UNITED COCONUT PLANTERS BANK, PETITIONER, VS. ROBERTO V. ONGPIN, RESPONDENT.

G.R. No. 146593. October 26, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated December 27, 2000, of the Court of Appeals,[1]setting aside the orders, dated April 19, 1999 and October 13, 1999, of the Regional Trial Court, Branch 133, Makati City in Civil Case No. 95-1594 entitled United Coconut Planters Bank v. Roberto V. Ongpin.

The facts are as follows:

On November 17, 1994, Philippine Apparel, Inc. (PAI) entered into a credit agreement with petitioner United Coconut Planters Bank for a case-to-case credit line in the amount of US$500,000.00. Respondent Roberto V. Ongpin, then controlling stockholder of PAI, signed as surety, binding himself jointly and severally liable with PAI for the same amount. PAI availed of the credit line by drawing on short-term loans and opening letters of credit for the importation of goods, which amounted to US$650,986.34 or P16,526,653.00.[2]

As PAI failed to pay its obligations, petitioner filed a complaint against respondent Ongpin with the Regional Trial Court, Branch 133, Makati to enforce his obligation as surety of PAI. Petitioner sought the issuance of a writ of preliminary attachment on the following grounds: (1) respondent, in fraud of creditors, had transferred residence to Hongkong; (2) his obligation was not covered by any collateral; and (3) PAI and its officers, including respondent, with intent to defraud, did not disclose the fact that the Bureau of Customs had claims against PAI for unpaid customs duties and taxes in the amount of P284,010,387.00, which fact could have affected petitioner's decision whether to grant the loan to PAI.

On November 10, 1995, the trial court issued an order granting petitioner's prayer for the issuance of a writ of preliminary attachment. On November 16, 1995, a writ of attachment and a notice of garnishment were issued by the trial court, addressed to the president and corporate secretary of the Dominion Asian Equities garnishing 8,315,600 shares of stock belonging to respondent.[3]

On November 21, 1995, respondent, making a special appearance through counsel, moved to dismiss the complaint and to quash the writ of attachment and garnishment on the ground that the trial court had no jurisdiction over the person of respondent, the summons prepared on October 30, 1995 having been unserved as of November 17, 1995. The trial court denied the urgent motion as well as respondent's subsequent motion for reconsideration.[4]

On May 24, 1996, respondent filed a petition for certiorari in the Court of Appeals assailing the orders of the trial court. During the pendency of the petition, on May 27, 1996, petitioner filed with the trial court a Motion for Leave to Serve Summons Through Publication. Its motion was granted, but the publication was held in abeyance on October 2, 1996. On the same date, petitioner entered into an agreement with TODAY for the publication of

the summons on October 4, 11, and 18, 1996. Petitioner received the trial court's order at the close of office hours on October 3, 1996. Attempts to prevent the publication by requesting the trial court through telephone to inform the newspaper publisher of its order and informing the newspaper itself of the same proved futile, as nobody in the court was contacted by petitioner while the telephone lines of the newspaper were busy. As a result, TODAY published the summons on October 4, 1996. It was only on October 8, 1996 that petitioner was able to inform the newspaper of the October 2, 1996 order and to request the latter to hold in abeyance further publication of the summons.[5]

On February 27, 1997, the Court of Appeals promulgated its decision, the dispositive portion of which states:

> THE FOREGOING CONSIDERED, the issuance of a Writ of Attachment together with the Notice of Garnishment is hereby validated: but the implementation of the Writ of Attachment/Garnishment is prohibited until after the Court shall have acquired jurisdiction over the person of the petitioner, either through voluntary appearance or service of summons.
>
> SO ORDERED.[6]

On March 19, 1997, petitioner filed a motion for reconsideration with the appeals court insofar as it held that the trial court had no jurisdiction on the person of petitioner and for this reason suspended implementation of the writ of attachment/garnishment. However, the Court of Appeals denied petitioner's motion.

