

**JAMES A. KEISTER, PETITIONER, VS. THE HON. PEDRO C. NAVARRO,
AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND
BATJAK, INC., RESPONDENTS.**

G.R. No. L-29067. May 31, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Special civil action of prohibition to prevent respondent Judge Pedro C. Navarro of the Court of First Instance of Rizal from enforcing his Order dated March 28, 1968 in Civil Case No. 10392 requiring the petitioner to answer the complaint and from proceeding with the trial of the case, on the ground that the Court has not acquired jurisdiction over the person of the petitioner.

Respondent Batjak, is a corporation duly organized and existing under the laws of the Philippines, with offices at the NIDC Building, 259-263 Buendia Avenue, Makati, Rizal; while petitioner James A. Keister is an American citizen and a resident of 11 Narra Road, Forbes Park, Makati, Rizal. Said respondent Batjak, Inc. is the registered owner of an automobile, Dodge 440, 4-door Sedan, with Motor No. 4248128752, Serial No. VE-132825C which it bought on November 12, 1965 for P19,000.00 from the Filipinas Auto Motor Corporation, and covered by Registration Certificate No. 1160094, dated November 23, 1965 issued by the Land Transportation Commission.

On December 27, 1966, petitioner James A. Keister, as President-General Manager of respondent Batjak, Inc., sold the automobile to Juan T. Chuidian for P5,000.00. Two (2) days later, or on December 29, 1966, J. T. Chuidian also sold and reconveyed the same automobile for P5,000.00 to James A. Keister, who registered the same in his name with the Land Transportation Commission. It is claimed by respondent Batjak, Inc. that these transactions were without its authority, knowledge and consent.

On March 30, 1967, respondent Batjak, Inc. took possession of the automobile, but sometime in May, 1967 the said automobile disappeared from the NIDC Compound at 259-263 Buendia Avenue, Makati, Rizal, where it was parked. However, on October 16, 1967, the automobile was recovered by the Land Transportation Commission, which, in turn, delivered it to the Criminal Investigation Service of the Philippine Constabulary for investigation.

When the Philippine Constabulary (CIS) refused to deliver said automobile to respondent Batjak, Inc. despite its repeated demands for its return, the latter filed, on November 22, 1967, a complaint for Annulment of Sale with Attachment against the Philippine Constabulary (CIS) and petitioner James A. Keister in the Court of First Instance of Rizal, Branch II (Civil Case No. 10392). Batjak, Inc. then prayed, among others, that an Order be issued: (1) annulling the sale of the automobile by James A. Keister in the name of Batjak, Inc. to J. T. Chuidian and the resale of said automobile by J. T. Chuidian to James A. Keister; (2) ordering the attachment of the automobile by directing the Provincial Sheriff of Rizal to take possession of it from the custody of the Philippine Constabulary (CIS), Camp Crame, Quezon City, and to deliver it to respondent Batjak, Inc.; (3) ordering the Land Transportation Commission to cancel the Registration Certificate No. 326456 dated January 5, 1967 issued in favor of James A. Keister, and to issue, in lieu thereof, a new registration certificate in favor of Batjak, Inc.; and

(4) ordering James A. Keister and any and all persons acting on his behalf, jointly and severally, to pay Batjak, Inc. the sum of P5,000.00 as attorney's fees, expenses of litigation, and costs of the suit.[1] It was alleged in the complaint that defendant James A. Keister, American citizen, and deposed President and General Manager of plaintiff may "be served with summons at c/o Chuidian Law Office, Suite 801, J M T Bldg., Ayala Avenue, Makati, Rizal". It also alleged that on or about March 27, 1967, said defendant "without notice to plaintiff and/or any of its officers and employees secretly and surreptitiously left the Philippines for the United States and up to the present time, he has not returned * * *."

On December 1, 1967, the summons,[2] with the complaint attached thereto, was served purportedly upon petitioner at "c/o Chuidian Law Office, Suite 801, JMT Bldg., Ayala Avenue, Makati, Rizal".[3] The receipt of service was signed by one Vicente Basallote, Clerk of said Chuidian Law Office.[4]

On December 15, 1967, the petitioner, thru his counsel, filed a special appearance questioning the jurisdiction of the court over the person of petitioner and moved to dismiss the complaint.[5] It was asserted that the Court had acquired no jurisdiction over the person of the defendant because the summons was improperly served at the Chuidian Law Office, Suite 801, JMT Bldg., Ayala Avenue, Makati, Rizal and not at the residence or place of business of the petitioner, contrary to the requirements of Section 8 of Rule 14 of the Revised Rules of Court.[6]

On December 23, 1967, the Motion to Dismiss was heard and argued. Thereafter, or on January 12, 1968, respondent Judge issued an Order denying the afore-mentioned Motion to Dismiss for the reasons: (1) that the address of the defendant James A. Keister given in the complaint is c/o Chuidian Law Office, Suite 801, JMT Bldg., Ayala Avenue, Makati, Rizal; (2) that the service of summons and copy of the complaint was made at the said place and received by one Vicente Basallote, Office Clerk; and (3) that, as far as the service of summons and complaint was concerned, the allegation in the complaint must prevail. In the same Order, the defendants in said Civil Case No. 10392 were given ten (10) days from receipt of said Order within which to file their answer.[7]

On February 9, 1968, petitioner, thru his counsel, filed a Motion for Reconsideration dated February 7, 1968 of the Order of January 12, 1968 of the respondent Judge, reiterating the grounds relied upon in his Motion to Dismiss.[8] On February 17, 1968, respondent Batjak, Inc. filed its opposition thereto.[9] On March 28, 1968, respondent Judge issued an Order denying petitioner's Motion for Reconsideration.[10]

Hence, the present petition for prohibition with preliminary injunction praying that respondent Judge be prohibited from enforcing the Order requiring petitioner to answer the complaint and to enter trial in Civil Case No. 10392 of said Court, and from further proceeding in said action, which is clearly beyond its jurisdiction; and that, pending the resolution of this petition, a preliminary writ of injunction be issued against the respondent Judge upon the filing of a bond.

