

ALLEN LEROY HAMILTON, PETITIONER, VS. DAVID LEVY AND FE QUITANGON, RESPONDENTS.*G.R. No. 139283. November 15, 2000*

Ponente: YNARES-SANTIAGO, J.

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The instant petition for review seeks to set aside the April 16, 1999 Decision[1] of the Court of Appeals in CA-G.R. SP No. 48299 which ordered the Regional Trial Court of Angeles City, Branch 57, to dismiss Civil Case No. 8696. Also challenged is the June 30, 1999 Resolution[2] of the Court of Appeals denying petitioner's Motion for Reconsideration.

The case commenced on June 30, 1997 with the filing by petitioner of a complaint for sum of money and damages, with prayer for preliminary attachment against respondents and one Pablo de Borja with the Regional Trial Court of Angeles, Pampanga.

On July 14, 1997, the trial court issued an Order for the issuance of a writ of preliminary attachment. The Writ of Preliminary Attachment was issued on July 15, 1997. On the strength of said Writ, the court sheriff levied on a Cherokee 180 Piper aircraft, allegedly owned by respondent David Levy. The corresponding Sheriff's Return, dated November 11, 1997, manifested that the sheriff (1) personally served summons and a copy of the writ of preliminary attachment to respondents, through Mercita S. Reyes and Ramon Araneta, secretaries of W.E.L. Phils., Inc., at Subic Bay Freeport Zone, Olongapo City, the address of respondents stated in the complaint; and (2) levied on the aforementioned aircraft on October 30, 1997.

On December 3, 1997, Ramon Araneta filed an Affidavit of Third-Party Claim asserting ownership of the levied aircraft by virtue of a sale from W.E.L. Phils., Inc., represented by respondent Levy, on June 19, 1997.

Meanwhile, on November 17, 1997, petitioner filed a Motion to Declare Defendants in Default for failure to file any responsive pleading within the reglementary period. This was granted by the trial court in its Order dated February 20, 1998.[3] Accordingly, petitioner proceeded with the presentation of evidence ex parte at a hearing held on April 3, 1998.

Prior to the presentation of evidence, however, or on March 26, 1998, respondents' counsel filed a Special Appearance to Question the Jurisdiction of the trial court. When no action was made on the Special Appearance, respondents filed a Petition for Certiorari with the Court of Appeals on July 16, 1998.

While the petition for certiorari was pending before the Court of Appeals, proceedings before the trial court continued with the filing by petitioner of Formal Offer of Exhibits and Motion for Leave to Sell Attached Property Pending Entry of Judgment. According to petitioner, the levied aircraft was just sitting idly in the hangar, deteriorating, depreciating and accumulating rust. To this, respondents filed a Supplemental Manifestation, informing the trial court of a pending case for Replevin and/or Annulment of the Writ of Preliminary Attachment filed by the alleged vendee of the aircraft, Ramon Araneta, before Branch 72 of the Olongapo Regional Trial

Court.

On April 16, 1999, the Court of Appeals issued the assailed Decision granting the Petition and ordering the dismissal of Civil Case No. 8696 without prejudice, on its finding that summons was not validly served upon respondents, hence, the trial court never assumed jurisdiction over their persons. With the denial of the Motion for Reconsideration on June 30, 1999, petitioner now comes to this Court with the following assignment of errors -

1

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI THAT WAS FILED BEYOND THE SIXTY (60) DAY-PRESCRIBED PERIOD.

2

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR NOT OBSERVING THE REQUIREMENTS OF "PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW" BEFORE GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI.

3

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI EVEN IF THE CERTIFICATION AGAINST NON-FORUM SHOPPING WAS EXECUTED BY ONE WHO WAS NOT A PARTY TO THE CASE.

