

TALSAN ENTERPRISES, INC., FRANCISCO P. SAN DIEGO, VICTOR RAMOGA AND BONIFACIO TALPLACIDO, PETITIONERS. VS. BALIWAG TRANSIT, INC. AND ANGELES RAMOS, RESPONDENTS.

G.R. No. 126258. July 08, 1999

Ponente: BUENA, J.

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BUENA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals dated March 29, 1996 in CA-G.R. CV No. 42036 and its resolution[2] dated September 4, 1996, denying petitioners' motion for reconsideration.

The factual antecedent of this case may be stated as follows:

On March 4, 1992, at around 11:30 P.M., at the Maharlika Highway, Sta. Rosa, Nueva Ecija, a passenger bus owned by respondent Baliwag Transit, Inc. and driven by respondent Angeles Ramos, hit and bumped a Kia Ceres Van bearing plate no. TAH-743 owned by petitioner Francisco P. San Diego and driven by Alfredo Santiago. As a result of the mishap, petitioners, on June 10, 1992, instituted a civil complaint[3] for damages against herein private respondents before the Regional Trial Court of Makati City, Branch 56, which was docketed as Civil Case No. 92-1591.

On June 29, 1992, summons and copy of the complaint were served upon private respondents' cashier, Miss Baby Cansino at respondents' bus station at No. 199 Rizal Ave. Extension, Caloocan City, who received the court process but refused to sign the original summons.[4]

On September 11, 1992, the trial court, upon motion of petitioners, declared private respondents in default.[5] Pursuant to the order of default petitioners presented their evidence ex-parte.

Respondents received a copy of the default order on September 23, 1992 and on October 8, 1992, it moved for a reconsideration alleging that the trial court did not acquire jurisdiction over its person by reason of improper service of summons. Respondents argued that the person who received the summons is only a cash receiving clerk "who, unschooled with the law, and whose position is not so integrated with the management circle of defendant corporation, did not fully appreciate the legal significance and consequences of said document that she failed to turn over the same to her superior officers." [6]

Without ruling on the respondents' motion, the trial court, on October 13, 1992, rendered a decision, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering defendants jointly and severally to pay:

- Plaintiff Francisco San Diego, the sum of P158,272.00 representing the repair cost of the Kia Ceres Van and the sum of P60,833.65 representing the amount paid for the medical and hospitalization of plaintiffs Victor Romago and Bonifacio Talplacido;

- The sum of P60,000.00 representing the unearned income of plaintiffs Victor Romago and Bonifacio Talplacido;
- Plaintiff corporation, the sum of P130,000.00 representing its unearned income due to the non-use of the damaged Kia Ceres Van;
- Plaintiffs Victor Romago and Bonifacio Talplacido, the sum of P50,000.00 as moral damages and the sum of P50,000.00 as exemplary damages;
- The sum of P25,000.00 as reasonable attorney's fees; and

Costs of the suit.

SO ORDERED."[7]

A copy of the decision was received by the respondents on October 13, 1992, and without waiting for the resolution of the motion for reconsideration, respondents appealed the decision to the respondent Court of Appeals, asseverating in essence that they could not be held in default because the receipt of summons by Ms. Baby Cansino, a mere "cash receiving clerk" in one of the respondents' station does not bind the petitioner.

On March 29, 1996, the respondent court annulled and set aside the order of default and the judgment by default and remanded the case to the trial court for appropriate proceedings. In granting respondents' appeal, the respondent court ratiocinated that the trial court did not acquire jurisdiction over the person of the respondent. It opined, thus:

"The service of summons on Baby Cansino, who is not an agent of appellant corporation but a mere rank and file employee whose position is not so integrated with the management of the corporation, was insufficient. Contrary to appellees' position, substantial compliance was not observed in this case. Appellant corporation was not notified of the action filed against it; first because summons was served at a place other than respondent's principal place of business; and second, because service of summons was made upon a person not contemplated in the rule on service of summons. Baby Cansino is obviously devoid of knowledge of the importance of court summons and process as she simply left the same unattended on the window ledge where the sheriff left the same. Being a mere 'cash receiving clerk', Ms. Cansino cannot be considered as an agent or representative of the appellant corporation"[8]

The motion for reconsideration filed by petitioner was denied on September 4, 1996.

Hence, this present petition where petitioners raise the following issues:

- Whether or not there was a valid service of summons upon respondents
- Whether or not the appeal taken by the private respondents instead of a motion for new trial is the proper remedy.

