420 Phil. 538

SECOND DIVISION

[G.R. No. 146593, October 26, 2001]

UNITED COCONUT PLANTERS BANK, PETITIONER, VS. ROBERTO V. ONGPIN, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision, dated December 27, 2000, of the Court of Appeals,[1]setting aside the orders, dated April 19, 1999 and October 13, 1999, of the Regional Trial Court, Branch 133, Makati City in Civil Case No. 95-1594 entitled United Coconut Planters Bank v. Roberto V. Ongpin.

The facts are as follows:

On November 17, 1994, Philippine Apparel, Inc. (PAI) entered into a credit agreement with petitioner United Coconut Planters Bank for a case-to-case credit line in the amount of US$500,000.00. Respondent Roberto V. Ongpin, then controlling stockholder of PAI, signed as surety, binding himself jointly and severally liable with PAI for the same amount. PAI availed of the credit line by drawing on short-term loans and opening letters of credit for the importation of goods, which amounted to US$650,986.34 or P16,526,653.00.[2]

As PAI failed to pay its obligations, petitioner filed a complaint against respondent Ongpin with the Regional Trial Court, Branch 133, Makati to enforce his obligation as surety of PAI. Petitioner sought the issuance of a writ of preliminary attachment on the following grounds: (1) respondent, in fraud of creditors, had transferred residence to Hongkong; (2) his obligation was not covered by any collateral; and (3) PAI and its officers, including respondent, with intent to defraud, did not disclose the fact that the Bureau of Customs had claims against PAI for unpaid customs duties and taxes in the amount of P284,010,387.00, which fact could have affected petitioner's decision whether to grant the loan to PAI.

On November 10, 1995, the trial court issued an order granting petitioner's prayer for the issuance of a writ of preliminary attachment. On November 16, 1995, a writ of attachment and a notice of garnishment were issued by the trial court, addressed to the president and corporate secretary of the Dominion Asian Equities garnishing 8,315,600 shares of stock belonging to respondent.[3]

On November 21, 1995, respondent, making a special appearance through counsel, moved to dismiss the complaint and to quash the writ of attachment and garnishment on the ground that the trial court had no jurisdiction over the person of respondent, the summons prepared on October 30, 1995 having been unserved as of November 17, 1995. The trial court denied the urgent motion as well as respondent's subsequent motion for reconsideration.[4]

On May 24, 1996, respondent filed a petition for *certiorari* in the Court of Appeals assailing the orders of the trial court. During the pendency of the petition, on May 27, 1996, petitioner filed with the trial court a Motion for Leave to Serve Summons Through Publication. Its motion was granted, but the publication was held in abeyance on October 2, 1996. On the same date, petitioner entered into an agreement with TODAY for the publication of the summons on October 4, 11, and 18, 1996. Petitioner received the trial court's order at the close of office hours on October 3, 1996. Attempts to prevent the publication by requesting the trial court through telephone to inform the newspaper publisher of its order and informing the newspaper itself of the same proved futile, as nobody in the court was contacted by petitioner while the telephone lines of the newspaper were busy. As a result, TODAY published the summons on October 4, 1996. It was only on October 8, 1996 that petitioner was able to inform the newspaper of the October 2, 1996 order and to request the latter to hold in abeyance further publication of the summons.[5]

On February 27, 1997, the Court of Appeals promulgated its decision, the dispositive portion of which states:

> THE FOREGOING CONSIDERED, the issuance of a Writ of Attachment together with the Notice of Garnishment is hereby validated: but the implementation of the Writ of Attachment/Garnishment is prohibited until after the Court shall have acquired jurisdiction over the person of the petitioner, either through voluntary appearance or service of summons.
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> SO ORDERED.[6]

On March 19, 1997, petitioner filed a motion for reconsideration with the appeals court insofar as it held that the trial court had no jurisdiction on the person of petitioner and for this reason suspended implementation of the writ of attachment/garnishment. However, the Court of Appeals denied petitioner's motion.

On August 1, 1997, petitioner filed a petition for certiorari with this Court. Again, during the pendency of the case, petitioner filed with the trial court on August 15, 1997 another Motion to Serve Summons through Publication with Leave of Court. In the meantime, on August 27, 1997, this Court issued a resolution dismissing petitioner's petition for review on *certiorari* for failure of petitioner to comply with procedural requirements.[7]

On November 27, 1997, Deputy Sheriff Glenn B. Parra, together with Atty. Rodulfo Baculi, Jr., representative of petitioner, went to the PILTEL office at the Banker's Center Building, Ayala Avenue, Makati City to serve summons on respondent, who was then the chairman of the board of PILTEL and was expected to attend a board meeting on that day. Upon arrival, they asked the receptionist, Arlene Cuenco, if respondent would attend the meeting. Cuenco conferred with Anne V. Morallo, executive secretary of the president of PILTEL, who then called respondent's office at the BA Lepanto Building, Paseo de Roxas Ave., Makati City. Morallo was informed that respondent was not going to attend the meeting. Nevertheless, Sheriff Parra and Atty. Baculi waited until 11:30 a. m. They proceeded to respondent's office at the BA Lepanto Building when respondent failed to appear at the board meeting.

The security guard at BA Lepanto told them that respondent was holding office at the 14th floor, but when they reached the said floor, they were told by a member of the Internal Security Personnel that respondent was not known at that place.

