Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATION PETROLEUM GAS, INCORPORATED, NENA ANG, MARIO ANG, ALISON A. SY, GUILLERMO G. SY, NELSON ANG, LUISA ANG, RENATO C. ANG, PAULINE T. ANG, RICKY C. ANG,[1] and MELINDA ANG, Petitioners, - *versus* - **RIZAL COMMERCIAL BANKING CORPORATION, substituted by PHILIPPINE ASSET GROWTH ONE, INC.,** Respondent.	**G.R. No. 183370** **Present:** VELASCO, JR., *J.*, *Chairperson*, LEONARDO-DE CASTRO,* PERALTA, PEREZ,** and JARDELEZA, *JJ.* **Promulgated:** August 17, 2015

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D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure (*Rules*) seeks to reverse and set aside the December 12, 2007 Decision[2] and June 17, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 98787, which affirmed the March 29, 2007 Order[4] of the Regional Trial Court (RTC), Branch 66, Makati City, in

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1 Died on October 24, 2014 (*Rollo*, p. 577).

* Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., per Special Order No. 2144 dated August 10, 2015.

** Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

2 Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon concurring (*Rollo*, pp. 7-20).

3 *Rollo*, pp. 22-23.

4 *Id.* at 329-331.

Civil Case No. 06-882, denying petitioners' *Special Appearance with Motion to Dismiss* for alleged improper service of summons.

On October 16, 2006, respondent Rizal Commercial Banking Corporation filed against petitioner corporation and its directors/officers a Complaint[5] for civil damages arising from estafa in relation to violations of the Trust Receipts Law. On October 26, 2006, after an *ex parte* hearing was conducted, respondent's prayer for a writ of preliminary attachment was granted and the corresponding writ was issued.[6] Thereafter, Sheriff Leodel N. Roxas served upon petitioners a copy of the summons, complaint, application for attachment, respondent's affidavit and bond, and the order and writ of attachment. The Sheriff's Report dated November 13, 2006 narrated:

> The undersigned sheriff respectfully submits the following report to wit:
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> On 26 October 2006, [a] copy of Writ of Attachment dated 26 October 2006, issued by the Court in the above-entitled case was received by the undersigned for service and implementation.
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> On even date, the undersigned served the Summons, copy of [the] Complaint, application for attachment, the plaintiffs affidavit and bond, and the Order and Writ of Attachment, on the defendants Nation Petroleum Gas et al., at BPI Building, Rizal Street, Candelaria, Quezon. Said summons and all pertinent papers, upon telephone instruction of defendant Melinda Ang, were received by Claudia Abante, [defendants'] [Liaison] Officer, as evidenced by her signature at the original copy of Summons and Writ. I also served copies to other defendants at their given addresses, but they refused to acknowledge receipt thereof.
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> On the same day, at the instance of the plaintiff's counsel and representative, the undersigned levied the real properties of the defendants at the Register of Deeds of Lucena City, Makati City, Pasig City, Quezon City and the Register of Deeds of Manila. I also levied a property (plant equipment) in NPGI plant in Sariaya, Quezon. Copies of the notices of levy on attachment are hereto attached.
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> WHEREFORE, the original copies of the Summonses, Order, Writ of Attachment and all pertinent papers are hereby returned to the Court of origin for record and information.[7]

Petitioners filed through counsel a Special Appearance with Motion to Dismiss[8] on November 15, 2006. They asserted that the trial court did not acquire jurisdiction over the corporation since the summons was improperly

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5 *Id.* at 81-99.
6 *Id.* at 222, 234-235.
7 *Id.* at 236.
8 *Id.* at 237-244.

served upon Claudia Abante (Abante), who is a mere liaison officer and not one of the corporate officers specifically enumerated in Section 11, Rule 14 of the *Rules*. Likewise, the individual petitioners argued that the sheriff and/or process server did not personally approach them at their respective address as stated in the Complaint. Neither did he resort to substituted service of summons, and that, even if he did, there was no strict compliance with Section 7, Rule 14 of the *Rules*. The Court's pronouncements in *Spouses Mason v. Court of Appeals*,[9] *E. B. Villarosa & Partner Co., Ltd. v. Judge Benito*,[10] *Laus v. Court of Appeals*,[11] and *Samartino v. Raon*[12] were invoked in praying for the dismissal of the complaint and the discharge of the writ of attachment.

