

TENTH DIVISION

[CA-G.R. CV. NO. 69357[1], June 28, 2006]

MYLENE CRUZ-ROCES, ASSISTED BY HER HUSBAND VITTORIO ROCES, PLAINTIFF-APPELLEE, VS. QUICKMART, INC., REPRESENTED HEREIN BY VIRGILIO Q. YU, YU CHIN HAN, HENRY YAO YU, ROMEO C. ASTILLERO AND ERWIN YAO YU, AND CHAMPION SECURITY AGENCY, HEREIN REPRESENTED BY ITS OWNER-PROPRIETOR JOHN BARATETA, DEFENDANTS-APPELLANTS,

DANILO MORAL, EDWIN VILLANUEVA AND DOMINGO LUMBES, DEFENDANTS.

DECISION

PERLAS-BERNABE, E., J.:

Before the Court is an appeal from the Decision^[2] dated October 18, 2000 of Branch 8, Regional Trial Court of Legazpi City (RTC) in Civil Case No. 9318 for Damages which decreed:

“WHEREFORE, premises considered, decision is hereby rendered in favor of the plaintiffs and against the defendants Quickmart, Inc., John B. Barateta as owner of Champion Security Agency, Edwin Villanueva and Domingo Lumbes, ordering said defendants to pay the plaintiffs, **jointly and severally**, the sum of P3,000,000.00 for moral damages, P500,000.00 for exemplary damages, P500,000.00 for attorney’s fees and litigation expenses and the costs of the suit.

The defendant Quickmart, Inc.’s counterclaim and cross claim against Champion Security Agency, Danilo Moral, Edwin Villanueva and Domingo Lumbes are hereby ordered dismissed.

Defendant Quickmart, Inc. is ordered to pay Danilo Moral the sum of P50,000.00 for attorney’s fees and litigation expenses.

SO ORDERED.”^[3]

As culled from the records, the following facts appear:

On *January 15, 1997*, a Complaint^[4] for “Damages” was filed by plaintiff-appellee Mylene Roces (hereinafter Mylene) against Quickmart, Inc. (hereinafter Quickmart), Virgilio Q. Yu, Yu Chin Han, Romeo C. Astillero and Erwin Yao Yu before the RTC, docketed as Civil Case No. 9318. The Complaint was amended on *February 4, 1997* to implead as additional defendants Champion Security Agency, Danilo Moral, Edwin Villanueva and Domingo Lumbes.^[5] It was further amended on *March 3, 1997* to

implead John B. Barateta as defendant.^[6] It was finally re-amended on *December 23, 1999* to make it conform to the evidence presented during the trial of the case.^[7]

Mylene claimed that at around 11:00 a.m. on January 9, 1997, she and her husband Vittorio Roces (hereinafter Vittorio) went to shop at Quickmart^[8] located along Rizal Street in Daraga, Albay. After buying around P 2,000 worth of groceries^[9] and paying the same, she went ahead of the bagger,^[10] put the receipt in her bag^[11] and slung the bag on her right shoulder.^[12] She stopped two steps away from the main exit^[13] facing the parking lot to look for her husband^[14] and to wait for the bagger.^[15] She looked to her right and signaled to the bagger, but a man^[16] about four (4) meters^[17] to her left called out aloud, "Miss." She looked at the man^[18] who said something in the Bicol language which she did not understand^[19] and not knowing him, she turned away and looked again for the bagger. This time the man shouted, "Miss, may ninakaw ka sa bag." Mylene just looked at him and wondered whether he was referring to her. The man repeated the accusation then moved towards her. Mylene backed off,^[20] got her bag and put it in front of her^[21] holding both sides of the bag firmly against her chest^[22] to protect herself as she felt the man was attacking her, but the latter approached her continuously. She looked at the security guard^[23] posted at the gate of Quickmart pleadingly^[24] but he just looked at her.^[25] The man then held her by the shoulders^[26] to keep her still^[27] and grabbed her bag, but Mylene pulled it back. He then grabbed her bag violently, opened it and forcibly searched its contents^[28] while continuously saying in a loud voice that she stole something^[29] (*i.e.*, a can of Century Tuna)^[30] and put it in her bag.^[31] The incident took place amidst a lot of people. Numerous shoppers stopped dead on their tracks to look at them.^[32] The man, however, found nothing except money and some documents in Mylene's bag.^[33] He then let go of her bag^[34] and in a very low voice, almost a whisper, said, "Sorry, wala pala."

