

HENRY S. OAMINAL, PETITIONER, VS. PABLITO M. CASTILLO AND GUIA S. CASTILLO, RESPONDENTS.

G.R. No. 152776. October 08, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In the instant case, the receipt of the summons by the legal secretary of the defendants -- respondents herein -- is deemed proper, because they admit the actual receipt thereof, but merely question the manner of service. Moreover, when they asked for affirmative reliefs in several motions and thereby submitted themselves to the jurisdiction of the trial court, whatever defects the service of summons may have had were cured.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the March 26, 2002 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 66562. The assailed Decision disposed thus:

"WHEREFORE, the [D]ecision dated 23 August 2001 is hereby NULLIFIED and SET ASIDE and Civil Case No. OZC-00-13 ordered DISMISSED, without prejudice. Costs against [petitioner]."[3]

The Antecedents

The antecedents of the case were narrated by the CA as follows:

"On 09 March 2000, [Petitioner Henry Oaminal] filed a complaint for collection against [Respondents Pablito and Guia Castillo] with the Regional Trial Court [RTC] of Ozamis City (Branch 35) x x x. The complaint prayed that [respondents] be ordered to pay P1,500,000.00 by way of liquidated damages and P150,000.00 as attorney's fees.

"On 30 May 2000, the summons together with the complaint was served upon Ester Fragonal, secretary of [Respondent] Mrs. Castillo.

"On 06 June 2000, [respondents] filed their 'Urgent Motion to Declare Service of Summons Improper and Legally Defective' alleging that the Sheriff's Return has failed to comply with Section (1), Rule 14 of the Rules of Court or substituted service of summons.

"The scheduled hearing of the Motion on 14 July 2000 did not take place because x x x [RTC] Judge [Felipe Zapatos] took a leave of absence from July 17 to 19, 2000[;] hence[,] it was re-scheduled to 16 August 2000.

"On 19 October 2000, [petitioner] filed an Omnibus Motion to Declare [Respondents] in Default and to Render Judgment because no answer [was] filed by [the latter].

"[Respondents] forthwith filed the following:

`a. Omnibus Motion Ad Cautelam to Admit Motion to Dismiss and Answer with Compulsory Counter-claim dated 9 November 2000 which was set for hearing on 27 November 2000 at 8:30 a.m.;

`b. x x x Urgent Motion to Dismiss also dated 9 November 2000 which was also set for hearing on 27

November 2000 at 8:30 a.m. The said motion was anchored on the premise that x x x [petitioner's] complaint was barred by improper venue and litis pendentia; and

`c. Answer with Compulsory Counter-Claim dated 9 November 2000.'

"On 16 November 2000, x x x [the] judge denied [respondents'] Motion to Dismiss, admitted [their] Answer, and set the pre-trial [on] 17 January 2001.

"On 24 November 2000, [respondents] filed an `Urgent Motion to Inhibit Ad Cautelam' against Judge [Zapatos], `in the higher interest of substantial justice and the [r]ule of [l]aw x x x.'

"On 27 December 2000, Judge [Zapatos] denied the motion and transferred the January 17[th] pre-trial to 19 February 2001.

"[Respondents] filed an `Urgent Omnibus Motion for Reconsideration with the Accompanying Plea to Reset' dated 22 January 2001. The motion requested that it be set for consideration and approval by the trial court on 05 February 2001 at 8:30 a.m. Said motion in the main prayed `that an order be issued by the Honorable Court reconsidering its adverse order dated 16 November 2000, by dismissing the case at bar on the ground of improper venue or in the alternative, that the Honorable Presiding Judge reconsider and set aside its order dated December 27, 2000 by inhibiting himself from the case at hand.'

"On 22 May 2001, Judge [Zapatos] ruled that [respondents'] `Omnibus Motion Ad Cautelam to Admit Motion to Dismiss and Answer with Counterclaim' was filed outside the period to file answer, hence he (1) denied the Motion to Admit Motion to Dismiss and Answer; (2) declared [respondents] in default; and (3) ordered [petitioner] to present evidence ex-parte within ten days from receipt of [the] order, [failing] which, the case will be dismissed.

"On 23 August 2001, Judge [Zapatos] rendered a decision on the merits, with the following dispositi[on]:

`WHEREFORE, finding by preponderance of evidence, judgment is hereby rendered in favor of [petitioner], ordering [respondents] to pay x x x:

1)

P1,500,000.00 by way of [l]iquidated [d]amages;

2)

P20,000.00 as attorney's fees and litigation expenses; and

3)

x x x cost[s].'"[4]

On September 11, 2001, respondents filed with the CA a Petition for certiorari, prohibition and injunction, with a prayer for a writ of preliminary injunction or temporary restraining order (TRO). In the main, they raised the issue of whether the trial court had validly acquired jurisdiction over them.

On September 20, 2001, the appellate court issued a TRO to enjoin the lower court from issuing a writ of execution to enforce the latter's decision.

Ruling of the Court of Appeals

The CA ruled that the trial court did not validly acquire jurisdiction over respondents, because the summons had

been improperly served on them. It based its finding on the Sheriff's Return, which did not contain any averment that effort had been exerted to personally serve the summons on them before substituted service was resorted to. Thus, the appellate court set aside the trial court's Decision and dismissed, without prejudice, Civil Case No. OZC-00-13.

Hence, this Petition.[5]

Issues

Petitioner submits the following issues for our consideration:

"I

Whether respondents' recourse to a Petition for Certiorari [was] appropriate when the remedy of appeal was available?

"II

Whether the Decision of the trial court attained finality?

"III

Whether the Honorable Third Division of the Court of Appeals [was] correct in entertaining and in granting the Writ of Certiorari when the facts clearly establish[ed] that not only was [an] appeal available, but x x x there were other plain, speedy and adequate remedies in the ordinary course of law?

"IV

Whether the Honorable Third Division of the Court of Appeals had jurisdiction to nullify and set aside the Decision of the trial court and dismiss the case?

"V

[Whether] receipt by a legal secretary of a summons [is deemed] receipt by a lawyer in contemplation of law?"[6]

Simply stated, the issues boil down to the following: (1) whether the Petition for certiorari before the CA was proper; and (2) whether the trial court acquired jurisdiction over respondents.

Since the Petition for certiorari was granted by the CA based on the trial court's alleged lack of jurisdiction over respondents, the second issue shall be discussed ahead of the former.

The Court's Ruling

The present Petition is partly meritorious.

First Issue:

Jurisdiction over Defendants

Petitioner contends that the trial court validly acquired jurisdiction over the persons of respondents, because the latter never denied that they had actually received the summons through their secretary. Neither did they dispute her competence to receive it.

Moreover, he argues that respondents automatically submitted themselves to the jurisdiction of the trial court when they filed, on November 9, 2000, an Omnibus Motion to Dismiss or Admit Answer, a Motion to Dismiss on

the grounds of improper venue and *litis pendentia*, and an Answer with Counterclaim.

On the other hand, respondents insist that the substituted service of summons on them was improper. Thus, they allege that the trial court did not have the authority to render its August 23, 2001 Decision.

We clarify.

Service of Summons

In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former. Where the action is in personam and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner provided for by Sections 6 and 7 of Rule 14 of the Revised Rules of Court, which read:

"Section 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.

"Section 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."

Personal service of summons is preferred over substituted service. Resort to the latter is permitted when the summons cannot be promptly served on the defendant in person and after stringent formal and substantive requirements have been complied with.[7]

For substituted service of summons to be valid, it is necessary to establish the following circumstances: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or regular place of business.[8] It is likewise required that the pertinent facts proving these circumstances are stated in the proof of service or officer's return.

In the present case, the Sheriff's Return[9] failed to state that efforts had been made to personally serve the summons on respondents. Neither did the Return indicate that it was impossible to do so within a reasonable time. It simply stated:

"THIS IS TO CERTIFY that on the 30[th] day of May 2000, copies of the summons together with the complaint and annexes attached thereto were served upon the defendants Pablito M. Castillo and Guia B. Castillo at their place of business at No. 7, 21[st] Avenue, Cubao, Quezon City thru MS. ESTER FREGINAL, secretary, who is authorized to receive such kind of process. She signed in receipt of the original as evidenced by her signature appearing on the original summons.

"That this return is submitted to inform the Honorable x x x Court that the same was duly served."[10]

Nonetheless, nothing in the records shows that respondents denied actual receipt of the summons through their secretary, Ester Friginal. Their "Urgent Motion to Declare Service of Summons Improper and Legally Defective"[11] did not deny receipt thereof; it merely assailed the manner of its service. In fact, they admitted in their Motion that the "summons, together with the complaint, was served by the Sheriff on Ester Friginal, secretary of the defendants at No. 7, 21[st] Avenue, Cubao, Quezon City on 30 May 2000."[12]

That the defendants' actual receipt of the summons satisfied the requirements of procedural due process had previously been upheld by the Court thus:

"x x x [T]here is no question that summons was timely issued and received by private respondent. In fact, he never denied actual receipt of such summons but confined himself to the argument that the Sheriff should prove that personal service was first made before resorting to substituted service.

"This brings to the fore the question of procedural due process. In *Montalban v. Maximo* (22 SCRA 1077 [1968]) the Court ruled that 'The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.'"[13]

There is likewise no showing that respondents had heretofore pursued the issue of lack of jurisdiction; neither did they reserve their right to invoke it in their subsequent pleadings. If at all, what they avoided forfeiting and waiving -- both in their Omnibus Motion and Cautelam to Admit Motion to Dismiss and Answer with Compulsory Counter-Claim[14] and in their Motion to Dismiss[15] -- was their right to invoke the grounds of improper venue and *litis pendencia*. They argued therein:

"3. x x x. To be sure, the [respondents] have already prepared a finalized draft of their [M]otion to [D]ismiss the case at bar, based on the twin compelling grounds of 'improper venue' and [the] additional fact that 'there exists a case between the parties involving the same transaction/s covered by the plaintiff's cause of action.' x x x;

"4. That as things now stand, the [respondents] are confronted with the dilemma of filing their [M]otion to [D]ismiss based on the legal grounds stated above and thus avoid forfeiture and waiver of these rights as provided for by the Rules and also file the corresponding [M]otion to [A]dmit x x x [A]nswer as mandated by the Omnibus Rule.

x x x x x x x x"[16]

Verily, respondents did not raise in their Motion to Dismiss the issue of jurisdiction over their persons; they raised only improper venue and *litis pendencia*. Hence, whatever defect there was in the manner of service should be deemed waived.[17]

Voluntary Appearance and Submission

Assuming *arguendo* that the service of summons was defective, such flaw was cured and respondents are deemed to have submitted themselves to the jurisdiction of the trial court when they filed an Omnibus Motion to Admit the Motion to Dismiss and Answer with Counterclaim, an Answer with Counterclaim, a Motion to Inhibit, and a Motion for Reconsideration and Plea to Reset Pre-trial. The filing of Motions seeking affirmative relief -- to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration -- are considered voluntary submission to the jurisdiction of the court.[18] Having invoked the trial court's jurisdiction to secure affirmative relief, respondents cannot -- after failing to obtain the relief prayed for -- repudiate the very same authority they have invoked.[19]

Second Issue:

Propriety of the Petition for Certiorari

Petitioner contends that the certiorari Petition filed by respondents before the CA was improper, because other remedies in the ordinary course of law were available to them. Thus, he argues that the CA erred when it took cognizance of and granted the Petition.

Well-settled is the rule that certiorari will lie only when a court has acted without or in excess of jurisdiction or

with grave abuse of discretion.[20] As a condition for the filing of a petition for certiorari, Section 1 of Rule 65 of the Rules of Court additionally requires that "no appeal nor any plain, speedy and adequate remedy in the ordinary course of law" must be available.[21] It is axiomatic that the availability of the right of appeal precludes recourse to the special civil action for certiorari.[22]

Here, the trial court's judgment was a final Decision that disposed of the case. It was therefore a fit subject of an appeal.[23] However, instead of appealing the Decision, respondents filed a Petition for certiorari on September 11, 2001.

Be that as it may, a petition for certiorari may be treated as a petition for review under Rule 45. Such move is in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, especially (1) if the petition was filed within the reglementary period for filing a petition for review;[24] (2) errors of judgment are averred;[25] and (3) there is sufficient reason to justify the relaxation of the rules.[26] Besides, it is axiomatic that the nature of an action is determined by the allegations of the complaint or petition and the character of the relief sought.[27] The Court explained:

"x x x. It cannot x x x be claimed that this petition is being used as a substitute for appeal after that remedy has been lost through the fault of petitioner. Moreover, stripped of allegations of 'grave abuse of discretion,' the petition actually avers errors of judgment rather than of jurisdiction, which are the subject of a petition for review." [28]

The present case satisfies all the above requisites. The Petition for certiorari before the CA was filed within the reglementary period of appeal. A review of the records shows that respondents filed their Petition on September 11, 2001 -- four days after they had received the RTC Decision. Verily, there were still 11 days to go before the lapse of the period for filing an appeal. Aside from charging grave abuse of discretion and lack of jurisdiction, they likewise assigned as errors the order and the judgment of default as well as the RTC's allegedly unconscionable and iniquitous award of liquidated damages.[29] We find the latter issue particularly significant, considering that the trial court awarded P1,500,000 as liquidated damages without the benefit of a hearing and out of an obligation impugned by respondents because of petitioner's failure to pay.[30] Hence, there are enough reasons to treat the Petition for certiorari as a petition for review.

In view of the foregoing, we rule that the Petition effectively tolled the finality of the trial court Decision.[31] Consequently, the appellate court had jurisdiction to pass upon the assigned errors. The question that remains is whether it was correct in setting aside the Decision and in dismissing the case.

Trial Court's Default Orders Erroneous

A review of the assailed Decision reveals that the alleged lack of jurisdiction of the trial court over the defendants therein was the reason why the CA nullified the former's default judgment and dismissed the case without prejudice. However, we have ruled earlier that the lower court had acquired jurisdiction over them. Given this fact, the CA erred in dismissing the case; as a consequence, it failed to rule on the propriety of the Order and the judgment of default. To avoid circuitousness and further delay, the Court deems it necessary to now rule on this issue.

As much as possible, suits should be decided on the merits and not on technicalities.[32] For this reason, courts have repeatedly been admonished against default orders and judgments that lay more emphasis on procedural niceties at the expense of substantial justice.[33] Not being based upon the merits of the controversy, such issuances may indeed amount to a considerable injustice resulting in serious consequences on the part of the defendant. Thus, it is necessary to examine carefully the grounds upon which these orders and judgments are

sought to be set aside.[34]

Respondents herein were declared in default by the trial court on May 22, 2001, purportedly because of their delay in filing an answer. Its unexpected volte face came six months after it had ruled to admit their Answer on November 16, 2000, as follows:

"That with respect to the Motion to Admit Answer, this Court is not in favor of terminating this case on the basis of technicality for failure to answer on time, hence, as ruled in the case of *Nantz v. Jugo and Cruz*, 43 O.G. No. 11, p. 4620, it was held:

'Lapses in the literal observance of a rule of procedure will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, when they have not prejudiced the adverse party and have not deprived the court of its authority. Conceived in the best traditions of practical and moral justice and common sense, the Rules of Court frown upon hairsplitting technicalities that do not square with their liberal tendency and with the ends of justice unless something in the nature of the factors just stated intervene. x x x'

"WHEREFORE, x x x in the interest of justice, the Answer of the [respondents] is hereby admitted." [35]

Indiana Aerospace University v. Commission on Higher Education [36] held that no practical purpose was served in declaring the defendants in default when their Answer had already been filed -- albeit after the 15-day period, but before they were declared as such. Applying that ruling to the present case, we find that respondents were, therefore, imprudently declared in default.

WHEREFORE, the Petition is hereby GRANTED IN PART, and the Decision of the Court of Appeals MODIFIED. The trial court's Order of Default dated May 22, 2001 and Judgment of Default dated August 23, 2001 are ANNULLED, and the case remanded to the trial court for further proceedings on the merits. No costs.

SO ORDERED.

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

[1] Rollo, pp. 8-33.

[2] Penned by Justice Buenaventura J. Guerrero (Division chairman), with the concurrence of Justices Rodrigo V. Cosico and Eliezer R. de los Santos (members); rollo, pp. 35-44.

[3] CA Decision, p. 10; rollo, p. 44.

[4] Id., pp. 2-5 & 36-39.

[5] The case was deemed submitted for decision on May 15, 2003, upon the Court's receipt of petitioner's Memorandum signed by Atty. Sam Norman G. Fuentes. Respondents' Memorandum, signed by Atty. Pablito M. Castillo, was received by this Court on March 4, 2003.

[6] Petitioner's Memorandum, pp. 4-5; rollo, pp. 180-181. Original in upper case.

[7] *Sandoval v. House of Representatives Electoral Tribunal (HRET)*, GR No. 149380, July 3, 2002; *Spouses Miranda v. CA*, 383 Phil. 163, February 23, 2000; *Ang Ping v. CA*, 369 Phil. 607, July 15, 1999.

[8] *Umandap v. Sabio Jr.*, 339 SCRA 243, August 29, 2000; *Laus v. CA*, 219 SCRA 688, March 8, 1993.

[9] Rollo, p. 45.

[10] Ibid.

[11] CA rollo, pp. 42-44.

[12] Urgent Motion to Declare Service of Summons Improper and Legally Defective, par. 1, p. 1; id., p. 42.

[13] Boticano v. Chu Jr., 148 SCRA 541, 551, March 16, 1987, per Paras, J.

[14] CA rollo, pp. 47-51.

[15] CA rollo, pp. 52-54.

[16] Omnibus Motion ad Cautelam to Admit Motion to Dismiss and Answer with Compulsory Counterclaim dated November 9, 2000; id., pp. 47-48.

[17] Ibid.

[18] Europa v. Hunter Garments Manufacturing (Phil.), Inc., 175 SCRA 394, July 18, 1989; Orosa v. CA, 330 Phil. 67, September 3, 1996; Villareal v. CA, 356 Phil. 826, September 17, 1998; Navale v. CA, 324 Phil. 70, February 20, 1996, citing Soriano v. Hon. Palacio and Medenilla, 120 Phil. 1244, November 28, 1964.

[19] American Inter-Fashion Corporation v. Glorious Sun Fashion Garments Manufacturing (Phils.) Co., Inc., 335 Phil. 723, February 13, 1997; citing St. Luke's Medical Center, Inc. v. Torres, 223 SCRA 779, June 29, 1993.

[20] Section 1 of Rule 65 of the Rules of Court.

[21] National Steel Corporation v. CA, 381 Phil. 219, January 31, 2000; Province of Bulacan v. CA, 359 Phil. 779, November 27, 1998.

[22] Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation, 339 SCRA 223, August 29, 2000; Raymundo v. CA, 374 Phil. 95, September 29, 1999.

[23] See Section 2 of Rule 36 of the Rules of Court.

[24] Republic v. CA, 379 Phil. 92, January 18, 2000; Eternal Gardens Memorial Park v. CA, 347 Phil. 232, December 9, 1997.

[25] Delsan Transport Lines, Inc. v. CA, 335 Phil. 1066, February 20, 1997.

[26] Banco Filipino Savings and Mortgage Bank v. CA, 389 Phil. 644, June 23, 2000.

[27] Ten Forty Realty and Development Corp. v. Cruz, GR No. 151212, September 10, 2003; Chico v. CA, 348 Phil. 37, January 5, 1998; Cañiza v. CA, 335 Phil. 1107, February 24, 1997.

[28] Delsan Transport Lines, Inc. v. CA, supra, p. 1075, per Mendoza, J.

[29] Respondents' Petition for Certiorari before the CA, p. 16; CA rollo, p. 17.

[30] Id., pp. 3 & 4.

[31] Under Section 4 of Rule 39 of the Rules of Court, only "[j]udgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. x x x."

[32] Spouses Diaz v. CA, 387 Phil. 314, April 28, 2000.

[33] *Sarmiento v. Juan*, 205 Phil. 335, January 28, 1983; cited in *Philippine Transmarine Carriers, Inc. v. CA*, 382 Phil. 777, February 18, 2000.

[34] *Spouses Ampeloquio v. CA*, 389 Phil. 13, June 15, 2000.

[35] CA rollo, p. 88.

[36] 356 SCRA 367, April 4, 2001.

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