

SECOND DIVISION

[G.R. No. 206147, January 13, 2016]

**MICHAEL C. GUY, PETITIONER, VS. ATTY. GLENN C. GACOTT,
RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Michael C. Guy (*Guy*), assailing the June 25, 2012 Decision^[1] and the March 5, 2013 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 94816, which affirmed the June 28, 2009^[3] and February 19, 2010^[4] Orders of the Regional Trial Court, Branch 52, Puerto Princesa City, Palawan (RTC), in Civil Case No. 3108, a case for damages. The assailed RTC orders denied Guy's Motion to Lift Attachment Upon Personalty^[5] on the ground that he was not a judgment debtor.

The Facts

It appears from the records that on March 3, 1997, Atty. Glenn Gacott (Gacott) from Palawan purchased two (2) brand new transreceivers from Quantech Systems Corporation (QSC) in Manila through its employee Rey Medestomas (Medestomas), amounting to a total of PI 8,000.00. On May 10, 1997, due to major defects, Gacott personally returned the transreceivers to QSC and requested that they be replaced. Medestomas received the returned transreceivers and promised to send him the replacement units within two (2) weeks from May 10, 1997.

Time passed and Gacott did not receive the replacement units as promised. QSC informed him that there were no available units and that it could not refund the purchased price. Despite several demands, both oral and written, Gacott was never given a replacement or a refund. The demands caused Gacott to incur expenses in the total amount of P40,936.44. Thus, Gacott filed a complaint for damages. Summons was served upon QSC and Medestomas, after which they filed their Answer, verified by Medestomas himself and a certain Elton Ong (Ong). QSC and Medestomas did not present any evidence during the trial.^[6]

In a Decision,^[7] dated March 16, 2007, the RTC found that the two (2) transreceivers were defective and that QSC and Medestomas failed to replace the same or return Gacott's money. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to jointly and severally pay plaintiff the following:

| | |
|--|-------------|
| 1. Purchase price plus 6% per annum from March 3,1997 up to and until fully paid ----- | P 18,000.00 |
| 2. Actual Damages ----- | 40,936.44 |
| 3. Moral Damages ----- | 75,000.00 |
| 4. Corrective Damages ----- | 100,000.00 |
| 5. Attorney's Fees ----- | 60,000.00 |
| 6. Costs. | |

SO ORDERED.

The decision became final as QSC and Medestomas did not interpose an appeal. Gacott then secured a Writ of Execution,^[8] dated September 26, 2007.

During the execution stage, Gacott learned that QSC was not a corporation, but was in fact a general partnership registered with the Securities and Exchange Commission (*SEC*). In the articles of partnership,^[9] Guy was appointed as General Manager of QSC.

To execute the judgment, Branch Sheriff Ronnie L. Felizarte (*Sheriff Felizarte*) went to the main office of the Department of Transportation and Communications, Land Transportation Office (*DOTC-LTO*), Quezon City, and verified whether Medestomas, QSC and Guy had personal properties registered therein.^[10] Upon learning that Guy had vehicles registered in his name, Gacott instructed the sheriff to proceed with the attachment of one of the motor vehicles of Guy based on the certification issued by the DOTC-LTO.^[11]

On March 3, 2009, Sheriff Felizarte attached Guy's vehicle by virtue of the Notice of Attachment/Levy upon Personalty^[12] served upon the record custodian of the DOTC-LTO of Mandaluyong City. A similar notice was served to Guy through his housemaid at his residence.

Thereafter, Guy filed his Motion to Lift Attachment Upon Personalty, arguing that he was not a judgment debtor and, therefore, his vehicle could not be attached.^[13] Gacott filed an opposition to the motion.

The RTC Order

On June 28, 2009, the RTC issued an order denying Guy's motion. It explained that considering QSC was not a corporation, but a registered partnership, Guy should be treated as a general partner pursuant to Section 21 of the Corporation Code, and he may be held jointly and severally liable with QSC and Medestomas. The trial court wrote:

All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof x x x. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership x x x, loss or injury is caused to any person, not being a partner in the partnership, or any

penalty is incurred, the partnership is liable therefore to the same extent as the partner so acting or omitting to act. All partners are liable solidarity with the partnership for everything chargeable to the partnership under Article 1822 and 1823.^[14]

Accordingly, it disposed:

WHEREFORE, with the ample discussion of the matter, this Court finds and so holds that the property of movant Michael Guy may be validly attached in satisfaction of the liabilities adjudged by this Court against Quantech Co., the latter being an ostensible Corporation and the movant being considered by this Court as a general partner therein in accordance with the order of this court impressed in its decision to this case imposing joint and several liability to the defendants. The Motion to Lift Attachment Upon Personalty submitted by the movant is therefore DENIED for lack of merit.