Vittorio, who happened to be about 10 steps or a car away, saw the man rush to Mylene and held her by the shoulders.^[35] He ran towards her and asked why she was being held by the man.^[36] Mylene said, "Pinagbibintangan niya ako." Vittorio shouted at the man, "How could you do that?, and pushed him.^[37] A man from Quickmart snack house^[38] who identified himself as a policeman, intervened and tried to pacify and stop Vittorio from pushing the man further, who turned out to be a house detective^[39] under the employ of Champion Security Agency (hereinafter Champion) subcontracted by Quickmart^[40] and who was later identified to be Edwin Villanueva^[41] (hereinafter Edwin).^[42] The policeman told Vittorio, "Tama na." To Edwin he said, "Dai nindo namidbidan sinda aki ni Mayor Roces?"^[43]

Both Mylene and Vittorio (hereinafter Sps. Roces) were hysterical and shouted at the people of Quickmart. Mylene then asked the bagger to put the groceries in their van but Vittorio said, "Inakusahan ka na, you are still patronizing them?"^[44] He then threw the boxes of the groceries back inside the store^[45] and they asked for a refund.^[46]

As a result of the incident, Mylene claimed that she experienced humiliation,^[47] she could not sleep or eat, she kept crying, she shunned public function,^[48] hence, the claim for actual/compensatory damages in the amount of P5,000,000.00, moral damages in the amount of P5,000,000.00, exemplary damages in the amount of P1,000,000.00, attorney's fees, litigation expenses and the costs of suit.^[49]

Danilo Moral (hereinafter Danilo) filed his "Answer with Counterclaim"^[50] denying that he is the owner-proprietor of Champion or that he has the capacity to represent, sue or be sued for and in its behalf, claiming that he was a mere employee therein.^[51] In his testimony, he claimed to be a mere Finance Officer of Champion at its Extension Office in Daraga, Albay^[52] and was the only officer present when a certain Roger of Quickmart called the office to inform Champion about the incident.^[53] He further claimed that the responsible officers of Champion had exercised extraordinary care and diligence in the hiring and supervision of the guards involved, who merely followed the instructions and orders of Quickmart.^[54] He interposed a counterclaim for moral damages in the amount of P10,000,000.00, exemplary damages in the amount of P1,000,000.00, actual and compensatory damages in the amount of P5,000,000.00, attorney's fees, litigation expenses and the costs of suit.^[55]

Quickmart, Virgilio Q. Yu, Yu Chin Han, Romeo C. Astillero, and Erwin Yao Yu filed a joint "Answer with Counterclaim and Cross-claim."^[56] Quickmart denied the existence of any employer-employee relationship with Edwin, who conducted the search on Mylene, and Domingo Lumbes (hereinafter Domingo), at whose behest Edwin searched Mylene,^[57] both of whom were employees of Champion; while the other defendants claimed to be mere stockholders of Quickmart. They interposed a counterclaim for moral/compensatory and exemplary damages, attorney's fees, litigation expenses and costs of suit, and a cross-claim against Champion, Danilo, Edwin and Domingo for whatever amounts they will be adjudged to pay to Sps. Roces.

On April 16, 1997, Mylene moved to set the case for pre-trial, to declare John B. Barateta in default and to be allowed to present evidence ex-parte as against the latter, which the court granted in its Order^[58] dated April 28, 1997.

During the pre-trial conference, the parties agreed to limit the issues to the following: "(C)an defendants be held liable for damages for the search conducted on the plaintiffs (sic) by the security guards of defendant Champion Security Agency? On the cross claim is the cross-defendant liable to cross claimant?"^[59] The pre-trial order was subsequently amended to include an additional issue, namely: "(W)hether a search described by the plaintiffs in their Complaint was conducted on plaintiff, Mylene Cruz-Roces, by the security guards of defendant Champion Security Agency, and if there was, who among the defendants should be made liable therefor."^[60]

On June 1, 2000, Sps. Roces moved to declare Edwin and Domingo in default which the RTC granted in its Order^[61] dated June 6, 2000.