On August 1, 1997, petitioner filed a petition for certiorari with this Court. Again, during the pendency of the case, petitioner filed with the trial court on August 15, 1997 another Motion to Serve Summons through Publication with Leave of Court. In the meantime, on August 27, 1997, this Court issued a resolution dismissing petitioner's petition for review on certiorari for failure of petitioner to comply with procedural requirements.[7]

On November 27, 1997, Deputy Sheriff Glenn B. Parra, together with Atty. Rodulfo Baculi, Jr., representative of petitioner, went to the PILTEL office at the Banker's Center Building, Ayala Avenue, Makati City to serve summons on respondent, who was then the chairman of the board of PILTEL and was expected to attend a board meeting on that day. Upon arrival, they asked the receptionist, Arlene Cuenco, if respondent would attend the meeting. Cuenco conferred with Anne V. Morallo, executive secretary of the president of PILTEL, who then called respondent's office at the BA Lepanto Building, Paseo de Roxas Ave., Makati City. Morallo was informed that respondent was not going to attend the meeting. Nevertheless, Sheriff Parra and Atty. Baculi waited until 11:30 a. m. They proceeded to respondent's office at the BA Lepanto Building when respondent failed to appear at the board meeting. The security guard at BA Lepanto told them that respondent was holding office at the 14th floor, but when they reached the said floor, they were told by a member of the Internal Security Personnel that respondent was not known at that place.

In the afternoon of the same day, Sheriff Parra returned to the PILTEL office to serve the summons on respondent. There, he met for the first time Anne V. Morallo, who told him that she was authorized to receive court processes for and on behalf of respondent even though the latter was not holding office in the building. Morallo was so advised by Atty. Joseph Santiago, Chief of the Legal Department of PILTEL. Thus, Sheriff Parra served the summons on Morallo who received it accordingly. However, when Morallo tried to forward the court process to respondent, the latter's lawyer, Atty. David S. Narvasa, refused to receive it.[8]

After serving summons through Morallo, Sheriff Parra then implemented the writ of attachment by serving notices of garnishment on the following: (1) Stock Transfer Office - FEBTC; (2) Professional Stock Transfer; (3) Stock Transfer Services; (4) The Corporate Secretary, Belle Corp., Tagaytay Highlands; and (5) International Exchange Bank, Head Office and all branches thereof.[9]

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On December 4, 1997, respondent filed with the trial court an Urgent Omnibus Motion: (a) to Dismiss; (b) for Prohibition of the Implementation of the Writ of Attachment dated 16 November 1995; (c) for Quashal of the Notice of Garnishment dated 27 November 1997; and (d) for Release of Properties attached thereby. On April 19, 1999, the trial court denied respondent's motion for lack of merit. Respondent's motion for reconsideration was likewise denied on October 13, 1999.

Consequently, respondent filed a petition for certiorari with application for a Temporary Restraining Order and Writ of Preliminary Injunction in the Court of Appeals. The Court of Appeals promulgated its decision on December 27, 2000, annulling and setting aside the orders of the trial court, dated April 19, 1999 and October 13, 1999, on the ground that PILTEL was not the regular place of business of respondent and that, even if it was, Morallo could not be considered a competent person in charge of respondent's office, as she was the executive secretary of the president of PILTEL and not of respondent. Hence, this petition for review under Rule 45 of the Revised Rules of Civil Procedure.[10]

Petitioner makes the following assignment of errors:

> THE COURT OF APPEALS ERRED IN ANNULLING THE ORDERS OF THE TRIAL COURT DATED 19 APRIL 1999 AND 13 OCTOBER 1999 BECAUSE:
>
> - RESPONDENT ONGPIN, AFTER FIVE LONG YEARS OF "SPECIAL APPEARANCE," SHOULD BE DEEMED TO HAVE VOLUNTARILY SUBJECTED HIMSELF TO THE JURISDICTION OF THE TRIAL COURT.
>
> - THE SUBSTITUTED SERVICE OF SUMMONS ON RESPONDENT ONGPIN ON 27 NOVEMBER 1997 WAS VALID, CONSIDERING THAT:
>
> - RESPONDENT ONGPIN, AT THE TIME OF SUBSTITUTED SERVICE OF SUMMONS, WAS CHAIRMAN OF THE BOARD OF DIRECTORS OF PILTEL WHOSE OFFICES SHOULD BE CONSIDERED HIS REGULAR PLACE OF BUSINESS.
>
> - MS. ANNE V. MORALLO, THE EXECUTIVE SECRETARY OF THE PRESIDENT OF PILTEL WAS NOT ONLY AUTHORIZED TO RECEIVE SUMMONS AND COURT PROCESSES ON BEHALF OF RESPONDENT ONGPIN, BUT WAS ALSO A COMPETENT PERSON TO RECEIVE SUMMONS.
>
> - THE ONLY REASON WHY MS. ANNE V. MORALLO DID NOT TRANSMIT THE SUMMONS TO RESPONDENT ONGPIN WAS THAT RESPONDENT ONGPIN'S COUNSEL, ALSO THE LEGAL COUNSEL OF PILTEL, ADVISED HER TO KEEP IT.

