners Benedict and Sandra Manuel (the Spouses Manuel) and sustained the November 30, 2010 and February 16, 2011 orders of the Regional Trial Court, La Trinidad, Benguet.^[4] The assailed December 19, 2012 resolution of the Court of Appeals denied the Spouses Manuel's motion for reconsideration. The Regional Trial Court's November 30, 2010 order denied their motion to lift order of default, while its February 16, 2011 order denied their motion for reconsideration.^[5]

On December 21, 2009, respondent Ramon Ong (Ong) filed with the Regional Trial Court, La Trinidad, Benguet, a complaint for accion *reivindicatoria*.^[6] Ong charged the Spouses Manuel with having constructed improvements — through force, intimidation, strategy, threats, and stealth — on a property he supposedly owned.^[7] The case was docketed as Civil Case No. 09-CV-2582.^[8]

On January 19, 2010, Ong filed an "amended complaint."^[9] On February 3, 2010, summons was issued directed to the Spouses Manuel.^[10]

On April 23, 2010, Ong filed with the Regional Trial Court a motion to declare the Spouses Manuel in default.^[11] Per the sheriffs return on summons, on February 12, 2010, Sheriff Joselito Sales, along with Ong's counsel, Atty. Christopher Donaal, and a certain Federico Laureano, attempted to personally serve summons on the Spouses Manuel at their address in Lower Bacong, Loacan, Itogon, Benguet.^[12] The Spouses Manuel, however, requested that service be made at another time considering that petitioner Sandra Manuel's mother was then critically ill.^[13] The sheriffs return further indicates that on March 16, 2010, another attempt at personal service was made. After Sheriff Joselito Sales had personally explained to petitioner Sandra Manuel the content of the summons and the complaint, the latter refused to sign and receive the summons and the complaint. Sheriff Joselito Sales was thus prompted to merely tender the summons and complaint to petitioner

Sandra Manuel and to advise her to file their answer within fifteen (15) days.^[14] As the Spouses Manuel failed to file their answer within this period, Ong asked that they be declared in default.^[15]

On June 28, 2010, the Regional Trial Court issued an order granting Ong's motion to declare the Spouses Manuel in default. Following this, Ong moved for the ex parte presentation of evidence, which the Regional Trial Court granted.^[16]

On September 13, 2010, the Spouses Manuel filed a motion to lift the order of default. They alleged that it is the siblings of petitioner Sandra Manuel who resided in Lower Bacong, Itogon, Benguet, while they resided in Ambiong, La Trinidad, Benguet. Thus, summons could not have been properly served on them in the former address. They surmised that Ong and his companions mistook petitioner Sandra Manuel's siblings as the defendants in Civil Case No. 09-CV-2582. They further claimed that they only subsequently received via registered mail copies of (1) a compliance and manifestation filed by Ong and (2) the Regional Trial Court's order scheduling the ex parte presentation of evidence. Attached to the Spouses Manuel's motion to lift order of default was their answer.^[17]

In its order dated November 30, 2010, the Regional Trial Court denied the Spouses Manuel's motion to lift order of default. It noted that, first, their motion was not sworn to, as required by the 1997 Rules of Civil Procedure, and, second, they did not show that their failure to timely file an answer "was due to fraud, accident, mistake or excusable negligence."^[18] In its order dated February 16, 2011, the Regional Trial Court denied the Spouses Manuel's motion for reconsideration.^[19]

Aggrieved, the Spouses Manuel filed a petition for certiorari before the Court of Appeals.^[20]

As mentioned, the assailed June 28, 2012 decision of the Court of Appeals dismissed the Spouses Manuel's Rule 65 petition for lack of merit. The assailed December 19, 2012 resolution of the Court of Appeals denied their motion for reconsideration.

Hence, this petition.

For resolution is the sole issue of whether the Spouses Manuel may be granted relief from the Regional Trial Court's June 28, 2010 order of default.

Jurisdiction over the persons of the Spouses Manuel acquired

As a preliminary matter, we rule on whether jurisdiction over the persons of the Spouses Manuel, as defendants in Civil Case No. 09-CV-2582, was validly acquired. This preliminary matter is determinative of whether the fifteen-day period within which they must file their answer started to run, thereby facilitating the context in which they could have validly been declared to be in default.

We hold that jurisdiction over the persons of both defendants in Civil Case No. 09-CV-2582 — the Spouses Benedict and Sandra Manuel — was validly acquired. This is

so because personal service of summons, via tender to petitioner Sandra Manuel, was made by Sheriff Joselito Sales on March 16, 2010.

Rule 14, Section 6 of the 1997 Rules of Civil Procedure provides:

SEC. 6. *Service in person on defendant.* — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Tendering summons is itself a means of personal service as it is contained in Rule 14, Section 6. Personal service, as provided by Rule 14, Section 6, is distinguished from its alternative :— substituted service — as provided by Rule 14, Section 7:

SEC. 7. *Substituted service.* — 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 defendant's office or regular place of business with some competent person in charge thereof. (Emphasis supplied)

In this case, the sheriffs return on summons indicated that Sheriff Joselito Sales endeavored to personally hand the summons and a copy of the complaint to the Spouses Manuel on two (2) separate occasions. He relented from doing so on the first occasion in deference to the medical condition of petitioner Sandra Manuel's mother. On the second occasion, he was constrained to tender the summons and copy of the complaint as petitioner Sandra Manuel refused to accept them.

The Spouses Manuel did not deny the occurrence of the events narrated in the sheriffs return but claimed that no valid service of summons was made. They claimed that they did not reside in Lower Bacong, Loacan, Itogon, Benguet, where the service of summons, was made. From this, they surmised that the "Sandra Manuel" who was specifically identified in the sheriffs return was someone other than petitioner Sandra Manuel.

The Spouses Manuel cannot capitalize on the supposed variance of address. Personal service of summons has nothing to do with the location where summons is served. A defendant's address is inconsequential. Rule 14, Section 6 of the 1997 Rules of Civil Procedure is clear in what it requires: *personally handing the summons to the defendant* (albeit tender is sufficient should the defendant refuse to receive and sign). What is determinative of the validity of personal service is, therefore, the person of the defendant, not the locus of service.

In any case, the Court of Appeals is correct in pointing out that the Spouses Manuel's self-serving assertion must crumble in the face of the clear declarations in the sheriffs return.^[21] Pursuant to Rule 131, Section 3(m) of the Revised Rules on Evidence,^[22] the acts of Sheriff Joselito Sales and the events relating to the attempt to personally hand the summons and a copy of the complaint to the Spouses

Manuel, as detailed in the sheriffs return, enjoy the presumption of regularity.^[23] Moreover, Sheriff Joselito Sales must be presumed to have taken ordinary care and diligence in carrying out his duty to make service upon the proper person(s) and not upon an impostor.^[24]

A sheriffs return, if complete on its face, must be accorded the presumption of regularity and, hence, taken to be an accurate and exhaustive recital of the circumstances relating to the steps undertaken by a sheriff. In this case, the Spouses Manuel have harped on their (self-serving) claim of maintaining residence elsewhere but failed to even allege that there was anything irregular about the sheriffs return or that it was otherwise incomplete.

Having alleged irregularities in the service of summons, it was incumbent upon the Spouses Manuel to adduce proof of their claims. All they mustered was their self-serving allegation of an alternative address. If at all, this claim of maintaining residence elsewhere should not even be lent an iota of credibility considering that, as respondent Ramon Ong pointed out, the barangay clearances, which the Spouses Manuel themselves attached to one of their pleadings (as proof of their identities), actually indicated that they were residents of Bacong Loacan, Itogon, Benguet.^[25] Their lie is, thus, revealed by their own pleading.

As the Spouses Manuel not only failed in discharging the burden of proving their allegation but even succeeded in contradicting themselves, Sheriff Joselito Sales' recollection of events must be taken to be true. Thus, valid personal service of summons, via tender to petitioner Sandra Manuel, was made. From this, it follows that jurisdiction over the persons of petitioners Benedict and Sandra Manuel was acquired by the Regional Trial Court, La Trinidad, Benguet, in Civil Case No. 09-CV-2582.

The Spouses Manuel are not entitled to relief from the order of default

As valid service of summons was made on them, it was incumbent upon the Spouses Manuel, pursuant to Rule 11, Section 1 of the 1997 Rules of Civil Procedure,^[26] to file their answer within fifteen (15) days from March 16, 2011. Having failed to do so, they were rightly declared to be in default.

Rule 9, Section 3 of the 1997 Rules of Civil Procedure provides for when a party to an action may be declared in default. Further, Rule 9, Section 3(b) governs the grant of relief from orders of default:

SEC. 3. Default; declaration of. — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) *Relief from, order of default.* — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was *due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense*. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (Emphasis supplied)

Pursuant to Rule 9, Section 3, a court may proceed to render judgment as the pleading may warrant should a defendant fail to timely file his or her answer. However, a court may decline from immediately rendering judgment and instead require the plaintiff to present evidence. Per Rule 9, Section 3(a), a party declared to be in default shall nevertheless be "entitled to notice of subsequent proceedings," although he or she may no longer take part in the trial.

As explained in *Spouses Delos Santos v. Carpio*,^[27] "there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default:

- (1) the claiming party must file a motion asking the court to declare the defending party in default;
- (2) the defending party must be notified of the motion to declare him in default;
- (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule."^[28]

All these requisites were complied with by respondent Ramon Ong.

It is not disputed that Ong filed a motion to declare the Spouses Manuel in default. It is also not disputed that the latter filed their answer after the fifteen-day period, counted from March 16, 2010, had lapsed. The Spouses Manuel only filed their answer along with their motion to lift order of default on September 13, 2010.

It is similarly settled that the Spouses Manuel were notified that a motion to declare them in default had been filed. They acknowledged in the present petition for certiorari that on June 23, 2010, Ong filed a compliance to the Regional Trial Court's April 30, 2010 order that required the submission of the registry return card evidencing the mailing to the Spouses Manuel of a copy of the motion to have them declared in default.

Not only were the requisites for declaring a party in default satisfied, the Spouses Manuel's motion to lift order of default was also shown to be procedurally infirm.

Consistent with Rule 9, Section 3(b) of the 1997 Rules of Civil Procedure, "the remedy against an order of default is a motion to set it aside on the ground of fraud,