

E. B. VILLAROSA & PARTNER CO., LTD., PETITIONER, VS. HON. HERMINIO I. BENITO, IN HIS CAPACITY AS PRESIDING JUDGE, RTC, BRANCH 132, MAKATI CITY AND IMPERIAL DEVELOPMENT CORPORATI...

G.R. No. 136426. August 06, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before this Court is a petition for certiorari and prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction seeking to annul and set aside the Orders dated August 5, 1998 and November 20, 1998 of the public respondent Judge Herminio I. Benito of the Regional Trial Court of Makati City, Branch 132 and praying that the public respondent court be ordered to desist from further proceeding with Civil Case No. 98-824.

Petitioner E.B. Villarosa & Partner Co., Ltd. is a limited partnership with principal office address at 102 Juan Luna St., Davao City and with branch offices at 2492 Bay View Drive, Tambo, Parañaque, Metro Manila and Kolambog, Lapasan, Cagayan de Oro City. Petitioner and private respondent executed a Deed of Sale with Development Agreement wherein the former agreed to develop certain parcels of land located at Barrio Carmen, Cagayan de Oro belonging to the latter into a housing subdivision for the construction of low cost housing units. They further agreed that in case of litigation regarding any dispute arising therefrom, the venue shall be in the proper courts of Makati.

On April 3, 1998, private respondent, as plaintiff, filed a Complaint for Breach of Contract and Damages against petitioner, as defendant, before the Regional Trial Court of Makati allegedly for failure of the latter to comply with its contractual obligation in that, other than a few unfinished low cost houses, there were no substantial developments therein.[1]

Summons, together with the complaint, were served upon the defendant, through its Branch Manager Engr. Wendell Sabulbero at the stated address at Kolambog, Lapasan, Cagayan de Oro City[2] but the Sheriff's Return of Service[3] stated that the summons was duly served "upon defendant E. B. Villarosa & Partner Co., Ltd. thru its Branch Manager Engr. WENDELL SALBULBERO on May 5, 1998 at their new office Villa Gonzalo, Nazareth, Cagayan de Oro City, and evidenced by the signature on the face of the original copy of the summons."

On June 9, 1998, defendant filed a Special Appearance with Motion to Dismiss[4]alleging that on May 6, 1998, "summons intended for defendant" was served upon Engr. Wendell Sabulbero, an employee of defendant at its branch office at Cagayan de Oro City. Defendant prayed for the dismissal of the complaint on the ground of improper service of summons and for lack of jurisdiction over the person of the defendant. Defendant contends that the trial court did not acquire jurisdiction over its person since the summons was improperly served upon its employee in its branch office at Cagayan de Oro City who is not one of those persons named in Section 11, Rule 14 of the 1997 Rules of Civil Procedure upon whom service of summons may be made.

Meanwhile, on June 10, 1998, plaintiff filed a Motion to Declare Defendant in Default[5] alleging that defendant has failed to file an Answer despite its receipt allegedly on May 5, 1998 of the summons and the complaint, as shown in the Sheriff's Return.

On June 22, 1998, plaintiff filed an Opposition to Defendant's Motion to Dismiss[6] alleging that the records show that defendant, through its branch manager, Engr. Wendell Sabulbero actually received the summons and the complaint on May 8, 1998 as evidenced by the signature appearing on the copy of the summons and not on May 5, 1998 as stated in the Sheriff's Return nor on May 6, 1998 as stated in the motion to dismiss; that defendant has transferred its office from Kolambog, Lapasan, Cagayan de Oro to its new office address at Villa Gonzalo, Nazareth, Cagayan de Oro; and that the purpose of the rule is to bring home to the corporation notice of the filing of the action.

On August 5, 1998, the trial court issued an Order[7] denying defendant's Motion to Dismiss as well as plaintiff's Motion to Declare Defendant in Default. Defendant was given ten (10) days within which to file a responsive pleading. The trial court stated that since the summons and copy of the complaint were in fact received by the corporation through its branch manager Wendell Sabulbero, there was substantial compliance with the rule on service of summons and consequently, it validly acquired jurisdiction over the person of the defendant.

