

## FIRST DIVISION

[ G.R. NO. 142272, May 02, 2006 ]

### **ABOITIZ INTERNATIONAL FORWARDERS, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND PHILIPPINE CHARTER INSURANCE CORPORATION, RESPONDENTS.**

#### **D E C I S I O N**

##### **CALLEJO, SR., J.:**

Before the Court is the petition for review on *certiorari* filed by Aboitiz International Forwarders, Inc. (petitioner AIFI) of the Decision dated November 16, 1999 of the Court of Appeals (CA) in CA-G.R. CV No. 57892 dismissing its appeal from the Order of the Regional Trial Court of Manila, Branch 4 (court *a quo*) in Civil Case No. 92-62951 denying the petition for relief from judgment of petitioner AIFI.

##### **The Antecedents**

On October 3, 1992, respondent Philippine Charter Insurance Corporation (PCIC), as plaintiff, filed a complaint against petitioner AIFI, Accord Container Lines (Philippines), Inc. and Accord Shipping PTE Ltd. for the collection of the principal amount of P269,349.54, with interests thereon. Respondent PCIC alleged in its complaint that:

3. On or about 25 February 1991, I.S. Parts International, Inc. of New Jersey, USA, engaged the services of the defendant ABOITIZ [herein petitioner AIFI] as forwarder/consolidator to deliver from Philadelphia, USA, one (1) box containing Glass Making Machine Parts for Hold/Open/Close Operating Linkage[s] with invoice value of P8,283.60 C & F Manila to Union Glass & Container Corp. in Manila;
4. Defendant ABOITIZ loaded the above cargo of one (1) box containing Glass Making Machine Parts for Hold/Open/Close Operating Linkage on or about 25 February 1991 at the port of Philadelphia, USA, on board the vessel "COOL Fortune" for transportation to Manila and delivery thereat to Union Glass & Container Corp. as ultimate consignee covered by bill of lading No. MNLO29110609, x x x;
5. The consignee insured with plaintiff the above cargo under the terms and conditions of its MRN-31131 for the sum of P269,349.54;

x x x x

8. On April 10, 1991, the vessel MS "QUEENSWAY BRIDGE" arrived at the port of Manila and subsequently discharged the said Container

No. AKLU2066382; upon stripping of the container, however, subject cargo was not among its contents and/or was found shorthanded, x x x;

9. Defendants misdelivered or misappropriated the subject cargo thereby failing to deliver the same to the consignee in violation of their obligations to forward and deliver the same to the consignee;
10. Claims were filed with the defendants for the value of the undelivered cargo but defendants declined payment without any valid or justifiable ground; plaintiff, having received similar claim under the insurance coverage, settled and paid the consigned-assured the sum of P269,349.54 after proper assessment and thereby become subrogated to the consignee's rights of recovery against the defendants.<sup>[1]</sup>

Respondent PCIC prayed that judgment be rendered in its favor, thus:

Wherefore, it is most respectfully prayed of the Honorable Court to render judgment ordering the defendants, jointly and severally, to pay plaintiff the sum of P269,349.54 with interest thereon at the legal rate computed from the filing hereof plus cost of suit.<sup>[2]</sup>

Based on the return of the process server of the court *a quo*, copies of the complaint and summons were served by him on October 22, 1992 on Lita Apostol, who informed the process server that she was a documentary clerk of petitioner AIFI. Only defendant Accord Container Lines (Philippines), Inc. filed its answer to the complaint.

On November 24, 1992, respondent PCIC filed an *ex parte* motion to declare the other defendants, petitioner AIFI and Accord Shipping PTE Ltd., in default and for it (respondent PCIC) to be allowed to adduce its evidence *ex parte*. The court *a quo* granted the motion in an Order issued on November 27, 1992.<sup>[3]</sup> However, respondent PCIC failed to adduce its evidence. Instead, it filed on September 1, 1992, a motion to admit the amended complaint, the amendment consisting in the inclusion of a plea for attorney's fees equivalent to 25% of its principal claim. Appended thereto was its proffered amended complaint.<sup>[4]</sup> However, petitioner AIFI was not served with a copy of the said motion. The court *a quo* failed to act on and resolve the motion.

Respondent PCIC adduced its testimonial and documentary evidence on April 24, 1994. On the other hand, defendant Accord Container Lines (Philippines), Inc. failed to present its evidence.

