

THIRD DIVISION

[G.R. No. 146553, November 27, 2002]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPOUSES
WILLIE AND JULIE L. EVANGELISTA AND LTS PHILIPPINES
CORPORATION, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

A defect in the service of summons, which is apparent on the face of the return, does not necessarily constitute conclusive proof that the *actual* service has in fact been improperly made. In the interest of speedy justice, the trial court should immediately ascertain whether the defect is real and, if so, to cause the service of a new summons thereafter.

The Case

The Petition for Review before us assails the November 6, 2000 Decision^[1] of the Court of Appeals (CA) in CA-GR SP No. 60081, as well as the December 27, 2000 CA Resolution^[2] denying the Motion for Reconsideration. The dispositive portion of the challenged Decision reads as follows:

"WHEREFORE, premises considered, the petition is GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The Resolution dated June 19, 2000 of respondent Judge Salvador S. Abad Santos of Branch 65 of the Regional Trial Court of Makati City in Civil Case No. 00-495 entitled '**Bank of the Philippine Islands v. Spouses Willie Evangelista and Julie L. Evangelista,**' and the Order dated July 21, 2000 denying the motion for reconsideration thereof, are both hereby ANNULLED and SET ASIDE.

"The respondent court is hereby ordered to DISMISS Civil Case No. 00-495 **WITHOUT PREJUDICE.**"

The Facts

The appellate court narrated the facts of the case in this manner:

"Factual antecedents show that on April 12, 2000, private respondent [now petitioner] Bank of the Philippine Islands ('BPI') filed Civil Case No. 00-495 to collect a sum of money against herein petitioners [now respondents] before the Regional Trial Court of Makati City. The case was raffled off to the sala of herein respondent Judge.

"Petitioner [now respondent] LTS Philippines Corporation ('LTS') has obtained various loans from BPI in the aggregate amount of TWENTY MILLION PESOS (P20,000,000.00) and as security for the said loans,

Spouses Evangelista, also herein petitioners, executed in favor of BPI a continuing suretyship and bound themselves to pay any or all indebtedness of the LTS in the principal amount of THIRTY MILLION PESOS (P30,000,000.00) and other charges thereon, and to pay BPI, its successors, assigns or its subsidiaries in case of default of LTS.

"Later on, a loan was obtained by Spouses Evangelista from BPI in the amount of SIX MILLION SIX HUNDRED THOUSAND PESOS (P6,600,000.00). As security for the said loan, Spouses Evangelista executed a real estate mortgage over one (1) parcel of land located at Quezon City, covered by Transfer Certificate of Title No. N-134746 of the Registry of Deeds of Quezon City. The real estate mortgage executed in favor of BPI not only secured the obligation of Spouses Evangelista, but also the obligation of LTS on the basis of the continuing suretyship executed by Spouses Evangelista in favor of BPI.

"After LTS and Spouses Evangelista failed to pay their respective loan obligations, BPI instituted an extrajudicial foreclosure on the mortgaged land. The mortgaged property was sold at public auction to BPI as the highest bidder therefor for the amount of EIGHT MILLION THIRTEEN THOUSAND TWO HUNDRED PESOS (P8,013,200.00). As alleged in BPI's complaint, petitioners' outstanding obligation with BPI was THIRTY FOUR MILLION FIFTEEN THOUSAND FOUR HUNDRED THIRTY TWO AND 22/100 [PESOS] (P34,015, 432.22), exclusive of interest, penalty and other charges as of July 12, 1999.

"It turns out, however, that the proceeds of the auction sale of the mortgaged property were insufficient to cover/pay petitioners' outstanding obligation. The deficiency obligation, exclusive of interest, penalty and other charges as of July 12, 1999, was pegged as TWENTY SIX MILLION TWO THOUSAND TWO HUNDRED THIRTY TWO AND 22/100 [PESOS] (P26,002,232.22).

"BPI unilaterally reduced its claim from TWENTY SIX MILLION TWO THOUSAND TWO HUNDRED THIRTY TWO AND 22/100 [PESOS] (P26,002,232.22) to only TWENTY ONE MILLION EIGHT HUNDRED TWELVE THOUSAND FIVE HUNDRED THIRTY FOUR AND 60/100 [PESOS] (P21,812,534.60).

"However, despite demands therefor, petitioners failed to pay the aforementioned deficiency obligation. Hence, BPI was prompted to file the collection suit.

"On May 15, 2000, the summons issued by the court a quo on April 14, 2000 for the individual petitioners was 'served,' and the return or proof of service by the process server was correspondingly made on May 16, 2000.

"Petitioners, however, assailed the summons for being improperly served and accordingly filed their Motion to Dismiss dated May 23, 2000 on the grounds of (a) lack of jurisdiction over the persons of herein petitioners, (b) lack of cause of action and (c) non-compliance with a condition precedent for filing the collection suit.

"On June 19, 2000, respondent Judge issued the assailed resolution denying petitioners' *Motion to Dismiss*. The court *a quo* reasoned, among other things, that the allegations of irregularity in the service of summons are insufficient to overcome the presumption of regularity in the performance of a court officer's official duties. On July 21, 2000, petitioners' motion for reconsideration thereof was also denied."^[3]
(Citations omitted)

Ruling of the Court of Appeals

In granting the Petition for Certiorari, the CA ruled that the Regional Trial Court (RTC) had not acquired jurisdiction over the persons of respondents because of the defective service of summonses. The return failed to indicate any reason why the process server had resorted to substituted, in lieu of personal, service. It merely stated the names of the recipients of the summonses, who were neither the defendants nor the proper officers of respondent corporation. Sections 7 and 11 of Rule 14 of the Rules of Court were thereby violated, warranting the dismissal of the case. And since the RTC never acquired jurisdiction over the persons of herein respondents, there was no more necessity to pass upon the other issues raised.

