Supreme Court E-Library

THIRD DIVISION

[G.R. No. 169116. March 28, 2007]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SPS. IRENEO M. SANTIAGO and LIWANAG P. SANTIAGO, CENTROGEN, INC., REPRESENTED BY EDWIN SANTIAGO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE OF SUMMONS UPON JURIDICAL ENTITY; THE OFFICER UPON WHOM THE SERVICE IS MADE MUST BE ONE WHO IS NAMED IN THE STATUTE; NOT PRESENT IN CASE AT BAR.—** Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise, the service is insufficient. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. Applying the aforestated principle in the case at bar, we rule that the service of summons on BPI's Branch Manager did not bind the corporation for the branch manager is not included in the enumeration of the statute of the persons upon whom service of summons can be validly made in behalf of the corporation. Such service is therefore void and ineffectual.

2. **ID.; ID.; ID.; ID.; WHATEVER DEFECT ATTENDED THE SERVICE OF THE ORIGINAL SUMMONS WAS PROMPTLY CURED UPON THE ISSUANCE AND PROPER SERVICE OF NEW SUMMONS; JUSTIFIED.—** *Upon the issuance and the proper service of new summons* on 11 March 2003, before the Writ of Preliminary Injunction was issued on 20 March 2003, ***whatever defect attended the service of the original summons, was promptly and accordingly cured.*** It bears stressing, that on 7 March 2003, the Branch Clerk of Court issued a new summons which was properly served upon BPI's Corporate Secretary on 11 March 2003, as evidenced by

Supreme Court E-Library

the Sheriff's Return. The subsequent service of summons was neither disputed nor was it mentioned by BPI except in a fleeting narration of facts and therefore enjoys the presumption that official duty has been regularly performed. The Process Server's Certificate of Service of Summons is a *prima facie* evidence of facts set out in that certificate. Inarguably, before the Order granting the application for Writ of Preliminary Injunction was issued, the RTC already acquired jurisdiction over the person of BPI by virtue of the new summons validly served on the Corporate Secretary. The fact that the original summons was invalidly served is of no moment since jurisdiction over BPI was subsequently acquired by the service of a new summons. In the case of *The Philippine American Life and General Insurance Company v. Brevea,* we ruled: ***A case should not be dismissed simply because an original summons was wrongfully served.*** It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case against him should be dismissed. ***An alias summons can be actually served on said defendant.*** x x x ***It is not pertinent whether the summons is designated as an "original" or an "alias" summons as long as it has adequately served its purpose. What is essential is that the summons complies with the requirements under the Rules of Court and it has been duly served on the defendant together with the prevailing complaint***. x x x Moreover, the second summons was technically not an alias summons but more of a new summons on the amended complaint. It was not a continuation of the first summons considering that it particularly referred to the amended complaint and not to the original complaint.

3. ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH THE RULE ON SERVICE OF SUMMONS, SUSTAINED.— In the case of *G&G Trading Corporation v. Court of Appeals,* this Court made the following pronouncements: Although it may be true that the service of summons was made on a person not authorized to receive the same in behalf of the petitioner, nevertheless since it appears that the summons and complaint were in fact received by the corporation through its said clerk, the Court finds that there was substantial compliance with the rule on service of summons. x x x The need for speedy justice must prevail over a technicality. In explaining the test on the validity of service of summons, Justice Florenz Regalado stressed

Supreme Court E-Library

that substantial justice must take precedence over technicality and thus stated: The ultimate test on the validity and sufficiency on service of summons is whether the same and the attachments thereto where ultimately received by the corporation under such circumstances that no undue prejudice is sustained by it from the procedural lapse and it was afforded full opportunity to present its responsive pleadings. This is but in accord with the entrenched rule that the ends of substantial justice should not be subordinated to technicalities and, for which purpose, each case should be examined within the factual milieu peculiar to it. Prescinding from the above, we deem it best to underscore that there is no hard and fast rule pertaining to the manner of service of summons. Rather, substantial justice demands that every case should be viewed in light of the peculiar circumstances attendant to each.

