

THIRD DIVISION

[G.R. No. 152776, October 08, 2003]

**HENRY S. OAMINAL, PETITIONER, VS. PABLITO M. CASTILLO
AND GUIA S. CASTILLO, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

In the instant case, the receipt of the summons by the legal secretary of the defendants -- respondents herein -- is deemed proper, because they admit the actual receipt thereof, but merely question the manner of service. Moreover, when they asked for affirmative reliefs in several motions and thereby submitted themselves to the jurisdiction of the trial court, whatever defects the service of summons may have had were cured.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to nullify the March 26, 2002 Decision^[2] of the Court of Appeals (CA) in CA-GR SP No. 66562. The assailed Decision disposed thus:

"WHEREFORE, the [D]ecision dated 23 August 2001 is hereby **NULLIFIED** and **SET ASIDE** and Civil Case No. OZC-00-13 ordered **DISMISSED**, without prejudice. Costs against [petitioner]."^[3]

The Antecedents

The antecedents of the case were narrated by the CA as follows:

"On 09 March 2000, [Petitioner Henry Oaminal] filed a complaint for collection against [Respondents Pablito and Guia Castillo] with the Regional Trial Court [RTC] of Ozamis City (Branch 35) x x x. The complaint prayed that [respondents] be ordered to pay P1,500,000.00 by way of liquidated damages and P150,000.00 as attorney's fees.

"On 30 May 2000, the summons together with the complaint was served upon Ester Fragonal, secretary of [Respondent] Mrs. Castillo.

"On 06 June 2000, [respondents] filed their 'Urgent Motion to Declare Service of Summons Improper and Legally Defective' alleging that the Sheriff's Return has failed to comply with Section (1), Rule 14 of the Rules of Court or substituted service of summons.

"The scheduled hearing of the Motion on 14 July 2000 did not take place because x x x [RTC] Judge [Felipe Zapatos] took a leave of absence from July 17 to 19, 2000[;] hence[,] it was re-scheduled to 16 August 2000.

"On 19 October 2000, [petitioner] filed an Omnibus Motion to Declare [Respondents] in Default and to Render Judgment because no answer [was] filed by [the latter].

"[Respondents] forthwith filed the following:

` a. Omnibus Motion *Ad Cautelam* to Admit Motion to Dismiss and Answer with Compulsory Counter-claim dated 9 November 2000 which was set for hearing on 27 November 2000 at 8:30 a.m.;

` b. x x x Urgent Motion to Dismiss also dated 9 November 2000 which was also set for hearing on 27 November 2000 at 8:30 a.m. The said motion was anchored on the premise that x x x [petitioner's] complaint was barred by improper venue and *litis pendentia*; and

` c. Answer with Compulsory Counter-Claim dated 9 November 2000.'

"On 16 November 2000, x x x [the] judge denied [respondents'] Motion to Dismiss, admitted [their] Answer, and set the pre-trial [on] 17 January 2001.

"On 24 November 2000, [respondents] filed an `Urgent Motion to Inhibit *Ad Cautelam*' against Judge [Zapatos], `in the higher interest of substantial justice and the [r]ule of [l]aw x x x.'

"On 27 December 2000, Judge [Zapatos] denied the motion and transferred the January 17th pre-trial to 19 February 2001.

"[Respondents] filed an `Urgent Omnibus Motion for Reconsideration with the Accompanying Plea to Reset' dated 22 January 2001. The motion requested that it be set for consideration and approval by the trial court on 05 February 2001 at 8:30 a.m. Said motion in the main prayed `that an order be issued by the Honorable Court reconsidering its adverse order dated 16 November 2000, by dismissing the case at bar on the ground of improper venue or in the alternative, that the Honorable Presiding Judge reconsider and set aside its order dated December 27, 2000 by inhibiting himself from the case at hand.'

"On 22 May 2001, Judge [Zapatos] ruled that [respondents'] `Omnibus Motion *Ad Cautelam* to Admit Motion to Dismiss and Answer with Counterclaim' was filed outside the period to file answer, hence he (1) denied the Motion to Admit Motion to Dismiss and Answer; (2) declared [respondents] in default; and (3) ordered [petitioner] to present evidence *ex-parte* within ten days from receipt of [the] order, [failing] which, the case will be dismissed.

"On 23 August 2001, Judge [Zapatos] rendered a decision on the merits, with the following dispositi[on]:

`WHEREFORE, finding by preponderance of evidence, judgment is hereby rendered in favor of [petitioner], ordering [respondents] to pay x x x:

- 1) P1,500,000.00 by way of [l]iquidated [d]amages;
- 2) P20,000.00 as attorney's fees and litigation expenses; and
- 3) x x x cost[s]."^[4]

On September 11, 2001, respondents filed with the CA a Petition for *certiorari*, prohibition and injunction, with a prayer for a writ of preliminary injunction or temporary restraining order (TRO). In the main, they raised the issue of whether the trial court had validly acquired jurisdiction over them.

