



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

SIXTO N. CHU,

Petitioner,

G.R. No. 184333

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

- versus -

Promulgated:

MACH ASIA TRADING
CORPORATION,

Respondent.

April 1, 2013

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DECISION

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision¹ dated July 25, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 70666, and the Resolution² dated August 28, 2008 denying petitioner's Motion for Reconsideration.

The factual and procedural antecedents are as follows:

Respondent Mach Asia Trading Corporation is a corporation engaged in importing dump trucks and heavy equipments. On December 8, 1998, petitioner Sixto N. Chu purchased on installment one (1) Hitachi Excavator worth ₱900,000.00 from the respondent. Petitioner initially paid

¹ Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; *rollo*, pp. 16-25.

² *Rollo*, pp. 27-29.

₱180,000.00 with the balance of ₱720,000.00 to be paid in 12 monthly installments through Prime Bank postdated checks. On March 29, 1999, petitioner again purchased two (2) heavy equipments from the respondent on installment basis in the sum of ₱1,000,000.00, namely: one (1) motorgrader and one (1) payloader. Petitioner made a down payment of ₱200,000.00 with the balance of ₱800,000.00 payable in 12 monthly installments through Land Bank postdated checks.³

However, upon presentment of the checks for encashment, they were dishonored by the bank either by reason of “closed account,” “drawn against insufficient funds,” or “payment stopped.” Respondent informed petitioner that the checks were dishonored and invited him to its office to replace the checks. On September 16, 1999, respondent sent petitioner a formal demand letter urging the latter to settle his accounts within five days from receipt of the letter. In response, petitioner sent respondent a letter explaining that his business was badly hit by the Asian economic crisis and that he shall endeavor to pay his obligation by giving partial payments. He said that he shall also voluntarily surrender the subject units should he fail to do so.⁴

On November 11, 1999, respondent filed a complaint before the Regional Trial Court (RTC) of Cebu City for sum of money, replevin, attorney’s fees and damages against the petitioner. Respondent prayed for the payment of the unpaid balance of ₱1,661,947.27 at 21% per annum until full payment, 25% of the total amount to be recovered as attorney’s fees, litigation expenses and costs.⁵

On November 29, 1999, the RTC issued an Order⁶ allowing the issuance of a writ of replevin on the subject heavy equipments.

On December 9, 1999, Sheriff Doroteo P. Cortes proceeded at petitioner’s given address for the purpose of serving the summons, together with the complaint, writ of replevin and bond. However, the Sheriff failed to serve the summons personally upon the petitioner, since the latter was not there. The Sheriff then resorted to substituted service by having the summons and the complaint received by a certain Rolando Bonayon, a security guard of the petitioner.⁷

³ *Rollo*, p. 17.

⁴ *Id.*

⁵ *Id.* at 17-18.

⁶ *Id.* at 18.

⁷ *Id.*

Petitioner failed to file any responsive pleading, which prompted respondent to move for the declaration of defendant in default. On January 12, 2000, the RTC issued an Order declaring defendant in default and, thereafter, allowed respondent to present its evidence *ex parte*.

On December 15, 2000, after respondent presented its evidence, the RTC rendered a Decision against the petitioner, thus:

1. By adjudicating and adjudging plaintiff's right of ownership and possession over the subject units mentioned and described in the complaint, and which were already seized and turned over to the plaintiff by virtue of the writ of replevin.

2. Ordering defendants to pay to plaintiff the sum of (sic) equivalent to 25% of the total amount recovered or value of the heavy equipments possessed as attorney's fees, and to reimburse no less than ₱15,000.00 as expenses for litigation, plus the cost of the premium of replevin bond in the amount of ₱11,333.50.⁸

Aggrieved, petitioner sought recourse before the CA, docketed as CA-G.R. CV No. 70666. Petitioner argued that the RTC erred in concluding that the substituted service of summons was valid, and that, consequently, there was error on the part of the RTC when it declared him in default, in proceeding with the trial of the case, and rendering an unfavorable judgment against him.

On July 25, 2007, the CA rendered a Decision⁹ affirming the Decision of the RTC, the decretal portion of which reads:

WHEREFORE, IN LIGHT OF THE FOREGOING, the Decision of the Regional Trial Court of Cebu, Branch 17, in Civil Case No. CEB-24551, rendered on December 15, 2000, is hereby AFFIRMED with the sole modification as to award of attorney's fees, which is hereby reduced to 10% of the value of the heavy equipments recovered.

SO ORDERED.¹⁰

Ruling in favor of the respondent, the CA opined, among others, that the requirement of due process was complied with, considering that petitioner actually received the summons through his security guard. It held that where the summons was in fact received by the defendant, his argument that the Sheriff should have first tried to serve summons on him personally

⁸ *Id.* at 19.

⁹ *Id.* at 16-25.

¹⁰ *Id.* at 24-25.

before resorting to substituted service of summons deserves scant consideration. Thus, in the interest of fairness, the CA said that the process server's neglect or inadvertence in the service of summons should not unduly prejudice the respondent's right to speedy justice.

The CA also noted that petitioner failed to set up a meritorious defense aside from his contention that summons was not properly served. It went further and decided the case on the merits and ruled that petitioner has an unpaid obligation due to respondent for the heavy machineries he purchased from the latter. It, however, reduced the amount of attorney's fees awarded to 10% of the value of the heavy equipments recovered.

Petitioner filed a Motion for Reconsideration, but it was denied in the Resolution¹¹ dated August 28, 2008.

