

TWENTY-THIRD DIVISION

[CA-G.R. CV NO. 03106-MIN, February 27, 2015]

VITARICH CORPORATION, PLAINTIFF-APPELLEE, VS. SPS. MA. THERESA L. GACUS AND FRANCISCO R. GACUS, DEFENDANTS-APPELLANTS.

DECISION

SANTOS, J.:^[1]

This is an appeal from the Decision^[2] dated 16 September 2012 rendered by the Regional Trial Court, 10th Judicial Region, Branch 18^[3] of Cagayan de Oro City (trial court) in a case docketed as Civil Case No. 2010-291 for collection of sum of money, damages and attorney's fees. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- (1) Ordering defendants spouses Ma. Theresa L. Gacus and Francisco R. Gacus to pay plaintiff Vitarich Corporation, represented by Ronan Ceasar T. Donayre, the sum of Nine Hundred Sixty Seven Thousand Six Hundred Pesos (Php967,600.00) plus Twenty Four Percent (24%) interest per annum to be computed from the filing of this case on October 11, 2010 until the obligation is paid in full.
- (2) Ordering defendants spouses Ma. Theresa L. Gacus and Francisco R. Gacus to pay plaintiff Vitarich Corporation, represented by Ronan Ceasar T. Donayre, the sum of Php75,000.00 as attorney's fees and Php 24,000.00 as costs of suit.

SO ORDERED.^[4]

The Antecedents

The instant appeal stemmed from a Complaint^[5] filed by plaintiff-appellee, Vitarich Corporation, on 11 October 2010 against defendants-appellants Spouses Ma. Theresa L. Gacus and Francisco R. Gacus for collection of sum of money, damages and attorney's fees. Plaintiff-appellee's Complaint alleged as follows:

x x x
x

x x
x x x

2. That Plaintiff is in the business, among others, of producing and selling of aqua feeds and Defendants were one of their customers;

3. That between the period: August 11, 2009 up to September 24, 2009, the Defendants acquired aqua feeds from Plaintiff under credit terms. x x x;

4. That defendants failed to pay their obligations when it fell due in the total amount of P967,600.00 (exclusive of interest at 2% per month and other charges) and despite letter of demand sent to them the same was not settled until the present. x x x;

5. That defendants sent a letter promising that she will settle her account after the 2010 elections but until the filing hereof, defendants still were not able to settle any portion of their account; x x x;

6. That Plaintiff was constrained to engage the services of counsel for the filing of the instant case and committed to pay the latter the amount equivalent to 25% of the recoverable amount;

7. That Plaintiff would be constrained to spend litigation expenses in the prosecution of the instant case in the amount of not less than P60,000.00;^[6]

On 19 October 2010, the trial court issued Summons^[7] requiring defendants-appellants to file their answer to plaintiff-appellee's Complaint within fifteen (15) days from notice. On 22 November 2010, summons was served by the trial court Sheriff, Niza P. Tacandong, by tendering the same, as well as a copy of the Complaint, to a certain Marlon S. Daarol. The Sheriff's Return of Summons^[8] states:

THIS IS TO CERTIFY that on November 22, 2010, the undersigned tendered Summons, together with a copy of the Complaint and its Annexes to Mr. Marlon S. Daarol, a house helper, at Blk. 4, Lot 2, Regency Plains Subd., Iponan, Cagayan de Oro City, a person of suitable age and discretion, residing therein, who refused to receive and acknowledge receipt thereof.

Service of summons was tendered due to the following justifiable reasons: As informed by Marlon S. Daarol, Defendant-Spouses Ma. Theresa L. Gacus and Francisco R. Gacus are both in their farm located at Magsaysay, Misamis Oriental and does not know the fixed date of their return.

The original copy of the Summons is, therefore, respectfully returned, DULY SERVED.^[9]

On 7 March 2011, plaintiff-appellee filed a Motion to Declare Defendants in Default^[10] on the ground of defendants-appellants failure to file their Answer despite service of summons upon them. Plaintiff-appellee thus prayed that it be allowed to present its evidence *ex parte*.

Subsequently, on 28 March 2011, defendants-appellants filed a Motion to Defer Resolution of Plaintiff's Motion to Declare Defendants' in Default.^[11] In the said

Motion, defendants-appellants posited that they were not personally served copy of the Summons together with the Complaint. Defendants-appellants thus prayed:

x x x
x

x x
x x x

That in order that Defendants Spouses could intelligently react thereto, Defendants now earnestly pray that he (sic) given the details of the following:

- 1) Name of the alleged helper of Defendants who received the summons.
- 2) The date the alleged helper of the house, received the pleadings and summons.
- 3) Photocopy of the Sheriff's Return of Service

WHEREFORE, pending submission of the requested document, is (sic) is prayed that the Resolution to Declare Defendants in Default be deferred.

And or, for Plaintiff to please complete its incomplete sentences.^[12]

Thereafter, the trial court issued an Order^[13] dated 15 April 2011 referring the case to the Philippine Mediation Center (PMC) of Cagayan de Oro City for mediation and suspending the proceedings of the case for thirty (30) days. Consequently, on 16 May 2011, the trial Court issued an Order^[14] directing the parties to personally appear before the PMC for the mediation proceedings.

