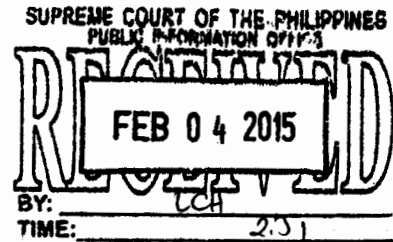




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 3, 2014** which reads as follows:*

**“G.R. No. 158813 - DAVID SHARPE, Petitioner, v. MANUEL LIMTONG, Respondent.**

For review on appeal is the decision promulgated on January 14, 2003 by the Court of Appeals (CA).<sup>1</sup>

Respondent Manuel Limtong filed in the Regional Trial Court in Cebu City (RTC) an action for abatement of nuisance and damages with application for a restraining order and preliminary prohibitory and mandatory injunction against the Wild Turkey Golf and Driving Range Corporation (Wild Turkey), represented by Marie Agnes Akkuk and David Sharpe in their personal and respective official capacities as Wild Turkey’s President and one of its officers. The Building Official of Cebu City, the Cebu City Zoning Board, the City Mayor of Cebu City and Wild Turkey were joined as co-defendants.<sup>2</sup>

After Limtong concluded his presentation of evidence as the plaintiff, the defendants presented only one witness. Their counsel (Sycip, Salazar, Hernandez and Gatmaitan Law Office) withdrew from the case on July 6, 1999. The RTC allowed the counsel to withdraw. The trial thus had

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<sup>1</sup> *Rollo*, pp. 39-43; penned by Associate Justice Rodrigo V. Cosico (retired), and concurred in by Associate Justice Rebecca de Guia-Salvador and Associate Justice Regalado E. Maambong (deceased).

<sup>2</sup> Wild Turkey Golf and Sports Club, Inc. and Wild Turkey Golf and Driving Range Corporation were later ruled by the RTC as one and the same corporation.

to be reset a number of times because of the defendants' inability to get legal services. On October 4, 1999, the Law Office of Alvarez, Cañete, Lopez, Pangandoyon, Ahat and Paredes entered an appearance as counsel for the defendants, but shortly thereafter also withdrew as such counsel.

The lack of legal representation for the defendants further stalled the proceedings, prompting the RTC to order the defendants to engage counsel, and warn them that they could be deemed to have waived their right to present their evidence if they failed to comply. Even with such order, the defendants and their counsel still failed to appear on the hearing scheduled on June 26, 2000. Thus, on motion of the plaintiff, the RTC gave a final warning to the defendants that their absence on August 14, 2000, the next scheduled hearing, would imply the waiver of their right to present evidence. Still, the defendants and their counsel did not appear. Consequently, the RTC declared the defendants to have waived their right to present evidence. In the meantime, the Cebu City Zoning Board, the Building Official of Cebu City, and the City Mayor of Cebu City dispensed with the presentation of their evidence because their obligation had already been performed. Hence, the case was deemed submitted for decision.<sup>3</sup>

In its decision dated October 23, 2000, the RTC ruled in favor of Limtong, to wit:

WHEREFORE, premises considered *Judgment* is hereby rendered *in favor of the plaintiff*, as follows:

1. Declaring the golf driving range operated by the private defendants to be a nuisance and ordering that the same abated and its operation perpetually stopped and terminated.

2. Ordering the private defendants Wild Turkey Golf and Driving Range Corporation and Wild Turkey Golf and Sports Club jointly and severally to pay plaintiff compensatory and moral damages in the sum of ₱600,000.00, exemplary damages in the sum of ₱500,000.00; attorney's fees in the sum of ₱200,000.00; and litigation expenses in the sum of ₱50,000.00.

x x x x

The counterclaim of the defendants is likewise ordered DISMISSED.

SO ORDERED.

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<sup>3</sup> Id. at 63.