4

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING CIVIL CASE NO. 8696 EVEN IF THE RESPONDENTS, PARTICULARLY DAVID LEVY, HAVE ACTUAL KNOWLEDGE OF THE FILING OF THE SAID CIVIL CASE NO. 8696.[4]

In support of the first assigned error, petitioner points out that the assailed February 20, 1998 Order of the trial court was received by respondents on March 23, 1998 while the Petition for Certiorari was filed only four (4) months thereafter, or on July 16, 1998. Under Rule 65, Section 4 of the 1997 Rules of Civil Procedure, petitions for certiorari should be filed within sixty (60) days from notice of the assailed Order. In the case at bar, respondents point out that they were no longer holding office at the address where summons and the questioned Order were served. Precisely, the issue in the instant Petition is the propriety of the service of summons made upon respondents at said address. If summons is found to have been improperly served, then the 60-day reglementary period did not commence to run upon service of the questioned Order at that address.

Petitioner next argues that the Court of Appeals should not have given due course to the Petition for Certiorari filed by respondents, in view of the failure of respondents to file the required Motion for Reconsideration before the trial court. Petitioner claims that the relief of certiorari was premature since respondents could have still filed a Motion to Lift Order of Default.

We disagree. Had respondents filed either a Motion for Reconsideration or Motion to Lift Order of Default, there was a danger that they might be deemed to have voluntarily submitted their persons to the jurisdiction of the court, when it was precisely said jurisdiction that they were questioning. Besides, the rule that a motion for reconsideration is required before the filing of a petition for certiorari admits of exceptions, among which is where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction.[5] Again,

what is being assailed in this case is the lack of jurisdiction of the trial court over the persons of the respondents, due to improper service of summons.

Petitioner maintains that respondents had voluntarily submitted to the jurisdiction of the trial court when they filed the Supplemental Manifestation to the effect that Ramon Araneta, the alleged vendee of the aircraft levied upon, had filed a complaint before Branch 72 of the Olongapo Regional Trial Court for Replevin and/or Annulment of the Writ of Preliminary Attachment issued by the court a quo in Civil Case No. 8696. According to petitioner, the Supplemental Manifestation was actually an opposition to the Motion for Leave to Sell Attached Property they filed with the trial court.

The records show, however, that respondents filed the Supplemental Motion on August 7, 1998, almost a month after they filed the petition for certiorari before the Court of Appeals. It was preceded by a Special Appearance to Question the Jurisdiction of this Honorable Court, dated March 26, 1998,[6] and by a Manifestation, dated August 5, 1998,[7] informing the trial court of the pendency of the petition for certiorari assailing the court's jurisdiction over their persons. In other words, when the Supplemental Motion was filed, it was made clear that respondents were questioning and continuing to question the jurisdiction of the trial court. At any rate, the Supplemental Manifestation did not seek any direct affirmative relief from the trial court.

Petitioner also alleges that the certification on non-forum shopping attached to respondents' Petition was prepared not by respondents but by one Teresita Torres, who was not a party to the suit either before the trial court or the certiorari proceedings in the Court of Appeals.

Rule 7, Section 5 of the 1997 Rules of Civil Procedure clearly provides that the certification must be executed by the principal party, which in this case are respondents David Levy and Fe Quitangon. This is so because the attestation contained in the certification on non-forum shopping requires personal knowledge by the party executing. To merit the Court's consideration, respondents must show good reasons for failure of the proper party to personally sign the certification. They must convince the court that the outright dismissal of the petition would defeat the administration of justice.[8] In the case at bar, respondents explained that they were both abroad when the petition for certiorari was filed with the Court of Appeals.[9] This is reasonable cause to exempt them from compliance with the requirement that they personally execute the certification. Moreover, to dismiss their petition for certiorari on this sole ground would deny them the opportunity to question the lack of jurisdiction of the trial court over their persons.

Finally, we come to the main issue of this petition, which is whether or not summons was properly served upon respondents.

Pertinent is Rule 14 of the 1997 Rules of Civil Procedure, particularly Sections 6 and 7, which respectively provide as follows --

SEC. 6. Service in person on defendant. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

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.

