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FIRST DIVISION

[G.R. No. 126321, October 23, 1997]

TOYOTA CUBAO, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND DANILO A. GUEVARRA, RESPONDENTS. D E C I S I O N

VITUG, J.:

Petitioner Toyota Cubao, Inc., undertook repairs on the car owned by private respondent Danilo Guevarra. The repair cost of P76,800.47 was paid by means of BPI Check No. 17819, dated 12 March 1991, drawn by Guevarra in favor of Toyota. When presented for payment, the check was dishonored, i.e., "Drawn Against Insufficient Funds (`DAIF')." Petitioner thereupon requested that Guevarra should make good the check. When Guevarra failed to heed the demand, petitioner filed a civil case for collection of the unpaid account.

On 07 January 1993, the trial court issued the summons to Guevarra at his address in 29 Burgos Street, Calamba, Laguna. On 02 February 1993, Process Server Antonio Rimas of the Regional Trial Court of Calamba, Laguna, submitted to the trial court a return on the service; it read in full:

> "Respectfully returned to the Branch Clerk of Court, Regional Trial Court, National Capital Judicial Region, Branch 92, Quezon City, the herein attached original summon in the above entitled case with the information that it was duly served to the defendant DANILO A. GUEVARRA, thru her sister-in-law, GLORIA CABALLES, by leaving a copy of the summons and complaint but refused to sign.
>
> "Serve[d] Feb. 2, 1993."[1]

On 23 February 1993, petitioner, claiming that Guevarra had failed to file an ANSWER within the reglementary period, moved to declare Guevarra in default. A copy of the motion was furnished Guevarra, through registered mail with return card, at 29 Burgos Street, Calamba, Laguna.

On 05 March 1993, the scheduled date of hearing on the aforesaid motion, the trial court held in abeyance any action pending submission to the court of proof of service to Guevarra.

On 16 March 1993, petitioner filed the registry return card indicating receipt of the motion.

On 19 March 1993, the trial court granted petitioner's Motion To Declare Defendant In Default and allowed an ex-parte presentation of petitioner's evidence.

On 19 May 1993, petitioner presented its evidence ex-parte. Petitioner rested, following its formal offer of documentary exhibits, and submitted the case for resolution by the court.

On 06 January 1994, the trial court rendered judgment in favor of petitioner; thus:

> "WHEREFORE, premises considered, the Court finds for the plaintiff and against the defendant and hereby renders judgment as follows:
>
> "1. Ordering the defendant to pay the plaintiff the sum of P76,800.47 with legal interest from March 3, 1993 and until the amount is fully paid;
>
> "2. Ordering the defendant to pay the amount of P10,000.00 as reasonable attorney's fees;
>
> "3. With cost of suit against the defendant."[2]

On 08 March 1994, a writ of execution was issued to implement the decision. On 26 July 1995, the Deputy Sheriff, implementing the writ, levied on Guevarra's Toyota Corolla bearing plate No. PRW-329. The notice of levy was served on Guevarra personally but he refused to sign the receipt thereof, expressed surprise over it, and stated that he was not aware of any case instituted against him.

On 28 July 1995, the Sheriff issued a notice of auction sale of the levied vehicle that was to take place on 07 August 1995 at ten o'clock in the morning.

On 07 August 1995, the vehicle was sold at public auction to Christopher Alex Sillano, the highest bidder, for P150,000.00. Whereupon, the corresponding certificate of sale was issued in his favor.

Guevarra turned over, on demand, the subject vehicle to the authorities; forthwith, however, he asked, in a certiorari petition (CA-G.R. SP No. 38048) before the Court of Appeals, for the nullification of the ex-parte judgment of 06 January 1994. Guevarra claimed that the trial court did not acquire jurisdiction over his person because of a defective service of summons on him. The appellate court, finding merit in the petition, annulled and set aside the default judgment, the writ of execution, the levy upon execution and the sale at public auction of the vehicle. It held, in its now assailed decision of 28 June 1996, that the substituted service of summons effected on private respondent was not valid and that, consequently, the proceedings had before the trial court were nugatory and without legal effect.

In its appeal to this Court, petitioner Toyota argues that the appellate court has gravely erred in ignoring the rule, enunciated in Mapa vs. Court of Appeals,[3] that the absence in the sheriff's return of a statement about the impossibility of personal service cannot be conclusive proof that the substituted service resorted to is invalid. Petitioner points out that Mapa has cautioned against jumping outright to the conclusion that a substituted service becomes inconsequential merely because the process server may have failed to state with specificity the reason for resorting to

substituted service. Petitioner asserts that the requirements of Section 8, Rule 14, of the Revised Rules of Court have been met and that the evidence for such compliance is the affidavit of the process server on the substituted service annexed to its reply filed before the appellate court.

The Court sustains the Court of Appeals.

Section 7, Rule 14, of the Rules of Court requires that summons must be served personally by "handing a copy thereof to the defendant in person or, if he refuses to receive it, by tendering it to him." If, however, this mode of service cannot be effected within a reasonable time, substituted service may be resorted to under Section 8 of the same Rule. A law prescribing the manner in which the service of summons should be effected is jurisdictional in character and its proper observance is what dictates the court's ability to take cognizance of the litigation before it. Compliance therewith must appear affirmatively in the return. It must so be as substitute service is a mode that departs or deviates from the standard rule. Substitute service must be used only in the way prescribed, and under circumstances authorized, by law.[4]

In Mapa vs. Court of Appeals,[5] we did say that -

> "x x x the absence in the sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Proof of prior attempts at personal service may be submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service. While the sheriff's return carries with it the presumption, albeit disputable, of regularity in the sense that inter alia, the entries therein are deemed correct, it does not necessarily follow that an act done in relation to the official duty for which the return is made was not done simply because it is not disclosed therein."[6]

The Court, however, has elucidated that evidence must in such a case be duly presented that would prove proper compliance with the rules on substituted service. Hence -

> "x x x. Unfortunately in these instant cases, the private respondent failed to present evidence during the hearings of the petitioner's separate motions to dismiss and set aside judgment to prove that substituted service of summons was indeed effected in strict compliance with Section 8, Rule 14 of the Rules of Court. During such hearings, the private respondent could also have presented evidence to show that the petitioner did in fact receive from Susan O. dela Torre the summonses, together with copies of the complaints, in both cases. If indeed the petitioner received the same, the requirement of due process would have been complied with."[7]