

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPOUSES WILLIE AND JULIE L. EVANGELISTA AND LTS PHILIPPINES CORPORATION, RESPONDENTS.

G.R. No. 146553. November 27, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A defect in the service of summons, which is apparent on the face of the return, does not necessarily constitute conclusive proof that the actual service has in fact been improperly made. In the interest of speedy justice, the trial court should immediately ascertain whether the defect is real and, if so, to cause the service of a new summons thereafter.

The Case

The Petition for Review before us assails the November 6, 2000 Decision[1] of the Court of Appeals (CA) in CA-GR SP No. 60081, as well as the December 27, 2000 CA Resolution[2] denying the Motion for Reconsideration. The dispositive portion of the challenged Decision reads as follows:

“WHEREFORE, premises considered, the petition is GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The Resolution dated June 19, 2000 of respondent Judge Salvador S. Abad Santos of Branch 65 of the Regional Trial Court of Makati City in Civil Case No. 00-495 entitled ‘Bank of the Philippine Islands v. Spouses Willie Evangelista and Julie L. Evangelista,’ and the Order dated July 21, 2000 denying the motion for reconsideration thereof, are both hereby ANNULLED and SET ASIDE.

“The respondent court is hereby ordered to DISMISS Civil Case No. 00-495 WITHOUT PREJUDICE.”

The Facts

The appellate court narrated the facts of the case in this manner:

“Factual antecedents show that on April 12, 2000, private respondent [now petitioner] Bank of the Philippine Islands (‘BPI’) filed Civil Case No. 00-495 to collect a sum of money against herein petitioners [now respondents] before the Regional Trial Court of Makati City. The case was raffled off to the sala of herein respondent Judge.

“Petitioner [now respondent] LTS Philippines Corporation (‘LTS’) has obtained various loans from BPI in the aggregate amount of TWENTY MILLION PESOS (P20,000,000.00) and as security for the said loans, Spouses Evangelista, also herein petitioners, executed in favor of BPI a continuing suretyship and bound themselves to pay any or all indebtedness of the LTS in the principal amount of THIRTY MILLION PESOS (P30,000,000.00) and other charges thereon, and to pay BPI, its successors, assigns or its subsidiaries in case of default of LTS.

“Later on, a loan was obtained by Spouses Evangelista from BPI in the amount of SIX MILLION SIX HUNDRED THOUSAND PESOS (P6,600,000.00). As security for the said loan, Spouses Evangelista

executed a real estate mortgage over one (1) parcel of land located at Quezon City, covered by Transfer Certificate of Title No. N-134746 of the Registry of Deeds of Quezon City. The real estate mortgage executed in favor of BPI not only secured the obligation of Spouses Evangelista, but also the obligation of LTS on the basis of the continuing suretyship executed by Spouses Evangelista in favor of BPI.

“After LTS and Spouses Evangelista failed to pay their respective loan obligations, BPI instituted an extrajudicial foreclosure on the mortgaged land. The mortgaged property was sold at public auction to BPI as the highest bidder therefor for the amount of EIGHT MILLION THIRTEEN THOUSAND TWO HUNDRED PESOS (P8,013,200.00). As alleged in BPI’s complaint, petitioners’ outstanding obligation with BPI was THIRTY FOUR MILLION FIFTEEN THOUSAND FOUR HUNDRED THIRTY TWO AND 22/100 [PESOS] (P34,015, 432.22), exclusive of interest, penalty and other charges as of July 12, 1999.

“It turns out, however, that the proceeds of the auction sale of the mortgaged property were insufficient to cover/pay petitioners’ outstanding obligation. The deficiency obligation, exclusive of interest, penalty and other charges as of July 12, 1999, was pegged as TWENTY SIX MILLION TWO THOUSAND TWO HUNDRED THIRTY TWO AND 22/100 [PESOS] (P26,002,232.22).

“BPI unilaterally reduced its claim from TWENTY SIX MILLION TWO THOUSAND TWO HUNDRED THIRTY TWO AND 22/100 [PESOS] (P26,002,232.22) to only TWENTY ONE MILLION EIGHT HUNDRED TWELVE THOUSAND FIVE HUNDRED THIRTY FOUR AND 60/100 [PESOS] (P21,812,534.60).

