

## SECOND DIVISION

[ G.R. No. 200693, April 18, 2016 ]

**NENA C. ANG, SPOUSES RENATO C. ANG AND PAULINE ANG, SPOUSES GUILLERMO SY AND ALISON ANG-SY, NELSON C. ANG, RICKY C. ANG, AS SUBSTITUTED BY HIS HEIRS, AND MELINDA C. ANG, PETITIONERS, VS. CHINATRUST (PHILIPPINES) COMMERCIAL BANK CORPORATION AND THE ASIAN DEBT FUND, RESPONDENTS.**

### DECISION

**BRION, J.:**

This petition for review on *certiorari* seeks to reverse the April 29, 2011 decision and January 30, 2012 resolution of the Court of Appeals (CA) in **CA-G.R. SP No. 99391**.<sup>[1]</sup> The CA only partly granted the petitioners' petition for *certiorari* against the May 17, 2007 order of the Regional Trial Court of Makati City (RTC), Branch 56 in **Civil Case No. 06-872**.<sup>[2]</sup> The RTC denied the petitioners' motion to dismiss the complaint for lack of jurisdiction over their person.

### ANTECEDENTS

On October 11, 2006, respondent Chinatrust (Philippines) Banking Corporation (*Chinatrust*) filed a money claim (with an application for the issuance of a writ of preliminary attachment) amounting to US \$458,614.84 against Nation Petroleum Corporation (*Nation*) and petitioners Mario Ang, Nena Ang, Renato Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson Ang, Ricky Ang, and Melinda Ang (*collectively the defendants*). The complaint was filed before the RTC and docketed as **Civil Case No. 06-872**.

On October 12, 2006, the RTC, through its Branch Clerk of Court Atty. Richard C. Jamora issued summonses to the defendants. The summonses indicated Nation's address as "Ground Floor, BPI Building, Rizal Street, Candelaria Quezon and/or 39<sup>th</sup> Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City." It also indicated the address of the individual defendants as "39<sup>th</sup> Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City."

The RTC heard *ex parte* the application for a preliminary attachment on October 18, 2006. On October 27, 2006, the RTC granted Chinatrust's application for a writ of attachment conditioned on its posting of a P25,000,000.00 bond.

On November 6, 2006, Process Server Joseph R. Dela Cruz and Assisting Sheriff Robert V. Alejo executed an Officer's Return reporting their service of the summons. It reads:

That on 30 October 2006, the undersigned Process Server of this Court together with one of the assisting Sheriff Robert V. Alejo, and plaintiffs counsel and its representative served the copy of summons together with complaint, its annexes, writ, order and bond, upon defendants at *39<sup>th</sup> Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave. cor. Sen. Gil J. Puyat Ave., Makati City*, thru Mr. RICKY ANG, personally, who acknowledged receipt thereof but refused to sign in the original copy of summons, and the receptionist of the said firm informed that the other defendants have not yet arrived and it would be better if we will return in the afternoon.

That in the afternoon on even date, said processes were served thru Ms. MELINDA ANG, Corporate Secretary of defendant NATION PETROLEUM CORPORATION and instructed Ms. Charlotte Magpayo, Administrative Assistant of the said corporation to received [sic] the same.

That despite diligent efforts to locate the whereabouts of the other defendants MARIO ANG, NENA ANG, RENATO ANG, PAULINE ANG, GUILLERMO SY, ALISON ANG-SY and NELSON ANG outside the premises of their office, considering that said process server and his group were not allowed to enter, substituted service was made by leaving their respective court processes at their office or regular place of business through the same Ms. Charlotte Magpayo by affixing the "receiving stamp" of Nation Petroleum and her notation, as shown in the original copy of summons.<sup>[3]</sup>

On November 21, 2006, the defendants entered a Special Appearance with a Motion to Dismiss the case for lack of jurisdiction.<sup>[4]</sup> The defendants argued: (1) that the RTC failed to acquire jurisdiction over Nation because service of summons was made on Charlotte Magpayo, a mere property supply custodian,<sup>[5]</sup> instead of the president, managing partner, general manager, corporate secretary, or in-house counsel;<sup>[6]</sup> and (2) that the individual defendants were not validly served summons<sup>[7]</sup> because (3) the process server improperly resorted to substituted service and failed to comply with its strict requirements.<sup>[8]</sup>

Chinatrust opposed the Motion to Dismiss,<sup>[9]</sup> insisting: (1) that Nation was validly served summons because as a property supply custodian, Magpayo occupies a very responsible position that enjoys the highest degree of trust and confidence;<sup>[10]</sup> (2) that the individual defendants likewise authorized Magpayo to receive the summons on their behalf;<sup>[11]</sup> (3) that the process server properly resorted to substituted service;<sup>[12]</sup> and (4) that Ricky Ang is estopped from contesting the validity of substituted service because he was served in person.<sup>[13]</sup>

On May 17, 2007, the RTC denied the defendants' Motion to Dismiss. The RTC held that Nation's corporate secretary Melinda Ang authorized Charlotte Magpayo as her agent for the limited purpose of receiving the summons.<sup>[14]</sup> It further held that Melinda's denial of this fact is self-serving as she was never presented in court for cross-examination.

