

## FIRST DIVISION

[ G.R. No. 167230, August 14, 2009 ]

**SPOUSES DANTE AND MA. TERESA L. GALURA, PETITIONERS, VS.  
MATH-AGRO CORPORATION, RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition<sup>[1]</sup> for review on certiorari under Rule 45 of the Rules of Court, with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. The petition challenges the 25 January and 28 February 2005 Resolutions<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 88088 dismissing the petition<sup>[3]</sup> for annulment of judgment and final order and denying the motion<sup>[4]</sup> for reconsideration, respectively, filed by Dante and Ma. Teresa L. Galura (Spouses Galura). The Spouses Galura sought to annul the 27 June 2001 Decision<sup>[5]</sup> and 10 November 2004 Order<sup>[6]</sup> of the Regional Trial Court (RTC), Judicial Region 3, Malolos, Bulacan, Branch 22, in Civil Case No. 473-M-2000.

#### The Facts

In March 1997, the Spouses Galura purchased broiler starters and finishers worth P426,000 from Math-Agro Corporation (MAC). The Spouses Galura paid MAC P72,500. Despite several demands, they failed to pay the P353,500 unpaid balance.

MAC engaged the services of a certain Atty. Ronolfo S. Pasamba (Atty. Pasamba) for the purpose of collecting the P353,500 unpaid balance from the Spouses Galura. In his letter<sup>[7]</sup> dated 13 November 1998 and addressed to the Spouses Galura, Atty. Pasamba stated:

*Ang kinatawan ng aming kliyente na Math Agro Corporation na may tanggapan sa Balagtas, Bulacan, ay lumapit sa aming tanggapan at kinuha ang aming paglilingkod bilang manananggol kaugnay sa inyong natitirang pagkakautang sa kanila na halagang P353,500.00, na hanggang sa ngayon ay hindi pa ninyo nababayaran.*

*Dahilan dito , kayo ay binibigyan namin ng limang (5) araw mula sa pagkatanggap ng sulat na ito upang bayaran ang aming nabanggit na kliyente, pati na ang kaukulang tubo nito. Ikinalulungkot naming sabihin sa inyo na kung hindi ninyo bibigyang pansin ang mga bagay na ito, mapipilitan na kaming magsampa ng kaukulang dimanda sa hukuman laban sa inyo upang mapangalagaan namin ang karapatan at interes ng*

*aming nabanggit na kliyente.*

*Inaasahan namin na bibigyang pansin ninyo ang mga bagay na ito .*

In its complaint<sup>[8]</sup> dated 21 June 2000 and filed with the RTC, MAC prayed that the RTC order the Spouses Galura to pay the P353,500 unpaid balance and P60,000 attorney's fees and litigation expenses. In the complaint, MAC stated that "defendants are both of legal age, spouses, and residents of G.L. Calayan Agro System Inc., Bo. Kalayaan, Gerona, Tarlac, and/or 230 Apo St., Sta. Mesa Heights, Quezon City, where they may be served with summonses and other processes of this Honorable Court."

Clerk of Court Emmanuel L. Ortega issued the corresponding summons<sup>[9]</sup> dated 15 August 2000 requiring the Spouses Galura to file their answer within 15 days, otherwise judgment by default would be taken against them.

On 17 September 2000, Court Process Server Faustino B. Sildo (Sildo) went to 230 Apo Street, Sta. Mesa Heights, Quezon City, to serve the summons. There, Dante Galura's father, Dominador Galura, told Sildo that the Spouses Galura were presently residing at Tierra Pura Subdivision, Tandang Sora, Quezon City. On 22 September 2000, Sildo went to G.L. Calayan Agro System, Inc. in Barrio Kalayaan, Gerona, Tarlac to serve the summons. Sildo learned that the property had been foreclosed and that the Spouses Galura no longer resided there. On 26 September 2000, Sildo went to Tierra Pura Subdivision, Tandang Sora, Quezon City, to serve the summons. Sildo served the summons on Teresa L. Galura's sister, Victoria Lapuz (Lapuz). In his return of service<sup>[10]</sup> dated 4 October 2000, Sildo stated:

THIS IS TO CERTIFY that on September 22, 2000 the undersigned went to the given address of the defendant at G. Bo. Kalayaan, Gerona, Tarlac for the purpose of serving the summons, issued in the above-entitled case

That the defendants is [sic] no longer residing at the given address and their property was foreclose [sic] by the Bank,

That on September 17, the undersigned went to the given address of the defendants at 230 Apo St., Sta Mesa Heights, Quezon City;

That the defendants is [sic] not residing at the given address as per information given by Mr. Dominador Galura father of the defendants.

That Mr. Dominador Galura give [sic] the address of the defendant where they are presently residing at Tierra Fura [sic] Subd. at Tandang Sora, Quezon City.

That on September 26, 2000 the undersigned went to Tandang Sora where the defendants presently residing [sic] Tierra Fura [sic] Subd. for the purpose of serving the summons, complaint together with the annexes,

That Ms. Victoria Lapuz sister-in-Law of Dante Galura received the copy of said summons, as evidence [sic] by her signature appearing on the face of original summons.

The Spouses Galura failed to file their answer. In its Order dated 23 January 2001, the RTC declared the Spouses Galura in default and allowed MAC to present its evidence *ex parte*.

In its 27 June 2001 Decision, the RTC ruled in favor of MAC and ordered the Spouses Galura to pay the P353,500 unpaid balance, P30,000 attorney's fees, and expenses of litigation. The RTC stated:

Based on the facts and findings established above, the Court is of the considered view that a judgment in favor of the plaintiff is in order. Likewise, this Court strongly believes that the failure of the defendants or their refusal to file any answer to the complaint is a clear admission on their part of their obligation to the plaintiff. It may even be safely presumed that by their inaction, defendants have no valid defense against the claim of the plaintiff such that under the circumstances, this Court has no other alternative but to pass judgment on the issued [sic] based on the evidence on record.

The award of attorney's fees in the amount of P30,000.00 is justified under the premises in view of the court's finding that the defendants acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim.

WHEREFORE, judgment is hereby rendered ordering the defendants to pay the plaintiff the following:

1. The sum of P353,500.00 representing the unpaid purchase price of the poultry products plus interest of 6% per annum accruing from the date of defendants' receipt of the first demand letter on October 18, 1998 until full payment is made;
2. The sum of P30,000.00 as and for attorney's fees; and
3. The costs of suit.

SO ORDERED.<sup>[11]</sup>

In its Order dated 10 November 2004, the RTC issued a writ of execution to implement the 27 June 2001 Decision. The RTC stated:

In support of the motion, it is alleged among others that on June 27, 2001, the Decision was rendered in the above-entitled case, has become final and executory on August 1, 2001 and was duly recorded in the Book

of Entry of Judgment.

On the other hand, the fifteen (15) days period given to the defendants, from receipt of the order of the Court dated November 11, 2003 had already lapsed without complying therewith, hence his right to file comment on the Motion for Execution filed by the plaintiff was waived.

For reasons heretofore made apparent, the Court resolves to grant the motion for execution.<sup>[12]</sup>

On 13 December 2004, the Spouses Galura received "from their parents-in-law" a copy of the 10 November 2004 Order. On 6 January 2005, the Spouses Galura filed with the Court of Appeals a petition<sup>[13]</sup> for annulment of judgment and final order under Rule 47 of the Rules of Court, with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. The Spouses Galura claimed that the RTC's 27 June 2001 Decision and 10 November 2004 Order were void for two reasons: (1) the RTC failed to acquire jurisdiction over their persons because the substituted service of summons was invalid, and (2) there was extrinsic fraud because MAC made them believe that it would not file a case against them. The Spouses Galura stated:

The assailed decision dated June 27, 2001 and the order of execution dated November 10, 2004, issued by respondent Judge in Civil Case No. 473-M-2000, should be annulled pursuant to Rule 47 of the 1997 Rules of Court.

1. The assailed decision and order of execution are null and void having been rendered and issued despite failure of the court a quo to first acquire jurisdiction over the persons of the petitioners, on account of the improper service of summons upon them.

2. The assailed decision and order of execution were rendered with extrinsic fraud in attendance. The owner of Math-Agro and herein petitioners had an existing agreement for the settlement of their obligation, and herein petitioners were complying with the agreement. Math-Agro, despite the commitment of its owner not to file the complaint, did so. Such an act on the part of Math-Agro and its owner constitutes extrinsic fraud, as it prevented petitioners from defending themselves in the action lodged with the court a quo.<sup>[14]</sup>

### **The Court of Appeals' Ruling**

In its 25 January 2005 Resolution, the Court of Appeals dismissed the petition for lack of merit. The Court of Appeals held that there was a valid substituted service of summons, that the allegation of extrinsic fraud was unbelievable, and that the Spouses Galura should have first availed of the ordinary remedies of new trial, appeal, or petition for relief. The Court of Appeals stated:

1. Petitioners make no denial that insofar as known by the respondent Math-Agro Corporation, their address at the time of the filing of the complaint on July 25, 2000 was at G.L. Calayaan Agro System Inc., Bo. Kalayaan, Gerona, Tarlac and/or 230 Apo St., Sta. Mesa Heights, Quezon City. They likewise do not deny the proceedings taken by Court Process Server Paulino Sildo as narrated in his Return of Service dated October 4, 2000 x x x.

Under the circumstances, we believe, and so hold, that there was a valid substituted service of summons on the petitioners as defendants in the case. To begin with, the petitioners never took the bother of informing the creditor Math-Agro Corporation that they were leaving their address known to the latter and were moving on to another place of residence, so the process server took it upon himself to diligently trace the whereabouts of the petitioners until he was able to effect service of the summons on Victoria Lapuz, a sister-in-law of petitioner Dante Galura at Tierra Fura Subdivision in Tandang Sora, Quezon City, where the defendants were then residing. What they claim is that substituted service was immediately resorted to without the process server first exhausting all opportunities for personal service which is improper. x x x

Far from being improper, the actuations taken and the efforts exerted by the process server are highly commendable for he started looking for the petitioners in the addresses given by them to their creditor and alleged by the latter in the complaint. Finding them not to be there, he methodically traced their whereabouts until he came upon their latest address at Tierra Fura Subdivision, Tandang Sora, Quezon City, as given by Dominador Galura, father of petitioner-husband, Dante Galura. Quite conspicuously, the petitioner do not deny that they were residing at that place when service of the summons was made on petitioner-husband's sister-in-law, Victoria Lapuz.

x x x x

2. Petitioners' posturing that they are at the receiving end of extrinsic fraud because they had an existing payment arrangement with their creditor, Math-Agro Corporation, that the latter would not resort to judicial action for as long as payments are being made by them and that they had been paying their obligation until July, 2004 is hard to be believed in. This is but a bare and vagrant allegation without any visible means of support for nowhere in their petition, as well as in their joint affidavit of merit, did they attach copies of the corresponding receipts of their payments. x x x

3. Prescinding from the foregoing records also show that contrary to Section 1, Rule 47 of the 1997 Rules of Civil Procedure, petitioners have not availed themselves first of the ordinary remedies of a motion to lift order of default, new trial, appeal, petition for relief before resorting to this extra-ordinary action for annulment of judgment.<sup>[15]</sup>