On February 16, 2001,<sup>4</sup> Limtong moved for the amendment of the dispositive portion of the decision in order to explicitly include Akkuk and Sharpe as jointly and severally liable with Wild Turkey. The RTC granted Limtong's motion on April 8, 2001,<sup>5</sup> to wit:

WHEREFORE, premises considered, paragraph no. 2 of the dispositive part of the Decision is hereby amended to include private defendants **David Sharpe and Marie Agnes Akkuk** as jointly and severally liable to plaintiff for damages, attorney's fees and litigation expenses.

SO ORDERED.<sup>6</sup>

The amendment of the dispositive portion of the RTC's decision prompted Sharpe to file a petition for annulment of judgment in the CA, contending that the RTC erred in amending its October 23, 2000 decision that ordered his joint liability as an officer of Wild Turkey; that he was thereby deprived of his right to due process of law, which eventually made the decision of the RTC void; that the decision had become final and executory, and could not anymore be amended in order to make him personally liable to Limtong; that if he had only been given the opportunity during trial, he would have presented evidence showing that he could not be made personally liable to Limtong; and the awards of damages by the RTC was improper.

In its challenged decision promulgated on January 14, 2003, the CA dismissed the petition for annulment of judgment for lack of merit,<sup>7</sup> viz:

We find the petition devoid of any merit. Records revealed that herein petitioner did not appeal the October 23, 2000 decision of the lower court, arguing that it has no reason to appeal such decision since it was not found liable thereon. The period to appeal such decision having lapsed without any appeal nor reconsideration thereof, the decision thus became final and executory. As a result thereof, herein private respondent Limtong filed a motion to execute the said decision with motion to amend the dispositive part of the decision to include herein petitioner as being liable thereto. The lower court in its assailed order amended the dispositive portion of the decision and included herein petitioner as being solidarily liable to herein private respondent.<sup>8</sup>

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<sup>4</sup> Id. at 70-74.

<sup>5</sup> Wrongfully dated as April 8, 2000.

<sup>6</sup> *Rollo*, p. 76.

<sup>7</sup> *Supra* note 1.

<sup>8</sup> Id. at 41.

The CA further ruled that even if the RTC had really erred in allowing the amendment of its original decision dated October 23, 2000, the error was not the proper subject of an action for annulment of judgment; and that the remedy of annulment of judgment did not delve on the question of whether or not the lower court correctly ruled on the merits of the case because the correctness of the judgment was not an issue in the action for annulment of judgment.<sup>9</sup>

### Issues

Sharpe has thus come to this Court to assail the decision of the CA, raising two main issues, namely: (1) whether or not he was deprived of his day in court; and (2) whether or not the petition for annulment of judgment was a proper remedy for him.

### Ruling

The petition for review has no merit.

First of all, Sharpe anchors his petition for annulment of judgment on the lack of due process of law in the proceedings *a quo*. He submits that there was lack of due process of law because the RTC proceeded to its trial even without his participation; that the RTC did not properly notify him of the subsequent notices of hearing, thereby depriving him of his opportunity to present his evidence; that the outcome of the case would have been different had he been given the opportunity to present his evidence; that the lack of due process of law rendered the petition for annulment all the more the proper remedy because the April 8, 2001 decision was deemed void.

Section 2, Rule 47 of the 1997 Rules of Civil Procedure provides the grounds for the remedy of annulment of judgment, to wit:

Section 2. *Grounds for annulment.* - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.


Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

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<sup>9</sup> Id. at 41-43.



Although not among the grounds explicitly mentioned by the rule, the lack of due process of law is allowed as a ground for the annulment of judgment in *Republic v. Court of Appeals*.<sup>10</sup> In that ruling, the ownership and possession of a parcel of land that was previously declared by the Court as part of the public domain were awarded to a private individual. The Republic, which was not made a party at the start, moved to have the decision of the trial court nullified on the ground of lack of due process of law. Upon appeal, the Court granted the petition and declared the decision null and void. It is in this wise that Sharpe has relied on the lack of due process of law as basis for his petition for annulment of judgment.

Sharpe argues that like in *Republic v. Court of Appeals, et al.*, he was denied his day in court, thereby rendering the April 8, 2001 decision void.

