

WILLIAM F. GEMPERLE, PLAINTIFF AND APPELLANT, VS. HELEN SCHENKER AND PAUL SCHENKER, AS HER HUSBAND, DEFENDANTS AND APPELLEES.*G.R. No. L-18164. January 23, 1967*

Ponente: CONCEPCION, C.J.

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Appeal, taken by plaintiff, William F. Gemperle, from a decision of the Court of First Instance of Rizal dismissing this case for lack of jurisdiction over the person of defendant Paul Schenker and for want of cause of action against his wife and co-defendant, Helen Schenker, said Paul Schenker "being in no position to be joined with her as party defendant, because he is beyond the reach of the magistracy of the Philippine courts."

The record shows that sometime in 1952, Paul Schenker—hereinafter referred to as Schenker—acting through his wife and attorney-in-fact, Helen Schenker—hereinafter referred to as Mrs. Schenker—filed with the Court of First Instance of Rizal, a complaint—which was docketed as Civil Case No. Q-2796 thereof — against herein plaintiff William F. Gemperle, for the enforcement of Schenker's allegedly initial subscription to the shares of stock of the Philippine-Swiss Trading Co., Inc. and the exercise of his alleged pre-emptive rights to the then unissued original capital stock of said corporation and the increase thereof, as well as for an accounting and damages. Alleging that, in connection with said complaint, Mrs. Schenker had caused to be published some allegations thereof and other matters, which were impertinent, irrelevant and immaterial to said case No. Q-2796, aside from being false and derogatory to the reputation, good name and credit of Gemperle, "with the only purpose of attacking" his "honesty, integrity and reputation" and of bringing him "into public hatred, discredit, disrepute and contempt as a man and a businessman", Gemperle commenced the present action against the Schenkers for the recovery of P300,000 as damages, P30,000 as attorney's fees, and costs, in addition to praying for a judgment ordering Mrs. Schenker "to retract in writing the said defamatory expressions". In due course, thereafter, the lower court rendered the decision above referred to. A reconsideration thereof having been denied, Gemperle interposed the present appeal.

The first question for determination therein is whether or not the lower court had acquired jurisdiction over the person of Schenker. Admittedly, he, a Swiss citizen, residing in Zurich, Switzerland, has not been actually served with summons in the Philippines, although the summons addressed to him and Mrs. Schenker had been served personally upon her in the Philippines. It is urged by plaintiff that jurisdiction over the person of Schenker has been secured through voluntary appearance on his part, he not having made a special appearance to assail the jurisdiction over his person, and an answer having been filed in this case, stating that "the defendants, by counsel, answering the plaintiff's complaint, respectfully aver", which is allegedly a general appearance amounting to a submission to the jurisdiction of the court, confirmed, according to plaintiff, by a P225,000 counterclaim for damages set up in said answer; but, this counterclaim was set up by Mrs. Schenker alone, not including her husband. Moreover, said answer contained several affirmative defenses, one of which was lack of jurisdiction over the person of Schenker, thus negating the alleged waiver of this defense. Nevertheless, we hold that the

lower court had acquired jurisdiction over said defendant, through service of the summons addressed to him upon Mrs. Schenker, it appearing from said answer that she is the representative and attorney-in-fact of her husband in the aforementioned civil case No. Q-2796, which apparently was filed at her behest, in her aforementioned representative capacity. In other words, Mrs. Schenker had authority to sue, and had actually sued, on behalf of her husband, so that she was, also, empowered to represent him in suits filed against him, particularly in a case, like the one at bar, which is a consequence of the action brought by her on his behalf.

Inasmuch as the alleged absence of a cause of action against Mrs. Schenker is premised upon the alleged lack of jurisdiction over the person of Schenker, which cannot be sustained, it follows that the conclusion drawn therefrom is, likewise, untenable.

Wherefore, the decision appealed from should be, as it is hereby, reversed, and the case remanded to the lower court for further proceedings, with the costs of this instance against defendants-appellees. It is so ordered.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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