

HARRY ANG PING, PETITIONER, THE HONORABLE COURT OF APPEALS, RTC-MAKATI, BRANCH 149 AND UNIBANCARD CORPORATION, RESPONDENTS.

G.R. No. 126947. July 15, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Before us is a petition for review on certiorari assailing the Decision[1] of the Eleventh Division of the Court of Appeals dated June 14, 1996 dismissing petitioner's prayer for annulment of the judgment of the Regional Trial Court of Makati Branch 149 in Civil Case No. 18843 entitled "Unibancard Corporation vs. Tionson and Ang Ping." Likewise under review is the Court of Appeals' Resolution[2] dated September 16, 1996 denying the petitioner's motion for reconsideration.

The antecedent facts are as follows:

In April 1987, Juan Tionson applied for and was issued a Unicard credit card by respondent Corporation with petitioner Harry Ang Ping as co-obligor. As part of the terms and conditions governing the issuance and use of the credit card, Tionson and Ang Ping agreed to jointly and severally pay Unibancard all purchases and charges made through the said credit card within twenty (20) days from receipt of the monthly statement without necessity of demand. Tionson and Ang Ping likewise bound themselves to pay interest and penalty fees on any unpaid balance and attorney's fees in case of suit.

Tionson defaulted on his monthly charges which amounted to P49,988.42 as of December 5, 1987 and despite repeated demands, failed or refused to settle his accounts with respondent Corporation prompting the latter to file a collection suit with the Regional Trial Court of Makati.

The summonses for both Tionson and Ang Ping were allegedly served on February 15, 1988 at 189 I. Lopez St., Mandaluyong Metro Manila and 34 Coolidge St., Greenhills West, San Juan, Metro Manila, respectively. In both cases, the person who received the summons was a certain Jonas Umali.

On May 12, 1988, a certain Atty. Benito Salazar filed an answer purportedly on behalf of defendants Tionson and Ang Ping, denying the substantial averments in the complaint and alleging inter alia that the unpaid charges were much less than P49,988.42 and that no proper demand was made on the defendants. At the pre-trial, on the other hand, a certain Atty. Lauro Sandoval represented Tionson and herein petitioner. Later, during trial, defendants' counsel did not present any evidence on their behalf; hence, the trial court deemed that the defendants had waived their right to present evidence and submitted the case for decision on the basis solely of the respondent Corporation's evidence.

The trial court rendered judgment on June 11, 1990, holding Tionson and Ang Ping jointly and severally liable for "the sum of P35,233.62 plus 3% interest and 5% penalty charge from August 3, 1987 until the entire amount is fully paid" plus 25% attorney's fees.[3]

A writ of execution was subsequently issued and the same was enforced on May 3, 1993 at Ang Ping's Greenhills address where Ruth Ang Ping, petitioner's sister, informed the sheriff that petitioner was no longer residing at the said address. The writ was later returned unsatisfied since a third party claim over the properties attached was filed and successfully proven. Thereafter, on November 5, 1993 and on motion of respondent Corporation, an alias writ of execution was issued and a notice of garnishment was served on San Lorenzo Bus Service Co. covering shares believed to be owned by Ang Ping. Another alias writ of execution was issued on August 29, 1994 by virtue of which, the sheriff levied on certain personal properties found inside Harrod's Haberdashery at SM Megamall, the Certificate of Business Name of which was issued to herein petitioner. During the enforcement of the writ on September 15, 1994, Ang Ping tried to stop the sheriff from carrying away personalty from the establishment and a scuffle between them ensued. The records show that the petitioner grabbed the sheriff by the neck while pulling him to the door, causing injury to the latter.

On October 27, 1994, Ang Ping filed with the Court of Appeals a petition^[4] to annul the judgment of the trial court which was the basis of the various writs of execution issued against him. He alleged that the judgment in question was rendered without due process of law as he was not given his day in court. Petitioner argued that since there was no valid service of summons upon him and he never appeared before the court by himself or by counsel, the trial court never acquired jurisdiction over his person, thus, the judgment cannot be enforced against him.

The Court of Appeals dismissed the petition after finding that petitioner Ang Ping was properly placed under the jurisdiction of the trial court which rendered the assailed judgment. First, the appellate court said, the petitioner was duly represented by counsel who, aside from filing a responsive pleading, had religiously appeared for him and his co-defendant before the lower court and petitioner's claim that said counsel was not duly authorized by him was never satisfactorily substantiated. Second, respondent Court noted that there was a valid service of summons on petitioner Ang Ping because the copy of the summons addressed to him was signed by a certain Jonas Umali. The Court of Appeals likewise pointed out that the delay in filing the petition to nullify the judgment of the lower court buttressed private respondent's contention that the same was just a ploy resorted to by petitioner to stymie the enforcement of the alias writ of execution issued against him.

Hence, this petition.

Petitioner insists that the trial court never acquired jurisdiction over his person since he was never validly served with summons and neither did he appear in court. In particular, he assails the substituted service resorted to by the process server on the ground that he never actually received the summons. He pointed to the irregularities in the conduct of the substituted service of summons such as: the fact that the same person, a certain Jonas Umali, received the summonses for both Tingson and petitioner Ang Ping on the same date at different addresses and the failure of the process server to file the proof of service together with the return thus dispensing with the explanation as to why substituted service was resorted to. He further claims that he never authorized the lawyers who filed an answer and appeared in court purportedly in his behalf.

In its comment, private respondent Corporation, on the other hand, prayed for the dismissal of the present petition reiterating that the trial court properly acquired jurisdiction over the person of petitioner Ang Ping.

Jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons.^[5] In this case, the records show that the summons addressed to petitioner Ang Ping was delivered by substituted service, with a certain Jonas Umali signing as the one who received the summons. As correctly pointed out by the petitioner, however, there was no explanation in the proof of service justifying the resort to substituted service. In fact, the records are bereft of any showing that a

proof of service was even filed after such substituted service.

Well settled is the rule that summons must be served upon the defendant himself. It is only when the defendant cannot be served personally within a reasonable time that substituted service may be resorted to and such impossibility of prompt service should be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.[6]

It should be emphasized that the 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.[7] Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction.

Moreover, as likewise pointed out by the petitioner, the presumption of regularity in the performance of public functions finds no application in the case at bar. Surely, there must be, at the very least, compliance with the procedure outlined in Sections 6 and 20 of Rule 14 of the rules of civil procedure then applicable (now Sections 4 and 18, Rule 14 of the new rules), to wit:

Section 6. Return - When the service has been completed, the server shall give notice thereof, by registered mail, to plaintiff or his counsel, and shall return the summons to the clerk who issued it, accompanied with the proof of service.

Section 20. Proof of Service - The proof of service of summons shall be made in writing by the server and shall set forth the manner, place, and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy.

A cursory examination of the records shows that the process server did not file any proof of service in Civil Case No. 18843. In this case, since substituted service was resorted to, there should have been a report indicating that the person who received the summons in Ang Ping's behalf was one with whom petitioner had a relation of confidence that would ensure that the latter will receive or be notified of the summons issued in his name. Certainly, it was never intended that the presumption of regularity in the performance of official duty will be applied even in cases where there is no showing of substantial compliance with the requirements of the rules of procedure. This is all the more so in the present case where the duty to be performed has a direct bearing on the acquisition of jurisdiction of the trial court over the person of the defendant.

As regards the alleged appearance of a lawyer in behalf of the petitioner during the proceedings in the trial court, the same cannot be considered as the voluntary appearance contemplated by the rules. In the first place, the records are bereft of any showing that petitioner Ang Ping personally appeared at any stage in the proceedings of the trial court. Second, no document vesting authority in the lawyer who purportedly represented him appears on record. At the pre-trial, for instance, Atty. Sandoval who claimed to be the counsel for the defendants did not present any special power of attorney executed by the petitioner herein. The rules require that the party-litigant himself must appear for pre-trial but if he chooses to be represented thereat, he should grant a special power of attorney to his counsel or representative. Thus, Section 4 of Rule 18 of the 1997 Rules of Civil Procedure requires:

Section 4. Appearance of parties - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Although the proceedings in the trial court were conducted under the old rules of civil procedure, the same procedural requirement applies to the case at bar since well settled is the rule that remedial rules have retroactive application. In any case, the aforecited new rule is merely a crystallization of a procedure long established by jurisprudence and practice.

With respect to the appellate court's holding that because of petitioner's delay in filing the petition for annulment of judgment, he is deemed to have forfeited his opportunity to present his side, it is enough to say that where the ground invoked as basis for annulment of judgment is lack of jurisdiction, the petition may be filed anytime before it is barred by estoppel or laches,[8] neither of which obtains in the present case. As held by this Court before, it is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[9]

All told, the judgment sought to be executed against Ang Ping was indeed rendered without jurisdiction as he was not properly served with summons and neither did he voluntarily submit himself to the authority of the trial court. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense.[10] 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.[11] Not having been duly accorded his day in court, petitioner cannot thus be bound by the judgment in the collection suit.

WHEREFORE, the instant petition is hereby GRANTED and the decision of the Court of Appeals is REVERSED. Accordingly, the decision of the Regional Trial Court in Civil Case No. 18843 is SET ASIDE as to herein petitioner Ang Ping. No costs.

SO ORDERED.

Vitug, Panganiban, and Purisima, JJ., concur.

Gonzaga-Reyes, J., no part; signatory to CA Decision.

[1] Rollo, pp. 39 - 57.

[2] Ibid., p. 59.

[3] Ibid., pp. 71-72.

[4] Ibid., pp. 82 -100.

[5] Avon Insurance PLC vs. CA, 278 SCRA 312 (1997).

[6] Keister vs. Navarro, 77 SCRA 209 (1977).

[7] Id.

[8] Section 3, Rule 47, 1997 Rules of Civil Procedure.

[9] Santiago vs. Court of Appeals, 278 SCRA 98 (1997).

[10] Salonga vs. Court of Appeals, 269 SCRA 534 (1997).

[11] Republic vs. Sandiganbayan, 266 SCRA 515 (1997).

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