On September 20, 2001, the appellate court issued a TRO to enjoin the lower court from issuing a writ of execution to enforce the latter's decision.

Ruling of the Court of Appeals

The CA ruled that the trial court did not validly acquire jurisdiction over respondents, because the summons had been improperly served on them. It based its finding on the Sheriff's Return, which did not contain any averment that effort had been exerted to personally serve the summons on them before substituted service was resorted to. Thus, the appellate court set aside the trial court's Decision and dismissed, without prejudice, Civil Case No. OZC-00-13.

Hence, this Petition.^[5]

Issues

Petitioner submits the following issues for our consideration:

"I

Whether respondents' recourse to a Petition for Certiorari [was] appropriate when the remedy of appeal was available?

"II

Whether the Decision of the trial court attained finality?

"III

Whether the Honorable Third Division of the Court of Appeals [was] correct in entertaining and in granting the Writ of Certiorari when the facts clearly establish[ed] that not only was [an] appeal available, but x x x there were other plain, speedy and adequate remedies in the ordinary course of law?

"IV

Whether the Honorable Third Division of the Court of Appeals had

jurisdiction to nullify and set aside the Decision of the trial court and dismiss the case?

"V

[Whether] receipt by a legal secretary of a summons [is deemed] receipt by a lawyer in contemplation of law?"^[6]

Simply stated, the issues boil down to the following: (1) whether the Petition for *certiorari* before the CA was proper; and (2) whether the trial court acquired jurisdiction over respondents.

Since the Petition for *certiorari* was granted by the CA based on the trial court's alleged lack of jurisdiction over respondents, the second issue shall be discussed ahead of the former.

The Court's Ruling

The present Petition is partly meritorious.

First Issue: **Jurisdiction over Defendants**

Petitioner contends that the trial court validly acquired jurisdiction over the persons of respondents, because the latter never denied that they had actually received the summons through their secretary. Neither did they dispute her competence to receive it.

Moreover, he argues that respondents automatically submitted themselves to the jurisdiction of the trial court when they filed, on November 9, 2000, an Omnibus Motion to Dismiss or Admit Answer, a Motion to Dismiss on the grounds of improper venue and *litis pendentia*, and an Answer with Counterclaim.

On the other hand, respondents insist that the substituted service of summons on them was improper. Thus, they allege that the trial court did not have the authority to render its August 23, 2001 Decision.

We clarify.

Service of Summons

In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former. Where the action is *in personam* and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner provided for by Sections 6 and 7 of Rule 14 of the Revised Rules of Court, which read:

"Section 6. *Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

"Section 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."

Personal service of summons is preferred over substituted service. Resort to the latter is permitted when the summons cannot be promptly served on the defendant in person and after stringent formal and substantive requirements have been complied with.^[7]

For substituted service of summons to be valid, it is necessary to establish the following circumstances: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or regular place of business.^[8] It is likewise required that the pertinent facts proving these circumstances are stated in the proof of service or officer's return.

In the present case, the Sheriff's Return^[9] failed to state that efforts had been made to personally serve the summons on respondents. Neither did the Return indicate that it was impossible to do so within a reasonable time. It simply stated:

"THIS IS TO CERTIFY that on the 30th day of May 2000, copies of the summons together with the complaint and annexes attached thereto were served upon the defendants Pablito M. Castillo and Guia B. Castillo at their place of business at No. 7, 21st Avenue, Cubao, Quezon City thru MS. ESTER FREGINAL, secretary, who is authorized to receive such kind of process. She signed in receipt of the original as evidenced by her signature appearing on the original summons.

"That this return is submitted to inform the Honorable x x x Court that the same was duly served."^[10]

Nonetheless, nothing in the records shows that respondents denied actual receipt of the summons through their secretary, Ester Fraginal. Their "Urgent Motion to Declare Service of Summons Improper and Legally Defective"^[11] did not deny receipt thereof; it merely assailed the manner of its service. In fact, they admitted in their Motion that the "summons, together with the complaint, was served by the Sheriff on Ester Fraginal, secretary of the defendants at No. 7, 21st Avenue, Cubao, Quezon City on 30 May 2000."^[12]

That the defendants' *actual* receipt of the summons satisfied the requirements of procedural due process had previously been upheld by the Court thus:

"x x x [T]here is no question that summons was timely issued and received by private respondent. In fact, he never denied actual receipt of such summons but confined himself to the argument that the Sheriff should prove that personal service was first made before resorting to