

VIRGILIO P. CEZAR, PETITIONER, VS. HON. HELEN RICAFORT-BAUTISTA IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 260, CITY OF PARAÑAQUE AND SPECIFIED MATERIALS, CO., RESPONDENTS.

G.R. NO. 136415. October 31, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Certiorari seeks the annulment of the Decision dated 9 September 1997[1] of respondent Honorable Helen Ricafort-Bautista of the Regional Trial Court (RTC) of Parañaque City, in Civil Case No. 96-0473 entitled, "Specified Materials Corporation v. Virgilio P. Cezar doing business under the name and style 'Virosell Construction and Supply.'" The dispositive portion of the assailed decision provides:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff, ordering defendant to pay plaintiff, as follows:

- P2,005,000.00 representing the total amount that remain unpaid; plus,
- A penalty of three (3%) percent per month on the value of each delivery receipt and sales invoice computed from the time the obligation fell due until the same is fully paid;
- P401,000.00 as attorney's fees.[2]

On 11 November 1996, private respondent Specified Materials Corporation filed a Complaint[3] for collection of sum of money against petitioner arising from the latter's failure to pay the construction materials it purportedly purchased under a credit line extended by private respondent. At the time of the institution of the action, petitioner's obligation stood at P1,860,000.00, and under the terms of the credit arrangement, materials sold to petitioner was supposed to be paid within thirty days from date of delivery, subject to an interest charge of 3% per month for delayed payments.

As petitioner failed to pay for the construction materials, private respondent sent two letters[4] to petitioner and his brother, Perfecto, reminding them of their obligation. In response, petitioner sent three letters all dated 12 August 1996.[5] In the first letter, petitioner manifested his willingness to settle his account with private respondent as long as his obligation conforms with the submitted list of materials he actually used. In the second letter, petitioner requested that any intended legal action on the part of private respondent be suspended until such time that all deliveries and payments made in his account are verified.[6] Finally, in the third letter, petitioner requested that an inventory be undertaken of the construction materials delivered by private respondent as well as those actually withdrawn and used by petitioner.[7]

On 3 September 1996, private respondent's representatives met with petitioner in order to reconcile their conflicting records. During said meeting, petitioner allegedly admitted that he failed to take into account some deliveries made in 1995 amounting to around P648,750.00. Petitioner then requested that they meet again after

two days so that he could verify his documents but he failed to show up for the subsequent meetings. Thereafter, private respondent sent a final demand letter to petitioner.[8]

After the filing of the complaint, summons[9] was issued to petitioner and this was served by Sheriff Juan C. Marquez with the pertinent portion of the return stating:

SHERIFF'S RETURN

I HEREBY CERTIFY that:

I HAVE SERVED a copy/ies of the summons, complaint and annexes issued in Civil Case No. 96-0473, entitled Specified Materials Corp. versus Virgilio P. Cezar. x x x

PERSONS SERVED

DATE OF SERVICE

HOW SERVED

Virgilio P. Cezar

January 9, 1997

served thru Mr. Arsenio Robles an employee of defendant who [is] authorized to transact business, as per his signature appearing below summons.

As petitioner failed to file his answer to the complaint, private respondent moved that he be declared in default.[10] This motion was favorably acted upon by public respondent through the Order dated 14 March 1997,[11] and private respondent was able to present its evidence.

On 15 May 1997, private respondent filed a Motion to Admit Amended Complaint alleging that it erroneously computed petitioner's obligation to be P1,860,000.00, when it should have amounted to P2,005,000.00. A copy of the motion and the Amended Complaint were personally received by petitioner as evidenced by his signatures thereon.[12] The Amended Complaint was ordered admitted on 16 May 1997.[13] On 9 September 1997, public respondent issued its now assailed decision.

