



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

NENA C. ANG, SPOUSES RENATO C. ANG and PAULINE ANG, SPOUSES GUILLERMO SY and ALISON ANG-SY, NELSON C. ANG, RICKY C. ANG , as substituted by his heirs, and MELINDA C. ANG,

Petitioners,

G.R. No. 200693

Present:

CARPIO, *J.*, Chairperson,
 BRION,
 PERALTA,*
 MENDOZA, and
 LEONEN, *JJ.*

- versus -

CHINATRUST (PHILIPPINES) COMMERCIAL BANK CORPORATION and THE ASIAN DEBT FUND,

Respondents.

Promulgated:

18 APR 2016

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DECISION

BRION, J.:

This petition for review on *certiorari* seeks to reverse the April 29, 2011 decision and January 30, 2012 resolution of the Court of Appeals (CA) in **CA-G.R. SP No. 99391**.¹ The CA only partly granted the petitioners' petition for *certiorari* against the May 17, 2007 order of the Regional Trial Court of Makati City (RTC), Branch 56 in **Civil Case No. 06-872**.² The RTC denied the petitioners' motion to dismiss the complaint for lack of jurisdiction over their person.

ANTECEDENTS

On October 11, 2006, respondent Chinatrust (Philippines) Banking Corporation (*Chinatrust*) filed a money claim (with an application for the

* Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo, per raffle dated March 14, 2016. On Leave.

¹ Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S.E. Veloso and Edwin D Sorongon.

² Penned by Judge Reynaldo M. Laigo.

issuance of a writ of preliminary attachment) amounting to US \$458,614.84 against Nation Petroleum Corporation (*Nation*) and petitioners Mario Ang, Nena Ang, Renato Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson Ang, Ricky Ang, and Melinda Ang (*collectively the defendants*). The complaint was filed before the RTC and docketed as **Civil Case No. 06-872**.

On October 12, 2006, the RTC, through its Branch Clerk of Court Atty. Richard C. Jamora issued summonses to the defendants. The summonses indicated Nation's address as "*Ground Floor, BPI Building, Rizal Street, Candelaria Quezon and/or 39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City.*" It also indicated the address of the individual defendants as "*39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City.*"

The RTC heard *ex parte* the application for a preliminary attachment on October 18, 2006. On October 27, 2006, the RTC granted Chinatrust's application for a writ of attachment conditioned on its posting of a ₱25,000,000.00 bond.

On November 6, 2006, Process Server Joseph R. Dela Cruz and Assisting Sheriff Robert V. Alejo executed an Officer's Return reporting their service of the summons. It reads:

That on 30 October 2006, the undersigned Process Server of this Court together with one of the assisting Sheriff Robert V. Alejo, and plaintiff's counsel and its representative served the copy of summons together with complaint, its annexes, writ, order and bond, upon defendants at *39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave. cor. Sen. Gil J. Puyat Ave., Makati City*, thru Mr. RICKY ANG, personally, who acknowledged receipt thereof but refused to sign in the original copy of summons, and the receptionist of the said firm informed that the other defendants have not yet arrived and it would be better if we will return in the afternoon.

That in the afternoon on even date, said processes were served thru Ms. MELINDA ANG, Corporate Secretary of defendant NATION PETROLEUM CORPORATION and instructed Ms. Charlotte Magpayo, Administrative Assistant of the said corporation to received [sic] the same.

That despite diligent efforts to locate the whereabouts of the other defendants MARIO ANG, NENA ANG, RENATO ANG, PAULINE ANG, GUILLERMO SY, ALISON ANG-SY and NELSON ANG outside the premises of their office, considering that said process server and his group were not allowed to enter, substituted service was made by leaving their respective court processes at their office or regular place of business through the same Ms. Charlotte Magpayo by affixing the "receiving stamp" of Nation Petroleum and her notation, as shown in the original copy of summons.³

³ *Rollo*, p. 112.

On November 21, 2006, the defendants entered a Special Appearance with a Motion to Dismiss the case for lack of jurisdiction.⁴ The defendants argued: (1) that the RTC failed to acquire jurisdiction over Nation because service of summons was made on Charlotte Magpayo, a mere property supply custodian,⁵ instead of the president, managing partner, general manager, corporate secretary, or in-house counsel;⁶ and (2) that the individual defendants were not validly served summons⁷ because (3) the process server improperly resorted to substituted service and failed to comply with its strict requirements.⁸

Chinatrust opposed the Motion to Dismiss,⁹ insisting: (1) that Nation was validly served summons because as a property supply custodian, Magpayo occupies a very responsible position that enjoys the highest degree of trust and confidence;¹⁰ (2) that the individual defendants likewise authorized Magpayo to receive the summons on their behalf;¹¹ (3) that the process server properly resorted to substituted service;¹² and (4) that Ricky Ang is estopped from contesting the validity of substituted service because he was served in person.¹³

On May 17, 2007, the RTC denied the defendants' Motion to Dismiss. The RTC held that Nation's corporate secretary Melinda Ang authorized Charlotte Magpayo as her agent for the limited purpose of receiving the summons.¹⁴ It further held that Melinda's denial of this fact is self-serving as she was never presented in court for cross-examination.