On August 19, 1998, defendant, by Special Appearance, filed a Motion for Reconsideration[8] alleging that Section 11, Rule 14 of the new Rules did not liberalize but, on the contrary, restricted the service of summons on persons enumerated therein; and that the new provision is very specific and clear in that the word "manager" was changed to "general manager", "secretary" to "corporate secretary", and excluding therefrom agent and director.

On August 27, 1998, plaintiff filed an Opposition to defendant's Motion for Reconsideration[9] alleging that defendant's branch manager "did bring home" to the defendant-corporation the notice of the filing of the action and by virtue of which a motion to dismiss was filed; and that it was one (1) month after receipt of the summons and the complaint that defendant chose to file a motion to dismiss.

On September 4, 1998, defendant, by Special Appearance, filed a Reply[10] contending that the changes in the new rules are substantial and not just general semantics.

Defendant's Motion for Reconsideration was denied in the Order dated November 20, 1998.[11]

Hence, the present petition alleging that respondent court gravely abused its discretion tantamount to lack or in excess of jurisdiction in denying petitioner's motions to dismiss and for reconsideration, despite the fact that the trial court did not acquire jurisdiction over the person of petitioner because the summons intended for it was improperly served. Petitioner invokes Section 11 of Rule 14 of the 1997 Rules of Civil Procedure.

Private respondent filed its Comment to the petition citing the cases of Kanlaon Construction Enterprises Co., Inc. vs. NLRC[12] wherein it was held that service upon a construction project manager is valid and in Gesulgon vs. NLRC[13] which held that a corporation is bound by the service of summons upon its assistant manager.

The only issue for resolution is whether or not the trial court acquired jurisdiction over the person of petitioner upon service of summons on its Branch Manager.

When the complaint was filed by Petitioner on April 3, 1998, the 1997 Rules of Civil Procedure was already in force.[14]

Section 11, Rule 14 of the 1997 Rules of Civil Procedure provides that:

"When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager,

corporate secretary, treasurer, or in-house counsel." (underscoring supplied).

This provision revised the former Section 13, Rule 14 of the Rules of Court which provided that:

"SEC. 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors." (underscoring supplied).

Petitioner contends that the enumeration of persons to whom summons may be served is "restricted, limited and exclusive" following the rule on statutory construction *expressio unius est exclusio alterius* and argues that if the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have easily done so by clear and concise language.

We agree with petitioner.

Earlier cases have uphold service of summons upon a construction project manager[15]; a corporation's assistant manager[16]; ordinary clerk of a corporation[17]; private secretary of corporate executives[18]; retained counsel[19]; officials who had charge or control of the operations of the corporation, like the assistant general manager[20]; or the corporation's Chief Finance and Administrative Officer[21]. In these cases, these persons were considered as "agent" within the contemplation of the old rule.[22] Notably, under the new Rules, service of summons upon an agent of the corporation is no longer authorized.

The cases cited by private respondent are therefore not in point.

In the Kanlaon case, this Court ruled that under the NLRC Rules of Procedure, summons on the respondent shall be served personally or by registered mail on the party himself; if the party is represented by counsel or any other authorized representative or agent, summons shall be served on such person. In said case, summons was served on one Engr. Estacio who managed and supervised the construction project in Iligan City (although the principal address of the corporation is in Quezon City) and supervised the work of the employees. It was held that as manager, he had sufficient responsibility and discretion to realize the importance of the legal papers served on him and to relay the same to the president or other responsible officer of petitioner such that summons for petitioner was validly served on him as agent and authorized representative of petitioner. Also in the Gesulgon case cited by private respondent, the summons was received by the clerk in the office of the Assistant Manager (at principal office address) and under Section 13 of Rule 14 (old rule), summons may be made upon the clerk who is regarded as agent within the contemplation of the rule.

The designation of persons or officers who are authorized to accept summons for a domestic corporation or partnership is now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure. The rule now states "general manager" instead of only "manager"; "corporate secretary" instead of "secretary"; and "treasurer" instead of "cashier." The phrase "agent, or any of its directors" is conspicuously deleted in the new rule.