On July 11, 1995, the court *a quo* rendered judgment in favor of respondent PCIC and against petitioner AIFI and its co-defendants. Although respondent PCIC did not specifically pray for attorney's fees in its complaint, the court *a quo* awarded in its favor the amount of P10,000.00 as attorney's fees. The *fallo* of the decision reads:

WHEREFORE, with all the foregoing, the court hereby renders judgment in favor of the plaintiff and against the defendants, ordering the latter to jointly and severally pay the plaintiff the amount of P269,349.54, with

the legal rate of interest thereon from the date of filing of the complaint until fully paid and to pay the plaintiff attorney's fees in the amount of P10,000.00 with costs.

SO ORDERED.<sup>[5]</sup>

A copy of the said decision was served on petitioner AIFI on July 24, 1996.<sup>[6]</sup> However, petitioner AIFI failed to appeal the same. On respondent PCIC's motion, the court *a quo* issued an Order on August 20, 1996 for the issuance of a writ of execution.<sup>[7]</sup> On the same day, it issued a writ of execution.<sup>[8]</sup> On September 23, 1996, the sheriff issued a Notice of Garnishment and served a copy thereof on petitioner AIFI's bank.

On October 11, 1996, petitioner AIFI filed with the court *a quo* a petition for relief from judgment in the same case. It alleged therein that the court *a quo* did not acquire jurisdiction over it because a copy each of the complaint and summons was served on Lita Apostol who, contrary to the statement in the return of the process server, was merely its customer service representative and not its documentary clerk. She had not been allegedly authorized to receive the complaint and summons in its behalf. Further, the motion of respondent PCIC to admit its amended complaint was not granted by the court *a quo*; hence, there can never be a judgment for attorney's fees based on the amended complaint.

Petitioner AIFI claimed that it had a meritorious defense because it exercised and observed extraordinary diligence in its vigilance over the goods consigned to Union Glass & Container Corp., which insured the same with respondent PCIC. It was allegedly due to the fault and negligence of petitioner AIFI's co-defendants that the said goods were lost. As such, petitioner AIFI's co-defendants must be the ones held liable to respondent PCIC, which paid the consignee-assured (Union Glass & Container Corp.) the sum of P269,349.54 and thereby became subrogated to the latter's right of recovery against petitioner AIFI's co-defendants.<sup>[9]</sup>

Petitioner AIFI prayed that, after due proceedings, it be granted reliefs, as follows:

WHEREFORE, premises considered, it is respectfully prayed that upon the filing of this Petition, a restraining order and/or writ of preliminary injunction be issued enjoining the plaintiff and/or the Sheriff of this Honorable Court from proceeding with the execution of the Judgment dated 11 July 1995; and that this Petition for Relief from Judgment be granted, dismissing this case, setting aside of the Judgment dated 11 July 1995 for being null and void, quashing the Writ of Execution dated 30 August 1996 and the Notice of Garnishment dated 23 September 1996.

AIFI prays for such other relief as may be deemed just and equitable under the premises.<sup>[10]</sup>

Appended to its petition was the affidavit of merit of its Treasurer, Ramonito E. De La Cruz.<sup>[11]</sup> Petitioner AIFI claimed that it had not been officially served with a copy of the decision of the court *a quo* nor of copies of the writs of execution and garnishment.

Petitioner AIFI likewise moved that it be allowed to present Lita Apostol as its witness to prove that, contrary to the statement in the return of the process server, she was merely petitioner AIFI's customer service representative and not authorized to receive the complaint and summons in its behalf. The court *a quo* granted the said motion. However, petitioner AIFI failed to present Apostol as witness.<sup>[12]</sup>

On February 3, 1997, the court *a quo* issued an Order denying the petition for relief from judgment on the following grounds:

First. As between the self-serving contention of petitioner AIFI and the return of the process server, the latter's determination of Lita Apostol as documentary clerk is accorded greater weight in view of the presumption that he had regularly performed his functions.<sup>[13]</sup> The court *a quo* took note of the fact that it granted petitioner AIFI's motion to present Lita Apostol in the hearing of November 8, 1996, however, it failed to do so.

Second. As documentary clerk, Lita Apostol is considered an agent of petitioner AIFI insofar as service of court processes is concerned since she is a representative so integrated with the corporation sued as to make it *a priori* supposable that she ought to know what to do with the legal papers served on her, consistent with the doctrine laid down in *Villa Rey Transit, Inc. v. Far East Motor Corporation*<sup>[14]</sup> and *Golden Country Farms, Inc. v. Sanvar Development Corporation*.<sup>[15]</sup>

Third. The court *a quo* relied on the original complaint in the conduct of its proceedings and rendition of decision. It awarded attorney's fees although there was no prayer for the same in the original complaint because it may nevertheless award attorney's fees "when (it) deems it just and equitable."<sup>[16]</sup>

Fourth. There was a valid service of the court *a quo*'s decision on petitioner AIFI. The certificate of service shows that the same was served on Lilia Nebris, a security guard of the building. The security guard represented to the process server of the court *a quo*, Thieron Johnston, Jr., that she was duly authorized to receive papers pertaining to the corporation, as reflected in the certificate of service filed by the said process server.