4. ID.; PROVISIONAL REMEDIES; INJUNCTION; CONSTRUED.— An injunction is a preservative remedy for the protection of one's substantive right or interest; it is not a cause of action by itself but merely a provisional remedy, an adjunct to the main suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case is heard fully.

5. ID.; ID.; ID.; WRIT OF PRELIMINARY INJUNCTION; REQUISITES FOR THE ISSUANCE THEREOF.— The issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the court taking cognizance of the case, the only limitation being that the discretion should be exercised based upon the grounds and in a manner provided by law. Before a writ of preliminary injunction may be issued, the following requisites must be complied with: (1) a right in *esse* or a clear or unmistakable right to be protected; (2) violation of that right; and (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.

6. ID.; ID.; ID.; THE ASSESSMENT AND EVALUATION OF EVIDENCE FOR THE ISSUANCE THEREOF INVOLVE FINDING OF FACTS LEFT TO THE TRIAL COURT FOR ITS CONCLUSIVE DETERMINATION.— Parenthetically, this petition affords us the opportunity to once again reiterate

Supreme Court E-Library

> the rule that the issuance of the writ of preliminary injunction rests entirely within the discretion of the court and generally not interfered with except in case of manifest abuse. The assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involve finding of facts ordinarily left to the trial court for its conclusive determination. In *Toyota Motor Phils. Corp. Workers' Association v. Court of Appeals*, citing *Ubanes, Jr. v. Court of Appeals,* we made the following declaration: [T]he matter of the issuance of writ of a preliminary injunction is addressed to the sound discretion of the trial court, unless the court commits a grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. x x x.

APPEARANCES OF COUNSEL

Benedicto Verzosa Gealogo and Burkley for BPI.
Felipe L. Arcigal, Jr., for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Bank of the Philippine Islands (BPI) seeking to reverse and set aside the Decision[1] of the Court of Appeals dated 3 March 2005 and its Resolution[2] dated 28 July 2005 affirming the Order[3] of the Regional Trial Court (RTC) of Santa Cruz, Laguna, Branch 91, dated 20 March 2003 enjoining the

---

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Roberto A. Barrios and Vicente E. Veloso, concurring.

[2] *Rollo,* pp. 42-43.

[3] *Id*. at 44-47.

Supreme Court E-Library

extrajudicial foreclosure sale of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-131382 registered under the name of Spouses Ireneo and Liwanag Santiago. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the petition is DISMISSED. The assailed orders dated March 20, 2003 and August 25, 2003 of the respondent court in Civil Case No. SC-4259 are hereby AFFIRMED.

Petitioner BPI is a banking institution duly organized and existing as such under the Philippine laws.

Private respondent Centrogen, Inc. (Centrogen) is a domestic corporation engaged in pharmaceutical business, duly organized and existing as such under the Philippine laws and represented in this act by its President, Edwin Santiago, son of private respondents Spouses Ireneo M. Santiago and Liwanag P. Santiago.

On several occasions, private respondent Centrogen obtained loans from Far East Bank and Trust Company (FEBTC) in different amounts, the total of which reached the sum ₱4,650,000.00, as evidenced by promissory notes executed by Edwin Santiago.

As a security for a fraction of the loan obligation, Ireneo M. Santiago executed a Real Estate Mortgage over a parcel of land covered by TCT No. T-131382 registered under his name and located at Sta Cruz, Laguna, with an area of 2,166 square meters (subject property).[4] The mortgage secured the principal loan in the amount of ₱490,000.00. Later on, the same property secured another loan obligation in the amount of ₱1,504,280.00.[5]

Subsequently, however, Centrogen incurred default and therefore the loan obligation became due and demandable.

Meanwhile, FEBTC merged with the BPI with the latter as the surviving corporation. As a result, BPI assumed all the rights, privileges and obligations of FEBTC.

---

[4] CA *rollo*, pp. 55-60.

[5] Records, pp. 26-27.

Supreme Court E-Library

On 13 December 2002, BPI filed an Extra-Judicial Foreclosure of Real Estate Mortgage[6] over the subject property before the RTC of Sta. Cruz, Laguna. In order to validly effect the foreclosure, a Notice of Sale was issued by the Provincial Sheriff on 21 January 2003. On the same day, the Spouses Santiago were served with the copy of the Notice of Sale.

Upon receipt of the Notice of Sale, the Spouses Santiago and Centrogen filed a Complaint seeking the issuance of a Temporary Restraining Order and Preliminary and Final Injunction and in the alternative, for the annulment of the Real Estate Mortgage with BPI.

The complaint alleged that the initial loan obligation in the amount of ₱490,000.00, including interest thereon was fully paid as evidenced by Union Bank Check No. 0363020895 dated 20 December 2001 in the amount of ₱648,521.51 with BPI as payee. Such payment notwithstanding, the amount was still included in the amount of computation of the arrears as shown by the document of Extra-Judicial Foreclosure of Real Estate Mortgage filed by the latter.

In addition, the Spouses Santiago and Centrogen asseverated that the original loan agreement was for the amount of Five Million Pesos. Such amount will be supposedly utilized to finance the squalene project of the company. However, after the amount of Two Million Pesos was released and was accordingly used in funding the erection of the structural details of the project, FEBTC, in gross violation of the agreement, did not release the balance of Three Million Pesos that will supposedly finance the purchase of machineries and equipment necessary for the operation. As a result, the squalene project failed and the company groped for funds to pay its loan obligations.

On 27 February 2003, BPI was summoned to file and serve its Answer to the Complaint filed by Spouses Santiago and Centrogen. On the same day, the Sheriff served a copy of the

---

[6] *Id*. at 15-38.

Supreme Court E-Library

summons to the Branch Manager of BPI Sta. Cruz, Laguna Branch, as evidenced by the Sheriff's Return,[7] which reads:

SHERIFF'S RETURN

Respectfully returned the original summons and order dated February 2003 with the information that on February 27, 2003 the undersigned served the copy of summons together with the corresponding copy of complaint and its Annexes and order dated February 27, 2003, to defendants (sic) Bank of the Philippine Islands (BPI) thru the manager Ms. Glona Ramos at Sta. Cruz Laguna Branch, at Sta. Cruz, Laguna, to defendant Sheriff Marcial Opinion at the Office of the Provincial Sheriff of Laguna, R.T.C. (sic) Sta. Cruz, Laguna as shown by their signatures on the original summons and order.

Instead of filing an Answer, BPI filed a Motion to Dismiss[8] the complaint on the ground of lack of jurisdiction over the person of the defendant and other procedural infirmities attendant to the filing of the complaint. In its Motion to Dismiss, BPI claimed that the Branch Manager of its Sta. Cruz, Laguna Branch, was not one of those authorized by Section 11, Rule 14 of the Revised Rules of Court[9] to receive summons on behalf of the corporation. The summons served upon its Branch Manager, therefore, did not bind the corporation. In addition, it was alleged that the complaint filed by the Spouses Santiago and Centrogen lacked a Certificate of Non-Forum Shopping[10] and was therefore

---

[7] *Id*. at 51.

[8] *Id*. at 52-56.

[9] 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 made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

[10] SEC. 5. *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other

Supreme Court E-Library

dismissible. Finally, BPI underscored that the person who verified the complaint was not duly authorized by Centrogen's Board of Directors to institute the present action as required by Section 23 of the Corporation Code.[11]

In an Order[12] dated 28 February 2003, the RTC denied the Motion to Dismiss and emphasized that the nature of the case merited its removal from the purview of Section 11, Rule 14 of the Revised Rules of Court. Based on the provisions of Section 5, Rule 58 of the Revised Rules of Court,[13] the RTC declared

---

pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar actions or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. (Rule 7, Rules of Court.)

[11] SEC. 23. *The Board of Directors or Trustees*. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all businesses conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[12] Records, pp. 57-58.