These modes of service should be strictly followed in order that the court may acquire jurisdiction over the person. It is only when a defendant cannot be served personally "within a reasonable time" that substituted service may be made.[10]

The Sheriff's Return reads -

"RESPECTFULLY RETURNED to the Honorable Court of origin the herein attached original copy of the Writ of Preliminary Attachment as well as the original of the Summons issued on July 15, 1997 in the above-entitled case, duly served/partially implemented.

On September 5, 1997, the undersigned personally effected the service of the copies of the summons and the Writ of Preliminary Attachment upon the defendants, thru the Secretaries at their Office (W.E.L. Phil., Inc.) by the names of Mercita S. Reyes and Ramon Araneta.

x x x x x x x x."[11]

A perusal of the aforementioned Return clearly shows that there was no reason why personal service could not be effected. The impossibility of prompt, personal service should be shown by stating in the proof of service that efforts were made to serve the defendant personally and that said efforts failed, hence the resort to substituted service. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, any substituted service made in lieu of personal service cannot be upheld.[12] 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.[13] Here, no such explanation was made. Failure to faithfully, strictly, and fully comply with the requirements of substituted service renders said service ineffective.[14]

In this connection, we issued Administrative Circular No. 59[15] on November 19, 1989 to stress the importance of strict compliance with the requisites for a valid substituted service.

Petitioner's insistence that we accord the presumption of regularity in the service of summons on respondents must likewise fail. The presumption of regularity finds no application in the case at bar. There must be, at the very least, compliance with the procedure outlined in the policy.[16] This is especially true in the instant case where the duty to be performed has a direct bearing on the acquisition of jurisdiction of the trial court over the persons of the respondents.

All told, we find no reason to set aside the Decision challenged, which ordered the dismissal of Civil Case No. 8696 without prejudice on the ground of improper service of summons.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 48299 is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Angelina Sandoval-Gutierrez and Martin S. Villarama, Jr., concurring; Petition, Annex "A"; Rollo, pp. 38-42.

[2] Id., Annex "B"; Rollo, pp. 44-45.

[3] Annex "E" of Annex "C", Petition in CA-G.R. SP No. 48299; Rollo, p. 79.

[4] Petition for Review, pp. 14-16, 18 and 20; Rollo, pp. 22-24, 26 and 28.

[5] *Alindao v. Josen*, G.R. No. 114132, 264 SCRA 211 [1996], citing *Gonzales v. Hechanova*, 9 SCRA 230, 235-236 (1963) and *Madrigal v. Lecaroz*, 191 SCRA 20, 26 (1990).

[6] Petition, Annex "D" of Annex "C", Petition in CA-G.R. SP No. 48299; Rollo, pp. 77-78.

[7] Petition, Annex "T"; Rollo, p. 163.

[8] See *Spouses Ortiz v. Court of Appeals*, G.R. No. 127393, 299 SCRA 708 [1998].

[9] See Comment, p. 3; Rollo, p. 137.

[10] *Miranda v. Court of Appeals*, G.R. No. 114243, 23 February 2000.

[11] See Annex "C" to Annex "C", Petition for Review; Rollo, p. 75.

[12] *Madrigal v. Court of Appeals*, G.R. No. 129955, 26 November 1999.

[13] *Ang Ping v. Court of Appeals*, G.R. No. 129955, 26 November 1999.

[14] *Miranda v. Court of Appeals*, *supra*.

[15] SUBJECT: Service of Summons

Delays in court proceedings have been caused by faulty and erroneous implementation of Section 8, Rule 14, Rules of Court on Substituted Service of Summons.

The Trial Judges of all lower courts, as well as the Clerks of Court in their capacity as Ex-Officio Sheriffs together with the Deputy Sheriffs are reminded of the provision of Section 8, Rule 14, Rules of Court on substituted service as follows:

x x x x x x x x

The manner of effecting substituted service as prescribed in *Venturanza v. Court of Appeals*, 156 SCRA 305 (1987), must be strictly complied with, thus:

‘The substituted service should be availed only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service.

Substituted service is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully and any substituted service other than authorized by the statute is considered ineffective.’

For immediate compliance."

[16] *Ang Ping v. Court of Appeals*, *supra*.

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