Respondent countered in its Opposition with Motion to Declare Defendants in Default[13] that there was valid service of summons upon petitioners. With respect to the corporation, Abante received the summons upon the express authority and instruction of the corporate secretary, petitioner Melinda Ang (Ang). As regards the individual petitioners, the Sheriff's Report reflects that they were served *"at their given addresses, but they refused to acknowledge receipt thereof."* Respondent stressed that said Report is *prima facie* evidence of the facts stated therein and that the sheriff enjoys the presumption of regularity in the performance of his official functions. In any case, it averred that, according to *Oaminal v. Castillo*,[14] petitioners already voluntarily submitted to the court's jurisdiction when they prayed for the discharge of the writ of attachment, which is an affirmative relief apart from the dismissal of the case.

A Reply with Comment/Opposition (to the motion to declare defendants in default)[15] was then filed by petitioners. In support of their contention that the court lacks jurisdiction over their persons, they submitted their Joint Affidavit[16] and the Affidavit[17] of Abante, claiming, among others, that they neither personally met the sheriff and/or the process server nor were handed a copy of the court documents; that Ang did not give Abante telephone instructions to receive the same; and that Abante did not receive any instruction from Ang. Petitioners further held that *Oaminal* finds no application in the instant case since they only filed one motion and that the additional relief prayed for, which is the discharge of the writ, is complementary to and a necessary consequence of a finding that the court

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9 459 Phil. 689 (2003).
10 370 Phil. 921 (1999).
11 G.R. No. 101256, March 8, 1993, 219 SCRA 688.
12 433 Phil. 173 (2002).
13 *Rollo*, pp. 246-257.
14 459 Phil. 542 (2003).
15 *Rollo*, pp. 265-278.
16 *Id.* at. 280-283.
17 *Id.* at 284.

has no jurisdiction over their persons. Instead, Our ruling in *Avon Insurance PLC v. Court of Appeals*[18] was relied upon.

In its Rejoinder with Motion to Strike,[19] respondent stood firm in defending the court's jurisdiction. The denials of Ang and Abante were viewed as self-serving and could not prevail over the presumption of regularity which the sheriff enjoys as an officer of the court. Even assuming that the Sheriff's Return does not state in detail the fact that the summons was served upon the individual petitioners through substituted service, respondent asserted that this does not conclusively prove that such service is invalid because it may still be shown through extraneous evidence similar to the case of *BPI v. Spouses Evangelista*.[20]

On March 29, 2007, the RTC denied petitioners' motion to dismiss and respondent's motion to declare them in default. In upholding the jurisdiction of the court over the persons of petitioners and requiring them to file an Answer, the Order ratiocinated:

> The very essence of service of summons is for the defendants to be aware of an existing suit against them and for them to file an answer or responsive pleading thereto. When corporate and individual defendants were served with summons through the [liaison] officer who received the same for and in their behalf as per instruction of defendant Melinda Ang, and when defendants filed a responsive pleading in the form of a Motion to Dismiss, the essence of service of summons was met and defendants are deemed to have ultimately received the summons despite their protestations. There is no reason for the Court to doubt the regularity of the Sheriff's service of summons as in fact its regularity is presumed. It bears stressing that defendants did not *per se* deny having received summonses. Perforce, they are challenging the manner of service of the same. Having ultimately received the summonses upon them and considering the rules on service of the same was substantially complied with, the Court finds no reason to deny the instant Motion to Dismiss.[21]

Petitioners elevated the jurisdictional issue to the CA *via* petition for *certiorari* and prohibition.[22] As afore-stated, the appellate court later dismissed the petition and denied the motion for reconsideration; hence, this petition raising the following issues for resolution:

> I.
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> WHETHER OR NOT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE DEFENDANT

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18 343 Phil. 849 (1997).
19 *Rollo*, pp. 289-315.
20 441 Phil. 445 (2002).
21 *Rollo*, p. 330.
22 *Id.* at 332-349.

