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SECOND DIVISION

[G.R. No. 110610. October 8, 1998]

ARTURO R. MACAPAGAL, *petitioner, vs.* **THE COURT OF APPEALS, HON. RAMON AM. TORRES, and ESTEBAN YAU,** *respondents.*

[G.R. No. 113851. October 8, 1998]

RICARDO C. SILVERIO, SR. and ARTURO MACAPAGAL, *petitioners, vs.* **THE COURT OF APPEALS and ESTEBAN YAU,** *respondents.*

SYNOPSIS

For resolution are two motions separately filed by herein petitioners, seeking reconsideration of the Court's decision rendered against them.

G.R. No. 110610. Petitioner Macapagal reiterates his claim that he found out about the case against him only when the writ of execution issued by the trial court was sought to be enforced against his properties. Prior to that, he had absolutely no knowledge of the actions taken against him and those undertaken in his behalf. Petitioner claims that he was deprived of due process.

The validity of service upon the petitioner had previously been settled. The service of summons on the law firm of Salva, Villanueva and Associates at the Philfinance Building was valid for the purpose of acquiring jurisdiction not only over Philfinance but also on its officers and directors, among whom was petitioner. Atty. Salva's law firm had been counsel not only of Delta Motors Corporation and of Philfinance but also of their respective corporate officers and directors. Atty. Salva was not only the legal counsel of Philfinance but also its corporate secretary.

G.R. No. 113851. The crux of the petition was Atty. Salva's gross negligence. It appears that after the summons for petitioner and his co-defendants had been served on him, Atty. Salva entered a special appearance seeking to have the service of summons

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declared null and void. The motion was denied, but Atty. Salva failed to file an answer on behalf of petitioner; for which reason, petitioner was declared in default. Atty. Salva filed a petition for *certiorari* with the Court of Appeals to set aside the order of default; however, the petition was dismissed and trial continued resulting in a judgment for private respondent. From that decision, Atty. Salva filed a notice of appeal on behalf of petitioner; but he later failed to pay the docket fees and for this reason, the appeal was dismissed. Petitioner would have us declare Atty. Salva's negligence as a sufficient ground for reinstating his petition.

It cannot be said that the failure to pay docket fees was Atty. Salva's fault. On the other hand, by his non-payment of the docket fees, petitioner abandoned his appeal and accepted the decision of the trial court. Hence, the decision became final as against him.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF SUMMONS; SERVICE MADE TO COUNSEL, VALID FOR THE PURPOSE OF ACQUIRING JURISDICTION OVER PETITIONER.**— The validity of service upon the petitioner had previously been settled. The service of summons on the law firm of Salva, Villanueva and Associates at the Philfinance Building was valid for the purpose of acquiring jurisdiction not only over Philfinance but also on its officers and directors, among whom was petitioner. It is undisputed that Atty. Salva's law firm had been counsel not only of Delta Motors Corporation and of Philfinance but also of their respective corporate officers and directors. Atty. Salva was not only the legal counsel of Philfinance but also its corporate secretary. Except for petitioner, not one of the officers and directors of Philfinance who were made defendants in the suit below denied that Atty. Salva was their counsel. Moreover, Atty. Salva entered a special appearance on their behalf for the purpose of contesting the jurisdiction of the trial court over the defendants not because he was not their counsel but simply on the ground that under Rule 14, Sec. 8 service of summons should have been made at their residences or offices. There is no evidence in this case to show lack of proper service of summons, specifically that Atty. Salva was

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no longer petitioner's attorney or counsel at the time summons intended for petitioner was served on him.

2. **ID.; ID.; APPEAL; DOCKET FEES; NON-PAYMENT IS TANTAMOUNT TO ABANDONMENT OF APPEAL.**— Petitioner Silverio contends that the gross negligence of Atty. Salva in the handling of the case is undisputed. The summons for petitioner and his co-defendants had been served on Atty. Salva who sought to have the service of summons declared null and void on the ground that substituted service was resorted to prematurely and his law firm was not authorized to receive summons for petitioner. The motion was denied and Atty. Salva failed to file an answer on behalf of petitioner. Petitioner was declared in default. Atty. Salva filed a petition for *certiorari* with the Court of Appeals to set aside the order of default. The petition was dismissed and trial continued resulting in a judgment for private respondent. From that decision, Atty. Salva filed a notice of appeal on behalf of petitioner but failed to pay the docket fees and hence the appeal was dismissed. It is this negligence that petitioner would have us declare as a sufficient ground for reinstating his petition. We cannot say that the failure to pay the docket fees was Atty. Salva's fault. He was not called upon to explain why the docket fees were not paid by him. By his non-payment of the docket fees, petitioner abandoned his appeal and accepted the decision of the trial court. The decision became final as to him.

