



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

MICHAEL C. GUY,
 Petitioner,

G.R. No. 206147

Present:

- versus -

CARPIO, *J.*, Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

ATTY. GLENN C. GACOTT,
 Respondent.

Promulgated:
 13 JAN 2016

MS Cabalag Projecto

x ----- x

DECISION

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Michael C. Guy (*Guy*), assailing the June 25, 2012 Decision¹ and the March 5, 2013 Resolution² of the Court of Appeals (*CA*) in CA-G.R. CV No. 94816, which affirmed the June 28, 2009³ and February 19, 2010⁴ Orders of the Regional Trial Court, Branch 52, Puerto Princesa City, Palawan (*RTC*), in Civil Case No. 3108, a case for damages. The assailed *RTC* orders denied Guy's Motion to Lift Attachment Upon Personalty⁵ on the ground that he was not a judgment debtor.

¹ *Rollo*, p. 23-38; Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla, concurring.

² *Id.* at 39-40.

³ *Id.* at 93-96; Penned by Judge Bienvenido C. Blancaflor.

⁴ *Id.* at 106-112.

⁵ *Id.* at 66-70.

The Facts

It appears from the records that on March 3, 1997, Atty. Glenn Gacott (*Gacott*) from Palawan purchased two (2) brand new transreceivers from Quantech Systems Corporation (*QSC*) in Manila through its employee Rey Medestomas (*Medestomas*), amounting to a total of ₱18,000.00. On May 10, 1997, due to major defects, Gacott personally returned the transreceivers to QSC and requested that they be replaced. Medestomas received the returned transreceivers and promised to send him the replacement units within two (2) weeks from May 10, 1997.

Time passed and Gacott did not receive the replacement units as promised. QSC informed him that there were no available units and that it could not refund the purchased price. Despite several demands, both oral and written, Gacott was never given a replacement or a refund. The demands caused Gacott to incur expenses in the total amount of ₱40,936.44. Thus, Gacott filed a complaint for damages. Summons was served upon QSC and Medestomas, after which they filed their Answer, verified by Medestomas himself and a certain Elton Ong (*Ong*). QSC and Medestomas did not present any evidence during the trial.⁶

In a Decision,⁷ dated March 16, 2007, the RTC found that the two (2) transreceivers were defective and that QSC and Medestomas failed to replace the same or return Gacott's money. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to jointly and severally pay plaintiff the following:

- | | |
|---|-------------|
| 1. Purchase price plus 6% per annum from March 3, 1997 up to and until fully paid ----- | ₱ 18,000.00 |
| 2. Actual Damages ----- | 40,000.00 |
| 3. Moral Damages ----- | 75,000.00 |
| 4. Corrective Damages ----- | 100,000.00 |
| 5. Attorney's Fees ----- | 60,000.00 |
| 6. Costs. | |

SO ORDERED.

The decision became final as QSC and Medestomas did not interpose an appeal. Gacott then secured a Writ of Execution,⁸ dated September 26, 2007.

⁶ Id. at 25.

⁷ Id. at 60-62.

⁸ Id. at 63.

During the execution stage, Gacott learned that QSC was not a corporation, but was in fact a general partnership registered with the Securities and Exchange Commission (*SEC*). In the articles of partnership,⁹ Guy was appointed as General Manager of QSC.

To execute the judgment, Branch Sheriff Ronnie L. Felizarte (*Sheriff Felizarte*) went to the main office of the Department of Transportation and Communications, Land Transportation Office (*DOTC-LTO*), Quezon City, and verified whether Medestomas, QSC and Guy had personal properties registered therein.¹⁰ Upon learning that Guy had vehicles registered in his name, Gacott instructed the sheriff to proceed with the attachment of one of the motor vehicles of Guy based on the certification issued by the DOTC-LTO.¹¹

On March 3, 2009, Sheriff Felizarte attached Guy's vehicle by virtue of the Notice of Attachment/Levy upon Personalty¹² served upon the record custodian of the DOTC-LTO of Mandaluyong City. A similar notice was served to Guy through his housemaid at his residence.

Thereafter, Guy filed his Motion to Lift Attachment Upon Personalty, arguing that he was not a judgment debtor and, therefore, his vehicle could not be attached.¹³ Gacott filed an opposition to the motion.

The RTC Order

On June 28, 2009, the RTC issued an order denying Guy's motion. It explained that considering QSC was not a corporation, but a registered partnership, Guy should be treated as a general partner pursuant to Section 21 of the Corporation Code, and he may be held jointly and severally liable with QSC and Medestomas. The trial court wrote:

All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof x x x. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership x x x, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefore to the same extent as the partner so acting or omitting to act. All partners are liable solidarily with the partnership for

⁹ Id. at 173-176.

¹⁰ RTC Records, Sheriff's Report, pp. 243-248.

¹¹ Id. at 247.

¹² *Rollo*, pp. 64-65.

¹³ Id. at 26.

everything chargeable to the partnership under Article 1822 and 1823.¹⁴

Accordingly, it disposed:

WHEREFORE, with the ample discussion of the matter, this Court finds and so holds that the property of movant Michael Guy may be validly attached in satisfaction of the liabilities adjudged by this Court against Quantech Co., the latter being an ostensible Corporation and the movant being considered by this Court as a general partner therein in accordance with the order of this court impressed in its decision to this case imposing joint and several liability to the defendants. The Motion to Lift Attachment Upon Personalty submitted by the movant is therefore DENIED for lack of merit.

SO ORDERED.¹⁵

Not satisfied, Guy moved for reconsideration of the denial of his motion. He argued that he was neither impleaded as a defendant nor validly served with summons and, thus, the trial court did not acquire jurisdiction over his person; that under Article 1824 of the Civil Code, the partners were only solidarily liable for the partnership liability under exceptional circumstances; and that in order for a partner to be liable for the debts of the partnership, it must be shown that all partnership assets had first been exhausted.¹⁶

On February 19, 2010, the RTC issued an order¹⁷ denying his motion.

The denial prompted Guy to seek relief before the CA.

The CA Ruling

On June 25, 2012, the CA rendered the assailed decision dismissing Guy's appeal for the same reasons given by the trial court. In addition thereto, the appellate court stated:

We hold that Michael Guy, being listed as a general partner of QSC during that time, cannot feign ignorance of the existence of the court summons. The verified Answer filed by one of the partners, Elton Ong, binds him as a partner because the Rules of Court does not require that summons be served on all the partners. It is sufficient that service be made on the "president, managing

¹⁴ Id. at 95-96.

¹⁵ Id. at 96.

¹⁶ Id. at 102-103.

¹⁷ Penned by Judge Angelo R. Arizala. Id. at 106-112.

partner, general manager, corporate secretary, treasurer or in-house counsel.” To Our mind, it is immaterial whether the summons to QSC was served on the theory that it was a corporation. What is important is that the summons was served on QSC’s authorized officer xxx.¹⁸

The CA stressed that Guy, being a partner in QSC, was bound by the summons served upon QSC based on Article 1821 of the Civil Code. The CA further opined that the law did not require a partner to be actually involved in a suit in order for him to be made liable. He remained “solidarily liable whether he participated or not, whether he ratified it or not, or whether he had knowledge of the act or omission.”¹⁹

Aggrieved, Guy filed a motion for reconsideration but it was denied by the CA in its assailed resolution, dated March 5, 2013.

Hence, the present petition raising the following

ISSUE

**THE HONORABLE COURT OF APPEALS
COMMITTED REVERSIBLE ERROR IN HOLDING
THAT PETITIONER GUY IS SOLIDARILY LIABLE
WITH THE PARTNERSHIP FOR DAMAGES
ARISING FROM THE BREACH OF THE
CONTRACT OF SALE WITH RESPONDENT
GACOTT.²⁰**

Guy argues that he is not solidarily liable with the partnership because the solidary liability of the partners under Articles 1822, 1823 and 1824 of the Civil Code only applies when it stemmed from the act of a partner. In this case, the alleged lapses were not attributable to any of the partners. Guy further invokes Article 1816 of the Civil Code which states that the liability of the partners to the partnership is merely joint and subsidiary in nature.

In his Comment,²¹ Gacott countered, among others, that because Guy was a general and managing partner of QSC, he could not feign ignorance of the transactions undertaken by QSC. Gacott insisted that notice to one partner must be considered as notice to the whole partnership, which included the pendency of the civil suit against it.

¹⁸ Id. at 32-33.

¹⁹ Id. at 36.

²⁰ Id. at 13.

²¹ Id. at 169-172

In his Reply,²² Guy contended that jurisdiction over the person of the partnership was not acquired because the summons was never served upon it or through any of its authorized office. He also reiterated that a partner's liability was joint and subsidiary, and not solidary.

The Court's Ruling

The petition is meritorious.

The service of summons was flawed; voluntary appearance cured the defect

Jurisdiction over the person, or jurisdiction *in personam* – the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*.²³ Jurisdiction over the person of the plaintiff is acquired by the mere filing of the complaint in court. As the initiating party, the plaintiff in a civil action voluntarily submits himself to the jurisdiction of the court. As to the defendant, the court acquires jurisdiction over his person either by the proper service of the summons, or by his voluntary appearance in the action.²⁴

Under Section 11, Rule 14 of the 1997 Revised Rules of Civil Procedure, when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Jurisprudence is replete with pronouncements that such provision provides an **exclusive enumeration** of the persons authorized to receive summons for juridical entities.²⁵

The records of this case reveal that QSC was never shown to have been served with the summons through any of the enumerated authorized persons to receive such, namely: president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. Service of summons upon persons **other than those officers enumerated in Section 11 is invalid**. Even substantial compliance is not sufficient service of summons.²⁶ The CA was obviously mistaken when it opined that it was

²² Id. at 194-205.

²³ *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 198.

²⁴ Id. at 201.

²⁵ *Cathay Metal Corp. v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 172204, July 2, 2014, 728 SCRA 482, 504.

²⁶ Id.

immaterial whether the summons to QSC was served on the theory that it was a corporation.²⁷

Nevertheless, while proper service of summons is necessary to vest the court jurisdiction over the defendant, the same is merely procedural in nature and the lack of or defect in the service of summons may be cured by the defendant's subsequent voluntary submission to the court's jurisdiction through his filing a responsive pleading such as an answer. In this case, it is not disputed that QSC filed its Answer despite the defective summons. Thus, jurisdiction over its person was acquired through voluntary appearance.

A partner must be separately and distinctly impleaded before he can be bound by a judgment

The next question posed is whether the trial court's jurisdiction over QSC extended to the person of Guy insofar as holding him solidarily liable with the partnership. After a thorough study of the relevant laws and jurisprudence, the Court answers in the negative.

Although a partnership is based on *delectus personae* or mutual agency, whereby any partner can generally represent the partnership in its business affairs, it is *non sequitur* that a suit against the partnership is necessarily a suit impleading each and every partner. It must be remembered that a partnership is a juridical entity that has a distinct and separate personality from the persons composing it.²⁸

In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court.²⁹ A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party.³⁰ The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.³¹

²⁷ *Rollo*, p. 33.

²⁸ Article 1768 of the Civil Code.

²⁹ *Villanueva v. Velasco*, 399 Phil. 664, 673 (2000).

³⁰ *Dare Adventure Farm Corporation v. CA*, G.R. No. 161122, September 24, 2012, 681 SCRA 580, 583.

³¹ *Id.* at 588.

In *Muñoz v. Yabut, Jr.*,³² the Court declared that a person not impleaded and given the opportunity to take part in the proceedings was not bound by the decision declaring as null and void the title from which his title to the property had been derived. The effect of a judgment could not be extended to non-parties by simply issuing an alias writ of execution against them, for no man should be prejudiced by any proceeding to which he was a stranger.