Hence, this Petition.^[4]

Issues

In its Memorandum dated October 5, 2001, petitioner raises the following issues for our consideration:

I

"Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error in holding that the 'court a quo did not acquire jurisdiction over the person of the respondents allegedly due to defective service of summons when the process server of the court a quo' who enjoys a presumption of regularity in the performance of official duty declared that the summons were duly served upon respondents.

II

"Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error in ordering the dismissal of Civil Case No. 00-495 entitled BPI vs. Spouses Willie and Julie Evangelista, LTS Corporation in the court a quo, by setting aside the consideration of substantial justice and equity and putting premium instead to the rules and technicalities which are not the object of the Rules of Procedure.

III

"Whether or not the Honorable Court of Appeals gravely abused its discretion by committing serious reversible error by departing from consideration of justice and equity in ordering the dismissal of Civil Case No. 00-495 entitled BPI vs. Spouses Willie and Julie Evangelista, LTS Corporation in the court a quo, thus, penalizing petitioner through no

fault of its own but for the neglect of the process server of the court a quo, who caused the alleged defective service of summons upon the respondents.”^[5]

In short, this Court is called upon to determine whether the trial court, through the service of summonses, acquired jurisdiction over respondents.

The Court’s Ruling

The Petition is partly meritorious.

Main Issue:

Jurisdiction over Respondents

Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.^[6] As a rule, if defendants have not been summoned, the court acquires no jurisdiction over their person, and a judgment rendered against them is null and void.^[7] To be bound by a decision, a party should first be subject to the court’s jurisdiction.^[8]

Petitioner argues that the summonses were validly served upon respondents. On the return, the process server indicated that these had been “duly served” upon them. It cannot be gainsaid that because she is a public officer, she enjoys the presumption of regularity in the performance of her duties. To overcome this presumption, clear and convincing evidence to the contrary must be presented.

Respondents, on the other hand, maintain that the said returns show prima facie the nonbinding character of the service of the summonses upon them. The process server herself stated on the returns that she had served the summonses upon Ms Paanto and Ms Cabrera, respectively. She had not served them upon the spouses as required by Section 6, Rule 14 of the Rules of Court; or upon respondent corporation’s president, general manager, corporate secretary, treasurer or in-house counsel as required by Section 11, Rule 14 of the Rules of Court. Therefore, the presumption of regularity in the performance of duty finds no application to the present case, because the process server’s pronouncement that the summonses were “duly served” is a mere conclusion of law.

We agree with respondents that the RTC did not acquire jurisdiction over their persons, because (1) there is no showing that the summonses were properly served upon them, and (2) they had not appeared before it and submitted to its jurisdiction. The defect in the service thereof is apparent on the face of the returns which failed to comply with Sections 7 and 11, Rule 14 of the Rules of Court.

We cannot sustain petitioner’s argument, which is anchored on the presumption of regularity in the process server’s performance of duty. The Court already had occasion to rule that “[c]ertainly, it was never intended that the presumption of regularity in the performance of official duty will be applied even in cases where there is no showing of substantial compliance with the requirements of the rules of procedure.”^[9] Such presumption does not apply where it is patent that the sheriff’s or server’s return is defective.^[10] Under this circumstance, respondents are not

duty-bound to adduce further evidence to overcome the presumption, which no longer holds.

Nevertheless, notwithstanding the patent defect in the service of the summonses, the RTC failed to ascertain fully whether resort to the substituted, in lieu of the personal, service thereof was justified. Although the returns did not show adherence to the rules, the *actual* service may still be proven by evidence extraneous to it. If it was indeed improper, the trial court should thereafter issue new summonses and serve them anew, as explained in *Laus v. Court of Appeals*.^[11]

The service of summons on the spouses was patently defective as shown by the Certificate of Return^[12] dated May 16, 2000, which merely stated the following:

"THIS IS TO CERTIFY that on the 15th day of May 2000, a copy of Summons together with the complaint and its annexes attached thereto in the above-entitled case were served to Sps. Willie & Julie L. Evangelista at #6 Yellowstone Street, White Plains, Quezon City thru Ms. Carmen Paanto, a person of suitable age and [discretion], living therein and who acknowledged receipt thereof."

The defect is likewise apparent in the service of summons on LTS Philippines Corporation. On the same return, the process server merely stated:

"THIS IS TO CERTIFY that on the same date the undersigned cause[d] the service of Summons together with the complaint and its annexes attached thereto in the above-entitled case to LTS Philippines Corporation at Orcell II Bldg., 1611 Quezon City thru Ms. Julie Cabrera, but she refused to sign."^[13]

The general rule requires that summonses be *personally* served upon the defendants. However, if this mode of service cannot be effected within a reasonable time, a substituted service may be resorted to. Failure to justify a resort from one to the other violates the clear import of Section 7, Rule 14 of the Rules of Court, which provides:

"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 affected (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."

In the present case, no justification for resorting to a substituted service of summons upon the spouses was indicated on the return.

On the other hand, the apparent defect in the service of summons upon LTS Philippines Corporation contravenes not only Section 7, but also Section 11 of Rule 14 of the Rules of Court which states:

"SEC. 11. *Service upon domestic private juridical entity*. — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be