

**GLOBEMASTER TRAVELMART CORPORATION, PETITIONER, VS.
HON. ANTONIO M. ROSALES, IN HIS OFFICIAL CAPACITY AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 52,
MANILA, AND MARA...**

Ponente: GUARIÑA III, J.

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GUARIÑA III, J.:

A petition for certiorari was brought by Globemaster Travelmart Corporation against an order issued by the Regional Trial Court of Manila, Branch 52, on September 9, 2004 denying its motion to dismiss a complaint for sum of money filed against it by Maranaw Hotels and Resort Corporation.[1] A motion for reconsideration of the order was denied on October 7, 2004. [2]

Globemaster, the defendant, stated that it was moving to dismiss the complaint on the ground that the court had not acquired jurisdiction over it.[3] It touted the argument that it was not validly served with summons either by personal or substituted service, and only by way of a parenthetical observation did it opine that the notice of garnishment was itself improperly served. The petitioner summed up its tour de force in these words : Since the court has not validly acquired jurisdiction over the defendant GTC, all proceedings taken in the case are null and void. [4] It prayed that its special appearance be noted and the motion to dismiss granted.

The focus on improper service of summons became sharper as the discussion wore on. The respondent Maranaw devoted its opposition to convincing the court that the defendant was validly served with summons through personal service,[5] while the petitioner, in a reply,[6] denigrated the impermissible shortcuts in the implementation of substituted service. “ Because of the improper resort to substituted service of summons,” it said confidently, “ the court did not acquire jurisdiction over the defendant and thus, the case against it must perforce be dismissed. ”

The shadow line to the other issue of improper attachment was crossed in the rejoinder. [7] After insisting that the service of summons by the sheriff was personal instead of substituted, the respondent stated : Allow us to comment on the (petitioner’s) peripheral argument that before summons was served, though erroneously, the sheriff already served the notice of garnishment. The petitioner was heard to say that the garnishment was made before the court acquired jurisdiction over the petitioner and when it still had no power to act in any manner against it. The respondent retorted that the argument conveniently overlooked the fact that while the levy preceded the service of summons, the actual pickup by the sheriff of the (garnished amount) was done contemporaneously with the service of summons. [8]

In denying the motion to dismiss, the trial court made two conclusions : (1) the summons was validly served by way of personal service on the president and general manager of Globemaster, and (2) there was a contemporaneous service of the summons and execution of the writ of preliminary attachment rendering valid the implementation of the writ. [9]

The petitioner now placed the two issues on a parity in the motion for reconsideration.[10] In its disquisition, it

argued that the summons was not validly served, hence the motion to dismiss, and that the implementation of the writ of attachment was invalid because it was done before summons was served. The court considered the arguments a mere repetition of those already presented in the motion to dismiss and passed upon by it. [11]

The issues of improper service of the summons and implementation of the writ of attachment are advanced in tandem in this petition. While the dismissal of the complaint is the only relief specifically prayed for, a general prayer for just and equitable reliefs is also included. This is sufficient. As stated in *Chacon Enterprises vs Court of Appeals* 124 SCRA 784, even without the prayer for a specific remedy, the proper relief may nonetheless be granted if the allegations in the complaint and the evidence so warrant.

The records of the case show that the respondent Maranaw filed with the Regional Trial Court of Manila on November 24, 2003 a complaint for a sum of money with damages and an application for a writ of preliminary attachment against the petitioner Globemaster. [12] The court initially denied the application for the writ due to the lack of an affidavit. Upon correction of the deficiency, it ordered the attachment on December 4, 2003, and the writ was forthwith issued commanding the branch sheriff to attach the properties of the petitioner. [13]

On January 12, 2004, as reported by the sheriff,[14] Atty. Antonio Reyes, counsel for Maranaw, requested her not to serve the summons and writ until they could locate assets to be attached. The following day, January 13, the lawyer informed her of the existence of a bank account and asked that a notice of garnishment be sent to the Philippine Savings Bank, Jaboneros Branch, Binondo, Manila. On January 14, the sheriff served the notice on the bank, prompting it to hold the small amount deposited with it by the petitioner. On January 29, she submitted to the bank an Order of Delivery of Money in order to apply the amount to the partial satisfaction of the writ.

This report was made on February 6, 2004. On March 8, 2004, the sheriff filed the return [15] stating further developments on the service of the writ. She was notified by the bank that the garnished amount was already available for pickup. She informed Maranaw's lawyer who gave the green light for her to serve the summons and writ to the petitioner. On March 1, she served the summons and writ on the petitioner and went to the bank to pick up the garnished amount of P38,567.50 in the form of a cashier's check. On March 8, she turned over the check to the Office of the Clerk of Court, RTC, Manila. The service of the summons and other papers on the petitioner was described in these words :

“On March 1,2004, the undersigned caused the service of summons, Complaint, copy of the Attachment Bond, copy of the Order granting the writ of attachment, copy of the Writ of Attachment, to defendant Globemaster Travelmart Corp. at its given address at Suite 1005, Jalandoni Bldg., 1444 A. Mabini St., Ermita, Manila, thru its alleged Operations Manager, Mr. Cris Querubin. However, Mr. Querubin refused to sign and acknowledge receipt thereof but he verbally instructed Mr. Alex Mauricio, alleged Liaison Officer, to receive on his behalf, as evidenced by his signature appearing on the original face of the Summons. The undersigned learned from plaintiff, through Mr. Sapinoso,[16] that Mr. Cris Querubin is the alleged president of defendant-corporation.”

It will be observed that the party upon which summons was served, the petitioner, was a private domestic corporation.[17] This simple fact tells us that both the petitioner and respondent had dueled on the wrong grounds. They focused on Section 6 and 7 of Rule 14 for the rules to govern this service when it should be Section 11, the provisions of which read : 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 in-house counsel. From the evidence of the communications between the parties, Cris Querubin, through whom the summons was effected, was the petitioner's president and general manager.[18] Section 11 was indubitably the framework for the service of the summons.

The apposite question is how service may be done on the corporate officers, including Querubin who was the

president and general manager and hence, one of the persons authorized to receive the summons for the petitioner. In *Summit Trading and Development Corporation vs Avendaño* 135 SCRA 397, summons was received by an employee of a corporation in her capacity as the secretary of the president. The president's personal secretary is not mentioned among those authorized to receive the summons, whether in the past or present rules. But the Supreme Court said that it could not close its eyes to the realities of the situation. As the secretary, she is normally the employee through whom the president makes contact with the outside world. It may thus be assumed that under the control of her immediate superior, she had delivered the summons to him. The Court distinguishes this case from service made on mere clerks or employees who do not belong directly to the staffs of the corporate officers mentioned. *ATM Trucking Incorporated vs Buencamino* 124 SCRA 434. The doctrine in *Summit Trading* was reaffirmed in *Golden Country Farms Inc vs Sanvar Development Corporation* 214 SCRA 295 where the receipt by a clerk-typist of summons on behalf of the general manager was declared sufficient.

The *Summit Trading* and *Golden Country Farms* cases stand for the proposition that service of summons on a corporation may be made on subordinate employees who act on behalf of responsible officers expressly mentioned in the rules. As enunciated in *Delta Moor Sales Corporation vs Mangosing* 70 SCRA 598, the purpose of service on the persons named is to render it reasonable certain 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. The same objective is achieved where the summons is received by employees or officers directly under the control of the authorized officer and acting on his behalf.

In the case at bench, the summons was handed directly to the president. He cannot thus pretend ignorance of the process, nor escape responsibility by having his liaison officer acknowledge receipt. We hold that service of summons has been validly made.

The validity of the service of the writ of attachment, on the other hand, rests on the simultaneity or contemporaneity rule announced in the leading cases of *Sievert vs Court of Appeals* 168 SCRA 692 and *Davao Light and Power Company Inc vs Court of Appeals* 204 SCRA 343. In *Sievert*, the Supreme Court held that where the application for a writ of attachment is embodied in the complaint, the application must be served either simultaneously with service of summons or after jurisdiction over the defendant was acquired by such service of summons. Stated otherwise, in *Davao Light and Power Company*, levy on property pursuant to the writ may not be effected unless preceded or contemporaneously accompanied by service of summons. The rule was bolstered in *Oñate vs Abrogar*, 241 SCRA 659, [19] which affirmed *Cuartero vs Court of Appeals* 212 SCRA 260 in emphasizing implementation of the writ as the critical point when the court should have jurisdiction over the defendant. *Cuartero* holds, *ibid*, at 266 : Once the implementation commences, it is required that the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. The jurisdictional bar is so peremptory that even if the defendant is finally brought into the case, the subsequent service of summons cannot cure the fatal defect in the enforcement of the writ of attachment. *Mangila vs Court of Appeals* 387 SCRA 162.

These tested precepts have been incorporated in the present Section 5, Rule 57 of the Rules of Court. A prior attachment is expressly allowed only when among a few other things not directly relevant to the case, summons cannot be served personally or by substituted service despite diligent efforts. As we may note, summons was served at the very first attempt.

The writ of attachment in this case was implemented when, pursuant to the notice of garnishment, the bank set aside the deposit of the petitioner for delivery to the sheriff. The act was accomplished prior to the service of the summons on the defendant. It is immaterial that the sheriff picked up the cashier's check on the same day that the summons was served. The garnishment was already effected when the money was set aside, because by that time,

the petitioner could no longer make use of it. The implementation of the writ was thus void.

IN VIEW OF THE FOREGOING, the orders denying the motion to dismiss dated September 9, 2004 and October 7, 2004 are **AFFIRMED**, but the service of the notice of garnishment prior to the service of the summons is declared invalid.

SO ORDERED.

Barrios, (Chairman) and Tagle, JJ., concur.

[1] Rollo, at 22-23.

[2] Ibid., at 24.

[3] Ibid., at 43-49.

[4] Ibid., at 48.

[5] Ibid., at 50-53.

[6] Ibid., at 58-60.

[7] Ibid., at 62-64.

[8] Ibid., at 63.

[9] See note 1.

[10] Rollo, at 65-73.

[11] See note 2.

[12] Rollo, at 25-36. The case was docketed as case 03-108491 and raffled to Branch 52.

[13] Ibid., at 37-40.

[14] Ibid., at 40.

[15] Ibid., at 41-42.

[16] Chonito Sapinoso is the Credit and Collection Manager of the respondent who verified the complaint. Ibid., at 29.

[17] See complaint, *ibid.*, at 25.

[18] Ibid., at 54-55.

[19] This is a resolution by the Supreme Court en banc of the motion for reconsideration of the division ruling in *Oñate vs Abrogar* 230 SCRA 181.

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