Hence, the petition assigning the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN DEFIANCE OF LAW AND JURISPRUDENCE IN FINDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE DEFENDANT EVEN WHEN THE SUBSTITUTED SERVICE OF SUMMONS WAS IMPROPER.¹²

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN DEFIANCE OF LAW AND JURISPRUDENCE IN HOLDING THAT HEREIN PETITIONER SHOULD HAVE SET UP A MERITORIOUS DEFENSE EVEN WHEN THE SUMMONS WAS IMPROPERLY SERVED.¹³

Petitioner argues that there was no valid substituted service of summons in the present case. He maintains that jurisdiction over the person of the defendant is acquired only through a valid service of summons or the voluntary appearance of the defendant in court. Hence, when there is no valid service of summons and no voluntary appearance by the defendant, any judgment of a court, which acquired no jurisdiction over the defendant, is null and void.

On its part, respondent posits that the RTC acquired jurisdiction over the person of the petitioner and the judgment by default of the RTC was

¹¹ *Id.* at 27-29.

¹² *Id.* at 7.

¹³ *Id.* at 11.

based on facts, law, and jurisprudence and, therefore, should be enforced against the petitioner.

The petition is meritorious.

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.¹⁴

As a rule, summons should be personally served on the defendant. It is only when summons cannot be served personally within a reasonable period of time that substituted service may be resorted to.¹⁵ Section 7, Rule 14 of the Rules of Court provides:

SEC. 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.

It is to be noted that in case of substituted service, there should be a report indicating that the person who received the summons in the defendant's behalf was one with whom the defendant had a relation of confidence, ensuring that the latter would actually receive the summons.¹⁶

Also, impossibility of prompt personal service must be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character, hence, may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.¹⁷

¹⁴ *Kukan International Corporation v. Reyes*, G.R. No.182729, September 29, 2010, 631 SCRA 596, 612, citing *Orion Security Corporation v. Kalfam Enterprises, Inc.*, G.R. No. 163287, April 27, 2007, 522 SCRA 617, 622.

¹⁵ *Orion Security Corporation v. Kalfam Enterprises, Inc.*, *supra*, at, 622.

¹⁶ *Casimina v. Legaspi*, 500 Phil. 560, 569 (2005).

¹⁷ *B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc.*, G.R. No. 169919, September 11, 2009, 599 SCRA 468, 474-475.

In the case at bar, the Sheriff's Return provides:

Respectfully returned to the Honorable Regional Trial Court, Branch 17, Cebu City, the Summons and writ issued in the above-entitled case with the following information, to wit:

1. That the Summons, together with the complaint, writ of replevin and bond was received on December 7, 1999, by *Rolando Bonayon, a security guard* on defendant Sixto Chu at his given address who received and signed receipt thereof.
2. That the writ of replevin was duly executed on the same date, December 7, 1999, Tacloban City and San Jorge, Samar of the following properties subject of the writ.
 - a) Excavator Hitachi with Serial No. WHO44-116-0743
 - b) Motorgrader with Serial No. N525PS-1014
 - c) Payloader with Serial No. KLD70-54224

After the issuance of the Sheriff's inventory receipt, the units were turned over to Al Caballero and companion, representatives of plaintiff, who shipped the same to Cebu to be deposited with MACH ASIA TRADING CORPORATION, Block 26 MacArthur Highway, Reclamation Area, Cebu City, for safekeeping, subject to the provision of Sec. 6, Rule 60 of the Rules of Court.¹⁸

Clearly, it was not shown that the security guard who received the summons in behalf of the petitioner was authorized and possessed a relation of confidence that petitioner would definitely receive the summons. This is not the kind of service contemplated by law. Thus, service on the security guard could not be considered as substantial compliance with the requirements of substituted service.

Moreover, the reasoning advanced by the CA in ruling against the petitioner was based merely on conjectures and surmises. The CA even went as far as to conclude that the process server's neglect should not have unduly prejudiced the respondent, thus:

Hence, if Chu had actually received the summons through his security guard, the requirement of due process would have nevertheless been complied with. x x x. Based on the presumption that a person takes ordinary care of his concerns, the security guard would not have allowed the sheriff to take possession of the equipments without the prior permission of Chu; otherwise he would be accountable to Chu for the said units. Chu, for his part, would not have given his permission without being informed of the fact of the summons and the writ of replevin issued

¹⁸

Id. at 18. (Emphasis supplied)

by the lower court, which permission includes the authority to receive the summons and the writ of replevin.

Thus, where summons was in fact received by defendant, his argument that the sheriff should have tried first to serve summons on him personally before resorting to substituted service of summons is not meritorious.

x x x x.

Evidently, plaintiff-appellee cannot be penalized, through no fault of its own, for an irregular or defective return on service of summons. x x x.

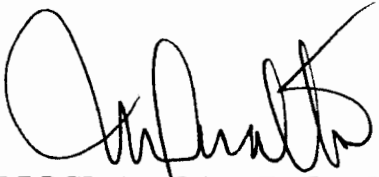
x x x x.

In the interest of fairness, the process server's neglect or inadvertence in the service of summons should not, thus, unduly prejudice plaintiff-appellee's right to speedy justice. x x x¹⁹

The service of summons is a vital and indispensable ingredient of due process. As a rule, if defendants have not been validly summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.²⁰ Since the RTC never acquired jurisdiction over the person of the petitioner, the judgment rendered by the court could not be considered binding upon him for being null and void.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision of the Court of Appeals, dated July 25, 2007, as well as its Resolution dated August 28, 2008, in CA-G.R. CV No. 70666 is hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court dated December 15, 2000 is declared NULL and VOID. The Regional Trial Court is hereby **ORDERED** to validly serve summons upon Sixto N. Chu and, thereafter, proceed with the trial of the main action with dispatch.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

¹⁹

Id. at 21-23.

²⁰

B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc., *supra* note 17, at 473.

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



ROBERTO A. ABAD

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



MARVIC MARIO VICTOR F. LEONEN

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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third 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.



MARIA LOURDES P. A. SERENO

Chief Justice