

**ARNEL SAGANA, PETITIONER, VS. RICHARD A. FRANCISCO, RESPONDENT,***G.R. No. 161952. October 02, 2009*

Ponente: DEL CASTILLO, J.

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It is, at times, difficult to reconcile the letter of the law with its spirit. Thus, it is not altogether surprising that two competing values are usually discernable in every controversy - the principle of *dura lex sed lex* versus the notion that technicalities should yield to broader interests of justice. In our rules of procedure, for instance, judges often struggle to find a balance between due process considerations and a liberal construction to secure a just disposition of every action. In such cases, where a measure of discretion is permitted, courts must tread carefully, with due consideration of the factual milieu and legal principles involved. In so doing, we take steps - sometimes tentative, sometimes bold - to apply prior experience and precedent towards an eventual just resolution. It is these principles that animate our decision in the instant case.

Assailed in this Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court is the 13 August 2003 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66412 which reversed and set aside the 20 September 1999 Decision[3] of the Regional Trial Court of Quezon City, Branch 99 in Civil Case No. Q-94-22445 and held that there was no valid service of summons to respondent Richard A. Francisco.

On 13 December 1994, petitioner Arnel Sagana filed a Complaint[4] for Damages before the Regional Trial Court of Quezon City docketed as Civil Case No. Q-94-22445 and raffled to Branch 99. Petitioner alleged that on 20 November 1992, respondent Richard A. Francisco, with intent to kill and without justifiable reason, shot him with a gun hitting him on the right thigh. As a result, petitioner incurred medical expenses and suffered wounded feelings, and was compelled to engage the services of a lawyer, due to respondent's refusal to pay said expenses. Petitioner thus demanded payment of P300,000.00 as actual damages, P150,000.00 as moral damages, P50,000.00, exemplary damages, and P50,000.00 as attorney's fees.

On 31 January 1995, process server Manuel S. Panlasigui attempted to serve summons at respondent's address at No. 36 Sampaguita St., Baesa, Quezon City but was unsuccessful. In his Server's Return,[5] Panlasigui stated that he tried to personally serve the summons to respondent at his given address at No. 36 Sampaguita St., Baesa, Quezon City. However, the occupant of that house, who refused to give his identity, told him that respondent is unknown at said address. Panlasigui also declared that diligent efforts were exerted to serve the summons but these proved to be futile.[6] Subsequently, the trial court attempted to serve summons to respondent's office through registered mail on 9 February 1995. However, despite three notices, respondent failed to pick up the summons.

On 30 June 1995, the trial court dismissed the case on account of petitioner's lack of interest to prosecute.[7] It noted that since the filing of the Server's Return on 8 February 1995, petitioner did not take any action thus indicating lack of interest to prosecute the case.

Petitioner filed a Motion for Reconsideration[8] stating that after the Server's Return was filed, he exerted efforts to locate the respondent, and it was confirmed that respondent indeed lived at No. 36 Sampaguita St., Baesa, Quezon City. On 4 August 1995, the trial court granted petitioner's motion for reconsideration, conditioned upon the service of summons on the respondent within 10 days from receipt of the Order.[9]

Thus, on 25 August 1995, Process Server Jarvis Iconar again tried to serve the summons at the address of the respondent but no avail. According to Iconar's handwritten notation on the summons,[10] he was informed by Michael Francisco, respondent's brother, that respondent no longer lived at said address. However, he left a copy of the summons to Michael Francisco.[11]

On 10 November 1995, petitioner filed a Motion to Declare Defendant in Default,[12] alleging that despite service of summons, respondent still failed to file an Answer. On 16 February 1996, the trial court issued an Order[13] finding that the summons was validly served to respondent through his brother, Michael. It thus declared respondent in default and allowed petitioner to present his evidence ex parte. Nonetheless, copies of all pleadings and court documents were furnished to respondent at No. 36 Sampaguita St.

In the meantime, on 1 March 1996, Michael Francisco, through his counsel, Atty. Bernardo Q. Cuaresma, filed a Manifestation and Motion[14] denying that he received the summons or that he was authorized to receive summons on behalf of his brother, respondent Richard Francisco. He alleged that the substituted service did not comply with Section 8, Rule 14 of the Rules of Court, since summons was not served at defendant's residence or left with any person who was authorized to receive it on behalf of the defendant. Michael Francisco also prayed that his name be stricken off the records as having received a copy of the summons.

In the Affidavit of Merit[15] submitted together with the Manifestation and Motion, Michael Francisco asserted that he was 19 years of age; that his brother, herein respondent Richard Francisco, had left their residence in March 1993; and that respondent would just write his family without informing them of his address, or would just call by phone.

Thereafter, petitioner and movant Michael Francisco submitted their respective Opposition, Reply, and Rejoinder. In his Rejoinder, petitioner attached a copy of an Affidavit[16] prepared by respondent Richard A. Francisco dated 23 December 1992, where he declared himself a resident of No. 36 Sampaguita St. Interestingly, the lawyer who notarized the affidavit for the respondent, Atty. Bernardo Q. Cuaresma, was the same lawyer who represented respondent's brother before the trial court.

On 4 October 1996, the trial court issued an Order[17] denying Michael Francisco's Manifestation and Motion for lack of merit, holding thus:

It should be considered that earlier, plaintiff had already sent numerous pleadings to defendant at his last known address. As also pointed out by [petitioner] in his Opposition, movant has not adduced evidence, except his affidavit of merit, to impugn the service of summons thru him. Movant herein also admits that defendant communicates with him through telephone. Movant, therefore, being a person of sufficient age and discretion, would be able, more likely than not, to inform defendant of the fact that summons was sent to him by the court.[18]

Having failed to file an answer or any responsive pleading, respondent was declared in default and petitioner was allowed to present evidence ex parte. On 20 September 1999, the trial court rendered its Decision,[19] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and hereby orders defendant to pay plaintiff the amount of THIRTY FIVE THOUSAND PESOS (PhP35,000.00) as and for actual damages, the amount of FIFTEEN THOUSAND PESOS (PhP15,000.00) as and for moral damages, the

amount of TEN THOUSAND PESOS (PhP10,000.00) for exemplary damages and the amount of TWENTY THOUSAND PESOS (PhP20,000.00) as attorney's fees.

No further costs.

SO ORDERED.[20]

On 23 November 1999, respondent Richard A. Francisco filed a Notice of Appeal, claiming that he received a copy of the trial court's Decision on 9 November 1999; that the same was contrary to the law, facts, and evidence, and praying that his appeal be given due course.[21]

On 5 June 2000, the Court of Appeals directed the parties to file their respective briefs, a copy of which was sent to respondent by registered mail at No. 36 Sampaguita St., Baesa, Quezon City.[22] In his Appellant's brief, respondent argued that:

I

The court a quo erred in assuming jurisdiction over the person of the defendant-appellant despite the irregularity of the substituted service of summons by the court process server.

II

The court a quo erred in awarding actual damages in the amount of THIRTY FIVE-THOUSAND PESOS (P35,000.00) to the plaintiff-appellee although only SEVENTEEN THOUSAND PESOS (P17,000.00) was duly supported by receipts.

III

The court a quo likewise erred in awarding unreasonable moral damages in the amount of FIFTEEN THOUSAND PESOS (P15,000.00); exemplary damages in the amount of TEN THOUSAND PESOS (P10,000.00); and attorney's fees in the amount of twenty thousand pesos (P20,000.00) despite the fact that there is no factual and substantive basis for all these.[23]

On 15 August 2002, the Court of Appeals issued a Resolution[24] ordering the parties to personally appear for the conduct of preliminary conference to consider amicably settling the appeal, pursuant to Sec. 1(a), Rule 7 of the Revised Internal Rules of the Court of Appeals and the Court's Resolution A.M. No. 02-2-17-SC dated 16 April 2002 regarding the Pilot Testing of Mediation in the Court of Appeals. Respondent was furnished[25] a copy of this Resolution at his address at No. 36 Sampaguita Street, Baesa, Quezon City. Per Delivery Receipt of the Court of Appeals, the same was personally received by respondent on 23 August 2002.[26]

On 3 September 2002, respondent attended the preliminary conference; however the parties failed to reach an amicable settlement.[27] Thus, on 13 August 2003, the Court of Appeals rendered the herein assailed Decision granting the appeal and setting aside the Decision of the trial court. The appellate court held that the service of summons was irregular and such irregularity nullified the proceedings before the trial court. Since it did not acquire jurisdiction over the person of the respondent, the trial court's decision was void.

In brief, the Court of Appeals found that there was no valid service of summons for the following reasons:

- Except for the notation made by the process server on the summons, no proof of service by way of a Process Server's Return was prepared;
- The process server failed to state the specific facts and circumstances that would justify valid substituted service of summons, to wit: (a) the impossibility of service of summons within a reasonable time, (b) the efforts exerted to locate the respondent, and (c) it was served on a person of sufficient age and discretion residing therein.

- Petitioner failed to prove that, at the time summons was served, respondent actually lived in No. 36 Sampaguita St.

Petitioner filed a Motion for Reconsideration<sup>[28]</sup> where he alleged that respondent did, in fact, reside at No. 36 Sampaguita St. To prove this assertion, petitioner submitted the original copy of the envelope containing respondent's Notice of Appeal, which indicated respondent's return address to be No. 36 Sampaguita St.<sup>[29]</sup> Nonetheless, on 29 January 2004, the Court of Appeals denied the Motion for Reconsideration.

Hence, petitioner filed this Petition for Review on Certiorari under Rule 45 of the Rules of Court, raising the sole issue of whether there was valid service of summons upon the respondent.

The petition is meritorious. Under the circumstances obtaining in this case, we find there was proper substituted service of summons upon the respondent.

Section 8 of Rule 14 of the old Revised Rules of Court, the rules of procedure then in force at the time summons was served, provided:

Section 8. Substituted service. - If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service 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 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.

Jurisprudence has long established that for substituted service of summons to be valid, the following must be demonstrated: (a) that personal service of summons within a reasonable time was impossible; (b) that efforts were exerted to locate the party; and (c) that 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.<sup>[30]</sup> It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return.<sup>[31]</sup>

In this case, personal service of summons was twice attempted by the trial court, although unsuccessfully. In the first attempt, the resident of the house refused to receive the summons; worse, he would not even give his name. In the second attempt, respondent's own brother refused to sign for receipt of the summons, and then later claimed that he never received a copy, despite his participation in the proceedings. The trial court also thrice attempted to contact the respondent through his place of work, but to no avail. These diligent efforts to locate the respondent were noted in the first sheriff's return, the process server's notation, as well as the records of the case.

Clearly, personal service of summons was made impossible by the acts of the respondent in refusing to reveal his whereabouts, and by the act of his brother in claiming that respondent no longer lived at No. 36 Sampaguita St., yet failing to disclose his brother's location. We also note that it was the trial court which directed that the second service of summons be made within seven days; thus, the reasonable time was prescribed by the trial court itself.

Undeniably, no Sheriff's Return was prepared by process server Jarvis Iconar; the only record of the second service of summons was Mr. Iconar's handwritten notation in the summons itself. However, the information required by law and prevailing jurisprudence, that is, that personal service was impossible because of the claim that respondent no longer lived at the stated address, that efforts were exerted to locate the respondent through the multiple attempts to serve summons, and that summons was served upon a person of sufficient age and discretion, were already in the records of the trial court.

Moreover, we find the claim that respondent moved out of their residence in March 1993 without informing his brother or parents his whereabouts, despite regular calls and letters, simply incredulous. What makes this version

of events even more implausible is respondent's admission that he received a copy of the trial court's Decision of 20 September 1999 that was sent to No. 36 Sampaguita Street. Respondent even filed a Notice of Appeal coincidentally indicating that his address was No. 36 Sampaguita St., Baesa, Quezon City. He also received a copy of the appellate court's order for preliminary conference that was sent to said address. These were never denied by respondent, despite being given every opportunity to do so.

Respondent also wishes us to believe that it was pure chance that he and his brother were assisted by the same lawyer, Atty. Bernardo Q. Cuaresma, and yet it never occurred to respondent's own brother or lawyer to inform him about the receipt of summons. All these militate against respondent's self-serving declaration that he did not reside at No. 36 Sampaguita St. Indeed, there was no proof presented as to when respondent left and then returned to his original home, if he actually did leave his home.

In view of the foregoing, we find that substituted service of summons was validly made upon respondent through his brother.

We do not intend this ruling to overturn jurisprudence to the effect that statutory requirements of substituted service must be followed strictly, faithfully, and fully, and that any substituted service other than that authorized by the Rules is considered ineffective.[32] However, an overly strict application of the Rules is not warranted in this case, as it would clearly frustrate the spirit of the law as well as do injustice to the parties, who have been waiting for almost 15 years for a resolution of this case. We are not heedless of the widespread and flagrant practice whereby defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing requests to sign for or receive documents, or eluding officers of the court. Of course it is to be expected that defendants try to avoid service of summons, prompting this Court to declare that, "the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant." [33] However, sheriffs are not expected to be sleuths, and cannot be faulted where the defendants themselves engage in deception to thwart the orderly administration of justice.

The purpose of summons is two-fold: to acquire jurisdiction over the person of the defendant and to notify the defendant that an action has been commenced so that he may be given an opportunity to be heard on the claim against him. Under the circumstances of this case, we find that respondent was duly apprised of the action against him and had every opportunity to answer the charges made by the petitioner. However, since respondent refused to disclose his true address, it was impossible to personally serve summons upon him. Considering that respondent could not have received summons because of his own pretenses, and has failed to provide an explanation of his purported "new" residence, he must now bear the consequences.[34]

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The 13 August 2003 Decision of the Court of Appeals in CA-G.R. CV No. 66412 and its 29 January 2004 Resolution are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Quezon City, Branch 99, dated 20 September 1999 in Civil Case No. Q-94-22445 holding that there was valid service of summons, and ordering respondent to pay petitioner the amounts of P35,000.00 as actual damages, P15,000.00 as moral damages, P10,000.00 as exemplary damages, and P20,000.00 as attorney's fees, is REINSTATED and AFFIRMED.

### **SO ORDERED.**

Ynares-Santiago, Carpio Morales, Brion, and Abad, JJ., concur.

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[\*] Additional member per Special Order No. 691 dated September 4, 2009, in lieu of Justice Leonardo A. Quisumbing who is on official leave.

[\*\*] The Court of Appeals and the Presiding Judge of the Regional Trial Court, Branch 99, Quezon City as co-respondents are deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

[1] Rollo, pp. 10-22.

[2] Id. at 23-35; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Eubolo G. Verzola and Regalado E. Maambong.

[3] Records, pp. 113-116; penned by Judge Ma. Theresa Dela Torre-Yadao.

[4] Id. at 1-4.

[5] Id. at 7.

[6] Ibid

[7] Id. at 8.

[8] Id. at 9-10.

[9] Id. at 13; penned by Judge Felix M. De Guzman.

[10] Id. at 14.

[11] Ibid.

[12] Id. at 15-16.

[13] Id. at 22.

[14] Id. at 23-24.

[15] Id. at 26.

[16] Id. at 37-38.

[17] Id. at 45-46; penned by Judge Felix M. De Guzman.

[18] Id. at 45.

[19] Id. at 113-116; penned by Judge Ma. Theresa Dela Torre-Yadao.

[20] Id. at 116.

[21] Id. at 119.

[22] CA rollo, p. 10.

[23] Id. at 15-32.

[24] Id. at 75.

[25] Id. at 71.

[26] Id., dorsal page.

[27] Id. at 45.

[28] Id. at 60-69.

[29] Id. at 68; Annex "A" of the Motion for Reconsideration.

[30] Umandap v. Sabio Jr., G.R. No. 140244, August 29, 2000, 339 SCRA 243, 249.

[31] Jose v. Boyon, G.R. No. 147369, October 23, 2003, 414 SCRA 216, 222.

[32] Pioneer International, Ltd. v. Guadiz, Jr., G.R. No. 156848, October 11, 2007, 535 SCRA 584, 601.

[33] Manotoc v. Court of Appeals, G.R. No. 130974, August 16, 2006, 499 SCRA 21, 35.

[34] Robinson v. Miralles, G.R. No. 163584, December 12, 2006, 510 SCRA 678, 684.

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