Supreme Court E-Library

PREMISES CONSIDERED, (a) the petition for *certiorari* is DISMISSED for lack of merit; (b) the resolution of the Bureau of Labor Relations dated January 30, 1987 and the order of the Bureau dated February 24, 1987 are AFFIRMED; and (c) the temporary restraining order issued by the Court on March 9, 1987 is LIFTED permanently.

SO ORDERED.

Melencio-Herrera (Chairman), Padilla, Sarmiento, and *Regalado, JJ.*, concur.

FIRST DIVISION

[G.R. No. 78252. April 12, 1989]

PALUWAGAN NG BAYAN SAVINGS BANK, *petitioner, vs.* **ANGELO KING, KEN SUY WAT, JOSE FERRER, JR., QUINTIN CALDERON, FE SARIÑO and DOMINGO K. LI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF; HOW MADE. — The rule on service of summons in this jurisdiction is too well-known. In civil cases, the service of summons on a defendant is made by handing a copy thereof to the defendant in person, or if he refuses to receive it, by tendering it to him. Such service of summons may be made at the defendant's dwelling house or residence or at his office or regular place of business. The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself.

2. ID.; ID.; ID.; ID.; SUBSTITUTED SERVICE; HOW EFFECTED. — However, when the defendant cannot be served personally

Supreme Court E-Library

within a reasonable time, substituted service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or 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.

3. **ID.; ID.; ID.; ID.; IT IS IN DEROGATION OF THE USUAL METHOD OF SERVICE; STATUTORY REQUIREMENTS OF *SUBSTITUTED SERVICE MUST BE FOLLOWED STRICTLY*, FAITHFULLY AND FULLY.** — It is only when the defendant cannot be served personally within a reasonable time that substituted service may be resorted to. The impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is "in derogation of the usual method of service. It has been held that this method of service is in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.

APPEARANCES OF COUNSEL

Cruz, Durian, Agabin, Atienza, Alday & Tuason for petitioner.

Simeon C. Sato for respondent Domingo K. Li.

Syquia Law Offices for respondents King, Ken Suy Wat, Calderon and Ferrer, Jr.

D E C I S I O N

GANCAYCO, *J.*:

The rule on service of summons in this jurisdiction is too well-known. In civil cases, the service of summons on a defendant is made by handing a copy thereof to the defendant in person,

Supreme Court E-Library

or if he refuses to receive it, by tendering it to him.[1] Such service of summons may be made at the defendant's dwelling house or residence or at his office or regular place of business. The essence of personal service is the handing or tendering of a copy of the summons to the defendant himself.

However, when the defendant cannot be served personally within a reasonable time, substituted service may be effected (a) by leaving copies of the summons at the defendant's dwelling house or 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.[2]

It is only when the defendant cannot be served personally within a reasonable time that substituted service may be resorted to. The impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. It has been held that this method of service is "in derogation of the common law; it is a method extraordinary in character, and hence may be used only as prescribed and in the circumstances authorized by statute." Thus, under the controlling decisions, the statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by the statute is considered ineffective.[3]

The application of the foregoing rules is the issue in this petition for review by *certiorari* of a decision of the Court Appeals in G.R. CV No. 03386 entitled "*Paluwagan ng Bayan*

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[1] Section 7. Rule 14. Rules of Court; *Matanguihan vs. Tengco*. 95 SCRA 478 (1980).

[2] Section 8. Rule 14. Rules of Court.

[3] *Keister vs. Navarro*. 77 SCRA 209. at 215 (1977) and *Arevalo vs. Quilatan*. 116 SCRA 700 (1982).

Supreme Court E-Library

Savings Bank vs. Mercantile Financing Corporation, et al." dated January 27, 1987, and its resolution dated April 22, 1987.[4]

The facts are undisputed. Petitioner sued Mercantile Financing Corporation (MFC) and private respondents, as directors and officers of MFC, for the recovery of money market placements through certain promissory notes. They were charged jointly and solidarily in accordance with Section 31 of the Corporation Code[5] which provides as follows:

"Section 31. *Liability of Directors, Trustees, Officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons."

Summons and copies of the complaints were served upon MFC and private respondents at the 4th Floor, LTA Building, No. 118 Perea Street, Makati, Metro Manila, which is the stated office address of MFC in the complaint, through its Assistant Manager Mr. Nasario S. Najomot, Jr. who acknowledged receipt thereof for and in behalf of MFC and the private respondents. This is so recited in the certification of deputy sheriff Bernardo San Juan dated May 11, 1983.

On May 24, 1983, the law firm of Guillermo E. Aragones and Associates filed a motion for extension of time to file a responsible pleading and/or motion to dismiss. The said motion was signed by Atty. Guillermo E. Aragones as counsel for the defendants. The motion was granted in an order dated May 26, 1983 giving the defendants an extension of twenty (20) days from the expiration of the reglementary period within which to file the responsive pleading and/or motion to dismiss. On June 13, 1983, said counsel for defendants filed a motion asking

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[4] Decided by the 11th Division of the Court of Appeals with Madame Justice Gloria C. Paras as *ponente*, and concurred in by Justices Lorna S. Lombos de la Fuente and Jorge S. Imperial.

