

DELTA MOTOR SALES CORPORATION, PETITIONER, VS. HON. JUDGE IGNACIO MANGOSING, BRANCH XXIV, COURT OF FIRST INSTANCE OF MANILA, THE CITY SHERIFF OF MANILA, AND JOSE LUIS PAMINTUAN,...

G.R. No. L-41667. April 30, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Delta Motor Sales Corporation (Delta Motor for short) in this special civil action of certiorari seeks to annul certain orders of the Court of First Instance of Manila denying its motion to set aside the order of default and the judgment by default in Civil Case No. 97373 and granting the motion for execution of Jose Luis Pamintuan. The facts are as follows:

On April 16, 1975 Pamintuan sued Delta Motor for the recovery of the sum of P58,000 as damages and attorney's fees. The basis of the action was that Delta Motor, as the seller of an allegedly defective Toyota car to Pamintuan for the sum of P33,950, failed to fulfill its warranty obligation by not properly repairing the car.

The summons for Delta Motor was served on April 9 on its employee, Dionisia G. Miranda, who acknowledged its receipt by signing on the lower portion of the original summons.

Delta Motor did not answer the complaint within the reglementary period which expired on May 4. On May 27 Pamintuan filed a motion to declare Delta Motor in default. A copy of the motion was furnished Delta Motor. The Manila court granted the motion in its order of June 3.

In its decision dated June 16, 1975 the lower court found that Pamintuan bought from Delta Motor on June 20, 1974 a Toyota car; that the leaks emanating from its windshield, doors and windows were not stopped by Delta Motor, and that in consequence of its breach of warranty Delta Motor should pay Pamintuan P45,000 as damages.

That decision was served on Delta Motor on June 27. On July 21, its lawyers filed a petition to lift the order of default, to set aside the judgment and for new trial. Delta Motor alleged that Dionisia G. Miranda, who accepted the service of summons, was not the corporate secretary but the secretary of Alberto Ramos of the personnel department who was on sick leave and that service upon her was a mistake; that Pamintuan is still indebted to Delta Motor for the unpaid balance of the price in the sum of P25,000; that the entity liable for breach of warranty was Toyota Motor Sales Company, and that Delta Motor has good defenses to the action.

The motion was supported by the affidavit of Dionisia G. Miranda who alleged that, as there was no instruction from the sheriff that the summons and complaint should be delivered to the officers of Delta Motor, she just kept the same "for reference" to her immediate superior, Ramos, who, however, seldom went to office. Geldino S. Santos, the administrative officer of Delta Motor, in his affidavit, also attached to the motion, confirmed that Dionisia G. Miranda was Ramos' secretary.

The lower court denied the motion in its order of July 29 on the ground that Dionisia G. Miranda was a person of suitable age and discretion who could receive summons for another person, as contemplated in section 8, Rule 14 of the Revised Rules of Court, and that although Delta Motor's legal department was served on May 27 with a copy of the motion to declare it in default, it did not oppose the motion.

The order of denial was received by Delta Motor's counsel on August 4. It filed a motion for reconsideration at ten minutes before five o'clock in the afternoon of the thirtieth day, August 8. The lower court denied it in its order of August 25. That order of denial was received by Delta Motor's counsel on September 4.

On the following day, September 5, Delta Motor deposited P120 as appeal bond and filed a notice of appeal and record on appeal.

Pamintuan countered with a motion for execution. He contended that the judgment was already final because Delta Motor's Motion for reconsideration was filed after four-thirty in the afternoon of the thirtieth day or after the close of office hours.

The Manila court in its order of October 13 refused to give due course to Delta Motor's appeal and granted Pamintuan's motion for execution. The instant petition was filed on October 20, 1975. The sheriff levied upon a Toyota mini-bus and a car to satisfy the judgment for damages against Delta Motor.

Pamintuan in his comment on the petition revealed that on May 27, 1975, when Delta Motor was furnished with a copy of the motion to declare it in default, it sued Pamintuan in the Court of First Instance of Rizal, Pasig Branch XIII for the rescission of the sale and the recovery of the car (Civil Case No. 21303). A writ of replevin was issued in that case. A deputy sheriff of Rizal seized from Pamintuan the Toyota car on June 6, 1975.

Pamintuan filed a motion to dismiss Delta Motor's complaint in the Pasig court on the ground of the pendency in the Manila court of Civil Case No. 97373 involving the same Toyota car. Delta Motor opposed it. It was denied.

Pamintuan filed in the Court of Appeals a petition for certiorari in order to set aside the Pasig court's order denying his motion to dismiss (Pamintuan vs. Revilla, CA-G.R. No. SP-04743). The Court of Appeals in its decision dated February 16, 1976 denied the petition. It held that the Rizal court did not commit any grave abuse of discretion in not dismissing Delta Motor's action.

The issue in this case is whether Delta Motor was properly served with summons or whether the Manila court had jurisdiction to render the judgment by default against it and to execute that judgment.

Rule 14 of the Revised 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."

For the purpose of receiving service of summons and being bound by it, a corporation is identified with its agent or officer who under the rule is designated to accept service of process. "The corporate power to receive and act on such service, so far as to make it known to the corporation, is thus vested in such officer or agent". (Lafayette Insurance Co. vs. French, 15 L. Ed. 451, 453).

As noted by the Federal Supreme Court, "the cases are numerous which decide that where a particular method of serving process is pointed out by statute, that method must be followed, and the rule is especially exacting in reference to corporations" (Amy vs. City of Watertown, 32 L. Ed. 946).

The Amy case cited the ruling in Watertown vs. Robinson, 69 Wis. 230 that the particular mode of service

indicated in the statute should be followed because *ita lex scripta est*. "There is no chance to speculate whether some other mode will not answer as well. This has been too often held by this court to require further citations. When the statute designates a particular officer to whom the process may be delivered and with whom it may be left, as service upon the corporation, no other officer or person can be substituted in his place. The designation of one particular officer upon whom service may be made excludes all others." (Page 952).

A strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise the service is insufficient. So, where the statute requires that in the case of a domestic corporation summons should be served on "the president or head of the corporation, secretary, treasurer, cashier or managing agent thereof", service of summons on the secretary's wife did not confer jurisdiction over the corporation in the foreclosure proceeding against it. Hence, the decree of foreclosure and the deficiency judgment were void and should be vacated. (*Reader vs. District Court*, 94 Pacific 2nd 858).

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. In other words, "to bring home to the corporation notice of the filing of the action". (35A C.J.S. 288 citing *Jenkins vs. Lykes Bros. S.S. Co.*, 48 F. Supp. 848; *McCarthy vs. Langston*, D.C. Fla., 23 F.R.D. 249).

The liberal construction rule cannot be invoked and utilized as a substitute for the plain legal requirements as to the manner in which summons should be served on a domestic corporation (*U.S. vs. Mollenhauer Laboratories, Inc.*, 267 Fed. Rep. 2nd 260).

In the instant case the Manila court did not acquire jurisdiction over Delta Motor because it was not properly served with summons. The service of summons on Dionisia G. Miranda, who is not among the persons mentioned in section 13 of Rule 14, was insufficient. It did not bind the Delta Motor.

"Courts acquire jurisdiction over the person of a party defendant and of the subject-matter of the action by virtue of the service of summons in the manner required by law. Where there is no service of summons or a voluntary general appearance by the defendant, the court acquires no jurisdiction to pronounce a judgment in the cause." (*Syllabi, Salmon and Pacific Commercial Co. vs. Tan Cuevo*, 36 Phil. 556).

Consequently, the order of default, the judgment by default and the execution in Civil Case No. 97373 are void and should be set aside.

It appears that Civil Case No. 21303 filed by Delta Motor against Pamintuan in the Pasig court, which is in effect a counter-claim to the Manila case, deals with the same sale of the Toyota car which is involved in Civil Case No. 97373 of the Manila court.

In the interest of justice and to avoid conflicting decisions, the trial of the two cases should be consolidated. The Pasig case should be transferred to Branch XXIV of the Court of First Instance of Manila where Civil Case No. 97373 is assigned. Apparently, Delta Motor filed its repliven case in Pasig because it was stipulated in the invoice covering the sale that any action thereunder may be instituted in any competent court of Rizal.

WHEREFORE, the order of default, judgment by default and the other proceedings in Civil Case No. 97373 are set aside. The lower court is directed to admit the answer of Delta Motor.

Respondent Pamintuan may likewise file his answer in Civil Case No. 21303. The record of that case should be transferred to the Court of First Instance of Manila as indicated above.

If the parties do not come to any amicable settlement during the pre-trial of the two cases, then further proceedings may be had for the adjudication of the said cases. No costs.

SO ORDERED.

Fernando, Acting C.J., Antonio, and Concepcion Jr., JJ., concur.

Barredo, J., Acting Chairman, see concurring opinion.

CONCURRING OPINION

BARREDO, J.:

I concur in the judgment setting aside the order of default as well as all subsequent proceedings in Civil Case No. 97373, even if I am not inclined to agree that in the service of summons upon private domestic corporations, it is indispensable that the same should necessarily be made in person to the officers named in Section 13 of Rule 14, namely, the president, manager, secretary, cashier, agent or any of the directors of the corporation. I feel that even as to said officers, service may be validly made by substitution pursuant to Section 8 of the same rule, that is, "(a) by leaving copies of the summons at the defendant's (any of such officer's) dwelling house or residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's (the officer's) office or regular place of business with some competent person in charge thereof". I cannot see why if an individual defendant can be served in such manner, the same method of service cannot be made to any of the officers of the corporation indicated in the rule, the essence and effect of the act to be done being practically identical, inasmuch as in the situation contemplated and for the legal purposes intended, said officer is virtually the embodiment of the corporation. And so, in the case at bar, it cannot be said that there was proper substituted service upon Delta Motor, there being no evidence that Dionisia G. Miranda was the "competent person in charge (of the office)" of any of the officers upon whom service of summons can be made under the rule.

As to the filing of Delta Motor of Civil Case No. 21303 in the Court of First Instance of Rizal, I believe that the same should have been considered by that court as barred by the Manila Case (Civil Case No. 97373), but inasmuch as its adverse ruling on this point was sustained by the Court of Appeals in CA-G.R. No. SP-04743 and the decision therein is already final, respondent is bound by said decision as the law of the case.

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