



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

EDGAR T. CARREON,  
Petitioner,

G.R. No. 240108

Present:

- versus -

MARIO AGUILLON and  
BETTY P. LOPEZ,  
Respondents.

PERLAS-BERNABE, S.A.J.,  
Chairperson,  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
GAERLAN,\* JJ.

Promulgated:

29 JUN 2020

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Resolutions dated February 19, 2018<sup>2</sup> and May 4, 2018<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 08173-MIN, which dismissed the Petition for Annulment of Judgment (Annulment Petition) filed by petitioner Edgar T. Carreon (Carreon) under Rule 47 of the Rules of Court (Rules).

\* Designated additional member per Special Order No. 2780 dated May 11, 2020.  
<sup>1</sup> *Rollo*, pp. 24-50.

<sup>2</sup> Id. at 172-175. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.

<sup>3</sup> Id. at 183. Issued by Division Clerk of Court Melody Sherry R. Chan.

### The Facts

This case stemmed from a complaint for breach of contract, damages, and attorney's fees filed by respondent Mario Aguillon (Aguillon) against Carreon and his wife, Isabel<sup>4</sup> (defendants), before the Regional Trial Court of Davao City, Branch 15 (RTC), docketed as Civil Case No. 33,044-09. In an Order dated March 10, 2010, the RTC, upon Aguillon's motion, declared the defendants in default for failure to file their responsive pleading within the reglementary period despite receipt of summons and a copy of the complaint through their "son" at their residence.<sup>5</sup> Eventually, the RTC rendered a Decision<sup>6</sup> dated October 15, 2010 in favor of Aguillon and ordered the defendants to, among others, pay the amount of ₱47,410.00 as actual damages, plus interests and attorney's fees.<sup>7</sup>

The RTC's Decision attained finality, and consequently, a writ of execution<sup>8</sup> was issued on April 12, 2011. Consequently, the Sheriff levied on the property belonging to the defendants, which was purportedly their family home. The property was thereafter sold at a public auction where the highest bidder thereof was respondent Betty P. Lopez (Lopez). Thereafter, a Final Certificate of Sale was issued in her favor.<sup>9</sup>

On December 5, 2013, Lopez filed a petition for cancellation<sup>10</sup> of Transfer Certificate of Title (TCT) No. T-208860 registered in the name of the defendants and for the issuance of a new one in her name. On December 12, 2013, the RTC issued an Order requiring the defendants to appear at the hearing of the petition. However, the Return of Service dated January 27, 2014 did not reflect service upon them of a copy of the December 12, 2013 Order. Nonetheless, the RTC proceeded to hear the petition; and on February 17, 2014, it issued an Order granting the same. The defendants were then directed to surrender their Owner's Duplicate Copy of TCT No. T-208860 while the Register of Deeds of Davao City was ordered to cancel the same and to issue a new one in the name of Lopez.<sup>11</sup>

Subsequently, Lopez filed a Motion to Publish the February 17, 2014 Order of the RTC granting the petition for cancellation of the defendants' title. Despite the absence of any affidavit from the Process Server or postman stating that the defendants' address could not be located, the RTC granted the motion in an Order dated May 20, 2014. Consequently, when the February 17, 2014 Order became final after publication, TCT No. T-208860

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<sup>4</sup> See RTC Decision; *id.* at 62.

<sup>5</sup> See *id.* at 27.

<sup>6</sup> *Id.* at 62-65. Penned by Judge Ridgway M. Tanjili.

<sup>7</sup> *Id.* at 64-65.

<sup>8</sup> *Id.* at 66.

<sup>9</sup> See *id.* at 96.

<sup>10</sup> Docketed as Sp. Proc. No. 12,881-2013.

<sup>11</sup> See *rollo*, pp. 29-30.

was cancelled and a new one was issued in Lopez's name, *i.e.*, TCT No. 146-2015001758. On December 11, 2015, Lopez filed before the RTC a petition praying for the issuance of a writ of possession in her favor, which the RTC eventually granted on April 17, 2016.<sup>12</sup>

On June 22, 2017, Carreon learned that they were about to be ousted from their family home when he received a letter from the City Government of Davao with the writ of possession attached thereto. It was only then that he discovered all the proceedings that transpired without their knowledge and participation. Thus, upon the advice of his counsel, he secured the pertinent records including the subsequent issuances of the RTC which had already become final and executory.<sup>13</sup>

Left with no legal recourse, Carreon, by himself, filed the Annulment Petition before the CA on the grounds of lack of jurisdiction and extrinsic fraud premised on the improper/invalid service of summons.<sup>14</sup>

### The CA Ruling

In a Resolution<sup>15</sup> dated July 28, 2017, the CA dismissed the Annulment Petition **on procedural grounds** as Carreon failed to, *inter alia*: (a) attach the affidavit of service of the petition to the court of origin as well as the adverse parties;<sup>16</sup> (b) attach a copy of TCT No. T-208860; and (c) submit affidavit/s of witness/es or documents in support of the cause of action or defense.<sup>17</sup>

Aggrieved, Carreon filed a Motion for Reconsideration with Manifestation, explaining that (a) the affidavit of service is not required in a petition for annulment of judgment, the same being an original action before the CA; hence, the rule on service of summons is applicable; (b) the failure to attach a copy of TCT No. T-208860 is not a fatal error to warrant the dismissal of the petition, but he nonetheless attached a copy thereof; and (c) Carreon himself, as well as his *only child*, Malaya De Luna Carreon (Malaya De Luna), and other witnesses have executed their respective affidavits in support of the Annulment Petition.