After due proceedings, the RTC rendered the assailed Decision on December 18,

2000. John Barateta (hereinafter John) and Quickmart interposed their respective appeals.^[62]

John imputed the following assignment of errors, to wit:

I

THE HONORABLE COURT A QUO HAS NEVER ACQUIRED JURISDICTION OVER DEFENDANTS JOHN BARATETA, EDWIN VILLANUEVA AND DOMINGO LUMBES.

II

THE HEREIN APPEALED DECISION OF THE COURT A QUO IS NULL AND VOID FOR DENIAL OF DUE PROCESS TO DEFENDANTS JOHN BARATETA, EDWIN VILLANUEVA AND DOMINGO LUMBES.

III

ASSUMING FOR THE SAKE OF ARGUMENT BUT WITHOUT ADMITTING THAT JURISDICTION HAS BEEN ACQUIRED BY THE COURT A QUO ON JOHN BARATETA, YET, UNLIQUIDATED DAMAGES COULD NOT BE IMPOSED AGAINST HIM BECAUSE HE WAS DECLARED IN DEFAULT.

IV

THE DECISION OF THE COURT A QUO WHICH AWARDED THE EXORBITANT AMOUNT OF THREE MILLION PESOS MORAL DAMAGES, FIVE MILLION^[63] PESOS EXEMPLARY DAMAGES AND FIVE MILLION^[64] PESOS ATTORNEY'S FEES TO PLAINTIFF AGAINST QUICKMART, INC. AND JOHN BARATETA IS AN UNDUE ENRICHMENT OF PLAINTIFF AND IS NOT SUPPORTED BY FACTS PROVEN DURING THE TRIAL, THE LAW AND JURISPRUDENCE ON THE MATTER.

V

ASSUMING FOR THE SAKE OF ARGUMENT BUT WITHOUT ADMITTING THAT THE COURT A QUO HAD ACQUIRED JURISDICTION OVER JOHN BARATETA, YET, HE COULD NOT BE HELD LIABLE FOR DAMAGES BECAUSE HE IS NOT THE EMPLOYER OF VILLANUEVA AND LUMBES AS COMPLETE SUPERVISION AND CONTROL OVER THE LATTER HOUSE DETECTIVES WAS EXERCISED BY DEFENDANT QUICKMART, INC."^[65]

On the other hand Quickmart argued that the RTC erred:

1. In acting on the Complaint, Amended Complaint, and Re-Amended Complaint and rendering a Decision despite its failure to validly acquire jurisdiction over the persons of Domingo, Edwin and Champion and/or John;
2. In ruling that Mylene has proven that she had a valid cause of action against it;

3. In ruling that it should be held liable for the acts of Domingo, Edwin and Champion;
4. In ruling that it is not entitled to its counterclaims and cross claims and, instead, be held liable for damages against Danilo.^[66]

The case *a quo* was for Damages^[67] under Articles 19,^[68] 21^[69] in relation to Articles 2176,^[70] 2180 and 2219 of the Civil Code. In her "Appellees' Brief," Mylene contended that under Article 107 of the Labor Code, the security agency, namely Champion, is the *direct employer* of Edwin and Domingo, while the client where they were designated, namely Quickmart, is considered the *indirect employer*. Both appellants, however, claim that the other is the employer of the two House Detectives. Nevertheless, both appellants attack, *inter alia*, the substituted service of summons upon John, Edwin and Domingo as invalid, warranting the setting aside of the assailed Decision for lack of jurisdiction over their persons. *There is merit in John's appeal.*

It bears to stress that the resolution of all the issues raised by John hinges upon a determination of whether or not jurisdiction was validly acquired over his person. In general, trial courts acquire jurisdiction over the person of the defendant by the service of summons. Where the action is *in personam* and the defendant is in the Philippines, *as in this case*, such service may be done by personal or substituted service, following the procedures laid out in Sections 6 and 7 of Rule 14 of the Rules of Court, which read:

"Section 6. *Service in person on defendant.* — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

"Section 7. *Substituted service.* — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."

As can be gleaned from the above-quoted Sections, personal service of summons is preferred to substituted service. Only if the former cannot be made promptly can the process server resort to the latter.^[71] Substituted service being in derogation of the usual method of service is a method extraordinary in character and hence may be used only as prescribed and in the circumstances authorized by statute.^[72] The proof of service of summons must (a) indicate the impossibility of service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business, of the defendant. It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return.^[73] The resort to a substituted service must be duly justified^[74] as the failure to comply faithfully, strictly and fully with all the foregoing requirements of