On 3 November 1997, petitioner, by way of special appearance, filed a Motion to Set Aside Decision arguing that the trial court did not acquire jurisdiction over his person.[14] This motion was denied through public respondent's order dated 7 November 1997.[15]

Following the denial of its Motion to Set Aside Decision, petitioner filed before the Court of Appeals a Petition for Annulment of Judgment, Preliminary Injunction with Prayer for Temporary Restraining Order.[16] This petition was dismissed for "failure to attach an affidavit of merit alleging the facts supporting the good and substantial defense, as well as the affidavits of witnesses or document supporting the defense."[17]

Petitioner then filed a motion for reconsideration but this was denied by the Court of Appeals in its Resolution dated 20 March 1998.[18] According to the Court of Appeals '

Under Section 1, Rule 47 of the 1997 Rules of Civil Procedure, the annulment of a judgment or final order or resolution in civil actions of the Regional Trial Courts may be availed of only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. The instant petition for annulment was filed before this Court on November 24, 1997. Clearly, petitioner had other remedies available when he filed the instant petition for annulment.

Following this set-back, petitioner filed before this Court a Petition for Review on Certiorari[19] of the resolutions of the Court of Appeals but we denied the same on 15 June 1998 for failure to comply with procedural requirements.[20] Our resolution became final and executory on 7 September 1998.[21]

On 10 November 1998, private respondent filed a Motion for Execution before the trial court.[22] The scheduled hearing of this motion on 13 November 1998 was ordered reset to 19 November 1998 after petitioner filed an Urgent Ex-Parte Motion to Re-Set Hearing.[23] The records also disclose that the 19 November 1998 hearing did not push through and in fact, it was rescheduled a couple of more times per agreement of the parties.[24] Finally, on 18 December 1998, public respondent granted private respondent's Motion for Execution.[25]

Hence, the present petition raising the sole issue:

1. WHETHER OR NOT THE COURT A QUO ACQUIRED JURISDICTION OVER THE PERSON OF THE PETITIONER BY VIRTUE OF THE SUBSTITUTED SERVICE OF SUMMONS EFFECTED BY SHERIFF JUAN C. MARQUEZ.[26]

The petition is unmeritorious.

Petitioner argues that since the trial court never acquired jurisdiction over his person, its Decision of 9 September 1997 is null and void. He claims that the person who allegedly received the summons on his behalf, and who was identified in the sheriff's return as Arsenio Robles, was not his employee. He adds that when he conducted an inquiry, he found out that Robles was a native of Batangas and was merely peddling mango seedlings within the vicinity of his office when the summons was served. He also maintains that had he been given the opportunity to present his defense, he would have shown that his obligation to private respondent is less than the amount as established by the trial court.

Private respondent retorts that petitioner's insistence that the court a quo did not acquire jurisdiction over him is belied by the fact that petitioner had actual knowledge of all the proceedings since he was furnished with all the copies of the pleadings and court orders. Private respondent points out that the Motion to Admit Amended Complaint and the Amended Complaint were personally served on petitioner himself as shown by his signatures appearing thereon. Moreover, private respondent is of the view that the sheriff who served the summons upon petitioner enjoys the presumption of regularity in the performance of duty - a presumption which petitioner was unable to overcome.

On 16 June 1999, this Court issued a temporary restraining order enjoining the enforcement of the court a quo's decision dated 9 September 1997 and resolution dated 28 November 1997.[27]

It is fundamental that courts acquire jurisdiction over the plaintiff once the complaint is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired - either through the service of summons upon them or through their voluntary appearance in court. In the case of *Avon Insurance PLC v. Court of Appeals*,[28] we discussed the function of summons in court actions, to be -

Fundamentally, the service of summons is intended to give official notice to the defendant or respondent that an action had been commenced against it. The defendant or respondent is thus put [on] guard as to the demands of the plaintiff as stated in the complaint. The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit. [29]

Elsewhere, we declared that jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons.[30] Such is the important role a valid service of summons plays in court actions.