APPEARANCES OF COUNSEL

Atty. Estelito P. Mendoza for A.R. Macapacal.
Atty. Renato J. Robles for petitioner.
Quisumbing Torres & Evangelista for R.C. Silverio, Sr.
Romulo Mabanta Buenaventura Sayoc & De los Angeles for Esteban Yau.

RESOLUTION

MENDOZA, *J.*:

For resolution are two motions separately filed by petitioners in these cases, seeking reconsideration of our decision of April 18, 1997.

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Petitioner Arturo Macapagal reiterates his claim that he found out about the case against him only when the writ of execution issued by the trial court was sought to be enforced against his properties. Prior to that he had absolutely no knowledge of the following actions taken against him and those undertaken in his behalf, to wit:

1. the filing of the complaint in CEB-2058;

2. the service of summons intended for him at Atty. Emerito Salva's law firm;

3. the filing by Atty. Salva of a "Manifestation and Motion to Declare Service of Summons Improper and/or Null and Void" dated July 24, 1984;

4. the filing of a petition for *certiorari* with the Court of Appeals, later docketed as AC-G.R. No. 04835;

5. the dismissal of the petition in AC-G.R. No. 04835;

6. his being declared in default by the Regional Trial Court in CEB-2058;

7. the decision rendered in CEB-2058 which ordered him and his co-defendants to pay over ₱12M in damages, excluding interest;

8. the filing of the appeal from CEB-2058, docketed as CA-G.R. CV No. 33496 and the dismissal thereof on March 27, 1991.

Petitioner claims that he was deprived of due process because he did not know of the proceedings taken against him and that, if given a chance to present his defense, he can prove that there is no basis for holding him liable under §31 of the Corporation Code. He points out that the trial court, in fact, could not make a factual finding on his liability as a one-share, non-management director, contenting itself with finding him liable solely on the ground that, as board member, he knew or should have known that Philfinance was not licensed to engage in quasi-banking functions such as the trading of commercial papers and securities.

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For this reason, petitioner prays that the decision of the trial court be annulled. In the alternative, he prays that —

(b) The Court order that evidence be received on whether the petitioner had authorized the law office of "Salva, Villanueva and Associates" to represent him in the case entitled "*Esteban Yau vs. Philippine Underwriters Finance Corporation, et al.,*" Civil Case No. CEB-2058 of the Regional Trial Court of Cebu, before the Court of Appeals in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, through a commissioner designated by the Court or to remand the petition to the Court of Appeals for reception of evidence;

(c) After hearing, should the court find that the law office of "Salva, Villanueva and Associates" did not have authority to represent the petitioner in the case entitled "*Esteban Yau vs. Philippine Underwriters Finance Corporation, et al.,*" Civil Case No. CEB-2058 of the Regional Trial Court of Cebu, before the Court of Appeals in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, to nullify the decision of the Regional Trial Court promulgated on March 27, 1991 in Civil Case No. CEB-2058 and all orders issued in implementation thereof, including writ of execution, the Court of Appeals' decision in AC-G.R. No. 04835 and in CA-G.R. CV No. 33496, for having been rendered in violation of the right of petitioner to due process of law.

As stated in our decision, the validity of service upon the petitioner had previously been settled in the decision of the Court of Appeals in AC-G.R. No. 04835, which held that the service of summons on the law firm of Villanueva and Associates at the Philfinance Building on Benavidez St., Makati, Metro Manila was valid for the purpose of acquiring jurisdiction not only over Philfinance but also on its officers and directors, among whom was petitioner. Indeed, it is undisputed that Atty. Emerito Salva's law firm had been counsel not only of Delta Motors Corporation and of Philfinance but also of their respective corporate officers and directors. Atty. Salva was not only the legal counsel of Philfinance but also its corporate secretary. Except for petitioner, not one of the officers and directors of Philfinance who were made defendants in the suit below denied that Atty. Salva was their counsel. Moreover, Atty. Salva entered a special appearance on their behalf for the purpose of contesting

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the jurisdiction of the trial court over the defendants not because he was not their counsel but simply on the ground that under Rule 14, §8 service of summons should have been made at their residences or offices.