“However, despite demands therefor, petitioners failed to pay the aforementioned deficiency obligation. Hence, BPI was prompted to file the collection suit.

“On May 15, 2000, the summons issued by the court a quo on April 14, 2000 for the individual petitioners was ‘served,’ and the return or proof of service by the process server was correspondingly made on May 16, 2000.

“Petitioners, however, assailed the summons for being improperly served and accordingly filed their Motion to Dismiss dated May 23, 2000 on the grounds of (a) lack of jurisdiction over the persons of herein petitioners, (b) lack of cause of action and (c) non-compliance with a condition precedent for filing the collection suit.

“On June 19, 2000, respondent Judge issued the assailed resolution denying petitioners’ Motion to Dismiss. The court a quo reasoned, among other things, that the allegations of irregularity in the service of summons are insufficient to overcome the presumption of regularity in the performance of a court officer’s official duties. On July 21, 2000, petitioners’ motion for reconsideration thereof was also denied.”[3] (Citations omitted)

Ruling of the Court of Appeals

In granting the Petition for Certiorari, the CA ruled that the Regional Trial Court (RTC) had not acquired jurisdiction over the persons of respondents because of the defective service of summonses. The return failed to indicate any reason why the process server had resorted to substituted, in lieu of personal, service. It merely stated the names of the recipients of the summonses, who were neither the defendants nor the proper officers of respondent corporation. Sections 7 and 11 of Rule 14 of the Rules of Court were thereby violated, warranting the dismissal of the case. And since the RTC never acquired jurisdiction over the persons of herein respondents, there was no more necessity to pass upon the other issues raised.

Hence, this Petition.[4]

Issues

In its Memorandum dated October 5, 2001, petitioner raises the following issues for our consideration:

I

“Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error in holding that the ‘court a quo did not acquire jurisdiction over the person of the respondents allegedly due to defective service of summons when the process server of the court a quo’ who enjoys a presumption of regularity in the performance of official duty declared that the summons were duly served upon respondents.

II

“Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error in ordering the dismissal of Civil Case No. 00-495 entitled BPI vs. Spouses Willie and Julie Evangelista, LTS Corporation in the court a quo, by setting aside the consideration of substantial justice and equity and putting premium instead to the rules and technicalities which are not the object of the Rules of Procedure.

III

“Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error by departing from consideration of justice and equity in ordering the dismissal of Civil Case No. 00-495 entitled BPI vs. Spouses Willie and Julie Evangelista, LTS Corporation in the court a quo, thus, penalizing petitioner through no fault of its own but for the neglect of the process server of the court a quo, who caused the alleged defective service of summons upon the respondents.”[5]

In short, this Court is called upon to determine whether the trial court, through the service of summonses, acquired jurisdiction over respondents.

The Court’s Ruling

The Petition is partly meritorious.

Main Issue:

Jurisdiction over Respondents

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.[6] As a rule, if defendants have not been summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.[7] To be bound by a decision, a party should first be subject to the court’s jurisdiction.[8]

Petitioner argues that the summonses were validly served upon respondents. On the return, the process server indicated that these had been “duly served” upon them. It cannot be gainsaid that because she is a public officer, she enjoys the presumption of regularity in the performance of her duties. To overcome this presumption, clear and convincing evidence to the contrary must be presented.

Respondents, on the other hand, maintain that the said returns show prima facie the nonbinding character of the service of the summonses upon them. The process server herself stated on the returns that she had served the summonses upon Ms Paanto and Ms Cabrera, respectively. She had not served them upon the spouses as required by Section 6, Rule 14 of the Rules of Court; or upon respondent corporation’s president, general manager, corporate secretary, treasurer or in-house counsel as required by Section 11, Rule 14 of the Rules of Court. Therefore, the presumption of regularity in the performance of duty finds no application to the present case,

because the process server's pronouncement that the summonses were "duly served" is a mere conclusion of law.

We agree with respondents that the RTC did not acquire jurisdiction over their persons, because (1) there is no showing that the summonses were properly served upon them, and (2) they had not appeared before it and submitted to its jurisdiction. The defect in the service thereof is apparent on the face of the returns which failed to comply with Sections 7 and 11, Rule 14 of the Rules of Court.

We cannot sustain petitioner's argument, which is anchored on the presumption of regularity in the process server's performance of duty. The Court already had occasion to rule that "[c]ertainly, 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."^[9] Such presumption does not apply where it is patent that the sheriff's or server's return is defective.^[10] Under this circumstance, respondents are not duty-bound to adduce further evidence to overcome the presumption, which no longer holds.

Nevertheless, notwithstanding the patent defect in the service of the summonses, the RTC failed to ascertain fully whether resort to the substituted, in lieu of the personal, service thereof was justified. Although the returns did not show adherence to the rules, the actual service may still be proven by evidence extraneous to it. If it was indeed improper, the trial court should thereafter issue new summonses and serve them anew, as explained in *Laus v. Court of Appeals*.^[11]

The service of summons on the spouses was patently defective as shown by the Certificate of Return^[12] dated May 16, 2000, which merely stated the following:

"THIS IS TO CERTIFY that on the 15th day of May 2000, a copy of Summons together with the complaint and its annexes attached thereto in the above-entitled case were served to Sps. Willie & Julie L. Evangelista at #6 Yellowstone Street, White Plains, Quezon City thru Ms. Carmen Paanto, a person of suitable age and [discretion], living therein and who acknowledged receipt thereof."

The defect is likewise apparent in the service of summons on LTS Philippines Corporation. On the same return, the process server merely stated:

"THIS IS TO CERTIFY that on the same date the undersigned cause[d] the service of Summons together with the complaint and its annexes attached thereto in the above-entitled case to LTS Philippines Corporation at Orcell II Bldg., 1611 Quezon City thru Ms. Julie Cabrera, but she refused to sign."^[13]

The general rule requires that summonses be personally served upon the defendants. However, if this mode of service cannot be effected within a reasonable time, a substituted service may be resorted to. Failure to justify a resort from one to the other violates the clear import of Section 7, Rule 14 of the Rules of Court, which provides:

"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 affected (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 the present case, no justification for resorting to a substituted service of summons upon the spouses was indicated on the return.

On the other hand, the apparent defect in the service of summons upon LTS Philippines Corporation contravenes not only Section 7, but also Section 11 of Rule 14 of the Rules of Court which states:

"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."

The return of the summons served upon respondent corporation failed to indicate the designation or title of the recipient, who should be the corporation's president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. The service of summons on a corporation is exclusive to the persons specified in Section 11, as held in *Villarosa v. Benito*[14] which pertinently ruled as follows:

"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."

Clearly, on both returns, there is no showing that there were prior but failed attempts at proper personal service, attempts that would have justified the server's resort to substituted service.

Again, *Laus v. Court of Appeals* held that "[s]tatutes prescribing modes other than personal service of summons must be strictly complied with to give the court jurisdiction, and such compliance must appear affirmatively on the return." [15] In that case, finding that there was a defective service of summons, the Court reversed the trial court that had conducted a hearing to determine whether the summons had properly been served. The former remanded the case to the latter for further proceedings and ordered that the summons be validly served upon the defendants. In its ruling, the Court referred to Administrative Circular No. 59, which mandated strict compliance with the prescribed manner of effecting substituted service as outlined in *Venturanza v. Court of Appeals*. [16] The pertinent portion of the Circular provides:

"The substituted service should be availed of 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. It has been held that it 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 that authorized by the statute is considered ineffective."

To repeat, the impossibility of personal service must first be shown before resort to substituted service can be made. It is only when the summons cannot be served personally on the defendant within a reasonable time that substituted service may be resorted to. This fact must be shown by stating that efforts have been made to locate the defendant personally, but that those efforts failed. [17]

And since substituted service is a derogation of the usual method of service, it must be used only as prescribed and under the circumstances authorized by the Rules. Laws providing for modes other than the personal service of summons must be strictly observed to enable the court to acquire personal jurisdiction. Compliance therewith must appear affirmatively on the return. [18]

In the present case, the return did not (1) indicate the impossibility of a personal service of summons within a reasonable time; (2) specify the efforts exerted by the process server to locate respondents; and (3) with regard to LTS Philippines Corporation, state that the summonses had been served upon its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

In the case before us, it appears from the records that the server effected substituted service right on her first attempt to serve the summonses.

We note that while the case was pending before the CA, new summons was served upon respondent corporation. The process server accomplished a corresponding return [19] which, according to petitioner, already complied

with the Rules. In this appeal, however, this allegation cannot be taken up, because it is being presented for the very first time. The new return, which was accomplished after new summons had been served upon LTS Philippines Corporation, cannot be accepted by this Court on its face; to do so would be tantamount to a denial of respondents' right to due process.

Since the service of summonses was patently defective, it follows that the trial court did not acquire jurisdiction over the persons of respondents. As described earlier, such jurisdiction in civil cases is acquired either by the defendants' voluntary appearance in court and submission to its authority or by the service of summons.[20] Since respondents did not voluntarily submit to the jurisdiction of the trial court, personal service became imperative.[21]

Petitioner further argues that ruling against the RTC's acquisition of jurisdiction may be putting more premium on technical rules of procedure rather than on substantive justice. While it may be true that the provision of the Rules of Court should be applied with substantial justice as the paramount end, their clear tenor and the supporting jurisprudence cannot simply be disregarded. The Rules were painstakingly conceived in order to guarantee the orderly dispensation of justice. Unjustifiably relegating them to the periphery by arguing that their imposition would be in contravention of justice would smack of inadvertence, negligence or even malice.

Actual Defect in the

Service of Summons

Nonetheless, notwithstanding the RTC's lack of jurisdiction, it has been held that "the absence in the sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Proof of prior attempts at personal service may be submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service. While the sheriff's return carries with it the presumption, albeit disputable, of regularity in the sense that inter alia, the entries therein are deemed correct, it does not necessarily follow that an act done in relation to the official duty for which the return is made was not done simply because it [was] not disclosed therein. Besides, the sheriff's neglect in making such a disclosure should not unduly prejudice the plaintiff if what was undisclosed was in fact done." [22]

Even if the defect is apparent on the face of the returns, evidence that would prove proper compliance with the Rules on substituted service may be presented.[23] In the present case, no hearing was conducted to determine whether the summonses had actually and correctly been served. The trial court merely relied on the return that declared that they had indeed been "duly served."

In the same wise, the process server's neglect or inadvertence in the service of summonses should not unduly prejudice petitioner. To repeat, evidence may be presented to ascertain whether prior attempts at personal service have in fact been done. Resort to substituted service may still be valid, if properly justified in a hearing to verify the matter. If not, new summonses should be issued and served properly.

Duty of Petitioner

in the Service of Summonses

Respondents cite BAC Manufacturing & Sales Corporation v. Court of Appeals,[24] which held that the plaintiff carried the burden of seeing to it that the process server had immediately caused its service to the defendant. In that case, however, we made no pronouncement on whether the plaintiff had the corresponding duty to see to it that the manner in which the process server had effected the summons was proper. Herein respondents aver that petitioner cannot simply wash its hands, if there is a defect in the service of summonses.

We agree with petitioner that it should not be directly faulted for the defective service of summonses. Strictly speaking, it should not be held responsible for the manner in which summonses were served or for ensuring that the corresponding returns complied with the Rules. This is because its representative is not required by the Rules to be physically present when the summonses were served, or when the return was accomplished. It was the duty of the process server to serve and accomplish the return. Only after the summonses had been served and the return accomplished would petitioner have known whether there had been any defect in the service.

We now take time to remind trial courts, clerks of court and process servers to ensure that summonses and other court processes are properly served in order to spare them, the litigants and the government from waste of effort, time and resources resulting from the improper service of summonses. It is their duty to see to it that these are validly served in order to avoid needless delays in the outcomes of cases.

Lack of Verification and Certification

of Non-Forum Shopping

Finally, we find no merit in respondents' prayer for the dismissal of this Petition for lack of verification and certification of no forum shopping in petitioner's Motion for Extension of Time to File Petition[25] dated January 12, 2001. We have held that the submission of a certification of no forum shopping is not always necessary when one files a motion for extension of time to file a petition.[26] As a rule, pleadings need not be verified unless required by law, the Rules or jurisprudence.[27] Section 4 of Rule 7 of the Rules of Court provides:

"SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

x x x x x x x x."

Petitioner's Motion for Extension of Time to File Petition need not be verified simply because no law, rule or jurisprudence requires its verification.

In view of the foregoing, we find it reasonable to remand the case to its court of origin to determine whether the summonses were actually defective. If they were, the trial court should issue an order calling for the service of new ones, to be served properly consistent with this Decision.

WHEREFORE, the Petition is PARTLY GRANTED and the assailed Decision of the Court of Appeals MODIFIED. The case is hereby REMANDED to the RTC for further proceedings. Those proceedings shall include a determination of whether there was actually a valid service of summonses. If, after hearing, such service is found to have been improper, then new summonses should be issued and served forthwith. No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.
Puno, (Chairman), J., abroad on official business.

[1] Penned by Justice Martin S. Villarama Jr., with the concurrence of Justices Romeo J. Callejo Sr. (Division chairman and now a member of this Court) and Juan Q. Enriquez Jr. (member); rollo, pp. 30-34.

[2] Rollo, p. 36.

[3] CA Decision, pp. 2-3; rollo, pp. 31-32.

[4] This case was deemed submitted for resolution on October 8, 2001, upon receipt by this Court of the

Memorandum for Petitioner, signed by Atty. Leslie G. Interior of Benedicto Verzosa Gealogo and Burkley. Filed earlier on August 24, 2001 was the Memorandum for Respondents, signed by Attys. Santiago T. Gabionza Jr., Maria Inez C. Marigomen and Oliver M. Zorilla of Villanueva Gabionza and De Santos.

[5] Petitioner's Memorandum, p. 4; rollo, p. 277.

[6] Padilla v. Court of Appeals, GR No. 123893, November 22, 2001; Ang Ping v. Court of Appeals, 310 SCRA 343, July 15, 1999.

[7] Arcelona v. Court of Appeals, 280 SCRA 20, October 2, 1997.

[8] Padilla v. Court of Appeals, *supra*.

[9] Ang Ping v. Court of Appeals, *supra*, per Romero, J.

[10] Laus v. Court of Appeals, 219 SCRA 688, 705, March 8, 1993; citing Venturanza v. Court of Appeals, 156 SCRA 305, 313, December 11, 1987.

[11] *Supra*.

[12] Annex "D" of the Petition; rollo, p. 68.

[13] *Ibid*.

[14] 312 SCRA 65, 73, August 6, 1999, per Gonzaga-Reyes, J.

[15] *Supra*, p. 698, per Davide Jr., J. (now CJ).

[16] *Supra*, p. 313.

[17] Laus v. Court of Appeals, *supra*.

[18] *Ibid*.; Toyota Cubao Inc. v. Court of Appeals, 281 SCRA 198, October 23, 1997.

[19] Rollo, p. 286.

[20] Padilla v. Court of Appeals, *supra*; Ang Ping v. Court of Appeals, *supra*.

[21] Mapa v. Court of Appeals, 214 SCRA 417, 426, October 2, 1992.

[22] *Id.*, pp. 428-429, per Davide Jr., J.

[23] Toyota Cubao Inc. v. Court of Appeals, *supra*, p. 203.

[24] 200 SCRA 130, August 2, 1991.

[25] Rollo, pp. 3-13.

[26] Far Eastern Shipping Company v. Court of Appeals, 297 SCRA 30, October 1, 1998.

[27] Regalado, Remedial Law Compendium, Vol. I, 1997 ed., p. 143.

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