

## SECOND DIVISION

[ G.R. NO. 161417, February 08, 2007 ]

**MA. TERESA CHAVES BIACO, PETITIONER, VS. PHILIPPINE  
COUNTRYSIDE RURAL BANK, RESPONDENT.**

### DECISION

**TINGA, J.:**

Petitioner, Ma. Teresa Chaves Biaco, seeks a review of the Decision <sup>[1]</sup> of the Court of Appeals in CA-G.R. No. 67489 dated August 27, 2003, which denied her petition for annulment of judgment, and the Resolution <sup>[2]</sup> dated December 15, 2003 which denied her motion for reconsideration.

The facts as succinctly stated by the Court of Appeals are as follows:

Ernesto Biaco is the husband of petitioner Ma. Teresa Chaves Biaco. While employed in the Philippine Countryside Rural Bank (PCRB) as branch manager, Ernesto obtained several loans from the respondent bank as evidenced by the following promissory notes:

Feb. 17, 1998	P 65,000.00
Mar. 18, 1998	30,000.00
May 6, 1998	60,000.00
May 20, 1998	350,000.00
July 30, 1998	155,000.00
Sept. 8, 1998	40,000.00
Sept. 8, 1998	120,000.00

As security for the payment of the said loans, Ernesto executed a real estate mortgage in favor of the bank covering the parcel of land described in Original Certificate of Title (OCT) No. P-14423. The real estate mortgages bore the signatures of the spouses Biaco.

When Ernesto failed to settle the above-mentioned loans on its due date, respondent bank through counsel sent him a written demand on September 28, 1999. The amount due as of September 30, 1999 had already reached ONE MILLION EIGHTY THOUSAND SIX HUNDRED SEVENTY SIX AND FIFTY CENTAVOS (P1,080,676.50).

The written demand, however, proved futile.

On February 22, 2000, respondent bank filed a complaint for foreclosure of mortgage against the spouses Ernesto and Teresa Biaco before the RTC of Misamis Oriental. Summons was served to the spouses Biaco through Ernesto at his office (Export and Industry Bank) located at

Jofelmor Bldg., Mortola Street, Cagayan de Oro City.

Ernesto received the summons but for unknown reasons, he failed to file an answer. Hence, the spouses Biaco were declared in default upon motion of the respondent bank. The respondent bank was allowed to present its evidence *ex parte* before the Branch Clerk of Court who was then appointed by the court as Commissioner.

Arturo Toring, the branch manager of the respondent bank, testified that the spouses Biaco had been obtaining loans from the bank since 1996 to 1998. The loans for the years 1996-1997 had already been paid by the spouses Biaco, leaving behind a balance of P1,260,304.33 representing the 1998 loans. The amount being claimed is inclusive of interests, penalties and service charges as agreed upon by the parties. The appraisal value of the land subject of the mortgage is only P150,000.00 as reported by the Assessor's Office.

Based on the report of the Commissioner, the respondent judge ordered as follows:

WHEREFORE, judgment is hereby rendered ordering defendants spouses ERNESTO R. BIACO and MA. THERESA [CHAVES] BIACO to pay plaintiff bank within a period of not less than ninety (90) days nor more than one hundred (100) days from receipt of this decision the loan of ONE MILLION TWO HUNDRED SIXTY THOUSAND THREE HUNDRED FOUR PESOS and THIRTY THREE CENTAVOS (P1,260,304.33) plus litigation expenses in the amount of SEVEN THOUSAND SIX HUNDRED FORTY PESOS (P7,640.00) and attorney's fees in the amount of TWO HUNDRED FIFTY TWO THOUSAND THIRTY PESOS and FORTY THREE CENTAVOS (P252,030.43) and cost of this suit.

In case of non-payment within the period, the Sheriff of this Court is ordered to sell at public auction the mortgaged Lot, a parcel of registered land (Lot 35802, Cad. 237 {Lot No. 12388-B, Csd-10-002342-D}), located at Gasi, Laguindingan, Misamis Oriental and covered by TCT No. P-14423 to satisfy the mortgage debt, and the surplus if there be any should be delivered to the defendants spouses ERNESTO and MA. THERESA [CHAVES] BIACO. In the event however[,] that the proceeds of the auction sale of the mortgage[d] property is not enough to pay the outstanding obligation, the defendants are ordered to pay any deficiency of the judgment as their personal liability.

SO ORDERED.

On July 12, 2000, the sheriff personally served the above-mentioned judgment to Ernesto Biaco at his office at Export and Industry Bank. The spouses Biaco did not appeal from the adverse decision of the trial court. On October 13, 2000, the respondent bank filed an *ex parte* motion for

execution to direct the sheriff to sell the mortgaged lot at public auction. The respondent bank alleged that the order of the court requiring the spouses Biaco to pay within a period of 90 days had passed, thus making it necessary to sell the mortgaged lot at public auction, as previously mentioned in the order of the court. The motion for execution was granted by the trial court per Order dated October 20, 2000.

