

## FIRST DIVISION

**[ G.R. No. 139283, November 15, 2000 ]**

**ALLEN LEROY HAMILTON, PETITIONER, VS. DAVID LEVY AND FE QUITANGON, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

The instant petition for review seeks to set aside the April 16, 1999 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 48299 which ordered the Regional Trial Court of Angeles City, Branch 57, to dismiss Civil Case No. 8696. Also challenged is the June 30, 1999 Resolution<sup>[2]</sup> of the Court of Appeals denying petitioner's Motion for Reconsideration.

The case commenced on June 30, 1997 with the filing by petitioner of a complaint for sum of money and damages, with prayer for preliminary attachment against respondents and one Pablo de Borja with the Regional Trial Court of Angeles, Pampanga.

On July 14, 1997, the trial court issued an Order for the issuance of a writ of preliminary attachment. The Writ of Preliminary Attachment was issued on July 15, 1997. On the strength of said Writ, the court sheriff levied on a Cherokee 180 Piper aircraft, allegedly owned by respondent David Levy. The corresponding Sheriff's Return, dated November 11, 1997, manifested that the sheriff (1) personally served summons and a copy of the writ of preliminary attachment to respondents, through Mercita S. Reyes and Ramon Araneta, secretaries of W.E.L. Phils., Inc., at Subic Bay Freeport Zone, Olongapo City, the address of respondents stated in the complaint; and (2) levied on the aforementioned aircraft on October 30, 1997.

On December 3, 1997, Ramon Araneta filed an Affidavit of Third-Party Claim asserting ownership of the levied aircraft by virtue of a sale from W.E.L. Phils., Inc., represented by respondent Levy, on June 19, 1997.

Meanwhile, on November 17, 1997, petitioner filed a Motion to Declare Defendants in Default for failure to file any responsive pleading within the reglementary period. This was granted by the trial court in its Order dated February 20, 1998.<sup>[3]</sup> Accordingly, petitioner proceeded with the presentation of evidence *ex parte* at a hearing held on April 3, 1998.

Prior to the presentation of evidence, however, or on March 26, 1998, respondents' counsel filed a Special Appearance to Question the Jurisdiction of the trial court. When no action was made on the Special Appearance, respondents filed a Petition for Certiorari with the Court of Appeals on July 16, 1998.

While the petition for certiorari was pending before the Court of Appeals,

proceedings before the trial court continued with the filing by petitioner of Formal Offer of Exhibits and Motion for Leave to Sell Attached Property Pending Entry of Judgment. According to petitioner, the levied aircraft was just sitting idly in the hangar, deteriorating, depreciating and accumulating rust. To this, respondents filed a Supplemental Manifestation, informing the trial court of a pending case for Replevin and/or Annulment of the Writ of Preliminary Attachment filed by the alleged vendee of the aircraft, Ramon Araneta, before Branch 72 of the Olongapo Regional Trial Court.

On April 16, 1999, the Court of Appeals issued the assailed Decision granting the Petition and ordering the dismissal of Civil Case No. 8696 without prejudice, on its finding that summons was not validly served upon respondents, hence, the trial court never assumed jurisdiction over their persons. With the denial of the Motion for Reconsideration on June 30, 1999, petitioner now comes to this Court with the following assignment of errors -

1

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI THAT WAS FILED BEYOND THE SIXTY (60) DAY-PRESCRIBED PERIOD.

2

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR NOT OBSERVING THE REQUIREMENTS OF "PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW" BEFORE GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI.

3

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE RESPONDENTS' PETITION FOR CERTIORARI EVEN IF THE CERTIFICATION AGAINST NON-FORUM SHOPPING WAS EXECUTED BY ONE WHO WAS NOT A PARTY TO THE CASE.

4

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING CIVIL CASE NO. 8696 EVEN IF THE RESPONDENTS, PARTICULARLY DAVID LEVY, HAVE ACTUAL KNOWLEDGE OF THE FILING OF THE SAID CIVIL CASE NO. 8696.<sup>[4]</sup>

In support of the first assigned error, petitioner points out that the assailed February 20, 1998 Order of the trial court was received by respondents on March 23, 1998 while the Petition for Certiorari was filed only four (4) months thereafter, or on July

16, 1998. Under Rule 65, Section 4 of the 1997 Rules of Civil Procedure, petitions for certiorari should be filed within sixty (60) days from notice of the assailed Order. In the case at bar, respondents point out that they were no longer holding office at the address where summons and the questioned Order were served. Precisely, the issue in the instant Petition is the propriety of the service of summons made upon respondents at said address. If summons is found to have been improperly served, then the 60-day reglementary period did not commence to run upon service of the questioned Order at that address.

Petitioner next argues that the Court of Appeals should not have given due course to the Petition for Certiorari filed by respondents, in view of the failure of respondents to file the required Motion for Reconsideration before the trial court. Petitioner claims that the relief of certiorari was premature since respondents could have still filed a Motion to Lift Order of Default.

We disagree. Had respondents filed either a Motion for Reconsideration or Motion to Lift Order of Default, there was a danger that they might be deemed to have voluntarily submitted their persons to the jurisdiction of the court, when it was precisely said jurisdiction that they were questioning. Besides, the rule that a motion for reconsideration is required before the filing of a petition for certiorari admits of exceptions, among which is where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction.<sup>[5]</sup> Again, what is being assailed in this case is the lack of jurisdiction of the trial court over the persons of the respondents, due to improper service of summons.

Petitioner maintains that respondents had voluntarily submitted to the jurisdiction of the trial court when they filed the Supplemental Manifestation to the effect that Ramon Araneta, the alleged vendee of the aircraft levied upon, had filed a complaint before Branch 72 of the Olongapo Regional Trial Court for Replevin and/or Annulment of the Writ of Preliminary Attachment issued by the court *a quo* in Civil Case No. 8696. According to petitioner, the Supplemental Manifestation was actually an opposition to the Motion for Leave to Sell Attached Property they filed with the trial court.

The records show, however, that respondents filed the Supplemental Motion on August 7, 1998, almost a month after they filed the petition for certiorari before the Court of Appeals. It was preceded by a Special Appearance to Question the Jurisdiction of this Honorable Court, dated March 26, 1998,<sup>[6]</sup> and by a Manifestation, dated August 5, 1998,<sup>[7]</sup> informing the trial court of the pendency of the petition for certiorari assailing the court's jurisdiction over their persons. In other words, when the Supplemental Motion was filed, it was made clear that respondents were questioning and continuing to question the jurisdiction of the trial court. At any rate, the Supplemental Manifestation did not seek any direct affirmative relief from the trial court.

Petitioner also alleges that the certification on non-forum shopping attached to respondents' Petition was prepared not by respondents but by one Teresita Torres, who was not a party to the suit either before the trial court or the certiorari proceedings in the Court of Appeals.

Rule 7, Section 5 of the 1997 Rules of Civil Procedure clearly provides that the