

UTI (GLOBAL LOGISTICS), INC., PLAINTIFF-APPELLEE, VS. SEAMAN MARINE PRODUCTS, OWNED AND MANAGED BY SPS. YIN SHIN NG AND FE ACOYMO, DEFENDANTS-APPELLANTS.

Ponente: CRUZ, J.

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CRUZ, J.:

Before the Regional Trial Court of Parañaque City (Branch 258) was an action for recovery of the value of the freight forwarding and customs brokerage services rendered by UTI Global Logistics, Inc. (or “appellee”) to Seaman Marine Products, allegedly owned and managed by spouses Yin Shin Ng and Fe Acoymo (or “appellants”, when collectively).

On August 20, 2002, appellants were served with summons and copy of the complaint at their residence thru a certain Marlon Suan (or “Suan”).

As appellants did not file an answer within the reglementary period, appellee filed on October 22, 2002 a motion to declare them in default. No opposition having been interposed by appellants to said motion, which they received on the same date (October 22, 2002), the trial court issued an order dated December 11, 2002 (or “order of default”) declaring them in default and allowing appellee to present its evidence ex-parte.

On January 24, 2003, appellants filed a motion to lift the order of default, claiming that the trial court acquired no jurisdiction over them for the reasons that they were not personally served with summons by a person duly authorized to effect the service of summons and that no proper substituted service was made.

Opposing the motion to lift the order of default, appellee argued that the service of summons was, per sheriff's return, effected by Sheriff Oscar G. Javier and the same enjoys the disputable presumption that official duty had been regularly performed; that appellants did not dispute the authority of Suan to receive the summons in their behalf; that appellants' affidavit of merit contains no averment that their failure to answer was due to fraud, accident, mistake or excusable negligence; and that they have a meritorious defense.

On March 27, 2003, the court a quo issued an order denying appellants' motion to lift the order of default. In due course, appellee presented its evidence ex-parte.

On February 10, 2004, the trial court rendered a decision, the dispositive portion of which reads:

“WHEREFORE, viewed in the light of the foregoing premises, judgment is hereby rendered directing the defendants to pay plaintiff the following, to wit:

1. P490,049.01 representing actual obligation with interest at the rate of 36% per annum from date of demand on April 16, 2002 until fully paid;
2. P16,173.00 as liquidated damages for transportation expenses;
3. P25,000.00 as and by way of attorney's fees; and

4. The cost of suit.

SO ORDERED.”

Unhappy with the decision, appellants interposed this appeal, anchored on the theory that the trial court erred –

1. “IN TAKING COGNIZANCE OF THE CASE DESPITE THE FACT THAT IT HAD NO JURISDICTION BECAUSE THE SERVICE OF SUMMONS BY SUBSTITUTED SERVICE WAS NOT VALID”;
2. “IN RULING DEFAULT AGAINST THE DEFENDANT-APPELLANT (sic) AND IN ALLOWING THE PRESENTATION OF THE PLAINTIFF-APPELLEE’S EVIDENCE EX-PARTE”; and
3. “IN RENDERING A JUDGMENT BY DEFAULT.”

The appeal is devoid of merit.

The issue is whether the lower court acquired jurisdiction over the persons of appellants through substituted service of summons.

Secs. 6 and 7, Rule 14 of the 1997 Rules of Civil Procedure provide:

“Sec. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

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.”

In this case, substituted service of summons was effected. The sheriff’s return dated August 30, 2002 reads:

“THIS IS TO CERTIFY that on August 20, 2002, at about 2:15 in the afternoon, the undersigned caused the service of Summons together with a copy of the Complaint, personally, upon MARLON SUAN, a cousin of one of the defendants herein Fe Acoymo, who is of legal age, sound mind and residing at the residence of Sps. Yin Shin Ng and Fe Acoymo located at Bu-ot, Punta Engaño, Lapu-Lapu City, Philippines. The undersigned went to the residence of the defendants two times before August 20, 2002, but the latter were always out of the house, hence substituted service of summons was made.”

It appears from the sheriff’s return that the summons was served on appellants thru Suan, a cousin of Fe Acoymo (or “Acoymo”), at their residence (Bu-ot, Punta Engaño, Lapu-Lapu City). At this juncture, it is significant that appellants do not question the authority and capacity of Suan to receive the summons in their behalf; and that the aforesaid address was their residence as of the service of summons (on August 20, 2002).

Nevertheless, appellants contend that the sheriff’s return should have stated the date and time of his attempts to effect personal service of the summons, the impossibility of such service and the identity of the person who gave him the information that appellants were always out of their residence. The contention is untenable.

In *Umandap vs. Sabio, Jr.* (339 SCRA 243, citing *Laus vs. Court of Appeals*, 219 SCRA 688), the Supreme Court laid down the requirements for a proper substituted service of summons, to wit: (i) indicate the impossibility of service of summons within a reasonable time; (ii) specify the efforts exerted to locate the defendants; and (iii) state that it was served on a person of sufficient age and discretion residing therein.

“Within a reasonable time” contemplates a period of time longer than that demarcated by the word “prompt”, and presupposes that a prior attempt at personal service, within a justifiable time frame as would be necessary to bring the defendant within the jurisdiction of the court, had failed (*Laus vs. Court of Appeals*, supra).

It is clear that before resorting to substituted service, positive steps were taken by the sheriff to locate appellants and serve the summons personally on them. The sheriff's return shows that he had gone twice to appellants' residence but did not find them as they "were always out of the house", thereby indicating the impossibility of personal service. In other words, the requirement that the sheriff's return must state the material facts and circumstances attendant to substituted service of summons (*Jose vs. Boyon*, 414 SCRA 216) was complied with.

Parenthetically, the process server's return in Umandap, merely states "(t)hat despite efforts exerted to serve said process personally upon the defendant on several occasions the same proved futile, for the reason that herein defendant was not around, thus substituted service was made x x x." Nevertheless, the Supreme Court held that said return "shows compliance with the requirements set forth in *Laus vs. Court of Appeals*".

As regards the third requisite of substituted service of summons, there is no question that Suan was a person of sufficient age and discretion residing at appellants' residence.

Finally, the sheriff's return is prima facie evidence of the facts therein set out. To overcome the presumption of regularity of performance of official functions in favor of such return, the evidence against it must be clear and convincing (*Madrigal vs. Court of Appeals*, 319 SCRA 331). However, appellants failed to overcome such presumption.

WHEREFORE, the appealed decision of the Regional Trial Court of Parañaque City (Branch 258) is AFFIRMED.

SO ORDERED.

Reyes, Jr., and Lanzas, JJ., concur.

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