

SPOUSES EFREN MASON AND DIGNA MASON, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND COLUMBUS PHILIPPINES BUS CORPORATION, RESPONDENTS.

G.R. No. 144662. October 13, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the decision,[1] dated May 12, 2000, of the Court of Appeals and its resolution[2] dated August 25, 2000 in CA-G.R. SP No. 54649 denying petitioners' motion for reconsideration. The decision set aside the decision[3] of the Regional Trial Court of Pasay City, Branch 112, in Civil Case No. 98-1567 and directed said court to conduct further proceedings on the complaint for rescission of lease contract.

The antecedent facts of the case, as found by the Court of Appeals, are as follows:

Petitioners spouses Efren and Digna Mason owned two parcels of land located along Epifanio delos Santos Avenue in Pasay City. On March 30, 1993, petitioners and private respondent Columbus Philippines Bus Corporation (hereafter Columbus) entered into a lease contract, under which Columbus undertook to construct a building worth ten million pesos (P10,000,000) at the end of the third year of the lease. Because private respondent failed to comply with this stipulation, the petitioners on November 13, 1998, filed a complaint for rescission of contract with damages against private respondent before the Regional Trial Court of Pasay City, docketed as Civil Case No. 98-1567. Summons was served upon private respondent through a certain Ayreen Rejalde. While the receiving copy of the summons described Rejalde as a secretary of Columbus, the sheriff's return described Rejalde as a secretary to the corporate president, duly authorized to receive legal processes.

Private respondent failed to file its answer or other responsive pleading, hence petitioners filed a motion to declare private respondent in default. The motion was granted and petitioners were allowed to present evidence ex-parte. Thereafter, the case was submitted for decision.

On April 22, 1999, the trial court rendered its decision whose dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant declaring the contract of lease rescinded, terminated and cancelled, and ordering defendant:

- To pay plaintiffs the amount of P10 Million which is the value of the building which defendant failed to construct on the leased properties, as and by way [of] actual damages;
- To pay plaintiffs the amount of P63,862.57 beginning November 1998 until defendant and the sub-lessee vacate the leased property by way of reasonable compensation for the use of the properties;
- and all other persons and entities claiming rights under it, to surrender possession to plaintiffs and to vacate the leased premises;
- to pay plaintiffs the amount of P300,000.00 as and by way of moral damages;

- to pay plaintiffs the amount of P100,000.00 as and by way of exemplary damages;
- to pay plaintiffs attorney's fees in the amount of P100,000.00; and
- to pay the cost of suit.

SO ORDERED.[4]

That decision became final on May 12, 1999. The following day, private respondent filed a motion to lift order of default, which was opposed by petitioners. The trial court ordered the parties to submit their respective memoranda. However, without waiting for the same, the trial court on May 26, 1999, denied the motion to lift order of default, thus:

It appearing that the decision rendered by this Court on April 27, 1999 became final and executory on May 12, 1999, defendant's Motion to Lift Order of Default is hereby DENIED. Concomitant thereto, plaintiffs' Motion for Execution is hereby GRANTED.

The Order of this Court on May 21, 1999 allowing the parties to file their respective memoranda within ten (10) days from May 21, 1999 is hereby revoked and set aside, since the incidents can be resolved based on the records.

WHEREFORE, let a writ of execution issue to enforce and implement the final and executory decision rendered by this Court on April 27, 1999.

SO ORDERED.[5]

Private respondent filed a motion for reconsideration, which was denied. Undaunted, private respondent filed a manifestation and motion to lift the writ of execution. It suffered the same fate as the motion for reconsideration for being dilatory. The branch sheriff was directed to proceed with the enforcement of the decision.

Private respondent appealed to the Court of Appeals, which ruled in its favor, thus:

WHEREFORE, the petition is GRANTED; the decision in Civil Case No. 98-1567 and all the proceedings therein, including the order of default and writ of execution, are SET ASIDE. The court a quo is ORDERED to require petitioner to file its answer and thereafter to conduct further appropriate proceedings with reasonable dispatch.

SO ORDERED.[6]

The Court of Appeals held that the trial court erred when it denied private respondent's motion to lift order of default. The appellate court pointed out that private respondent was not properly served with summons, thus it cannot be faulted if it failed to file an Answer. Section 11, [7] Rule 14 of the 1997 Rules of Civil Procedure requires that service of summons upon domestic private juridical entity shall be made through its president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. Since service upon private respondent was made through a certain Ayreen Rejalde, a mere filing clerk in private respondent's office, as evidenced by the latter's employment record, such service cannot be considered valid. Consequently, the subsequent proceedings, including the order of default, judgment by default and its execution, were also invalid because the trial court did not acquire jurisdiction over private respondent. Besides, judgments by default are not favored, especially so when there is a prima facie showing that the defaulting party has a meritorious defense, which in this case was grounded on the contract of lease sued upon, said the Court of Appeals.

Petitioner filed a motion for reconsideration, but to no avail. Hence, this petition for review averring that the Court of Appeals erred in:

- ... HOLDING THAT THERE WAS NO VALID SERVICE OF SUMMONS UPON PRIVATE RESPONDENT COLUMBUS PHILIPPINES BUS CORPORATION

- ... NOT HOLDING THAT THERE WAS VALID SERVICE OF SUMMONS CONFORMABLY WITH THE SUBSTANTIAL COMPLIANCE RULE.

- ... HOLDING THAT WITH THE ADOPTION OF SECTION 11, RULE 14 OF THE 1997 RULES OF CIVIL PROCEDURE, THE SUBSTANTIAL COMPLIANCE RULE NO LONGER APPLIES.

- ... NOT HOLDING THAT JURISDICTION WAS ACQUIRED OVER PRIVATE RESPONDENT COLUMBUS PHILIPPINES BUS CORPORATION AND THAT ITS MOTION TO LIFT ORDER OF DEFAULT LACKS MERIT.[8]

The issues in this case may be succinctly stated as follows:

- Whether there was valid service of summons on private respondent for the trial court to acquire jurisdiction, and
- Whether private respondent's motion to lift order of default was in order.

On the first issue, petitioners contend that while Section 11, Rule 14 of the 1997 Rules of Civil Procedure clearly specifies the persons authorized to receive summons on behalf of a private juridical entity, said provision did not abandon or render inapplicable the substantial compliance rule. Petitioners cite *Millenium Industrial Commercial Corporation v. Tan*,[9] and maintain that this Court, by referring to *E.B Villarosa & Partner Co., Ltd. v. Judge Benito*,[10] effectively ruled that said provision is the statement of the general rule on service of summons upon corporation and the substantial compliance rule is the exception. Petitioners claim that this Court, in an array of cases, upheld the substantial compliance rule when it allowed the validity of the service of summons on the corporation's employee other than those mentioned in the Rule where said summons and complaint were in fact seasonably received by the corporation from said employee. Petitioners insist that technicality must not defeat speedy justice.

Petitioners stress that even though the summons was received by a mere filing clerk in private respondent's corporation, there was substantial compliance with Section 11, Rule 14 because the summons actually reached private respondent. This can be gleaned from private respondent's motion to lift order of default where private respondent did not question the validity of the service of summons but explained in paragraph three thereof that its failure to answer the complaint was due to its impression that the case would not be pursued by petitioners because the corporation already made payments to them.[11]

From said averment, according to petitioners, private respondent in effect admitted that it received the summons. Notwithstanding this, private respondent did not file its answer to the complaint, said the petitioners. This is tantamount to negligence which the court cannot tolerate, petitioners conclude. There being valid service of summons, the Regional Trial Court acquired jurisdiction over private respondent, according to petitioners.

Petitioners further contend that the Court of Appeals' reliance on *E.B Villarosa & Partner Co., Ltd. v. Judge Benito*,[12] in denying their motion for reconsideration was misplaced, because the factual milieu in said case was different from that in the instant case. In *Villarosa*, according to them, there was no showing of actual receipt by the defendant corporation of the summons while in this case, private respondent actually received the summons.

Private respondent counters that nowhere in the *Millenium* case did this Court expressly state or remotely imply that we have not abandoned the doctrine of substantial compliance. Private respondent claims that petitioners misquoted the portion of the *Millenium* decision where this Court cited the *Villarosa* case, to make it appear that the *Villarosa* ruling, which provides an interpretation of Section 11, Rule 14 of the 1997 Rules of Civil Procedure,

states the general rule on the service of summons upon corporations where the substantial compliance rule is the exception. Private respondent avers that what this Court discussed in the *Millenium* case was the rule on service of summons under the old Rules of Court prior to the promulgation and effectivity of the 1997 Rules of Civil Procedure. The *Millenium* case held that as a general rule, service upon one who is not enumerated in Section 13,[13] Rule 14 of the then Rules of Court is invalid, according to private respondent. An exception is when the summons is actually received by the corporation, which means that there was substantial compliance with the rule. Private respondent stresses that since the exception referred to the old rule, it cannot be made to apply to the new rule, which clearly specifies and limits the persons authorized to receive the summons in behalf of the corporation.

Neither can petitioners rely on *Millenium* to justify their theory, adds private respondent, because at the time the complaint in this case was filed with the trial court, the 1997 Rules of Civil Procedure were already in effect. The case law applicable in the instant case, contends private respondent, is *Villarosa* which squarely provides for the proper interpretation of the new rule on the service of summons upon domestic corporation, thus:

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.[14]

According to private respondent, service through Ayreen Rejalde, a mere filing clerk of private respondent and not one of those enumerated above, is invalid.

We find private respondent's submission on this issue meritorious.

The question of whether the substantial compliance rule is still applicable under Section 11, Rule 14 of the 1997 Rules of Civil Procedure has been settled in *Villarosa* which applies squarely to the instant case. In the said case, petitioner E.B. Villarosa & Partner Co. Ltd. (hereafter *Villarosa*) with principal office address at 102 Juan Luna St., Davao City and with branches at 2492 Bay View Drive, Tambo, Parañaque, Metro Manila and Kolambog, Lapasan, Cagayan de Oro City, entered into a sale with development agreement with private respondent Imperial Development Corporation. As *Villarosa* failed to comply with its contractual obligation, private respondent initiated a suit for breach of contract and damages at the Regional Trial Court of Makati. Summons, together with the complaint, was served upon *Villarosa* through its branch manager at Kolambog, Lapasan, Cagayan de Oro City. *Villarosa* filed a Special Appearance with Motion to Dismiss on the ground of improper service of summons and lack of jurisdiction. The trial court denied the motion and ruled that there was substantial compliance with the rule, thus, it acquired jurisdiction over *Villarosa*. The latter questioned the denial before us in its petition for certiorari. We decided in *Villarosa*'s favor and declared the trial court without jurisdiction to take cognizance of the case. We held that there was no valid service of summons on *Villarosa* as service was made through a person not included in the enumeration in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, which revised the Section 13, Rule 14 of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited and exclusive, following the rule in statutory construction that *expressio unius est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

Neither can herein petitioners invoke our ruling in *Millenium* to support their position for said case is not on all

fours with the instant case. We must stress that Millenium was decided when the 1964 Rules of Court were still in force and effect, unlike the instant case which falls under the new rule. Hence, the cases^[15] cited by petitioners where we upheld the doctrine of substantial compliance must be deemed overturned by Villarosa, which is the later case.

At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process.^[16] We will deprive private respondent of its right to present its defense in this multi-million peso suit, if we disregard compliance with the rules on service of summons.

On the second issue, petitioners claim that private respondent's motion to lift order of default was not in order for it was filed late, contrary to the provision in sub-paragraph (b), Section 3,^[17] Rule 9 of the 1997 Rules of Civil Procedure, which requires filing of the motion after notice but before judgment. Also, the motion was (a) not under oath; (b) did not show the fraud, accident, mistake or excusable neglect that caused private respondents' failure to answer; and (c) did not show private respondent's meritorious defense.

Private respondent, in turn, argues that since service upon it was invalid, the trial court did not acquire jurisdiction over it. Hence, all the subsequent proceedings in the trial court are null and void, including the order of default. This renders the second issue now moot and academic.

We find merit in private respondent's submissions. Since we have ruled that service of summons upon private respondent through its filing clerk cannot be considered valid, it necessarily follows therefore that the Regional Trial Court of Pasay City did not acquire jurisdiction over private respondent.^[18] Consequently, all the subsequent proceedings held before it, including the order of default, are null and void.^[19] As private respondent points out, the second issue has become moot and academic.

WHEREFORE, the instant petition is DENIED. The questioned decision, as well as the resolution, of the Court of Appeals in CA-G.R. SP No. 54649 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 38-55. Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Martin S. Villarama, Jr., and Wenceslao I. Agnir, Jr., concurring.

[2] Id. at 57-65.

[3] Id. at 83-87.

[4] Id. at 87.

[5] Id. at 99.

[6] Id. at 54-55.

[7] SEC. 11. Service upon domestic private juridical entity. - 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.

[8] Rollo, p. 22.

[9] 383 Phil. 468, 476-477 (2000).

[10] 370 Phil. 921, 927-928 (1999).

[11] Defendant was laboring under the impression that the above-entitled case shall not be pursued by the plaintiff in as much as the defendant represented to the undersigned counsel that same defendant had already made payments in favor of the plaintiff.

[12] Supra, note 10.

[13] 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.

[14] Supra, note 10 at 929.

[15] Rebollido v. Court of Appeals, G.R. No. 81123, 28 February 1989, 170 SCRA 800, 809-810; Golden Country Farms, Inc. v. Sanvar Development Corp, G.R. No. 58027, 28 September 1992, 214 SCRA 295, 299; Mapa v. Court of Appeals, G.R. No. 79374, 2 October 1992, 214 SCRA 417, 431.

[16] National Power Corporation v. NLRC, 339 Phil. 89, 107 (1997).

[17] SEC. 3. Default; declaration of. - xxx

(a) xxx

(b) Relief from order of default. - A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

[18] See Cano-Gutierrez v. Gutierrez, G.R. No. 138584, 2 October 2000, 341 SCRA 670, 675.

[19] Arcenas v. Court of Appeals, 360 Phil. 122, 131 (1998).

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