

## **FILOIL MARKETING CORPORATION, PLAINTIFF-APPELLEE, VS. MARINE DEVELOPMENT CORPORATION OF THE PHILIPPINES, DEFENDANT-APPELLANT.**

*G.R. No. L-29636. September 30, 1982*

Ponente: RELOVA, J.

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### **RELOVA, J.:**

Complaint dated April 25, 1967, for sum of money, more specifically, the sum of Forty-five Thousand Six Hundred Four Pesos and Seventy-six centavos (P45 ,604.76), which is the alleged balance owing from defendant-appellant to plaintiff- appellee. It was docketed as Civil Case No. 69548 before Branch XII of the Court of First Instance of Manila.

Summons and complaint were served on defendant-corporation, thru Aquilina Situbal, a house girl of Mr. Victor Nepomuceno, the General Manager of defendant-corporation.

Defendant-corporation, thru counsel Atty. Paulino Al. Aquino and by way of special appearance, filed on August 4, 1967 a Motion to Dismiss on ground of improper service of summons. Plaintiff filed its opposition to dismiss.

The lower court in its order dated August 5, 1967 did not dismiss the case; instead, it ordered "that a new summons be issued to be served in accordance with the provisions of Section 13, Rule 14 of the Revised Rules of Court x x x to be complied within a period of fifteen days from today, (or) otherwise this case would be dismissed."

As no valid summons was served within the period of fifteen (15) days as required in the order of August 5, 1967, defendant-corporation, through Atty. Paulino Al. Aquino, filed another Motion to Dismiss. This was opposed by plaintiff, alleging that summons was served on defendant-corporation on August 17, 1967 thru "Mr. Rodolfo Marigmen, Purchasing Chief of Stock of defendant corporation."

Arguing that the second service of summons was also improper, defendant-corporation, thru counsel Atty. Paulino Al. Aquino and likewise by way of special appearance, filed a Supplemental Motion to Dismiss dated September 4, 1967. On the other hand, plaintiff filed an ex- parte motion to declare defendant in default.

During the hearing of the two motions on September 23, 1967, defendant-corporation submitted an affidavit of Rodolfo Marigmen who stated that he was just a minor employee therein. Whereupon, the court denied plaintiff's motion to declare defendant in default. In the meantime, the lower court failed to resolve defendant's motion to dismiss dated September 4, 1967 on the ground of improper service of summons.

On December 28, 1967, defendant-corporation, thru same counsel, filed another Motion to Dismiss, similar to its unresolved motion dated September 4, 1967. Plaintiff opposed the motion and, on January 5, 1968, filed a motion to allow plaintiff to serve summons by publication.

The lower court, in an order dated January 6, 1968, directed defendant-corporation's counsel, Atty. Paulino Al.

Aquino "to inform the court within five (5) days from today the whereabouts of the officers of the defendant-corporation so that proper service of summons may be made on them."

On January 9, 1968, Atty. Aquino filed his compliance, giving the names and addresses of the Officers and Directors of defendant-corporation. This was followed by an urgent motion and manifestation, dated February 8, 1968, filed by plaintiff praying that the secretary of defendant-corporation be ordered to appear before the lower court "to receive the summons."

On February 17, 1968, the court ordered "that summons be issued and served through the lawyers of the defendant-corporation, Messrs. Syquia and Associates." Pursuant to this order, plaintiff obtained an alias summons and with the assistance of Special Sheriff Enrique Escriba, served the summons and complaint on defendant-corporation, through its counsel Atty. Paulino Al. Aquino, an Assistant Attorney in the Syquia Law Offices.

Plaintiff, on May 30, 1968, filed a Motion to declare defendant in default and to allow plaintiff to present its evidence ex- parte. The lower court, in its order dated June 1, 1968, granted the same.

Plaintiff presented its evidence ex- parte before the Branch Clerk of Court who was appointed commissioner to receive the evidence. Thereafter, the court rendered a decision "sentencing the defendant to pay the plaintiff the sum of P45 ,604.71 with interest thereon at the stipulated rate of 12% per annum from the time of the filing of this case until the full amount is paid; plus P1,000.00 as reasonable attorney's fees, it appearing that the defendant failed to satisfy plaintiff's plainly valid demands plus the costs."

The only issue in this appeal is whether or not the court acquired jurisdiction over the person of the defendant-private corporation when the summons and copy of the complaint were served on its retained counsel.

It is the position of herein defendant-appellant that the lower court did not acquire jurisdiction over it due to improper service of summons and, therefore, there was an error in declaring the latter in default and rendering judgment against it instead of dismissing the case for lack of jurisdiction.

WE are not persuaded. Section 13, Rule 14 of the New Rules of Court, provides:

"SEC. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors."

It is admitted that in this case the summons and copy of the complaint were served upon Atty. Paulino Al. Aquino, an Assistant Attorney in the Syquia Law Offices and who, in three or four instances, had already appeared in court in connection with the Motions to Dismiss on the ground of improper service of summons. Section 13, Rule 14 of the Revised Rules of Court, provides that service of summons upon a domestic corporation may be made on its agent. In the case at bar, where defendant-corporation's counsel received the summons, he was acting for and in behalf of the defendant in connection with the Motions to Dismiss on the ground of lack of jurisdiction on the person of the defendant due to improper service of summons. Perforce, he was the defendant's agent and under the aforecited rule, service upon him is sufficient.

In the case of Republic vs. Ker and Co., Ltd. 18 SCRA 207 (213), the defendant argued that the Court a quo did not acquire jurisdiction over its person inasmuch as summons was not served upon it but upon Messrs. Leido and Associates who do not come under any of the class of persons upon whom summons should be served as enumerated in Section 13, Rule 14 of the Rules of Court. This Court held that:

"Messrs. Leido and Associates acted as counsel for Ker & Co., Ltd. when this tax case was in its administrative

stage. The same counsel represented Ker & Co., Ltd., when it appealed said case to the Court of Tax Appeals and later to this Court. Subsequently, when the Deputy Commissioner of Internal Revenue, by letter dated March 15, 1962, demanded the payment of deficiency income tax in question, it was Messrs. Leido, Andrada, Perez & Associates who replied in behalf of Ker & Co., Ltd. in two letters, dated March 28, 1962 and April 10, 1962, both after the complaint in this case was filed. At least therefore on April 2, 1962 when Messrs. Leido and Associates received the summons, they were still acting for and in behalf of Ker & Co., Ltd. in connection with its tax liability involved in this case. Perforce, they were the taxpayer's agent when summons was served. Under Section 13 of Rule 7 (now Rule 14), aforequoted, service upon the agent of a corporation is sufficient." (Republic vs. Ker & Co., Ltd., 18 SCRA 213)

In line with the ruling of this Court in the aforementioned case, WE hold that there was valid service of summons in this case.

ACCORDINGLY, the lower court's order dated June 1, 1966 declaring defendant-corporation in default is upheld, and the prayer that the decision dated June 27, 1968 be set aside is hereby DENIED.

**SO ORDERED.**

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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