

**SPS. DOMINGO M. BELEN AND DOMINGA P. BELEN, HEREIN
REPRESENTED BY THEIR ATTORNEY- IN-FACT NERY B. AVECILLA,
PETITIONERS, VS. HON. PABLO R. CHAVEZ, PRESIDING JUDGE,
RTC-BRANCH 87...**

G.R. No. 175334. March 26, 2008

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TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 88731. The appellate court's decision dismissed the petition for certiorari which sought to nullify the orders of the Regional Trial Court (RTC) of Rosario, Batangas, Branch 87, denying herein petitioners' motion to quash writ of execution and their motion for reconsideration. The Court of Appeals' resolution denied petitioners' motion for reconsideration of the decision.

The instant petition originated from the action for the enforcement of a foreign judgment against herein petitioners, spouses Domingo and Dominga Belen, filed by private respondent spouses Silvestre and Patricia Pacleb, represented by their attorney-in-fact, Joselito Rioveros, before the RTC of Rosario, Batangas.

The complaint alleged that private respondents secured a judgment by default in Case No. NC021205 rendered by a certain Judge John W. Green of the Superior Court of the State of California. The judgment ordered petitioners to pay private respondents the amount of \$56,204.69 representing loan repayment and share in the profits plus interest and costs of suit. The summons was served on petitioners' address in San Gregorio, Alaminos, Laguna, as was alleged in the complaint, and received by a certain Marcelo M. Belen.

On 5 December 2000, Atty. Reynaldo Alcantara entered his appearance as counsel for petitioners, stating that his legal services were retained at the instance of petitioners' relatives. Atty. Alcantara subsequently filed an answer, alleging that contrary to private respondents' averment, petitioners were actually residents of California, USA. The answer also claimed that petitioners' liability had been extinguished via a release of abstract judgment issued in the same collection case.

In view of petitioners' failure to attend the scheduled pre-trial conference, the RTC ordered the ex parte presentation of evidence for private respondents before the branch clerk of court. On 16 March 2001, before the scheduled ex parte presentation of evidence, Atty. Alcantara filed a motion to dismiss, citing the judgment of dismissal issued by the Superior Court of the State of California, which allegedly dismissed Case No. NC021205. The RTC held in abeyance the ex parte presentation of evidence of private respondents and the resolution of Atty. Alcantara's motion pending the submission of a copy of the judgment of dismissal.

For failure to present a copy of the alleged judgment of dismissal, the RTC denied the motion to dismiss in an Order dated 19 February 2002. Through a motion, Atty. Alcantara sought the reinstatement of the motion to dismiss by attaching a copy of the said foreign judgment.

For their part, private respondents filed a motion for the amendment of the complaint. The amended complaint

attached to the motion averred that private respondents were constrained to withdraw their complaint against petitioners from the California court because of the prohibitive cost of litigation, which withdrawal was favorably considered by said court. The amended complaint prayed for judgment ordering petitioners to satisfy their obligation to private respondents in the amount of P2,810,234.50.

The answer to the amended complaint raised the defenses of lack of cause of action, res judicata and lack of jurisdiction over the subject matter and over the persons of the defendants since the amended complaint had raised an entirely new cause of action which should have been ventilated in another complaint.

Petitioners and Atty. Alcantara failed to appear at the rescheduled pre-trial conference. Thus, the RTC declared petitioners in default and allowed private respondents to present evidence ex parte. On 15 March 2003, Atty. Alcantara passed away without the RTC being informed of such fact until much later.

On 5 August 2003, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the defendants are hereby directed to pay the plaintiffs the following, to wit:

- a) The amount of P656,688.00 (equivalent to \$27,362.00) in an exchange ratio of One (1) dollar is to P24.00 Philippine Currency;
- b) Plus 30% of P656,688.00 which is P197,006.40;
- c) Plus P1,576,051.20 (30% for eight (8) years, 1995-2003); and
- d) Plus 12% per annum as interest of the principal obligation (P656,688.00) from 1995 to 2003;

SO ORDERED.[3]

A copy of the RTC decision intended for Atty. Alcantara was returned with the notation "Addressee Deceased." A copy of the RTC decision was then sent to the purported address of petitioners in San Gregorio, Alaminos, Laguna and was received by a certain Leopoldo Avecilla on 14 August 2003. Meanwhile, immediately after the promulgation of the RTC decision, private respondents filed an ex-parte motion for preliminary attachment which the RTC granted in its Order dated 15 September 2003.

On 24 November 2003, private respondents sought the execution of the RTC decision. In its Order dated 10 December 2003, the RTC directed the issuance of a writ of execution. Upon the issuance of a writ of execution, the real properties belonging to petitioners were levied upon and the public auction scheduled on 15 January 2004.

On 16 December 2003, Atty. Carmelo B. Culvera entered his appearance as counsel for petitioners. On 22 December 2003, Atty. Culvera filed a Motion to Quash Writ of Execution (With Prayer to Defer Further Actions). On 6 January 2004, he filed a Notice of Appeal from the RTC Decision averring that he received a copy thereof only on 29 December 2003.

In an Order dated 7 July 2004, the RTC denied the motion seeking the quashal of the writ of execution.[4] Subsequently, the RTC denied Atty. Culvera's motion for reconsideration of said order.

Thus, petitioners filed a Rule 65 petition before the Court of Appeals, imputing on the RTC grave abuse of discretion tantamount to lack or excess of jurisdiction (1) in rendering its decision although it had not yet acquired jurisdiction over their persons in view of the improper service of summons; (2) in considering the decision final and executory although a copy thereof had not been properly served upon petitioners; (3) in issuing the writ of execution before the decision had become final and executory and despite private respondents' failure to comply with the procedural requirements in filing the motion for the issuance of the said writ; and (4) in denying

petitioners' motion to quash the writ of execution and notice of appeal despite sufficient legal bases in support thereof.

On 31 July 2006, the Court of Appeals rendered the assailed Decision dismissing the petition for certiorari. On 3 November 2006, it issued the assailed Resolution denying petitioners' motion for reconsideration.

Hence, the instant petition, attributing to the Court of Appeals the following errors:

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS [OF] LAW IN RULING THAT THE TRIAL COURT ACTED WITHIN ITS JURISDICTION OR DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED THE APPEARANCE OF THE COUNSEL AS THEIR SUBMISSION TO THE JURISDICTION OF THE TRIAL COURT ALTHOUGH SUCH APPEARANCE OF THE SAID COUNSEL WAS WITHOUT THEIR EXPRESS AUTHORITY BUT WAS DONE BY THEIR ALLEGED RELATIVES.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS [OF] LAW WHEN IT RULED THAT THE DECISION OF THE TRIAL COURT WAS DULY SERVED UPON THE PETITIONERS THROUGH THEIR ALLEGED RELATIVES ALTHOUGH THE RECORDS OF THIS CASE CLEARLY SHOWS THAT THE SAID PETITIONERS ARE RESIDENTS OF UNITED STATES OF AMERICA.[5]

In a Resolution dated 22 January 2007, the Court denied the petition because it is not accompanied by a valid verification and certification of non-forum shopping. Petitioners sought reconsideration, which the Court granted in a Resolution dated 16 April 2007. The Court also ordered the reinstatement of the petition and the filing of a comment.

The instant petition raises two issues, thus: (1) whether the RTC acquired jurisdiction over the persons of petitioners through either the proper service of summons or the appearance of the late Atty. Alcantara on behalf of petitioners and (2) whether there was a valid service of the copy of the RTC decision on petitioners.

On one hand, courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority. As a rule, if defendants have not been summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void. To be bound by a decision, a party should first be subject to the court's jurisdiction.[6]

In *Asiavest Limited v. Court of Appeals*,^[7] the Court underscored the necessity of determining first whether the action is in personam, in rem or quasi in rem because the rules on service of summons under Rule 14 of the Rules of Court of the Philippines apply according to the nature of the action.^[8] The Court elaborated, thus:

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 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.

However, in an action in personam wherein the defendant is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person. This method of service is possible if such defendant is physically present in the country. If he is

not found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. An exception was laid down in *Gemperle v. Schenker* wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representative and attorney-in-fact in a prior civil case filed by him; moreover, the second case was a mere offshoot of the first case.

On the other hand, in a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res. Nonetheless, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements. Thus, where the defendant is a non-resident who is not found in the Philippines and (1) the action affects the personal status of the plaintiff; (2) the action relates to, or the subject matter of which is property in the Philippines in which the defendant has or claims a lien or interest; (3) the action seeks the exclusion of the defendant from any interest in the property located in the Philippines; or (4) the property of the defendant has been attached in the Philippines-- service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[9]

The action filed against petitioners, prior to the amendment of the complaint, is for the enforcement of a foreign judgment in a complaint for breach of contract whereby petitioners were ordered to pay private respondents the monetary award. It is in the nature of an action in personam because private respondents are suing to enforce their personal rights under said judgment.

Applying the foregoing rules on the service of summons to the instant case, in an action in personam, jurisdiction over the person of the defendant who does not voluntarily submit himself to the authority of the court is necessary for the court to validly try and decide the case through personal service or, if this is not possible and he cannot be personally served, substituted service as provided in Rule 14, Sections 6-7.[10]

In an action strictly in personam, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. If the defendant, for justifiable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." [11]

If defendant cannot be served with summons because he is temporarily abroad, but otherwise he is a Philippine resident, service of summons may, by leave of court, be effected out of the Philippines under Rule 14, Section 15. In all of these cases, it should be noted, defendant must be a resident of the Philippines, otherwise an action in personam cannot be brought because jurisdiction over his person is essential to make a binding decision.[12]

However, the records of the case reveal that herein petitioners have been permanent residents of California, U.S.A. since the filing of the action up to the present. From the time Atty. Alcantara filed an answer purportedly at the instance of petitioners' relatives, it has been consistently maintained that petitioners were not physically present in the Philippines. In the answer, Atty. Alcantara had already averred that petitioners were residents of California, U.S.A. and that he was appearing only upon the instance of petitioners' relatives.[13] In addition, private respondents' attorney-in-fact, Joselito Rioveros, testified during the ex parte presentation of evidence that he knew petitioners to be former residents of Alaminos, Laguna but are now living in California, U.S.A.[14] That being the case, the service of summons on petitioners' purported address in San Gregorio, Alaminos, Laguna was defective and did not serve to vest in court jurisdiction over their persons.

Nevertheless, the Court of Appeals correctly concluded that the appearance of Atty. Alcantara and his filing of numerous pleadings were sufficient to vest jurisdiction over the persons of petitioners. Through certain acts, Atty.

Alcantara was impliedly authorized by petitioners to appear on their behalf. For instance, in support of the motion to dismiss the complaint, Atty. Alcantara attached thereto a duly authenticated copy of the judgment of dismissal and a photocopy of the identification page of petitioner Domingo Belen's U.S. passport. These documents could have been supplied only by petitioners, indicating that they have consented to the appearance of Atty. Alcantara on their behalf. In sum, petitioners voluntarily submitted themselves through Atty. Alcantara to the jurisdiction of the RTC.

We now come to the question of whether the service of a copy of the RTC decision on a certain Teodoro Abecilla is the proper reckoning point in determining when the RTC decision became final and executory.

The Court of Appeals arrived at its conclusion on the premise that Teodoro Abecilla acted as petitioners' agent when he received a copy of the RTC decision. For their part, private respondents contend that the service of a copy of the RTC decision on Atty. Alcantara, notwithstanding his demise, is valid. On the other hand, petitioners reiterate that they are residents of California, U.S.A. and thus, the service of the RTC decision of a residence which is not theirs is not proper.

As a general rule, when a party is represented by counsel of record, service of orders and notices must be made upon said attorney and notice to the client and to any other lawyer, not the counsel of record, is not notice in law. The exception to this rule is when service upon the party himself has been ordered by the court.[15] In cases where service was made on the counsel of record at his given address, notice sent to petitioner itself is not even necessary.[16]

The following provisions under Rule 13 of the Rules of Court define the proper modes of service of judgments:

SEC. 2. Filing and service, defined.--x x x

Service is the act of providing a party with a copy of the pleading or paper concerned. x x x

SEC. 5. Modes of service.--Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 9. Service of judgments, final orders or resolutions. --Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

SEC. 6. Personal service. --Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. Service by mail. --Service by registered mail shall be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. Substituted service. --If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

In the instant case, a copy of the RTC decision was sent first to Atty. Alcantara, petitioners' counsel of record. However, the same was returned unserved in view of the demise of Atty. Alcantara. Thus, a copy was subsequently sent to petitioners' "last known address in San Gregorio, Alaminos, Laguna," which was received by a certain Leopoldo Avecilla.

Undoubtedly, upon the death of Atty. Alcantara, the lawyer-client relationship between him and petitioners has ceased, thus, the service of the RTC decision on him is ineffective and did not bind petitioners.

The subsequent service on petitioners' purported "last known address" by registered mail is also defective because it does not comply with the requisites under the aforementioned Section 7 of Rule 13 on service by registered mail. Section 7 of Rule 13 contemplates service at the present address of the party and not at any other address of the party. Service at the party's former address or his last known address or any address other than his present address does not qualify as substantial compliance with the requirements of Section 7, Rule 13. Therefore, service by registered mail presupposes that the present address of the party is known and if the person who receives the same is not the addressee, he must be duly authorized by the former to receive the paper on behalf of the party.

Since the filing of the complaint, petitioners could not be physically found in the country because they had already become permanent residents of California, U.S.A. It has been established during the trial that petitioners are former residents of Alaminos, Laguna, contrary to the averment in the complaint that they reside and may be served with court processes thereat. The service of the RTC decision at their former address in Alaminos, Laguna is defective and does not bind petitioners.

On many occasions,[17] the Court has strictly construed the requirements of the proper service of papers and judgments. Both in *Heirs of Delos Santos v. Del Rosario*[18] and *Tuazon v. Molina*,[19] the service of the trial court's decision at an adjacent office and the receipt thereof by a person not authorized by the counsel of record was held ineffective. Likewise, the service of the decision made at the ground floor instead of at the 9th floor of a building in the address on record of petitioners' counsel, was held invalid in *PLDT v. NLRC*. [20] In these cases, there was no constructive service of the decision even if the service was made at the offices adjacent to the address on record of the parties' counsels and even if the copies eventually found their way to persons duly authorized to receive them.

In view of the foregoing, the running of the fifteen-day period for appeal did not commence upon the service of the RTC decision at the address on record of Atty. Alcantara or at the Laguna address. It is deemed served on petitioners only upon its receipt by Atty. Culvera on 29 December 2003. Therefore, the filing of the Notice of Appeal on 06 January 2004 is within the reglementary period and should be given due course.

WHEREFORE, the instant petition for review on certiorari is GRANTED and the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 88731 are REVERSED and SET ASIDE. Accordingly, the orders dated 7 July 2004 and 2 February 2005 of the Regional Trial Court of Rosario, Batangas, Branch 87 are SET ASIDE. The RTC is also ordered to GIVE DUE COURSE to the Notice of Appeal filed by Atty. Culvera on 06 January 2004. Costs against private respondents.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Chico-Nazario, and Velasco, Jr., JJ., concur.

[1] Rollo, p. 16; dated 31 July 2006 and penned by J. Normandie B. Pizarro and concurred in by JJ. Josefina Guevara-Salonga, Chairman of the Seventeenth Division, and Aurora Santiago-Lagman.

[2] Id. at 26; dated 3 November 2006.

[3] CA rollo, p. 74.

[4] Id. at 23.

[5] Rollo, p. 4.

[6] Bank of the Philippine Islands v. Sps. Evangelista and LTS Corp., G.R. No. 146553, 27 November 2002, 393 SCRA 187.

[7] 357 Phil. 536 (1998).

[8] Id.

[9] Supra note 7 at 538. Emphasis supplied.

[10] Valmonte v. Court of Appeals, 322 Phil. 97 (1996).

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

[12] Supra note 10 at 97.

[13] CA rollo, p, 47.

[14] Id. at 99.

[15] De Leon v. Court of Appeals, G.R. No. 138884, 6 June 2002, 383 SCRA 216.

[16] GCP-Manny Transport Services, Inc. v. Principe, G.R. No. 141484, 11 November 2005, 474 SCRA 555.

[17] See also Adamson Ozanan Educational Institution, Inc. v. Adamson University Faculty and Employees Association, G. R. No. 86819, 9 November 1989, 179 SCRA 279; BPI-Family Savings Bank, Inc. v. Court of Appeals, G. R. No. 94925, 22 April 1991, 196 SCRA 242.

[18] G.R. No. 139167, 29 June 2005, 462 SCRA 98.

[19] No. L-55697, 26 February 1981, 103 SCRA 365.

[20] No. L-60050, 213 Phil. 362 (1984).

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