[13] SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time

Supreme Court E-Library

that the instant Order is still valid and binding despite non-compliance with the provisions of Section 11, Rule 14 of the same Rules. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the motion to dismiss is hereby denied because of the presence of extreme urgency wherein the Court has jurisdiction to act on the TRO despite lack of proper service of summons. Let the instant case be called for summary hearing on plaintiff's application for temporary restraining order.

After summary hearing on the Spouses Santiago and Centrogen's application for Temporary Restraining Order, the RTC, on 28 February 2003, issued an Order[14] enjoining the Provincial Sheriff from proceeding with the extra-judicial foreclosure sale of the subject property until the propriety of granting a preliminary injunction is ascertained. The decretal portion of the said Order reads:

> Wherefore, premises considered, the Court orders that pending the resolution of the plaintiff's prayer for preliminary injunction:
>
> 1. The Defendant Provincial Sheriff, his deputies, employees, and agents are enjoined from proceeding with the threatened extra-judicial foreclosure sale (to be conducted today) of the parcel of land owned

---

and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

[14] Records, pp. 59-60.

Supreme Court E-Library

by plaintiffs Spouses Ireneo M. Santiago and Liwanag P. Santiago located in (sic) Brgy. Sto. Angel Norte, Sta. Cruz, Laguna.

2. The application for a preliminary injunction is hereby set for hearing on March 10, 2003 at 1:30 pm. Further, the plaintiffs are hereby ordered to immediately file a bond amounting to One Hundred Thousand Pesos (₱100,000.00) to answer for damages that Defendant Bank may sustain if the court should finally decide that the plaintiffs are not entitled thereto.

On 6 March 2003, the RTC ordered the service of new summons to BPI in accordance with the provisions of the Revised Rules of Court. The aforesaid Order reads:

To avoid further argument as regards the proper service of summons to Defendant Bank, the Branch Clerk of Court is hereby directed to issue another summons and serve copy of the same together with the complaint and its annexes to any of the officers of the Defendant Bank as provided by the rules of civil procedure.[15]

In compliance with the aforesaid Order, the Branch Clerk of Court caused the issuance of a new summons on 7 March 2003, a copy of which was served upon the Office of the Corporate Secretary of the BPI on 11 March 2003, as evidenced by the Sheriff's Return,[16] which reads:

Sheriff's Return

This is to Certify that on March 11, 2003 the undersigned caused the service of summons together with the copy of complaint and its annexes to defendant Bank of the Philippine Islands (BPI) and receive (sic) by the Office of the Corporate Secretary dated March 11, 2003 at the BPI Building Ayala Avenue, Makati City.

On 20 March 2003, the RTC issued an Order granting the application for the issuance of a Writ of Preliminary Injunction filed by the Spouses Santiago and Centrogen. It enjoined the extra-judicial foreclosure sale of the subject property pending resolution of the main action for Annulment of Real Estate

---

[15] *Id*. at 63.

[16] *Id*. at 67.

Supreme Court E-Library

Mortgage or until further orders of the trial court. In issuing the Writ of Preliminary Injunction, it rationalized that to allow the foreclosure without hearing the main case would work injustice to the complainant and since Spouses Santiago and Centrogen claimed that the first loan in the amount of ₱490,000.00 secured by the property subject of the extra-judicial sale had long been paid by Centrogen through a Union Bank Check No. 0363020895 presented as evidence. The dispositive part of the Order reads:

> Wherefore, premises considered, the Court orders that pending the resolution of the main action for the annulment of the real estate mortgage, etc., and /or order from this Court:
>
> 1. The Defendant Provincial Sheriff, his deputies, employees, and agents are enjoined from proceeding with the threatened extra-judicial foreclosure sale of the parcel of land covered by TCT No. T-131382 owned by Plaintiffs Spouses Ireneo M. Santiago and Liwanag P. Santiago located in Brgy. Sto. Angel, Sta. Cruz, Laguna.
>
> 2. The bond in the amount of One Hundred Thousand (₱100,000.00) Pesos ordered by the Court to be posted by the plaintiffs to answer for damages that defendant bank may sustain if the court should finally decide that the plaintiffs are entitled thereto still stands.