In the afternoon of the same day, Sheriff Parra returned to the PILTEL office to serve the summons on respondent. There, he met for the first time Anne V. Morallo, who told him that she was authorized to receive court processes for and on behalf of respondent even though the latter was not holding office in the building. Morallo was so advised by Atty. Joseph Santiago, Chief of the Legal Department of PILTEL. Thus, Sheriff Parra served the summons on Morallo who received it accordingly. However, when Morallo tried to forward the court process to respondent, the latter's lawyer, Atty. David S. Narvasa, refused to receive it.[8]

After serving summons through Morallo, Sheriff Parra then implemented the writ of attachment by serving notices of garnishment on the following: (1) Stock Transfer Office - FEBTC; (2) Professional Stock Transfer; (3) Stock Transfer Services; (4) The Corporate Secretary, Belle Corp., Tagaytay Highlands; and (5) International Exchange Bank, Head Office and all branches thereof.[9]

On December 4, 1997, respondent filed with the trial court an Urgent Omnibus Motion: (a) to Dismiss; (b) for Prohibition of the Implementation of the Writ of Attachment dated 16 November 1995; (c) for Quashal of the Notice of Garnishment dated 27 November 1997; and (d) for Release of Properties attached thereby. On April 19, 1999, the trial court denied respondent's motion for lack of merit. Respondent's motion for reconsideration was likewise denied on October 13, 1999.

Consequently, respondent filed a petition for *certiorari* with application for a Temporary Restraining Order and Writ of Preliminary Injunction in the Court of Appeals. The Court of Appeals promulgated its decision on December 27, 2000, annulling and setting aside the orders of the trial court, dated April 19, 1999 and October 13, 1999, on the ground that PILTEL was not the regular place of business of respondent and that, even if it was, Morallo could not be considered a competent person in charge of respondent's office, as she was the executive secretary of the president of PILTEL and not of respondent. Hence, this petition for review under Rule 45 of the Revised Rules of Civil Procedure.[10]

Petitioner makes the following assignment of errors:

> THE COURT OF APPEALS ERRED IN ANNULLING THE ORDERS OF THE TRIAL COURT DATED 19 APRIL 1999 AND 13 OCTOBER 1999 BECAUSE:
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> I. RESPONDENT ONGPIN, AFTER FIVE LONG YEARS OF "SPECIAL APPEARANCE," SHOULD BE DEEMED TO HAVE VOLUNTARILY SUBJECTED HIMSELF TO THE JURISDICTION OF THE TRIAL COURT.
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> II. THE SUBSTITUTED SERVICE OF SUMMONS ON RESPONDENT ONGPIN ON 27 NOVEMBER 1997 WAS VALID, CONSIDERING THAT:

A. RESPONDENT ONGPIN, AT THE TIME OF SUBSTITUTED SERVICE OF SUMMONS, WAS CHAIRMAN OF THE BOARD OF DIRECTORS OF PILTEL WHOSE OFFICES SHOULD BE CONSIDERED HIS REGULAR PLACE OF BUSINESS.

B. MS. ANNE V. MORALLO, THE EXECUTIVE SECRETARY OF THE PRESIDENT OF PILTEL WAS NOT ONLY AUTHORIZED TO RECEIVE SUMMONS AND COURT PROCESSES ON BEHALF OF RESPONDENT ONGPIN, BUT WAS ALSO A COMPETENT PERSON TO RECEIVE SUMMONS.

C. THE ONLY REASON WHY MS. ANNE V. MORALLO DID NOT TRANSMIT THE SUMMONS TO RESPONDENT ONGPIN WAS THAT RESPONDENT ONGPIN'S COUNSEL, ALSO THE LEGAL COUNSEL OF PILTEL, ADVISED HER TO KEEP IT.

This assignment of errors boils down to the following questions: (1) whether or not respondent Ongpin's continuous "special appearances" before the court for five years may be deemed voluntary appearance as contemplated by the Revised Rules on Civil Procedure on acquisition of jurisdiction over the person of defendant; and (2) whether or not the substituted service of summons on Anne V. Morallo, executive secretary of the president of PILTEL, was valid.

First. Petitioner maintains that the trial court had already acquired jurisdiction over the person of respondent Ongpin by virtue of the numerous appearances by his counsel and respondent's undeniable knowledge of the complaint against him.

This contention has no merit. A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground, *e.* g., invalidity of the service of summons, cannot be considered to have submitted himself to the jurisdiction of the court.[11] In fact, in *La Naval Drug Corp. vs. Court of Appeals,* [12]this Court ruled that even the assertion of affirmative defenses aside from lack of jurisdiction over the person of the defendant cannot be considered a waiver of the defense of lack of jurisdiction over such person.

In the present case, although respondent had indeed filed numerous pleadings, these pleadings were precisely for the purpose of contesting the jurisdiction of the court over the person of respondent on the ground that there was no valid service of summons on him. It would be absurd to hold that respondent, by making such appearance, thereby submitted himself to the jurisdiction of the court.

Petitioner cites the ruling in *Macapagal v. Court of Appeals*[13]for its contention that the "feigned unawareness" of a defendant is equivalent to voluntary appearance. The facts of *Macapagal* are, however, different from the facts of this case. In that case, this Court considered the petitioner to have been validly served summons based on its findings that summons was served on the legal counsel of the two corporations and its officers and directors. Petitioner's defense that at the time of the service of summons he was no longer connected with both corporations, having resigned from them before such service, was dismissed by this Court as flimsy. The finding of this Court on the feigned unawareness of petitioner was based on the fact