This assignment of errors boils down to the following questions: (1) whether or not respondent Ongpin's continuous "special appearances" before the court for five years may be deemed voluntary appearance as contemplated by the Revised Rules on Civil Procedure on acquisition of jurisdiction over the person of defendant; and (2) whether or not the substituted service of summons on Anne V. Morallo, executive secretary of the president of PILTEL, was valid.

First. Petitioner maintains that the trial court had already acquired jurisdiction over the person of respondent Ongpin by virtue of the numerous appearances by his counsel and respondent's undeniable knowledge of the complaint against him.

This contention has no merit. A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground, e. g., invalidity of the service of summons, cannot be considered to have submitted himself to the jurisdiction of the court.[11] In fact, in La Naval Drug Corp. vs. Court of Appeals,[12]this Court ruled that even the assertion of affirmative defenses aside from lack of jurisdiction over the person of the

defendant cannot be considered a waiver of the defense of lack of jurisdiction over such person.

In the present case, although respondent had indeed filed numerous pleadings, these pleadings were precisely for the purpose of contesting the jurisdiction of the court over the person of respondent on the ground that there was no valid service of summons on him. It would be absurd to hold that respondent, by making such appearance, thereby submitted himself to the jurisdiction of the court.

Petitioner cites the ruling in Macapagal v. Court of Appeals[13]for its contention that the "feigned unawareness" of a defendant is equivalent to voluntary appearance. The facts of Macapagal are, however, different from the facts of this case. In that case, this Court considered the petitioner to have been validly served summons based on its findings that summons was served on the legal counsel of the two corporations and its officers and directors. Petitioner's defense that at the time of the service of summons he was no longer connected with both corporations, having resigned from them before such service, was dismissed by this Court as flimsy. The finding of this Court on the feigned unawareness of petitioner was based on the fact that Philfinance's woes were widely publicized. This, together with counsel's authority to receive service of summons on behalf of petitioner, was the basis for this Court's ruling that jurisdiction over the person of the latter had already been acquired by the trial court.

In contrast, summons in this case was served on the executive secretary of the president of PILTEL, a company which is not a party to the present action. Respondent Ongpin, through counsel, entered "numerous special appearances" in court precisely to question the court's jurisdiction over his person either due to failure to serve summons or to an invalid service of summons on him. Jurisdiction cannot be acquired over the person of respondent even if he knows of the case against him unless he is validly served with summons.[14]

Second. Petitioner contends that the Court of Appeals erred in ruling that (1) substituted service of summons at the PILTEL office where respondent sits as chairman of the board is invalid as the PILTEL office is not his regular place of business; and (2) Anne V. Morallo, the executive secretary of PILTEL's president, was not authorized to receive the summons on behalf of respondent Ongpin as she was not his executive secretary but that of the president's.

We think no error was incurred by the Court of Appeals in this ruling. Rule 14, §7 of the 1997 Revised Rules of Civil Procedure provides that if, for justifiable causes, personal service cannot be effected on defendant, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.[15] The word "office" or the phrase "regular place of business" refers to the office or place of business of the defendant at the time of service. The rule specifically designates the persons to whom copies of the process should be left. In Mapa vs. Court of Appeals,[16]substituted service of summons in a person claiming to be authorized to receive service of summons in behalf of the corporation was held to be invalid as far as jurisdiction over the person of the chairman of the board was concerned inasmuch as he was not holding office in the corporation but in his residence. Thus, it does not necessarily follow that the regular place of business of a chairman of the board of directors is the same as the address of the corporation as it is possible for him to hold office elsewhere.

In the case at bar, the corporation (PILTEL), where substituted summons was served and of which respondent was the chairman of the board, was not even a party to the present suit. Respondent was sued in his personal capacity as surety for PAI. Even from the initial inquiries made by the sheriff and petitioner's representative in the office of PILTEL, it was evident that respondent was not holding office there. Indeed, Morallo, executive secretary of the PILTEL, had to call respondent's secretary at the BA Lepanto Building, Paseo de Roxas, to find out whether he was attending the board meeting to be held on that day. Thus, the process server already knew that respondent

was not holding office at the PILTEL office but somewhere else.

As the PILTEL office is not respondent's regular place of business, it cannot therefore be said that Anne V. Morallo, the person who received the service of summons in behalf of respondent, was authorized to receive service of process on behalf of respondent.

Third. It is not clear whether respondent could be personally served with summons because he had transferred residence to Hongkong. Thus in its complaint, petitioner alleged that respondent's address was either at ATA Capital Corporation, 3404 1 Exchange Square, #8 Connaught Place, Central Hongkong or South China Morning, Post Center #22 Tai Fat Street, Taipo Industrial Estate, Taipo, New Territories, Hongkong. But later, it tried to personally serve summons on respondent at the PILTEL office, where he served as chairman of the board of directors. When respondent failed to attend the meeting, the process server proceeded to the BA Lepanto Building, Paseo de Roxas, Makati City, where, as the process server learned from Morallo, respondent was allegedly holding office.

Under the Rules, if a defendant is a non-resident and his property in the Philippines had been attached, service may, by leave of court, be effected outside the Philippines or by publication in a newspaper of general circulation.[17] In the same manner, if the whereabouts of the defendant is unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, likewise be effected by publication in a newspaper of general circulation.[18] In this case, the plaintiff must show that the address of defendant is unknown and cannot be ascertained by diligent inquiry.[19]

It is clear that petitioner is not without remedy under the Revised Rules of Civil Procedure to enforce the writ of attachment through a valid service of summons. If, indeed, respondent is no longer a resident of the Philippines, petitioner still can, by leave of court, serve summons by publication, as it in fact tried to do. The records show that petitioner attempted to serve summons by publication, but later abandoned its effort and for some reason attempted personal service instead.

If, on the other hand, respondent is a resident and petitioner cannot determine the correct address of respondent, petitioner only needs to show that respondent's address is unknown and cannot be ascertained by diligent inquiry. Upon compliance with this requirement, it can validly serve summons by publication in a newspaper of general circulation.

Petitioner cannot fall back on allegations of knowledge of respondent to avoid complying with the standards and guidelines set by the Rules. What we said in Oñate v. Abrogar[20]bears repeating in this case:

> ... More important than the need for insuring success in the enforcement of the writ is the need for affirming a principle on that "most fundamental of all requisites -- the jurisdiction of the court issuing attachment over the person of the defendant." It may be that the same result would follow from requiring that a new writ be served all over again. The symbolic significance of such an act, however, is that it would affirm our commitment to the rule of law.

WHEREFORE, the decision of the Court of Appeals is affirmed. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Presbiterio J. Velasco, Jr. and Conrado M. Vasquez, Jr.

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[2] Petition, pp. 8-9; Rollo, pp. 64-67; Annex E & F of the Petition.

[3] Id., pp. 9-10; id., pp. 68-69; Annex G & H of the Petition.

[4] Id., pp. 8-9; id., p. 10-11.

[5] Id., pp. 9-10; id., pp. 11-12; CA Rollo, pp 211-212.

[6] Id., pp. 10-11; id., pp. 12-13; Annex N.

[7] Id., pp. 11-12; Comment, p. 3; Rollo, pp. 13-14, 113; annex E of the Petition.

[8] Id., pp. 12-18; Order, dated April 19, 1999, pp. 1-5; Rollo, pp. 14-20.

[9] Rollo, p. 98; Annex P of the Petition.

[10] Comment, pp. 4-5; Rollo, pp. 114-115; annex F, G & H of the Comment.

[11] 1 F.D. REGALADO, REMEDIAL LAW COMPENDIUM 234-244 (7[th] ed., 1999).

[12] 236 SCRA 78 (1994). See also Rule 14, §20 of the 1997 Revised Rules of Civil procedure.

[13] 297 SCRA 429 (1998).

[14] cf. 1 F.D. REGALADO, REMEDIAL LAW COMPENDIUM 215 (7[th] ed., 1999) citing Habana v. Vamenta, 33 SCRA 569 (1970).

[15] REVISED RULES OF CIVIL PROCEDURE, RULE 14, §7.

[16] 241 SCRA 417 (1992).

[17] REVISED RULES OF CIVIL PROCEDURE, RULE 14, §15.

[18] Id., §14.

[19] Baltazar v. Court of appeals, 168 SCRA 354 (1988).

[20] 241 SCRA 659, 668 (1995).

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