The RTC also held that Ricky Ang was validly served summons because he acknowledged receipt of the process even though he refused to sign the original copy.¹⁵

With respect to the remaining defendants, the RTC held that the process server's resort to substituted service on Charlotte Magpayo was warranted. The Court found: (1) that the process server and his group attempted to serve summons on the defendants on the morning of October 30, 2006 at their place of work; (2) that aside from Mr. Ricky Ang, the defendants had not yet arrived; (3) that the process server left and exerted diligent efforts to locate the defendants' whereabouts; (4) that he returned to the defendants' office on the afternoon of the same day but was denied entry

⁴ *Id.* at 114.

⁵ *Id.* at 116.

⁶ *Id.* at 115.

⁷ *Id.* at 117.

⁸ *Id.* at 119.

⁹ *Id.* at 125.

¹⁰ *Id.* at 127.

¹¹ *Id.* at 128.

¹² *Id.* at 131.

¹³ *Id.* at 134.

¹⁴ *Id.* at 196.

¹⁵ *Id.* at 197.

to the defendants' offices; and (5) therefore, he was forced to resort to substituted service through Charlotte Magpayo.¹⁶

On June 22, 2007, the defendants filed a petition for *certiorari* before the CA challenging the RTC's jurisdiction over them. The petition was docketed as **CA-G.R. SP No. 99391**.

In the meantime, Chinatrust assigned its rights to the trust receipt subject of **Civil Case No. 06-872** to respondent The Asian Debt Fund, Ltd. (*ADF*). Thus, the CA allowed *ADF* to be substituted for Chinatrust on March 9, 2010.

On April 29, 2011, the CA affirmed the RTC's May 17, 2007 order but dismissed the suit as against Nation.¹⁷ The CA held that RTC did not acquire jurisdiction over Nation because the list of corporate officers authorized to receive summons for a corporation is exclusive.¹⁸ The CA found insufficient evidence to support the RTC's conclusion that Nation's corporate secretary granted Charlotte Magpayo, a property supply custodian, a special power of attorney to receive summons for the corporation on her behalf.¹⁹

However, the CA upheld the process server's resort to substituted service with respect to the individual defendants.²⁰ The CA held that the process server exerted efforts to personally serve the summons on the individual defendants but was prohibited from entering their individual offices. This made personal service impossible, leaving the process server no choice but to resort to substituted service by leaving a copy of the summons with Charlotte Magpayo, a competent person of sufficient age and discretion in the defendants' office.²¹

On April 4, 2012, the individual defendants, now petitioners, filed the present petition for review on *certiorari*.

THE PETITION

The petitioners argue: (1) that the Officer's return failed to establish the impossibility of personal service;²² (2) that Charlotte Magpayo is not a competent person in charge of their business;²³ and (3) that the failure to comply with the strict requirements of substituted service renders the service of summons void.²⁴

¹⁶ *Id.*

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 52.

¹⁹ *Id.* at 53.

²⁰ *Id.* at 57.

²¹ *Id.* at 58-59.

²² *Id.* at 33.

²³ *Id.* at 38.

²⁴ *Id.* at 40.

On the other hand, ADF maintains that the questions of the impossibility of personal service and whether diligent efforts were exerted to locate the petitioners are factual matters that should not be passed upon in a petition for review on *certiorari*.²⁵ ADF continues that nevertheless, circumstances showed an impossibility of service because upon the server's return to the office, the petitioners' staff prevented them from entering the offices;²⁶ thus, the officers resorted to service of summons to a Charlotte Magpayo, a competent person authorized to receive summons in the Nation Petroleum office.²⁷

ADF also insists that Ricky Ang was personally tendered summons despite his refusal to sign the original.²⁸

OUR RULING

We find the petition partly meritorious.

In civil cases, jurisdiction over a party is acquired either through his voluntary appearance in court or upon a valid service of summons. When a party was not validly served summons and did not voluntarily submit to the court's jurisdiction, the court cannot validly grant any relief against him.

In an action strictly *in personam*, summons shall be served personally on the defendant whenever practicable.²⁹ Personal service is made by personally handing a copy of the summons to the defendant or by tendering it to him if he refuses to receive and sign for it.

