

JUDGE ALMA CRISPINA B. COLLADO-LACORTE, METROPOLITAN TRIAL COURT, BRANCH 51, CALOOCAN CITY, COMPLAINANT, VS. EDUARDO RABENA, PROCESS SERVER, MUNICIPAL TRIAL COURT IN CITIES, VIG...

A.M. No. P-09-2665. August 04, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

The instant case arose from a letter^[1] complaint sent to the Office of the Court Administrator dated 13 February 2008 by Presiding Judge Francisco A. Ante, Jr., Municipal Trial Court in Cities, First Judicial Region, Vigan City, on the improper service of summons made by Ernesto R. Rabena, Process Server of the said court, relative to Civil Case No. 07-29131, entitled Moneyline Lending Investors Inc., v. Rowell Mark D. Abero & Ernesto R. Rabena, which was raffled off to Branch 51, Metropolitan Trial Court of Caloocan City, presided by Judge Alma Crispina B. Collado-Lacorte.

As stated by the Office of the Court Administrator, the facts of the case are as follows:

According to Judge Collado-Lacorte, the Officer's Return dated 18 February 2008 revealed that summons upon defendants Rowell Mark D. Abero and Ernesto R. Rabena were served, through substituted service, upon Elvira Abero and Anita Rabena, respectively. The service was made without stating in the Return the facts and circumstances surrounding the failed personal service; the date and time of the attempts on personal service; the inquiries made to locate the defendants; the names of the occupants of the defendants' alleged residence, and all other acts done, though futile, to serve the summons on defendants. Hence, the substituted service on the defendants was improper, as it failed to comply with the requirements prescribed by the Rules of Court, and deviated from the ruling of the Supreme Court in *Ma. Imelda M. Manotoc v. Court of Appeals*. ^[2] Accordingly, the court did not acquire jurisdiction over their persons.

On 16 September 2008, an Order was issued by Judge Collado-Lacorte that since the substituted service on the defendants were improperly made, an Alias Summons be issued to them.

In his Letter dated 4 February 2009, Eduardo Rabena explained: 1) the defendant Ernesto R. Rabena was not related to him; 2) after showing to Ernesto R. Rabena the summons with the complaint attached, Ernesto R. Rabena ran away, thus, although he was duly notified, the said defendant wantonly refused to receive and sign the same; 3) the other defendant Rowell Mark A. Abero could not be located, as he failed to appear for six (6) months at his residence; and when he tendered the summons to Rowell's mother Elvira Abero, she said that her son told her, "HUWAG TATANGGAP NG ANO MANG DUMATING NA PAPELES O DOKUMENTO LALO NA KONG GALING SA KORTE," such that he no longer insisted lest he be charged with Grave Coercion; and 4) he had performed his duty with utmost good faith. Hence, he should not be faulted for the refusal of the concerned persons to receive the summons.

After evaluation of the case, the Office of the Court Administrator recommended that the case be re-docketed as a regular administrative matter and that Eduardo R. Rabena be found guilty of simple neglect of duty and be fined the amount of P5,000.00, and be sternly warned that a repetition of the same or similar act shall be dealt with more severely.

The Court agrees with the findings and recommendations of the Office of the Court Administrator.

In the 16 September 2008 Order, the Return of Service of Summons of Process Server Eduardo R. Rabena states:

The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, First Judicial Region, Branch 51, Caloocan City the herein summons on the person of MR. ERNESTO RABENA was duly notified and received by his sister Anita Rabena, as evidenced by her signature appearing on the face of the herein summons.

The undersigned respectfully returned to the Hon. Court, Metropolitan Trial Court, Branch 51, Caloocan City the herein summons on the person of ROWELL MARK D. ABERO was duly notified and received by his mother Mrs. Elvira Abero, as evidenced by her signature appearing on the face of the herein summons.

It is clear that Eduardo R. Rabena failed to fulfill his duty with utmost diligence as a process server. As emphasized in *Ma. Imelda M. Manotoc v. Hon. Court of Appeals*,^[3] which is also applicable to process servers:

In an action strictly in personam, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." Hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Indeed, "compliance with the rules regarding the service of summons is as much important as the issue of due process of jurisdiction.

Requirements for Substituted Service

Section 8 of Rule 14 of the old Revised Rules of Court which applies to this case provides:

SEC. 8. Substituted Service. If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], 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.

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. 'Reasonable time' is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any [,] to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a

plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts, which should be made in the proof of service.

x x x (emphasis supplied)

As gleaned from the cited case and from the Return of Service of Summons of Process Server Eduardo R. Rabena and his explanation, respondent is liable for simple neglect or dereliction of duty.

A process server's primary duty is to serve court notices. This requires utmost dedication on his part to ensure that all notices assigned to him are duly served on the parties.[4] The significance of the duties of a process server was enunciated in *Zenaida Musni v. Ernesto G. Morales*.^[5]

It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summons, other writs and court processes be served expeditiously.

Considering the grave responsibilities imposed on him, Eduardo R. Rabena, despite his explanation that he had performed his duty with utmost good faith, proved to be careless and imprudent in discharging his duties. Neither neglect nor delay should be allowed to stall the expeditious disposition of cases. As such, he is indeed guilty of simple neglect of duty, which is the failure of an employee to give proper attention to a required task. Simple neglect of duty signifies "disregard of a duty resulting from carelessness or indifference."

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is

punishable by suspension of one month and one day to six months for the first offense. However, under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, this Court finds the penalty of a fine in the amount of P5,000.00 just and reasonable.

WHEREFORE, Process Server Eduardo B. Rabena is hereby FOUND GUILTY of Simple Neglect of Duty and is FINED in the amount of P5,000.00. He is, likewise, STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Rollo, p. 1.

[2] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

[3] Id. at 33.

[4] Rodrigo-Ebron v. Adolfo, 522 SCRA 286.

[5] A.M. No. P-99-1340, September 23, 1999, 315 SCRA 85.

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