

## THIRD DIVISION

**[ G.R. No. 225035, February 08, 2017 ]**

**CARSON REALTY & MANAGEMENT CORPORATION, PETITIONER,  
VS. RED ROBIN SECURITY AGENCY AND MONINA C. SANTOS,  
RESPONDENTS.**

### **D E C I S I O N**

**VELASCO JR., J.:**

#### **Nature of the Case**

This is a petition for review under Rule 45 of the Rules of Court, which seeks to reverse and set aside the August 20, 2015 Decision<sup>[1]</sup> and June 8, 2016 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 121983.

#### **Factual Antecedents**

The facts according to the CA are as follows:

On March 23, 2007, respondent Monina C. Santos (Santos) filed a Complaint for Sum of Money and Damages against petitioner Carson Realty & Management Corp. (Carson) with the Quezon City Regional Trial Court (RTC), Branch 216. As per the Officer's Return dated April 12, 2007 of Process Server Jechonias F. Pajila, Jr. (Process Server Pajila), a copy of the Summons dated April 11, 2007, together with the Complaint and its annexes, was served upon Carson at its business address at Unit 601 Prestige Tower Condominium, Emerald Avenue, Ortigas Center, Pasig City, through its "corporate secretary," Precilla S. Serrano.<sup>[3]</sup>

Thereafter, the appointed Corporate Secretary and legal counsel of Carson, Atty. Tomas Z. Roxas, Jr. (Atty. Roxas), filed an Appearance and Motion dated April 25, 2007 with the court wherein the latter entered his appearance and acknowledged that the Summons was served and received by one of the staff assistants of Carson. Atty. Roxas prayed for an extension of fifteen (15) days from April 27, 2007 within which to file a responsive pleading. The RTC, in its Order dated May 3, 2007, noted the appearance of Atty. Roxas as counsel for Carson and granted his request for extension of time to file a responsive pleading.<sup>[4]</sup>

Instead of filing a responsive pleading, Atty. Roxas moved to dismiss the complaint, alleging that the Summons dated April 11, 2007 was not served on any of the officers and personnel authorized to receive summons under the Rules of Court.<sup>[5]</sup>

In her Comment, Santos countered that while the Summons was initially received by Serrano, who as it turned out was a staff assistant and not the corporate secretary of Carson, the corporation acknowledged receipt of the Summons when Atty. Roxas

alleged in his Appearance and Motion that he may not be able to comply with the 15-day prescribed period stated in the Summons within which to file a responsive pleading. Thus, when Carson sought for an affirmative relief of a 15-day extension from April 27, 2007 to file its pleading, it already voluntarily submitted itself to the jurisdiction of the RTC.<sup>[6]</sup>

The RTC denied Carson's Motion to Dismiss and directed the issuance of an alias summons to be served anew upon the corporation. On November 9, 2007, Process Server Pajila submitted his Officer's Report stating in essence that he attempted to serve the alias Summons dated September 24, 2007 on the President and General Manager of Carson, as well as on the Board of Directors and Corporate Secretary, but they were not around. Hence, he was advised by a certain Lorie Fernandez, the "secretary" of the company, to bring the alias Summons to the law office of Atty. Roxas. Process Server Pajila attempted to serve the alias Summons at the law office of Atty. Roxas twice, but to no avail. This prompted him to resort to substituted service of the alias Summons by leaving a copy thereof with a certain Mr. JR Taganila, but the latter also refused to acknowledge receipt of the alias Summons.<sup>[7]</sup>

Atty. Roxas filed a Manifestation stating that the alias Summons was again improperly and invalidly served as his law office was not empowered to receive summons on behalf of Carson. In relation thereto, Atty. Roxas maintained that substituted service is not allowed if the party defendant is a corporation. Thus, Atty. Roxas manifested his intention of returning the alias Summons to the RTC.

On December 10, 2007, Santos filed a Motion to Declare Defendant in Default. Finding that there was an improper service of summons on Carson, the RTC denied the motion.

Thereafter, Santos requested the RTC for the issuance of another alias Summons. The RTC granted this request and issued an alias Summons dated September 9, 2008. Process Server Pajila submitted his Officer's Return dated October 28, 2008 on the services of the alias Summons, quoted hereunder in full:

THIS IS TO CERTIFY that on October 2, 2008 at around 12:51 in the afternoon, when a copy of Alias Summons dated September 9, 2008 issued in the above-entitled case together with a copy of the complaint and annexes attached thereto was brought for service to the President/General Manager of CARSON REALTY & MANAGEMENT CORP., in the person of Marcial M. Samson and/or Nieva A Cabrera at its office address at Unit 601 Prestige Tower Condominium, Emerald Avenue, Ortigas Center, 1605 Pasig City, undersigned was informed by the secretary of the company in the person of Ms. Vina Azonza that the abovementioned persons were not around and there was no one in the company authorized to receive the aforesaid summons. That the undersigned went back to the said office on October 16, 2008 at around 3:08 in the afternoon and was entered by Ms. Lorie Fernandez, also an employee of the company who is authorized to receive the said process. On October 27, 2008, at around 2:23 in the afternoon, undersigned tried again to serve the same process to the President/General Manager of Carson Realty & Management Corp. but with the same result.

