

FILMERCO COMMERCIAL CO., INC., SPOUSES JAIME AND ANA MARIA MIGUEL, PETITIONERS, VS. HON. INTERMEDIATE APPELLATE COURT; HON. TEOFILO GUADIZ, JR., IN HIS OFFICIAL CAPACITY AS PRES...

G.R. No. 70661. April 09, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The main issue in this petition is whether or not the petitioners were served valid summons so as to bring them within the jurisdiction of the court.

Filmerco Commercial Co., Inc., (Filmerco) obtained two separate loans from the Bank of Philippine Islands (BPI) on November 26, 1982 and December 26, 1982 respectively. As security for the payment of the obligation stated in the promissory notes, spouses Jaime and Ana Maria Miguel executed a deed of continuing suretyship wherein the Miguels bound themselves jointly and solidarily with Filmerco for the payment of the latter's obligation under the loan-accounts.

The loans remained outstanding even after they became due and demandable. Hence, on May 5, 1983, BPI filed a complaint docketed as Civil Case No. 2807 for recovery of a sum of money against Filmerco and spouses Jaime and Ana Maria Miguel before the Regional Trial Court of Makati, Rizal.

Upon motion of the plaintiff, the defendants were declared in default for failure to file an answer within the reglementary period. The plaintiff was then allowed to present its evidence ex-parte after which the lower court on June 11, 1984 rendered a decision, the dispositive portions of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay, jointly and severally, the former:

"a) the sum of P308,525.17 plus 10% interest per annum and 12% penalty fee per annum from May 21, 1984 until the amount is fully paid;

"b) the sum equivalent to 20% of the total amount due as and for attorney's fees;

"c) to pay the costs of suit."

(p. 52, Rollo)

On the ground that the period to appeal expired without any decision having been appealed, the plaintiff filed a motion for execution of judgment before the lower court. This motion was granted and a writ of execution was issued against Filmerco and the Miguels.

Pursuant to the writ of execution, respondent Sheriff Villapana levied on and attached alleged properties of Filmerco and the Miguels. These properties were scheduled for sale on September 20, 1984.

On September 25, 1984, the defendants filed a motion to set aside the decision, writ of execution, notice of levy/attachment and to restrain the holding of the auction sale. The motion was premised on the ground that the court had no jurisdiction over the defendants because no valid summons was served on them.

On November 26, 1984, after opposition to motion, reply, rejoinder and sub-rejoinder had been duly submitted, the lower court issued an order denying the aforesaid motion.

On December 3, 1984, while the public auction of the attached properties was in progress, the defendants filed a motion for reconsideration of the November 26, 1984 order.

Without waiting for the resolution of the aforesaid motion for reconsiderations, the defendants filed with the Intermediate Appellate Court a petition for certiorari and prohibition, injunction and preliminary restraining order against the lower court's decisions and orders.

The appellate court dismissed the petition. A motion for reconsideration was likewise denied.

Hence, this petition.

The petitioners submit that no valid summons was served upon them. Therefore, they contend that the lower court had not acquired jurisdictions over their persons thus resulting in the nullity of its decision.

According to the sheriff's return dated September 7, 1983, summons and copy of the complaint were not served on the petitioners at 31 Sta. Escolastica Street, Pasay City, their given principal place of business and had to be returned to the court unserved for the reason that the "defendants have already vacated the premises and/or addresses more than a year ago and no definite information could be had regarding their present whereabouts." Three separate summons for each of the defendants were addressed to 31 Sta. Scholastica Street, Pasay City, Metro Manila.

Upon motion of the private respondent (plaintiff in the case) the lower court issued alias summons.

According to the sheriff's return dated March 31, 1984, summons were duly served upon "defendant-spouses Jaime and Ana Maria Miguel at No. 18 Yuchengco Drive, Pacific Malayan Village, Alabang, Muntinlupa, Metro Manila, thru Mrs. Angie Morger, a person residing therein of suitable age and discretion to receive service off that nature and who received the said court processes for and in behalf of the defendants but refused to sign." It was noted therein that the defendant spouses were "duly served" but that the other defendant Filmerco was "not and could not be served" and the summons pertaining to it was "returned unserved."

Petitioner spouses, Jaime and Ana Maria Miguel contend that the substituted service of summons upon their persons thru Mrs. Angie Morger at No. 18 Yuchengco Drive, Pacific Malayan Village, Alabang, Muntinlupa, Metro Manila was invalid for the following reasons: (1) at the time of the service they were not residents of the said address, and (2) Mrs. Angie Morger was not authorized to receive papers or documents for them. They submitted affidavits of Angie Morger to prove their point

There can be no dispute that service of summons upon the defendant is necessary in order that court may acquire jurisdiction over his person. Any judgment without such service in the absence of a valid waiver is nulls and void. (Keister v. Navarro, 77 SCRA 209).

Pursuant to Section 7, Rule 14 of the Revised Rules of Court, summons must be served on the defendant. However, when the defendant cannot be served personally within a reasonable time after efforts to locate him have failed, substituted service may be made.

In the case at bar, there is no question that personal service of summons upon the defendants could not be made

because they moved out from their given address and their whereabouts were unknown as indicated in the sheriff's return. Hence, the court resorted to substituted service of summons provided for under Section 8, Rule 14 of the Revised Rules of Court:

"SEC. 8. Substituted service. — If 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 dwelling house or 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 the case of *Keister v. Navarro* (supra), we construed this rule as follows:

x x x x x x x x

"x x x [U]nder the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective. (Ibid., pp. 1053-1054).

"Indeed, the constitutional requirement of due process requires that the service be such as may be reasonably expected to give the desired notice to the party of the claim against him. (*Perkins v. Dizon*, 69 Phil. 186; *Dy Reyes v. Ortega*, 16 SCRA 903)

x x x x x x x x

"x x x The terms 'dwelling house' or 'residence' are generally held to refer to the time of service, hence it is not sufficient 'to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom.' (72 C.J.S. 1059) They refer to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms 'office' or 'regular place of business' refer to the office or place of business of defendant at the time of service. x x x." (at p. 215)

Applying these principles to the case at bar, we find that no valid service of summons upon the defendant spouses could be effected thru Mrs. Angie Morger. In her affidavits, Mrs. Morger manifested that she and her husband are the bona fide residents of 18 Yuchengco Drive, Pacific Malayan Village, Alabang, Metro Manila; that they leased the said premises from the owner thereof as evidenced by a contract of lease dated August 8, 1983; that they have been occupying the premises since September 1, 1983; that on March 31, 1984, Sheriff Villapana attempted to serve the official summons and a copy of a complaint against spouses Jaime and Ana Maria Miguel and Filmerco Commercial, Inc., that she informed the sheriff that the Miguels do not reside in the place and that neither was said residence the dwelling place of the Miguel spouses; that she does not know Filmerco, Inc.; that despite the fact that she informed the sheriff that she is not authorized by the spouses and Filmerco to receive any papers for them, the sheriff left, leaving some documents with her maid, Daday Lopez; that she did not affix her signature on the documents being then served by the sheriff nor did the maid affix hers; that the documents left by the sheriff with the maid were not even ascertained nor read by the affiant. Mrs. Morger's manifestation is not refuted or rebutted.

Obviously, the address No. 18 Yuchengco Drive, Pacific Malayan Village, Alabang, Muntinlupa, Metro Manila was neither the "residence" nor the "dwelling house" of the petitioners at the time summons was served upon them as contemplated by the Rules.

Moreover, Angie Morger is not a proper person with whom the copies of the summons could be left. The sheriff's return indicates that she refused to sign the summons and the same was returned to the court unsigned. This fact adds credence to Angie Morger's manifestation about her informing the sheriff that she was not authorized to receive papers in behalf of the defendant-spouses and that she refused to receive them. We ruled in the case earlier

cited:

x x x x x x x x

"x x x [T]he rule designates the persons to whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and therefore, assumes that such person will deliver the process to defendant or in some way give notice thereof. (Keister v. Navaro, supra)

Mrs. Morger's manifestation negates any close relationship between herself and the defendant-spouses to qualify her is representative of the former to received summons in their behalf.

The private respondent merely relies on the sheriff's return that summons was duly served on the spouses and states that to disregard the return would be disastrous as "self-serving affidavits" would be preferred over the presumption of regularity in the discharge of official functions. It urges that the sheriff's return should be given credence over the affidavit.

A sheriff's certification that he duly served summons on a defendant does not necessarily mean that he validly served the summons. In this particular case, there is a strong showing that Mr. and Mrs. Jaime Miguel are not residents of 18 Yuchengco Drive, Pacific Malayan Village, Alabang, Muntinlupa. The respondent, itself, states that the spouses are hiding to escape their obligations. Sworn statements of Mrs. Angie Morger assert that she and her husband are lessees of the premises and are the actual residents therein. The respondents claim these statements are self-serving. Whether self-serving or not, the fact remains that Mrs. Morger was seen by the sheriff as the then person in that house. The respondent have absolutely no grounds, other than suspicions, for their contention that the Miguels and not the Morgers are the actual residents at that address.

In the light of these facts, the appellate court's reliance on the sheriff's return that summons upon defendant-spouses thru Angie Morger was "duly served" in consonance with the principle of presumption in favor of regularity of performance of official functions of a public officer (Section 5, Rule 13, Rules of Court) has no basis.

With regards to the petitioner corporation, the sheriff's return categorically states that the alias summons was not served upon the corporation. Moreover, the private respondent filed a motion to declare defendant-spouses Jaime and Ana Maria Miguel alone, in default without including the petitioner corporation. (Annex E, p. 64, Rollo)

These facts notwithstanding the trial court declared all the defendants in default and rendered a decision also against the petitioner corporation. This decision was affirmed by the appellate court which applied the doctrine of piercing the veil of corporate fiction. The appellate court stated:

"The records disclose that petitioner-spouses are both directors of respondent-Corporation being the majority stockholder of FILMERCOR (Annex "A", Comment). The records, also, reveal that both petitioner-spouses and petitioner-corporation were impleaded as party defendants in the civil case filed before the lower court. Hence, petitioner-corporation cannot now claim to have been improperly served with summons. This Court, therefore, finds justifiable reason for the lower court's order piercing the veil of corporate fiction. x x x." (p. 56, rollo)

We have already found that there was no valid summons effected upon petitioner-spouses. Since, the appellate court considered service of summons upon the petitioner-spouses as constituting service of summons upon the petitioner-corporation, the inevitable conclusion is that no valid summons could have been effected upon the petitioner-corporation.

Moreover, even if we assume that there was valid service of summons upon the petitioner-spouses, it does not necessarily follow that there was also valid service of summons upon the petitioner-corporation.

We have explained the doctrine of piercing the veil of corporate fiction in the following manner:

"The doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law. (Borja v. Vasquez, 74 Phil. 56), When the fiction is urged as a means of perpetrating a fraud or an illegal act as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, (Koppel Phil. v. Yatco, 77 Phil 496; Lidell & Co. v. Collector, G.R. No. L-9687, June 30, 1961; Commissioner v. Norton & Harrison Company, G.R. No. L-17618, Aug. 31, 1964; and Guevarra, Phil. Corp. Law, 1961 ed., p. 7) the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals." (Villa Rey Transit, Inc., v. Ferrer, 25 SCRA 845-857).

In effect, this doctrine refers to determination of liability and not to determination of jurisdiction.

This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be applied, based on the evidence to be presented, it is imperative that the court must first have jurisdiction over the corporation. For the court to acquire jurisdiction over a domestic corporation such as the petitioner-corporation, summons must be served upon it through the officers of the corporation enumerated in Section 13, Rule 14 of the Revised Rules of Court. There is not even a semblance of any effort to serve summons upon an officer as such. Since, the summons intended for the petitioner-corporation was "not and could not be served" as certified in the sheriff's return, the lower court never acquired jurisdiction over the petitioner-corporation. It follows that the judgment against the petitioner-corporation is null and void.

The allegations that the petitioners deliberately concealed their whereabouts to escape the payment of just and valid obligations appear to have some basis. However, allegations such as these do not justify the appellate court's upholding a judgment wherein the trial court has not acquired jurisdiction over the persons of the defendants.

The private respondent has chosen to employ a procedure which is strictly in personam. As indicated in the cases of Citizens Surety and Insurance, Inc. v. Melencio-Herrera (38 SCRA 369) and Magdalena Estate, Inc. v. Nieto (125 SCRA 758) it is also possible to use proceedings in rem or quasi in rem to achieve the same desired ends. There may be other ways which, if utilized, would insure that the courts acquire jurisdiction over defendants in recovery of money cases but the shortcut method approved by the respondent court is not one of them.

WHEREFORE, the instant petition is hereby GRANTED. The lower court's decision in Civil Case No. 2807 is SET ASIDE. The case is remanded to the trial court for proper service of summons and trial. SO ORDERED.

Paras, Bidin, and Cortes, JJ., concur.

Fernan, (Chairman), and Padilla JJ., no part.

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