The RTC also held that Ricky Ang was validly served summons because he acknowledged receipt of the process even though he refused to sign the original copy.<sup>[15]</sup>

With respect to the remaining defendants, the RTC held that the process server's resort to substituted service on Charlotte Magpayo was warranted. The Court found: (1) that the process server and his group attempted to serve summons on the defendants on the morning of October 30, 2006 at their place of work; (2) that aside from Mr. Ricky Ang, the defendants had not yet arrived; (3) that the process server left and exerted diligent efforts to locate the defendants' whereabouts; (4) that he returned to the defendants' office on the afternoon of the same day but was denied entry to the defendants' offices; and (5) therefore, he was forced to resort to substituted service through Charlotte Magpayo.<sup>[16]</sup>

On June 22, 2007, the defendants filed a petition for *certiorari* before the CA challenging the RTC's jurisdiction over them. The petition was docketed as **CA-G.R. SP No. 99391**.

In the meantime, Chinatrust assigned its rights to the trust receipt subject of **Civil Case No. 06-872** to respondent The Asian Debt Fund, Ltd. (ADF). Thus, the CA allowed ADF to be substituted for Chinatrust on March 9, 2010.

On April 29, 2011, the CA affirmed the RTC's May 17, 2007 order but dismissed the suit as against Nation.<sup>[17]</sup> The CA held that RTC did not acquire jurisdiction over Nation because the list of corporate officers authorized to receive summons for a corporation is exclusive.<sup>[18]</sup> The CA found insufficient evidence to support the RTC's conclusion that Nation's corporate secretary granted Charlotte Magpayo, a property supply custodian, a special power of attorney to receive summons for the corporation on her behalf.<sup>[19]</sup>

However, the CA upheld the process server's resort to substituted service with respect to the individual defendants.<sup>[20]</sup> The CA held that the process server exerted efforts to personally serve the summons on the individual defendants but was prohibited from entering their individual offices. This made personal service impossible, leaving the process server no choice but to resort to substituted service by leaving a copy of the summons with Charlotte Magpayo, a competent person of sufficient age and discretion in the defendants' office.<sup>[21]</sup>

On April 4, 2012, the individual defendants, now petitioners, filed the present petition for review on *certiorari*.

## **THE PETITION**

The petitioners argue: (1) that the Officer's return failed to establish the impossibility of personal service;<sup>[22]</sup> (2) that Charlotte Magpayo is not a competent person in charge of their business;<sup>[23]</sup> and (3) that the failure to comply with the strict requirements of substituted service renders the service of summons void.<sup>[24]</sup>

On the other hand, ADF maintains that the questions of the impossibility of personal service and whether diligent efforts were exerted to locate the petitioners are factual

matters that should not be passed upon in a petition for review on *certiorari*.<sup>[25]</sup> ADF continues that nevertheless, circumstances showed an impossibility of service because upon the server's return to the office, the petitioners' staff prevented them from entering the offices;<sup>[26]</sup> thus, the officers resorted to service of summons to a Charlotte Magpayo, a competent person authorized to receive summons in the Nation Petroleum office.<sup>[27]</sup>

ADF also insists that Ricky Ang was personally tendered summons despite his refusal to sign the original.<sup>[28]</sup>

## OUR RULING

We find the petition partly meritorious.

In civil cases, jurisdiction over a party is acquired either through his voluntary appearance in court or upon a valid service of summons. When a party was not validly served summons and did not voluntarily submit to the court's jurisdiction, the court cannot validly grant any relief against him.

In an action strictly *in personam*, summons shall be served personally on the defendant whenever practicable.<sup>[29]</sup> Personal service is made by personally handing a copy of the summons to the defendant or by tendering it to him if he refuses to receive and sign for it.

While personal service is the preferred method of serving summons, the Rules of Court are also mindful that this is sometimes impracticable or even impossible. Thus, Rule 14 also allows the sheriff (or other proper court officer) to resort to substituted service instead:

SEC. 7. *Substituted service*.—If, for justifiable causes, 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 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.<sup>[30]</sup>

But while the Rules permit substituted service, they also require strict compliance with its statutory requirements because of its extraordinary character.<sup>[31]</sup> After all, substituted service is in derogation of the usual method of service.<sup>[32]</sup>

In *Manotoc v. Court of Appeals*,<sup>[33]</sup> we dissected Rule 14, Section 8 and distilled the following elements of a valid substituted service:

***First***, the party relying on substituted service or the sheriff must establish the impossibility of prompt personal service.<sup>[34]</sup> Before substituted service of summons can be resorted to, the sheriff must have made several attempts to personally serve the summons within a reasonable period of one month. And by "several attempts," the sheriff is expected to have tried *at least thrice on at least two different dates*.<sup>[35]</sup>