

**GUIGUINTO CREDIT COOPERATIVE, INC. (GUCCI), PETITIONER, VS.
AIDA TORRES, NONILO TORRES AND SHERYL ANN
TORRES-HOLGADO, RESPONDENTS.**

G.R. NO. 170926. September 15, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Decision of the Court of Appeals dated August 24, 2005[1] in CA-G.R. SP No. 89974, declaring the Decision of the Regional Trial Court of Bulacan, Branch 14, dated September 15, 2004[2] in Civil Case No. 232-M-2003 null and void for having been rendered without jurisdiction, and its Resolution dated December 9, 2005,[3] denying petitioner's motion for reconsideration.

Respondents are members of Guiguinto Credit Cooperative, Inc. (GUCCI). They availed of loans from the cooperative but were unable to pay on the due dates despite demands. Hence, on March 24, 2003, petitioner filed a complaint before the Regional Trial Court of Bulacan for collection of sum of money and damages which was docketed as Civil Case No. 232-M-2003 and raffled to Branch 14.

Summons against respondents were served through a certain Benita S. Pagtalunan who received the same on April 22, 2003.[4] The Return of Summons was filed on April 24, 2003 by Process Server Valeriano P. Badato which stated:

RESPECTFULLY RETURNED to the Honorable Court the herein Summons, together with their Complaints and Annexes in connection with the service of the same with the information that it was received by Ms. BENITA C. PAGTALUNAN secretary of the defendants on April 22, 2003 at their given address.

PROOF OF SERVICE CAN BE FOUND on the original copy of Summons as shown by her signature therein.

RESPECTFULLY SUBMITTED.

Malolos, Bulacan, April 24, 2003.

(Sgd.) VALERIANO P. BADATO

Process Server[5]

On November 18, 2003, petitioner filed a motion to declare respondents in default which was granted by the trial court thus:

Submitted is a Motion to Declare Defendants in Default [f]iled by plaintiffs through counsel, Atty. Jose I. dela Rama, Jr.

Records show that on April 22, 2003, Summons together with the complaint and its annexes were served to defendants Aida Torres, Nonilo Torres and Sheryl Ann Torres through their Secretary Ms. Benita C. Pagtalunan per process Server's Return dated April 24, 2003. Despite receipt of the same defendants failed to

file their Answer and/or responsive pleading within the reglementary period.

WHEREFORE, in view of the foregoing premises, the Motion to Declare Defendants in default is GRANTED. The defendants are hereby declared in default.

The plaintiff is hereby allowed to present its evidence ex-parte before the court on February 10, 2004 at 8:30 a.m.

SO ORDERED.[6]

After presenting petitioner's evidence ex-parte, the trial court rendered judgment on September 15, 2004, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered, ordering the defendants to pay plaintiff the following:

- For Aida Torres:

a. The amount of P163,516.80 from April, 2004 plus legal interest until the said amount is fully paid;

- For Nonilo Torres:

a. The amount of P278,151.58 from April, 2004 plus legal interest until the said amount is fully paid;

- For Sheryl Ann Torres:

a. The amount of P15,903.93 from April, 2004 plus legal interest until the said amount is fully paid;

- To pay P10,000.00, jointly and severally, as attorney's fees.

- Costs of suit.

SO ORDERED.[7]

Petitioner thereafter moved for the issuance of a writ of execution, which was granted and accordingly, the writ of execution was issued on even date.[8]

On May 4, 2005, Sheriff Felixberto L. Samonte levied respondents' house and lot covered by Transfer Certificate of Title No. RT-22289 (T-285668) and the same was scheduled to be sold at public auction on June 7, 2005 when the Court of Appeals issued a temporary restraining order.[9]

On August 24, 2005, the Court of Appeals annulled the judgment of the trial court on the ground that it did not acquire jurisdiction over the persons of respondents since they were not validly served with summons and neither did they voluntarily appear in court.[10] According to the appellate court, the service of summons to Pagtalunan was in violation of Section 6, Rule 14 of the Rules of Court because there was no explanation why resort to substituted service of summons was made. Thus, the appellate court held that respondents were deprived of their right to due process.

The Court of Appeals denied petitioner's motion for reconsideration,[11] hence, this petition on the following assignment of errors:

I

The Court of Appeals erred when it granted the Annulment of Judgment despite the active participation of the respondents in the court proceeding without questioning the jurisdiction of the Court.

II

The Court of Appeals erred when it granted the Annulment of Judgment despite the availability of legal remedies provided for by law. Hence, respondents are barred by estoppel and laches to question the jurisdiction of the court.

III

The Court of Appeals erred when it dismissed the Complaint and absolved the respondents of any civil liability to the Cooperative without evidence having been presented in the Court of Appeals. The Court of Appeals likewise erred when it acted beyond what is being prayed for.[12]

Petitioner alleges that the trial court rightly assumed jurisdiction over the persons of respondents, asserting that No. 180 San Vicente Ferrer St., Rosaryville Subd., Sta. Cruz, Guiguinto, Bulacan, is the residence of all the respondents as shown in (a) the Affidavit of Merit of Sheryl Ann Torres attached to the Petition, (b) the Special Power of Attorney executed by Nonilo and Aida Torres and (c) the Verification/Certification executed under oath by Sheryl Ann Torres.[13] Petitioner asserts that the service of summons to Pagtalunan at the same address was valid pursuant to the rules and applicable jurisprudence.

Petitioner avers that respondents cannot avail of the remedy of annulment of judgment under Rule 47 since there are other available remedies under the Rules of Court,[14] such as a motion for new trial or reconsideration, petition for relief from judgment, or an original action for certiorari under Rule 65.

Finally, petitioner asserts that the Court of Appeals erred in concluding that the obligations of the respondents are guaranteed by their co-signors' capital investments. It claims that the appellate court completely disregarded that the co-signors in the persons of Danilo Santos and Carmelita Reyes had withdrawn their capital shares in the cooperative. The Court of Appeals, according to petitioner, concluded that the obligations of the respondents were already paid, without the latter having presented any proof or evidence to that effect.[15]

On the other hand, respondents argue that the Court of Appeals did not commit reversible error when it granted the annulment of judgment considering that the trial court, which rendered the judgment, lacked jurisdiction over their persons. They were not validly served with summons nor did they voluntarily appear and submit themselves to the jurisdiction of the trial court. Neither did they actively participate in the proceedings conducted therein. Respondents assert that their right to due process was violated when the trial court rendered the questioned decision.[16]

Respondents also aver that the filing of the petition for annulment of judgment is proper there being no recourse to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies, which are no longer available through no fault of their own. They assert that laches and estoppel are not applicable to the case at bar.[17]

The issues to be resolved are: (a) whether summons was validly served on the respondents; and (b) whether the judgment of the trial court was correctly annulled by the Court of Appeals.

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person.[18] Jurisdiction over the person of the defendant is acquired through coercive process, generally by the service of summons issued by the court, or through the defendant's voluntary appearance or submission to the court.

Where the defendant is a natural person, service may be personal, substituted, by publication and such other mode of service as the court may deem sufficient.

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a resident defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be made in accordance with Section 8 of the said Rule. If he is temporarily out of the country, any of the following modes of

service may be resorted to: (1) substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient.[19]

In these types of civil actions, summons on the defendant must be served by handing a copy thereof to the defendant in person, or in case of refusal, by tendering it to him. If efforts to find defendant personally makes prompt service impossible, service may be effected by leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion residing therein, or by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof.[20] The proper service of summons is a critical step in litigation because upon such service rests the court's acquisition of jurisdiction over the person of the defendant. In the absence of a valid waiver, trial and judgment without such service are null and void.

In the instant case, the Court of Appeals correctly ruled that since substituted service was availed of in lieu of personal service, there should be a report stating that Pagtalunan was one with whom respondents had a relationship of trust and confidence that would ensure that the latter will receive or be notified of the summons issued in their names. This is because substituted service may only be availed of when the respondents could not be served personally within a reasonable period of time, and such impossibility of prompt service must be shown by stating that earnest efforts have been made to find the respondents personally and that such efforts have failed. Such requirements under Sections 6 and 7 of Rule 14 must be followed strictly, faithfully and fully in order not to deprive any person of his property by violating his constitutional right to due process. The statutory requirements of substituted service must be strictly construed since it is an extraordinary method of service in derogation of personal service of summons, availed of only under certain conditions imposed by the Rules of Court. Any substituted service other than that authorized under Section 7 is deemed ineffective and contrary to law.

Granting that Pagtalunan is the personal secretary of Aida Torres, as appearing in the Affidavit of Merit of Sheryl Ann Torres and attached to the Petition of Annulment filed before the Court of Appeals, there is no showing that the former had indeed a relationship of trust and confidence with the three respondents. It appears that the process server hastily and capriciously resorted to substituted service of summons without ascertaining the whereabouts of the respondents. Such service of summons is not binding upon respondents Nonilo and Sheryl Ann Torres whose relationship with Pagtalunan was neither readily ascertained nor adequately explained in the Return of Summons. Also, no earnest efforts were made to locate respondent Aida Torres who was allegedly working abroad at the time summons was served on her person. No explanation why substituted service was resorted to through Pagtalunan was stated in the Return.

The Return of Summons by the process server showed that no effort was exerted and no positive step was taken to locate and serve the summons personally on respondents. Without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.

It must be emphasized that personal service of summons is the mode which must be adopted whenever practicable. It ought to be effected either by handing a copy thereof to the defendant in person, or if he refuses, by tendering it to him.

In *Ang Ping v. Court of Appeals*,[21] we ruled:

Jurisdiction over the person of the defendant in civil cases is acquired either by his voluntary appearance in court and his submission to its authority or by service of summons. x x x

Well-settled is the rule that summons must be served upon the defendant himself. It is only when the defendant

cannot be served personally within a reasonable time that substituted service may be resorted to and such impossibility of prompt service should be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.

It should be emphasized that the service of summons is not only required to give the court jurisdiction over the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him. Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction.[22]

In *Avon Insurance PLC v. Court of Appeals*,[23] we held:

Fundamentally, the service of summons is intended to give official notice to the defendant or respondent that an action has been commenced against it. The defendant or respondent is thus put on guard as to the demands of the plaintiff as stated in the complaint. The service of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit.

When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction. x x x

x x x x

If the defendant, besides setting up in a motion to dismiss his objection to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, or seeks an affirmative relief in the motion, he is deemed to have submitted himself to the jurisdiction of the court.[24]

In *Laus v. Court of Appeals*,[25] we reiterated that substituted service must: (a) indicate the impossibility of service of summons within a reasonable time, (b) specify the efforts exerted to locate the petitioners, and (c) state that it was served on a person of sufficient age and discretion residing therein.[26] We held that the pre-condition that substituted service may be resorted to only if personal service cannot be made "within a reasonable time" must be strictly followed.

In the instant case, there was an undue, if not indecent, haste to serve the summons at the first attempt without making sure that personal service was an impossibility because either the respondents had left for a foreign country or an unknown destination with no definite date of returning within a reasonable period, or had gone into hiding to avoid service of any process from the courts. Since the substituted service was not validly effected, the trial court did not acquire jurisdiction over the persons of the respondents. The order of default, the judgment by default, the writ of execution issued by it, as well as the auction sale of the respondents' properties levied on execution are, therefore, null and void.

Statutes prescribing modes other than personal service of summons must be strictly complied with to give the

court jurisdiction, and such compliance must appear affirmatively on the return.[27]

In the case of Jose v. Boyon,[28] we observed:

In the instant case, it appears that the process server hastily and capriciously resorted to substituted service of summons without actually exerting any genuine effort to locate respondents. A review of the records reveals that the only effort he exerted was to go to No. 32 Ariza Drive, Camella Homes, Alabang on July 22, 1998, to try to serve the summons personally on respondents. While the Return of Summons states that efforts to do so were ineffectual and unavailing because Helen Boyon was in the United States and Romeo Boyon was in Bicol, it did not mention exactly what efforts " if any " were undertaken to find respondents. Furthermore, it did not specify where or from whom the process server obtained the information on their whereabouts. x x x

x x x x

The Return of Summons shows no effort was actually exerted and no positive step taken by either the process server or petitioners to locate and serve the summons personally on respondents. At best, the Return merely states the alleged whereabouts of respondents without indicating that such information was verified from a person who had knowledge thereof. Certainly, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.[29]

We explained in *Venturanza v. Court of Appeals*[30] how the impossibility of personal service should be shown by the process server:

The substituted service should be availed only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. It has been held that substituted service is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully, and any substituted service other than that authorized by the statute is considered ineffective.[31]

Jurisdiction over the persons of the respondents never vested with the trial court since the manner of substituted service by the process server is deemed invalid and ineffective. Clearly, there was a violation of due process because of the defective service of summons. The judgment of the trial court should be annulled on the ground of lack of jurisdiction, since the respondents were not properly notified of the action filed against them, and denied them the chance to answer the complaint before the court, thus depriving them of an opportunity to be heard.

Under Section 2 of Rule 47, judgments may be annulled on grounds of extrinsic fraud and lack of jurisdiction, which refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[32] A judgment of annulment sets aside the questioned judgment or final order or resolution and renders the same null and void, without prejudice to the original action being refiled in the proper court.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated August 24, 2005 in CA-G.R. SP No. 89974, annulling the decision of the Regional Trial Court of Bulacan, Branch 14, dated September 15, 2004 in Civil Case No. 232-M-2003 for having been rendered without jurisdiction and the Resolution dated and December 9, 2005, denying the motion for reconsideration, are AFFIRMED.

No costs.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Panganiban, C. J., (Chairperson), in the result.

[1] Rollo, pp. 51-60. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eliezer R. delos Santos and Arturo D. Brion.

[2] Id. at 64-67. Penned by Judge Petrita Braga Dime.

[3] Id. at 62-63.

[4] Id. at 53.

[5] Id. at 155.

[6] CA rollo, p. 58.

[7] Rollo, p. 67.

[8] Id. at 157.

[9] Id. at 54.

[10] Id. at 56-58.

[11] Id. at 63.

[12] Id. at 18.

[13] Id. at 20.

[14] Id. at 24.

[15] Id. at 37.

[16] Id. at 111.

[17] Id. at 128.

[18] Romualdez-Licaros v. Licaros, G.R. No. 150656, April 29, 2003, 401 SCRA 762, 769.

[19] Asiavest Limited v. Court of Appeals, 357 Phil. 536, 553 (1998). See also Valmonte v. Court of Appeals, 322 Phil. 96, 105 (1996).

[20] Talsan Enterprises, Inc. v. Baliwag Transit, Inc., G.R. No. 126258, July 8, 1999, 310 SCRA 156, 162.

[21] G.R. No. 126947, July 15, 1999, 310 SCRA 343.

[22] Id. at 349-350.

[23] G.R. No. 97642, August 29, 1997, 278 SCRA 312.

[24] Id. at 325-326.

[25] G.R. No. 101256, March 8, 1993, 219 SCRA 688.

[26] Id. at 699.

[27] Id. at 698.

[28] G.R. No. 147369, October 23, 2003, 414 SCRA 216.

[29] Id. at 222-223.

[30] G.R. No. 77760, December 11, 1987, 156 SCRA 305.

[31] Id. at 313.

[32] Tolentino v. Leviste, G.R. No. 156118, November 19, 2004, 443 SCRA 274, 282 and 284.

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