



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Laztan
WILFREDO V. LAZTAN
Division Clerk of Court
Third Division

FEB 28 2018

THIRD DIVISION

INTERLINK MOVIE HOUSES, G.R. No. 203298
INC. and EDMER Y. LIM,

Petitioners, Present:

VELASCO, JR., J.,
Chairperson,

BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

HONORABLE COURT OF
APPEALS, EXPRESSIONS
STATIONERY SHOP, INC. and
JOSEPHINE LIM BON HUAN,
Respondents.

Promulgated:

January 17, 2018

Wilfredo V. Laztan

X -----X

DECISION

MARTIRES, J.:

This is a petition for review on certiorari seeking to reverse and set aside the 17 May 2012 Decision¹ and the 6 September 2012 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 116221, which nullified the 15 September 2010 Decision³ of the Regional Trial Court, Branch 167, Pasig City (RTC), in Civil Case No. 71732.

Manuel M. Barrios

¹ Rollo, pp. 228-238, penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Apolinario D. Bruselas, Jr.

² Id. at 281-283, penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Agnes Reyes-Carpio.

³ Records, pp. 139-143; penned by Judge Rolando G. Misleng.

THE FACTS

On 22 July 2008, petitioner Interlink Movie Houses, Inc. (*Interlink*), represented by its president, petitioner Edmer Y. Lim (*Lim*), filed before the RTC a complaint for sum of money and damages against respondents Expressions Stationery Shop, Inc. (*Expressions*), a corporation duly organized and existing under the laws of the Republic of the Philippines, and Joseph Lim Bon Huan (*Bon Huan*).⁴ Interlink sought from Expressions the recovery of the latter's unpaid rentals and damages resulting from its alleged breach of their lease contract.

In the Sheriff's Return,⁵ dated 26 September 2008, Sheriff Benedict R. Muriel (*Sheriff Muriel*) of the RTC's Branch 167 certified that on 24 September 2008, he served the summons issued in the subject case, together with the copy of the complaint, on the respondents at the office of the defendant company's president through a certain Jonalyn Liwanan (*Liwanan*). Sheriff Muriel stated that Liwanan undertook to forward the said documents to her superior.

On 5 January 2009, Interlink filed a motion to declare herein respondents in default for their failure to file their answer.⁶

On 6 January 2009, respondents entered a special appearance through Atty. Generosa Jacinto (*Atty. Jacinto*) alleging that the service of the summons was defective and, as such, the RTC did not acquire jurisdiction over them. They further prayed that Interlink's motion for declaration of default be denied.⁷

Thus, in its Order,⁸ dated 2 March 2009, the RTC denied Interlink's motion to declare defendants in default. The trial court agreed that the summons was not served in accordance with Section 11, Rule 14 of the Rules of Court rendering such service defective. Thus, it ordered the issuance and service of summonses to the respondents.

In the Sheriff's Return,⁹ dated 15 May 2009, Sheriff Muriel certified that on 11 May 2009, he served the summons on Expressions at the office of its president, Bon Huan, through a certain Ameer Ochotorina (*Ochotorina*), a person of suitable age and discretion, who introduced herself as one of the secretaries of Bon Huan. Sheriff Muriel added that Ochotorina assured him that the summons would be brought to the attention of Bon Huan. He added

⁴ Id. at 1-14.

⁵ Id. at 31.

⁶ Id. at 32-34.

⁷ Id. at 35-39.

⁸ Id. at 49-50; Penned by Judge Rolando G. Misleng.

⁹ Id. at 53.



that he had insisted that the summons be received personally by Bon Huan, but Ochotorina refused and told him that Bon Huan was then attending to some business matters.

On 25 June 2009, Interlink filed another motion to declare defendants in default.¹⁰ To this motion, respondent again entered a special appearance through Atty. Jacinto on 10 July 2009. The respondents alleged that the second service of the summons was still defective because Ochotorina did not work for nor was connected with the office of the president of Expressions, and that she was neither its president, managing partner, general manager, corporate secretary, treasurer, nor its in-house counsel.¹¹

In the Order,¹² dated 10 February 2010, the RTC granted the motion to declare defendants in default and allowed Interlink to present evidence *ex parte*. The trial court was convinced that there was sufficient compliance with the rules on service of summons to a juridical entity considering that the summons was received by the assistant/secretary of the president. The trial court further stated that corporate officers are usually busy and as such, summons to corporations are usually received only by assistants or secretaries of corporate officers.

On 5 March 2010, the respondents, on special appearance through Atty. Jacinto, filed an omnibus motion wherein they prayed that the 10 February 2010 order be recalled. The respondents insisted that the second service of summons did not vest upon the trial court jurisdiction over their persons.¹³

In its Order,¹⁴ dated 9 August 2010, the RTC denied the respondents' omnibus motion. Thereafter, Interlink proceeded with its *ex parte* presentation of evidence.