[5] Batas Pambansa Blg. 68, as amended.

Supreme Court E-Library

for a suspension of the action for a period of sixty (60) days on the ground that there was an on-going negotiation for an amicable settlement of the case between the parties. The motion was denied. On June 27, 1983, counsel for plaintiff filed a motion to declare defendants in default for failure to file an answer. This motion was granted in an order dated June 29, 1983. On July 14, 1983, the parties, assisted by their counsel, submitted a Compromise Agreement for the approval of the court. It reads as follows:

"1. The defendants propose to pay, jointly and severally, their account with the plaintiff as of June 15, 1983, in the sum of ₱707,500.01 with 20% interest per annum as follows:

₱100,000.00	—	on or before July 18, 1983
100,000.00	—	on or before August 30, 1983
100 000.00	—	on or before September 30, 1983
100,000.00	—	on or before October 30, 1983
100,000.00	—	on or before November 30, 1983
100,000.00	—	on or before December 30, 1983
100,000.00	—	on or before January 30, 1984.

"2. Except those mentioned above, the plaintiff has no more claim against the defendants.

"3. The plaintiff agrees to the proposal of settlement offered by the defendants provided that in case the latter fail to pay, jointly and severally, two or more successive monthly installments, the plaintiff is entitled to secure from the Court a writ of execution for the collection of the unpaid account of the defendants."[6]

On July 18, 1983, a decision was rendered by the trial court approving the said Compromise Agreement and enjoining the parties to comply with the terms and conditions embodied therein. Partial payments were made under the compromise judgment. Upon failure of private respondent to make the other payments, petitioner filed a motion for the issuance of a writ of execution of judgment. The trial court granted the motion on December 16, 1983.

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[6] Pages 27 and 28, *Rollo*.

Supreme Court E-Library

On January 16, 1984, counsel for defendants filed a pleading entitled "Clarification" thereby seeking a correction of the compromise judgment on the ground that he erroneously filed the Compromise Agreement in behalf of all the defendants when in fact he was the counsel for MFC only. On January 17, 1984, said counsel filed a "Motion To Correct Compromise Agreement" attaching thereto a copy of the resolution of the Board of Directors of MFC of July 6, 1983 showing that he was the attorney-in-fact of MFC only, and praying for the correction of the judgment, accordingly. The motion for clarification was denied on January 20, 1984.

On January 24, 1984, the Syquia Law Offices, in behalf of private respondents Angelo King, Keng Suy Wat, Quintin Calderon and Jose J. Ferrer, Jr., filed a motion to set aside the decision dated July 18, 1983, the Compromise Agreement and the writ of execution dated December 21, 1983 on the ground that there was no service of summons upon each of them as the corporate address of the corporation was not their address they were no longer connected therewith; that Atty. Aragones had no authority to represent them in the action and compromise agreement; that they were not served copies of the decision of the court; that they learned about the same only when it was being executed; and that they did not participate as directors or officers of MFC in the subject transaction.

On January 26, 1984, private respondent Domingo F. Li filed a petition for relief from judgment with a prayer for the issuance of a writ of preliminary injunction alleging therein that there was no service of summons upon him and that Atty. Aragones was not authorized to represent him or to enter into the Compromise Agreement. After an opposition to said motion was filed by the petitioner, the lower court denied the same in its order dated April 6, 1984. Separate motions for reconsideration filed by the private respondents were also denied on May 4, 1984.

Thus, private respondents appealed to the respondent Court of Appeals, reiterating that there was no service of summons, upon each of them as service of summons was made at the address of the firm with which they had severed connections;

Supreme Court E-Library

that the counsel of record of MFC has no authority to represent them in the case and in the Compromise Agreement; that they have not ratified the same by a partial payment of the compromise judgment; and that they were no longer connected with MFC at the time they were sued. In due time, a decision was rendered by the appellate court on January 27, 1987, the dispositive part of which reads as follows:

"In view of the foregoing, the other errors assigned by the appellants need not be resolved:

Wherefore:

(1) the decision dated July 18, 1983 approving the compromise agreement rendered by the lower court as well as the writ of execution issued pursuant thereto as against appellants Angelo King, Keng Suy Wat, Quintin Calderon, Jose Ferrer, Jr., and Domingo Li are hereby SET ASIDE; and

(2) the case is remanded to the court of origin which is hereby ordered to direct proper service of summons on the aforesaid individual appellants at their respective correct addresses and thereafter to proceed in accordance with law.

SO ORDERED."[7]

A motion for reconsideration of the said decision filed by petitioner was denied by the appellate court on April 22, 1987. Hence, the instant petition predicated on the following grounds:

(A) THAT THE CASE AT BAR (a) PERTAINS TO (AN) APPEAL FROM ORDER OF TRIAL COURT DATED APRIL 6, 1984, DENYING (i) PRIVATE RESPONDENT DOMINGO K. LI'S 'PETITION FOR RELIEF FROM JUDGMENT' FILED JANUARY 25, 1984, AND (ii) MOTION TO SET ASIDE DECISION, COMPROMISE AGREEMENT AND QUASH EXECUTION FILED JANUARY 14, 1984 BY PRIVATE RESPONDENTS ANGELO KING, KENG SUY WAT, QUINTIN CALDERON and JOSE FERRER, JR. and (b) DOES NOT INVOLVE ANY APPEAL FROM TRIAL COURT'S DECISION DATED JULY 19, 1983 APPROVING THE COMPROMISE

[7] Pages 42 and 43. *Rollo*.

Supreme Court E-Library

AGREEMENT WHICH HAS LONG BECOME FINAL AND EXECUTORY.

(B) THAT RESPONDENT COURT OF APPEALS COMPLETELY IGNORED THE BASIC QUESTION OF WHETHER (a) PRIVATE RESPONDENT DOMINGO K. LI'S 'PETITION FOR RELIEF FROM JUDGMENT' FILED JANUARY 25, 1984, and (b) 'THE MOTION TO SET ASIDE DECISION, COMPROMISE AGREEMENT AND QUASH EXECUTION' FILED JANUARY 14, 1984 BY PRIVATE RESPONDENTS ANGELO KING, KENG SUY WAT, QUINTIN CALDERON AND JOSE FERRER, JR., WERE FILED OUT OF TIME.

(C) THAT PRIVATE RESPONDENTS WHO WERE SUED AS DIRECTORS AND OFFICERS OF MFC WERE PROPERLY SERVED WITH SUMMONS.

The petition is devoid of merit.

Although private respondents were sued in their capacity as directors and officers of MFC, they are, nevertheless, being held personally liable for the obligation subject of the litigation under the complaint filed by petitioner. Hence, the rule on personal service of summons must be observed in that summons must be served personally on private respondents or, if they refuse to receive the same, by tendering it to them.

The proof of service prepared by the sheriff does not show that such personal service of summons was effected. The office address of the corporation as indicated in the complaint does not appear to be the office address of private respondents as they were no longer connected with the corporation then. Personal service of summons should have been made on them at their residences as shown in the records of the Securities and Exchange Commission and the Central Bank. Instead, the sheriff effected substituted service by leaving copies of the summons with the Assistant Manager of MFC at the place of business of said corporation with which as above stated private respondents were no longer connected. Such substituted service is not valid. There was no compliance with the requirements of the rule that there must be a previous personal service and a failure to effect the same before substituted service could be resorted

Supreme Court E-Library

to. As the private respondents have not been duly served with summons, the trial court never acquired jurisdiction over their persons.

It is true that Atty. Aragones, who entered his appearance in behalf of MFC and private respondents, sought an extension of time to file an answer or a responsive pleading, and a suspension of the proceedings pending a possible settlement of the case; that thereafter, he signed a Compromise Agreement in behalf of MFC and private respondents which was submitted to the court on the basis of which a compromise judgment was rendered; that said judgment was partially complied with but upon default in the payment of the balance, a writ of execution was sought from and granted by the trial court; and that it was only then that Atty. Aragones informed the court that he committed an oversight in having filed the Compromise Agreement in behalf of private respondents when it was only MFC which hired his services. If Atty. Aragones was duly authorized to appear in behalf of the defendants, his voluntary appearance in their behalf by the filing of the aforementioned pleadings and the Compromise Agreement would constitute a waiver of the defect in the service of summons. However, the lack of authority of Atty. Aragones was revealed when he produced the resolution of the Board of Directors of MFC to the effect that the authority of said counsel was in behalf of said corporation only and not in behalf of the private respondents.

Since the Compromise Agreement was signed by Atty. Aragones in behalf of the private respondents without their authority, the same is null and void in so far as they are concerned. By the same token, the compromise judgment is also null and void as to private respondents. The ruling of the lower court that the motion to set aside the judgment and the petition for relief from judgment were filed beyond the reglementary period is untenable. An action to declare the nullity of a void judgment does not prescribe.[8]

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[8] *Ang Lam vs. Rosillosa and Santiago*, 86 Phil. 447, 452 (1950).

Supreme Court E-Library

One last word, Atty. Aragones appears to be remiss in his duties and reckless in the performance of his responsibility as counsel of record in said case. He represented himself to be the counsel for the defendants including the private respondents not only in the motions he filed but also in the Compromise Agreement he submitted. It was only after the writ of execution of the compromise judgment was being enforced that he perked up by saying that he committed an oversight and that he was not authorized by the private respondents to represent them as counsel, much less in the Compromise Agreement. Candor towards the courts is a cardinal requirement of the practicing lawyer. To say one thing today and another tomorrow is a transgression of this imperative. Counsel should be made to account before his peers.

WHEREFORE, the petition is DENIED. Let a copy of this decision be furnished the Integrated Bar of the Philippines for an appropriate administrative investigation, report and recommendation on Atty. Guillermo E. Aragones who holds office at the 9th Floor of the Finasia Building, 6774 Ayala Avenue, Makati, Metro Manila. No costs. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and *Medialdea, JJ.*, concur.