



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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UNITED COCONUT PLANTERS
BANK,

Petitioner,

- versus -

SPS. ALISON ANG-SY and
GUILLERMO SY, RENATO ANG,
NENA ANG, RICKY ANG, and
DERICK CHESTER SY,

Respondents.

G.R. No. 204753

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

Promulgated:

27 MAR 2019

X-----X

RESOLUTION

CAGUIOA, J.:

Before this Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by petitioner United Coconut Planters Bank (petitioner UCPB) assailing the Decision² dated February 10, 2012 (assailed Decision) and Resolution³ dated December 7, 2012 (assailed Resolution) of the Court of Appeals (CA) Special Twelfth Division, and Former Special Twelfth Division, respectively, in CA-G.R. SP No. 102725, which reversed and set aside the Order⁴ dated June 8, 2007 (Order) of the Regional Trial Court of Makati City, Branch 146 (RTC) for improper service of summons.

¹ Rollo, pp. 14-32.

² Id. at 34-46. Penned by Associate Justice Mario V. Lopez, with Associate Justices Fernanda Lampas Peralta and Ramon A. Cruz concurring.

³ Id. at 48-50.

⁴ Id. at 153-157. Penned by Presiding Judge Encarnacion Jaja G. Moya.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

On 27 November 2006, United Coconut Planters Bank (UCPB) filed a [C]omplaint⁵ for sum of money and/or damages with prayer for the *ex parte* issuance of a writ of preliminary attachment against Nation Granary, Inc. (NGI), the spouses Alison Ang-Sy and Guillermo Sy, Renato Ang, Nena Ang, Ricky Ang, Derick Chester A. Sy [(collectively, respondents Sps. Sy, *et al.*)], and Nation Petroleum Gas, Inc. (NPGI) [collectively, therein defendants]. [The Complaint was filed before the RTC and was docketed as Civil Case No. 06-1014.] The [C]omplaint alleged that, on 28 August 2005, UCPB granted NGI a credit accommodation, in the form of an Import Letter of Credit/Trust Receipt Line in the amount of US\$15,000,000.00 and a case-to-case Letter of Credit/Trust Receipt in the amount of US\$3,800,400.00. Both NPGI and the spouses Sy executed Surety Agreements securing the credit accommodations. x x x Demands for payment remained unheeded. The [C]omplaint prayed that the RTC order [therein] defendants to pay UCPB: (1) the amount of ₱824,390,158.21 plus interest, penalty and other charges from 15 November 2006 until fully paid; (2) ₱1,000,000.00 as attorney's fees as well as litigation expenses; and (3) costs of suit.

On 30 November 2006, the RTC granted UCPB's prayer for a writ of preliminary attachment. Summonses and copies of the order granting the writ were served on the [therein] defendants on 4 December 2006. On the same day, the Sheriff levied a Toyota Land Cruiser with plate number XRK-783 allegedly owned by the [therein] defendants. The following day, [therein] defendants' interests in stocks and shares and other assets in NPGI and NGI were garnished.

On 18 December 2006, [therein] defendants filed a Motion to Dismiss with Manifestation⁶ alleging that the RTC did not acquire jurisdiction over their persons. Where a defendant is a corporation, service of summons may be made on the president, managing partner, general manager, corporate secretary or in-house counsel. This list is exclusive and does not include a mere employee like Charlotte Magpayo, NPGI's Property Supply Custodian (OIC). The RTC did not also acquire jurisdiction over the persons of the spouses Allyson Ang-Sy and Guillermo Sy, Renato Ang, Nena Ang, Ricky Ang and Derick Chester Sy as personal service of summons was not first resorted to before substituted service was effected. Defendants thus prayed for the dismissal of the [C]omplaint for lack of jurisdiction, the discharge of the writ of attachment on their properties, and the suspension of further proceedings because a Stay Order had been issued against NGI and NPGI.

UCPB opposed the motion insisting that there was valid service of summons or, at the very least, substantial compliance of the rules. If not, [therein] defendants are deemed to have voluntarily submitted to the jurisdiction of the RTC when it prayed for an alternative relief other than dismissal in its [M]otion to [D]ismiss.

⁵ Id. at 236-254.

⁶ Id. at 55-63.

