



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 20, 2022**, which reads as follows:

“G.R. No. 248649 (*TL2 Shipping Agency, Inc. v. Hanjin Shipping Co., Ltd.*). — This Petition for Review on *Certiorari*<sup>1</sup> assails the *Decision*<sup>2</sup> dated 19 February 2019 and the *Resolution*<sup>3</sup> dated 11 July 2019 of the Court of Appeals (CA), which granted the Petition for *Certiorari* and Prohibition<sup>4</sup> and denied the Motion for Reconsideration<sup>5</sup> thereof, respectively, in CA-G.R. SP No. 154620.

The factual milieu of the case is as follows:

Petitioner TL2 Shipping Agency, Inc. is a company duly organized and existing in the Philippines, and doing business as a shipping agent. Meanwhile, respondent Hanjin Shipping Co., Ltd. — a non-registered, non-resident foreign corporation holding office abroad in Seoul, South Korea — is an international common carrier which ships and transports goods and cargoes worldwide.

On 1 July 2016, petitioner and respondent executed an Agency Agreement (Agreement) appointing the former as the latter’s shipping agent in the Philippines tasked, *inter alia*, to represent respondent in all its dealings in the Philippines.<sup>6</sup> On the other hand, respondent was obliged under the Agreement to pay petitioner commissions from its net ocean revenues, container handling fees, DEM/DET Charges commission, and other miscellaneous fees. Respondent was likewise required to remit to petitioner the disbursements made on its behalf, and to reimburse any expense that the latter may incur for the services it would render. In this regard, respondent

<sup>1</sup> Rollo, pp. 9-19.

<sup>2</sup> Id. at 20-28. Penned by Associate Justice Danton Q. Bueser (now retired) with Associate Justices Mariflor Punzalan Castillo and Rafael Antonio M. Santos, concurring.

<sup>3</sup> Id. at 29-33.

<sup>4</sup> Id. at 115-156.

<sup>5</sup> Id. at 174-187.

<sup>6</sup> Id. at 20-21.

also undertook to reimburse petitioner of all its expenses for the renovation of the agency office and to pay the salaries of the agency employees.<sup>7</sup>

As it happened, respondent filed a petition for bankruptcy/rehabilitation with the Seoul Central District Court in South Korea (Seoul District Court). The Seoul District Court thereby issued an order prohibiting all creditors from attaching or exercising any security right until judgment would be rendered on the petition. Pursuant thereto, a representative of respondent informed petitioner of the impending court receivership *via* e-mail and instructed petitioner to “[s]top all payment of [sic] officer including agents”.<sup>8</sup> This, notwithstanding, petitioner wrote respondent a demand letter<sup>9</sup> seeking claims for reimbursement for the renovation of its agency office and earned commissions.<sup>10</sup>

Petitioner ensuingly instituted a Complaint for sum of money and damages<sup>11</sup> (Complaint) before the Regional Trial Court (RTC) of Parañaque City. The case, docketed as Civil Case No. 2016-261, was raffled off to Branch 274 thereat. Petitioner averred that respondent had an unpaid obligation of ₱30,000,000.00 in commission fees and reimbursements, and prayed for the issuance of a writ of preliminary attachment. Ensuingly, the RTC granted petitioner's prayer and issued the writ of preliminary attachment.<sup>12</sup> In implementing the writ, the Sheriff seized, levied upon, and garnished and/or attached respondent's properties as evidenced by the Partial Sheriff's Return.<sup>13</sup> Concurrently, petitioner filed a motion for leave to serve summons by publication.<sup>14</sup> On even date, petitioner's complaint was amended, contending that respondent's unpaid obligations had already ballooned to ₱90,000,000.00.<sup>15</sup>

By way of special appearance, respondent lodged on 1 February 2017 an Urgent Omnibus Motion to Dismiss and Lift Writ of Preliminary Attachment (Urgent Omnibus Motion)<sup>16</sup> arguing that: (1) the RTC had no jurisdiction over respondent; (2) the RTC had no jurisdiction over the *res*; (3) the condition precedent for the filing of the claim had not been complied with; (4) the affiant, acting on behalf of petitioner, lacked the authority to sign and execute the Certificate of Non-Forum Shopping; and (5) the Complaint failed to state a cause of action.<sup>17</sup>

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<sup>7</sup> Id. at 21.

<sup>8</sup> Id. at 21 and 37.

<sup>9</sup> Id. at 38-39.

<sup>10</sup> Id. at 21 and 47-49.

<sup>11</sup> Id. at 34-43.

<sup>12</sup> Id. at 22, 45, and 50.

<sup>13</sup> Id. at 22, 45, 50, and 89.

<sup>14</sup> Id. at 26, 55 and 91.

<sup>15</sup> Id. at 41-54.

<sup>16</sup> Id. at 55-84.

<sup>17</sup> Id. at 22 and 55-84.

Respondent argued that petitioner's action for collection of sum of money was one *in personam*, which required jurisdiction over the person of the defendant so that the court may validly try and decide the case. Here, the RTC had not acquired jurisdiction over its person due to petitioner's failure to serve summons upon it. Furthermore, the action against respondent was not validly converted into an action *quasi in rem* and, therefore, personal service of summons was still required.<sup>18</sup>

Meanwhile, on 17 February 2017, the Seoul District Court rendered a decision declaring respondent bankrupt and appointing a trustee over the company.<sup>19</sup>

In the Order<sup>20</sup> dated 7 April 2017, the RTC denied respondent's Urgent Omnibus Motion for lack of merit and granted petitioner's motion for leave to serve summons by publication.<sup>21</sup> The RTC ratiocinated that while it admittedly had no jurisdiction over respondent, the issuance of the writ of preliminary attachment is allowed even at the commencement of the action, and jurisdiction over the person of the defendant is not yet required at such stage. Thusly, the prayer seeking to dismiss the case based on the trial court's lack of jurisdiction over the person of the defendant was premature. As to the issue of lack of jurisdiction over the *res*, jurisdiction was already properly acquired when the action was converted from one *in personam* into one *in rem* upon the attachment of respondent's properties.<sup>22</sup>

Undeterred, respondent filed an Urgent Motion for Reconsideration.<sup>23</sup> Petitioner, on the other hand, filed a Motion to Declare Defendant in Default<sup>24</sup> for respondent's failure to file an answer to the amended complaint.

Acting on the foregoing motions, the RTC issued the Order<sup>25</sup> dated 5 December 2017 to resolve the pending incidents before it: 1) respondent's Urgent Motion for Reconsideration was denied for being a mere rehash of its previous allegations; and 2) petitioner's Motion to Declare Defendant in Default was granted due to respondent's failure to file an answer after the summons and the amended Complaint were published from 9 to 11 June 2017 in the Wall Street Journal, and mailed to respondent's last known address. Consequently, the RTC allowed petitioner to present evidence *ex parte* before the Branch Clerk of Court.<sup>26</sup>

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<sup>18</sup> Id. at 55-60.

<sup>19</sup> Id. at 22.

<sup>20</sup> Id. at 85-91. Penned by Presiding Judge Fortunito L. Madrona.

<sup>21</sup> Id.

<sup>22</sup> Id. at 86-89.

<sup>23</sup> Id. at 92-108.

<sup>24</sup> Id. at 122.

<sup>25</sup> Id. at 112-114.

<sup>26</sup> Id.

Fulminating against the aforementioned RTC Orders, respondent sought refuge before the CA *via* a Petition for *Certiorari* and Prohibition<sup>27</sup> asseverating that the RTC committed grave abuse of discretion amounting to lack or excess in jurisdiction when it refused to lift the preliminary attachment for lack of jurisdiction over the *res* and to dismiss the case based on lack of jurisdiction over the person of respondent.<sup>28</sup>

In due course, the CA rendered the challenged *Decision*<sup>29</sup> granting respondent's Petition on the ground that the implementation of the writ of preliminary attachment was invalid. In finding that the RTC committed grave abuse of discretion, the CA elucidated that while it correctly issued the writ on valid grounds, *i.e.*, that attachment may issue in "an action against a party who does not reside and is not found in the Philippines,"<sup>30</sup> the trial court had nevertheless failed to acquire jurisdiction over the person of respondent at the time that the writ of preliminary attachment was implemented. The CA expounded that while the acquisition of jurisdiction over the person of the defendant is not required upon the issuance of the writ, the court must have already acquired jurisdiction once the same is implemented. Without acquiring said jurisdiction, the court had no power to act in any manner which would be binding on the defendant. Thus, the RTC Orders were set aside and the attached properties were returned to respondent.<sup>31</sup>

Petitioner's motion for reconsideration<sup>32</sup> thereof was subsequently denied by the CA in the challenged *Resolution*.<sup>33</sup>

Perforce, petitioner now comes to this Court mainly invoking that the CA gravely erred when it held that jurisdiction over the person of respondent, a non-resident foreign corporation, was necessary for the implementation of the writ of preliminary attachment.<sup>34</sup>

***After a painstaking evaluation of the records of the case, this Court resolves to grant the Petition.***

Prefatorily, a writ of preliminary attachment has been defined as a provisional remedy issued upon the order of the court where an action is pending. Through the writ, properties of the defendant may be levied upon and held thereafter by the sheriff.<sup>35</sup> The purposes of preliminary attachment are either: (1) to seize the property of the debtor in advance of final judgment and to hold it for purposes of satisfying said judgment, as in the grounds stated

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<sup>27</sup> Supra note 4.

<sup>28</sup> Id. at 123.

<sup>29</sup> Supra note 2.

<sup>30</sup> Id. at 25.

<sup>31</sup> Id. at 25-27.

<sup>32</sup> Supra note 5.

<sup>33</sup> Supra note 3.

<sup>34</sup> Id. at 4-15.

<sup>35</sup> See *Chua v. China Banking Corp.*, G.R. No. 202004, 4 November 2020.

in paragraphs (a) to (e) of Section 1, Rule 57 of the Rules of Court; or (2) to **acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected**, as in paragraph (f) of the same provision.<sup>36</sup> Thus, a writ of preliminary attachment may be obtained in “an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.”<sup>37</sup>

The nature of the action involved in the case at bench, *i.e.*, a collection of sum of money, is not disputed – it is an action *in personam*, or one brought on the basis of personal liability. In actions *in personam*, jurisdiction over the person of the respondent is necessary for the court to hear and decide the case and may be acquired through the coercive process of either the issuance of summons upon them, through personal or substituted service, or their voluntary appearance in court.<sup>38</sup> Particularly, in preliminary attachment, Section 5 of Rule 57 prescribes the rule on prior or contemporaneous service of summons on the defendant within the Philippines, which is necessary before the sheriff is allowed to make a levy on attachment. This rule allows the RTC to **acquire jurisdiction over the person of the defendant before the writ is implemented** and to comply with due process. The service includes the service of summons, copy of the complaint, application for attachment, applicant’s affidavit and bond; and the order and writ of attachment.<sup>39</sup>

However, the rule on prior or contemporaneous service of summons does not apply in the following cases: (a) where the summons could not be served personally or by substituted service despite diligent efforts; (b) or the defendant is a resident of the Philippines temporarily absent therefrom; (c) or the **defendant is a non-resident of the Philippines**; (d) or the action is one *in rem* or *quasi in rem*.<sup>40</sup> In such cases, the levy on attachment is justified even if there was no prior or contemporaneous service of summons.

*Based on the foregoing principles and in accordance with prevailing rules and jurisprudence on the matter, the CA clearly erred in holding that jurisdiction over the person of the respondent was required before the writ of preliminary attachment may be implemented.*

Quite illuminating is the disquisition of this Court in the case of *PBCOM v. Alejandro*<sup>41</sup> where it was expressly held that the trial court may

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<sup>36</sup> See *Philippine Commercial and International Bank (PBCOM) v. Alejandro*, G.R. No. 175587, 560 Phil. 219, 237 (2007). See also *Excellent Quality Apparel, Inc. v. Visayan Surety & Insurance Corp., et al.*, 762 Phil. 706, 719 (2015).

<sup>37</sup> Section 1(f), Rule 57, Rules of Court.

<sup>38</sup> See *Ekistics Philippines, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 250440, 12 May 2021.

<sup>39</sup> Section 5, par. 1, Rule 57, Rules of Court.

<sup>40</sup> *Id.* par. 2.

<sup>41</sup> 560 Phil. 219 (2007).

acquire jurisdiction to try a case for collection for sum of money precisely by attaching the property of the defendant, to wit:

[I]n actions *in personam*, such as the instant case for collection of sum of money, summons must be served by personal or substituted service, otherwise the court will not acquire jurisdiction over the defendant. In case the **defendant does not reside and is not found in the Philippines** (and hence personal and substituted service cannot be effected), the remedy of the plaintiff in order for the court to acquire jurisdiction to try the case is to **convert the action into a proceeding *in rem* or quasi *in rem* by attaching the property of the defendant**. Thus, in order to acquire jurisdiction in actions *in personam* where defendant resides out of and is not found in the Philippines, **it becomes a matter of course for the court to convert the action into a proceeding *in rem* or quasi *in rem* by attaching the defendant's property. The service of summons in this case (which may be by publication coupled with the sending by registered mail of the copy of the summons and the court order to the last known address of the defendant), is no longer for the purpose of acquiring jurisdiction but for compliance with the requirements of due process.**<sup>42</sup> (Emphases and underscoring supplied)

Unlike in actions *in personam*, jurisdiction over the person of the defendant is not required in actions *in rem* or *quasi in rem*, provided that jurisdiction over the *res* has been acquired either: (a) **by the seizure of the property under legal process, whereby it is brought into actual custody of the law**; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.<sup>43</sup>

Corollarily, in *Sahagun v. CA*,<sup>44</sup> citing the earlier cases of *De Midgely v. Ferandos*<sup>45</sup> and *Perkins v. Dizon*,<sup>46</sup> the Court had the opportunity to explain the purpose of service of summons upon a non-resident defendant which is “so that he may be **informed** of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of a resident, and that he may thereby be **accorded an opportunity to defend in the action**, if he be so minded.”<sup>47</sup>

Reverting to the issue raised before this Court, the CA committed serious reversible error in ascribing grave abuse of discretion to the RTC which implemented the writ before acquiring jurisdiction over the person of respondent. Respondent is undoubtedly a non-resident and a non-registered foreign corporation which cannot be found in the Philippines and, hence, personal and substituted service cannot be effected upon it. Considering the

<sup>42</sup> Id. at 237-238; See also *Citizens' Surety & Insurance Company, Inc. v. Melencio-Herrera*, 148 Phil. 381 (1971) and *Magdalena Estate, Inc. v. Nieto*, 201 Phil. 101 (1983).

<sup>43</sup> See *Frias v. Alcayde*, 826 Phil. 713, 731 (2018).

<sup>44</sup> 275 Phil. 51 (1991).

<sup>45</sup> 159-A Phil. 314 (1975).

<sup>46</sup> 69 Phil. 186 (1939).

<sup>47</sup> Supra note 45.

foregoing, while the case involved is a collection of sum of money which is an action *in personam*, and therefore requires the court's jurisdiction over the defendant's person, it is not possible for the RTC to do so in this case.

Thus, in order for the court to properly acquire jurisdiction, petitioner aptly moved to attach the properties of respondent in the Philippines, as provided for in Section 1(f), Rule 57 of the Rules of Court, in order to convert the action to one *in rem* or *quasi in rem*. As borne from the records, respondent's properties were successfully attached.<sup>48</sup> Necessarily, jurisdiction over the *res* was acquired. The trial court, in effect, acquired jurisdiction over the action and properly granted the motion for leave to serve summons by publication upon respondent to fulfill the requirements of due process.

Notably, the reliance of the CA on the case *Mangila v. Court of Appeals*<sup>49</sup> is egregiously misplaced. The plaintiff therein could have resorted to other modes of service of summons in order for the court to acquire jurisdiction over the person of therein defendant. Thus, the failure of therein plaintiff to serve summons prior to the attachment of therein defendant's properties constituted a fatal defect in the enforcement of the writ since no jurisdiction was acquired over the person of defendant therein.

As earlier adumbrated, this was not the same circumstance in the present case since herein defendant, *i.e.*, respondent, is a **non-resident party not found in the Philippines**. Hence, the other modes of service of summons are inapplicable.

In fine, the CA should have denied the Petition. The RTC committed no grave abuse of discretion when it denied respondent's motion to dismiss<sup>50</sup> since it had already acquired jurisdiction over the *res*.

Given the foregoing discourse, it is pointless to discuss the remaining issues raised in this Petition.

**WHEREFORE**, the Petition for Review on *Certiorari* is hereby **GRANTED**. The *Decision* dated 19 February 2019 and the *Resolution* dated 11 July 2019 of the Court of Appeals in CA-G.R. SP. No. 154620 are **REVERSED** and **SET ASIDE**. Accordingly, the Orders dated 7 April 2017 and 5 December 2017 of the Regional Trial Court of Parañaque City, Branch 274 in Civil Case No. 2016-261, and the corresponding writ of preliminary attachment issued therefor against respondent Hanjin Shipping Co., Ltd. are **REINSTATED**.

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<sup>48</sup> See *rollo*, pp. 22, 45, 50, and 89.

<sup>49</sup> 435 Phil. 870 (2002).

<sup>50</sup> *Id.* at 174-187.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

*JB 9/21/22*

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