On October 31, 2000, the sheriff served a copy of the writ of execution to the spouses Biaco at their residence in #92 9th Street, Nazareth, Cagayan de Oro City. The writ of execution was personally received by Ernesto. By virtue of the writ of execution issued by the trial court, the mortgaged property was sold at public auction in favor of the respondent bank in the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00).

The amount of the property sold at public auction being insufficient to cover the full amount of the obligation, the respondent bank filed an "*ex parte* motion for judgment" praying for the issuance of a writ of execution against the other properties of the spouses Biaco for the full settlement of the remaining obligation. Granting the motion, the court ordered that a writ of execution be issued against the spouses Biaco to enforce and satisfy the judgment of the court for the balance of ONE MILLION THREE HUNDRED SIXTY NINE THOUSAND NINE HUNDRED SEVENTY FOUR PESOS AND SEVENTY CENTAVOS (P1,369,974.70).

The sheriff executed two (2) notices of levy against properties registered under the name of petitioner Ma. Teresa Chaves Biaco. However, the notices of levy were denied registration because Ma. Teresa had already sold the two (2) properties to her daughters on April 11, 2001.<sup>[3]</sup>

Petitioner sought the annulment of the Regional Trial Court decision contending that extrinsic fraud prevented her from participating in the judicial foreclosure proceedings. According to her, she came to know about the judgment in the case only after the lapse of more than six (6) months after its finality. She claimed that extrinsic fraud was perpetrated against her because the bank failed to verify the authenticity of her signature on the real estate mortgage and did not inquire into the reason for the absence of her signature on the promissory notes. She moreover asserted that the trial court failed to acquire jurisdiction because summons were served on her through her husband without any explanation as to why personal service could not be made.

The Court of Appeals considered the two circumstances that kept petitioner in the dark about the judicial foreclosure proceedings: (1) the failure of the sheriff to personally serve summons on petitioner; and (2) petitioner's husband's concealment of his knowledge of the foreclosure proceedings. On the validity of the service of summons, the appellate court ruled that judicial foreclosure proceedings are actions *quasi in rem*. As such, jurisdiction over the person of the defendant is not essential as long as the court acquires jurisdiction over the *res*. Noting that the spouses Biaco were not opposing parties in the case, the Court of Appeals further ruled that the fraud committed by one against the other cannot be considered extrinsic fraud.

Her motion for reconsideration having been denied, petitioner filed the instant

Petition for Review,<sup>[4]</sup> asserting that even if the action is *quasi in rem*, personal service of summons is essential in order to afford her due process. The substituted service made by the sheriff at her husband's office cannot be deemed proper service absent any explanation that efforts had been made to personally serve summons upon her but that such efforts failed. Petitioner contends that extrinsic fraud was perpetrated not so much by her husband, who did not inform her of the judicial foreclosure proceedings, but by the sheriff who allegedly connived with her husband to just leave a copy of the summons intended for her at the latter's office.

Petitioner further argues that the deficiency judgment is a personal judgment which should be deemed void for lack of jurisdiction over her person.

Respondent PCRB filed its Comment,<sup>[5]</sup> essentially reiterating the appellate court's ruling. Respondent avers that service of summons upon the defendant is not necessary in actions *quasi in rem* it being sufficient that the court acquire jurisdiction over the *res*. As regards the alleged conspiracy between petitioner's husband and the sheriff, respondent counters that this is a new argument which cannot be raised for the first time in the instant petition.

We required the parties to file their respective memoranda in the Resolution<sup>[6]</sup> dated August 18, 2004. Accordingly, petitioner filed her Memorandum<sup>[7]</sup> dated October 10, 2004, while respondent filed its Memorandum for Respondent<sup>[8]</sup> dated September 9, 2004.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Jurisprudence and Sec. 2, Rule 47 of the 1997 Rules of Civil Procedure (Rules of Court) provide that judgments may be annulled only on grounds of extrinsic fraud and lack of jurisdiction or denial of due process.<sup>[9]</sup>

Petitioner asserts that extrinsic fraud consisted in her husband's concealment of the loans which he obtained from respondent PCRB; the filing of the complaint for judicial foreclosure of mortgage; service of summons; rendition of judgment by default; and all other proceedings which took place until the writ of garnishment was served.<sup>[10]</sup>

Extrinsic fraud exists when there is a fraudulent act committed by the *prevailing party* outside of the trial of the case, whereby the *defeated party* was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party.<sup>[11]</sup> Extrinsic fraud is present where the *unsuccessful party* had been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the *defendant* never had knowledge of the suit, being kept in ignorance by the acts of the *plaintiff*; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side. The overriding consideration is that the fraudulent scheme of the *prevailing litigant* prevented a party from having his day in court.<sup>[12]</sup>

With these considerations, the appellate court acted well in ruling that there was no