On 10 June 2011, plaintiff-appellee filed a Manifestation with Motion^[15] praying that the trial court reconsider the Order dated 15 April 2011 and the Order 16 May 2011 and that the trial court issue an order declaring defendants-appellants in default. On 13 June 2011, the PMC submitted its Mediator's Report^[16] stating that the case was being referred back to the trial court per request of plaintiff-appellee. The trial court then set the case for Judicial Dispute Resolution (JDR) through an Order^[17] dated 2 August 2011.

On 17 August 2011, the trial court issued an Order^[18] declaring defendants-appellants in default as prayed for by plaintiff-appellee. In the same Order, the trial court cancelled the JDR of the case scheduled on 5 September 2011.^[19] On 5 September 2011, the trial court set the case for the *ex parte* presentation of plaintiff-appellee's evidence.^[20]

Thereafter, defendants-appellants filed a Motion for Reconsideration^[21] assailing the Order dated 17 August 2011 and the Order dated 5 September 2011 issued by the trial court.

On 14 November 2011, the trial court Sheriff, Niza P. Tacandong, filed a Manifestation^[22] stating as follows:

x x x
x

x x
x x x

That I made three (3) attempts in serving the summons, October 27, 2010, November 12, 2010 and November 22, 2010, respectively.

That on the first and second attempts, nobody was in the house of the defendants.

That it was only on November 22, 2010 that I was able to serve the summons thru substituted service.

That the undersigned admits that it should have been "substituted service" indicated in my return and not "tendered", and left a copy to Mr. Marlon S. Daarol, who refused to receive and acknowledge receipt.

That there were four (4) people/helpers present during the service of summons. That the three helpers pointed Mr. Daarol to receive the summons with complaint since he is permanently staying in the defendants' residence and trusted by them.

That Mr. Daarol did not inform the undersigned that he is only a truck driver.

That I instructed Mr. Daarol to contact the defendants immediately and inform them about the case.^[23]

In an Order^[24] dated 29 February 2012, the trial court denied defendants-appellants' Motion for Reconsideration. Thereafter, the case was set anew for presentation of plaintiff-appellee's evidence *ex parte* on 15 May 2012.^[25]

On 15 May 2012, plaintiff-appellee presented its evidence *ex parte* through the testimonies of Diosdoro Josol, Jr. and Lorelie Acuzar.^[26] Plaintiff-appellee likewise presented the following documents as evidence:

- | | |
|-----------------------|---------------------------------------------------------------------------------------------|
| Exhibit "A" to "A-2" | - Philippine National Bank check, the "DAIF notation and check return slip. |
| Exhibit "B" to "B-1" | - Demand Letter dated November 24, 2009 and the registry receipt. |
| Exhibit "C" to "C-5B" | - Charge Sales Invoice and provision numbers 5 and 6 (back portion of charge sales invoice. |
| Exhibit "D" to "D-2" | - Demand Letter dated December 12, 2009, Statement of Account and registry receipt. |
| Exhibit "E" to "E-1" | - Demand Letter dated January 11, 2010 and registry receipt. |
| Exhibit "F" to "F-2" | - Promissory Letter from Mrs. [Gacus] |

dated February 23, 2010, signature of Mrs. [Gacus] and the amount Php 967,000.00.

Exhibit "G" to "G-1-2" - Credit application of the defendants, signature specimen card and the signatures of the defendants.

Exhibit "H" to "H-3" - Re-evaluation form, amount of credit arrangement, and attachments, and

Exhibit "I" to "I-5" - Official Receipts of Docket and Filing fees.^[27]

After plaintiff-appellee formally offered its evidence on 31 May 2012, the case was deemed submitted for decision.^[28]

On 16 September 2012, the trial court rendered the assailed Decision in favor of plaintiff-appellee and against defendants-appellants.

Hence, this appeal.

Assignment of Errors

Defendants-appellants raise the following errors in this appeal:^[29]

I – THAT THE COURT A QUO GROSSLY ERRED IN DECLARING DEFENDANTS IN DEFAULT DESPITE CLEAR EVIDENCE OF IMPROPER SERVICE OF SUMMONS, AMOUNTING TO LACK OF JURISDICTION AND/OR GRAVE ABUSE OF DISCRETION.

II THAT THE COURT A QUO ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT RECALLED ITS ORDER DATED APRIL 15, 2011, REFERRING THE CASE TO THE PHILIPPINE MEDIATION CENTER, CAGAYAN DE ORO CITY, FOR MEDIATION, AND ITS ORDER DATED AUGUST 2, 2011, REQUIRING THE PARTIES TO APPEAR FOR JUDICIAL DISPUTE RESOLUTION; AND

III THAT THE COURT A QUO GRAVELY ERRED IN GRANTING THE RELIEFS PRAYED FOR IN THE COMPLAINT DESPITE UTTER LACK AND/OR INSUFFICIENCY OF EVIDENCE.^[30]

This Court's Ruling

Defendants-appellants argue that the trial court erred in declaring them in default considering that there was no proper service of summons in accordance with Sections 6 and 7 of the Rules of Court. Specifically, defendants-appellants argue in their Appellant's Brief:

A perusal of the sheriff's Return of Summons x x x readily reveals that it does not (a) indicate the impossibility of service of Summons in person