The RTC Ruling

In its decision, the RTC ruled in favor of Interlink. It opined that Interlink was able to prove its claims against Expressions and Bon Huan. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favour of plaintiff and against the defendants ordering the latter to pay the former jointly and severally the following:



¹⁰ Id. at 54-55.

¹¹ Id. at 60-68.

¹² Id. at 76-78.

¹³ Id. at 109-120.

¹⁴ Id. at 136-138.

- a. The sum of PhP600,000.00 for the unpaid use of the 1,000 square meters which defendant has unlawfully occupied for (4) months at the rate of PhP150.00 per square meter with the interest of 12% per annum from the time of filing of the complaint until full payment;
- b. The sum of PhP242,676.00 for the use of the leased premises from June to July 2008 with 12% interest per annum from the time of the filing of the complaint until full payment;
- c. The sum of PhP300,000.00 as actual damages;
- d. Costs of suit.

SO ORDERED.¹⁵

Aggrieved, the respondents filed a petition for certiorari under Rule 65 of the Rules of Court before the CA.¹⁶

The CA Ruling

In its assailed decision, dated 17 May 2012, the CA annulled the RTC decision. The appellate court ruled that the second service of summons was still defective, and the trial court did not acquire jurisdiction over the persons of the respondents, thus rendering the RTC decision void. The dispositive portion of the CA decision states:

WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated 09 August 2010 and 10 February 2010 and the Decision dated 15 September 2010 of the Regional Trial Court, Branch 167 of Pasig City in Civil Case No. 71732 are REVERSED and SET ASIDE.

Respondent court is instructed to issue alias Summonses on the defendants therein and to direct the Branch Sheriff to serve the same in a valid and effective manner in accordance with the provisions of the Rules of Court.

SO ORDERED.¹⁷

Interlink moved for reconsideration, but the same was denied by the CA in its resolution, dated 6 September 2012.

Hence, this petition.



¹⁵ Id. at 143.

¹⁶ *Rollo*, pp. 112-144.

¹⁷ Id. at 237-238.

THE ISSUE

WHETHER THE APPELLATE COURT ERRED WHEN IT RULED THAT THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PERSONS OF THE RESPONDENTS.

OUR RULING

The appeal has no merit.

No valid service of summons

It is settled that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. In the absence of service or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.¹⁸

In actions *in personam*, such as collection for a sum of money and damages, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons.¹⁹

Personal service is effected by handing a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.²⁰ If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.²¹ It has been held that this enumeration is exclusive.²² Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, Rule 14 of the Rules of Court.²³ If the service of summons is made upon persons other than those officers enumerated in Section 11, the same is invalid.²⁴

There is no dispute that respondent Expressions is a domestic corporation duly existing under the laws of the Republic of the Philippines,

¹⁸ *Spouses Belen v. Judge Chavez*, 573 Phil. 58, 67 (2008).

¹⁹ *Tam-Wong v. Factor-Koyama*, 616 Phil. 239, 250 (2009).

²⁰ RULES OF COURT, Rule 14, Section 6.

²¹ RULES OF COURT, Rule 14, Section 11.

²² *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.*, 738 Phil. 37, 57 (2014).

²³ *Green Star Express, Inc. v. Nissin-Universal Robina Corporation*, 763 Phil. 27, 29 (2015).

²⁴ *Paramount Insurance Corp. v. A.C. Ordoñez Corporation and Franklin Suspine*, 583 Phil. 321, 327 (2008).

and that respondent Bon Huan is its president. Thus, for the trial court to acquire jurisdiction, service of summons to it must be made to its president, Bon Huan, or to its managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It is further undisputed that the questioned second service of summons was made upon Ochotorina, who was merely one of the secretaries of Bon Huan, and clearly, not among those officers enumerated under Section 11 of Rule 14. The service of summons upon Ochotorina is thus void and, therefore, does not vest upon the trial court jurisdiction over Expressions.

Even assuming *arguendo* that the second service of summons may be treated as a substituted service upon Bon Huan as the president of Expressions, the same did not have the effect of giving the trial court jurisdiction over the respondents.

It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. In such cases, substituted service may be effected (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 a competent person in charge.²⁵ Because substituted service is in derogation of the usual method of service, and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons.²⁶

In *Manotoc v. Court of Appeals*,²⁷ the Court held that before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To establish such impossibility, there must be at least three (3) attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one (1) month or eventually result in failure. The sheriff must further cite why such efforts are unsuccessful.

In this case, the impossibility of prompt personal service was not shown. The 15 May 2009 sheriff's return reveals that Sheriff Muriel attempted to serve the second summons personally only once on 11 May 2009. Clearly, the efforts exerted by Sheriff Muriel were insufficient to establish that it was impossible to personally serve the summons promptly. Further, Sheriff Muriel failed to cite reasons why personal service proved ineffectual. He merely stated that Ochotorina told him that Bon Huan was

²⁵ RULES OF COURT, Rule 14, Section 7; *Sps. Jose v. Sps. Boyon*, 460 Phil. 354, 363 (2003).

²⁶ *Carson Realty & Management Corporation v. Red Robin Security Agency*, G.R. No. 225035, 08 February 2017.

²⁷ 530 Phil. 454 (2006).



then attending to business matters, and that he was assured that the summons would be brought to the attention of Bon Huan.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. They are enjoined to make their best efforts to accomplish personal service on defendant.²⁸ Sheriff Muriel clearly failed to meet this requirement.

No voluntary submission to the jurisdiction of the trial court

It must be recalled that the respondents filed an omnibus motion to recall the trial court's order granting Interlink's motion for declaration of default and for allowance of *ex parte* presentation of evidence.

As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.²⁹ Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.³⁰ This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.³¹

As summarized by the Court in *Philippine Commercial International Bank v. Spouses Dy*,³² a special appearance operates as an exception to the general rule on voluntary appearance. Such special appearance, however, requires that the defendant must explicitly and unequivocally pose objections to the jurisdiction of the court over his person; otherwise, such failure would constitute voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

At first glance, the respondents may be seen to have submitted themselves to the jurisdiction of the RTC. Indeed, said omnibus motion, which is essentially a motion to lift order of default, prayed for an affirmative relief which would not be possible if the movant does not recognize the jurisdiction of the court.

²⁸ *Prudential Bank v. Magdamit, Jr.*, 746 Phil. 649, 660 (2014).

²⁹ *Galicia, et al. v. Manriquez, et al.*, 549 Phil. 595, 606 (2007).

³⁰ *Planters Development Bank v. Chandumal*, 694 Phil. 411, 422 (2012).

³¹ *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, 483 Phil. 525, 543 (2004); *Casimina v. Legaspi, et al.*, 500 Phil. 560, 570 (2005).

³² 606 Phil. 615 (2009).

Nevertheless, a reading of the said omnibus motion reveals that the respondents expressly stated that the said omnibus motion was filed on special appearance. Further, the respondents explicitly objected, in an equivocal manner, to the jurisdiction of the RTC on the ground of invalid service of summons. Measured against the requirements enunciated in *Philippine Commercial International Bank*, the Court is convinced that the respondents never recognized and did not acquiesce to the jurisdiction of the RTC. A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted itself to the jurisdiction of the court.³³


From the foregoing, it is clear that the trial court failed to acquire jurisdiction over the respondents either by valid service of summons or by their voluntary appearance. Necessarily, the proceedings before the RTC in Civil Case No. 71732 are void with respect to the respondents. Thus, the CA did not err when it nullified the 9 August 2010 and 10 February 2010 Orders, and the 15 September 2010 Decision of the RTC.

WHEREFORE, the present petition is **DENIED** for lack of merit. The 17 May 2012 Decision and the 6 September 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116221 are **AFFIRMED**.

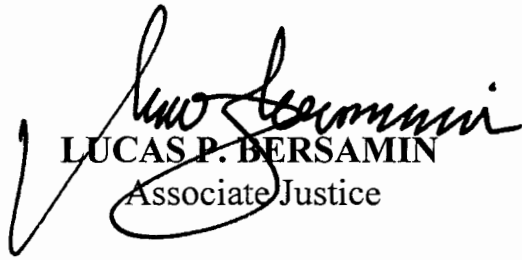
SO ORDERED.

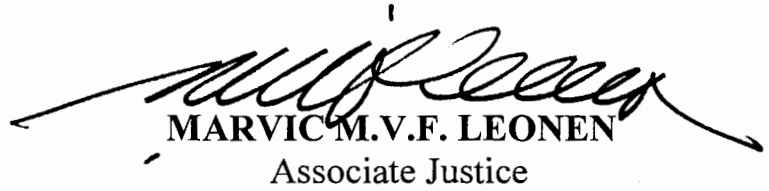

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

³³ *Orion Security Corporation v. Kalfam Enterprises, Inc.*, 550 Phil. 711, 717-718 (2007).



LUCAS P. BERSAMIN
 Associate Justice


MARVIC M.V.F. LEONEN
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice


ATTESTATION

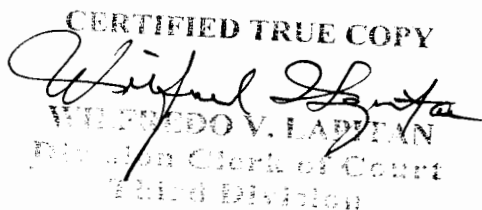
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
 Chief Justice

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WILFREDO V. LAPID
 Division Clerk of Court
 Third Division