SO ORDERED.^[15]

Not satisfied, Guy moved for reconsideration of the denial of his motion. He argued that he was neither impleaded as a defendant nor validly served with summons and, thus, the trial court did not acquire jurisdiction over his person; that under Article 1824 of the Civil Code, the partners were only solidarily liable for the partnership liability under exceptional circumstances; and that in order for a partner to be liable for the debts of the partnership, it must be shown that all partnership assets had first been exhausted.^[16]

On February 19, 2010, the RTC issued an order^[17] denying his motion.

The denial prompted Guy to seek relief before the CA.

The CA Ruling

On June 25, 2012, the CA rendered the assailed decision dismissing Guy's appeal for the same reasons given by the trial court. In addition thereto, the appellate court stated:

We hold that Michael Guy, being listed as a general partner of QSC during that time, cannot feign ignorance of the existence of the court summons. The verified Answer filed by one of the partners, Elton Ong, binds him as a partner because the Rules of Court does not require that summons be served on all the partners. It is sufficient that service be made on the "president, managing partner, general manager, corporate secretary, treasurer or in-house counsel." To Our mind, it is immaterial whether the summons to QSC was served on the theory that it was a corporation. What is important is that the summons was served on QSC's authorized officer xxx.^[18]

The CA stressed that Guy, being a partner in QSC, was bound by the summons served upon QSC based on Article 1821 of the Civil Code. The CA further opined that the law did not require a partner to be actually involved in a suit in order for him to be made liable. He remained "solidarity liable whether he participated or not, whether he ratified it or not, or whether he had knowledge of the act or omission."^[19]

Aggrieved, Guy filed a motion for reconsideration but it was denied by the CA in its assailed resolution, dated March 5, 2013.

Hence, the present petition raising the following

ISSUE

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER GUY IS SOLIDARILY LIABLE WITH THE PARTNERSHIP FOR DAMAGES ARISING FROM THE BREACH OF THE CONTRACT OF SALE WITH RESPONDENT GACOTT.^[20]

Guy argues that he is not solidarity liable with the partnership because the solidary liability of the partners under Articles 1822, 1823 and 1824 of the Civil Code only applies when it stemmed from the act of a partner. In this case, the alleged lapses were not attributable to any of the partners. Guy further invokes Article 1816 of the Civil Code which states that the liability of the partners to the partnership is merely joint and subsidiary in nature.

In his Comment,^[21] Gacott countered, among others, that because Guy was a general and managing partner of QSC, he could not feign ignorance of the transactions undertaken by QSC. Gacott insisted that notice to one partner must be considered as notice to the whole partnership, which included the pendency of the civil suit against it.

In his Reply,^[22] Guy contended that jurisdiction over the person of the partnership was not acquired because the summons was never served upon it or through any of its authorized office. He also reiterated that a partner's liability was joint and subsidiary, and not solidary.

The Court's Ruling

The petition is meritorious.

The service of summons was flawed; voluntary appearance cured the defect

Jurisdiction over the person, or jurisdiction *in personam* - the power of the court to render a personal judgment or to subject the parties in a particular action to the

judgment and other rulings rendered in the action - is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*.^[23] Jurisdiction over the person of the plaintiff is acquired by the mere filing of the complaint in court. As the initiating party, the plaintiff in a civil action voluntarily submits himself to the jurisdiction of the court. As to the defendant, the court acquires jurisdiction over his person either by the proper service of the summons, or by his voluntary appearance in the action.^[24]

Under Section 11, Rule 14 of the 1997 Revised Rules of Civil Procedure, when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Jurisprudence is replete with pronouncements that such provision provides an **exclusive enumeration** of the persons authorized to receive summons for juridical entities.^[25]

The records of this case reveal that QSC was never shown to have been served with the summons through any of the enumerated authorized persons to receive such, namely: president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. Service of summons upon persons **other than those officers enumerated in Section 11 is invalid**. Even substantial compliance is not sufficient service of summons. The CA was obviously mistaken when it opined that it was immaterial whether the summons to QSC was served on the theory that it was a corporation.^[27]

Nevertheless, while proper service of summons is necessary to vest the court jurisdiction over the defendant, the same is merely procedural in nature and the lack of or defect in the service of summons may be cured by the defendant's subsequent voluntary submission to the court's jurisdiction through his filing a responsive pleading such as an answer. In this case, it is not disputed that QSC filed its Answer despite the defective summons. Thus, jurisdiction over its person was acquired through voluntary appearance.

*A partner must be separately
and distinctly impleaded before
he can be bound by a judgment*

The next question posed is whether the trial court's jurisdiction over QSC extended to the person of Guy insofar as holding him solidarity liable with the partnership. After a thorough study of the relevant laws and jurisprudence, the Court answers in the negative.

Although a partnership is based on *delectus personae* or mutual agency, whereby any partner can generally represent the partnership in its business affairs, it is *non sequitur* that a suit against the partnership is necessarily a suit impleading each and every partner. It must be remembered that a partnership is a juridical entity that has a distinct and separate personality from the persons composing it.^[28]

In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court.^[29] A decision rendered on a complaint in