> CORPORATION BY SERVICE OF SUMMONS UPON ITS MERE EMPLOYEE.
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> II.
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> WHETHER OR NOT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSONS OF THE INDIVIDUAL DEFENDANTS BY RESORTING TO SUBSTITUTED SERVICE OF SUMMONS DESPITE ABSENCE OF EARNEST EFFORTS ON THE PART OF THE SERVING OFFICER TO SERVE SUMMONS PERSONALLY.[23]

We deny.

Summons is a writ by which the defendant is notified of the action brought against him or her.[24] Its purpose is two-fold: to acquire jurisdiction over the person of the defendant and to notify the defendant that an action has been commenced so that he may be given an opportunity to be heard on the claim against him.[25] "[C]ompliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense. It is elementary that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised."[26]

Service of summons on domestic corporation, partnership or other juridical entity is governed by Section 11, Rule 14 of the *Rules*, which states:

> SECTION 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.

When the defendant is a domestic corporation like herein petitioner, service of summons may be made only upon the persons enumerated in Section 11, Rule 14 of the *Rules*.[27] The enumeration of persons to whom summons may be served is restricted, limited and exclusive following the rule on statutory construction *expressio unios est exclusio alterius*.[28] Substantial compliance cannot be invoked.[29] Service of summons

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23 *Id.* at 31.

24 *Tam Wong v. Factor-Koyama*, 616 Phil. 239, 249 (2009).

25 *Sagana v. Francisco*, 617 Phil. 387, 398 (2009).

26 *Samartino v. Raon*, *supra* note 12, at 186.

27 *Atiko Trans, Inc. v. Prudential Guarantee and Assurance, Inc.*, 671 Phil. 388, 397-398 (2011).

28 *E. B. Villarosa & Partner Co., Ltd. v. Judge Benito*, *supra* note 10, at 927. See also *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 172204, July 10, 2014; *Sps. Santiago, Sr. v. Bank of the Philippine Islands*, 588 Phil. 121, 132 (2008); *Paramount Insurance Corp. v.*

upon persons other than those officers specifically mentioned in Section 11, Rule 14 is void, defective and not binding to said corporation.[30]

> Basic is the rule that a strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise, the service is insufficient. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or 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.[31]

As correctly argued by petitioners, *Sps. Mason* already resolved that substantial compliance on service of summons upon a domestic corporation is no longer an excuse. Thus:

> 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 the 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

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A.C. Ordoñez Corporation, et al., 583 Phil. 321, 328 (2008); *DOLE Philippines, Inc. (Tropifresh Div.) v. Judge Quilala, et al.*, 579 Phil. 700, 704 (2008); and *Spouses Mason v. Court of Appeals, supra* note 9, at 698.

[29] See *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc., supra*; *Spouses Santiago, Sr. v. Bank of the Philippine Islands, supra*, at 131-133; *Paramount Insurance Corp. v. A.C. Ordoñez Corporation, et al., supra*, at 328 and *Spouses Mason v. Court of Appeals, supra* note 9, at 697-699.

[30] *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc., supra* note 28; *Paramount Insurance Corp. v. A.C. Ordoñez Corporation, et al., supra*, at 328; and *Bank of the Philippine Islands v. Spouses Santiago*, 548 Phil. 314, 326 (2007).

[31] *B. D. Long Span Builders, Inc. v. R. S. Ampeloquio Realty Dev't, Inc.*, 615 Phil. 530, 536 (2009); *Spouses Santiago, Sr. v. Bank of the Philippine Islands, supra* note 28, at 130-131; and *Bank of the Philippine Islands v. Spouses Santiago, supra*, at 325-326.

> 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.
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> Neither can herein petitioners invoke our ruling in *Millennium* to support their position for said case is not on all fours with the instant case. We must stress that *Millennium* was decided when the 1964 Rules of Court were still in force and effect, unlike the instant case which falls under the new rule. Hence, the cases cited by petitioners where we upheld the doctrine of substantial compliance must be deemed overturned by *Villarosa*, which is the later case.
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> At this juncture, it is worth emphasizing that notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative or judicial proceedings. The service of summons is a vital and indispensable ingredient of due process. x x x[32]

The foregoing notwithstanding, We agree with the CA that there was a valid and effective service of summons upon petitioner corporation through its liaison officer who acted as the agent of the corporate secretary. It ruled:

> Petitioner corporation asserts that based on the said rule [Section 11, Rule 14 of the *Rules*], the service of summons made by the sheriff upon its liaison officer, Claudia Abante, was defective for the reason that a liaison officer is not one of the corporate officers enumerated therein upon whom service of summons is authorized to be made. It contends that there having been no valid service, the trial court consequently did not acquire jurisdiction to hear the complaint *a quo*.
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> The contention deserves full credence only if it is to be assumed that Claudia Abante received the summons in her official capacity as petitioner corporation's liaison officer. However, this is not true in the instant case, since according to the sheriff, Abante proceeded to receive the summons and accompanying documents only after receiving instructions to do so from Melinda Ang, an individual petitioner herein and the petitioner corporation's corporate secretary. It is clear, therefore, that Abante, in so receiving the summons, did so in representation of Ang who, as corporate secretary, is one of the officers competent under the Rules of Court to receive summons on behalf of a private juridical person. Thus, while it may be true that there was no direct, physical handing of the summons to Ang, the latter could at least be charged with having constructively received the same, which in Our view, amounts to a valid service of summons.

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[32] *Spouses Mason v. Court of Appeals*, *supra* note 9, at 697-699. See also *Spouses Santiago, Sr. v. Bank of the Philippine Islands*, *supra* note 28, at 129-131.

> Having herself instructed Abante to receive the summons, Ang, and for that matter, petitioner corporation, is thus now precluded from impugning the jurisdiction of the trial court on the ground of invalid service of summons. In point in this regard is the principle of estoppel which, under our remedial laws, is an effective bar against any claim of lack of jurisdiction. Under said doctrine, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.
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> Thus, despite the assertions of Ang and Abante that, as between them, no such instruction had been relayed and received, the sheriff's statement belying the allegations should be accorded weight.
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> The sheriff's report is further bolstered by the presumption of regularity in the performance of public duty as the same is provided for in Rule 131 of the Rules of Court. The presumption applies so long as it is shown that the officer, in performing his duties, is not inspired by any improper motive, a fact that is true with the sheriff in the case at bar. And, if the presumption may be made to apply to public officers in general, with more reason should its benefit be accorded to the sheriff, who is an officer of the court.
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> True, the presumption is disputable, but to overcome the same, more concrete evidence than the affidavit of Abante is required. As correctly pointed out by the respondent, in line with the ruling of the Supreme Court in *R. Transport Corporation vs. Court of Appeals* and *Talsan Enterprises, Inc. vs. Baliwag*, Abante's affidavit is self-serving in nature, and being so, is not sufficient to overturn the said presumption.
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> On this aspect, petitioners score the respondent, asserting that the two above-cited cases are not applicable to the case at hand inasmuch as these were decided before the advent of the 1997 Revised Rules of Civil Procedure, adding likewise that the cited cases and the instant case differ in their respective factual milieus. We are not persuaded. Under either the former or the present rules, it is clear that Abante's denial that she received instructions from Ang is evidence that would pale in comparison to the declaration of an officer of the court indisputably performing his duty objectively and free from any malicious and ill motives.[33]

Petitioner corporation cannot conveniently rely on the sworn statements of the individual petitioners and Abante. Upon examination, Ang's denial of having spoken with any process server to give instruction to serve the summons and other pertinent papers to Abante[34] is not incompatible with the Sheriff's Report stating that *"[s]aid summons and all pertinent papers, upon telephone instruction of defendant Melinda Ang, were received by Claudia Abante, [defendants'] [Liaison] Officer, as evidenced by her signature at the original copy of Summons and Writ."* While it may be true that Ang had not talked to the sheriff or process server, it still does not rule out the possibility that she in fact spoke to Abante and

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33 *Rollo*, pp. 11-14. (Citations omitted)

34 See paragraph 11 of the Joint Affidavit (*Rollo*, p. 281).

instructed the latter to receive the documents in her behalf. As to the Affidavit of Abante, her disavowal of having spoken to Ang or receiving telephone instructions from her is truly self-serving. Evidence as simple as a telephone billing statement or an affidavit of a disinterested third person, among others, could have been presented to refute the sheriff's claim, but there was none. Likewise, no substantial proofs were credibly shown to support Abante's allegation that the sheriff insisted on having the court processes received and that she was *"intimidated by the presence of a court personnel who was quite earnest in accomplishing his task."*[35]

It is well to note that the certificate of service of the process server is *prima facie* evidence of the facts as set out therein. This is fortified by the presumption of the regularity of performance of official duty. To overcome the presumption of regularity of official functions in favor of such sheriff's return, the evidence against it must be clear and convincing. Sans the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit.[36]

The same conclusion, however, could not be said with respect to the service of summons upon the individual petitioners.

Section 7, in relation to Section 6, Rule 14 of the *Rules*, provides for substituted service of summons:

> **Section 6.** *Service in person on defendant*. – Whenever practicable, the summons shall be served by handling a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
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> **Section 7.** *Substituted service*. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (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.

Sections 6 and 7 of the *Rules* cannot be construed to apply simultaneously and do not provide for alternative modes of service of summons which can either be resorted to on the mere basis of convenience to the parties for, under our procedural rules, service of summons in the persons of the defendants is generally preferred over substituted service.[37] Resort to the latter is permitted when the summons cannot be promptly served on the defendant in person and after stringent formal and substantive

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35 See paragraphs 3 and 4 of the Affidavit (*Rollo*, p. 284).

36 *Sansio Philippines, Inc. v. Spouses Mogol, Jr.*, 610 Phil. 321, 340 (2009).

37 *Id.* at 338.

requirements have been complied with.[38] The failure to comply faithfully, strictly and fully with all the requirements of substituted service renders the service of summons ineffective.[39]

Manotoc v. Court of Appeals[40] painstakingly elucidated the requirements of the *Rules* as follows:

> We can break down this section into the following requirements to effect a valid substituted service:
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> **(1) Impossibility of Prompt Personal Service**
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> The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an *alias* summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff's Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.
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> Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to

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38 *Oaminal v. Castillo*, *supra* note 14, at 552.

39 *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, 694 SCRA 302, 309.

40 530 Phil. 454 (2006).

prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferrably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed". Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in

> the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return.[41]

In resorting to the substituted service, the sheriff in this case pithily declared in his Report that he *"also served copies to other defendants at their given addresses, but they refused to acknowledge receipt thereof."* Obviously, the Sheriff's Report dated November 13, 2006 does not particularize why substituted service was resorted to and the precise manner by which the summons was served upon the individual petitioners. The disputable presumption that an official duty has been regularly performed will not apply where it is patent from the sheriff's or server's return that it is defective.[42]

To avail themselves of substituted service of summons, courts must rely on a detailed enumeration of the sheriff's actions and a showing that the defendant cannot be served despite diligent and reasonable efforts.[43] The Court requires that the Sheriff's Return clearly and convincingly show the impracticability or hopelessness of personal service.[44] The impossibility of personal service justifying availment of substituted service should be explained in the proof of service; why efforts exerted towards personal service failed. The pertinent facts and circumstances attendant to the service of summons must be stated in the proof of service or Officer's Return; otherwise, the substituted service cannot be upheld.[45]

Under exceptional terms, the circumstances warranting substituted service of summons may be proved by evidence *aliunde*.[46] Substituted service will still be considered as regular if other evidence of the efforts to serve summons was presented.[47] *BPI v. Spouses Evangelista*[48] teaches Us that a defect in the service of summons, which is apparent on the face of the return, does not necessarily constitute conclusive proof that the actual service has in fact been improperly made. In the interest of speedy justice, the trial court has to immediately ascertain whether the patent defect is real and, if so, to fully determine whether prior attempts at personal

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41 *Id.* at 468-471. (Citations omitted) See also *Yuk Ling Ong v. Benjamin T. Co*, G.R. No. 206653, February 25, 2015; *De Pedro v. Romasan Development Corporation*, G.R. No. 194751, November 26, 2014; *Prudential Bank v. Magdamit, Jr.*, G.R. No. 183795, November 12, 2014; *Office of the Court Administrator v. Castañeda*, A.M. No. RTJ-12-2316 (Formerly A.M. No. 09-7-280-RTC), October 9, 2012, 682 SCRA 321, 330; *Planters Development Bank v. Chandumal*, G.R. No. 195619, September 5, 2012, 680 SCRA 269, 278; *Afdal, et al. v. Carlos*, 651 Phil. 104, 115 (2010); *Pascual v. Pascual*, 622 Phil. 307, 319-322 (2009); *Garcia v. Sandiganbayan, et al.*, 618 Phil. 346, 366 (2009); and *Judge Collado-Lacorte v. Rabena*, 612 Phil. 327, 332-334 (2009).

42 *Heirs of Mamerto Manguiat, et al. v. The Hon. Court of Appeals, et al.*, 584 Phil. 403, 411 (2008).

43 *De Pedro v. Romasan Development Corporation*, *supra* note 41.

44 *Tam Wong v. Factor-Koyama*, *supra* note 24, at 250.

45 *Samartino v. Raon*, *supra* note 12, at 184.

46 *Id*.

47 See *De Pedro v. Romasan Development Corporation*, *supra* note 41.

48 *Supra* note 20.

service have in fact been done and resort to the substituted service was justified. Should the returns not show compliance with the *Rules* on substituted service, actual and correct service may still be proven by evidence extraneous to it. If substituted service is indeed improper, the trial court must issue new summons and serve it in accordance with the *Rules.*

In the present case, while no actual hearing was conducted to verify the validity of the grounds for substituted service of summons, the parties exchanged pleadings in support of their respective positions. To justify, respondent contends:

> 34. In the instant case, representatives of the undersigned counsel and plaintiff RCBC personally observed the service of summons on the defendants. Based on their account, the following facts and circumstances transpired:
>
> a. On [October 26, 2006], the Sheriff served summons on defendant NPGI at the G/F BPI Building, Rizal Street, Candelaria, Quezon, the reported office address of defendant NPGI in the latter's General Information Sheet submitted with the Securities and Exchange Commission.
>
> a.1. In the said address, the Sheriff met a person who introduced herself as Ms. Claudia Abante, the Liaison [Officer] of defendant NPGI.
>
> a.2. Upon inquiry, the Sheriff was informed that defendants NPGI Officers were all not around to receive the summons for defendant NPGI considering that, according to Ms. Abante, the defendant NPGI Directors do not hold office at said address.
>
> a.3. However, Ms. Abante volunteered to call defendant Melinda Ang on the phone to inform her that summons was beings served upon defendant NPGI.
>
> a.4. Subsequently, Ms. Abante informed the Sheriff that defendant Melinda Ang authorized her to receive the summons for defendant NPGI.
>
> a.5. Considering that she claimed to be authorized by defendant Melinda Ang, who is the Corporate Secretary of defendant NPGI, to receive the summons on behalf of defendant NPGI, the Sheriff entrusted the same to her, as well as the *Complaint* and the *Writ of Attachment*, among others, and Ms. Abante voluntarily signed the receiving copy thereof.
>
> a.6 the Sheriff did not intimidate Ms. Abante into receiving the summons. In fact, she volunteered to receive the same.

b. Copies of the *Complaint*, summons and *Writ of Attachment*, among others, were likewise served to defendant NPGI at its office located at 39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, corner Sen. Gil Puyat Avenue, Makati City, Metro Manila ('RCBC Plaza Office').

b.1. The personnel from said office also stated that all the defendant NPGI Directors were not around and were probably at home. As such, a copy of the *Complaint*, summons and *Writ of Attachment*, among others, were left with said office.

c. Thereafter, summons on the individual defendants were served at the following addresses:

c.1. Renato Ang, Nena Ang, Melinda Ang, Pauline Ang – 1348 Palm Avenue, Dasmariñas Village, Makati City;

c.2. Guillermo Sy and Alison Sy – 1320 Glorioso Streets, Dasmariñas Village, Makati City;

c.3. Nelson Ang, Luisa Ang – 19 Swallow Drive, Greenmeadows, Quezon City;

c.4. Mario Ang – Diamond Furniture, Cabunyag Street, Candelaria, Quezon; and

c.5. Ricky Ang – Rizal Street, Candelaria, Quezon.

d. Upon service of the summons upon them, it became apparent that the individual defendants were evading service of summons considering that the sheriff was being given a run-around.

d.1. In their respective residences, their house helpers stated that the individual defendants were not at home but in the RCBC Plaza Office.

d.2. However, considering that the Sheriff had already been to the RCBC Plaza Office and the personnel at said office previously stated that all the defendants were not at said office, it became apparent that all the defendants were trying to evade service of summons.

d.3. Given the obvious attempt of defendants to evade service of summons, it was futile for the Sheriff to go back to the RCBC Plaza Office.

d.4. Hence, summons were served to the individual defendants through substituted service by entrusting the same to their house helpers residing at the respective addresses, all of whom are of suitable age and discretion.

x x x x

> 36. Indeed, in the instant case, contrary to the allegations contained in the *Motion to Dismiss*, the summons were properly served to the individual defendants through substituted service considering that there were justifiable causes existing which prevented personal service upon all the individual defendants within a reasonable time.
>
> 36.1. It should be noted that aside from defendant NPGI, there are **ten (10) other individual defendants** in the instant case who are residing in addresses which are far apart (*i.e.*, Makati City, Pasig City, City of Manila and Quezon Province).
>
> 36.2. Summons were attempted to be served to all defendant NPGI Directors, Luisa Ang, Guillermo Sy and Pauline Ang on the following addresses:
>
> 1. Renato Ang, Nena Ang, Melinda Ang, Pauline Ang – 1348 Palm Avenue, Dasmariñas Village, Makati City;
>
> 2. Guillermo Sy and Alison Sy – 1320 Glorioso Streets, Dasmariñas Village, Makati City;
>
> 3. Nelson Ang, Luisa Ang – 19 Swallow Drive, Greenmeadows, Quezon City;
>
> 4. Mario Ang – Diamond Furniture, Cabunyag Street, Candelaria, Quezon; and
>
> 5. Ricky Ang – Rizal Street, Candelaria, Quezon.
>
> 36.3. To require the sheriff to return several times at the residences of the ten (10) defendants as suggested by the defendants, despite the apparent intention of the defendants to evade service of summons, and the considerable distances between all their residences (*i.e.*, Makati City, Pasig City, City of Manila and Quezon Province), would clearly be unreasonable.[49]

According to respondent's version, copies of the complaint, summons and writ of attachment, among others, were served to petitioner corporation at its offices in Candelaria, Quezon and RCBC Plaza. In the Quezon office, the sheriff was informed that the individual petitioners were all not around to receive the summons for the corporation considering that they do not hold office at said address. Likewise, a staff from the RCBC Plaza office stated that all them were not around and were probably at home. Thereafter, summons was served on the individual petitioners at their respective addresses in Makati City, Quezon City, and Candelaria, Quezon. Their house helpers told that they were not at home but were in the RCBC Plaza office. Considering that the sheriff already went there and its personnel said that they were not at said office, it became apparent on the sheriff that the

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[49] *Rollo*, pp. 303-309.

individual petitioners were trying to evade service of summons. Thus, given this predicament, it was futile for him to go back to the RCBC Plaza office.

It is argued that the summons was properly served to the individual petitioners through substituted service because there were justifiable causes existing which prevented personal service within a reasonable period of time. Respondent asserts that requiring the sheriff to return several times at the residences of the ten (10) individual petitioners despite their intention to evade service of summons and the considerable distances of their residences would clearly be unreasonable.

Respondent's explanations do not suffice.

In the instant case, it appears that the sheriff hastily and capriciously resorted to substituted service of summons without actually exerting any genuine effort to locate the individual petitioners. The *"reasonable time"* within which to personally serve the summons – 7 days for the plaintiff or 15-30 days for the sheriff as stated in *Manotoc* – has not yet elapsed at the time the substituted service was opted to. Remarkably, based on the Sheriff's Report and the narration of petitioners, the personal service of summons upon the corporation and the individual petitioners as well as the levy of their personal and real properties were all done in just one day. *Manotoc* stresses that for substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period which eventually resulted in failure in order to prove impossibility of prompt service. To reiterate, "several attempts" means at least three (3) tries, preferrably on at least two different dates.

Further, except for the Quezon Province, there is, in fact, no considerable distance between the residences of the individual petitioners since the cities of Makati and Quezon are part of the National Capital Region; hence, accessible either by private or public modes of transportation. Assuming that there is, the distance would not have been insurmountable had respondent took its time and not unnecessarily rushed to accomplish personal service in just a single day.

Finally, respondent alleges that the summons was served to the individual petitioners through substituted service by entrusting the same to their house helpers, all of whom are of suitable age and discretion. It did not, however, elaborate that these persons know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the individual petitioners at the earliest possible time for them to take appropriate action. There is no way for Us to conclusively ascertain that the sheriff ensured, among others,

that the persons found in the alleged dwelling or residence comprehend the significance of the receipt of the summons and the duty to immediately deliver it to the individual petitioners or at least notify them of said receipt of summons.

The foregoing considered, it can be deduced that since there were no actual efforts exerted and no positive steps undertaken to earnestly locate the individual petitioners, there is no basis to convincingly say that they evaded the personal service of summons and merely gave the sheriff a run-around, thus, justifying substituted service upon them.

Despite improper service of summons upon their persons, the individual petitioners are deemed to have submitted to the jurisdiction of the court through their voluntary appearance. The second sentence of Section 20,[50] Rule 14 of the *Rules* that *"[t]he 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"* clearly refers to **affirmative defenses**, not affirmative reliefs.[51]

In the present case, the individual petitioners prayed, among others, for the following: (1) discharge of the writ of attachment on their properties; (2) denial of the motion to declare them in default; (3) admission of the Comment/Opposition (to the motion to declare them in default) filed on December 19, 2006; and (4) denial of respondent's motion to strike off from the records (their opposition to the motion to declare them in default). By seeking affirmative reliefs from the trial court, the individual petitioners are deemed to have voluntarily submitted to the jurisdiction of said court. A party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.[52] Therefore, the CA cannot be considered to have erred in affirming the trial court's denial of the *Special Appearance with Motion to Dismiss* for alleged improper service of summons.

WHEREFORE, premises considered, the petition is **DENIED**. The December 12, 2007 Decision and June 17, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 98787, which sustained the March 29, 2007 Order of the Regional Trial Court, Branch 66, Makati City, in Civil Case No. 06-882, are hereby **AFFIRMED**.

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[50] Section 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.

[51] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, 677 Phil. 351, 375 (2011).

[52] *Id.* at 374.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that 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