The particular revision under Section 11 of Rule 14 was explained by retired Supreme Court Justice Florenz Regalado, thus:[23]

"x x x the then Sec. 13 of this Rule allowed service upon a defendant corporation to `be made on the president, manager, secretary, cashier, agent or any of its directors.' The aforesaid terms were obviously ambiguous and susceptible of broad and sometimes illogical interpretations, especially the word `agent' of the corporation. The Filoil case, involving the litigation lawyer of the corporation who precisely appeared to challenge the validity of service of summons but whose very appearance for that purpose was seized upon to validate the defective service, is an illustration of the need for this revised section with limited scope and specific terminology. Thus

the absurd result in the Filoil case necessitated the amendment permitting service only on the in-house counsel of the corporation who is in effect an employee of the corporation, as distinguished from an independent practitioner." (underscoring supplied)

Retired Justice Oscar Herrera, who is also a consultant of the Rules of Court Revision Committee, stated that "(T)he rule must be strictly observed. Service must be made to one named in (the) statute x x x".[24]

It should be noted that even prior to the effectivity of the 1997 Rules of Civil Procedure, strict compliance with the rules has been enjoined. In the case of *Delta Motor Sales Corporation vs. Mangosing*,[25] the Court held:

"A strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise the service is insufficient. x x x.

The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. In other words, 'to bring home to the corporation notice of the filing of the action.' x x x.

The liberal construction rule cannot be invoked and utilized as a substitute for the plain legal requirements as to the manner in which summons should be served on a domestic corporation. x x x." (underscoring supplied).

Service of summons upon persons other than those mentioned in Section 13 of Rule 14 (old rule) has been held as improper.[26] Even under the old rule, service upon a general manager of a firm's branch office has been held as improper as summons should have been served at the firm's principal office. In *First Integrated Bonding & Ins. Co., Inc. vs. Dizon*,[27] it was held that the service of summons on the general manager of the insurance firm's Cebu branch was improper; default order could have been obviated had the summons been served at the firm's principal office.

And in the case of *Solar Team Entertainment, Inc. vs. Hon. Helen Bautista Ricafort, et al.*[28] the Court succinctly clarified that, for the guidance of the Bench and Bar, "strictest" compliance with Section 11 of Rule 13 of the 1997 Rules of Civil Procedure (on Priorities in modes of service and filing) is mandated and the Court cannot rule otherwise, lest we allow circumvention of the innovation by the 1997 Rules in order to obviate delay in the administration of justice.

Accordingly, we rule that the service of summons upon the branch manager of petitioner at its branch office at Cagayan de Oro, instead of upon the general manager at its principal office at Davao City is improper. Consequently, the trial court did not acquire jurisdiction over the person of the petitioner.

The fact that defendant filed a belated motion to dismiss did not operate to confer jurisdiction upon its person. There is no question that the defendant's voluntary appearance in the action is equivalent to service of summons.[29] Before, the rule was that a party may challenge the jurisdiction of the court over his person by making a special appearance through a motion to dismiss and if in the same motion, the movant raised other grounds or invoked affirmative relief which necessarily involves the exercise of the jurisdiction of the court, the party is deemed to have submitted himself to the jurisdiction of the court.[30] This doctrine has been abandoned in the case of *La Naval Drug Corporation vs. Court of Appeals, et al.*,[31] which became the basis of the adoption of a new provision in the former Section 23, which is now Section 20 of Rule 14 of the 1997 Rules. Section 20 now provides that "the inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance." The emplacement of this rule clearly underscores the purpose to enforce strict enforcement of the rules on summons. Accordingly, the filing of a motion to dismiss, whether or not belatedly filed by the defendant, his authorized agent or attorney, precisely

objecting to the jurisdiction of the court over the person of the defendant can by no means be deemed a submission to the jurisdiction of the court. There being no proper service of summons, the trial court cannot take cognizance of a case for lack of jurisdiction over the person of the defendant. Any proceeding undertaken by the trial court will consequently be null and void.[32]

WHEREFORE, the petition is hereby GRANTED. The assailed Orders of the public respondent trial court are ANNULLED and SET ASIDE. The public respondent Regional Trial Court of Makati, Branch 132 is declared without jurisdiction to take cognizance of Civil Case No. 98-824, and all its orders and issuances in connection therewith are hereby ANNULLED and SET ASIDE.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Annexes "C" to "C-6" of the Petition, pp. 23-29, Rollo.