In a Resolution<sup>18</sup> dated February 19, 2018, the CA reconsidered its original ruling, stating that the procedural infirmities in Carreon's petition have already been rectified. However, **on the merits**, it found that the RTC acquired jurisdiction over the person of Carreon and his wife Isabel, there

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<sup>12</sup> See *id.* at 30.

<sup>13</sup> See *id.* at 31.

<sup>14</sup> *Id.* at 99.

<sup>15</sup> See *id.* at 162-165.

<sup>16</sup> See Section 13, Rule 13 of the Rules.

<sup>17</sup> See Section 4 (3), Rule 47 of the Rules.

<sup>18</sup> See *rollo*, pp. 172-175.

being no irregularity in the service of summons upon them. Hence, the CA dismissed the Annulment Petition entirely.<sup>19</sup>

Focusing solely on the CA's disposition of the case on the merits, Carreon then filed on March 8, 2018 a Motion for Reconsideration (March 8, 2018 Motion for Reconsideration) of the February 19, 2018 Resolution. In a Resolution dated May 4, 2018, the CA noted without action the said motion, opining that it was a *second* motion for reconsideration which shall no longer be entertained for being a prohibited pleading. Hence, the CA directed the issuance of an Entry of Judgment, prompting Carreon to file the instant petition before the Court.

### The Issue Before the Court

The essential issues for the Court's resolution is whether or not the CA correctly (a) treated Carreon's March 8, 2018 Motion for Reconsideration as a second motion for reconsideration, a prohibited pleading; and (b) dismissed the Annulment Petition based on its finding that the RTC acquired jurisdiction over the person of defendants.

### The Court's Ruling

The petition is meritorious.

The Rules are explicit that a second motion for reconsideration shall not be allowed. Section 2, Rule 52 of the Rules provides that:

Section 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Case law explains that “[t]he rule rests on the basic tenet of immutability of judgments [which evokes that] [a]t some point, a decision [must] becom[e] final and executory and, consequently, all litigations must come to an end.”<sup>20</sup> Moreover, “a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect.”<sup>21</sup>

In this case, the CA characterized Carreon's March 8, 2018 Motion for Reconsideration as a *second* motion for reconsideration. Hence, it noted without action the same for being a prohibited pleading and, resultantly, issued an Entry of Judgment.

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<sup>19</sup> See *id.* at 174-175.

<sup>20</sup> *Reyes v. People*, 764 Phil. 294, 303 (2015).

<sup>21</sup> *Id.* at 305; citation omitted.

The CA is mistaken.

Carreon's March 8, 2018 Motion for Reconsideration can hardly be considered as a *second* motion for reconsideration as contemplated by the Rules. In fact, the aforesaid motion should have actually been treated as a first motion for reconsideration because it assailed the CA's reconsidered ruling (*i.e.*, the Resolution dated February 19, 2018), and not its original Resolution dated July 28, 2017. As will be discussed below, these Resolutions were premised on completely different legal grounds from one another.

To recount, Carreon's earlier Motion for Reconsideration with Manifestation was in response to the CA's original Resolution dated July 28, 2017 which dismissed the Annulment Petition based purely on procedural grounds. As such, this motion was intended to address the alleged procedural infirmities pointed out by the CA. In its February 19, 2018 Resolution, the CA reconsidered its original resolution, holding that there was a "rectification of the infirmities" in the Annulment Petition.<sup>22</sup> Moreover, in the same February 19, 2018 Resolution, the CA proceeded to tackle the merits of the Annulment Petition itself. In particular, the CA held that the issue of extrinsic fraud raised in the Annulment Petition was "too unsubstantial to warrant consideration." Moreover, anent the claim of lack of jurisdiction over the persons of the defendants, the CA, citing the presumption of regularity in official duties, found that the service of summons upon the defendants was proper; therefore, the RTC acquired jurisdiction over them.<sup>23</sup>

Clearly, the CA's February 19, 2018 Resolution is a new ruling based on legal grounds that are totally different from its original July 28, 2017 Resolution; hence, when Carreon filed the March 8, 2018 Motion for Reconsideration, he was technically filing a first motion for reconsideration of the February 19, 2018 Resolution wherein the CA, for the first time, traversed the merits of his Annulment Petition. As such, the prohibition on the filing of a second motion for reconsideration found in Section 2, Rule 52 of the Rules did not come into play. Evidently, what the Rules seek to proscribe is a second motion for reconsideration, which essentially repeats or reiterates the same arguments already passed upon by the tribunal, when it resolved the first motion for reconsideration filed by the same party. If the issues had already been passed upon and there is no substantial argument raised, then the finality and immutability of a judgment should not be obviated.

