

## SECOND DIVISION

**[ G.R. No. 131724, February 28, 2000 ]**

**MILLENIUM INDUSTRIAL COMMERCIAL CORPORATION,  
PETITIONER, VS. JACKSON TAN, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

In December 1994, Millenium Industrial Commercial Corporation, petitioner herein, executed a Deed of Real Estate Mortgage<sup>[1]</sup> over its real property covered by TCT No. 24069 in favor of respondent Jackson Tan. The mortgage was executed to secure payment of petitioner's indebtedness to respondent in the amount of P2 million, without monthly interest, but which, at maturity date on June 10, 1995, was payable in the amount of P4 million.

On November 9, 1995, respondent filed against petitioner a complaint for foreclosure of mortgage in the Regional Trial Court, Branch 6, Cebu City. On November 21, 1995, summons and a copy of the complaint were served upon petitioner through a certain Lynverd Cinches, described in the sheriff's return, dated November 23, 1995, as "a Draftsman, a person of sufficient age and (discretion) working therein, he is the highest ranking officer or Officer-in-Charge of defendant's Corporation, to receive processes of the Court."<sup>[2]</sup>

Petitioner moved for the dismissal of the complaint on the ground that there was no valid service of summons upon it, as a result of which the trial court did not acquire jurisdiction over it. Petitioner invoked Rule 14, §13 of the 1964 Rules of Court and contended that service on Lynverd Cinches, as alleged in the sheriff's return, was invalid as he is not one of the authorized persons on whom summons may be served and that, in fact, he was not even its employee.<sup>[3]</sup>

Petitioner also sought the dismissal of the complaint against it on the ground that it had satisfied its obligation to respondent when the latter opted to be paid in shares of stock under the following stipulation in the mortgage contract:

That in the remote possibility of failure on the part of the mortgagor to pay the mortgage obligation and interest in cash, the MORTGAGEE at his option may demand that payment be made in the form of shares of stock of Millenium Industrial Commercial Corporation totaling at least 4,000,000 shares.<sup>[4]</sup>

Petitioner further prayed for "other reliefs just and equitable under the premises."<sup>[5]</sup>

On December 15, 1995, the trial court denied petitioner's Motion to Dismiss. Its order stated:

This refers to the Motion to Dismiss, dated December 4, 1995, by defendant anchored on the following grounds:

1. That the Court had not acquired jurisdiction over the person of the defendant corporation because summons was served upon a person who is not known to or an employee of the defendant corporation.
2. That the obligation sought to be collected was already paid and extinguished.

*By interposing the second ground, the defendant has availed of an affirmative defense on the basis of which the Court has to hear and receive evidence. For the Court to validly decide the said plea of the defendant it necessarily had to acquire jurisdiction over the person of the defendant. Thus, defendant is considered to have then abandoned its first ground and is deemed to have voluntarily submitted itself to the jurisdiction of the Court. It is a legal truism that voluntary appearance cures the defect of the summons, if any. The defendant's filing of the motion to dismiss by pleading therein the second ground amounts to voluntary appearance and it indeed cured the defect.*

Wherefore, Motion to Dismiss is hereby denied for lack of merit.<sup>[6]</sup>

Petitioner moved for reconsideration, but its motion was denied by the trial court in its order, dated January 16, 1996, for failure of petitioner to raise any new ground. Petitioner then filed a petition for *certiorari* in the Court of Appeals, assailing the aforesaid orders of the trial court.

On September 18, 1997, the Court of Appeals dismissed the petition.<sup>[7]</sup> The appellate court ruled that although petitioner denied Lynverd Cinches' authority to receive summons for it, its actual receipt of the summons could be inferred from its filing of a motion to dismiss, hence, the purpose for issuing summons had been substantially achieved. Moreover, it was held, by including the affirmative defense that it had already paid its obligation and praying for other reliefs in its Motion to Dismiss, petitioner voluntarily submitted to the jurisdiction of the court.<sup>[8]</sup>

Hence, this petition for review. Petitioner raises the following issues:

- I. WHETHER OR NOT SERVICE OF SUMMONS UPON A MERE DRAFTSMAN WHO IS NOT ONE OF THOSE UPON WHOM SUMMONS MAY BE SERVED IN CASE OF A DEFENDANT CORPORATION AS MENTIONED IN THE RULES IS VALID.
- II. WHETHER OR NOT THE INCLUSION OF ANOTHER AFFIRMATIVE RELIEF IN A MOTION TO DISMISS ABANDONS AND WAIVES THE GROUND OF LACK OF JURISDICTION OVER THE PERSON OF THE DEFENDANT THEREIN ALSO PLEADED UNDER PREVAILING LAW AND JURISPRUDENCE.
- III. WHETHER OR NOT THERE IS A LEGAL GROUND TO GRANT PETITIONER'S MOTION TO DISMISS THE COMPLAINT BELOW.

*First.* Petitioner objects to the application of the doctrine of substantial compliance in the service of summons for two reasons: (1) the enumeration of persons on whom service of summons on a corporation may be effected in Rule 14 §13, is exclusive and mandatory; and (2) even assuming that substantial compliance is allowed, its alleged actual receipt of the summons is based on an unfounded speculation because there is nothing in the records to show that Lynverd Cinches actually turned over the summons to any of the officers of the corporation.<sup>[9]</sup> Petitioner contends that it was able to file a motion to dismiss only because of its timely discovery of the foreclosure suit against it when it checked the records of the case in the trial court.

The contention is meritorious.

Summons is the means by which the defendant in a case is notified of the existence of an action against him and, thereby, the court is conferred jurisdiction over the person of the defendant.<sup>[10]</sup> If the defendant is corporation, Rule 14, §13 requires that service of summons be made upon the corporation's president, manager, secretary, cashier, agent, or any of its directors.<sup>[11]</sup> The rationale of the rule is that service must be made on a representative so integrated with the corporation sued as to make it a *priori* presumable that he will realize his responsibilities and know what he should do with any legal papers received by him.<sup>[12]</sup>

Petitioner contends that the enumeration in Rule 14, §13 is exclusive and that service of summons upon one who is not enumerated therein is invalid. This is the general rule.<sup>[13]</sup> However, it is settled that substantial compliance by serving summons on persons other than those mentioned in the above rule may be justified. In *G & G Trading Corporation v. Court of Appeals*,<sup>[14]</sup> we ruled that although the service of summons was made on a person not enumerated in Rule 14, §13, if it appears that the summons and complaint were in fact received by the corporation, there is substantial compliance with the rule as its purpose has been attained.

In *Porac Trucking, Inc. v. Court of Appeals*,<sup>[15]</sup> this Court enumerated the requisites for the application of the doctrine of substantial compliance, to wit: (a) there must be actual receipt of the summons by the person served, *i.e.*, transferring possession of the copy of the summons from the Sheriff to the person served; (b) the person served must sign a receipt or the sheriff's return; and (c) there must be actual receipt of the summons by the corporation through the person on whom the summons was actually served.<sup>[16]</sup> The third requisite is the most important for it is through such receipt that the purpose of the rule on service of summons is attained.

In this case, there is no dispute that the first and second requisites were fulfilled. With respect to the third, the appellate court held that petitioner's filing of a motion to dismiss the foreclosure suit is proof that it received the copy of the summons and the complaint. There is, however, no direct proof of this or that Lynverd Cinches actually turned over the summons to any of the officers of the corporation. In contrast, in our cases applying the substantial compliance rule,<sup>[17]</sup> there was direct evidence, such as the admission of the corporation's officers, of receipt of summons by the corporation through the person upon whom it was actually served. The question is whether it is allowable to merely infer actual receipt of summons by the corporation through the person on whom summons was served. We hold that it cannot be allowed. For there to be substantial compliance, actual receipt of