# COOPERATIVE RURAL BANK OF BULACAN REP. BY NESTOR S. CUSTODIO, PETITIONER, V. POL JOSEPH CONSTRUCTION CORP., REP. BY APOLINARIO C. BERNABE AND THE HON. EFREN B. TIENZO, ACTING JU...

Ponente: ELBINIAS, J.

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**ELBINIAS, J.:**

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Resolution[2] dated November 15, 2011 issued by public respondent Hon. Efren B. Tienzo ("public respondent Judge" for brevity) of the Regional Trial Court ("respondent court" for brevity) of Malolos City, Bulacan, Branch 21, in Civil Case No. 336-M-2011 for "Cancellation of Mortgage and Surrender of Title with Damages".[3] The Petition also questions the Resolution[4] dated April 16, 2012, which denied petitioner's eventual Motion for Reconsideration[5].

On June 21, 2001, private respondent Pol Joseph Construction Corp. ("private respondent PJCC" or "private respondent" for brevity) filed before respondent court, a Complaint[6] for "Cancellation of Mortgage and Surrender of Title with Damages"[7] against petitioner Cooperative Rural Bank of Bulacan, represented by Nestor S. Custodio ("petitioner CRBB" or "petitioner" for brevity).

Instead of filing an Answer to the Complaint, petitioner CRBB filed a Motion to Dismiss[8], alleging that, among others, respondent court did not acquire jurisdiction over petitioner CRBB, as defendant below, due to an improper service of summons.

On November 15, 2011, respondent court issued its first assailed Resolution[9] denying petitioner CRBB's Motion to Dismiss for lack of merit.[10]

After petitioner's Motion for Reconsideration[11] was denied by respondent court in its other assailed Resolution[12] dated April 16, 2012, petitioner CRBB filed the Petition at bench praying that:

> "WHEREFORE, it is most respectfully prayed of this Honorable Court that:
>
> 1. A Temporary Restraining Order be immediately issued directing respondent to cease and desist from enforcing the subject Resolution of November 15, 201[1] and April 16, 2012.
>
> 2. After due hearing, a writ of Preliminary Injunction be issued.
>
> 3. On the merits of the [P]etition, judgment be rendered, nullifying and setting aside the questioned Resolutions of November 15, 2011 and April 16, 2012 and making the injunction permanent.[13] (Emphasis and Italics were supplied in the original)

Petitioner raised the following grounds:

> "i. There is no justifiable reason for availing of the mode of substituted service of summons by the Honorable Court's Process Server.

ii. Angelita Alipio is not a responsible Officer of the Defendant.

iii. Presumption of regularity was overcome by evidence.

iv. Enumeration is exclusive."[14]

Contrary to petitioner CRBB's arguments in its assigned groundsi., ii., iii., and iv., respondent court had acquired jurisdiction over the person of petitioner, as the defendant below.

Petitioner CRBB had argued as follows:

"xxx The [Process] Server did not state in his return what justifies the resort to the alternative mode of substituted service of summons. All he said in his return is that he tried to serve the summons t[h]rice but was informed on all three occasions by the security guard of the Defendant that the Officers mentioned in Sec. 11 of Rule 14 of the Rules of Court are not around. Thus based on that circumstance alone he decided to avail of the mode of substituted service.

xxx

xxx Contrary to the Process Server's Return xxx there was no impossibility of prompt personal service. In the affidavit xxx of the security guard who was on duty on July 6, and 7, 2011 the Honorable Court's [Process] Server only asked for two persons the lawyer of the Defendant and its President. xxx It is also not true that he went on July 6, and 7, 2011 according to the security guard he only went to the bank either on July 6, or July 7, 2011 and July 8, 2011.

xxx The corporate secretary was present during July 6, 7, and 8, 2011 when allegedly the Process Server attempted to serve the summons in question. xxx

xxx

xxx by no stretch of the imagination can Ms. Alipio be considered a responsible officer of the Defendant. She has no degree of control as to what to do in case the officers who needed to receive the summons fails to go to the office at least within the reglementary period. xxx

xxx

xxx Section 11, Rule 14 sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation's president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel, is not valid and does not bind the juridical entity. xxx"[15] (Emphasis and Underlining were made in the original)

Defeating petitioner CRBB's allegations however, is that, as the records revealed, respondent court had acquired jurisdiction over the person of petitioner CRBB through a valid substituted service of summons.

As a rule, personal service of summons that is made to a domestic private juridical entity, such as petitioner CRBB, should be thru its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, as is pursuant to Section 11, Rule 14 of the 1997 Rules of Civil Procedure[16]. However, if the summons could not be served personally to the defendant corporation, such as to petitioner here, within a reasonable period of time, then substituted service could be resorted to, as is pursuant to Section 7, Rule 14 of the 1997 Rules of Civil Procedure, which 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."


