

SIXTH DIVISION

[CA-G.R. SP NO. 93348, September 21, 2006]

**EDUARDO CHUA, PETITIONER, VS. HON. RAUL E. DE LEON, AS
PRESIDING JUDGE OF BRANCH 258, REGIONAL TRIAL COURT OF
PARAÑAQUE CITY, UNIVERSAL PACKAGING AND DESIGNS
LIMITED AND ANTHONY ESTEBAN, RESPONDENTS.**

D E C I S I O N

COSICO, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the following Orders issued by public respondent Honorable Raul E. De Leon, presiding judge of the Regional Trial Court, Branch 258 of Parañaque City in Civil Case No. 04-0121:

(1) the Order dated August 31, 2005 denying herein petitioner's motion to declare herein private respondent Universal Packaging and Designs Limited in default; and

(2) the Order dated December 12, 2005 denying petitioner's motion for reconsideration of the Order dated August 31, 2005.

The Facts

In March 2004, Guess Labels and Weaving Corporation (GLWC) filed with the Regional Trial Court of Parañaque City a complaint for sum of money and damages against herein petitioner Eduardo Chua, doing business under the name and style of Universal Packaging and Designs Philippines Enterprises (UPDP, for brevity). The complaint alleged that Chua regularly ordered and purchased from GLWC various woven and printed cloth labels, usually for export to other countries. In the years 1996 and 1997, Chua purchased from GLWC various cloth labels amounting to about One Million Four Hundred Thirteen Thousand Eight Hundred Pesos (Php1,413,800.00), which remained unpaid at the time of the institution of the suit for collection.

On May 7, 2004, petitioner Chua filed with the trial court a motion for leave of court to file and admit third-party complaint¹ against herein private respondent Universal Packaging and Design Limited (UPDL). Chua alleged in his third-party complaint² that UPDL is a foreign entity based in Hong Kong but doing business in the Philippines through its resident agent in the Philippines, herein private respondent Anthony G. Esteban, whose principal office and place of business is at 3540 Santa Monica Street, Dongalo, Parañaque, Metro Manila, where he may be served with summons and other processes. On November 23, 1995, Chua and UPDL, through its managing director Peter Chang, executed a partnership agreement for the business activities of UPDP. As partners in the business UPDP, they agreed that they would

share and contribute in equal participations to the payment of all capital expenditures and obligations which the business may incur in the course of its operations in the Philippines. Thus, in the event that petitioner Chua is adjudged liable for the payment of the claim of GLWC, UPDL should be ordered to reimburse to the petitioner fifty percent (50%) of the judgment, pursuant to their agreement.

The third-party complaint was admitted by the RTC via an Order dated May 21, 2004. On March 10, 2005, summons was served on private respondent Anthony Esteban.

Private respondent UPDL failed to file an answer within the time allowed under the rules. In a manifestation³ dated March 23, 2005 filed by Esteban with the RTC, he alleged that he had long severed whatever working relationship, and ceased any business dealings he may have had with UPDL and its joint venture proponents: Chua and UPDL. Hence, the attempt to serve summons upon UPDL through him could not have any legal effect.

On May 31, 2005, petitioner filed a motion to declare third-party defendant UPDL in default for its failure to file an answer to the third-party complaint. Several other pleadings were filed by the parties relative to the motion to declare UPDL in default.

The Ruling of the RTC

On August 31, 2005, the trial court issued the assailed Order⁴ denying petitioner's motion to declare UPDL in default. The court ruled that there was no valid service of summons upon private respondent UPDL because Esteban had ceased to be connected with the UPDL. Thus, the dispositive portion of the Order reads—

"WHEREFORE, premises considered, the Motion to Declare Third-party Defendant in Default is DENIED, for lack of merit.

"SO ORDERED."

Petitioner's motion for reconsideration was denied via an Order⁵ dated December 12, 2005. Hence, the instant petition for certiorari.

The Issue

The issue for this Court's consideration is: Whether or not public respondent RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motion to declare defendant in default.

This Court's Ruling

After due study, this Court finds the instant petition for certiorari bereft of merit. Public respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying herein petitioner's motion to declare third-party defendant in default, because no valid service of summons upon herein private respondent UPDL was effected. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty