

SPOUSES JULIAN SANTIAGO, SR. AND LEONILA SANTIAGO AND SPOUSES LIM JOSE ONG AND MIMI ONG LIM, PETITIONERS, VS. BANK OF THE PHILIPPINE ISLANDS AS SUCCESSOR IN INTEREST OF FAR EAST...

G.R. No. 163749. September 26, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari filed by Spouses Julian Santiago, Sr. and Leonila Santiago (Spouses Santiago) and Spouses Lim Jose Ong and Mimi Ong Lim (Spouses Lim), seeking to reverse and set aside the Decision[2] dated November 14, 2003 and the Resolution[3] dated June 2, 2004 issued by the Court of Appeals (CA) in CA-G.R. SP No. 73110.

Petitioners Spouses Santiago were the original owners of three parcels of land covered by TCT Nos. 3943, 9797 and 15131, all situated in Barrio Piapi, Dumaguete City. They mortgaged the said properties to spouses Bienvenido and Theresa Deloria (spouses Deloria) as security for their loan in the amount of P2,370,000.00. On August 24, 1994, Far East Bank and Trust Company (FEBTC) wrote a letter[4] addressed to spouses Deloria stating that the bank had approved a term loan facility in favor of petitioner Lim Jose Ong, and among the conditions for the approval of the facility was that the entire proceeds shall be exclusively used to purchase the three parcels of land, with its improvement mortgaged to them; and that the amount of P2,370,000.00 shall be delivered to spouses Deloria in consideration of their release of the mortgage.

Subsequently, a deed of sale over the three parcels of land was executed by Spouses Santiago in favor of Spouses Lim; and new TCT Nos. 23276, 23277 and 23278 were issued to Spouses Lim.

On September 29, 1994, Spouses Lim executed in favor of FEBTC a real estate mortgage over the three parcels of land to secure the amount of P2,500,000.00 loaned from the bank; the mortgage was made to stand as a security for the payment of the loan, as well as those loans that the mortgagee may extend to the mortgagor, including interest and expenses or any other obligation owed to the mortgagee whether direct or indirect, principal or secondary, as appearing in the accounts, books and records of the mortgagee. Petitioner Lim Jose Ong was also an officer of Marichris Development Corporation (MDC), one of FEBTC's valued clients, which has a credit line with the bank. However due to the business slow-down brought about by the economic crisis, MDC through petitioner Lim Jose Ong requested a restructuring of its loan term, which was granted by the FEBTC.

Meanwhile, FEBTC merged with the Bank of the Philippine Islands (private respondent), with the latter as the surviving corporation. Thus, private respondent assumed all the rights, privileges and obligations of FEBTC.

As Spouses Lim failed to pay their indebtedness with the bank in the total amount of P18,630,011.96, private respondent filed on August 2, 2002 an application for extra-judicial foreclosure of real estate mortgage[5] with the Office of the Clerk of Court, Dumaguete City, and the case was raffled to sheriff Ramoneto Hedriana. The public

auction was scheduled on September 13, 2002 at 9 o'clock in the morning.[6]

Petitioners filed with the Regional Trial Court (RTC) of Negros Oriental, Dumaguete City, a complaint[7] for injunction, damages and accounting with prayer for preliminary injunction and/or temporary restraining order against private respondent as successor-in-interest of FEBTC. They also filed together with the complaint a motion for special raffle in view of the urgency of the relief sought and for the issuance of an ex-parte temporary restraining order (TRO). In their complaint, petitioners alleged that since petitioners Spouses Santiago, as the original owners of the three parcels of land, could not pay their mortgage loan with the spouses Deloria, they tried to apply for a loan with FEBTC but was told that they should be accommodated by a person with a good credit standing with the bank; that the titles to their land should be transferred to the accommodating party; that Spouses Santiago sought the help of petitioner Lim, who had a good reputation and credit facility with the bank, and who accommodated them; that titles to the three parcels of land were transferred to Spouses Lim who subsequently executed a real estate mortgage over the three parcels of land in favor of FEBTC to secure the P2.5 million loan of petitioners Spouses Lim; that the fact of accommodation was with prior approval of FEBTC officials, since they had been directly transacting with the original mortgagees for the release of the mortgage; that petitioners Spouses Santiago, being the real borrowers, have been paying the loan after the execution of the mortgage, as appearing on various FEBTC official receipts, in which it was stated: "Julian Santiago for the account (FAO) of Lim Jose Ong"; that they had asked for, apart from the mortgage, a detailed statement of account, which was unheeded; thus, the obligation being claimed by private respondent is unliquidated.

On September 12, 2002, Executive Judge Eleuterio E. Chiu issued a TRO[8] valid for 72 hours ordering the bank or any person acting on its behalf from conducting the scheduled auction sale of the subject three parcels of land.

Summons, together with a copy of the complaint, was served on private respondent through the managers of its branches located in San Jose Street and Percedes Street, Dumaguete City. The case was raffled to Branch 33,[9] and a hearing for the issuance of the TRO was scheduled on September 13, 2002.

During the hearing, counsel for private respondent raised the issue of the RTC's lack of jurisdiction over private respondent, as the summons was served on its branch manager in Dumaguete City, and not on any one of those persons enumerated under Section 11, Rule 14 of the 1997 Rules of Civil Procedure. Petitioners' counsel had argued that service of summons even to a substation of the corporation was valid, as it was in effect served on a principal of the corporation. The RTC judge continued with the reception of petitioners' evidence and ruled that he would include in his resolution for the issuance of a TRO whether the court had jurisdiction when the summons was served only on the manager of BPI, Dumaguete Branch.[10] The continuation of the hearing was set on September 16, 2002.

On September 16, 2002, private respondent filed a memorandum[11] in support of the opposition to the petition for preliminary injunction or TRO. It moved for the dismissal of the complaint on the following grounds:

- that the court has no jurisdiction over the person of the defending party;
- the court has no jurisdiction over the subject matter of the claim because the proper docketing fees have not been paid;
- that Julian Santiago, Sr. and Leonila Santiago are not the real party [sic] in interest to file this claim;
- that this court has no jurisdiction or authority to issue injunction against extrajudicial foreclosure under Art. 3135.[12]

In the hearing of even date, petitioners argued that the memorandum was in reality a motion to dismiss; thus, it should comply with the three-day notice rule. The RTC, however, stated that petitioners' counsel was aware that

during the last hearing, private respondent had insisted that the RTC had no jurisdiction over the case because of improper service of summons; that the motion was only a follow up, as counsel for private respondent could not cite authorities; that with or without authority, Rule 14 enumerated the persons on whom service of summons may be served.[13] The RTC also stated that even without the motion, it would resolve whether a TRO should be issued, and whether the court had jurisdiction over the case.[14]

On the same day, the RTC issued its Order,[15] the dispositive portion of which reads:

WHEREFORE, on the ground that this Court did not acquire jurisdiction over the defendant because of improper service of summons, the prayer for the issuance of the restraining order is hereby dismissed and this case is likewise dismissed on the same ground.[16]

Petitioners filed with the CA a petition for certiorari with prayer for the issuance of a TRO and injunction.

In a Resolution[17] dated October 17, 2002, the CA issued a TRO effective for 60 days, restraining private respondent from conducting the foreclosure sale of the subject properties.

On January 8, 2003, the CA issued another Resolution[18] for the issuance of a writ of preliminary injunction upon petitioners' filing of a bond in the amount of one million pesos.

On November 14, 2003, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby DISMISSED and consequently the order decreeing the issuance of a writ of preliminary injunction dated 08 January 2003 [is] set aside.

Petitioners' motion for reconsideration was denied in a Resolution dated June 2, 2004.

The CA found that the RTC did not commit any grave abuse of discretion in finding that summons served on the branch managers of BPI Dumaguete City was not valid and therefore the RTC did not acquire jurisdiction over the person of private respondent. The CA upheld the RTC's application of this Court's ruling in *E.B. Villarosa & Partner Co., Ltd v. Benito*,[19] in which it was held that the designation of persons or officers who were authorized to accept summons for a domestic corporation or partnership was now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

The CA found no merit in private respondent's contention that the CA failed to acquire jurisdiction over it, since no copy of the petition for certiorari and motion for reconsideration were furnished to the bank through any of the persons enumerated under Section 11, Rule 14; that counsel was not one of the in-house counsels of private respondent, but was the counsel on record of the Dumaguete branch only. The CA ruled that there was no requirement of service of summons in the manner provided for under Section 11, Rule 14, relative to a special civil action of certiorari under Rule 65.

Hence herein petition raising the following issues:

- WHETHER OR NOT SERVICE OF SUMMONS UPON TWO (2) BRANCH MANAGERS OF BPI IN DUMAGUETE IS A SUBSTANTIAL COMPLIANCE OF THE RULES.
- WHETHER OR NOT BPI'S MOTION TO DISMISS VIOLATES THE THREE-DAY NOTICE RULE.
- WHETHER OR NOT THERE IS SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE FOR THE PETITIONERS WHEN CA G.R. SP NO. 73110 WAS FILED. [20]

Petitioners filed a Motion for Leave of Court to admit the urgent motion for issuance of TRO since the notice of extra-judicial sale set the auction sale of the subject properties on September 7, 2003.

On September 6, 2004, the Court issued a TRO^[21] and ordered petitioners to post a bond in the amount of two million five hundred thousand pesos which petitioners did.

The main issue for resolution is whether or not the service of summons on the branch managers of private respondent's two separate branches in Dumaguete City constitutes substantial compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

The complaint was filed by petitioners in 2002 when the 1997 Rules of Civil Procedure was already in force.

Section 11, Rule 14 of the 1997 Rules of Civil Procedure provides:

SECTION 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.

This provision revised the former Section 13, Rule 14 of the Rules of Court, which provided that:

SECTION 13. Service upon private domestic corporation or partnership. - If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors.

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.^[22] 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 from the new rule.^[23]

Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation.^[24] The officer upon whom service is made must be one who is named in the statute; otherwise, the service is insufficient.^[25] The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him.^[26]

Petitioners contend that the summons were received by two branch managers of BPI's San Jose Street and Perdecas Street, Dumaguete City on September 12, 2002; that the branch manager is the chief executive officer of the branch and the alter ego of the management within his/her jurisdiction and oversees the overall operations of the branch; that for certain, the two branch managers, upon receipt of summons, have sufficient responsibility and discretion to realize the importance of the legal papers served on them and are expected to relay to the president, or other responsible officer of the company, the complaint filed against it; that in *Millenium Industrial Commercial Corporation v. Tan*,^[27] it was held that service of summons upon a defendant corporation must be made on a representative so integrated with the corporation sued as to make it a priori presumable that he would realize his responsibilities and know what he should do with any legal papers received by him; that clearly then, there is in this case substantial compliance with the rule on service of summons; and that the need for speedy justice must prevail over technicality.

We are not persuaded.

The matter of whether petitioners can invoke substantial compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure, has been settled in *Mason v. Court of Appeals*,^[28] thus:

The question of whether the substantial compliance rule is still applicable under Section 11, Rule 14 of the

1997 Rules of Civil Procedure has been settled in *Villarosa* which applies squarely to the instant case. In the said case, petitioner E.B. Villarosa & Partner Co. Ltd. (hereafter Villarosa) with principal office address at 102 Juan Luna St., Davao City and with branches at 2492 Bay View Drive, Tambo, Parañaque, Metro Manila and Kolambog, Lapasan, Cagayan de Oro City, entered into a sale with development agreement with private respondent Imperial Development Corporation. As Villarosa failed to comply with its contractual obligation, private respondent initiated a suit for breach of contract and damages at the Regional Trial Court of Makati. Summons, together with the complaint, was served upon Villarosa through its branch manager at Kolambog, Lapasan, Cagayan de Oro City. Villarosa filed a Special Appearance with Motion to Dismiss on the ground of improper service of summons and lack of jurisdiction. The trial court denied the motion and ruled that there was substantial compliance with the rule, thus, it acquired jurisdiction over Villarosa. The latter questioned the denial before us in its petition for certiorari. We decided in Villarosa's favor and declared the trial court without jurisdiction to take cognizance of the case. We held that there was no valid service of summons on Villarosa as service was made through a person not included in the enumeration in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, which revised the Section 13, Rule 14 of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited and exclusive, following the rule in statutory construction that *expressio unius est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.

Neither can herein petitioners invoke our ruling in *Millennium* to support their position for said case is not on all fours with the instant case. We must stress that *Millennium* was decided when the 1964 Rules of Court were still in force and effect, unlike the instant case which falls under the new rule. Hence, the cases cited by petitioners where we upheld the doctrine of substantial compliance must be deemed overturned by *Villarosa*, which is the later case.

At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process.[29]

Moreover, in the recent case of *Bank of Philippine Islands v. Santiago*,[30] it was ruled that service of the original summons upon the branch manager of BPI's Sta. Cruz, Laguna branch did not bind the corporation, for the branch manager was not included in the enumeration in the statute of the persons upon whom service can be validly made in behalf of the corporation; thus, such service was therefore void and ineffectual. It was only upon the issuance and proper service of new summons validly served on BPI's corporate secretary that the RTC acquired jurisdiction to issue the Order granting the application for the issuance of a writ of preliminary injunction filed by the plaintiffs therein.

Petitioners further contend that the motion to dismiss filed by private respondent came as a surprise, as they were not notified three days prior to the hearing thereon, and petitioners were made to oppose the motion on the same day it was filed; that a motion that does not comply with requirements of Sections 4[31] and 5,[32] Rule 15 of the Rules of Court, is a worthless piece of paper which the clerk has no right to receive, and which the court has no authority to act upon.

This time, the Court does not agree.

Private respondent filed a memorandum in support of its opposition to the petition for preliminary injunction or TRO and moved for the dismissal of the complaint claiming, among others, that the court had no jurisdiction over the person of BPI. Even if it would appear that the memorandum was a motion to dismiss, which was filed on the

same day where the court's hearing for the issuance of TRO was set, the non-observance of the three-day notice rule would not affect the RTC's Order dismissing the case for lack of jurisdiction over the person of private respondent.

The purpose of the law in requiring the filing of motions at least three days before the hearing thereof is to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the movant.[33] In this case, during the initial hearing for the issuance of the TRO on September 13, 2002, counsel of private respondent had already raised the issue of the court's lack of jurisdiction over the private respondent, since the summons was not served on any of the persons enumerated under Section 11, Rule 14. Notably, in that same hearing, petitioners' counsel presented arguments and even cited jurisprudence to prove the validity of the service of summons on private respondent's branch managers in Dumaguete City. Thus, when BPI filed its memorandum/motion to dismiss on September 16, 2002, there was no element of surprise to speak of, as petitioners knew that private respondent was already questioning the jurisdiction of the court over it, but this time it had jurisprudence cited in its memorandum to support its argument.

Procedural due process is not based solely on a mechanistic and literal application of a rule, such that any deviation is inexorably fatal.[34] Rules of procedure, and these include the three-day notice requirement, are liberally construed to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding.[35] Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.[36]

Moreover, as the RTC correctly observed, it would still resolve the issue of jurisdiction over the person of private respondent even without taking into consideration the memorandum as the issue of jurisdiction was already raised during the initial hearing for the issuance of the TRO on September 13, 2002, which must be ruled upon before the RTC could issue the TRO.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated November 14, 2003 and the Resolution dated June 2, 2004 issued by the Court of Appeals in CA-G.R. SP No. 73110 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Motion for substitution filed by Investments 2234 Philippines Fund I (SPV-AMC), Inc. was granted in a Resolution dated September 12, 2007.

[2] Penned by Justice Buenaventura J. Guerrero, concurred in by Justices Mercedes Gozo-Dadole and Mariano C. del Castillo, rollo, pp. 31-36.

[3] Id. at 37.

[4] Rollo, pp. 57-58.

[5] Rollo, pp. 72-74.

[6] Id. at 88.

[7] Docketed as Civil Case No. 13240.

[8] Rollo, pp. 90-91.

- [9] Presided by Judge Fe Lualhati D. Bustamante.
- [10] TSN, September 13, 2002, p. 5.
- [11] Rollo, pp. 108-127.
- [12] Rollo, pp. 108-109.
- [13] TSN September 16, 2002, p. 58.
- [14] Id. at 62.
- [15] Rollo, pp. 128-129.
- [16] Id. at 129.
- [17] Id. at 158-159.
- [18] Penned by Justice Teodoro P. Regino, concurred in by Justices Buenaventura J. Guerrero and Mariano C. del Castillo; CA rollo, pp. 396-397
- [19] E.B. Villarosa & Partner Co. Ltd. v. Benito, G.R. No. 136426, August 6, 1999, 312 SCRA 65.
- [20] Rollo, p. 326.
- [21] Id. at 221.
- [22] E.B. Villarosa & Partners Co. Ltd. v. Benito, supra note 19, at 73.
- [23] Id.
- [24] Bank of Philippine Islands v. Santiago, G.R. No. 169116, March 28, 2003, 519 SCRA 389, 400.
- [25] Id. citing Delta Motors Corp. v. Pamintuan, No. L-41667, April 30, 1976, 70 SCRA 598.
- [26] Id.
- [27] G.R. No. 131724, February 28, 2000, 326 SCRA 563.
- [28] G.R. No. 144662, October 15, 2003, 413 SCRA 303, 310.
- [29] Mason v. Court of Appeals, supra note 28, at 310-311.
- [30] Supra note 24, at 400-401.
- [31] Sec. 4. Hearing of motion. -- x x x
- Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
- [32] Sec. 5. Notice of hearing -- The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
- [33] J.M. Tuazon & Co., Inc. v. Magdangal, No. L-15539, January 30, 1962, 4 SCRA 84, 86.
- [34] E & L Mercantile, Inc. v. Intermediate Appellate Court, No. L-70262, June 25, 1986, 142 SCRA 385, 392.
- [35] E & L Mercantile, Inc. v. Intermediate Appellate Court, id.

[36] E & L Mercantile, Inc. v. Intermediate Appellate Court, *supra* note 34, at 392.

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