Petitioner points out that he is only one among several defendants allegedly represented by Atty. Salva in the case. He contends that it would have been a different matter had he been the only defendant and yet claimed not to know about the case. Then his claim would be dubious.

Petitioner likewise claims that at the time summons was served on the law firm of Salva, Villanueva and Associates on July 16, 1984, he was no longer connected with either Delta Motors Corporation or Philfinance, having resigned from Delta Motors on March 1, 1984 and from Philfinance on June 11, 1981. Petitioner thus contends that the summons should have been served at his residence instead of the Philfinance Building since he had always maintained the same residence at Valle Verde since 1977.

There is no merit to the aforementioned contentions. The only evidence offered by the petitioner to show that the service of summons at the Philfinance Building on Benavidez Street in Makati, Metro Manila was not sufficient to acquire jurisdiction over his person were his resignation letters from the two corporations. Such letters, however, are easily fabricated. Without more, it is hard put to believe the allegations of petitioner. Indeed, petitioner neither denies that he had held office at Philfinance or Delta Motors Corporation nor that at one time or other those places had been his regular place of business. He likewise does not deny that Atty. Salva had been counsel of the two corporations and their officials. As both the trial court and the appellate court held, Atty. Salva would not have sought affirmative relief from the trial court had he not been the defendants' attorney. Even after the proceedings resumed in the trial court after the Court of Appeals dismissed the petition for *certiorari* filed by Atty. Salva questioning the order of default, and judgment was rendered against the defendants, including herein petitioner, it was Atty. Salva's

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office which continued to represent defendants by filing a notice of appeal. If petitioner did not want to be represented by Atty. Salva any longer, petitioner should have so notified him.

Nor was it probable that petitioner did not know about the case against him because the fact is that petitioner was living in Manila and was moving in business circles. At the very least, he ought to have heard about Philfinance's legal problems from news reports. As a former member of its board of directors and a close associate of petitioner Ricardo C. Silverio, it is improbable that petitioner was completely oblivious of the developments in the insolvency proceedings and unaware of the cases filed against the directors of Philfinance in various courts. It is unbelievable that he never inquired about Philfinance, whether from Silverio or from his other associates and fellow members of the board (who were his co-defendants) during the eight years between the filing of the complaint and the issuance of the writ of execution. After all, this was not the only case filed by defrauded investors against Philfinance in which the latter was also represented by the Salva law firm.[1] Indeed, the Securities and Exchange Commission placed Philfinance under suspension of payments on June 18, 1981, took over the management thereof together with the Central Bank barely a week after Macapagal allegedly resigned therefrom, and subsequently approved a receivership committee two weeks later on August 7, 1981.[2] Could petitioner simply have ignored the news reports and not at all felt compelled to find out what was going on in his former company? Even this Court took judicial notice of the "Philfinance caper."[3]

Petitioner also claims that, contrary to our ruling that he should have filed a petition for annulment of judgment, a petition

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[1] *See Sesbreño v. Court of Appeals*, 222 SCRA 466 (1993); *Filinvest v. Court of Appeals*, 182 SCRA 664 (1990). *See also PCIB v. Court of Appeals*, 172 SCRA 436 (1989); *Araneta v. Court of Appeals*, 211 SCRA 830 (1992); *Sesbreño v. Garcia*, 181 SCRA 879 (1995).

[2] *PCIB v. Court of Appeals*, *supra* at 438.

[3] *Sesbreño v. Court of Appeals*, *supra*.

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for *certiorari* is the proper remedy to annul a judgment which was rendered without the proper service of summons. In support of his contention, he cites cases, among them, that of *Matanguihan v. Tengco*.[4]

In *Matanguihan,* the absence of service of summons was evident from the return of the sheriff. Moreover, the manner of service was in violation of §§ 2 & 5 of Rule 14 of the Rules of Court. In *Cavili v. Vamenta, Jr.*, defendants' counsel withdrew a motion he had filed on behalf of the three defendants when he found out that two of the defendants had not actually been served with summons. He then desisted from further acting in the case. In *Olar v. Cuna*, summons was served by registered mail. In *Filmerco v. Intermediate Appellate Court*, the sheriff insisted on leaving copies with the maid of the lessor of the house of the defendants even after he had been informed that the defendants did not live there. In *Syjuco v. Castro,* the summons was invalidated for being vague as to the place of service and for failure to show the identity of the person on whom summons was to be served.

