

SECOND DIVISION

[G.R. No. 143736, August 11, 2004]

OFELIA HERRERA-FELIX, REPRESENTED BY JOVITA HERRERA-SEÑA, PETITIONER, VS. COURT OF APPEALS, AND ST. JOSEPH RESOURCES DEVELOPMENT, INC., RESPONDENTS.

RESOLUTION

CALLEJO, SR., J.:

This is a petition for review on certiorari assailing the Decision^[1] of the Court of Appeals which dismissed the petition to annul the Decision^[2] of the Regional Trial Court of Malabon, Metro Manila, Branch 73, in Civil Case No. 1967, on the ground of lack of jurisdiction over the person of herein petitioner Ofelia Herrera-Felix.

The Antecedents

On March 11, 1993, respondent St. Joseph Resource Development, Inc. filed a complaint for sum of money against the Spouses Restituto and Ofelia Felix with a prayer for a writ of preliminary attachment. It was alleged therein that, during the period from November 16, 1992 to December 14, 1992, the Felix Spouses purchased from the respondent tubs of assorted fish, as follows:

<u>Date of Purchase</u>	<u>Amount of Fish Purchased</u>
November 16, 1992	P 183,360.00
November 17, 1992	114,380.00
November 19, 1992	56,014.00
November 20, 1992	183,400.00
December 2, 1992	70,000.00
December 3, 1992	159,100.00
December 5, 1992	73,500.00
December 8, 1992	79,025.50
December 9, 1992	275,190.00
December 11, 1992	102,840.00
December 12, 1992	78,300.00
December 13, 1992	108,692.00
December 14, 1992	32,379.50

Total	<u>P 1,516,181.00</u>

It was also alleged that the Felix Spouses still had an outstanding obligation amounting to P1,132,065.50, after deducting their total payment of P438,615.50 from their aggregate purchases. The respondent prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendants, ordering the latter to pay the former the following:

1. P1,132,065.50, representing their unpaid obligation, including unpaid tubs, plus legal interest from the date of filing of the complaint;
2. Attorney's fees equivalent to 25% of the foregoing amount; and
3. Costs of suit.

Plaintiff likewise prays that a writ of preliminary attachment be issued *ex parte* against the properties of defendants as security for the satisfaction of any judgment that may be recovered.

Other just and equitable relief is also prayed for.^[3]

The case was docketed as Civil Case No. 1967.

The trial court granted the respondent's prayer for a writ of preliminary attachment on a bond of P1,132,065.50 which was posted on March 26, 1993. The Sheriff levied and took custody of some of the personal properties of the Felix Spouses. On March 26, 1993, a copy of the writ of preliminary attachment, summons and complaint were served on them at their residence, through the sister of Ofelia Herrera-Felix, Ma. Luisa Herrera.^[4] According to the Sheriff's Return, Ofelia Herrera-Felix was out of the country, as per the information relayed to him by Ma. Luisa Herrera. On April 5, 1993, the Felix Spouses, through Atty. Celestino C. Juan, filed a motion praying for an extension of time to file their answer to the complaint.^[5] On April 6, 1993, the trial court issued an Order granting the motion. However, the Felix Spouses failed to file their answer to the complaint. The respondent then filed a Motion dated April 23, 1993 to declare the said spouses in default,^[6] which motion was granted by the court in its Resolution^[7] dated May 13, 1993. A copy of the said resolution was sent to and received by the counsel of the Felix Spouses through registered mail.

On August 11, 1993, the court *a quo* rendered a decision in favor of the respondent, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered ordering:

1. The defendants to pay, jointly and severally, the plaintiffs the amount of **ONE MILLION SEVENTY-SEVEN THOUSAND FIVE HUNDRED SIXTY-FIVE PESOS AND FIFTY CENTAVOS** (P1,077,565.50) plus legal rate of interest from the date of the filing of the complaint;
2. The defendants to pay, jointly and severally, the amount of **TWENTY-FIVE THOUSAND PESOS** (P25,000.00) – as/for reasonable Attorney's fees;
3. The defendants to pay the costs of this suit.

SO ORDERED.^[8]

Copies of the said decision were mailed to the Felix Spouses and their counsel, Atty. Celestino C. Juan, by registered mail. The copy of the decision addressed to the spouses was returned to the court after two notices for having been "Unclaimed." However, then counsel for the Felix Spouses received his copy of the decision.

The decision of the trial court became final and executory after the Felix Spouses failed to appeal the same. The respondent filed a motion for a writ of execution. A copy thereof was served on the said spouses by registered mail, but they failed to oppose the motion. The court thereafter issued an order granting the motion and directing the issuance of a writ of execution. The counsel for the Felix Spouses received a copy of the said order. Thereafter, the following personal properties of the latter were levied upon and sold by the sheriff at public auction for P83,200.00 to the respondent as the winning bidder:

- (1) unit Jeep-semi stainless
- (1) unit Jeep-stainless
- (1) Victor-Radio/TV/Cassette Recorder
- (1) Sony "17" TV w/ remote control
- (1) Kawai Electric Organ
- (3) Hitachi Stand Fan
- (1) Standard Desk Fan
- (1) 6 pieces Sala Set.^[9]

On August 14, 1995, the Sheriff executed a Certificate of Sale of personal properties.^[10]

On September 13, 1996, petitioner Ofelia Herrera-Felix, represented by another sister, Jovita Herrera-Seña, filed a petition with the Court of Appeals under Rule 47 of the Rules of Court for the nullification of the trial court's judgment by default, the writ of execution issued by the said court, and the sale of her properties at public auction. The petitioner alleged, *inter alia*, that the complaint and summons were handed over to her sister, Ma. Luisa Herrera, who was merely a visitor in her house and, as such, was not a valid substituted service under Rule 14, Section 7 of the Rules of Court. She also alleged that her husband Restituto Felix had died as early as April 23, 1988, as evidenced by his Certificate of Death.^[11]

In its comment on the petition, the respondent alleged that the substituted service of the complaint and summons on the petitioner, who was then temporarily outside the Philippines, through her sister Ma. Luisa Herrera, was valid and effective. The respondent, likewise, averred that even if such substituted service on the petitioner was defective, the defect was cured when the latter, through her counsel, Atty. Celestino C. Juan, appeared in court and moved for an extension of time to file her responsive pleading. The respondent also maintained that the petitioner and her counsel were served with copies of the decision of the court *a quo*, but that the petitioner failed to appeal the decision.

In her reply to the comment of the respondent, the petitioner alleged that since she failed to file a responsive pleading to the complaint, the appearance of Atty. Celestino C. Juan, as her counsel, did not constitute as a voluntary submission to the jurisdiction of the court.