Fifth. Petitioner AIFI failed to show that it had a meritorious defense. Its liability as a common carrier has been well-established in the decision subject of the petition for relief.<sup>[17]</sup>

Petitioner AIFI filed a motion for reconsideration of the court *a quo*'s order denying its petition for relief from judgment.<sup>[18]</sup> However, the same was denied in the Order of June 5, 1997.<sup>[19]</sup> Petitioner AIFI appealed the said orders to the CA in which it alleged that:

I. THE COURT A QUO NEVER ACQUIRED JURISDICTION OVER DEFENDANT-APPELLANT INASMUCH AS THERE WAS NO VALID SERVICE OF SUMMONS UPON DEFENDANT-APPELLANT ON THE ORIGINAL COMPLAINT DATED 30 SEPTEMBER 1992.

II. NEITHER DID THE COURT *A QUO* ACQUIRE JURISDICTION [OVER THE] COMPLAINT DATED 24 AUGUST 1993 AS THERE WAS ABSOLUTELY NO SERVICE OF SUMMONS UPON DEFENDANT-APPELLANT.

III. EVEN ASSUMING IN *GRATIA ARGUMENTI* THAT SUMMONS WAS VALIDLY SERVED UPON DEFENDANT-APPELLANT ON THE ORIGINAL COMPLAINT AND, AS SUCH, DEFENDANT-APPELLANT WAS PROPERLY DECLARED IN DEFAULT. THERE WAS NO SERVICE OF SUMMONS UPON DEFENDANT-APPELLANT OF EITHER THE AMENDED COMPLAINT, THE JUDGMENT AND/OR THE FINAL ORDER OF THE HONORABLE COURT DATED 11 OCTOBER 1993 DISMISSING THE CASE FOR FAILURE TO PROSECUTE, IN COMPLETE VIOLATION OF RULE 13, SECTION 9 OF THE REVISED RULES OF COURT, NOW RULE 9, SECTION 3(A) OF THE 1997 RULES OF CIVIL PROCEDURE.

IV. THE COURT *A QUO* ERRED IN FINDING THAT DEFENDANT-APPELLANT FAILED TO SHOW A MERITORIOUS DEFENSE. [20]

Petitioner AIFI reiterated the arguments in its petition for relief from judgment and motion for reconsideration filed with the court *a quo* in support of its appeal before the appellate court.

On November 16, 1999, the appellate court rendered the Decision affirming the appealed orders of the court *a quo*. The CA declared, *inter alia*, that: (a) the petition for relief was grounded on lack of jurisdiction of the court *a quo* over the person of petitioner, the defendant below, and not grounded on extrinsic fraud, accident, mistake or excusable negligence as provided in Rule 38 of the Rules of Court; (b) the complaint and summons were validly served on petitioner AIFI through Lita Apostol, its documentary clerk; and (c) it had the remedy of a motion for reconsideration of the decision of the court *a quo* or an appeal therefrom but petitioner AIFI failed to avail any of the said remedies; hence, it was proscribed from filing a petition for relief from the judgment of the court *a quo*.

Petitioner AIFI sought to reconsider the above decision but the CA denied its motion for reconsideration. Hence, petitioner AIFI filed the present petition for review on *certiorari* alleging that:

I. THE PUBLIC RESPONDENT COMMITTED MANIFEST ERROR IN HOLDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF PETITIONER SUCH THAT SERVICE OF SUMMONS ON THE ORIGINAL COMPLAINT DATED 30 SEPTEMBER 1992 AND/OR ON THE AMENDED COMPLAINT DATED 24 AUGUST 1993 WAS VALIDLY MADE UPON THE PETITIONER.

II. THE PUBLIC RESPONDENT COMMITTED MANIFEST ERROR IN NOT FINDING THAT EVEN ASSUMING IN *GRATIA ARGUMENTI* THAT SUMMONS WAS VALIDLY SERVED UPON PETITIONER ON THE ORIGINAL COMPLAINT AND, AS SUCH, PETITIONER WAS PROPERLY DECLARED IN DEFAULT, THERE WAS NO SERVICE OF SUMMONS UPON PETITIONER ON EITHER THE AMENDED COMPLAINT, THE