The Motion for Reconsideration filed by BPI was denied by the RTC in its Order[17] dated 25 August 2003.

Aggrieved, BPI filed a Petition for *Certiorari* before the Court of Appeals seeking the reversal of the adverse Orders of the RTC.

On 3 March 2005, the Court of Appeals rendered a Decision[18] affirming the assailed Orders of the RTC and dismissing the Petition for *Certiorari* filed by BPI. The Court of Appeals declared that jurisdiction was acquired upon the service of new

---

[17] *Id*. at 116.

[18] *Rollo,* pp. 30-41.

Supreme Court E-Library

summons. Before the assailed Orders were therefore issued, the RTC properly acquired jurisdiction over the person of BPI.

Undaunted, BPI filed this instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. For our resolution are the following issues:

I.

WHETHER OR NOT THE RTC ACQUIRED JURISDICTION OVER THE PERSON OF BPI WHEN THE ORIGINAL SUMMONS WAS SERVED UPON THE BRANCH MANAGER OF ITS STA. CRUZ, LAGUNA BRANCH.

II.

WHETHER OR NOT THE RTC COMMITTED A GRAVE ABUSE OF DISCRETION IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION.

BPI vehemently insists that the court *a quo* did not acquire jurisdiction over its person and consequently, the Order issued by the RTC, permanently enjoining the foreclosure sale, was therefore void and does not bind BPI.

We are not persuaded.

The pertinent provision of the Revised Rules of Court provides:

> Sec. 11, Rule 14. 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 made on the president, managing partner, general manager, corporate secretary, treasurer or in-house counsel.

Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise, the service is insufficient.[19] The purpose is to render it reasonably certain

---

[19] *Delta Motors Corp. v. Pamintuan*, G.R. No. L-41667, 30 April 1976, 70 SCRA 598.

Supreme Court E-Library

that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him.

Applying the aforestated principle in the case at bar, we rule that the service of summons on BPI's Branch Manager did not bind the corporation for the branch manager is not included in the enumeration of the statute of the persons upon whom service of summons can be validly made in behalf of the corporation. Such service is therefore void and ineffectual.

However, **upon the issuance and the proper service of new summons** on 11 March 2003, before the Writ of Preliminary Injunction was issued on 20 March 2003, **whatever defect attended the service of the original summons, was promptly and accordingly cured.**

It bears stressing, that on 7 March 2003, the Branch Clerk of Court issued a new summons which was properly served upon BPI's Corporate Secretary on 11 March 2003, as evidenced by the Sheriff's Return.

The subsequent service of summons was neither disputed nor was it mentioned by BPI except in a fleeting narration of facts and therefore enjoys the presumption that official duty has been regularly performed.[20] The Process Server's Certificate of Service of Summons is a *prima facie* evidence of facts set out in that certificate.[21]

Inarguably, before the Order granting the application for Writ of Preliminary Injunction was issued, the RTC already acquired jurisdiction over the person of BPI by virtue of the new summons validly served on the Corporate Secretary. The fact that the original summons was invalidly served is of no moment since

---

[20] Section 3, Rule 131 of the Revised Rules of Court.

[21] *Romualdez-Licaros v. Licaros*, G.R. No. 150656, 29 April 2003, 401 SCRA 762.

Supreme Court E-Library

jurisdiction over BPI was subsequently acquired by the service of a new summons.

In the case of *The Philippine American Life and General Insurance Company v. Brevea,*[22] we ruled:

> **A case should not be dismissed simply because an original summons was wrongfully served.** It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case against him should be dismissed. **An *alias* summons can be actually served on said defendant.**
>
> x x x x x x x x x
>
> x x x **It is not pertinent whether the summons is designated as an "original" or an "alias" summons as long as it has adequately served its purpose. What is essential is that the summons complies with the requirements under the Rules of Court and it has been duly served on the defendant together with the prevailing complaint**. x x x Moreover, the second summons was technically not an *alias* summons but more of a new summons on the amended complaint. It was not a continuation of the first summons considering that it particularly referred to the amended complaint and not to the original complaint. (Emphases supplied.)

BPI's lamentation, at every turn, on the invalidity of the service of summons made on the Branch Manager and its deliberate neglect to acknowledge the fact that a new summons was accordingly served on its Corporate Secretary, is an attempt in futility to mislead this Court into believing that the court *a quo* never acquired jurisdiction over the case and thus the issuance of the Writ of Preliminary Injunction was invalid.

We are not drawn into petitioner's sophistry.

In the case of *G&G Trading Corporation v. Court of Appeals,*[23] this Court made the following pronouncements:

---

[22] *The Philippine American Life and General Insurance Company v. Breva,* G.R. No. 147937, 11 November 2004, 442 SCRA 217, 223-225.

[23] G.R. No. 78299, 29 February 1988, 158 SCRA 466, 469.

Supreme Court E-Library

Although it may be true that the service of summons was made on a person not authorized to receive the same in behalf of the petitioner, nevertheless since it appears that the summons and complaint were in fact received by the corporation through its said clerk, the Court finds that there was substantial compliance with the rule on service of summons. x x x The need for speedy justice must prevail over a technicality.

In explaining the test on the validity of service of summons, Justice Florenz Regalado[24] stressed that substantial justice must take precedence over technicality and thus stated:

The ultimate test on the validity and sufficiency on service of summons is whether the same and the attachments thereto where ultimately received by the corporation under such circumstances that no undue prejudice is sustained by it from the procedural lapse and it was afforded full opportunity to present its responsive pleadings. This is but in accord with the entrenched rule that the ends of substantial justice should not be subordinated to technicalities and, for which purpose, each case should be examined within the factual milieu peculiar to it.

Prescinding from the above, we deem it best to underscore that there is no hard and fast rule pertaining to the manner of service of summons. Rather, substantial justice demands that every case should be viewed in light of the peculiar circumstances attendant to each.

In any event, as it is glaringly evident from the records of the case that jurisdiction over the person of the defendant was validly acquired by the court by the valid service of a new summons before the writ of preliminary injunction was issued and guided by jurisprudential pronouncements heretofore adverted to, we hold that the proceedings attendant to the issuance of the writ of preliminary injunction were regular.

Having settled this issue necessitates us to look into the propriety of the issuance of the Writ of Preliminary Injunction.

---

[24] REMEDIAL LAW COMPENDIUM (Seventh Revised Ed.), pp. 224-225.

Supreme Court E-Library

BPI asserts that the RTC gravely abused its discretion in granting the Spouses Santiago and Centrogen's application for the Writ of Preliminary Injunction in the absence of showing that the latter have a clear legal right sought to be protected.

Again, we do not agree.

An injunction is a preservative remedy for the protection of one's substantive right or interest; it is not a cause of action by itself but merely a provisional remedy, an adjunct to the main suit.[25] The purpose of injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case is heard fully.[26]

The issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the court taking cognizance of the case, the only limitation being that the discretion should be exercised based upon the grounds and in a manner provided by law. Before a writ of preliminary injunction may be issued, the following requisites must be complied with: (1) a right in *esse* or a clear or unmistakable right to be protected; (2) violation of that right; and (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.[27]

Verily, the aforestated requisites for the issuance of the Writ of Preliminary Injunction have been fully complied with. The right of Spouses Santiago over the property clearly exists since they are the registered owners thereof, and the existence of a Real Estate Mortgage does not undermine the right of the absolute owner over the property. The violation of such right is manifest

---

[25] *Transfield Philippines, Inc.v. Luzon Hydro Corporation,* G.R. No. 146717, 22 November 2004, 443 SCRA 307.

[26] *Medina v. Greenfield Development Corporation,* G.R. No. 140228, 19 November 2004, 443 SCRA 150.

[27] *Id*.

Supreme Court E-Library

in the threatened foreclosure proceedings commenced by BPI amidst the claim that the principal obligation has been fully paid. Finally, to allow the foreclosure of the subject property without first calibrating the evidence of opposing parties pertaining to the action for the annulment of mortgage would cause irreparable damage to the registered owner.