On 8 June 2007, the RTC granted the suspension of proceedings with respect to defendants NGI and NPGI but denied defendants' [M]otion to Dismiss x x x.

[Therein] [d]efendants' [M]otion for [R]econsideration was denied. Hence, [the Sps. Ang-Sy, *et al.* filed a Petition for Certiorari and Prohibition⁷ under Rule 65 of the Rules of Court imputing grave abuse of discretion on the part of the RTC when it denied their Motion to Dismiss through its Order dated June 8, 2007.]⁸

The Ruling of the CA

In its assailed Decision, the CA granted the Rule 65 Petition filed by respondents Sps. Sy, *et al.*, reversing and setting aside the RTC's Order dated June 8, 2007:

FOR THE STATED REASONS, the petition is **GRANTED**. The assailed RTC [O]rder dated 8 June 2007 is **REVERSED** and **SET ASIDE**.

SO ORDERED.⁹ (Emphasis in the original)

The CA held that the RTC failed to acquire jurisdiction over the persons of the therein defendants due to improper service of summons. Hence, "all proceedings before the [RTC] and the subsequent [Order] [are] void. [Therein] [d]efendants-petitioners are not bound by it."¹⁰

On February 29, 2012, petitioner UCPB filed with the CA a Motion for Reconsideration¹¹ (MR) of the assailed Decision. The MR was denied by the CA in its assailed Resolution¹² dated December 7, 2012.

Hence, petitioner UCPB filed the instant Petition for Review¹³ asking the Court to reverse the CA's assailed Decision and Resolution.

Issue

In the instant Petition, petitioner UCPB posits two issues for the Court's consideration, *i.e.*, (1) whether the CA committed an error of law when it found that the RTC did not acquire jurisdiction over the therein defendant corporations, even when such corporations failed to assail the RTC's Order; and (2) whether the CA committed an error of law in finding that the RTC did not acquire jurisdiction over the persons of the Sps. Sy, *et al.*

⁷ Id. at 193-223.

⁸ Id. at 34-38.

⁹ Id. at 45.

¹⁰ Id.

¹¹ Id. at 377-387.

¹² Id. at 48-50.

¹³ Id. at 14-32.

Stripped to its core, the critical question to be resolved by the Court is whether the RTC acquired jurisdiction to hear petitioner UCPB's Complaint.

The Court's Ruling

The aforesaid question should be answered in the negative; the instant appeal is denied.

Jurisdiction refers to the power and authority of the court to hear, try, and decide a case.¹⁴ One of the aspects of jurisdiction is jurisdiction over the parties. This refers to the fundamental rule that jurisdiction over a defendant in a civil case is acquired either through: (1) **service of summons** or through (2) **voluntary appearance in court and submission to its authority**.¹⁵

The service of summons undertaken in the instant case is undoubtedly defective.

According to the Rules of Court, upon the filing of the complaint and the payment of the requisite legal fees, the clerk of court shall forthwith issue the corresponding summons to the defendants.¹⁶ The summons shall be served by handing a copy thereof to the defendant in person.¹⁷ Only in instances wherein, for justifiable causes, the defendant cannot be served within a reasonable time, may summons be effected through substituted service, *i.e.*, (a) by leaving copies of the summons at the defendant's residence with some person of suitable 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.¹⁸ With respect to parties that are domestic private juridical entities, service may be made only upon the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.¹⁹

In the absence of service of summons or when the service of summons upon the person of the defendant is defective, **the court acquires no jurisdiction over his person, and the proceedings and any judgment rendered are null and void**.²⁰

At the outset, it must be stressed that **the fact that service of summons was defective in the instant case is undisputed**.

The evidence on record, specifically the Sheriff's Report,²¹ indubitably shows that the established jurisprudential doctrine on the

¹⁴ *Asia International Auctioneers, Inc., et al. v. Parayno, et al.*, 565 Phil. 255, 265 (2007).

¹⁵ *Prudential Bank v. Magdamit, Jr., et al.*, 746 Phil. 649, 659 (2014).

¹⁶ RULES OF COURT, Rule 14, Sec. 1.

¹⁷ RULES OF COURT, Rule 14, Sec. 6.

¹⁸ RULES OF COURT, Rule 14, Sec. 7.

¹⁹ RULES OF COURT, Rule 14, Sec. 11.

²⁰ *Prudential Bank v. Magdamit, Jr., et al.*, supra note 15.

²¹ *Rollo*, pp. 85-86.



prerequisites for valid substituted service was not observed, *i.e.*, for substituted service of summons to be available, there must be several attempts by the sheriff, which means at least three tries, preferably on at least two different dates.²²

It is crystal clear that there were no several attempts made to effect personal service in the instant case; as correctly found by the court *a quo*, there was only a single day's effort to personally serve summons upon the therein defendants.

Further, as also correctly found by the CA, the Sheriff's Report miserably failed to indicate that the person who received the summons was a person of suitable age and discretion residing in the residence of the therein defendants. Nor is there a statement that validates that such person understood the significance of the receipt of the summons and the correlative duty to immediately deliver the same to the therein defendants or, at the very least, to notify the said persons immediately. Jurisprudence is clear and unequivocal in making it an ironclad rule that such matters "must be clearly and specifically described in the Return of Summons."²³

As regards the service of summons undertaken with respect to the therein defendant corporations, *i.e.*, NGI and NPGI, the CA was also not mistaken in holding that since the summons were served on a mere OIC property supply custodian, the services of summons undertaken were defective.

Section 11, Rule 14 of the Rules of Court sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation. Service of summons to someone other than the corporation president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel is not valid.²⁴

It must be emphasized that even the RTC's Order, which petitioner UCPB aims to reinstate, does not make any refutation with respect to the fact that the service of summons undertaken was defective.

In fact, a perusal of the instant Petition would show that petitioner UCPB does not refute at all that substituted service was undertaken despite the fact that there were no several attempts to personally serve the summons on different dates, and that the summons with respect to the therein defendant corporations was made upon a person other than the defendant corporations' president, managing partner, general manager, corporate secretary, treasurer, and in-house counsel.

²² *Manotoc v. Court of Appeals*, 530 Phil. 454, 469-470 (2006).

²³ *Id.* at 470.

²⁴ *Paramount Insurance Corp. v. A.C. Ordoñez Corporation, et al.*, 583 Phil. 321, 327 (2008).

Bearing in mind the foregoing, the critical question now redounds to whether there was voluntary appearance on the part of respondents Sps. Sy, *et al.* that cures the defective service of summons.

There was no voluntary submission to the jurisdiction of the RTC on the part of respondents Sps. Sy, et al.

Indeed, despite lack of valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance.²⁵ According to the Rules of Court, the defendant's voluntary appearance in the action shall be equivalent to service of summons. However, 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.²⁶

As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.²⁷

Both petitioner UCPB and the RTC posit the view that since respondents Sps. Sy, *et al.*, in their Motion to Dismiss, included a plea to suspend the proceedings in view of the Stay Order issued by another court, they thus sought an affirmative relief which should be deemed a voluntary submission to the jurisdiction of the court.

Such view is mistaken.

As held in the very recent case of *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.*²⁸ (*Interlink Movie Houses, Inc.*), the abovementioned general rule is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.²⁹

As explained by the Court in the aforesaid case, citing *Philippine Commercial International Bank v. Spouses Dy, et al.*,³⁰ a special appearance operates as an exception to the general rule on voluntary appearance when

²⁵ *Prudential Bank vs. Magdamit, Jr., et al.*, supra note 15 at 665.

²⁶ RULES OF COURT, Rule 14, Sec. 20.

²⁷ *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 203298, January 17, 2018, p. 7.

²⁸ *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.*, G.R. No. 203298, January 17, 2018.

²⁹ Id. at 7.

³⁰ 606 Phil. 615 (2009).

the defendant explicitly and unequivocally poses objections to the jurisdiction of the court over his person.³¹

The Court in *Interlink Movie Houses, Inc.* explained that while at first glance, the therein respondents may be seen to have submitted themselves to the jurisdiction of the RTC by praying for an affirmative relief, there was an explicit objection made by the parties, in an unequivocal manner, to the jurisdiction of the court on the ground of invalid service of summons. This convinced the Court that the therein respondents never recognized and did not acquiesce to the jurisdiction of the RTC despite the fact that the said party prayed for an affirmative relief.³²

Applying the foregoing principles to the instant case, while it is true that respondents Sps. Sy, *et al.* did pray in their Motion to Dismiss for a suspension of the proceedings due to a Stay Order issued by a different court, which is an affirmative relief, **such was not tantamount to a voluntary appearance as respondents Sps. Sy, *et al.*, in an explicit and unequivocal manner, posed vehement objections to the jurisdiction of the RTC over their persons due to improper service of summons.**³³ Therefore, following what is already settled jurisprudence, the general rule that asking for an affirmative relief is tantamount to voluntary submission to the jurisdiction of the court should not be applied in the instant case.

In supporting their view that respondents Sps. Sy, *et al.*'s raising of an affirmative relief cured the defective service of summons, petitioner UCPB cites the Court's ruling in *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*,³⁴ which in turn cited *Philippine Commercial International Bank v. Spouses Dy, et al.*³⁵ Petitioner UCPB placed much emphasis on the Court's pronouncement in the aforesaid cases that "by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction."³⁶

Regrettably, the petitioner UCPB failed to place the foregoing pronouncement of the Court in the proper context.

In *Philippine Commercial International Bank v. Spouses Dy, et al.*, it should be emphasized that the pleading which contained certain affirmative reliefs "**did not categorically and expressly raise the jurisdiction of the court over their persons as an issue.**"³⁷

³¹ *Interlink Movie Houses, Inc., et al. v. Court of Appeals, et al.*, supra note 28 at 8.

³² *Id.*

³³ *Rollo*, pp. 56-59.

³⁴ 677 Phil. 351 (2011).

³⁵ *Supra* note 30.

³⁶ *Id.* at 635.

³⁷ *Id.* at 634; emphasis and underscoring supplied.

Oppositely, respondents Sps. Sy, *et al.* plainly and unmistakably questioned the jurisdiction of the RTC over their persons due to improper service of summons.³⁸ Hence petitioner UCPB's theory lacks any jurisprudential support.

As a final note, petitioner UCPB also made the argument that the CA purportedly committed an error of law because it held that the RTC did not acquire jurisdiction with respect to the therein defendant corporations even when such corporations failed to question the RTC's Order before the CA.

Such argument fails to convince. The courts may dismiss an action when there is lack of jurisdiction, even though the issue of jurisdiction was not raised by the pleadings or not even suggested by the parties. Issues of jurisdiction are not subject to the whims of the parties.³⁹ Even if a party does not question the jurisdiction of the court to hear and decide the pending action, the courts are not prevented from addressing the issue, especially where the lack of jurisdiction is apparent and explicit.⁴⁰

Therefore, the Petition is without merit.


WHEREFORE, the appeal is hereby **DENIED**. The Decision dated February 10, 2012 and Resolution dated December 7, 2012 issued by the Court of Appeals Special Twelfth Division, and Former Special Twelfth Division, respectively, in CA-G.R. SP No. 102725 are **AFFIRMED**.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

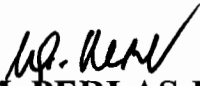


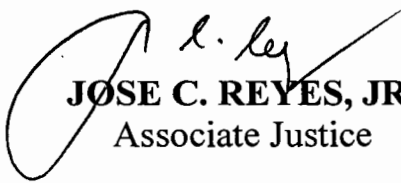
ANTONIO T. CARPIO
Associate Justice
Chairperson

³⁸ *Rollo*, pp. 56-59.

³⁹ *Paguio v. NLRC*, 323 Phil. 203, 212 (1996).

⁴⁰ *Heirs of De la Cruz v. Heirs of Cruz*, 512 Phil. 389, 400-401 (2005), citing *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631 (2003).



ESTELA M. PERLAS-BERNABE
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice

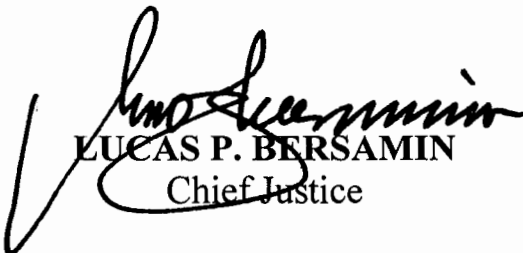
ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
 Associate Justice
 Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
 Chief Justice