The petition is partly meritorious.

First, the service of summons upon Angeles Ramos, the bus driver, was improper.

In actions in personam, such as the case at bench, summons on the defendant must be served by handing a copy thereof to the defendant in person, or, if he refuses to receive it, by tendering it to him.[9] If efforts to find defendant personally makes prompt service impossible, service may be effected 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 by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof.[10]

In the case at bench, the sheriff hastily effected the service of summons upon respondent Ramos by substituted service without first attempting to personally serve the same upon him. This is in violation of the rule which provides that service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of.[11]

Consequently, the lower court did not acquire jurisdiction over the person of respondent Ramos and for that reason it has no right or power to render judgment against him.[12] Perforce, the judgment rendered against respondent Ramos is nugatory and without effect.

With regard to the service of summons upon respondent Baliwag Transit through its cashier, Ms. Baby Cansino, we find such service of summons proper.

Under Section 13 of Rule 14 of the Revised Rules of Court, if the defendant is a corporation organized under the laws of the Philippines, such as private respondent Baliwag, service of summons may be made on the president, manager, secretary, cashier, agent, or any of its directors.

The affidavit of Ms. Cansino stating that she is not the cashier of respondent Baliwag, but merely a cash receiving clerk deserves scant consideration for being self-serving. The Sheriff's Return certifying that summons were served upon "the defendant Baliwag Transit, Inc. and Angelo Ramos, thru Ms. Baby Cansino, cashier of Baliwag Transit, who received the said court processes but refused to sign the original summons at no. 199 Rizal Ave. Ext., Caloocan City," is prima facie evidence of the fact that the person on whom the summons was served was in fact the cashier of the company.[13] The affidavit of Ms. Cansino cannot overcome the presumption that official duty had been regularly performed,[14] which presumption may be overcome only by clear and convincing evidence.[15] Respondent Baliwag failed to overcome such presumption.

But even assuming that Ms. Cansino is not the cashier, as respondent Baliwag claims, still, service upon her was proper. Ms. Cansino is considered an agent of the company authorized to receive court processes.

Generally, service on persons other than those mentioned in Section 13, Rule 14 has been held as improper.[16] However, this has been liberalized to give life to the rationale behind the rule. Thus, in *Villa Rey Transit, Inc. v. Far East Motor Corporation*,[17] we ruled:

"The rationale of all rules for service of process on corporation is that service must be made on a representative so integrated with the corporation sued as to make it a priori supposable that he will realize his responsibilities and know what he should do with any legal papers served on him."

Consequently, service of summons on ordinary clerks,[18] private secretaries of corporate executives,[19] retained counsel,[20] officials who had charge or control of the operations of the corporation, like Assistant General Manager,[21] and the corporation's Chief of Finance and Administrative Officer,[22] were considered proper. These individuals were considered "agents" within the contemplation of the rule.[23]

Ms. Baby Cansino is an officer of respondent Baliwag Transit who is conferred with vital and sensitive functions and responsibilities. Accordingly, she may be relied upon to appreciate the importance of the papers served on her. She is not one of the lesser officers of the corporation who would not have been able to appreciate the importance of the papers delivered to her. She falls squarely under the term agent who is authorized by law to receive the process of the Court for the corporation.[24]

Moreover, since, respondents do not deny that they actually received the summons and the attachments thereto, there is, therefore, substantial compliance with the rules on service of summons. The actual receipt of the summons by respondent's cash receiving clerk must be construed as receipt on behalf of the officer of the corporation.[25]

In addition, service on respondent's bus terminal at the address stated in the summons and not in its main office in Baliwag do not render the service of summons invalid. In *Artemio Baltazar vs. Court of Appeals*[26] we held:

"The regular mode, in other words, of serving summons upon a private Philippine Corporation is by personal service upon one of the officers of such corporation identified in Section 13. Ordinarily, such personal service may be expected to be made at the principal office of the corporation. Section 13, does not, however, impose such requirement, and so personal service upon the corporation may be effected through service upon, for instance, the president of the corporation at his office or residential address."(Emphasis supplied)

In fine, the service of summons upon respondent Baliwag Transit is proper. Consequently, the trial court validly acquired jurisdiction over respondent Baliwag.