The right of BPI to foreclose the subject property is under dispute upon the claim interposed by the Spouses Santiago and Centrogen that payments for the loan secured by the property subject to the threatened foreclosure proceedings were already made. To support their assertions, Spouses Santiago and Centrogen presented as evidence Union Bank Check No. 0363020895 dated 20 December 2001 in the amount of ₱648,521.51, with BPI as payee. From this, we can deduce that the right of BPI to foreclose the subject property is questionable. We cannot therefore allow the foreclosure of the Real Estate Mortgage to proceed without first setting the main case for hearing so that based on the evidence presented by the parties, the trial court can determine who between them has the better right over the subject property. To rule otherwise would cause a grave irreparable damage to the Spouses Santiago and Centrogen.

Parenthetically, this petition affords us the opportunity to once again reiterate the rule that the issuance of the writ of preliminary injunction rests entirely within the discretion of the court and generally not interfered with except in case of manifest abuse. The assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involve finding of facts ordinarily left to the trial court for its conclusive determination.[28]

In *Toyota Motor Phils. Corp. Workers' Association v. Court of Appeals*,[29] citing *Ubanes, Jr. v. Court of Appeals,*[30] we made the following declaration:

---

[28] *Dungog v. Court of Appeals*, G.R. No. 139767, 5 August 2003, 408 SCRA 267, 275-276.

[29] 458 Phil. 661, 681 (2003).

[30] G.R. No. 117964, 28 March 2001, 355 SCRA 537.

Supreme Court E-Library

[T]he matter of the issuance of writ of a preliminary injunction is addressed to the sound discretion of the trial court, unless the court commits a grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. x x x.

In the case at bar, after summary hearing and evaluation of evidence presented by both contending parties, the RTC ruled that justice would be better served if *status quo* is preserved until the final determination of the merits of the case, to wit:

For purposes of preliminary injunction, between the evidence presented by [the spouses Santiago and Centrogen] and [BPI], the evidence of the former carries more weight. The evidence of [the spouses Santiago and Centrogen] established that to allow extra-judicial foreclosure without hearing the main action for the annulment of mortgage would probably work injustice to the plaintiffs and would probably violate their rights over the subject lot.

Furthermore, this case involves complicated issues that must be resolved first before altering the status quo. The issue of payment and non-payment of the loan and the issue of breach of the second loan directly affect the rights of the plaintiffs over the subject lot. Hence, the last actual, peaceable, uncontested status of the parties before the controversy must be preserved.

The unyielding posture of BPI that its right to foreclose the subject property was violated since it is permanently barred from proceeding with the auction sale is patently erroneous. The RTC, in the exercise of its discretion merely intended to preserve the *status quo* while the principal action for the annulment of mortgage is heard with the end view that no irreversible damage may be caused to the opposing parties. We find nothing whimsical, arbitrary or capricious in the exercise of the RTC of its discretion.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is *DENIED.* The Decision dated 3 March 2005,

Supreme Court E-Library

and the Resolution dated 28 July 2005, rendered by the Court of Appeals in CA-G.R. SP No. 80643, are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Callejo, Sr., and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169129. March 28, 2007]

SPS. VIRGILIO F. SANTOS & ESPERANZA LATI SANTOS, SPS. VICTORINO F. SANTOS, & LAGRIMAS SANTOS, ERNESTO F. SANTOS, and TADEO F. SANTOS, *petitioners, vs.* **SPS. JOSE LUMBAO and PROSERFINA LUMBAO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF APPEALS, CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTION.—** It is well-settled that in the exercise of the Supreme Court's power of review, the court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of fact of the Court of Appeals are conclusive and binding on the Court. But, the rule is not without exceptions. There are several recognized exceptions in which factual issues may be resolved by this Court. One of these exceptions is when the findings of the appellate court are contrary to those of the trial court.

2. **ID.; CIVIL PROCEDURE; *BARANGAY* CONCILIATION, AS PRE-CONDITION BEFORE FILING A COMPLAINT IN COURT**