

SECOND DIVISION

[G.R. No. 183182, September 01, 2010]

**GENTLE SUPREME PHILIPPINES, INC., PETITIONER, VS.
RICARDO F. CONSULTA, RESPONDENT.**

DECISION

ABAD, J.:

This case is about the service of summons on a corporation and its officers, allegedly done improperly, resulting in the failure of the trial court to acquire jurisdiction over the persons of the defendants and in the nullity of its proceedings.

The Facts and the Case

On September 29, 2005 petitioner Gentle Supreme Philippines, Inc. (GSP) filed a collection case with application for a writ of preliminary attachment^[1] against Consar Trading Corporation (CTC), its president, respondent Ricardo Consulta (Consulta), and its vice-president, Norberto Sarayba (Sarayba) before the Regional Trial Court (RTC) of Pasig City, Branch 68, in Civil Case 70544. GSP alleged that CTC, through Consulta and Sarayba, bought certain merchandise from it but refused to pay for them.

Before summons could be served, the RTC issued a writ of preliminary attachment^[2] against the defendants after GSP filed the required bond.^[3] Afterwards, the RTC issued summons against the defendants.

On October 11, 2005 as the sheriff failed to serve the summons and copies of the complaint on any of CTC's authorized officers as well as on Consulta and Sarayba, he left copies of such documents with Agnes Canave (Canave) who, according to the sheriff's return,^[4] was Sarayba's secretary and an authorized representative of both Sarayba and Consulta.

None of the defendants filed an answer to the complaint. Thus, upon motion,^[5] on November 18, 2005 the RTC declared them in default^[6] and proceeded to hear GSP's evidence *ex parte*. Meanwhile, the sheriff attached a registered land^[7] belonging to Consulta.^[8] After trial, the RTC ruled that having defrauded GSP, defendants CTC, Consulta, and Sarayba were solidarily liable for the value of the supplied goods plus attorney's fees and costs of the suit.^[9] And upon motion, on January 25, 2006 the RTC issued a writ of execution against the defendants.^[10]

On June 9, 2006 respondent Consulta filed a petition for annulment of the RTC decision before the Court of Appeals (CA) in CA-G.R. SP 94817.^[11] He alleged 1) that he found out about the case against him only on May 19, 2006 when he

received a notice of sale on execution of his house and lot in Marikina City; and 2) that he was not properly served with summons because, although his address stated in the complaint was his regular place of business, Canave, who received the summons, was not in charge of the matter.

Consulta invoked the Court's ruling in *Keister v. Judge Navarro*,^[12] that "the rule (on substituted service) presupposes that such relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof." Consulta claimed that Canave was only Sarayba's secretary. Thus, neither the sheriff nor the RTC had basis for assuming that Canave would find a way to let Consulta know of the pending case against him. Consulta concluded that the RTC did not acquire jurisdiction over his person.

In its answer to the petition,^[13] GSP insisted on the validity of the service of summons on Consulta. Also, assuming that summons was not properly served, Consulta's ignorance was contrived. His knowledge of the case against him may be proved by the following circumstances:

1. On February 25, 2006 CTC faxed GSP a letter proposing a schedule of payment for the adjudged amounts in the RTC decision. Admittedly, it was only Sarayba who signed the letter. By the rules of evidence, however, the act and declaration of a joint debtor is binding upon a party.^[14] This means that Sarayba's knowledge and admission of the case and the defendants' corresponding liability to GSP was binding on Consulta. Besides, Consulta, together with Sarayba, signed the postdated checks as partial payment of CTC's obligation to GSP;
2. The RTC's sheriff garnished CTC's bank accounts on the day the summons was served. As company president, it was incredulous that Consulta was unaware of the garnishment and the reason for it;
3. Consulta admitted that CTC was properly served with summons through Canave. By that statement, it can be deduced that Canave was in charge of the office, Consulta's regular place of business, signifying proper service of the summons on him.

On March 18, 2008 the CA rendered a decision, holding that the RTC sheriff did not properly serve summons on all the defendants. It ordered the remand of the case to the trial court, enjoining it to take steps to insure the valid service of summons on them.^[15]

Respondent Consulta filed a motion for partial reconsideration of the decision but the CA denied it for being late. Petitioner GSP also filed a motion for reconsideration^[16] which the CA denied on May 29, 2008 for lack of merit,^[17] hence, this petition.

The Issue Presented

The sole issue presented in this case is whether the CA correctly ruled that summons had not been properly served on respondent Consulta with the result that the RTC did not acquire jurisdiction over his person and that the judgment against