The trial court's acquisition of jurisdiction over respondent Baliwag via proper service of summons notwithstanding, its accountability for the complained negligence of its driver cannot be determined as of the moment. Since the driver has yet to come under the court's adjudicatory powers for not having been properly summoned, then obviously there is no proof adduced in a full-dress trial as to his purported negligence upon which respondent Baliwag's primary but vicarious liability[27] under Article 2180[28] of the New Civil Code is perched. Therefore, as things stand, no presumption of negligence in the selection and supervision of its employees can operate against, much less be overcome by, respondent Baliwag as employer since the factual basis for such adverse presumption simply does not exist.[29]

Going now to the second issue, the appeal taken by the private respondents was proper. It is well-settled that, a defendant who has been declared in default has the following remedies, to wit: (a) he may, at any time after discovery of the default but before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense;[30] b) if judgment has already been rendered when he discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c) If he discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and d) he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him.[31]

It must be recalled that after private respondents received a copy of the resolution declaring them in default, they seasonably filed a motion for reconsideration on October 8, 1992. However, while the motion for reconsideration was pending resolution, the court rendered its decision. Given this factual milieu, private respondents can appeal the judgment pursuant to Section 2(3), Rule 41 of the Rules of Court. A default judgment is an adjudication on the merits and is thus appealable.[32]

WHEREFORE, the case is hereby remanded to the Regional Trial Court for further proceedings consistent with the above ruling.

SO ORDERED.

Bellosillo, (Chairman), Puno, Mendoza, and Quisumbing, JJ., concur.

[1] Penned by Justice Fermin A. Martin, Jr. and concurred in by Justices Fidel P. Purisima and Conchita Carpio Morales; Rollo, pp. 14-20.

[2] *Id.*, pp. 23-24.

[3] Pp. 1-4, Record.

[4] Sheriff's Return, p. 13, Record.

- [5] Order of default, p. 19, Id.
- [6] Motion for Reconsideration, p. 102, Id.
- [7] RTC Decision, pp. 96-100, Record.
- [8] CA Decision, Rollo, pp.18-19.
- [9] Section 7, Rule 14, Rules of Court.
- [10] Section 8, Id..
- [11] Litonjua vs. Court of Appeals, 80 SCRA 246 (1977) cited in 124 SCRA 441 (1983).
- [12] Dultra vs. Court of First Instance of Agusan, 70 SCRA 466 [1976].
- [13] R. Transport Corporation vs. Court of Appeals, 241 SCRA 77-78 [1995].
- [14] Section 5(m), Rule 131 of the Revised Rules of Court.
- [15] Vargas and Co. vs. Chan Hang Chiu, 29 Phil. 446 [1915].
- [16] ATM Trucking, Inc. v. Buencamino, 124 SCRA 434 [1983]; Delta Motors Sales Corporation v. Mangosing, 70 SCRA 598 [1976] cited in R. Transport Corporation vs. Court of Appeals, supra.

[17] 81 SCRA 298 [1978].

- [18] Golden Country Farms, Inc. vs. Sanvar Development Corporation, 214 SCRA 295 [1992]; G & G Trading vs. Court of Appeals, 158 SCRA 466 [1988]
- [19] Summit Trading & Development Corp. vs. Avedaña, 135 SCRA 397 [1985].
- [20] Republic vs. Ker & Company, Ltd., 18 SCRA 207 [1966].
- [21] Villa Rey Transit, Inc. vs. Far East Motor Corp, supra.
- [22] Far Corp. vs. Francisco 146 SCRA 197 [186].
- [23] Filoil Marketing Corp. vs. Marine Development Corp. of the Phil., 177 SCRA 86 [1982].
- [24] Far Corp. v. Judge Francisco, supra.
- [25] Rebolledo vs. Court of Appeals, supra; Golden Country Farms, Inc. vs. Sanvar Development Corporation, 214 SCRA 295 [1992]

[26] 168 SCRA 354 [1988]

- [27] Lanuzo vs. Ping, 100 SCRA 205 (1980).
- [28] Article 2180 - The obligation imposed by Article 2176 is demandable not only for one's own acts or omission, but also for those persons for whom one is responsible.

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Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

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The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[29] Saldares vs. Martinez, 29 SCRA 745 (1969); Poblete vs. Fabros, 93 SCRA 200 (1979); Kapalaran Bus Line vs. Coronado, 176 SCRA 792 (1989).

[30] Section 3, Rule 18 of the Revised Rules of Court.

[31] Section 2, Rule 41 of the Revised Rules of Court.

[32] Jao & Company, Inc. vs. Court of Appeals, 251 SCRA 391 [1995]; Oriental Media, Inc. vs. Court of Appeals, 250 SCRA 647 [1995].

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