[2] Annex "D" of the Petition, p. 41, Rollo.

[3] Annex "F-2" of the Petition, p. 46, Rollo.

[4] Annexes "E" to "E-1" of the Petition, pp. 42-43, Rollo.

[5] Annexes "F" to "F-1" of the Petition, pp. 44-45, Rollo.

[6] Annexes "G" to "G-3" of the Petition, pp. 47-50, Rollo.

[7] Annexes "A" to "A-1" of the Petition, pp. 20-21, Rollo.

[8] Annexes "H" to "H-3" of the Petition, pp. 51-54, Rollo.

[9] Annexes "I" to "I-4" of the Petition, pp. 55-59, Rollo.

[10] Annexes "J" to "J-4" of the Petition, pp. 60-64, Rollo.

[11] Annex "B" of the Petition, p. 22, Rollo.

[12] 279 SCRA 337.

[13] 219 SCRA 561.

[14] It was approved by this Court in its Resolution dated April 8, 1998 in Bar Matter No. 803 to take effect on July 1, 1997.

[15] *Kanlaon Construction Enterprises Co., Inc. vs. NLRC*, 279 SCRA 337 [1997].

[16] *Gesulgon vs. NLRC*, 219 SCRA 561 [1993].

[17] *Golden Country Farms, Inc. vs. Sanvar Development Corporation*, 214 SCRA 295 [1992]; *G & G Trading Corporation vs. Court of Appeals*, 158 SCRA 466 [1988].

[18] *Summit Trading and Development Corporation vs. Avendaño*, 135 SCRA 397 [1985].

[19] *Republic vs. Ker & Co., Ltd.*, 18 SCRA 207 [1966].

[20] *Villa Rey Transit, Inc. vs. Far East Motor Corporation*, 81 SCRA 298 [1978].

[21] *Far Corporation vs. Francisco*, 146 SCRA 197 [1986].

[22] See also, *Filoil Marketing Corporation vs. Marine Development Corporation of the Philippines*, 177 SCRA 86 [1982].

[23] p. 224, *Remedial Law Compendium*, Vol. 1, 1997. He is also Vice-Chairman of the Rules of Court Revision Committee.

[24] p. 147, *Remedial Law*, Vol. VII, 1997 Edition.

[25] 70 SCRA 598 (1976).

[26] *Talsan Enterprises, Inc. et al. vs. Baliwag Transit, Inc. and Angeles Ramos*, G.R. 126258, July 8, 1999; *R. Transport Corporation vs. Court of Appeals*, 241 SCRA 77; *ATM Trucking, Inc. vs. Buencamino*, 124 SCRA 434; *Delta Motors Sales Corporation vs. Mangosing*, *supra*.

[27] 125 SCRA 440; also cited in *Regalado, Remedial Law Compendium*, Vol. 1, 1997 at p. 223.

[28] G.R. No. 132007, August 5, 1998.

[29] Section 20 (formerly Section 23), Rule 14.

[30] *De Midgely vs. Fernando*, 64 SCRA 23 [1975]; *Busuego vs. Court of Appeals*, 151 SCRA 376 [1987].

[31] 236 SCRA 78 [1994], also cited in pp. 244-245, *Regalado, Remedial Law Compendium*, 1997 and p. 157, *Herrera, Remedial Law*, Vol. VII, 1997 Edition.

[32] *Gan Hock vs. Court of Appeals*, 197 SCRA 223 [1991]; *Keister vs. Navarro*, 77 SCRA 209 [1997].

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