Finally, on October 28, 2008 at around 1:03 in the afternoon, the

undersigned went back to the said company to personally serve the Alias Summons together with the other pertinent documents, just the same, the President/General Manager of the company was not around, hence, substituted service of summons was resorted to by leaving the copy of the Alias Summons at the company's office through its employee, MS. LORIE FERNANDEZ, however, she refused to acknowledge receipt of the process.

Loreta M. Fernandez (Fernandez), the receptionist who received the September 9, 2008 alias Summons, filed a Manifestation before the RTC signifying her intention of returning the alias Summons, together with the Complaint. Fernandez posited that, as a mere receptionist, she had no authority to receive the said documents and that there was an improper service of summons.

Santos filed a second Motion to Declare Defendant in Default in January 2009. The RTC granted the motion and allowed her to present her evidence *ex-parte* in its Order dated June 29, 2009.<sup>[8]</sup>

On August 27, 2009, Carson filed an Urgent Motion to Set Aside Order of Default<sup>[9]</sup> alleging that the RTC has yet to acquire jurisdiction over its person due to improper service of summons. The RTC denied the same in its December 4, 2009 Order.<sup>[10]</sup>

Carson filed an Urgent Motion for Reconsideration and for Leave of Court to Admit Responsive Pleading on March 17, 2010, appending thereto its Answer with Counterclaims. This was opposed by Santos in her Comment/Opposition. In the meantime, Santos filed an Ex-Parte Motion to Set for Hearing and for Reception of Evidence Before the Branch Clerk of Court.<sup>[11]</sup> On November 22, 2010, the RTC rendered an Order<sup>[12]</sup> denying Carson's Urgent Motion for Reconsideration and granting Santos' Ex-Parte Motion to Set Case for Hearing and for Reception of Evidence Before the Branch Clerk.<sup>[13]</sup>

Carson filed a Motion for Clarification and prayed for the annulment of the Orders dated June 29, 2009, December 4, 2009, and November 22, 2010. The RTC, however, maintained its stance and denied the motion in its Order<sup>[14]</sup> dated September 9, 2011.

Thus, Carson filed a Petition for Certiorari<sup>[15]</sup> dated November 9, 2011 under Rule 65 of the Rules of Court with the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to the RTC for issuing the Orders dated June 29, 2009, December 4, 2009, November 22, 2010, and September 9, 2011. Carson essentially questioned the validity of the service of the second alias Summons dated September 9, 2008, received by Fernandez, who is a receptionist assigned at its office in Ortigas.

### **Ruling of the Court of Appeals**

The CA denied the petition and ruled that the RTC had properly acquired jurisdiction over Carson due to its voluntary appearance in court. In ruling thus, the CA considered Carson's act of requesting additional time to file its responsive pleading as voluntary submission to the jurisdiction of the trial court.

Even on the assumption that Carson did not voluntarily submit to the RTC's jurisdiction, the CA maintained that the RTC still acquired jurisdiction over it due to the substituted service of the alias Summons dated September 9, 2008. The appellate court reasoned that Fernandez is a competent person charged with authority to receive court documents on behalf of the corporation.<sup>[16]</sup> Consequently, the CA upheld the Order dated June 29, 2009 declaring Carson in default.

Carson moved for reconsideration but was denied by the CA in its Resolution dated June 8, 2016. Hence, this petition.

Carson, in the main, argues that the trial court did not acquire jurisdiction over its person because the summons was not properly served upon its officers as mandated under Section 11,<sup>[17]</sup> Rule 14 of the Rules of Court. Thus, Carson posits, the RTC improperly declared it in default and should not have allowed Santos to present her evidence *ex-parte*.

### **Issues**

The pertinent issues for the resolution of this Court can be summarized, as follows:

- (1) Whether the RTC acquired jurisdiction over Carson.
- (2) Whether Carson was properly declared in default.

### **Our Ruling**

The petition is bereft of merit.

In actions *in personam*, such as the present case, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.<sup>[18]</sup>

In relation to the foregoing, *Manotoc v. Court of Appeals*<sup>[19]</sup> provides an exhaustive discussion on what constitutes valid resort to substituted service of summons:

#### **(1) Impossibility of Prompt Personal Service**

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in

person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party." Under the Rules, the service of summons has no set period.

However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff: "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

## (2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriffs Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine