



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
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**EXPRESS PADALA (ITALIA)
 S.P.A., now BDO REMITTANCE
 (ITALIA) S.P.A.,**

G.R. No. 202505

Petitioner,

Present:

-versus-

SERENO, *CJ.*, Chairperson,*
 LEONARDO-DE CASTRO,**
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, *JJ.*

HELEN M. OCAMPO,

Respondent.

Promulgated:

SEP 06 2017

X -----X

DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*¹ challenging the Decision² dated January 5, 2012 and Resolution³ dated June 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 113475. The CA granted the petition for *certiorari* filed by respondent Helen M. Ocampo (Ocampo) and set aside the Decision⁴ dated September 14, 2009 of the Regional Trial Court (RTC) in Civil Case No. MC08-3775 which granted BDO Remittance (Italia) S.P.A.'s (BDO Remittance) petition for recognition of foreign judgment.

The core issue being raised is whether service of summons was validly effected upon respondent, who lives in Italy, through substituted service.

* On official leave.

** Designated as Acting Chairperson of the First Division per Special Order No. 2480 dated August 31, 2017.

¹ *Rollo*, pp. 8-25.

² *Id.* at 27-44, penned by Associate Justice Danton Q. Bueser and Associate Justices Rosmari D. Carandang and Ricardo R. Rosario, concurring.

³ *Id.* at 46-47.

⁴ *Id.* at 123-129.

BDO Remittance, a corporation with principal office in Italy, hired respondent Ocampo as a remittance processor in September 2002. She was dismissed in February 2004 for misappropriating the sum of €24,035.60 by falsifying invoices of money payments relating to customers' money transfer orders from February to December 2003.⁵

Accordingly, BDO Remittance filed a criminal complaint against Ocampo for the same acts before the Court of Turin, Italy. Ocampo pleaded guilty to the offense charged. On April 13, 2005, the Honorable Court of Turin convicted and sentenced her to suffer imprisonment of six months and a penalty of €300.00, but granted her the benefit of suspension of the enforcement of sentence on account of her guilty plea (the Court of Turin Decision).⁶

On September 22, 2008, BDO Remittance filed a petition for recognition of foreign judgment⁷ with the RTC of Mandaluyong City. BDO Remittance prayed for the recognition of the Court of Turin Decision and the cancellation or restriction of Ocampo's Philippine passport by the Department of Foreign Affairs (DFA).⁸

On November 21, 2008, the sheriff attempted to personally serve the summons on Ocampo in her local address alleged in the petition located in San Bernardo Village, Darasa, Tanauan, Batangas. However, since the address was incomplete, the sheriff sought the help of barangay officials, who pointed him to the house belonging to Ocampo's father, Nicasio Ocampo. Victor P. Macahia (Macahia), uncle of Ocampo and present occupant, informed the sheriff that Ocampo and her family were already in Italy, and that he was only a caretaker of the house. The sheriff then proceeded to serve the summons upon Macahia.⁹ After Ocampo failed to file an answer, BDO Remittance filed a motion to declare Ocampo in default. The RTC granted the motion and allowed BDO Remittance to present evidence *ex parte*.¹⁰

On September 14, 2009, the RTC rendered a Decision¹¹ in favor of BDO Remittance (RTC Decision). It recognized as valid and binding in the Philippines the Court of Turin Decision and ordered the DFA to cancel or restrict Ocampo's Philippine passport and not to allow its renewal until she has served her sentence.¹²

⁵ *Id.* at 123-124.

⁶ *Id.* at 29.

⁷ *Id.* at 115-121.

⁸ *Id.* at 119.

⁹ *Id.* at 30-31.

¹⁰ *Id.* at 31.

¹¹ *Supra* note 4.

¹² *Rollo*, p. 128.



On February 11, 2010, Ocampo's mother, Laureana Macahia, received a copy of the RTC Decision and forwarded it to Ocampo.¹³ Not having been represented by counsel *a quo*, the period of appeal lapsed. Ocampo was later able to engage the services of counsel who filed a petition for *certiorari* under Rule 65 with the CA on April 12, 2010.¹⁴ Ocampo principally argued that the RTC acted in grave abuse of discretion in recognizing and ordering the enforcement of the Court of Turin Decision.¹⁵

In its now assailed Decision,¹⁶ the CA set aside the RTC Decision and revoked the order to cancel or restrict Ocampo's Philippine passport (CA Decision). The CA first settled the issue of procedural due process, particularly whether Ocampo was properly served with summons. It held that since Ocampo's whereabouts were unknown, summons should have been served in accordance with Section 14, Rule 14 of the Rules of Civil Procedure. The sheriff however, erroneously effected the substituted service of summons under Section 7 of Rule 14. Thus, the CA concluded that the RTC did not acquire jurisdiction over Ocampo, and the RTC Decision against her is null and void. It also found that the RTC acted in grave abuse of discretion when it recognized a foreign judgment of a criminal case and ordered the DFA to restrict or cancel Ocampo's passport.¹⁷

After the CA denied its motion for reconsideration, BDO Remittance filed the present petition for review under Rule 45 arguing that: (1) Ocampo availed of the wrong remedy; and (2) the RTC did not gravely abuse its discretion in granting the petition for recognition of foreign judgment and ordering the DFA to restrict or cancel Ocampo's passport.¹⁸

In her comment,¹⁹ Ocampo explained that BDO Remittance's insistence on the enforcement of Court of Turin Decision is misleading because, by availing of the benefit of suspension of the enforcement, the penalty of confinement will not be enforced upon her. She also presented a decree²⁰ from the High Court of Turin dated June 29, 2010 which stated that her criminal liability has been extinguished.

We deny the petition.

The general rule in this jurisdiction is that summons must be served personally on the defendant. Section 6, Rule 14 of the Rules of Court provides:

¹³ *Id.* at 95.

¹⁴ *Id.* at 176.

¹⁵ *Id.* at 33.

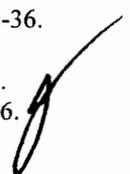
¹⁶ *Supra* note 2.

¹⁷ *Rollo*, pp. 33-36.

¹⁸ *Id.* at 15-22.

¹⁹ *Id.* at 94-114.

²⁰ *Id.* at 155-156.



Sec. 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.

For justifiable reasons, however, other modes of serving summons may be resorted to. When the defendant cannot be served personally within a reasonable time after efforts to locate him have failed, the rules allow summons to be served by substituted service. Substituted service is effected by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.²¹

When the defendant's whereabouts are unknown, the rules allow service of summons by publication.²² As an exception to the preferred mode of service, service of summons by publication may only be resorted to when the whereabouts of the defendant are not only unknown, but cannot be ascertained by diligent inquiry. The diligence requirement means that there must be prior resort to personal service under Section 7 and substituted service under Section 8, and proof that these modes were ineffective before summons by publication may be allowed.²³ This mode also requires the plaintiff to file a written motion for leave of court to effect service of summons by publication, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.²⁴

In the present case, the sheriff resorted to substituted service upon Ocampo through her uncle, who was the caretaker of Ocampo's old family residence in Tanauan, Batangas. The CA held that substituted service was improperly resorted to. It found that since Ocampo's "whereabouts are unknown and cannot be ascertained by diligent inquiry x x x service may be effected only by publication in a newspaper of general circulation."²⁵

We agree with the CA that substituted service is improper under the facts of this case. Substituted service presupposes that the place where the summons is being served is the defendant's **current residence** or **office/regular place of business**. Thus, where the defendant neither resides nor holds office in the address stated in the summons, substituted service cannot be resorted to. As we explained in *Keister v. Navarro*:²⁶

Under the Rules, substituted service may be effect[ed]
(a) by leaving copies of the summons at the defendant's
dwelling house or *residence* with some *person* of suitable

²¹ RULES OF COURT, Rule 14, Sec. 7.

²² RULES OF COURT, Rule 14, Sec. 14.

²³ See *Pua v. Deyto*, G.R. No. 173336, November 26, 2012, 686 SCRA 365, 372-373, citing *Santos, Jr. v. PNO Exploration Corporation*, G.R. No. 170943, September 23, 2008, 566 SCRA 272.

²⁴ RULES OF COURT, Rule 14, Sec. 17.

²⁵ *Rollo*, p. 35.

²⁶ G.R. No. L-29067, May 31, 1977, 77 SCRA 209

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*. The terms "dwelling house" or "residence" are generally held to refer to the time of service, hence it is not sufficient "to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom." They refer to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms "office" or "regular place of business" refer to the office or place of business of defendant at the time of service. Note that the rule designates the persons to whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.²⁷ (Italics in the original, citations omitted.)

Based on the sheriff's report, it is clear that Ocampo no longer resides in San Bernardo Village, Darasa, Tanauan, Batangas. The report categorically stated that "defendant Helen M. Ocampo and her family were already in Italy,"²⁸ without, however, identifying any specific address. Even BDO Remittance itself admitted in its petition for recognition that Ocampo's "whereabouts in Italy are no longer certain."²⁹ This, we note, is the reason why in alleging the two addresses of Ocampo, one in Italy and one in the Philippines, BDO Remittance used the phrase "last known [address]"³⁰ instead of the usual "resident of." Not being a resident of the address where the summons was served, the substituted service of summons is ineffective. Accordingly, the RTC did not acquire jurisdiction over the person of Ocampo.

BDO Remittance's reliance on *Palma v. Galvez*³¹ is misplaced for the simple reason that the case involved service of summons to a person who is *temporarily* out of the country. In this case, however, Ocampo's sojourn in Italy cannot be classified as temporary considering that she already resides there, albeit her precise address was not known. Modes of service of summons must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. The purpose of this is to afford the defendant an opportunity to be heard on the claim against him.³² BDO Remittance is not totally without recourse, as the rules allow summons by publication and extraterritorial service.³³ Unlike substituted service, however, these are extraordinary modes which require leave of court.

²⁷ *Id.* at 215-216.

²⁸ *Rollo*, p. 30.

²⁹ *Id.* at 118.

³⁰ *Id.* at 115.

³¹ G.R. No. 165273, March 10, 2010, 615 SCRA 86.

³² *Pacaña-Gonzales v. Court of Appeals*, G.R. No. 150908, January 21, 2005, 449 SCRA 196, 204.

³³ RULES OF COURT, Rule 14, Sec. 15.

The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process. As a rule, if a defendant has not been validly summoned, the court acquires no jurisdiction over his person, and a judgment rendered against him is void.³⁴ Since the RTC never acquired jurisdiction over the person of Ocampo, the judgment rendered by the court could not be considered binding upon her.

Consequently, it is no longer necessary to delve into the other issues raised in the petition. These issues can be resolved by the trial court upon acquiring jurisdiction over Ocampo and giving her an opportunity to be heard. It is in a better position to receive and assess the evidence that may be presented by Ocampo, including the decree dated June 29, 2010 issued by the High Court of Turin, to the effect that her liability has been extinguished. While such claim would tend to render the case moot, we refuse to consider the argument at the first instance on two grounds: first, we are not a trier of facts; and second, the document submitted has not been authenticated in accordance with the rules on evidence.

WHEREFORE, the petition is **DENIED**. The Decision dated January 5, 2012 and Resolution dated June 27, 2012 of the Court of Appeals in CA-G.R. SP No. 113475 are **AFFIRMED** insofar as there was no valid service of summons. The Decision dated September 14, 2009 of the Regional Trial Court, Branch 212, Mandaluyong City in Civil Case No. MC08-3775 is declared **VOID**.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

(On Official Leave)
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

³⁴ *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, 694 SCRA 302, 311.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


NOEL GIMENEZ TIJAM
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.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified 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
Senior Associate Justice
Acting Chief Justice