



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 17, 2023** which reads as follows:*

**“G.R. No. 238465 (*Bostik Philippines, Inc. v. Davies Technical Solutions, Inc.*)**.—Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> assailing the October 18, 2017 Decision<sup>2</sup> and the March 19, 2018 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 147874 which dismissed Bostik Philippines, Inc.’s (*Bostik*) Petition for *Certiorari*<sup>4</sup> under Rule 65 of the Rules of Court.

**Factual Antecedents**

On January 19, 2010, Bostik and Davies Technical Solutions, Inc, (Davies) entered into a Dealership Agreement (Agreement) for the distribution of Bostik’s products for a period of two years from January 1, 2010 to December 31, 2011. Pursuant to the Agreement, Bostik delivered its products to Davies for sale to Davies’ customers within its exclusive territory.<sup>5</sup>

The conflict between the parties began when Davies failed to pay the products after several deliveries made by Bostik. Thus, in December 2013, Bostik instituted a civil case for the collection of sum of money against Davies.<sup>6</sup> In its Amended Complaint,<sup>7</sup> Bostik claimed that Davies’ outstanding indebtedness amounted to PHP 4,510,728.57 for deliveries covering the period of January 2010 to March 2011, plus interest amounting to PHP 293,197.36. Bostik prayed that judgment be rendered ordering Davies to pay

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<sup>1</sup> *Rollo*, pp. 3-35.

<sup>2</sup> *Id.* at 26-34. Penned by Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) and concurred in by Associate Justices Jane Aurora C. Lantion and Myra V. Garcia-Fernandez.

<sup>3</sup> *Id.* at 35-36. Penned by Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) and concurred in by Associate Justices Jane Aurora C. Lantion and Myra V. Garcia-Fernandez.

<sup>4</sup> *Id.* at 37-53.

<sup>5</sup> *Id.* at 26.

<sup>6</sup> *Id.* at 27.

<sup>7</sup> *CA rollo*, pp. 35-48.

the aforesaid amounts, and also the sums of PHP 500,000.00 as exemplary damages and PHP 500,000.00 as attorney's fees and costs of suit.<sup>8</sup>

Davies filed a Special Appearance with Motion to Dismiss<sup>9</sup> on January 16, 2014 on the ground of improper service of summons because the summons was served on Davies through its receptionist/HR Assistant, Gretchen S. Bautista (Bautista).<sup>10</sup> Davies prayed for the dismissal of the Amended Complaint for lack of jurisdiction over its person.<sup>11</sup> Bostik opposed the motion to dismiss arguing that summons was validly served upon Davies, which in fact, was able to file a motion to dismiss after it has been notified and informed by its receptionist within several days from the receipt of summons. Bostik contended that the job of a receptionist/HR and Administrative Assistant necessarily includes receiving documents and other correspondence, and hence Bautista was in the position to ensure that Davies actually receives the summons. In the alternative, Bostik also prayed that should the court determine that summons was improperly served, that an *alias* summons be issued by the trial court to ensure that Davies will not be able to evade its contractual obligations to the prejudice of Bostik.<sup>12</sup>

Davies submitted its Reply<sup>13</sup> and emphasized that Section 11, Rule 14 of the Rules of Court clearly specified the corporate officers on whom summons should be served, which shows that the Court intended strict compliance with the Rule.<sup>14</sup>

### **Ruling of the Regional Trial Court**

On July 4, 2014, the Regional Trial Court (RTC) of Pasig City, Branch 71, issued an Order<sup>15</sup> denying the motion to dismiss, holding that there was substantial compliance with the rule on service of summons. Davies was sufficiently notified by its staff since it was able to hire a lawyer and subsequently file a motion to dismiss within the period prescribed by the Rules. There is no other conclusion than that Davies received the summons together with the complaint and its annexes.<sup>16</sup>

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<sup>8</sup> Id.

<sup>9</sup> Id. at 50-54.

<sup>10</sup> The Officer's Return dated January 6, 2014 stated the following circumstances in the service of summons upon Davies:

This CERTIFIES that on January 3, 2014 the undersigned caused the service of Summons dated January 2, 2014 issued by this Honorable Court together with the copy of the Amended Complaint and its Annexes to defendant Davies Technical Solutions Inc., at 12<sup>th</sup> Floor Belvedere Tower, San Miguel Avenue, Ortigas Business Center, Pasig City. Gretchen S. Bautista, a person working therein and authorize to receive the said processes, received the Summons and copy of the Amended Complaint together with its Annexes as evidenced by her signature at the original copy of the Summons. (CA rollo, p. 49.)

<sup>11</sup> Rollo, p. 27.

<sup>12</sup> Id. at 28.

<sup>13</sup> CA rollo, pp. 63-67.

<sup>14</sup> Id.

<sup>15</sup> Id. at 68-71. Penned by Judge Elisa R. Sarmiento-Flores.

<sup>16</sup> Rollo, p. 28.

Davies filed a Motion for Reconsideration<sup>17</sup> reiterating its position that strict compliance with Sec. 11, Rule 14 of the Rules of Court is required for the court to acquire jurisdiction over Davies.<sup>18</sup> Bostik again filed its Opposition<sup>19</sup> to Davies' Motion for Reconsideration, reiterating that the purpose of the rule on service of summons is to ascertain that the corporation will receive prompt and proper notice in an action against it, or to ensure that a representative so integrated with the corporation upon whom summons is served would know what to do with the legal papers served on him.<sup>20</sup> Bostik pointed out that Bautista is in the position to ensure that Davies actually receives the summons.

In the meantime, Davies filed its Answer Ad Cautelam with Compulsory Counterclaim.<sup>21</sup> Davies raised the lack of jurisdiction of the trial court due to the improper service of summons. Davies further asserted that the parties to the Dealership Agreement had agreed that, in addition to the Bostik Invoices and DRs to be given to the customer, a Davies DR should likewise be issued to the customers for Davies to be able to collect payment from its customers and process the payment due to Bostik for deliveries of the latter's products. However, sometime in 2011, to Davies' surprise, Bostik demanded for payment of supposed direct deliveries of products to Davies' customers without the corresponding Davies DRs. Without such Davies DRs, Davies cannot confirm the deliveries supposedly made by Bostik to Davies' customers, consequently, Davies cannot collect any payment from said customer/s without proof of delivery. Both Bostik and Davies conferred and conducted separate investigations to reconcile their documents.<sup>22</sup> Davies undertook to settle its outstanding balance upon Bostik's submission of the proper documents, however, Bostik failed to show properly executed and authenticated Davies DRs. Davies averred that Bostik's claim for the alleged outstanding balance of PHP 4,510,728.57 has no basis. It noted that Bostik's alleged invoices offered to support its claim show that most of the DRs do not even contain signatures of Davies nor were the invoices authenticated by Bostik's own authorized personnel. Moreover, certain invoices have already been paid, since Davies has been making timely payments of Bostik's claims which are properly documented and substantiated. This then leaves Bostik with no cause of action against Davies. Despite knowing its lack of cause of action against Davies, Bostik filed this action for no other purpose than to harass, vex and oppress Davies. Thus, Davies prayed for the dismissal of the Amended Complaint and for the award of its counterclaim for attorney's fees (PHP 500,000.00) and exemplary damages (PHP 2,000,000.00).<sup>23</sup>

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<sup>17</sup> CA rollo, pp. 91-98.

<sup>18</sup> Id.

<sup>19</sup> Id. at 106-112.

<sup>20</sup> Rollo, p. 28.

<sup>21</sup> CA rollo, pp. 72-84.

<sup>22</sup> Rollo, p. 29.

<sup>23</sup> Id.

In an Order<sup>24</sup> dated April 15, 2016, the RTC granted Davies' motion for reconsideration. This time, the RTC found that the service of summons on Davies' receptionist/HR Assistant was invalid under Sec. 11, Rule 14 of the Rules of Court. The RTC set aside the earlier Order dated July 4, 2014 and dismissed the case for lack of jurisdiction over Davies.<sup>25</sup>

Bostik filed a Motion for Reconsideration<sup>26</sup> invoking the presumption of regularity in the performance of official duty and contended that as shown by the Officer's Return, the Process Server had ensured that Bautista was authorized to receive the summons. Further, Bostik prayed that an *alias* summons be issued against Davies and that the same should be addressed and served on the proper corporate officers provided under Sec. 11, Rule 14. On August 4, 2016, the RTC issued an Order denying Bostik's Motion for Reconsideration.<sup>27</sup>

Aggrieved, Bostik elevated its case before the CA *via* a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion committed by the RTC in ruling that there was improper service of summons.<sup>28</sup>

Bostik claimed that the presiding judge of RTC-Pasig, Br.71, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated April 15, 2016 and August 4, 2016 granting the motion to dismiss filed by Davies. Bostik claimed that it resorted to filing a Petition for *Certiorari* via Rule 65 before the CA since there is no appeal or any other plain, speedy or adequate remedy in the ordinary course of law available to it.<sup>29</sup>

### **Ruling of the Court of Appeals**

In a Decision<sup>30</sup> dated October 18, 2017, the CA found the petition bereft of merit. In dismissing the petition, the CA held that Bostik availed of a wrong remedy. An order granting a defending party's motion to dismiss is a final order, and not an interlocutory order, because resultant thereto, the proceedings are terminated, and leaves nothing more to be done by the lower court.<sup>31</sup> The special civil action of *certiorari* under Rule 65 is resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law, thus, when an appeal or a petition for review is available, *certiorari* cannot be resorted to. Where an appeal is available,

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<sup>24</sup> CA *rollo*, pp. 19-21.

<sup>25</sup> Id.

<sup>26</sup> Id. at 24-30.

<sup>27</sup> *Rollo*, p. 30.

<sup>28</sup> Id. at 37. Petition for *Certiorari* prepared by Bostik Philippines, Inc. dated 12 October 2016.

<sup>29</sup> Id. at 39.

<sup>30</sup> Id. at 26-34.

<sup>31</sup> Id. at 30, citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 784 (2004).

*certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.<sup>32</sup>

The CA further concluded that, even if it relaxes the procedural rule on appeals, the petition would still fail, since service of summons was not made in accordance with law, hence, the RTC did not acquire jurisdiction over the person of Davies. Sec. 11, Rule 14 governing the service of summons upon domestic private juridical entity is exclusive, such that, service of summons upon persons other than those officers enumerated therein is invalid, defective and not binding to the defendant corporation.<sup>33</sup>

A Motion for Reconsideration<sup>34</sup> was filed by Bostik, which was denied by the CA in a Resolution dated March 19, 2018.

Bostik now comes before this Court insisting that it availed of the correct remedy to question the RTC-Pasig's Orders which dismissed the Amended Complaint for alleged lack of jurisdiction over Davies.

### Issue

The sole issue for this Court's resolution is whether the CA erred in upholding the Orders of the RTC and dismissing the petition based on procedural grounds.

### Our Ruling

Rules on procedure is the primary issue put forth by the parties in this case. The Court is fully aware that procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice.<sup>35</sup> The importance of procedural rules in the adjudication of disputes has been reiterated in numerous cases. The Court in *Santos v. Court of Appeals*,<sup>36</sup> held that:

Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party. Adjective law is important in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed, to provide for a system under which suitors may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. The other alternative is the settlement of their conflict through the barrel of a gun.<sup>37</sup>

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<sup>32</sup> Id., citing *Consigna v. People*, 731 Phil. 108, 118 (2014).

<sup>33</sup> Id.

<sup>34</sup> *Rollo*, p. 35.

<sup>35</sup> *Latogan v. People*, G.R. No. 238298, January 22, 2020.

<sup>36</sup> 275 Phil. 894 (1991).

<sup>37</sup> Id. at 898.

*No appeal may be taken from an Order dismissing an action without prejudice, thus the aggrieved party may file an appropriate special civil action under Rule 65*

Sec. 1, Rule 16 enumerates the grounds for which a motion to dismiss may be filed, viz.:

Section 1. *Grounds.* Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth; in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.

Sec. 5 of the same Rule recites the effect of a dismissal under Sec. 1(f), (h) and (i), thereof:

SEC. 5. *Effect of dismissal.* Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of Section 1 hereof shall bar the refiling of the same action or claim.

In *Strongworld Construction Corporation v. Perello*,<sup>38</sup> the Court declared:

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is "with prejudice" because the dismissal

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<sup>38</sup> 528 Phil. 1080 (2006)

prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action.<sup>39</sup>

In this case, Davies filed a Motion to Dismiss on the ground that the court has no jurisdiction over the person of the defending party due to the improper service of summons to it. Davies' main contention was that the service of summons to its receptionist/HR assistant is improper and does not bind the corporation since pursuant to Sec. 11, Rule 14 of the same Rules, service of summons upon a domestic private juridical entity shall be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

Finding merit on Davies' contention, the RTC granted Davies' motion to dismiss. Based on the foregoing, the Order granting the motion to dismiss is an order dismissing an action without prejudice, thus, Bostik is not barred from refiling the same action. It follows that the Order of the RTC is a final order and is not appealable pursuant to Sec. 1, Rule 41, to wit:

SECTION 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) **An order dismissing an action without prejudice.**

**In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (As amended by A.M. No. 07-7-12-SC, December 4, 2007) (Emphasis supplied)**

Clearly, while the Order disposes of the case, the disposal is without prejudice as Bostik is not barred from refiling the same action. Aggrieved from the Orders of the RTC, Bostik availed of the correct remedy of a Rule 65 *certiorari* since appeal is not available to it under Sec. 1(g) of Rule 41.

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<sup>39</sup> Id. at 1097.

Nonetheless, the petition must fail because it has not convinced the Court that the RTC and CA acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the Amended Complaint for improper service of summons.

*There was improper service of summons resulting to lack of jurisdiction over the defendant corporation*

We reiterate the CA's conclusions that when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel of the corporation.<sup>40</sup> Sec. 11 provides an exclusive list of persons upon whom service of summons on domestic juridical entities may be made.<sup>41</sup>

As the summons in this case was not served on any of the persons listed in Sec. 11, the service made to Davies is improper and thus would not be sufficient to vest the RTC with jurisdiction over Davies. Sec. 11 of Rule 14 changed the old rules pertaining to the service of summons on corporations. While the former rule allowed service on an agent of a corporation, the current rule has provided for a list of specific persons to whom service of summons must be made.<sup>42</sup>

**WHEREFORE**, the petition is **DENIED**. The October 18, 2017 Decision and the March 19, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 147874 are **AFFIRMED**.

The petitioner's Manifestation with Compliance (Re: Resolution dated December 6, 2021), stating that it already filed on November 15, 2021 its memorandum and received on December 2, 2021 a copy of the respondent's memorandum, and both memoranda were filed pursuant to the Court's Resolution dated June 23, 2021, is **NOTED**.

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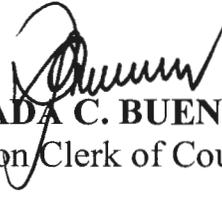
<sup>40</sup> RULES OF COURT, Rule 14, Sec. 11.

<sup>41</sup> *G.V Florida Transport Inc., v. Tiara Commercial Corporation*, 820 Phil. 235, 250 (2017).

<sup>42</sup> *Id.*

**SO ORDERED.”**

**By authority of the Court:**



**LIBRADA C. BUENA**  
Division Clerk of Court **MBZ**

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

**290-A**

**JAN 27 2023**

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