

## FIRST DIVISION

[ G.R. NO. 155392, December 06, 2006 ]

**ERLINDA GUANZON, PETITIONER, VS. ANDREW P. ARRADAZA,  
FRANCISCA MAIDIN AND ERLINDA LEBITA, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Respondent Andrew B. Arradaza filed with the Metropolitan Trial Court (MeTC) of Manila, Branch 13, an Amended Complaint<sup>[1]</sup> against Francisca Maidin and Erlinda Lebita, Reynaldo Lebita, Erlinda Guanzon and Ruel Escarilla for Damages. He alleged that on 22 May 1995 at around 2:45 A.M., he boarded a jeepney that was cruising along Magsaysay Boulevard near Pureza Street, Manila. Respondent sat at the jeepney's rear portion.

The Amended Complaint further alleged that the jeepney was owned and operated by Francisca Maidin (Maidin) and Erlinda Lebita (Erlinda) with plate number NVD 734. Erlinda's husband, defendant Reynaldo Lebita (Reynaldo) was behind the wheel of the jeepney. Meanwhile, following the jeepney was a dump truck with plate number PCP 827 registered in the name of Erlinda Guanzon (Guanzon). On its wheel was defendant Ruel Escarilla (Escarilla). As neither of the two drivers were willing to give way to the other, the two vehicles collided.

Owing to the said accident, respondent sustained injuries which required his confinement at the Orthopedic Hospital where he incurred medical expenses in the amount of seven thousand pesos (P7,000.00). He contends that defendant Reynaldo Lebita failed to exercise diligence in the operation of his vehicle while defendant Guanzon, the registered owner of the dump truck, failed to exercise due diligence in the selection and hiring of her driver in the person of Escarilla. Despite several demands, the defendants failed to reimburse the respondent for his actual damages. He claims,<sup>[2]</sup> that, he had since been absent from his work as a service crew member of a fastfood restaurant earning a salary of P145.00 per day and had been unable to enroll as an Engineering student in the 5th year.

Defendants Maidin and Erlinda filed their Answer with cross-claim<sup>[3]</sup> against Escarilla and Guanzon, substantially arguing that it was defendant Escarilla who was at fault and whose negligence was the proximate and immediate cause of the accident and that Escarilla's employer, Guanzon, failed to exercise the diligence of a good father of the family in the selection and hiring of Escarilla.

Defendant Reynaldo Lebita also filed his Answer with cross-claim<sup>[4]</sup> against Escarilla and Guanzon Lime Development Co. owned by defendant Guanzon.

Summons was not served on Escarilla apparently on the ground that he was "no longer connected with the firm" Guanzon Lime and Development Co.

Defendant Guanzon was furnished on 13 June 1996 with copies of the amended complaint and other pertinent papers *via* substituted service through a certain Susan Ador, after attempts exerted to cause personal service failed.<sup>[5]</sup> For having failed to file an answer, Guanzon was declared in default in an Order dated 12 July 1996.

Almost two years later, defendant Guanzon argued through a Motion to Dismiss<sup>[6]</sup> dated 9 July 1998 that the court did not acquire jurisdiction over her person by reason of defective service of summons.

The Motion to Dismiss was denied by the MeTC in an Order dated 7 August 1998.<sup>[7]</sup> Guanzon filed a Motion for Reconsideration<sup>[8]</sup> which the MeTC denied in the Order dated 5 October 1998.<sup>[9]</sup>

After hearing, the MeTC in its judgment<sup>[10]</sup> dated 12 April 1999, held:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering defendants Francisca Maidin, Reynaldo Lebita, and Erlinda Guanzon, to pay, jointly and severally, the following amount:

1. TWO THOUSAND ONE HUNDRED THREE PESOS AND TEN CENTAVOS (P2,103.10) as actual medical expenses;
2. SIX THOUSAND NINE HUNDRED SIXTY PESOS (P6,960.00) as loss of earning capacity for the two remaining months of the plaintiff's contract;
3. FOUR HUNDRED FIFTEEN PESOS (P415.00) as litigation expenses;
4. THIRTY THOUSAND PESOS (P30,000.00) as moral damages.

On defendant Francisca Maidin, Erlinda Lebita, and Reynaldo Lebita's cross-claim against defendant Erlinda Guanzon, answering defendants can recover from Erlinda Guanzon the amount they will pay to the plaintiff.<sup>[11]</sup>

Defendant Guanzon appealed to the Regional Trial Court (RTC) of Manila.<sup>[12]</sup> In a Decision<sup>[13]</sup> of the RTC dated 9 August 1999, it affirmed the decision of the MeTC.<sup>[14]</sup>

From the decision of the RTC, defendant Erlinda Guanzon filed a Petition for Review before the Court of Appeals<sup>[15]</sup> on the single issue of the correctness of service of summons on her person. In a Decision<sup>[16]</sup> of the Court of Appeals dated 30 August 2002, the petition of defendant Guanzon was denied and dismissed.

Defendant Guanzon is now before this Court on Petition for Review on *Certiorari* submitting the same issue that:

THE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO AND IN DENYING THE PETITION FOR REVIEW DESPITE THE FACT THAT THE

SHERIFF'S RETURN CLEARLY SHOWED THAT THE SUBSTITUTED SERVICE OF SUMMONS ON THE PETITIONER WAS DEFECTIVE AND PRODUCED NO EFFECT OTHER THAN NULLITY OF THE PROCEEDING.<sup>[17]</sup>

We deny the Petition.

Records clearly show that defendant Guanzon was declared in default by the MeTC on 12 July 1996 for failure to file an Answer within the reglementary period.<sup>[18]</sup>

First off, in *Cerezo v. Tuazon*,<sup>[19]</sup> the Court reiterated the remedies available to a party declared in default:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a ***motion under oath to set aside the order of default*** on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a ***motion for new trial*** under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a ***petition for relief*** under Section 2 [now Section 1] of Rule 38; and

d) He may also ***appeal*** from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a Petition for *Certiorari* to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.<sup>[20]</sup>

Instead of resorting to the above remedies, defendant Guanzon filed on 9 July 1998 or almost two years after having been declared in default, a Motion to Dismiss the complaint predicated on defective service of summons.

In any event, we rule that there was proper service of summons on defendant Guanzon and that the court *a quo* properly took cognizance of the case.

It appears that a document from the Land Transportation Commission reveals that the motor vehicle registration of the Isuzu dump truck then driven by Escarilla is under the name of Erlinda A. Guanzon as owner with address at 22 Sapocoy St., Bo. Manresa, Quezon City. Thus, summons was first attempted to be served personally on Guanzon at such address.<sup>[21]</sup> However, the attempt failed for the reason that she was unknown at said address.

Thereafter, further inquiry was made on Guanzon's real address. A General Information Sheet obtained from the Securities and Exchange Commission (SEC),