

BENEDICTO B. POTENCIANO II, PETITIONER, VS. GREGORY P. BARNES, RESPONDENT.

G.R. No. 159421. August 20, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 26 August 2002 and the Resolution dated 8 August 2003 of the Court of Appeals in CA-G.R. SP No. 68359.

The Facts

In February 2000, GP Barnes Group of Companies hired petitioner Benedicto B. Potenciano II (Potenciano) as a member of the Management Committee of the Barnes Marketing Concept which held office in Ortigas Center, Pasig City. Potenciano was also designated as one of the managers of the London Underground Bar and Restaurant, another member-company of GP Barnes Group of Companies. In February 2001, Potenciano was assigned as Operations Manager of Executive Dinner Club International, also a member-company of GP Barnes Group of Companies.

On 9 May 2001, Potenciano filed with the Regional Trial Court of Muntinlupa City, Branch 276 (trial court) a complaint for damages against respondent Gregory P. Barnes (Barnes), the owner and president of GP Barnes Group of Companies, for alleged harassment and maltreatment.

On 11 May 2001, a certain Jaime S. Herrera (Mr. Herrera), a representative of E. Himan Law Office, secured from the trial court copies of the complaint with annexes and the summons intended for Barnes. Mr. Herrera indicated on the court's copy of the summons that E. Himan Law Office was Barnes' counsel. On the same date, the deputy sheriff issued a Return of Summons.

On 16 June 2001, Potenciano filed a motion to declare Barnes in default. On 22 June 2001, E. Himan Law Office, represented by Atty. Jose Valentino G. Dave (Atty. Dave), by way of special appearance for the sole purpose of questioning the validity of the service of summons, filed its Comment/Manifestation, manifesting that the law office does not represent Barnes because he has not yet engaged the services of the law office. Hence, the law office has no authority to bind Barnes.

On 12 July 2001, the trial court issued an Order of Default. On 30 July 2001, E. Himan Law Office, represented by Atty. Dave, by way of special appearance, filed an urgent motion for reconsideration of the default order, which the trial court denied.

On 8 August 2001, the trial court rendered a resolution, the dispositive portion of which reads:

Prescinding, judgment is rendered for Plaintiff [Benedicto B. Potenciano II], declaring Defendant Gregory Paul Barnes, by himself and severally, jointly with his companies, being GP Barnes Group of Companies, Barnes

Marketing Concept, London Underground Bar and Restaurant and Executive Dinner Club International, with which Plaintiff was connected or working with, for sometime during his employment with Mr. Barnes, for damages and are therefore directed to personally, jointly and severally pay Plaintiff as follows:

- One Million Pesos (P1,000,000.00) as and by way of moral damages;
- Four Hundred Thousand Pesos (P400,000.00) as and by way of nominal damages;
- Four Hundred Thousand Pesos (P400,000.00) as and by way of exemplary damages;
- Two Hundred Thousand Pesos (P200,000.00) and Three Thousand Pesos (P3,000.00) per appearance, as and by way of attorney's fees; and
- Costs of the suit.

It is SO ORDERED.[3]

On 16 August 2001, Potenciano filed a Motion for Execution Pending Appeal. On 25 August 2001, Barnes, now formally represented by Diores Law Offices, filed a Motion for New Trial as Remedy Against Judgment by Default with Opposition to Execution Pending Appeal, which the trial court denied on 25 September 2001. Barnes moved for reconsideration, which the trial court denied in its Order dated 26 October 2001.

Barnes filed a Petition for Certiorari, Prohibition, and Mandamus, with prayer for a temporary restraining order or preliminary prohibitory injunction, praying for the nullification of the following orders and resolution of the trial court: (1) Order dated 12 July 2001; (2) Resolution dated 8 August 2001; (3) Order dated 25 September 2001; and (4) Order dated 26 October 2001.

On 26 August 2002, the Court of Appeals rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the PETITION FOR CERTIORARI, PROHIBITION and MANDAMUS is hereby GRANTED. Accordingly, the Orders dated July 12, 2001, September 25, 2001 and October 26, 2001 and Resolution dated August 8, 2001 are hereby declared NULL AND VOID.

Let the entire record of the case be remanded to the court a quo for further proceedings.

The application for issuance of a temporary restraining order and/or preliminary prohibitory injunction is hereby declared moot and academic.

SO ORDERED.[4]

Potenciano moved for reconsideration, which the Court of Appeals denied. Hence, this petition for review.

The Ruling of the Trial Court

In its Order dated 25 September 2001, the trial court denied Barnes' Motion for New Trial. The trial court held that the sheriff did not commit fraud when he certified in his Return of Summons that Barnes was duly served with the summons when a representative of E. Himan Law Office, claiming as counsel of Barnes, secured a copy of the summons and the complaint against Barnes. The trial court ruled that when E. Himan Law Office received the copy of the complaint and the summons, it was acting on behalf of Barnes. Thus, Barnes was duly served with the summons through the voluntary appearance of his counsel on his behalf.

The Ruling of the Court of Appeals

The Court of Appeals held that there was no valid service of summons since neither Mr. Herrera nor E. Himan

Law Office was the defendant. When Mr. Herrera, as a representative of E. Himan Law Office, received a copy of the summons, Barnes had not yet engaged the services of E. Himan Law Office. The Court of Appeals ruled that the sheriff did not exert any effort to comply with Section 6, Rule 14 of the Rules of Court, either by handing a copy of the summons to Barnes in person and should Barnes refuse to receive and sign the summons, by tendering it to him. Since there was no valid service of summons on Barnes, the trial court therefore did not acquire jurisdiction over Barnes.

The Issues

Potenciano raises the following issues:

- Whether the Court of Appeals committed grievous error of law when it impliedly ruled in favor of the propriety of the remedy of special civil action of certiorari, prohibition, and mandamus; and
- Whether the Court of Appeals committed grievous error of law when it ruled that the trial court did not acquire jurisdiction over the person of the respondent, and rendered the trial court's proceedings null and void.[5]

The Ruling of the Court

We find the petition without merit.

Service of summons on the defendant is the means by which the court acquires jurisdiction over the defendant.[6] Summons serves as a notice to the defendant that an action has been commenced against him, thereby giving him the opportunity to be heard on the claim made against him.[7] This is in accordance with the constitutional guaranty of due process of law which requires notice and an opportunity to be heard and to defend oneself.

Section 6, Rule 14 of the Rules of Court underscores the importance of actual delivery or tender of the summons to the defendant himself:

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.

Under this provision, service of summons should be made on the defendant himself. However, if for justifiable reasons the defendant cannot be served in person within a reasonable time, substituted service of summons is proper. Thus, Section 7, Rule 14 of the Rules of Court provides:

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.

In this case, there was no attempt whatsoever on the part of the deputy sheriff to serve the summons on Barnes himself, who was the defendant in the complaint. The deputy sheriff just handed a copy of the summons, complaint, and the annexes to a certain Mr. Herrera who is a representative of E. Himan Law Office, which claimed to be the counsel of Barnes. The Return of Summons of the trial court's deputy sheriff reads:

THIS IS TO CERTIFY that on May 11, 2001, Mr. Jaime S. Herrera Jr. came to this branch asking a copy of the Summons together with the Complaint and its annexes on the above-entitled case and when asked what is his participation in this case he answered that he is the representative of E. Himan Law Office, the counsel for the defendant Gregory Paul Barnes.

That he was told by the said Law Office to come to Branch 276, R.T.C. Muntinlupa to get the copy of the Summons and the Complaint and its annexes, so that the undersigned give [sic] him the said documents, as

evidenced by his signature appearing on the original Summons.

Wherefore said original copy of Summons is hereto attached to the record of the above-entitled case DULY SERVED.[8]

Clearly, there was no service of summons on Barnes himself. The handing of a copy to Mr. Herrera cannot even qualify as substituted service under Section 7 of Rule 14. The requisites of substituted service of summons are: (1) the defendant cannot be served personally within a reasonable time; and (2) the impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed, and this statement should be made in the proof of service.[9] In this case, the deputy sheriff never made any effort to serve the summons on Barnes himself. Neither was the copy of the summons served at Barnes' residence nor at his office or regular place of business, as provided under Section 7 of Rule 14. The deputy sheriff just handed a copy of the summons to a messenger of E. Himan Law Office who came to the office of the trial court claiming that E. Himan Law Office was the counsel of Barnes. Giving a copy of the summons to a messenger of a law firm, which was not even the counsel of the defendant, cannot in any way be construed as equivalent to service of summons on the defendant.

Since there was no service of summons on Barnes, the trial court never acquired jurisdiction over Barnes and the trial court's order of default and the judgment by default are void.[10] The trial court should have refrained from issuing the default order when E. Himan Law Office manifested that it did not represent Barnes who had not engaged its services. It would have been more prudent for the trial court at that point to order the deputy sheriff to serve the summons on Barnes himself by handing it to him personally.

Other than valid service of summons on the defendant, the trial court can still acquire jurisdiction over the defendant by his voluntary appearance,[11] in accordance with Section 20, Rule 14 of the Rules of Court.[12] However, this is not the case here. There is no evidence on record that Barnes authorized E. Himan Law Office to represent him in the case. In fact, E. Himan Law Office filed a Comment/Manifestation to the Motion to Declare Defendant in Default, alleging that Barnes had not yet engaged the services of E. Himan Law Office, which could not therefore represent Barnes. Thus, the receipt of the summons by E. Himan Law Office and its filing of a Comment/Manifestation to the Motion to Declare Defendant in Default cannot be considered as voluntary appearance on the part of Barnes.

It was only on 15 August 2001 that Barnes made his first appearance in the trial court by filing a Motion for New Trial through his counsel of record, Diores Law Offices. The motion was precisely to question the validity of the order of default and the subsequent judgment for lack of jurisdiction over the person of the defendant.

This case is similar to the case of *Cavili v. Hon. Vamenta, Jr.*,[13] where summons was served only on one of the defendants. The two other defendants were not served with summonses and neither did they authorize the counsel of the other defendant to represent them in the case. The Court held:

As shown in the return of the service of summons (Annex "B" of Petition), which is not contested by the respondents, summons was served on defendant Perfecta Cavili in Bayawan, Negros Oriental, but not on defendants Quirino and Primitivo Cavili who were then staying in Kabankalan, Negros Occidental. While Perfecta Cavili's counsel, Atty. Jose Alamillo, filed in behalf of all the three defendants a motion for extension of time to file an answer upon assurance of Perfecta Cavili that she would summon her brothers, Quirino and Primitivo to Bayawan to authorize him to represent them in the case, said counsel later on manifested before the Court of First Instance of Negros Oriental that he desisted from further appearing in the case since Perfecta Cavili's assurance that he would be authorized by the other two defendants to represent them in the case was never carried out. The motion for extension of time to file an answer cannot, thus, be construed as a voluntary appearance in the case by the defendants Quirino and Primitivo Cavili.

Neither can the motion for new trial filed later by Atty. Reuben A. Espancho on behalf of the Cavili brothers cure the jurisdictional defect brought about by the non-service of summons on them precisely because the motion was predicated on such lack and was intended to secure for said defendants the opportunity to be heard in a new trial. It cannot be construed as a waiver of the right to be heard.[14] (Emphasis supplied)

Thus, since the trial court never acquired jurisdiction over Barnes, either by personal or substituted service of summons or by Barnes' voluntary appearance in court and submission to its authority, the trial court's order of default and the succeeding judgment are void for lack of jurisdiction over the person of the defendant. The trial court should have granted Barnes' Motion for New Trial to afford him due process of law. The appellate court was therefore correct in granting the petition for certiorari, prohibition and mandamus.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 26 August 2002 and the Resolution dated 8 August 2003 of the Court of Appeals in CA-G.R. SP No. 68359.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam, concurring.

[3] CA rollo, pp. 37-38.

[4] Rollo, pp. 40-41.

[5] Id. at 16.

[6] Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation, G.R. No. 172242, 14 August 2007, 530 SCRA 170.

[7] Pioneer International, Ltd. v. Guadiz, Jr., G.R. No. 156848, 11 October 2007, 535 SCRA 584; Alegar Corporation v. Alvarez, G.R. No. 172555, 10 July 2007, 527 SCRA 289.

[8] Rollo, p. 46.

[9] Pioneer International, Ltd. v. Guadiz, Jr., supra note 7; Air Material Wing Savings and Loan Association, Inc. v. Manay, G.R. No. 175338, 9 October 2007, 535 SCRA 356.

[10] Regner v. Logarta, G.R. No. 168747, 19 October 2007, 537 SCRA 277.

[11] Id.; Orion Security Corporation v. Kalfam Enterprises, Inc., G.R. No. 163287, 27 April 2007, 522 SCRA 617.

[12] Section 20, Rule 14 of the Rules of Court reads:

SEC. 20. Voluntary appearance. - The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

[13] 199 Phil. 528 (1982).

[14] Id. at 530-531.

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