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These requirements for a valid Substituted Service of Summons were explained by the Supreme Court in Planters Development Bank vs. Julie Chandumal[17], by the following:

> "In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In Manotoc v. Court of Appeals, the Court detailed the requisites for a valid substituted service of summons, summed up as follows: (1) impossibility of prompt personal service – the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) specific details in the return – the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service; (3) a person of suitable age and discretion – the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) a competent person in charge, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. These were reiterated and applied in Pascual v. Pascual, where the substituted service of summons made was invalidated due to the sheriff's failure to specify in the return the necessary details of the failed attempts to effect personal service which would justify resort to substituted service of summons." (Emphasis Supplied)

Here, a perusal of the Process Server's "Return of Summons"[18] portrayed the process server of respondent court as having complied with the requirements for a substituted service of summons. The Process Server had indicated on the "Return of Summons"[19]: the impossibility of prompt personal service upon petitioner CRBB; the efforts he made to find and to personally serve the summons to petitioner CRBB, and; that such efforts had failed. The Process Server also indicated that the person who received the summons in petitioner CRBB's behalf, Angie Alipio ("Alipio" for brevity), a legal assistant of petitioner, possessed sufficient discretion, such that she was knowledgeable of the importance and necessity to deliver the summons to petitioner CRBB. The "Return of Summons"[20] dated July 12, 2011 disclosed the following:

> "1. On July 6, 2011, July 7, 2011 and July 8, 2011, the undersigned Process Server proceeded to the office of defendant Cooperative Rural Bank of Bulacan at CRBB Building, Banga 1, Plaridel, Bulacan. On all three (3) occasions, he was informed by the security guard on duty that the officers specifically mentioned and authorized to receive summons under Section 11[,] Rule 14 of the Revised Rules of Court were not around.
>
> 2. Based on the foregoing facts, the undersigned in good faith had valid reason to believe that the said defendant cannot be served promptly or there is impossibility of prompt service of summons [and] [C]ourt [O]rder dated June 28, 2011 and [C]omplaint with its annexes.
>
> THUS, on July 8, 2011, he served the summons, court order dated June 28, 2011 and the complaint with its annexes to Ms. Angie Alipio, Legal Assistant of the said defendant, who is [believed] to possess sufficient discretion and knowledge of the fact of the importance of the summons and the necessity to deliver the same to the defendant at the earliest opportunity."[21] (Emphasis Supplied)

The "Return of Summons"[22] dated July 12, 2011 complied with the requirements for a valid substituted service of summons, including indicating that the person who received the summons on behalf of the corporation, such as Alipio, would ensure the corporation's actual receipt of the summons. All of these therefore enabled respondent court to have acquired jurisdiction over the person of the defendant corporation, petitioner CRBB. That this is the consequence is pursuant to the pronouncement of the Supreme Court in B.D. Long Span Builders, Inc. vs. B.S. Ampeloquio Realty Development, Inc.[23], as follows:

> "As a rule, summons should be personally served on the defendant. In case of a domestic private juridical

> entity, the service of summons must be made upon an officer who is named in the statute (i.e., the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel), otherwise, the service is insufficient. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. However, if the summons cannot be served on the defendant personally within a reasonable period of time, then substituted service may be resorted to. xxx

xxx

> Nonetheless, the 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 and 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.
>
> In Orion Security Corporation v. Kalfam Enterprises, Inc., this Court held 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." (Emphasis Supplied)

No cogent reason was therefore shown to justify any deviation from the following findings of respondent court, which were in accordance with the facts and the law:

> "Although service of summons upon a juridical entity may be made on the 'president, managing partner, general manager, corporate secretary, treasurer or in-house counsel' and the enumeration is exclusive, 'if for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section (personal service), service may be effected xxx by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.'

xxx

> This Court finds the explanation of the Process Server as justifiable reasons to warrant a substituted service of summons upon the defendant through some competent person in charge at its regular place of business and accords it a presumption of regularity.
>
> Admittedly, Ms. Angelita Alipio, more than a Clerk, is the legal assistant of the counsel for the defendant in the central office who is reasonably expected to be aware of the nature of court processes and to deliver said processes to the defendant as a competent person at the latter's regular place of business. She, being an assistant of the legal counsel, enjoys a relation of the confidence with the defendant not only in the preparation of legal documents but is 'primarily responsible in the systematic documentation of the loan files and related documents/papers of Micro-Agri farmers/borrowers, and assists Ms. Emilie Dancel (FVP-Treasury) in the preparation or reports needed by various fund providers, including the proper safekeeping of all documents and papers xxx'
>
> This Court finds that Angelita Alipio is a responsible officer of the defendant and the substituted service may be resorted as an exception to the rule in D.B. Long Span Case when summons cannot be served on the defendant personally within a reasonable time."[24]

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, public respondent Judge was therefore shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is

equivalent to an excess or lack of jurisdiction.[25]

WHEREFORE, the Petition for Certiorari is DENIED.

**SO ORDERED.**

Dicdican (Chairman) and Paredes, JJ., concur.

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[1] Rollo, pp. 6-30

[2] Rollo, pp. 111-113

[3] Rollo, p. 37

[4] Rollo, pp. 138-140

[5] Rollo, pp. 114-129

[6] Rollo, pp. 37-41

[7] Rollo, p. 37

[8] Rollo, pp. 54-59

[9] Rollo, pp. 111-113

[10] Rollo, p. 113

[11] Rollo, pp. 114-129

[12] Rollo, pp. 138-140

[13] Rollo, pp. 29-30

[14] Rollo, p. 15

[15] Rollo, pp. 16-27

[16] "SEC. 11. Service upon domestic private juridical entity. – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or inhouse counsel."

[17] G.R. No. 195619, September 5, 2012

[18] Rollo, p. 130

[19] Rollo, p. 130

[20] Rollo, p. 130

[21] Rollo, p. 130

[22] Rollo, p. 130

[23] G.R. No. 169919, September 11, 2009

[24] Rollo, pp. 111-113


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[25] First Women's Credit Corporation, et al. v. Glicerio Perez, G.R. No. 169026, June 15, 2006

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