In *Aguila v. Court of Appeals*,³³ the complainant had a cause of action against the partnership. Nevertheless, it was the partners themselves that were impleaded in the complaint. The Court dismissed the complaint and held that it was the partnership, not its partners, officers or agents, which should be impleaded for a cause of action against the partnership itself. The Court added that the partners could not be held liable for the obligations of the partnership unless it was shown that the legal fiction of a different juridical personality was being used for fraudulent, unfair, or illegal purposes.³⁴

Here, Guy was never made a party to the case. He did not have any participation in the entire proceeding until his vehicle was levied upon and he suddenly became QSC's "co-defendant debtor" during the judgment execution stage. It is a basic principle of law that money judgments are enforceable only against the property incontrovertibly belonging to the judgment debtor.³⁵ Indeed, the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.³⁶

In the spirit of fair play, it is a better rule that a partner must first be impleaded before he could be prejudiced by the judgment against the partnership. As will be discussed later, a partner may raise several defenses during the trial to avoid or mitigate his obligation to the partnership liability. Necessarily, before he could present evidence during the trial, he must first be impleaded and informed of the case against him. It would be the height of injustice to rob an innocent partner of his hard-earned personal belongings without giving him an opportunity to be heard. Without any showing that Guy himself acted maliciously on behalf of the company, causing damage or

³² 665 Phil. 488 (2011).

³³ 377 Phil. 257, 267 (1999).

³⁴ See *McConnel v. Court of Appeals*, 111 Phil. 310 (1961).

³⁵ *Villasi v. Garcia*, G.R. No. 190106, January 15, 2014, 713 SCRA 629, 637.

³⁶ *Id.* at 638.

injury to the complainant, then he and his personal properties cannot be made directly and solely accountable for the liability of QSC, the judgment debtor, because he was not a party to the case.

Further, Article 1821 of the Civil Code **does not state that there is no need to implead a partner** in order to be bound by the partnership liability. It provides that:

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of fraud on the partnership, committed by or with the consent of that partner.

[Emphases and Underscoring Supplied]

A careful reading of the provision shows that notice to any partner, under certain circumstances, operates as notice to or knowledge to the partnership only. Evidently, it does not provide for the reverse situation, or that notice to the partnership is notice to the partners. Unless there is an unequivocal law which states that a partner is automatically charged in a complaint against the partnership, the constitutional right to due process takes precedence and a partner must first be impleaded before he can be considered as a judgment debtor. To rule otherwise would be a dangerous precedent, harping in favor of the deprivation of property without ample notice and hearing, which the Court certainly cannot countenance.

Partners' liability is subsidiary and generally joint; immediate levy upon the property of a partner cannot be made

Granting that Guy was properly impleaded in the complaint, the execution of judgment would be improper. Article 1816 of the Civil Code governs the liability of the partners to third persons, which states that:

Article 1816. All partners, including industrial ones, shall be liable **pro rata with all their property and after all the partnership assets have been exhausted**, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract.

[Emphasis Supplied]

This provision clearly states that, *first*, the partners' obligation with respect to the partnership liabilities is subsidiary in nature. It provides that the partners shall only be liable with their property after all the partnership assets have been exhausted. To say that one's liability is subsidiary means that it merely becomes secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation. Resort to the properties of a partner may be made only after efforts in exhausting partnership assets have failed or that such partnership assets are insufficient to cover the entire obligation. The subsidiary nature of the partners' liability with the partnership is one of the valid defenses against a premature execution of judgment directed to a partner.

In this case, had he been properly impleaded, Guy's liability would only arise after the properties of QSC would have been exhausted. The records, however, miserably failed to show that the partnership's properties were exhausted. The report³⁷ of the sheriff showed that the latter went to the main office of the DOTC-LTO in Quezon City and verified whether Medestomas, QSC and Guy had personal properties registered therein. Gacott then instructed the sheriff to proceed with the attachment of one of the motor vehicles of Guy.³⁸ The sheriff then served the Notice of Attachment/Levy upon Personalty to the record custodian of the DOTC-LTO of Mandaluyong City. A similar notice was served to Guy through his housemaid at his residence.

Clearly, no genuine efforts were made to locate the properties of QSC that could have been attached to satisfy the judgment – contrary to the clear mandate of Article 1816. Being subsidiarily liable, Guy could only be held personally liable if properly impleaded and after all partnership assets had been exhausted.

Second, Article 1816 provides that the partners' obligation to third persons with respect to the partnership liability is *pro rata* or joint. Liability is *joint* when a debtor is liable only for the payment of only a proportionate part of the debt. In contrast, a *solidary* liability makes a debtor liable for the payment of the entire debt. In the same vein, Article 1207 does not presume solidary liability unless: 1) the **obligation expressly** so states; or 2) the **law or nature requires** solidarity. With regard to partnerships, ordinarily, the liability of the partners is not solidary.³⁹ The joint liability of the partners is a defense that can be raised by a partner impleaded in a complaint against the partnership.

³⁷ RTC Records, Sheriff's Report, pp. 243-248.

³⁸ Id. at 247.

³⁹ *Liwanag v. Workmen's Compensation Commission*, 105 Phil 741, 743 (1959).

In other words, only in exceptional circumstances shall the partners' liability be solidary in nature. Articles 1822, 1823 and 1824 of the Civil Code provide for these exceptional conditions, to wit:

Article 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

Article 1823. The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

Article 1824. All partners are **liable solidarily** with the partnership for everything chargeable to the partnership **under Articles 1822 and 1823.**

[Emphases Supplied]

In essence, these provisions articulate that it is the **act of a partner** which caused loss or injury to a third person that makes all other partners solidarily liable with the partnership because of the words "*any wrongful act or omission of **any partner** acting in the ordinary course of the business,*" "***one partner** acting within the scope of his apparent authority*" and "*misapplied by **any partner** while it is in the custody of the partnership.*" The obligation is solidary because the law protects the third person, who in good faith relied upon the authority of a partner, whether such authority is real or apparent.⁴⁰

In the case at bench, it was not shown that Guy or the other partners did a wrongful act or misapplied the money or property he or the partnership received from Gacott. A third person who transacted with said partnership can hold the partners solidarily liable for the whole obligation **if the case of the third person falls under Articles 1822 or 1823.**⁴¹ Gacott's claim

⁴⁰ *Muñasque v. Court of Appeals*, 224 Phil. 79, 90 (1985).

⁴¹ *Id.* at 89.

stemmed from the alleged defective transreceivers he bought from QSC, through the latter's employee, Medestomas. It was for a breach of warranty in a contractual obligation entered into in the name and for the account of QSC, not due to the acts of any of the partners. For said reason, it is the general rule under Article 1816 that governs the joint liability of such breach, and not the exceptions under Articles 1822 to 1824. Thus, it was improper to hold Guy solidarily liable for the obligation of the partnership.

Finally, Section 21 of the Corporation Code,⁴² as invoked by the RTC, cannot be applied to sustain Guy's liability. The said provision states that a general partner shall be liable for all debts, liabilities and damages incurred by an ostensible corporation. It must be read, however, in conjunction with Article 1816 of the Civil Code, which governs the liabilities of partners against third persons. Accordingly, whether QSC was an alleged ostensible corporation or a duly registered partnership, the liability of Guy, if any, would remain to be joint and subsidiary because, as previously stated, **all partners** shall be liable *pro rata* with all their property and after all the partnership assets have been exhausted for the contracts which may be entered into in the name and for the account of the partnership.

WHEREFORE, the petition is **GRANTED**. The June 25, 2012 Decision and the March 5, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 94816 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Regional Trial Court, Branch 52, Puerto Princesa City, is **ORDERED TO RELEASE** Michael C. Guy's Suzuki Grand Vitara subject of the Notice of Levy/Attachment upon Personalty.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁴² All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: *Provided, however*, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
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

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