

FIRST DIVISION

[G.R. No. 156759, June 05, 2013]

ALLEN A. MACASAET, NICOLAS V. QUIJANO, JR., ISAIAS ALBANO, LILY REYES, JANET BAY, JESUS R. GALANG, AND RANDY HAGOS, PETITIONERS, VS. FRANCISCO R. CO, JR., RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

To warrant the substituted service of the summons and copy of the complaint, the serving officer must first attempt to effect the same upon the defendant in person. Only after the attempt at personal service has become futile or impossible within a reasonable time may the officer resort to substituted service.

The Case

Petitioners – defendants in a suit for libel brought by respondent– appeal the decision promulgated on March 8, 2002^[1] and the resolution promulgated on January 13, 2003,^[2] whereby the Court of Appeals (CA) respectively dismissed their petition for *certiorari*, prohibition and *mandamus* and denied their motion for reconsideration. Thereby, the CA upheld the order the Regional Trial Court (RTC), Branch 51, in Manila had issued on March 12, 2001 denying their motion to dismiss because the substituted service of the summons and copies of the complaint on each of them had been valid and effective.^[3]

Antecedents

On July 3, 2000, respondent, a retired police officer assigned at the Western Police District in Manila, sued Abante Tonite, a daily tabloid of general circulation; its Publisher Allen A. Macasaet; its Managing Director Nicolas V. Quijano; its Circulation Manager Isaias Albano; its Editors Janet Bay, Jesus R. Galang and Randy Hagos; and its Columnist/Reporter Lily Reyes (petitioners), claiming damages because of an allegedly libelous article petitioners published in the June 6, 2000 issue of Abante Tonite. The suit, docketed as Civil Case No. 00-97907, was raffled to Branch 51 of the RTC, which in due course issued summons to be served on each defendant, including Abante Tonite, at their business address at Monica Publishing Corporation, 301-305 3rd Floor, BF Condominium Building, Solana Street corner A. Soriano Street, Intramuros, Manila.^[4]

In the morning of September 18, 2000, RTC Sheriff Raul Medina proceeded to the stated address to effect the personal service of the summons on the defendants. But his efforts to personally serve each defendant in the address were futile because the defendants were then out of the office and unavailable. He returned in the afternoon

of that day to make a second attempt at serving the summons, but he was informed that petitioners were still out of the office. He decided to resort to substituted service of the summons, and explained why in his sheriff's return dated September 22, 2000,^[5] to wit:

SHERIFF'S RETURN

This is to certify that on September 18, 2000, I caused the service of summons together with copies of complaint and its annexes attached thereto, upon the following:

1. Defendant Allen A. Macasaet, President/Publisher of defendant Abante Tonite, at Monica Publishing Corporation, Rooms 301-305 3rd Floor, BF Condominium Building, Solana corner A. Soriano Streets, Intramuros, Manila, thru his secretary Lu-Ann Quijano, a person of sufficient age and discretion working therein, who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendant were made, but the same were ineffectual and unavailing on the ground that per information of Ms. Quijano said defendant is always out and not available, thus, substituted service was applied;

2. Defendant Nicolas V. Quijano, at the same address, thru his wife Lu-Ann Quijano, who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendant were made, but the same were ineffectual and unavailing on the ground that per information of (sic) his wife said defendant is always out and not available, thus, substituted service was applied;

3. Defendants Isaias Albano, Janet Bay, Jesus R. Galang, Randy Hagos and Lily Reyes, at the same address, thru Rene Esleta, Editorial Assistant of defendant Abante Tonite, a person of sufficient age and discretion working therein who signed to acknowledge receipt thereof. That effort (sic) to serve the said summons personally upon said defendants were made, but the same were ineffectual and unavailing on the ground that per information of (sic) Mr. Esleta said defendants is (sic) always roving outside and gathering news, thus, substituted service was applied.

Original copy of summons is therefore, respectfully returned duly served.

Manila, September 22, 2000.

On October 3, 2000, petitioners moved for the dismissal of the complaint through counsel's special appearance in their behalf, alleging lack of jurisdiction over their persons because of the invalid and ineffectual substituted service of summons. They contended that the sheriff had made no prior attempt to serve the summons personally on each of them in accordance with Section 6 and Section 7, Rule 14 of the *Rules of Court*. They further moved to drop Abante Tonite as a defendant by virtue of its being neither a natural nor a juridical person that could be impleaded as a party in a civil action.

At the hearing of petitioners' motion to dismiss, Medina testified that he had gone to the office address of petitioners in the morning of September 18, 2000 to personally

serve the summons on each defendant; that petitioners were out of the office at the time; that he had returned in the afternoon of the same day to again attempt to serve on each defendant personally but his attempt had still proved futile because all of petitioners were still out of the office; that some competent persons working in petitioners' office had informed him that Macasaet and Quijano were always out and unavailable, and that Albano, Bay, Galang, Hagos and Reyes were always out roving to gather news; and that he had then resorted to substituted service upon realizing the impossibility of his finding petitioners in person within a reasonable time.

On March 12, 2001, the RTC denied the motion to dismiss, and directed petitioners to file their answers to the complaint within the remaining period allowed by the *Rules of Court*,^[6] relevantly stating:

Records show that the summonses were served upon Allen A. Macasaet, President/Publisher of defendant Abante Tonite, through Lu-Ann Quijano; upon defendants Isaias Albano, Janet Bay, Jesus R. Galang, Randy Hagos and Lily Reyes, through Rene Esleta, Editorial Assistant of defendant Abante Tonite (p. 12, records). It is apparent in the Sheriff's Return that on several occasions, efforts to served (sic) the summons personally upon all the defendants were ineffectual as they were always out and unavailable, so the Sheriff served the summons by substituted service.

Considering that summonses cannot be served within a reasonable time to the persons of all the defendants, hence substituted service of summonses was validly applied. Secretary of the President who is duly authorized to receive such document, the wife of the defendant and the Editorial Assistant of the defendant, were considered competent persons with sufficient discretion to realize the importance of the legal papers served upon them and to relay the same to the defendants named therein (Sec. 7, Rule 14, 1997 Rules of Civil Procedure).

WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby DENIED for lack of merit.

Accordingly, defendants are directed to file their Answers to the complaint within the period still open to them, pursuant to the rules.

SO ORDERED.

Petitioners filed a motion for reconsideration, asserting that the sheriff had immediately resorted to substituted service of the summons upon being informed that they were not around to personally receive the summons, and that Abante Tonite, being neither a natural nor a juridical person, could not be made a party in the action.

On June 29, 2001, the RTC denied petitioners' motion for reconsideration.^[7] It stated in respect of the service of summons, as follows:

The allegations of the defendants that the Sheriff immediately resorted to substituted service of summons upon them when he was informed that they were not around to personally receive the same is untenable. During

the hearing of the herein motion, Sheriff Raul Medina of this Branch of the Court testified that on September 18, 2000 in the morning, he went to the office address of the defendants to personally serve summons upon them but they were out. So he went back to serve said summons upon the defendants in the afternoon of the same day, but then again he was informed that the defendants were out and unavailable, and that they were always out because they were roving around to gather news. Because of that information and because of the nature of the work of the defendants that they are always on field, so the sheriff resorted to substituted service of summons. There was substantial compliance with the rules, considering the difficulty to serve the summons personally to them because of the nature of their job which compels them to be always out and unavailable. Additional matters regarding the service of summons upon defendants were sufficiently discussed in the Order of this Court dated March 12, 2001.

Regarding the impleading of Abante Tonite as defendant, the RTC held, viz:

"Abante Tonite" is a daily tabloid of general circulation. People all over the country could buy a copy of "Abante Tonite" and read it, hence, it is for public consumption. The persons who organized said publication obviously derived profit from it. The information written on the said newspaper will affect the person, natural as well as juridical, who was stated or implicated in the news. All of these facts imply that "Abante Tonite" falls within the provision of Art. 44 (2 or 3), New Civil Code. Assuming *arguendo* that "Abante Tonite" is not registered with the Securities and Exchange Commission, it is deemed a corporation by estoppels considering that it possesses attributes of a juridical person, otherwise it cannot be held liable for damages and injuries it may inflict to other persons.

Undaunted, petitioners brought a petition for *certiorari*, prohibition, *mandamus* in the CA to nullify the orders of the RTC dated March 12, 2001 and June 29, 2001.

Ruling of the CA

On March 8, 2002, the CA promulgated its questioned decision,^[8] dismissing the petition for *certiorari*, prohibition, *mandamus*, to wit:

We find petitioners' argument without merit. The rule is that *certiorari* will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction committed by the respondent Judge. A judicious reading of the questioned orders of respondent Judge would show that the same were not issued in a capricious or whimsical exercise of judgment. There are factual bases and legal justification for the assailed orders. From the Return, the sheriff certified that "effort to serve the summons personally xxx were made, but the same were ineffectual and unavailing xxx.

and upholding the trial court's finding that there was a substantial compliance with the rules that allowed the substituted service.

Furthermore, the CA ruled:

Anent the issue raised by petitioners that "Abante Tonite is neither a natural or juridical person who may be a party in a civil case," and therefore the case against it must be dismissed and/or dropped, is untenable.

The respondent Judge, in denying petitioners' motion for reconsideration, held that:

xxxx

Abante Tonite's newspapers are circulated nationwide, showing ostensibly its being a corporate entity, thus the doctrine of corporation by estoppel may appropriately apply.

An unincorporated association, which represents itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relies in good faith on such representation.

There being no grave abuse of discretion committed by the respondent Judge in the exercise of his jurisdiction, the relief of prohibition is also unavailable.

WHEREFORE, the instant petition is **DENIED**. The assailed Orders of respondent Judge are **AFFIRMED**.

SO ORDERED.^[9]

On January 13, 2003, the CA denied petitioners' motion for reconsideration.^[10]

Issues

Petitioners hereby submit that:

1. THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER HEREIN PETITIONERS.
2. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY SUSTAINING THE INCLUSION OF ABANTE TONITE AS PARTY IN THE INSTANT CASE.^[11]

Ruling

The petition for review lacks merit. Jurisdiction over the person, or jurisdiction *in personam* – the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*. Jurisdiction over the defendant in an action *in rem* or *quasi in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action. The purpose of summons in such action is not the acquisition of jurisdiction over the defendant but mainly to satisfy the constitutional requirement of due process.^[12]