

WORLD PRECISION GAS CORPORATION, NELSON ANG, MARIA LUISA ANG, NENA C. ANG, GUILLERMO SY, ALLISON ANG-SY, RENATO C. ANG, MELINDA ANG AND RICKY ANG, PETITIONERS, VS. HON. EDWIN SO...

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

Because public respondent Judge Edwin Sorongon rendered a Decision on 16 March 2009[1] ordering them to pay private respondent Banco de Oro Universal Bank (BDO) actual damages in the amount of One Hundred Forty Nine Million One Hundred Eighty One Thousand Seven Hundred Pesos (P149,181,700.00) plus interest and liquidated damages, exemplary damages in the amount of One Hundred Thousand Pesos (P100,000.00), attorney's fees in the amount of One Million Pesos (P1,000,000.00) and cost of suit, petitioners filed this Petition for Certiorari and Prohibition (with prayer for Temporary Restraining Order and/or Preliminary Injunction)[2] to reverse and set aside the aforesaid decision on the ground that the public respondent judge, in rendering the same, acted with grave abuse of discretion amounting to lack or excess of jurisdiction due to the lack of proper service of summons to them.

The Facts

Petitioner World Precision Gas Corporation ("World Precision"), formerly known as Nation Petroleum Gas Inc., is engaged in the business of trading, distribution and retailing of petroleum, liquefied petroleum gas (LPG) and related products. In order to expand its business by constructing an oil depot in Sariaya, Quezon, it applied for a credit line with BDO in 2003. On 2004, BDO and World Precision executed a Facility Agreement[3] for the sum of One Hundred Fifty Million Pesos (P150,000,000.00). This was followed by the execution of several documents like the Conforme Letter[4] that was signed by Allison Sy and Renato Ang; Continuing Suretyship Agreement,[5] which was signed by World Precision's Board of Directors and Officers (Nena, Nelson, Renato, Ricky, Alison and Melinda, all surnamed Ang) including three of their spouses (Maria Luisa Ang, Mario Ang and Guillermo Sy); and several irrevocable letters of credit[6] and trust receipts.[7] Thereafter, World Precision's suppliers (NLG-Transman Brokerage and Freight Services, Inc. and Melinph Marketing) delivered the goods subject of the trust receipts to World Precision which BDO paid upon presentment of their proofs of delivery. In consideration thereof, World Precision obligated itself to hold the goods in trust for BDO, with permission to sell them and to remit the proceeds thereof and if not, to return the goods to the bank. When three of the trust receipts fell due, BDO demanded that the petitioner company hand over the proceeds of the sale or surrender the subject goods.[8] Unfortunately, World Precision failed and continuous to fail to comply with this obligation as they were having financial difficulties and even resorted for a rehabilitation proceedings before the Regional Trial Court in Lucena City, who in turn issued a Stay Order on 18 December 2006.[9]

As a consequence of petitioners' inability to pay, BDO filed several suits against them, among which is the instant complaint for damages in the Regional Trial Court of Mandaluyong City. The complaint, docketed as Civil Case No. MC-06-3164, sought to collect the total amount of One Hundred Forty Nine Million One Hundred Eighty

One Thousand Seven Hundred Pesos (P149,181,700.00) representing the proceeds of the sale of the subject goods or value of unsold goods held in trust by World Precision under the matured trust receipts.

Public respondent judge issued the writ of attachment[10] prayed for by BDO and directed the service of summons and copies of the instant complaint upon the petitioners. However, personal service of summons to them failed because the court personnel were unable to locate them as they were told by the persons found at their respective addresses that the petitioners moved without leaving any forwarding addresses.[11] Subsequently, on BDO's motion,[12] public respondent judge allowed service of summons by publication in its Order dated 11 May 2007.[13]

BDO then caused the publication of summons in Weekly Insider News, a newspaper of general circulation on 26 June 2007[14] and sent to petitioners the same by registered mail at their last known addresses.[15] The bank also submitted the affidavit of publication of Weekly Insider's publisher.[16]

After more than sixty (60) days from the date of publication and when petitioners still failed to file their answers within the prescribed period, BDO moved to declare them in default and prayed that it be allowed to present its evidence ex parte.[17] Public respondent granted the same in his Order dated 26 October 2007.[18]

BDO then proceeded with the ex parte presentation and formal offer of its evidence.[19] Thereafter, public respondent judge rendered the assailed Decision[20] on 16 March 2009.

Alleging that they only discovered the instant suit on 20 April 2009 and raising the Stay Order , petitioners now institute the present petition interposing the following grounds,[21] to wit:

I.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING THE ISSUANCE OF SUMMONS BY PUBLICATION WHEN THE WHEREABOUTS OF PETITIONERS ARE NOT UNKNOWN AND CAN BE ASCERTAINED BY DILIGENT INQUIRY.

II.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECLARING DEFENDANT'S IN DEFAULT AND ALLOWING RECEPTION OF EVIDENCE EX PARTE DESPITE LACK OF PROPER SERVICE OF SUMMONS TO PETITIONERS.

III.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING A DECISION IN CIVIL CASE NO. MC-06-3164 DESPITE LACK OF PROPER SERVICE OF SUMMONS TO PETITIONERS; and

IV.

THE PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING A DECISION IN CIVIL CASE NO. MC-06-3164 AGAINST PETITIONER WORLD PRECISION GAS CORPORATION (NATION PETROLEUM GAS, INC.) DESPITE THE STAY ORDER ISSUED BY THE REGIONAL TRIAL COURT OF LUCENA CITY, BRANCH 57.

The Issue

The errors presented could be summarized to the sole issue of whether or not petitioners could be validly served with summons by publication.

The Ruling of this Court

This petition lacks merit.

At the outset, we reiterate the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order or decision.[22] A careful perusal of the records of the case indicates that the trial court did not abuse its discretion in rendering the assailed decision.

Contrary to the claim of the petitioners, the proceedings in the trial court and the assailed decision are not null and void because the petitioners were properly served with summons.

Under the Rules of Court, the service of summons should firstly be effected on the defendant himself whenever practicable. Such personal service consists either in handing a copy of the summons to the defendant in person, or if the defendant refuses to receive and sign for it, in tendering it to him. The rule on personal service is to be rigidly enforced in order to ensure the realization of these two fundamental objectives: to vest in the court jurisdiction over the person of the defendant and to afford to the defendant the opportunity to be heard on the claim brought against him.[23]

In the instant case, Sheriffs Helder Dyangco, Ramon Paterno and Armando de Leon II attempted to serve personally the summons upon each of the petitioners at their given addresses on 17 and 18 April 2007. However, their attempts failed for the reasons that “nobody was there to accept” or “leased to a tenant” or “utilized as a commercial area”,[24] thus, leading to the conclusion that further attempts to serve them personally would be pointless. It cannot be gainsaid that said assumption was haphazardly made since the records indicated that Sheriffs Dyangco, Paterno and de Leon painstakingly exerted zealous efforts to locate the petitioners. They not only went to each of the specified residences and offices, talked to the persons who they found to be occupying the premises but also asked the assistance of the village security to help them in finding the petitioners. They even waited during the creditor's meeting held on 18 April 2007 as they were informed that Nelson Ang and Renato Ang will attend it[25] but to no avail. All of these circumstances fully warranted the above-mentioned conclusion since as the serving officers, sheriffs were not expected or required to effect personal service by all means and at all times, considering that they were expressly authorized to resort to substituted service should they be unable to effect the personal service within a reasonable time.[26]

We likewise cannot fault the sheriffs for not resorting to the substituted service since the reasons they've given for failing to serve personally the summons extends and renders also the substituted service futile.

It appearing therefore that personal service could no longer be effected, BDO's recourse to effect service to the petitioners by publication is in order. Section 14, Rule 14 of the Rules of Court provides that whenever the defendant's whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation.[27] Thus, petitioners were properly served with summons by publication.

In an attempt to sway us, petitioners claimed that the bank's ex parte motion did not include its supporting affidavit as warranted by the procedural rules.

Section 14, Rule 14 of the Rules of Court provides that any application to the court to effect service in any manner for which leave of court is necessary shall be made by motion in writing, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.

In this case, even though BDO did not attach its affidavit setting forth the grounds for its application to effect service by publication on the petitioners, the trial court still opted to grant the motion as the Sheriff's Report, which was attached to the motion, sufficiently establish BDO's ground since it narrates in detail the unsuccessful efforts of the sheriffs to serve the summons personally to the petitioners and the anonymity of their whereabouts despite diligent inquiry. Thus, BDO complied with the requirement of the rules.

Regarding the matter of the Stay Order issued by the commercial court in Lucena City, the same does not affect the validity of the proceedings and the soundness of the assailed decision because per the records of the case, BDO is enforcing the claim not against World Precision but only against the individual petitioners who bound themselves solidarily liable when they signed the suretyship agreement.[28] Thus, the attachment is limited only to the properties of the individual petitioners.[29] Moreover, the inadvertent inclusion of the petitioner company in the instant case is a reversible error on the part of the public respondent which is not proper to be discussed in the instant petition for certiorari. Certiorari is not the proper remedy to correct mistakes in the judge's findings and conclusions or to cure erroneous conclusions of law and fact. For certiorari to prosper, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent.[30] (emphasis supplied)

Considering the foregoing discussion, we rule that the trial court did not commit any grave abuse of discretion when it rendered the assailed decision. The same, therefore, binds the petitioners sans their participation in the proceedings below.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Decision dated 16 March 2009 of the Regional Trial Court is AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

[1] Rollo, pp. 38-43

[2] Id., pp. 3-36

[3] Id., p. 307

[4] Id., p. 316

[5] Id., pp. 328-330

[6] Id., p. 333

[7] Id., pp. 60-63

[8] Id., pp. 370-372, 375-377

[9] Id., p. 69

[10] Id., pp. 414-416

[11] Id., pp. 417-418

[12] Id., pp. 419-423

[13] Id., p. 426

[14] Id., pp. 427-447

[15] Id., pp. 459-471

[16] Id., pp. 453-458

[17] Id., pp. 448-451

[18] Id., pp. 472-473

[19] Id., pp. 480-501

[20] Supra on note 1

[21] Supra on note 2, p. 15

[22] Novateknika Land Corporation vs. Philippine National Bank and the Register of Deeds of Manila City, G. R. No. 194104, March 13, 2013, 693 SCRA 423, 434-435

[23] Allen Macasaet, et al., vs. Francisco Co Jr., G. R. No. 156759, June 5, 2013, 697 SCRA 187, 202-203

[24] Rollo, pp. 417-418

[25] Id.

[26] Allen Macasaet, et al., vs. Francisco Co Jr., supra on note 23

[27] Anita Mangila vs. Court of Appeals and Loreta Guina, G. R. No. 125027, August 12, 2002, 387 SCRA 162-173

[28] Supra on note 5

Section 3. LIABILITY OF THE SURETY.-- The liability of the Surety is solidary and is not contingent upon the pursuit by the Bank of whatever remedies it may have against the Debtor or the collaterals/liens it may possess. If any of the secured obligations is not paid or performed on due date (at stated maturity or by acceleration), the Surety shall, without need for any notice, demand or any other act or deed, immediately be liable therefore and the Surety shall pay and perform the same. (emphasis supplied)

[29] Supra on note 10

[30] People of the Philippines vs. Hon. Nazar Chavez, in his capacity as Presiding Judge of Branch 18 of the

Regional Trial Court of Cagayan de Oro City and SPO1 Reynaldo Lim de la Victoria, G. R. No. 140690, June 19, 2001, 358 SCRA 810, 817

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