

**EDUARDO CHUA, PETITIONER, VS. HON. RAUL E. DE LEON, AS
PRESIDING JUDGE OF BRANCH 258, REGIONAL TRIAL COURT OF
PARAÑAQUE CITY, UNIVERSAL PACKAGING AND DESIGNS LIMITED
AND ANTHONY...**

Ponente: COSICO, J.

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COSICO, J.:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the following Orders issued by public respondent Honorable Raul E. De Leon, presiding judge of the Regional Trial Court, Branch 258 of Parañaque City in Civil Case No. 04-0121:

(1) the Order dated August 31, 2005 denying herein petitioner's motion to declare herein private respondent Universal Packaging and Designs Limited in default; and

(2) the Order dated December 12, 2005 denying petitioner's motion for reconsideration of the Order dated August 31, 2005.

The Facts

In March 2004, Guess Labels and Weaving Corporation (GLWC) filed with the Regional Trial Court of Parañaque City a complaint for sum of money and damages against herein petitioner Eduardo Chua, doing business under the name and style of Universal Packaging and Designs Philippines Enterprises (UPDP, for brevity). The complaint alleged that Chua regularly ordered and purchased from GLWC various woven and printed cloth labels, usually for export to other countries. In the years 1996 and 1997, Chua purchased from GLWC various cloth labels amounting to about One Million Four Hundred Thirteen Thousand Eight Hundred Pesos (Php1,413,800.00), which remained unpaid at the time of the institution of the suit for collection.

On May 7, 2004, petitioner Chua filed with the trial court a motion for leave of court to file and admit third-party complaint[1] against herein private respondent Universal Packaging and Design Limited (UPDL). Chua alleged in his third-party complaint[2] that UPDL is a foreign entity based in Hong Kong but doing business in the Philippines through its resident agent in the Philippines, herein private respondent Anthony G. Esteban, whose principal office and place of business is at 3540 Santa Monica Street, Dongalo, Parañaque, Metro Manila, where he may be served with summons and other processes. On November 23, 1995, Chua and UPDL, through its managing director Peter Chang, executed a partnership agreement for the business activities of UPDP. As partners in the business UPDP, they agreed that they would share and contribute in equal participations to the payment of all capital expenditures and obligations which the business may incur in the course of its operations in the Philippines. Thus, in the event that petitioner Chua is adjudged liable for the payment of the claim of GLWC, UPDL should be ordered to reimburse to the petitioner fifty percent (50%) of the judgment, pursuant to their agreement.

The third-party complaint was admitted by the RTC via an Order dated May 21, 2004. On March 10, 2005,

summons was served on private respondent Anthony Esteban.

Private respondent UPDL failed to file an answer within the time allowed under the rules. In a manifestation[3] dated March 23, 2005 filed by Esteban with the RTC, he alleged that he had long severed whatever working relationship, and ceased any business dealings he may have had with UPDP and its joint venture proponents: Chua and UPDL. Hence, the attempt to serve summons upon UPDL through him could not have any legal effect.

On May 31, 2005, petitioner filed a motion to declare third-party defendant UPDL in default for its failure to file an answer to the third-party complaint. Several other pleadings were filed by the parties relative to the motion to declare UPDL in default.

The Ruling of the RTC

On August 31, 2005, the trial court issued the assailed Order[4] denying petitioner's motion to declare UPDL in default. The court ruled that there was no valid service of summons upon private respondent UPDL because Esteban had ceased to be connected with the UPDL. Thus, the dispositive portion of the Order reads—

“WHEREFORE, premises considered, the Motion to Declare Third-party Defendant in Default is DENIED, for lack of merit.

“SO ORDERED.”

Petitioner's motion for reconsideration was denied via an Order[5] dated December 12, 2005. Hence, the instant petition for certiorari.

The Issue

The issue for this Court's consideration is: Whether or not public respondent RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motion to declare defendant in default.

This Court's Ruling

After due study, this Court finds the instant petition for certiorari bereft of merit. Public respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying herein petitioner's motion to declare third-party defendant in default, because no valid service of summons upon herein private respondent UPDL was effected. By “grave abuse of discretion” is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[6]

The importance of a valid service of summons upon a defendant cannot be underestimated. Service of summons is not only required to give the court jurisdiction over the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him. It is elementary that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised.[7] Section 12, Rule 14 of the 1997 Rules of Civil Procedure provides the manner by which service upon a foreign private juridical entity shall be made. It reads—

“SECTION 12. Service upon foreign juridical entity. – When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.”

The records of the instant case sufficiently show that the service of summons upon private respondent Esteban could not have been binding upon UPDL, as there was no clear showing that Esteban was an agent of UPDL at the time of the service of summons. Petitioner's reliance on the Supreme Court pronouncement in the case of *Hahn v. Court of Appeals*[8] in insisting that the trial court can only rely upon the allegations in the complaint not only to determine its jurisdiction over the foreign corporation but also to ascertain corporation's agent and the latter's address is evidently misplaced. In the said case, the High Court held that "for purposes of having summons served on a foreign corporation in accordance with [the Rules], it is sufficient that it be alleged in the complaint that the foreign corporation is doing business in the Philippines. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction. A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to [Rule 14]."

It is worthy to note that the ruling in the *Hahn* case pertained to the matter of the foreign corporation's standing to be sued, corollary to the issue of whether or not the foreign corporation was doing business in the Philippines. This is because in order for a court to obtain jurisdiction over a foreign corporation, such foreign corporation must have transacted business in the Philippines. Still, the acquisition by the trial court of jurisdiction over the person of the defendant is ultimately dependent on the service of summons in accordance with the requirements of law, through which the foreign corporation can be granted the opportunity to present its side and dispute the claimant's allegations. Due process will then be realized, as the doctrine provides that the determination that the foreign corporation is doing business is only tentative.

In the instant case, however, the subject of public respondent's Order is petitioner's motion to declare defendant in default. Conformably with the *Hahn* ruling, reliance on the allegations in the complaint was made by the trial court when it attempted to serve summons upon the person named by the petitioner in its third-party complaint. The trial court, however, could not have been expected to still rely on such allegations despite the eventual showing of the inaccuracy thereof. For the court to do so would clearly result to an outcome fully incongruent with the pronouncement embodied in *Hahn*. First, the trial court could not acquire jurisdiction over the person of the foreign corporation because the service of summons would not be in full accord with the requirement under the law that it be made to, among other persons, the resident agent or agent of the corporation. Second, the foreign corporation would be unduly and unjustly deprived of its right to due process enshrined under the law to protect even foreign entities. This Court reiterates that a strict compliance with the modes of service of summons must be observed. Compliance with the rules on the service of summons is both a concern of jurisdiction as it is of due process.[9]

In the more recent case of *French Oil Mill Machinery Co., Inc. v. Court of Appeals*[10], the Supreme Court in fact clarified—

"Under the Rules of Court, if the defendant is a foreign corporation doing business in the Philippines, summons may be served on (a) its resident agent designated in accordance with law; (b) if there is no resident agent, the government official designated by law to that effect; or (c) any of its officer or agent within the Philippines. Private respondent alleged in its complaint that Trans-World is petitioner's agent, so that the service was made on the latter. Such general allegation is insufficient to show the agency relationship between petitioner and Trans-World. However, although there is no requirement to first substantiate the allegation of agency yet it is necessary that there must be specific allegations in the complaint that establishes the connection between the principal foreign corporation and its alleged agent with respect to the transaction in question."

In the instant case, petitioner insists that the service of summons upon UPDL through private respondent Esteban was valid because the latter is an agent in the Philippines of the corporation. A perusal of the third-party

complaint filed against UPDL reveals that there was no compliance with the parameters set forth in the case of French Oil Mill Machinery Co., Inc. Neither was petitioner able to prove that Esteban was a resident agent of UPDL specifically authorized to accept summons and processes affecting the corporation, after such fact was disputed by Esteban. It is well-settled that the party who alleges a fact has the burden of proving it. Contrary to petitioner's allegations, there is no clear motive for Esteban to make an incorrect assertion as to his connection with UPDL. Had Esteban merely wanted to protect the interests of UPDL, then he would not have attempted to furnish the trial court and the petitioner with particulars as to the persons who can properly address the concerns of petitioner. This Court then finds it needless to discuss petitioner's contentions on the alleged failure of the private respondents to inform him of the termination of the supposed agency, considering that the connection of Esteban in the transaction in question was, in the first place, not sufficiently and convincingly established in the complaint.

This Court stresses that petitioner is actually not without any remedy to pursue its claim against UPDL. It bears emphasizing that the trial court did not at all dismiss the third-party complaint he filed against UPDL, but only denied the motion to declare the third-party defendant in default, clearly for valid reasons. The law provides for the modes through which a valid service of summons can be effected. A resort to such modes will clearly be more in accord with substantial justice, because the parties are ensured of due process before a final resolution of the case.

All told, this Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the trial court in issuing the assailed orders. Public respondent judge properly denied the motion to declare third-party defendant in default due to the absence of a valid service of summons.

WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby DISMISSED.

SO ORDERED.

Sundiam, and Librea-Leagogo, JJ., concur.

[1] Rollo, p. 241.

[2] Id. at 73.

[3] Id. at 83.

[4] Id. at 40.

[5] Id. at 63.

[6] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[7] *Samartino v. Raon*, 383 SCRA 664 (2002).

[8] 266 SCRA 537 (1997).

[9] *Sandoval II v. House of Representatives Electoral Tribunal*, 383 SCRA 770 (2002).

[10] 295 SCRA 462 (1998).

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