Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

G.V. FLORIDA TRANSPORT, INC.,	**G.R. No. 201378**
Petitioner,	Present:
	SERENO, **CJ.**, *Chairperson,*
	LEONARDO-DE CASTRO,
	DEL CASTILLO,
- versus -	JARDELEZA, and
	TIJAM,* ***JJ.***
TIARA COMMERCIAL CORPORATION,	
Respondent.	Promulgated:
	OCT 18 2017

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DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner G.V. Florida Transport Inc. (GV Florida) to challenge the Decision of the Court of Appeals (CA) in CA-G.R. SP No. 110760 dated October 13, 2011 (Decision)[2] and its Resolution dated March 26, 2012 (Resolution)[3] which denied GV Florida's subsequent motion for reconsideration. The CA granted respondent Tiara Commercial Corporation's (TCC) petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. It found that Branch 129 of the Regional Trial Court (RTC), Caloocan City, acted with grave abuse of discretion when it refused to grant TCC's motion to dismiss GV Florida's third-party complaint in an action for damages pending before the RTC.

The bus company Victory Liner, Inc. (VLI) filed an action for damages[4] against GV Florida and its bus driver Arnold Vizquera (Vizquera)

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* On official leave.

1 *Rollo*, pp. 8-42.

2 *Id.* at 47-54. Penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

3 *Id.* at 56.

4 *Id.* at 57-62.

before the RTC. This action arose out of a vehicle collision between the buses of VLI and GV Florida along Capirpiwan, Cordon, Isabela on May 1, 2007. In its complaint, VLI claimed that Vizquera's negligence was the proximate cause of the collision and GV Florida failed to exercise due diligence in supervising its employee.[5]

In its Answer,[6] GV Florida alleged that the Michelin tires of its bus had factory and mechanical defects which caused a tire blow-out. This, it claimed, was the proximate cause of the vehicle collision.[7]

On April 8, 2008, GV Florida instituted a third-party complaint[8] against TCC. According to GV Florida, on March 23, 2007, it purchased from TCC fifty (50) brand new Michelin tires, four (4) of which were installed into the bus that figured in the collision. It claimed that though Vizquera exerted all efforts humanly possible to avoid the accident, the bus nevertheless swerved to the oncoming south-bound lane and into the VLI bus. GV Florida maintains that the "proximate cause of the accident is the tire blow out which was brought about by factory and mechanical defects in the Michelin tires which third-party plaintiff GV Florida absolutely and totally had no control over."[9]

The RTC ordered the service of summons on TCC. In the return of summons, it appears that the sheriff served the summons to a certain Cherry Gino-gino (Gino-gino) who represented herself as an accounting manager authorized by TCC to receive summons on its behalf.[10]

TCC filed a Special Entry of Appearance with an Ex-parte Motion for Extension of Time to File Responsive Pleading and/or Motion to Dismiss.[11] Therein, it stated that the summons was received by Gino-gino, its financial supervisor. The RTC granted TCC's prayer for extension of time to file a responsive pleading or a motion to dismiss.

TCC eventually filed a motion to dismiss[12] GV Florida's third-party complaint. First, it argued that the RTC never acquired jurisdiction over it due to improper service of summons. Under Section 11 of Rule 14, there is an exclusive list of the persons upon whom service of summons on domestic juridical entities may be made. As the summons in this case was not served on any of the persons listed in Section 11 of Rule 14, there was no proper service of summons on TCC that would vest the RTC with jurisdiction over it. Second, TCC stated that the purported cause of action in the third-party complaint is a claim for an implied warranty which has already prescribed,

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5 *Id.* at 58-59.
6 *Id.* at 79-85.
7 *Id.* at 81.
8 *Id.* at 89-95.
9 *Id.* at 91-92.
10 *Id.* at 121.
11 *Id.* at 122-125.
12 *Id.* at 127-144.

having been made beyond the six-month period allowed in the Civil Code. Third, the third-party complaint failed to state a cause of action against TCC. TCC harped on the fact that GV Florida did not mention in the third-party complaint that the tires that blew out were purchased from it. Moreover, a tire blow-out does not relieve a common carrier of its liability. Fourth, TCC argues that there is a condition precedent which the law requires before a claim for implied warranty may be made. The party claiming must submit a warranty claim and demand. GV Florida failed to do so in this case. Fifth, GV Florida has the burden of first establishing that the cause of the accident was not its own negligence before it can be allowed to file a third-party complaint against TCC. Sixth, venue was improperly laid since TCC's principal place of business is in Makati. And finally, TCC states that the third-party complaint should be dismissed due to GV Florida's failure to implead Michelin as an indispensable party.[13]

The RTC denied TCC's motion to dismiss in an Order[14] dated March 2, 2009. It also denied TCC's subsequent motion for reconsideration in an Order[15] dated July 16, 2009.

On October 5, 2009, TCC filed before the CA a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court challenging the RTC's denial of its motion to dismiss and motion for reconsideration.

In the meantime, TCC filed its Answer *Ad Cautelam*[16] which repeated its arguments pertaining to jurisdiction, the prescription of the implied warranty claim, the impropriety of the third-party complaint and the venue of the action, and the failure to implead Michelin. Upon order of the RTC, the case was set for pre-trial[17] and the parties submitted their respective pre-trial briefs. Notably, TCC filed its pre-trial brief without any reservations as to the issue of jurisdiction. Moreover, not only did it fail to include in its identification of issues the question of the RTC's jurisdiction, TCC even reserved the option to present additional evidence.[18]

On October 13, 2011, the CA rendered its Decision granting TCC's petition and reversing the Orders of the RTC. Emphasizing that the enumeration in Section 11 of Rule 14 of the Rules of Court is exclusive, the CA found that the RTC never acquired jurisdiction over TCC because of the improper service of summons upon a person not named in the enumeration.[19] It then proceeded to rule that GV Florida's third-party complaint against TCC is a claim for implied warranty which, under Article 1571 of the Civil Code, must be filed within six months from delivery. While the CA noted that the delivery receipt for the tires is not in the records

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13 *Id.* at 128-141.
14 *Id.* at 168.
15 *Id.* at 189-190.
16 *Id.* at 191-206.
17 *Id.* at 231-232.
18 *Id.* at 233-239.
19 *Id.* at 50-51.

of the case, it may be assumed that the tires were delivered a few days after the purchase date of March 23, 2007. Since GV Florida only filed the third-party complaint on April 8, 2008, the action has prescribed.[20]

GV Florida thus filed this petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the CA's Decision.

GV Florida argues that the RTC acquired jurisdiction over TCC. While it agrees that the enumeration in Section 11 of Rule 14 of the Rules of Court is exclusive, GV Florida argues that service of summons is not the only means through which a court acquires jurisdiction over a party. Under Section 20 of Rule 14, voluntary appearance of a defendant is equivalent to service of summons, which then gives a court jurisdiction over such defendant. In this case, GV Florida claims that TCC voluntarily appeared and submitted to the jurisdiction of the RTC when it filed motions and pleadings seeking affirmative relief from said court. It adds that Section 11 of Rule 14 is only a general rule which allows for substantial compliance when there is clear proof that the domestic juridical entity in fact received the summons. Moreover, GV Florida argues that improper service of summons is not a ground for dismissal of the third-party complaint since the RTC has the authority to issue *alias* summons.[21]

GV Florida also challenges the CA's ruling that its third-party complaint against TCC should be dismissed on the ground of prescription. It claims that prescription cannot be the basis of a dismissal when the issue involves evidentiary matters that can only be threshed out during trial. In this case, GV Florida asserts that the issue of whether its action has prescribed requires a determination of when the Michelin tires were delivered. Thus, there is a need to examine the delivery receipts which, as GV Florida highlights, are not in the records of the CA as stated in the Decision itself.[22]

In its Comment, TCC raises the procedural defense that GV Florida's petition was filed out of time. It insists that GV Florida's motion for extension of time to file its petition is no longer allowed by virtue of AM No. 7-7-12-SC which prohibits the filing of motions for extension of time in petitions filed under Rule 45 and Rule 65 of the Rules of Court.[23] Further, TCC repeats its position that the RTC did not acquire jurisdiction over it due to improper service of summons. It also disputes GV Florida's argument that it voluntarily appeared. TCC insists that it initially filed a Special Entry of Appearance to apprise the RTC that "[TCC] is represented without necessarily waiving any right/s of the latter."[24] TCC adds that in its motion to dismiss and Answer *Ad Cautelam*, it consistently raised the question of

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20 *Id.* at 51-53.
21 *Id.* at 25-33.
22 *Id.* at 33-38.
23 *Id.* at 354-355.
24 *Id.* at 361.

the propriety of the service of summons and the RTC's lack of jurisdiction over it.[25]

Moreover, TCC insists that GV Florida's implied warranty claim has prescribed and that the latter has, in any case, failed to comply with a condition precedent—the filing of a warranty claim or demand. TCC also insists that GV Florida has never complained about the other Michelin tires it purchased. This, in TCC's view, belies GV Florida's claim that the tires are defective.[26]

TCC also contends that GV Florida's filing of the third-party complaint is improper. It explains that the test for ascertaining whether a third-party complaint may be filed is whether the third-party defendant may assert any defense which the third-party plaintiff may have against the original plaintiff in the original case. However, GV Florida's defense against VLI, which is lack of negligence, is personal to GV Florida and cannot be raised by TCC for its own benefit. TCC also asserts that in any case, the venue of the third-party complaint is improperly laid since TCC's principal place of business is in Makati.[27]

Finally, TCC claims that the third-party complaint should be dismissed for failure to implead an indispensable party—Michelin, the manufacturer of the tires which GV Florida claims are defective.[28]

We **GRANT** the petition.

I

We emphasize that GV Florida's appeal came from an original special civil action for *certiorari* and prohibition under Rule 65 filed before the CA. In cases such as this, the question of law presented before us is whether the CA was correct in its ruling that the lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[29]

In particular, the main issue we must resolve is whether the CA correctly found that the RTC's Order dismissing GV Florida's third-party complaint is tainted with grave abuse of discretion which, in turn, merits its reversal and the reinstitution of the third-party complaint.

A

However, we shall first resolve the procedural issue raised by TCC pertaining to the timeliness of this petition.

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[25] *Id.* at 361-364.
[26] *Id.* at 364-369.
[27] *Id.* at 369-370.
[28] *Id.* at 370-373.
[29] See *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 413.

Section 2 of Rule 45 of the Rules of Court governing the procedure for filing an appeal through a petition for review on certiorari expressly allows the filing of a motion for extension of time. Under the Rules, the period to file a petition for review on certiorari is fifteen (15) days from receipt of the judgment, resolution, or final order appealed from. Nevertheless, on motion of the party filed before the reglementary period, this Court may grant extension for a period not exceeding thirty (30) days. In a Resolution[30] dated July 16, 2012, we granted Florida's motion for extension of time. We thus find GV Florida's petition to be timely filed.

B

The central issue in this case arose from the RTC's Order dated March 2, 2009 denying TCC's motion to dismiss GV Florida's third-party complaint. In remedial law, an order denying a motion to dismiss is classified as an interlocutory order.[31] This classification is vital because the kind of court order determines the particular remedy that a losing party may pursue. In the case of a final order—one that finally disposes of a case—the proper remedy is an appeal. On the other hand, when an order is merely interlocutory—one which refers to something between the commencement and end of the suit which decides some point or matter but is not the final decision of the whole controversy,[32]—Section 1 of Rule 41 provides that an appeal cannot be had. In this instance, a party's recourse is to file an answer, with the option to include grounds stated in the motion to dismiss, and proceed to trial. In the event that an adverse judgment is rendered, the party can file an appeal and raise the interlocutory order as an error.[33]

This general rule is subject to a narrow exception. A party may question an interlocutory order without awaiting judgment after trial if its issuance is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[34] In this case, the party can file a special civil action for *certiorari* under Rule 65.

A special civil action for *certiorari* is an original civil action and not an appeal. An appeal aims to correct errors in judgment and rectify errors in the appreciation of facts and law which a lower court may have committed in the proper exercise of its jurisdiction.[35] A special civil action for *certiorari*, on the other hand, is used to correct errors in *jurisdiction*. We have defined an error in jurisdiction as "one where the officer or tribunal

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30 *Rollo*, p. 352.

31 *The Municipality of Tangkal, Province of Lanao del Norte v. Balindong*, G.R. No. 193340, January 11, 2017.

32 *Aboitiz Equity Ventures, Inc. v. Chiongbian*, G.R. No. 197530, July 9, 2014, 729 SCRA 580, 594.

33 *Caballes v. Perez-Sison*, G.R. No. 131759, March 23, 2004, 426 SCRA 98, 106-107.

34 *Bañez, Jr. v. Concepcion*, G.R. No. 159508, August 29, 2012, 679 SCRA 237, 247-248.

35 *Tan Po Chu v. Court of Appeals*, G.R. No. 184348, April 4, 2016, 788 SCRA 1, 7.

acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."[36]

This distinction finds concrete significance when a party pleads before a higher court seeking the correction of a particular order. When a party seeks an appeal of a final order, his or her petition must identify the errors in the lower court's findings of fact and law. Meanwhile, when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion.

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave "as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[37] In more concrete terms, not every error committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for *certiorari.* There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.[38]

In *Pahila-Garrido v. Tortogo*,[39] we found grave abuse of discretion when a trial court judge issued a temporary restraining order to prevent the implementation of a writ of execution for an indefinite period. There, we declared that the blatant violation of the Rules of Court is clearly grave abuse of discretion.[40] In *Belongilot v. Cua*,[41] we also ruled that the Ombudsman's dismissal of a complaint for a violation of Republic Act No. 3019 was attended with grave abuse of discretion because it used irrelevant considerations and refused to properly examine pertinent facts in arriving at its decision on the issue of probable cause.[42] We held that "an examination of the records reveal a collective pattern of action—done capriciously, whimsically and without regard to existing rules and attendant facts."[43]

There are instances when litigants file a petition seeking the reversal of an interlocutory order yet their pleadings fail to allege any grave abuse of discretion on the part of the lower tribunal. Instead, these petitions merely identify errors of fact and law and seek their reversal. In such a case, the higher court must dismiss the petition because it fails to allege the core requirement of a Rule 65 petition—the allegation of the presence of grave

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36 *Id.*
37 *Solvic Industrial Corporation v. NLRC*, G.R. No. 125548, September 25, 1998, 296 SCRA 432, 441.
38 *See* RULES OF COURT, Rule 65, Sec. 1.
39 G.R. No. 156358, August 17, 2011, 655 SCRA 553.
40 *Id.* at 574-577.
41 G.R. No. 160933, November 24, 2011, 636 SCRA 34.
42 *Id.* at 52.
43 *Id.* at 44.

abuse of discretion. Without this requirement, litigants can easily circumvent the rule that an interlocutory order cannot be appealed. They will simply file a pleading denominated as a special civil action for *certiorari,* but which instead raises errors in judgment and is, in truth, an appeal. An appeal and a special civil action for *certiorari* are, however, not interchangeable remedies.[44]

In the present case, TCC's petition for *certiorari* did not identify the RTC's specific acts constituting grave abuse of discretion. Rather, it imputed errors in the RTC's proper interpretation of the law. Further, the CA's Decision makes no finding of any grave abuse of discretion on the part of the RTC. The penultimate paragraph of the Decision, which summarizes the basis for its ruling, states:

> In fine, the RTC failed to acquire jurisdiction over the person of [TCC] since the service of summons to its Account Manager is not binding on the corporation. Furthermore, the action brought by [GV Florida] against [TCC] is already barred by prescription having filed beyond the six-month prescriptive period. Having settled the pivotal issues in this case, We find that it is no longer necessary to address other arguments raised by the petitioner since those questions, if considered, would not alter the outcome of this case.[45]

The CA, in choosing to reverse the RTC in a special civil action for *certiorari*, based its decision on its disagreement with the RTC as to the *correct* application of the law. This is not an error in jurisdiction but merely an error in judgment. Instead of granting the petition and reversing the RTC, what the CA should have done was to dismiss the petition for *certiorari* for failing to allege grave abuse of discretion. We further note that the RTC Order challenged before the CA through the petition for *certiorari* is an interlocutory order. As there was no showing of grave abuse of discretion, TCC's recourse is to proceed to trial and raise this error in its appeal in the event of an adverse judgment.

II

Nevertheless, we have examined the errors raised by GV Florida in the appeal filed before us and hold that the CA erred in its conclusions of law as well.

We agree that there was improper service of summons on TCC. We, however, apply jurisprudence and rule that in cases of improper service of summons, courts should not automatically dismiss the complaint by reason

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[44] See *Bellosillo v. Board of Governors of the Integrated Bar of the Philippines*, G.R. No. 126980, March 31, 2006, 486 SCRA 152, 159.

[45] *Rollo*, p. 53.

of lack of jurisdiction over the person of the defendant. The remedy is to issue *alias* summons and ensure that it is properly served.[46]

Service of summons is the main mode through which a court acquires jurisdiction over the person of the defendant in a civil case. Through it, the defendant is informed of the action against him or her and he or she is able to adequately prepare his or her course of action. Rules governing the proper service of summons are not mere matters of procedure. They go into a defendant's right to due process.[47] Thus, strict compliance with the rules on service of summons is mandatory.

Section 11, Rule 14 of the Rules of Court provides the procedure for the issuance of summons to a domestic private juridical entity. It states:

> Sec. 11. *Service upon domestic private juridical entity.* – 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.

This enumeration is exclusive. Section 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.

In *Nation Petroleum Gas, Incorporated v. Rizal Commercial Banking Corporation*,[48] we explained that the purpose of this rule is "to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him."[49] This rule requires strict compliance; the old doctrine that substantial compliance is sufficient no longer applies.[50] In *E.B. Villarosa & Partner Co., Ltd. v. Benito*,[51] we ruled that the liberal construction of the rules cannot be invoked as a substitute for the plain requirements stated in Section 11 of Rule 14.[52] In *Mason v. Court of Appeals*,[53] we definitively ruled that *Villarosa* settled the question of the application of the rule on substantial compliance. It does not apply in the case of Section 11 of Rule 14. We said:

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46 *Lingner & Fisher GMBH v. Intermediate Appellate Court*, G.R. No. L-63557, October 28, 1983, 125 SCRA 522, 527.

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

48 G.R. No. 183370, August 17, 2015, 766 SCRA 653.

49 *Id.* at 664-665.

50 *Mason v. Court of Appeals*, G.R. No. 144662. October 13, 2003, 413 SCRA 303, 311.

51 G.R. No. 136426, August 6, 1999, 312 SCRA 65.

52 *Id.* at 74.

53 *Supra* note 50.

> The question of whether the substantial compliance rule is still applicable under Section 11, Rule 14 of the 1997 Rules of Civil Procedure has been settled in *Villarosa* which applies squarely to the instant case. In the said case, petitioner *E.B. Villarosa & Partner Co. Ltd.* (hereafter Villarosa) with principal office address at 102 Juan Luna St., Davao City and with branches at 2492 Bay View Drive, Tambo, Parañaque, Metro Manila and Kolambog, Lapasan, Cagayan de Oro City, entered into a sale with development agreement with private respondent Imperial Development Corporation. As Villarosa failed to comply with its contractual obligation, private respondent initiated a suit for breach of contract and damages at the Regional Trial Court of Makati. Summons, together with the complaint, was served upon Villarosa through its branch manager at Kolambog, Lapasan, Cagayan de Oro City. Villarosa filed a Special Appearance with Motion to Dismiss on the ground of improper service of summons and lack of jurisdiction. The trial court denied the motion and ruled that there was substantial compliance with the rule, thus, it acquired jurisdiction over Villarosa. The latter questioned the denial before us in its petition for *certiorari*. We decided in Villarosa's favor and declared the trial court without jurisdiction to take cognizance of the case. We held that there was no valid service of summons on Villarosa as service was made through a person not included in the enumeration in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, which revised [ ] Section 13, Rule 14 of the 1964 Rules of Court. We discarded the trial court's basis for denying the motion to dismiss, namely, private respondent's substantial compliance with the rule on service of summons, and fully agreed with petitioner's assertions that the enumeration under the new rule is restricted, limited and exclusive, following the rule in statutory construction that *expressio unios est exclusio alterius*. Had the Rules of Court Revision Committee intended to liberalize the rule on service of summons, we said, it could have easily done so by clear and concise language. Absent a manifest intent to liberalize the rule, we stressed strict compliance with Section 11, Rule 14 of the 1997 Rules of Civil Procedure.[54] (Italics in the original.)

Service of summons, however, is not the only mode through which a court acquires jurisdiction over the person of the defendant. Section 20 of Rule 14 of the Rules of Court states:

> Sec. 20. *Voluntary appearance.* – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

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[54] *Id.* at 310-311.

There is voluntary appearance when a party, without directly assailing the court's lack of jurisdiction, seeks affirmative relief from the court.[55] When a party appears before the court without qualification, he or she is deemed to have waived his or her objection regarding lack of jurisdiction due to improper service of summons.[56] When a defendant, however, appears before the court for the specific purpose of questioning the court's jurisdiction over him or her, this is a special appearance and does not vest the court with jurisdiction over the person of the defendant.[57] Section 20 of Rule 14 of the Rules of Court provides that so long as a defendant raises the issue of lack of jurisdiction, he or she is allowed to include other grounds of objection. In such case, there is no voluntary appearance.

Still, improper service of summons and lack of voluntary appearance do not automatically warrant the dismissal of the complaint. In *Lingner & Fisher GMBH v. Intermediate Appellate Court*,[58] we held:

> A case should not be dismissed simply because an original summons was wrongfully served. It should be difficult to conceive, for example, that when a defendant personally appears before a Court complaining that he had not been validly summoned, that the case filed against him should be dismissed. An *alias summons* can be actually served on said defendant.[59] (Italics in the original)

We repeated this doctrine in later cases such as *Tung Ho Steel Enterprises Corporation v. Ting Guan Trading Corporation*,[60] *Spouses Anuncacion v. Bocanegra*,[61] and *Teh v. Court of Appeals*.[62]

In *Philippine American Life & General Insurance Company v. Breva*,[63] we even said that there is no grave abuse of discretion when a trial court refuses to dismiss a complaint solely on the ground of lack of jurisdiction over the person of the defendant because of improper service of summons.[64]

Thus, when there is improper service of summons and the defendant makes a special appearance to question this, the proper and speedy remedy is for the court to issue *alias* summons.

In the present case, the summons was served to Gino-gino, a financial supervisor of TCC. While she is not one of the officers enumerated in

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55 See *supra* note 48 at 682.
56 *Garcia v. Sandiganbayan*, G.R. No. 170122, October 12, 2009, 603 SCRA 348, 366.
57 *Perkin Elmer Singapore Pte Ltd.* v. *Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 193.
58 *Supra* note 46.
59 *Id.* at 527.
60 G.R. No. 182153, April 7, 2014, 720 SCRA 707.
61 G.R. No. 152496, July 30, 2009, 594 SCRA 318.
62 G.R. No. 147038, April 24, 2003, 401 SCRA 576.
63 G.R. No. 147937, November 11, 2004, 442 SCRA 217.
64 *Id.* at 222-223.

Section 11 of Rule 14, we find that TCC has voluntarily appeared before (and submitted itself to) the RTC when it filed its pre-trial brief *without any reservation as to the court's jurisdiction over it*. At no point in its pre-trial brief did TCC raise the issue of the RTC's jurisdiction over it. In fact, it even asked the RTC that it be allowed to reserve the presentation of additional evidence through documents and witnesses. While it is true that TCC initially filed an Answer *Ad Cautelam*, we rule that TCC waived any objection raised therein as to the jurisdiction of the court when it subsequently filed its pre-trial brief without any reservation and even prayed to be allowed to present additional evidence. This, to this Court's mind, is an unequivocal submission to the jurisdiction of the RTC to conduct the trial.

Moreover, we apply the doctrine in *Lingner & Fisher GMBH* and hold that the mere fact of improper service of summons does not lead to the outright dismissal of the third-party complaint. While the RTC should issue an *alias* summons to remedy the error, its refusal to dismiss GV Florida's third-party complaint on the ground of lack of jurisdiction (over TCC due to improper service of summons) does not constitute grave abuse of discretion.

III

We also disagree with the CA that GV Florida's third-party complaint should be dismissed on the ground of prescription.

Prescription is a ground for the dismissal of a complaint without going to trial on the merits. Under Rule 16 of the Rules of Court, it is raised in a motion to dismiss which is filed before the answer. It may also be raised as an affirmative defense in the answer. At the discretion of the court, a preliminary hearing on the affirmative defense may be conducted as if a motion to dismiss was filed.[65] Nevertheless, this is only a general rule. When the issue of prescription requires the determination of evidentiary matters, it cannot be the basis of an outright dismissal without hearing.

In *Sanchez v. Sanchez* (*Sanchez*),[66] we held that the trial court erred when it dismissed an action on the ground of prescription on the basis of the pleadings filed and without requiring any trial. The issue of prescription in *Sanchez* required the prior determination of whether the sale subject of the case was valid, void or voidable. This is a matter that requires the presentation of evidence *since the fact of prescription is not apparent in the pleadings*. We said:

> The Court has consistently held that the affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the

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[65] RULES OF COURT, Rule 16, Sec. 6.

[66] G.R. No. 187661, December 4, 2013, 711 SCRA 541.

> complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss x x x.[67] (Citations omitted.)

Here, TCC alleges that GV Florida's third-party complaint (which it argues is essentially an action for implied warranty) has already prescribed. The Civil Code states that this claim must be made within six months from the time of the delivery of the thing sold. Without preempting the RTC's findings on the validity of the argument that this is a warranty claim, a finding that the action has prescribed requires the ascertainment of the delivery date of the tires in question. This, in turn, requires the presentation of the delivery receipts as well as their identification and authentication. Under the Rules of Court, a party presenting a document as evidence must first establish its due execution and authenticity as a preliminary requirement for its admissibility.[68]

We find that the reckoning date from which the prescriptive period may be ascertained is not apparent from the pleadings themselves. We agree with GV Florida's observation that the CA itself admitted in its Decision that the delivery receipts do not appear in the records. A finding of fact as to the date of delivery can only be made after hearing and reception of evidence. Thus, the CA erred in ruling that GV Florida's third-party complaint should be dismissed on the ground of prescription.

We further note that the CA based its finding on the delivery date on mere presumptions. The assailed Decision states that since Florida purchased the Michelin tires on March 23, 2007, it may be presumed that the delivery was made in the ensuing days. Since the third-party complaint was filed only on April 8, 2008, or more than one year from the date of purchase, it concluded that the claim on the implied warranty has prescribed.[69] Findings of fact, however, cannot be based on mere assumptions. The Rules of Court provide the process through which factual findings are arrived at. This procedure must be followed as it is the means chosen by law to ascertain judicial truth. Relying on probabilities, when the rules provide for a specific procedure to ascertain facts, cannot be countenanced.

Since we cannot proceed to rule beyond the question of whether the CA correctly ruled that the RTC committed grave abuse of discretion, this being the only question of law presented before us in this petition for review on *certiorari,* we shall withhold ruling on the other issues raised by TCC in its Comment which have not been discussed by the CA in its *Decision.* In any case, we find that the other matters raised by TCC in its Comment are questions that should first be threshed out before the RTC.

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67 *Id.* at 545.
68 RULES OF COURT, Rule 132, Sec. 20.
69 *Rollo*, pp. 52-53.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated October 13, 2011 and its Resolution dated March 26, 2012 are **REVERSED**. The Order dated March 2, 2009 of Branch 129 of the Regional Trial Court of Caloocan City is **REINSTATED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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