

## THIRD DIVISION

[ G.R. No. 155316, July 28, 2005 ]

**PORTHOS P. ALMA JOSE AND MA. THERESA D. ALMA JOSE,  
PETITIONERS, VS. INTRA STRATA ASSURANCE CORPORATION,  
RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On October 5, 1993, Anhui-Alma Jose Hydrogeologic and Well Drilling Co., Inc. (ANHUI) as principal, and herein respondent Intra Strata Assurance Corporation as surety, executed in favor of the Bureau of Customs an "Ordinary Re-Export Bond"<sup>[1]</sup> in the amount of P3,010,758.00 to guaranty the re-export of 68 pieces of tools and equipment for drilling and the payment of the corresponding duty, taxes and charges to be imposed by the Bureau of Customs. Porthos P. Alma Jose signed on behalf of ANHUI of which he is President.

On even date, herein petitioners Porthos P. Alma Jose and his wife Ma. Theresa D. Alma Jose, treasurer of ANHUI, together with Atty. Leonides Bernabe, Atty. Edgardo Alzate, Celia M. Bernabe and Juliet Alzate, all in their personal capacity, and ANHUI, executed an Indemnity Agreement<sup>[2]</sup> in favor of respondent "agree[ing] at all times to jointly and severally indemnify [respondent] and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the [respondent] shall or may at any time sustain or incur in consequence of having become surety upon the bond . . ."

In the Indemnity Agreement, petitioners indicated their address as "**48 Guijo Street, TCEV,<sup>[3]</sup> Antipolo, Rizal.**"

Claiming that petitioners and the other signatories to the Indemnity Agreement "fail[ed] to comply with their obligations of re-exporting the goods and/or pay taxes, duties and penalties despite demands of the Bureau of Customs" and despite advisement, respondent filed on September 25, 1997 before the Regional Trial Court (RTC) of Makati a complaint<sup>[4]</sup> for collection of sum of money against ANHUI and the other signatories to the Indemnity Agreement, docketed as Civil Case No. 97-2200.

The complaint alleged that the following defendants may be served with summons and other court processes at the addresses<sup>[5]</sup> opposite their respective names, *viz*:

- |   |   |
|---|---|
| <b>1. Anhui-Almajose<br/>Hydrogeologic and Well<br/>Drilling Co., Inc</b> | <b>Rm. 304 Maligaya Bldg.,<br/>111 430 E. Rodriguez<br/>Avenue, Quezon City</b> |
| <b>2. Porthos P. Alma Jose</b>  | <b>Rm. 304 Maligaya Bldg.,</b>  |

**111 430 E. Rodriguez  
Avenue, Quezon City**

**3. Ma. Theresa D. Alma  
Jose**

**Rm. 304 Maligaya Bldg.,  
111 430 E. Rodriguez  
Avenue, Quezon City**

x x x (Emphasis supplied)

Based on the Return<sup>[6]</sup> dated November 12, 1997 accomplished by Process Server Delfin P. Manga, Jr., substituted service was resorted to for the summons of ANHUI and spouses Alma Jose. The full text of the Return reads:

On 29 October 1997, **I went to the office and place of business of defendants Anhui-Almajose Hydrogeologic and Well Drilling Co. Inc., Porthos Almajose and Ma. Theresa Almajose at no. 348 M.F. Jocson St., Sampaloc, Manila to serve them personally the summons, complaint and annexes but failed because they were not there.**

Defendants Porthos Almajose and Ma. Theresa Almajose are the officers of defendant corporation.

Again on November 4, 1997 I tried again to serve the summons personally to the aforesaid defendants but I was informed that they were out of the office. I waited for them but my waiting proved futile.

Finally, on November 5, 1997, I went back again on the said address but defendants were again not around. Considering that this was the third time that I endeavor[e]d to serve the summons personally and due to the uncertainty of whether the defendants, who were also officers of defendant corporation, will report to their office, **I left the summons together with the copies of the complaint and annexes at their office and place of business thru Shirley Cabangon**, a competent person in-charge thereof, who affixed her signature for receipt thereof.

**Substituted service availed for the reason above-stated.**

**The original copy of the summons is hereby returned to the Hon. Court of origin, FULLY SERVED, for its information and guidance.**  
(Emphasis and underscoring supplied).

From the July 3, 2000 Resolution of Branch 141 of the Makati RTC to which the complaint was raffled, the following observations of the judge are noted:

. . . **The record indicated that summons upon the defendants were served thru Atty. Leonides Bernabe who was the Corporate Secretary of defendant Anhui-Alma Jose Hydrogeologic and Well Drilling Co., Inc..** Atty. Leonides Bernabe filed a motion for extension of time to file answer for all the defendants on 9 December 1999. The motion was granted and therefore defendants were granted fifteen (15) days counted from 19 December 1997 to file a responsible pleading. x x x<sup>[7]</sup> (Emphasis and underscoring supplied)

From the same Resolution of the RTC, it is gathered that Atty. Edgardo Alzate, one of the defendants, by way of special appearance, moved to dismiss the complaint on the grounds of lack of jurisdiction over his person, lack of cause of action, lack of jurisdiction over the proceedings, and lack of condition precedent for filing the collection case. The motion was, by Order<sup>[8]</sup> dated January 26, 1998, denied, but the case against him was eventually dismissed on motion of the plaintiff.