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<sup>22</sup> See *rollo*, p. 173.

<sup>23</sup> See *id.* at 173-175.

Thus, since Carreon's March 8, 2018 Motion for Reconsideration was erroneously treated by the CA as a second motion for reconsideration, the period within which to file an appeal did not lapse and consequently, the CA's ruling did not attain finality.

In this regard, while the remand of this case back to the CA appears to be in order so that it may now pass upon Carreon's arguments in his March 8, 2018 Motion for Reconsideration, the Court finds it fit to determine whether or not the Annulment Petition has *prima facie* merit.

At the onset, it bears to note that defective service of summons negates the Court's jurisdiction and is thus recognized as a ground for an action for annulment of judgment.<sup>24</sup> As a rule, any substituted service other than that authorized under Section 7,<sup>25</sup> Rule 14 of the Rules is deemed ineffective and contrary to law.<sup>26</sup> Here, Carreon argued that substituted service of summons was improperly resorted to, considering that no earnest efforts had been exerted by the sheriff or process server of the RTC showing the impossibility of personal service. As the records bear out, it appears that Carreon's argument of the defective service of summons has, at least, *prima facie* basis, considering that:

- (a) Nothing on record shows that earnest efforts had been exerted by the sheriff or process server of the RTC to personally serve the defendants with summons within a reasonable period;
- (b) The Return only states that the summons was purportedly served sometime in December 2009 and that the defendants' son, whose name was not even indicated, allegedly received it;
- (c) The Return did not specify the address of the defendants' supposed residence where the summons was served; and
- (d) Carreon explicitly attested<sup>27</sup> that he has no son who could have possibly received the summons in his stead because his only child was his daughter Malaya De Luna, who had likewise executed an affidavit to this effect.<sup>28</sup>

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<sup>24</sup> See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 734-735 (2014).

<sup>25</sup> Section 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

<sup>26</sup> See *Guigunito Credit Cooperative, Inc. v. Torres*, 533 Phil. 476, 486-487 (2006).

<sup>27</sup> *Rollo*, p. 156.

<sup>28</sup> *Id.* at 157.

To be sure, the CA cannot casually dismiss the Annulment Petition based on a blanket invocation of the presumption of regularity in the performance of official duties, considering that as case law holds, where the official act is irregular on its face, the presumption cannot arise.

Hence, pursuant to Sections 5 and 6, Rule 47 of the Rules, the CA is required to give due course to the Annulment Petition, cause the service of summons, and conduct trial to determine its merits:

Section 5. *Action by the court.* — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.

Section 6. *Procedure.* — The procedure in ordinary civil cases shall be observed. Should trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court.

In proceeding with the case, the CA ought to be guided by the provisions of Rule 47 of the Rules, including Sections 7 and 9 thereof which state:

Section 7. *Effect of judgment.* — A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

Section 9. *Relief available.* — The judgment of annulment may include the award of damages, attorney's fees and other relief.

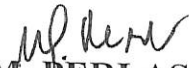
If the questioned judgment or final order or resolution had already been executed the court may issue such orders of restitution or other relief as justice and equity may warrant under the circumstances.

In fine, the Court holds that the CA erred in noting without action Carreon's March 8, 2018 Motion for Reconsideration of its February 19, 2018 Resolution, as well as in dismissing outright his Annulment Petition. The present petition seeking the grant of the Annulment Petition and other related reliefs should, however, only be partly granted, considering that the CA must still conduct a trial on its merits and issue the corresponding judgment in accordance with the parameters of Rule 47 of the Rules.

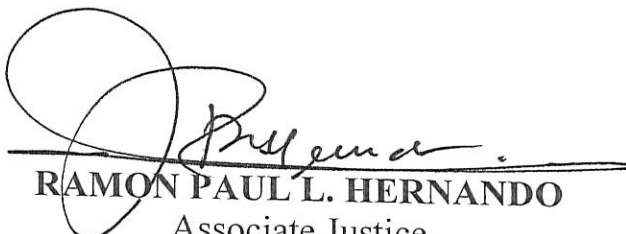
**WHEREFORE**, the petition is **PARTLY GRANTED**. The Resolutions dated February 19, 2018 and May 4, 2018 of the Court of Appeals in CA-G.R. SP No. 08173-MIN are **REVERSED** and **SET ASIDE**.

A new one is **ENTERED** directing the remand of petitioner Edgar Carreon's Petition for Annulment of Judgment to the Court of Appeals which is hereby **DIRECTED** to give due course to the same, issue the necessary summons, and conduct trial for the reception of evidence pursuant to Rule 47 of the Rules of Court.

**SO ORDERED.**

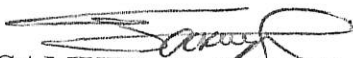
  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

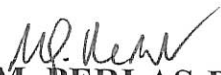
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

**ATTESTATION**

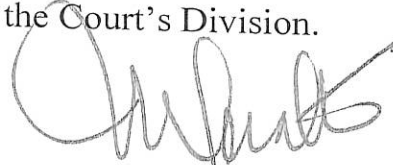
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice