

FIRST DIVISION

G.R. No. 243366 – FELICITAS Z. BELO, *petitioner*, versus CARLITA C. MARCANTONIO, *respondent*.

Promulgated:

SEP 08 2020

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CONCURRING OPINION

I concur in the result.

Carlita C. Marcantonio (the Respondent) should be allowed to participate in the foreclosure proceedings. I maintain, however, that this should proceed from a recognition that: (1) the court has jurisdiction over the foreclosure proceedings when it acquired jurisdiction over the *res*; but (2) she was denied due process when, albeit deemed notified about the proceedings when she filed her motion to lift the order of default, she was deprived her due participation therein when the trial court erroneously stood by its order of default.

To recall, the controversy arose from a complaint for judicial foreclosure of real estate mortgage filed by the mortgagee, Felicitas Z. Belo (the Petitioner), against the mortgaged property of the Respondent.¹ For failing to file any responsive pleading after service of summons, the Respondent was declared in default and the Petitioner presented evidence *ex parte*.²

Before the trial court could render its judgment, the Respondent filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial³ (Motion to Lift). The trial court denied the Motion to Lift and ruled that there was valid substituted service of summons.⁴ As such, she was validly declared in default.⁵ According to the trial court, her filing of the Motion to Lift amounted to voluntary appearance which vested the court with jurisdiction over her person.⁶

The Respondent challenged the findings of the Regional Trial Court (RTC) in a petition for *certiorari* and prohibition under Rule 65 with the Court of Appeals (CA).⁷ The CA reversed the orders of the RTC and correctly ruled that there was improper resort to substituted service of summons. The CA also found that the Respondent cannot be deemed to have voluntarily submitted to the jurisdiction of the court as she raised the defense of lack of jurisdiction

¹ *Ponencia*, p. 1.

² *Rollo*, p. 65.

³ *Id.* at 68-69.

⁴ *Id.* at 80.

⁵ *Id.*

⁶ *Id.* at 91-92. RTC Order dated September 22, 2017.

⁷ *Id.* at 93-108.



over her person at the first opportunity.⁸ Hence, this petition for review on *certiorari* by the Petitioner.

The RTC and CA failed to take into consideration the fact that the Petitioner instituted a judicial foreclosure proceeding which is **an action *quasi in rem***.⁹ Petitioner is enforcing her personal claim against the property of the Respondent, named as party defendant in the proceedings below, burdened by the mortgage constituted thereon.¹⁰ Otherwise stated, the purpose of the action is to have the mortgaged property seized and sold by court order to the end that proceeds thereof be applied to the payment of the mortgagee's claim.¹¹

Being an action *quasi in rem*, **jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction¹² in the court provided that the court acquires jurisdiction over the res.**¹³

In the 1918 case of *El Banco Español-Filipino v. Palanca*,¹⁴ the Court had the first opportunity to discuss the nature of jurisdiction in actions *quasi in rem*.¹⁵ The Court therein clarified that while jurisdiction over the person of the defendant is not required, the defendant nevertheless shall have an opportunity to be heard by giving him or her notice through the means provided by law:¹⁶

It will be observed that in considering the effect of this irregularity, **it makes a difference whether it be viewed as a question involving jurisdiction or as a question involving due process of law.** In the matter of jurisdiction there can be no distinction between the much and the little. The court either has jurisdiction or it has not; and **if the requirement as to the mailing of notice should be considered as a step antecedent to the acquiring of jurisdiction, there could be no escape from the conclusion that the failure to take that step was fatal to the validity of the judgment.** In the application of the idea of due process of law, on the other hand, it is clearly unnecessary to be so rigorous. **The jurisdiction being once established, all that due process of law thereafter requires is an opportunity for the defendant to be heard;** and as publication was duly made in the newspaper, it would seem highly unreasonable to hold that the failure to mail the notice was fatal.¹⁷ (Emphasis and underscoring supplied)

⁸ *Ponencia*, p. 4; *rollo*, pp. 34-36.

⁹ See seminal case of *El Banco Español-Filipino v. Palanca*, 37 Phil. 921, 928 (1918); see also *Frias v. Alcaide*, G.R. No. 194262, February 28, 2018, 856 SCRA 514, citing *Munoz v. Yabut*, 655 Phil. 488, 515-516 (2011).

¹⁰ *Ocampo v. Domalanta*, G.R. No. L-21011, August 30, 1967, 20 SCRA 1136, 1141.

¹¹ See *Ocampo v. Domalanta*, *id.*; *San Pedro v. Ong*, G.R. No. 177598, October 17, 2008, 569 SCRA 767.

¹² *Biaco v. Philippine Countryside Rural Bank*, G.R. No. 161417, February 8, 2007, 515 SCRA 106, 115; *Alba v. Court of Appeals*, 503 Phil. 451 (2005); *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corp.*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 188.

¹³ Jurisdiction over the *res* is acquired either (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. (*Biaco v. Philippine Countryside Rural Bank*, *id.* at 115-116, citing *Alba v. Court of Appeals*, *id.*)

¹⁴ *Supra* note 9.

¹⁵ *Id.*

¹⁶ *Id.* at 934.

¹⁷ *Id.* at 937.

Hence, while jurisdiction over the person is not required, notification of the defendant is still required by due process of law.¹⁸ In actions *quasi in rem*, like judicial foreclosure proceedings, **this notice takes the form of summons validly served upon the defendant, not for vesting the court with jurisdiction, but for complying with the requirements of fair play.**¹⁹ By service of summons, the defendant is given notice that a civil action has been commenced and places him or her on guard as to the demands of the plaintiff,²⁰ and the possibility that property belonging to him, or in which he has an interest, might be subjected to a judgment in favor of the plaintiff and he or she can thereby take steps to protect such interest if he or she is so minded.²¹

To be clear, the proper characterization of the purpose of summons is not a hollow exercise. Viewing compliance, and by extension, any alleged defect in the service of summons as either being jurisdictional or as a question involving due process of law, would yield markedly different conclusions.

If service of summons is jurisdictional, then any defect thereon will necessarily result in the nullification of the proceedings for want of judicial authority.²² The court either has jurisdiction or it does not. Hence, in actions *in personam*, such as an action for specific performance,²³ defect in the service of summons upon the defendant, barring any voluntary appearance, automatically results in the nullification of the proceedings.²⁴

If service of summons on the person of the defendant is not an antecedent to the acquisition of the court's power to try and hear the case but instead is a facet of due process, any defect does not divest the court of jurisdiction. The Court retains its power to take cognizance of the case and may direct the proper service of summons to satisfy the requirements of due process.²⁵ **When the court proceeds to render judgment despite the failure to properly serve summons on the defendant, this deprives the latter the**

¹⁸ See *El Banco Español-Filipino v. Palanca*, supra note 9 at 934.

¹⁹ *Biacó v. Philippine Countryside Rural Bank*, supra note 12 at 118; *Alba v. Court of Appeals*, supra note 12.

²⁰ See *Paramount Insurance Corp. v. Japzon*, G.R. No. 68037, July 29, 1992, 211 SCRA 879, 885; see also *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres*, G.R. No. 170926, September 15, 2006, 502 SCRA 182, 193.

²¹ *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 296, citing *Perkin Elmer Singapore PTE LTD. v. Dakia Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170.

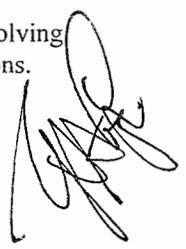
²² In *El Banco Español-Filipino v. Palanca*, supra note 9 at 937, the Court stated:

It will be observed that in considering the effect of this irregularity, it makes a difference whether it be viewed as a question involving jurisdiction or as a question involving due process of law. In the matter of jurisdiction there can be no distinction between the much and the little. The court either has jurisdiction or it has not; and if the requirement as to the mailing of notice should be considered as a step antecedent to the acquiring of jurisdiction, there could be no escape from the conclusion that the failure to take that step was fatal to the validity of the judgment.

²³ See *Spouses Jose v. Spouses Boyon*, G.R. No. 147369, October 23, 2003, 414 SCRA 216.

²⁴ See *Domagas v. Jensen*, 489 Phil. 631 (2005); *Lam v. Rosillosa*, 86 Phil. 447 (1950).

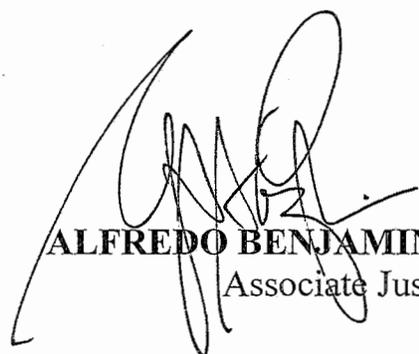
²⁵ Hence, in *Sahagun v. Court of Appeals*, G.R. No. 78328, June 3, 1991, 198 SCRA 44, likewise involving an action *quasi in rem*, the Court remanded the case to the trial court for proper service of summons.



opportunity to be heard, and only then may the proceedings be nullified — not on jurisdictional grounds, but on due process considerations.²⁶

In this case, the CA was correct in finding that, indeed, there was an invalid substituted service of summons upon the Respondent. However, her filing of the *Motion to Lift* should be considered as due notice that foreclosure proceedings had been instituted. Stated differently, the Respondent should be deemed to have been notified of the case, thus satisfying the requirement of due process that summons ordinarily serves in a proceeding *quasi in rem*. This necessarily foregoes the necessity of directing the trial court to serve summons anew. Since the Respondent is now deemed notified, due process also mandates that she be entitled to participate in the foreclosure proceedings.

Despite being deemed notified, however, it appears that the Respondent was, in fact, not able to participate in the proceedings. She was deprived of such opportunity because of the RTC's insistence on the validity of its default order, despite the impropriety of the substituted service of summons. Accordingly, the setting aside by the CA of the orders issued by the RTC is correct, but not for lack of jurisdiction — rather, for violation of the Respondent's right to due process of law. Hence, I join the *ponencia* in directing the RTC to allow the Respondent to present her case and participate in the foreclosure proceedings.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

²⁶ If, however, the trial court proceeded in rendering judgment despite the defective service of summons and deprived the defendant of his or her participation in the proceedings, the Court has, as in the case of *Biacó v. Philippine Countryside Rural Bank*, supra note 12, vacated the judgment, not on jurisdictional grounds, but on due process considerations.