In contrast, as already said, there is no evidence in this case to show lack of proper service of summons, specifically that Atty. Salva was no longer petitioner's attorney or counsel at the time summons intended for petitioner was served on him. Moreover, petitioner himself says:

> It is fairly obvious that the issue involved in the resolution of the petition is essentially one of fact. Was the law office "Salva, Villanueva and Associates" authorized by petitioner to act in his behalf? Was petitioner aware of the representation of the aforementioned lawyers made in his behalf before the Regional Trial Court of Cebu and the Court of Appeals? It is submitted that *these vital, yet simple, questions can only be decided on the basis of evidence — not on assumptions, principally the assumption that the representations of the law office "Salva, Villanueva and Associates" were truthful* which precisely is disputed by petitioner, and therefore, in issue.[5] (Italics added.)

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[4] 95 SCRA 478 (1980).

[5] Macapagal's Motion for Reconsideration, p. 10. *Rollo*, p. 434.

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It is clear from the aforequoted portion of petitioner's motion for reconsideration that his remedy should be an action for annulment of judgment.

The fact is that petitioner did not see fit to bring an action for annulment of judgment by alleging that, because of extrinsic fraud, he was deprived of the right to be heard. He did not even take action against Atty. Salva for what petitioner now claims was Atty. Salva's misrepresentation. It was only much later and only after the Court of Appeals pointed out that petitioner had not filed any administrative disciplinary action against Atty. Salva that he finally did so.

At all events, the burden was on petitioner to prove that he had resigned from Delta Motors Corporation and Philfinance before the summons was served on Atty. Salva's law office and that as a consequence of such resignation, the Salva law office ceased to be his counsel. He did not ask the Court of Appeals for an opportunity to present evidence, contenting himself instead with the bare allegation that, as shown in two letters allegedly made before the service of summons on the law firm of Atty. Salva, petitioner had severed his connection with Delta Motors Corporation and Philfinance. Petitioner cannot now ask that he be allowed to present evidence to prove these matters. These cases are here on review. It is not the function of this Court to review questions of fact, much less to try cases.

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On the other hand, petitioner in G.R. No. 113851, Ricardo Silverio, contends that the gross negligence of Atty. Salva in the handling of the case is undisputed. Therefore, the fact that petitioner did not question the appearance of Atty. Salva should not bar him from filing the present petition since the crux of the petition is Atty. Salva's gross negligence and not his lack of authority. Moreover, petitioner claims that the fact that he was constantly traveling between Manila, Hongkong, and California is a fair explanation for his alleged failure to inquire about the status of his case and is thus not sufficient basis for finding him equally negligent in protecting his interest.

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As already stated, after the summons for petitioner and his co-defendants had been served on him, Atty. Salva entered a special appearance on July 24, 1984 and sought to have the service of summons declared null and void on the ground that substituted service was resorted to prematurely and his law firm was not authorized to receive summons for petitioner. The motion was denied, but for some reason Atty. Salva failed to file an answer on behalf of petitioner, for which reason petitioner was declared in default. After petitioner was declared in default, Atty. Salva filed a petition for *certiorari* with the Court of Appeals to set aside the order of default. However, the petition was dismissed and trial continued resulting in a judgment for private respondent. From that decision, Atty. Salva filed a notice of appeal on behalf of petitioner. But he later failed to pay the docket fees and for this reason the appeal was dismissed (CA-G.R. No. CV 33496). It is this negligence that petitioner would have us declare as a sufficient ground for reinstating his petition.

We cannot say that the failure to pay the docket fees was Atty. Salva's fault. He was not called upon to explain why the docket fees were not paid by him.

Petitioner also contends that the payment of docket fees by his co-defendants should inure to his benefit. This contention is without merit. By his non-payment of the docket fees, he abandoned his appeal and accepted the decision of the trial court. The decision became final as to him.

ACCORDINGLY, the motions for reconsideration are *DENIED* with *FINALITY* for lack of merit.

SO ORDERED.

Regalado (Chairman), Melo, and *Puno, JJ.,* concur.

Martinez, J., No part. I concurred in CA Division appealed from.