

[G.R. No. 140244, August 29, 2000]

JOEL R. UMANDAP, PETITIONER, VS. HON. JUDGE JOSE L. SABIO, JR., AND DOMINGO F. ESTOMO, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the June 7, 1999 Decision of the Court of Appeals^[1] in CA-G.R. SP No. 51294 and the September 30, 1999 Resolution denying the motion to reconsider said decision. The challenged decision dismissed, for lack of merit, the petition for *certiorari*, to annul the Resolutions dated October 2, 1998 and January 18, 1999 of the Regional Trial Court of Misamis Oriental (Branch 23) in Civil Case No. 97-559 which, respectively, denied the motion to set aside judgment by default and quash writ of execution; and denied the motion for reconsideration.

The facts are summarized by the Court of Appeals in this wise:

"In August, 1997, private respondent Domingo Estomo filed against petitioner Joel Umandap an action for damages based on breach of contract. On February 3, 1998, Process Server Marmolejo effected substituted service of the summons and copy of the Complaint upon petitioner, by leaving a copy thereof at petitioner's home and office address to a certain Joseph David who refused to receive and acknowledge the same (Officer's Return, *Rollo*, p. 27).

Petitioner failed to file his Answer and, on motion of private respondent, was declared in default. Thereafter, private respondent was allowed to adduce his evidence *ex parte*. On May 8, 1998, the trial court rendered a judgment against petitioner, the dispositive portion of which reads:

"WHEREFORE, premises above-considered and pursuant to applicable law on the matter and plaintiff having proven by preponderance of evidence his right to the relief prayed for, judgment is hereby rendered in favor of the plaintiff and against the defendant Joel R. Umandap holding the latter liable to plaintiff and ordering the defendant to pay to the plaintiff:

"1. The amount of P304,393.25 representing the unremitted collections from MORESCO/NEA received by defendant;

2. The amount of P200,000.00 as reimbursement of interest incurred and paid by plaintiff to finish the contracted project;

"3. P50,000.00 as moral damages;

"4. P75,000.00 as attorney's fees;

"5. Litigation expenses of P5,547.00; and

"6. Cost of this suit.

"SO ORDERED."

(*Rollo*, p. 33).

On July 8, 1998, a Writ of Execution was issued and petitioner's deposit and receivables were garnished. On August 3, 1998, petitioner filed a Motion to Set Aside Judgment by Default and Quash Writ of Execution which respondent Court denied in an Order dated October 2, 1998. Petitioner's motion for reconsideration was likewise denied in the Court's order of January 18, 1999. xxx."^[2]

Aggrieved, petitioner filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the resolutions of the trial court dated October 2, 1998 and January 18, 1999.

Petitioner argued before the Court of Appeals that the trial court never acquired jurisdiction over his person because there has been no valid service of summons; that the substituted service of summons was improper and invalid since the process server's return failed to show on its face the impossibility of personal service.

In dismissing the petition, the Court of Appeals found that the process server's Return is "valid and regular on its face, and readily reveals that earnest efforts were exerted to find the defendant personally but such efforts failed." The Court of Appeals also held that the "return is clothed with the mantle of presumption of regularity under Section 3[m], Rule 131 of the New Rules on Evidence; and that said presumption is not overcome by petitioner's unsubstantiated and self-serving assertion that the process server went to his home and office address only once."

Hence, this recourse to this Court.

In his Memorandum, petitioner raises the following issues:

1. Whether or not the substituted service of summons made on petitioner through Joseph David on February 3, 1998 was valid and regular.
2. On the assumption that the service of summons made on petitioner was valid, whether or not the Court of Appeals acted in accord with law and the applicable decisions of this Court when it refused to set aside the default judgment rendered against petitioner in Civil Case No. 97-559 (RTC-Misamis oriental, Branch 23; Cagayan de Oro City) and giving the latter a chance to present his evidence therein so as to rebut or even defeat private respondent's claim.^[3]

The main issue in this petition is whether or not petitioner was served valid summons so as to bring him within the jurisdiction of the court.

There can be no dispute that service of summons upon the defendant is necessary in order that a court may acquire jurisdiction over his person. Any judgment without such service in the absence of a valid waiver is null and void.^[4]

Pursuant to Section 6, Rule 14 of the Revised Rules of Court, the general rule in this jurisdiction is that summons must be served personally on the defendant, it reads:

"SEC. 6. *Service in person on defendant.* - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him."

However, when the defendant cannot be served personally within a reasonable time after efforts to locate him have failed, substituted service may be made. Section 7, Rule 14 of the Revised Rules of Court reads:

"SEC. 7. *Substituted Service.* - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, 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 some competent person in charge thereof."

In fine, the two modes for effecting substituted service of summons are: (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion; and (b) by leaving copies at defendant's office or regular place of business with some competent person in charge thereof. Among these two modes of substituted service, the sheriff or the process server may choose that which will more likely insure the effectiveness of the service.^[5]

In *Venturanza vs. Court of Appeals*,^[6] this Court described how the impossibility of personal service should be shown:

"The substituted service should be availed only when the defendant cannot be served promptly in person. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts. The statement should be made in the proof of service. This is necessary because substituted service is in derogation of the usual method of service. Substituted service is a method extraordinary in character, and hence may be used only as prescribed in the circumstances authorized by statute. Thus, the statutory requirements of substituted service must be followed strictly, faithfully, and any substituted service other than that authorized by the statute is considered ineffective."

The proof of service alluded to is the return required by Section 4 of Rule 14 which reads:

"SEC. 4. *Return.* - When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service."

Central to the instant controversy is the process server's return which petitioner relies upon to show the invalidity of the substituted service of summons. He points to the following alleged defects: (1) it does not state the efforts exerted or the alleged occasions on which attempts were made to personally serve the summons upon petitioner; (2) it does not state that Joseph David, to whom the process server left or tendered the summons and a copy of the complaint was a person of suitable age and discretion then residing therein or a competent person in charge of