On June 22, 1968, this Court issued, as prayed for, the writ of preliminary injunction.[11]

The sole issue for determination in this case is whether or not jurisdiction was lawfully acquired by the court a quo over person of petitioner.

We find the petition meritorious.

Service of summons upon the defendant is the means by which the court may acquire jurisdiction over his person. In the absence of a valid waiver, trial and judgment without such service are null and void.[12] This process is solely for the benefit of the defendant.[13] Its purpose is not only to give the court jurisdiction of the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him.[14]

The summons must be served to the defendant in person.[15] It is only when the defendant cannot be served

personally within a reasonable time that a substituted service may be made.[16] Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service.[17] This is necessary because substituted service is in derogation of the usual method of service. It has been held that this method of service is "in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." [18] Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.[19]

Indeed, the constitutional requirement of due process requires that the service be such as may be reasonably expected to give the desired notice to the party of the claim against him.[20]

Under the Rules, substituted service may be effected (a) by leaving copies of the summons at the defendant'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 office or regular place of business with some competent person in charge thereof.[21] The terms "dwelling house" or "residence" are generally held to refer to the time of service, hence it is not sufficient "to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom." [22] They refer to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms "office" or "regular place of business" refer to the office or place of business of defendant at the time of service. Note that the rule designates the persons to whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.[23]

It is not disputed that the dwelling house or residence of the defendant, herein petitioner James A. Keister, is at 11 Narra Road, Forbes Park, Makati Rizal, and that his office or regular place of business, prior to his temporary departure to the United States on March 27, 1967, is at the Batjak Corporation office in Sarmiento Building, Ayala Avenue, Makati Rizal. It is, however, conceded that in neither of these places was service of summons effected in the manner prescribed by the procedural law.

The circumstance that "defendant James A. Keister, without notice to plaintiff and/or any of its officers and employees, secretly and surreptitiously left the Philippines for the United States and up to the present time he has not returned" does not warrant much less justify the service of summons upon petitioner at a place which is neither his residence nor regular place of business.

In *Montalban v. Maximo*, [24] this Court explained that summons in a suit in personam against a resident of the Philippines temporarily absent therefrom may be validly effected by substituted service under Section 8, Rule 14 of the Revised Rules of Court, and that Section 18 of Rule 14 is not the sole provision that governs summons upon a defendant temporarily absent from the Philippines in personal actions.

As above indicated, the service of summons, in the case at bar, was fatally defective and, therefore, insufficient to confer jurisdiction on the court a quo over the person of petitioner James A. Keister. Consequently, the Orders of January 12, 1968 and March 28, 1968 are null and void.

WHEREFORE, the petition for prohibition is hereby GRANTED, and the writ of preliminary injunction issued on June 22, 1968 is made permanent. Costs against respondent Batjak, Inc..

Fernando, (Chairman), Aquino, and Martin, JJ., concur.

Barredo, J., in the result.
Concepcion, Jr., J., on leave.

[1] Annex "A", Petition, SC Rollo, pp. 5-10.

[2] Annex "B", Ibid., SC Rollo, p. 11.

[3] Paragraph 1 of the complaint alleges, among others, that: "defendant, James A. Keister, of legal age, American citizen, and the deposed President-General Manager of Plaintiff, which for purposes of this action he may be served with summons at 'c/o Chuidian Law Office, Suite 801, JMT Bldg., Ayala Avenue, Makati, Rizal.'"

[4] Annex "B-1", Petition, SC Rollo, p. 11.

[5] Annex "C", Ibid., SC Rollo, pp. 12-15.

[6] The pertinent provisions reads:

"SEC. 8. Substituted service. - If 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 dwelling house or 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."

[7] Annex "D", Petition, SC Rollo, p. 16.

[8] Annex "E", Ibid., SC Rollo, pp. 17-22.

[9] Annex "F", Ibid., SC Rollo, pp. 23-24.

[10] Annex "G", Ibid., SC Rollo, pp. 25-26.

[11] SC Rollo, p. 30.

[12] *Salmon, et al. v. Tan Cueco*, 36 Phil. 556; *Echevarria v. Parsons Hardware Co.*, 51 Phil. 980; *Reyes v. Paz, et al.*, 60 Phil. 440; *Pantaleon v. Asuncion*, 105 Phil. 761; *Government v. Botor*, 69 Phil. 130; *Caneda v. Court of Appeals*, 116 Phil. 283; *Trimica, Inc. v. Polaris Marketing Corporation*, 60 SCRA 321, 325.

[13] *Mosaic Templars of America v. Saines*, Civ. App. 265, SW 721.

[14] 72 C.J.S. 989; *Mohr v. Manvierre*, 101 U.S. 417, 25 L. ed. 1052.

[15] Section 7, Rule 14, Revised Rules of Court.

[16] Section 8, Ibid.

[17] I Moran, *Comments on the Rules of Court*, 1970 Ed., p. 444.

[18] 72 C.J.S. 1053.

[19] Ibid., pp. 1053-1054.

[20] *Perkins v. Dizon*, 69 Phil. 186; *Dy Reyes v. Ortega*, 16 SCRA 903.

[21] Section 8, Rule 14 of the Revised Rules of Court.

[22] 72 C.J.S. 1059.

[23] Ibid., p. 1060.

[24] 22 SCRA 1070.

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