For failure to file answer within the period specified by the trial court and on motion of the plaintiff-herein respondent, the defendants, with the exception of Atty. Alzate, were declared in default on March 6, 1998.

Respondent was thus allowed to present evidence *ex parte*.

By Decision<sup>[9]</sup> dated June 15, 1998, the trial court rendered judgment in favor of respondent and accordingly ordered the remaining defendants to jointly and severally pay respondent the sum of P3,010,758.00 plus attorney's fees equivalent to 25% of the amount due and the costs.

No appeal from the trial court's decision having been taken, it became final and executory. On respondent's motion, a Writ of Execution was issued on October 13, 1998.<sup>[10]</sup>

Petitioners, claiming that they received a copy of a Notice of the Sheriff's Sale<sup>[11]</sup> of their conjugal property covered by Transfer Certificate of Title (TCT) No. N-66602 located at their residential address at 48 Guijo St., Town and Country Executive Village, Antipolo City on September 23, 1999 and that it was only then that they were apprised of the complaint filed against them by respondent, filed before the trial court on September 30, 1999 a "Petition for Relief from Judgment with a Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order."<sup>[12]</sup>

In their petition, petitioners alleged that Atty. Bernabe's appearance in their behalf was without their consent and knowledge; that they were not properly served with summons, hence, the trial court did not acquire jurisdiction over their persons; and that if given the chance to be heard, they could controvert respondent's claim with good and strong evidence.

Apprehensive that their petition for relief from judgment "may have been filed out of time," petitioners nevertheless pleaded that given the flaw in the service of summons upon them and the unauthorized entry of Atty. Bernabe as their counsel, they were deprived of their day in court, hence, they prayed that in the interest of justice, their petition be given due course and judgment be rendered:

1. setting aside the judgment rendered in [the] case, lifting or canceling the writ of execution and ordering the conduct of a new trial;
2. immediately enjoining the Sheriff and the [respondent] from conducting the sale of [petitioners'] levied property;
3. after trial, making the injunction above-mentioned permanent.<sup>[13]</sup>

By Resolution<sup>[14]</sup> of July 3, 2000, the trial court, noting that the petition for relief from judgment was filed out of time and the supporting affidavit did not state a valid defense to the complaint, and discrediting petitioners' claim that Atty. Bernabe's appearance as counsel was unauthorized in this wise:

[Petitioners] could not feign not know[ing] about the filing of this case during its early stage because Atty. Leonides Bernabe who lawyered for them and the defendant corporation was the corporate secretary of the corporation where petitioners were President and Treasurer, respectively. Defendant corporation did not disown the representation of Atty. Leonides Bernabe. This being so and considering that petitioners were key officers of the corporation, they were **presumed** to have authorized Atty. Bernabe to represent the corporation perforce they are **presumed** to have gained actual knowledge of the fact that they were sued in this case in their respective personal capacity. (Emphasis and underscoring supplied),

denied the same.

Petitioners' Motion for Reconsideration<sup>[15]</sup> of the trial court's July 3, 2000 Resolution having been denied by Order dated December 4, 2000,<sup>[16]</sup> they filed a "Petition for *Certiorari* with Prayer for a Restraining Order and/or Preliminary Injunction"<sup>[17]</sup> with the Court of Appeals (CA), docketed as CA-G.R. SP No. 62789, faulting the trial court as follows:

A

THE RESPONDENT COURT, WITH DUE RESPECT, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF ITS JURISDICTION WHEN PETITIONERS' WERE DECLARED IN DEFAULT DESPITE THE FACT THAT **IT HAS NOT ACQUIRED JURISDICTION OVER THEM.**<sup>[18]</sup>

B

ASSUMING WITHOUT ADMITTING THAT ATTY. LEONIDES BERNABE WAS THE COUNSEL FOR THE REMIANING DEFENDANTS INCLUDING THE PETITIONERS HEREIN, THE RESPONDENT COURT, WITH DUE RESPECT, ACTED WITH GRAVE ABUSE OF ITS DISCRETION, AMOUNTING TO EXCESS OF ITS JURISDICTION WHEN IT DENIED THE LATTER'S PETITION FOR RELIEF FROM JUDGMENT AND DID NOT CONSIDER THE GROSS INACTION, AND/OR RECKLESSNESS OF THEIR COUNSEL AS TANTAMOUNT TO EXCUSABLE NEGLIGENCE.<sup>[19]</sup> (Emphasis and underscoring supplied).

By Decision<sup>[20]</sup> of July 31, 2001, the CA dismissed the petition for certiorari upon a finding that the trial court did not commit grave abuse of discretion when it denied the petition for relief from judgment because

x x x the Rules are very clear that such a petition [for certiorari] is not the proper remedy to resort to when a party alleges lack of jurisdiction over him and the remedy of a petition for relief from judgment is no longer available without his fault. If petitioners were deprived of due