The Rules of Court[31] requires that, whenever practicable, summons must be served by handing a copy thereof to the defendant in person. In case the defendant refuses to receive and sign for it, by tendering the summons to him or her.

However, in the event that summons cannot be served within a reasonable time, the Rules permit that substituted service may be resorted to, thus:

Sec. 7. Substituted service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, 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.

In this case, the sheriff employed the substituted service of summons. The defect, however, in the manner in which he implemented this mode of service of summons is readily apparent on the face of the return. It must be emphasized that laws providing for modes other than the personal service of summons must be strictly followed in order for the court to acquire jurisdiction over the person of respondent or defendant. Compliance therewith should appear affirmatively on the return.[32] The essence of this requirement was enunciated in the case of *Keister v. Navarro*[33] to be -

The summons must be served to the defendant in person. It is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. It has been held that this method of service is "in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.[34] (Emphases supplied.)

As the sheriff's return in the present case does not contain any statement with regard to the impossibility of personal service the same is patently defective and so the presumption of regularity in the performance of official functions will not lie.[35]

Nevertheless, we still hold that jurisdiction was validly acquired by the trial court. Although the substituted service upon him of summons was defective, said defect was cured by his voluntary appearance.[36]

As the records of this case disclose, after private respondent moved for the execution of the trial court's decision, petitioner filed a motion for a re-setting of the court's hearing thereon. In *Flores v. Zurbito*,[37] we held that an appearance in whatever form without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person of the defendant or respondent, thus:

A voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and unless by such

appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person.[38]

Hence, in this case, petitioner's filing of a Motion for Re-setting of the Hearing effectively cured the defect of the substituted service of summons. Petitioner's insistence of lack of jurisdiction over his person is utterly lacking in any legal basis.

WHEREFORE, premises considered, the present Petition is DISMISSED. The Decision dated 9 September 1997 rendered by the Regional Trial Court of Parañaque City in Civil Case No. 96-0473 is hereby AFFIRMED and the Temporary Restraining Order issued by this Court on 16 June 1999 is hereby LIFTED. With costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1]Rollo, pp. 13-15.

[2]Id. at 15.

[3]Records, pp. 1-6.

[4]Annexes "D" and "E" of the Complaint; id. at 10-11.

[5]Annex "F," id. at 12.

[6]Annex "G," id. at 13.

[7]Annex "H," id. at 14.

[8]Annex "J," id. at 17.

[9]Records, p. 19.

[10]Id. at 23-24.

[11]Id. at 28.

[12]Id. at 67, 74.

[13]Id. at 90.

[14]Id. at 91-95.

[15]Id. at 108.

[16]Docketed as CA-G.R. SP No. 46079.

[17]Records, p. 167.

[18]Annex "3" of private respondent's Comment; rollo, p. 51.

[19]G.R. No. 133278.

[20]Records, p. 165.

[21]Id. at 46-47.

[22]Id. at 159-160.

[23]Id. at 178.

[24]Id. at 182, 184.

[25]Id. at 186.

[26]Rollo, p. 6.

[27]Rollo, pp. 89-91; the resolution of 28 November 1997 was actually issued by the Court of Appeals.

[28]343 Phil. 849, 863 (1997).

[29]Id.

[30]United Coconut Planters Bank v. Ongpin, 420 Phil. 538, 547 (2001).

[31]THE 1997 RULES OF CIVIL PROCEDURE, Rule 14, Section 6.

[32]Bank of the Philippine Islands v. Spouses Evangelista, 441 Phil. 445, 457 (2002).

[33]G.R. No. L-29067, 31 May 1977, 77 SCRA 209, 214-215.

[34]Id.

[35]Santiago Syjuco, Inc. v. Hon. Castro, G.R. No. 70403, 7 July 1989, 175 SCRA 171, 198.

[36]Navale v. Court of Appeals, 324 Phil. 70, 75 (1996).

[37]37 Phil. 746, 750 (1918).

[38]Id.

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