Sharpe's argument is hugely misplaced.

In *Republic v. Court of Appeals*, the Republic was not made a party in the action, and thus had no opportunity to contest the claim. In this case, however, Sharpe was properly sued and duly notified of the proceedings, and actually even participated in the early part of the proceedings but later did not appear in court for the alleged reason that he had not been duly notified by the RTC of the upcoming hearings. He denied knowledge of his counsel's withdrawal of appearance and representation.

As the records show, however, Sharpe's last counsel's appearance was on October 4, 1999, and he was given the final warning of his waiver to present evidence on June 26, 2000. He thus had more than eight months to follow up on the status of the case. Had he been diligent in that regard, he could have easily inquired directly from the RTC on such status. Such diligence was expected of him who was made a party in the case, in addition to his being an officer of Wild Turkey. His position as the client should have also dictated on him to be keen on keeping himself abreast on the status of the litigation, including keeping in touch with the lawyer from time to time on the progress and developments of the case.<sup>11</sup> That was the standard of care "which an ordinarily prudent man bestows upon his business."<sup>12</sup> But he did not do so, and worse, could not be bothered to render any explanation for the conscious omission. Instead, he conveniently blamed the RTC for not notifying him when in fact, his residence was near the office address of Wild Turkey.

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<sup>10</sup> G.R. No. 122269, September 30, 1999, 315 SCRA 600.

<sup>11</sup> *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331.

<sup>12</sup> *Tan v. Court of Appeals*, 524 Phil. 752, 760-761 (2006).

Sharpe has no one else to blame for his present predicament but himself. As such, he cannot complain of being deprived of due process of law in the proceedings *a quo*. In truth, he slept on his right and negligently passed up his opportunity to present his evidence in court. Even the loftiest conception of equity will not come to his succor.

Secondly, the petition for annulment of judgment was not a proper remedy for Sharpe. As the CA correctly posited:

x x x. [T]he remedy of annulment of judgment is available only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.<sup>13</sup>

Sharpe should have instead sought the reconsideration of the April 8, 2001 decision, as amended, or appealed it. For him to resort outrightly to the exceptional remedy of annulment of judgment was a gross mistake on his part. According to *Antonino v. Register of Deeds of Makati City*:<sup>14</sup>

In *Ramos v. Judge Combong, Jr.*, this Court expounded that the remedy of annulment of judgment is only available under certain exceptional circumstances as this is adverse to the concept of final judgments:

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders or resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, *i.e.* extrinsic fraud and lack of jurisdiction. The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment.<sup>15</sup>

Verily, the remedy of annulment of judgment is granted only under exceptional circumstances; it is never resorted to as a substitute for a party's own neglect of promptly availing himself of the ordinary or other appropriate remedies.<sup>16</sup> Sharpe could not substitute his remedy of appeal to undo an adverse judgment with the remedy of annulment of judgment.

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<sup>13</sup> *Rollo*, p. 42, citing Section 1, Rule 47, 1997 Rules of Civil Procedure and *Linzag v. Court of Appeals*, 291 SCRA 304 (1998).

<sup>14</sup> G.R. No. 185663, June 20, 2012, 674 SCRA 227.

<sup>15</sup> *Id.* at 236.

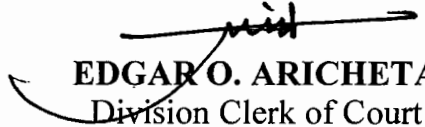
<sup>16</sup> *Manila v. Gallardo-Manzo*, G.R. No. 163602, September 7, 2011, 657 SCRA 20, 29.

With his failure to appeal, the decision of the RTC dated April 8, 2001 became final and executory, and such finality mooted his quest to revise and diminish the damages awarded in favor of the plaintiff.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on January 14, 2003; **DECLARES** the judgment rendered on April 8, 2001 by the Regional Trial Court, Branch 22, in Cebu City as final and executory; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court *klh*  
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