

FIRST DIVISION

[G.R. No. 204796, February 04, 2015]

**REICON REALTY BUILDERS CORPORATION, PETITIONER, VS.
DIAMOND DRAGON REALTY AND MANAGEMENT, INC.,
RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Resolutions dated May 21, 2012^[2] and November 21, 2012^[3] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 116845 which dismissed outright petitioner Reicon Realty Builders Corporation's (Reicon) *certiorari* petition on procedural grounds.

The Facts

Reicon is the owner of a parcel of land and the one-storey building erected thereon located at the corner of Aurora Boulevard and Araneta Avenue, Sta. Mesa, Quezon City,^[4] covered by Transfer Certificate of Title No. 330668 (subject property).^[5] On January 9, 1991, Reicon and respondent Diamond Dragon Realty and Management, Inc. (Diamond) entered into a Contract of Lease^[6] (January 9, 1991 Contract), whereby Reicon leased the subject property to Diamond for a period of twenty (20) years, from January 15, 1991 to January 15, 2011, for a monthly rental of P75,000.00, subject to periodical increments.^[7] In turn, Diamond sublet portions of the subject property to Jollibee Foods Corporation^[8] (Jollibee) and Maybunga U.K. Enterprises (Maybunga), represented by its proprietor, Andrew D. Palangdao (Andrew).^[9]

Beginning June 2006, Diamond failed to pay the monthly rentals due, and the checks it had issued by way of payments from June 2006 to December 2006 were all dishonored upon presentment.^[10] This prompted Reicon to send, through counsel, a letter^[11] dated July 23, 2007 demanding the payment of the accrued rentals and terminating the January 9, 1991 Contract.^[12] Thereafter, it entered into separate contracts with Jollibee^[13] and Maybunga^[14] over the portions of the subject property they respectively occupy.

On December 14, 2009, Diamond filed a complaint^[15] for breach of contract with damages against Reicon, Jollibee, Maybunga, Andrew, and a certain Mary Palangdao (Mary) (defendants) before the Regional Trial Court of Pasig City, Branch 166 (RTC), docketed as Civil Case No. 72319, alleging that the January 9, 1991 Contract did not provide for its unilateral termination by either of the parties.^[16] It also alleged that the act of defendants in entering into separate contracts, despite the existence of the January 9, 1991 Contract, constitutes unlawful interference,^[17] for which they

must be held solidarily liable for damages. As such, Diamond prayed that the unilateral termination of the January 9, 1991 Contract effected by Reicon, as well as the separate contracts of lease it entered into with Jollibee and Maybunga, be declared invalid and illegal.^[18] Further, it sought the award of unpaid rentals from Jollibee and Maybunga starting July 23, 2007 up to the present, moral and exemplary damages, and attorney's fees.^[19]

By way of special appearance, Reicon filed a motion to dismiss^[20] the complaint on the following grounds: (a) lack of jurisdiction over its person, considering that the summons was not served upon its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel, as required by the Rules of Court (Rules),^[21] but upon a certain Fernando Noyvo, a houseboy/gardener, at a residence located at 1217 Acacia St., Dasmariñas Village, Makati City, which is not the principal office of Reicon;^[22] (b) lack of legal capacity to sue as a juridical person on the part of Diamond, its certificate of registration having already been revoked by the Securities and Exchange Commission (SEC) as early as September 29, 2003, per certifications^[23] issued by the latter;^[24] and (c) lack of cause of action, in the absence of the requisite allegations of the ultimate facts constituting bad faith and malice on the part of the defendants as would support the cause of action of "unlawful interference."^[25]

Opposing Reicon's motion to dismiss, Diamond argued^[26] that, even assuming that summons was not properly served upon Reicon, improper service is not a ground to dismiss its complaint.^[27] It also insisted that it has legal capacity to sue,^[28] as the corporation whose certificate of registration was revoked was "*Diamond Dragon Realty and Mgt. Inc.*," while its name, per its General Information Sheet^[29] for 2009, was "Diamond Dragon Realty & Management, Inc." Moreover, it claimed that its legal existence cannot be attacked except in a *quo warranto* petition.^[30]

In its reply,^[31] Reicon pointed out, *inter alia*, that the corporation whose certificate of registration was revoked by the SEC on September 29, 2003^[32] was registered under **SEC No. 144830**.^[33] Per the SEC's Certificate of Corporate Filing/Information^[34] dated February 1, 2010 which referred to "*Diamond Dragon Realty & Mgt. Inc.*" as well as Certificate of Corporate Filing/Information^[35] dated March 2, 2010 which referred to "*Diamond Dragon Realty and Management, Inc.*," both corporations were registered under **SEC No. 144830**, which can only mean that it is one and the same corporation. Reicon also reiterated its previous arguments in its motion to dismiss.

For its part, Jollibee filed a separate motion to dismiss^[36] the complaint on the ground of lack of jurisdiction over its person, the summons having been improperly served; lack of jurisdiction over the subject matter, as Diamond failed to allege the value of the subject property, which is required in an action involving title to, or possession of, real property, as in this case; and improper venue.^[37] As for Maybunga, records do not show that they filed a similar motion for the dismissal of the complaint.

The RTC Ruling

In an Order^[38] dated June 9, 2010, the RTC denied Reicon's (and Jollibee's) motion to dismiss, ratiocinating that improper service of summons is not among the grounds enumerated under Section 1,^[39] Rule 16 of the Rules allowing for the dismissal of a complaint. With regard to the legal capacity of Diamond to sue as a juridical person, the RTC cited Section 20^[40] of the Corporation Code,^[41] in relation to Sections 1^[42] and 5^[43] of Rule 66 of the Rules, in ruling that Diamond's legal existence can only be impugned in a *quo warranto* proceeding.

Reicon moved for reconsideration^[44] thereof which was, however, denied in an Order^[45] dated September 16, 2010.

The Proceedings Before the CA

Aggrieved, Reicon elevated the matter to the CA *via* petition for *certiorari*^[46] taken under Rule 65 of the Rules, ascribing grave abuse of discretion upon Presiding Judge Rowena De Juan Quinagoran (Judge Quinagoran) of the RTC in not dismissing Diamond's complaint on the grounds discussed in Reicon's motion to dismiss, particularly the issue respecting Diamond's lack of legal capacity to sue.^[47] Reicon filed its *certiorari* petition on November 18, 2010, entitled "*Reicon Realty Builders Corporation v. Hon. Rowena De Juan-Quinagoran and Diamond Dragon Realty and Management, Inc.,*" docketed as CA-G.R. SP No. 116845.

In a Resolution^[48] dated March 28, 2011, however, the CA required Reicon to show cause as to why its petition for *certiorari* should not be dismissed for its failure to acquire jurisdiction over the person of Diamond, as private respondent, as required under Section 4,^[49] Rule 46 of the Rules. It appears that the CA's earlier Resolution dated January 5, 2011 addressed to Diamond, with address at "Suite 305, AIC Burgundy Empire Tower, ADB Ave., cor[.] Garnet^[50] Road, Ortigas Center 1605 Pasig City" was returned to it, with the notation "RTS-Moved Out."^[51]

In its Compliance,^[52] Reicon stated that the address "Suite 305, AIC Burgundy Empire Tower, ADB Avenue corner Garnet Road, Ortigas Center, Pasig City" was Diamond's address on record in Civil Case No. 72319, the civil case from which the *certiorari* petition originated. From the institution thereof up to the filing of Reicon's petition before the CA, Diamond has not submitted any paper or pleading notifying the RTC of any change in its address. As such, Reicon maintained that the service of its petition to Diamond's address as above-indicated should be deemed effective. In the alternative, it proffered that Diamond may be served through its counsel of record in Civil Case No. 72319, Atty. Anselmo A. Marqueda (Atty. Marqueda) of A.A. MARQUEDA LAW OFFICES, at the latter's office address.^[53]

Alleging that it received a copy of Reicon's Compliance, Diamond, through its counsel, Atty. Marqueda, filed a manifestation,^[54] under a special appearance, averring that Reicon's petition for *certiorari* must be dismissed outright for its failure to serve a copy thereof on its counsel of record (*i.e.*, Atty. Marqueda).^[55] It cited the rule that when a party is represented by counsel, notice of proceedings must be served upon said counsel to constitute valid service.^[56]

In a Resolution^[57] dated May 21, 2012, the CA dismissed Reicon's *certiorari* petition without passing upon its merits based on the following grounds: (a) non-compliance with the requirements of proof of service of the petition on Diamond pursuant to Section 3,^[58] Rule 46 of the Rules, and (b) non-compliance with the rule on service upon a party through counsel under Section 2, Rule 13 of the Rules.

Reicon's motion for reconsideration^[59] was denied in a Resolution^[60] dated November 21, 2012, hence, this petition.

The Issues Before the Court

The sole issue to resolve is whether or not Reicon's *certiorari* petition before the CA was properly served upon the person of Diamond.

The Court's Ruling

The petition is meritorious.

I.

Sections 3 and 4, Rule 46 of the Rules, which covers cases originally filed^[61] before the CA, provide as follows:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies **together with proof of service thereof on the respondent** with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. x x x.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

SEC. 4. Jurisdiction over the person of respondent, how acquired. – The

court shall acquire jurisdiction over the **person of the respondent by the service on him** of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction. (Emphases and underscoring supplied)

A punctilious review of the records, particularly of the *certiorari* petition filed by Reicon before the CA, shows that it contains the registry numbers corresponding to the registry receipts^[62] as well as the affidavit of service and/or filing^[63] of the person who filed and served the petition *via* registered mail on behalf of Reicon. These imply that a copy of Reicon's *certiorari* petition had been served to the RTC as well as to Diamond through its address at "Suite 305 AIC Burgundy Empire Tower, ADB Avenue corner Garnet Road, Ortigas Center, Pasig City,"^[64] in compliance with Section 13,^[65] Rule 13 of the Rules on proof of service as well as with Sections 3 and 4 of Rule 46 above-quoted.^[66]

On this score, the Court notes that Diamond declared the aforesaid address as its business address^[67] in its complaint before the RTC, and that there is dearth of evidence to show that it had since changed its address or had moved out. Hence, Reicon cannot be faulted for adopting the said address in serving a copy of its *certiorari* petition to Diamond in light of the requirement under Sections 3 and 4, Rule 46 of the Rules as above-cited, which merely entails **service of the petition upon the respondent itself**, not upon his counsel.

The underlying rationale behind this rule is that a *certiorari* proceeding is, by nature, **an original and independent action**, and, therefore not considered as part of the trial that had resulted in the rendition of the judgment or order complained of.^[68] Hence, at the preliminary point of serving the *certiorari* petition, as in other initiatory pleadings, it cannot be said that an appearance for respondent has been made by his counsel. Consequently, the requirement under Section 2,^[69] Rule 13 of the Rules, which provides that if any party has appeared by counsel, service upon him shall be made upon his counsel, should not apply.

Thus, the CA erred when it dismissed Reicon's *certiorari* petition outright for non-compliance with Section 3, Rule 46 of the Rules as well as the rule on service upon a party through counsel under Section 2, Rule 13 of the Rules. The service of said pleading upon the person of the respondent, and not upon his counsel, is what the rule properly requires, as in this case.

II.

On a related note, the Court further observes that jurisdiction over the person of Diamond had already been acquired by the CA through its voluntary appearance by virtue of the Manifestation dated May 5, 2011, filed by its counsel, Atty. Marqueda, who, as the records would show, had consistently represented Diamond before the proceedings in the court *a quo* and even before this Court. To restate, Section 4, Rule 46 of the Rules provides:

SEC. 4. *Jurisdiction over person of respondent, how acquired.* — The court shall acquire **jurisdiction over the person of the respondent by**