While personal service is the preferred method of serving summons, the Rules of Court are also mindful that this is sometimes impracticable or even impossible. Thus, Rule 14 also allows the sheriff (or other proper court officer) to resort to substituted service instead:

SEC. 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.³⁰

But while the Rules permit substituted service, they also require strict compliance with its statutory requirements because of its extraordinary

²⁵ *Id.* at 390.

²⁶ *Id.* at 393.

²⁷ *Id.* at 396.

²⁸ *Id.* at 397.

²⁹ RULES OF COURT, Rule 14, Section 6.

³⁰ *Id.*, Section 67.

character.³¹ After all, substituted service is in derogation of the usual method of service.³²

In *Manotoc v. Court of Appeals*,³³ we dissected Rule 14, Section 8 and distilled the following elements of a valid substituted service:

First, the party relying on substituted service or the sheriff must establish the impossibility of prompt personal service.³⁴ Before substituted service of summons can be resorted to, the sheriff must have made several attempts to personally serve the summons within a reasonable period of one month. And by “several attempts,” the sheriff is expected to have tried *at least thrice on at least two different dates*.³⁵

Second, there must be specific details in the return describing the circumstances surrounding the attempted personal service.³⁶ The sheriff must describe the efforts he took and the circumstances behind the failure of his attempts. The details in the return serve as evidence to prove the impossibility of prompt personal service.

Nevertheless, the sheriff’s failure to make such a disclosure in the return does not conclusively prove that the service is invalid. The plaintiff may still establish the impossibility of service during the hearing of any incident assailing the validity of the substituted service.³⁷

Further, if there is a defect in the service of summons that is apparent on the face of the return, the trial court must immediately determine whether the defect is real or not.³⁸ If the defect is real, the court is obliged to issue new summonses and cause their service on the defendants.

Third, if substituted service is made at the defendant’s house or residence, the sheriff must leave a copy of the summons with a person of “*suitable age and discretion residing therein*.”³⁹ This refers to a person who has reached the age of full legal capacity and has sufficient discernment to comprehend the importance of a summons and his duty to deliver it immediately to the defendant.

Finally, if substituted service is made at the defendant’s office or regular place of business, the sheriff must instead leave a copy of the summons with a “*competent person in charge thereof*.” This refers to the

³¹ *Domagas v. Jensen*, 489 Phil. 631, 645-646 (2005), citing *Hamilton v. Levy*, 344 SCRA 821 (2000).

³² *Id.*; *Manotoc v. Court of Appeals*, 530 Phil. 454, 468 (2006); *Keister v. Navarro*, 167 Phil. 567, 573 (1977).

³³ *Manotoc v. Court of Appeals*, *supra* note 32.

³⁴ *Id.* at 468, citing *Arevalo v. Quintalan*, 202 Phil. 256, 262 (1982).

³⁵ *Id.* at 469.

³⁶ *Id.* at 470.

³⁷ *Mapa v. Court of Appeals*, G.R. No. 79374, October 2, 1992, 214 SCRA 417, 428.

³⁸ *Bank of the Philippine Islands v. Sps. Evangelista*, 441 Phil. 445, 449 (2002).

³⁹ *Manotoc v. Court of Appeals*, *supra* note 32, at 471.

person managing the office or the business of the defendant, such as the president or the manager.⁴⁰

A serving officer's failure to comply with any of these elements results in the court's failure to acquire jurisdiction over the person of the defendant. However, proof that the defendant actually received the summons in a timely manner or his failure to deny the same (which amounts to voluntary appearance)⁴¹ would satisfy the requirements of due process. The constitutional requirement of due process requires that the service be such as may be reasonably expected to give the notice desired.⁴² Once the service reasonably accomplishes that end, the requirement of justice is answered, traditional notions of fair play are satisfied, and due process is served.⁴³

The impossibility of prompt personal service was not established.

In the present case, the return failed to establish the impossibility of prompt personal service. The return stated that the process server and the assisting sheriffs made two attempts at personal service on the morning and the afternoon of October 30, 2006. The server claims that in between the two attempts, he made diligent efforts to locate the whereabouts of the other defendants outside their office.

The process server only made two attempts at Nation's office and both attempts were made on the same date. He did not even attempt to serve the defendants at their homes. This does not even meet the bare minimum requirements in *Manotoc*. This does not establish the impossibility of personal service within a reasonable period of time; this only shows a half-hearted attempt that hardly satisfies the diligence and best efforts required from a serving officer. We reiterate that the server must have made at least three attempts on two different dates within a reasonable period of one month before substituted service becomes available.

We cannot give credence to the server's general and sweeping claim that he exerted "diligent efforts" to locate the defendants' whereabouts outside the premises of the Nation Petroleum Office in between his attempts. That he exerted "diligent efforts" is a conclusion of fact which can only be made after examining the details of his efforts which were omitted from the return. Without the narration of these *particular* efforts, the courts cannot sufficiently conclude whether or not the efforts taken were, in fact, diligent.

While defendants are expected to avoid and evade service of summons, a serving officer is likewise expected to be resourceful,

⁴⁰ *Id.*

⁴¹ *Boticano v. Chu*, 232 Phil. 503, 511-512 (1987).

⁴² *Keister v. Navarro*, *supra* note 32, at 573.

⁴³ *Montalban v. Maximo*, 131 Phil. 154, 161 (1968).

persevering, canny, and diligent in serving the process on a defendant.⁴⁴ Given the circumstances, we find that immediate resort to substituted service was unwarranted for failure to establish the impossibility of personal service.

A property custodian is *not* a competent person in charge of the defendant's workplace.

Moreover, even assuming that Chinatrust were able to establish the impossibility of personal service, the substituted service through Charlotte Magpayo was invalid. A "competent person in charge" refers to one managing the office or the business, such as the president, manager, or the officer-in-charge. The rule presupposes the existence of a relation of confidence between such person and the defendant.

Charlotte Magpayo is a Property Custodian at Nation Petroleum. Her position denotes limited responsibility to office equipment, inventory, and supplies. Chinatrust did not submit any evidence that Magpayo's job description includes the management of Nation Petroleum's Makati office. We do not see how she can be considered as the *competent person in charge of the defendants' business or office* and the respondents failed to prove otherwise.

The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.⁴⁵ We find that the RTC failed to acquire jurisdiction over petitioners Mario Ang, Nena Ang, Renato Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson Ang, and Melinda Ang for failure to comply with the rules on substituted service under Rule 14, Section 8.

However, with respect to petitioner Ricky Ang, we sustain the lower courts' conclusion that he was personally served summons. Personal service may be effected by handing a copy of the summons to the defendant in person or, **if he refuses to receive and sign for it, by tendering it to him.**⁴⁶ The return indicates that Ricky Ang personally received a copy of the summons and the complaint despite his refusal to sign the original copy. This constitutes valid tender of the summons and the complaint.

This Court cannot tolerate – or worse, validate - laxity and laziness of judicial serving officers. And while this rule may seem unduly harsh on litigants, they too have a duty to be vigilant in the enforcement of their rights. A plaintiff's counsel has the duty to inspect the return to ensure that the rules on substituted service have been complied with. He cannot take legal shortcuts and gain advantage from an improperly served summons. He must

⁴⁴ *Manotoc v. Court of Appeals*, supra note 32, at 469.

⁴⁵ *Macasaet v. Co*, G.R. No. 156759, 5 June 2013, 697 SCRA 187, 203.

⁴⁶ RULES OF COURT, Rule 14, Section 6.

satisfy himself that the court regularly acquired jurisdiction over the other party. Otherwise, he must move for the issuance of alias summons as there is a failure of service.⁴⁷

We empathize with the situation of the ADF, but as an assignee of rights, it is bound by the actions (and inaction) of Chinatrust. We further note that the lawyer for Chinatrust was part of the serving entourage and should have known that the resort to substituted service was premature. Thus, we have no choice but to grant the petition and dismiss the complaint in **Civil Case No. 06-872** against all the petitioners, except for Ricky Ang, for failure of the RTC to acquire jurisdiction over their persons. As a consolation to ADF, this dismissal is *without prejudice* to the re-filing of the complaint against the petitioners or their subsequent inclusion in the same case upon a valid service of summons.

WHEREFORE, premises considered, we partly **GRANT** the petition.

The April 29, 2011 decision of the Court of Appeals in **CA-G.R. SP No. 99391** is **MODIFIED** and the complaint against Mario Ang, Nena C. Ang, Renato C. Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson C. Ang, and Melinda C. Ang in **Civil Case No. 06-872** is hereby **DISMISSED** for lack of jurisdiction over their persons **WITHOUT PREJUDICE** to its refiling in court.

The Regional Trial Court of Makati City, Branch 56 is **DIRECTED** to **PROCEED** with **Civil Case No. 06-872** against Ricky C. Ang.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:

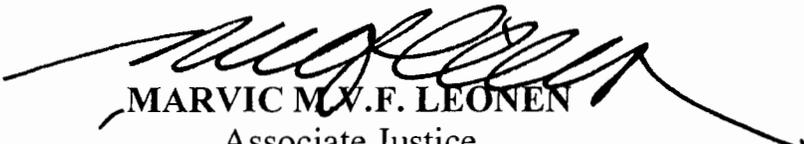

ANTONIO T. CARPIO
Associate Justice
Chairperson

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RULES OF COURT, Rule 14, Section 5.

(On Leave)
DIOSDADO M. PERALTA
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice