Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FELICITAS Z. BELO,
Petitioner,

- versus -

CARLITA C. MARCANTONIO,
Respondent.

G.R. No. 243366

Present:

PERALTA, *C J., Chairperson,*
CAGUIOA,
REYES, J. JR., and
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

SEP 08 2020

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DECISION

REYES, J. JR., *J.*:

This is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated June 29, 2018 and Resolution[3] dated November 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 153771, which annulled and set aside the Orders[4] dated August 15, 2016 and September 22, 2017 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 208, in Civil Case No. MC15-9374.

The Facts

On January 12, 2015, Felicita Z. Belo (petitioner) filed a complaint for foreclosure of mortgage against Carlita C. Marcantonio (respondent). The

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1 *Rollo*, pp. 10-22.
2 Penned by Associate Justice Manuel M. Barrios with Justices Japar B. Dimaampao and Jhosep Y. Lopez, concurring, id. at 28-37.
3 Id.
4 Id. at 80-81 and 91-92.

clerk of court then issued summons dated January 26, 2015 addressed to respondent's known address at 155 Haig St., Mandaluyong City. Per the Sheriff's Return, copies of said summons and the complaint along with its annexes were left to a certain Giovanna Marcantonio (Giovanna), respondent's "niece," allegedly because respondent was not at the given address at that time.[5] The Sheriff's Return[6] dated January 29, 2015 reads:

> This is to certify that on January 28, 2015, a copy of Summons with Complaint, Annexes dated January 26, 2015 issued by the Honorable Court in connection with the above-entitled case was cause[d] to be served by substituted service (Sec. 7 – Rule 14). The defendant/s cannot be served within a reasonable time as provided for in Sec. 8 – Rule 14 because the [d]efendant [is] not around and cannot be found at the given address located at 155 Haig Street, Mandaluyong City at the time of the service of summons and that earnest efforts were exerted to serve summons personally to the defendant and service was effected by leaving a copy of summons at the defendant['s] given address thru Giovann[a] Marcantonio – Niece of the [d]efendant and a person of suitable age and discretion who acknowledged receipt thereof the copy of summons as evidenced by her signature located at the lower portion of the original copy of summons.
>
> WHEREFORE, I respectfully return to the Court of origin the original copy of Summons with annotation **DULY SERVED** for record and information.[7]

No responsive pleading was, however, filed. Thus, upon petitioner's motion, respondent was declared in default. Petitioner was then allowed to present evidence *ex parte*, and thereafter, the case was submitted for decision.[8]

In April 2016, before judgment was rendered, respondent learned about petitioner's case against her. Respondent immediately, thus, filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial[9] dated April 11, 2016 on the ground of defective service of summons. She averred therein, among others, that she learned about the case only on April 5, 2016 through petitioner's niece, a certain Mae Zamora; that she was not able to file a responsive pleading as she did not receive a copy of the summons; that she is currently a resident of Cavite and no longer a resident of Mandaluyong where the summons was served; and that said summons was received by her daughter (not niece as stated in the Sheriff's Return) Giovanna, who never sent the same to her, being unaware of the significance thereof. Respondent further averred that she has good and meritorious defenses to defeat petitioner's claim for foreclosure of mortgage as the same was pursued through fraudulent misrepresentation perpetrated by one Maria Cecilia Duque, and that at any rate, certain payments have already been made, which controverted the amount claimed in the complaint.

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5 Id. at 29.
6 Id. at 61.
7 Id.
8 Id. at 30.
9 Id. at 68-69.

Respondent, thus, sought for the court's liberality in setting aside the default order and re-opening the case for trial considering her legitimate reason for her failure to file answer, as well as her meritorious defense.[10]

In its Order[11] dated August 15, 2016, the RTC held that the substituted service of summons upon respondent was validly made per Sheriff's Return dated January 29, 2015, thus:

> From the foregoing and finding no cogent reason to depart from the proceedings which had already taken place to be in order, the instant motion is hereby denied.
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> Accordingly, the instant case is submitted anew for decision.
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> The Formal Entry of Appearance filed by Atty. John Gapit Colago as counsel for [respondent] is hereby noted.
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> SO ORDERED.[12]

Respondent filed a motion for reconsideration to said Order, reiterating her averment that there was a defective substituted service of summons and asserting her right to file a responsive pleading. This motion for reconsideration was, however, likewise denied in an Order[13] dated September 22, 2017, wherein the RTC ruled that respondent's filing of the motion to lift default order and to re-open trial, as well as the motion for reconsideration of the order denying said motion, amounted to a voluntary appearance which already vested it with jurisdiction over her person.

Aggrieved, respondent sought refuge from the CA through a Petition for *Certiorari* and Prohibition with Application for Temporary Restraining Order (TRO) or Writ of Preliminary Injunction (WPI) imputing grave abuse of discretion against the RTC for ruling that the resort to substituted service of summons was valid, and that there was voluntary appearance on her part in filing the motion to lift default order and to re-open trial, as well as in filing the motion for reconsideration of the order denying the motion to lift default order/re-open trial.[14]

On March 23, 2019, during the pendency of the case before the CA, petitioner filed a motion before the RTC to proceed with the resolution of the case as no TRO or WPI was issued by the appellate court. Thus, in a Decision[15] dated May 25, 2018, the RTC ruled in favor of petitioner.

In the meantime, in its assailed June 29, 2018 Decision, the CA ruled that there was improper resort to substituted service of summons. It held that the sheriff's single attempt to effect personal service, as well as the mere

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10 Id.
11 Id. at 80-81.
12 Id. at 81.
13 Id. at 91-92.
14 Id. at 30-31.
15 Id. at 229-233.

statement in the Sheriff's Return that "earnest efforts were exerted to serve summons personally to the defendant" without describing the circumstances surrounding the alleged attempt to personally serve the summons, did not justify resort to substituted service. Thus, the appellate court held that petitioner's reliance upon the presumption of regularity in the performance of duties of public officers was misplaced due to said lapses on the part of the sheriff.[16]

On the matter of voluntary submission to the jurisdiction of the court, the CA ruled that respondent's motions cannot be deemed as voluntary appearance that vested jurisdiction upon the trial court over the person of respondent considering that the same were filed precisely to question the court's jurisdiction. The appellate court observed that respondent raised the defense of lack of jurisdiction due to improper service of summons at the first opportunity, and repeatedly argued therefor.[17]

The CA disposed, thus:

> **WHEREFORE**, the foregoing considered, the instant Petition for Certiorari is **GRANTED**. The Orders dated 15 August 2016 and 22 September 2017 of the Regional Trial Court, Branch 208, Mandaluyong City in Civil Case No. MC15-9374 are **ANNULLED** and **SET ASIDE**. The Regional Trial Court, Branch 208, Mandaluyong City is **DIRECTED** to allow [respondent] to file a responsive pleading within the terms and period as provided for under the Rules of Court; and thereafter, to resolve the case with utmost dispatch.
>
> **SO ORDERED**.

Petitioner's motion for reconsideration was denied in the November 23, 2018 assailed Resolution of the CA.

Hence, this petition.

Issue

The sole issue for our resolution is whether respondent may be granted relief from the RTC's default order.

Notably, petitioner does not question the CA's ruling with regard to the invalidity of the substituted service of summons. She, however, submits that the defect in the service of summons was already cured by respondent's filing of a Motion to Set Aside/Lift Order of Default and Re-open Trial as by such motion, according to petitioner, respondent is deemed to have already voluntarily submitted to the jurisdiction of the trial court. For petitioner, thus, the entire proceedings before the RTC is already binding upon respondent.

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16 Id. at 33-34.

17 Id. at 34-36.

For her part, respondent maintains that she explicitly questioned the jurisdiction of the trial court over her person, consistently and categorically stating in detail the circumstances surrounding the defective service of summons, and asserting her right to file a responsive pleading before the resolution of the case. Respondent further points out in her Comment to the petition that, in violation of her right to due process, the RTC treated her motion to lift default order as a responsive pleading, ruling that she failed to substantiate her claim therein that she had already made installment payments to petitioner. Hence, respondent prays for the denial of the instant petition, affirmance of the CA's Decision, and for her to be allowed to file a responsive pleading before the trial court.[18]

The Court's Ruling

It should be emphasized, at the outset, that petitioner no longer questions the appellate court's finding with regard to the invalidity of the service of summons upon respondent. At any rate, it would not go amiss to state in this disquisition that we are one with the CA in ruling that there was a "defective, invalid, and ineffectual" substituted service of summons in this case. It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. As substituted service is in derogation of the usual method of service – personal service is preferred over substituted service – parties do not have unbridled right to resort to substituted service of summons.

In the landmark case of *Manotoc v. Court of Appeals*,[19] the Court ruled that before the sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To do so, there must be at least three best effort attempts, preferably on at least two different dates, to effect personal service within a reasonable period of one month or eventually result in failure. It is further required for the sheriff to cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

Here, as correctly found by the CA, the sheriff merely made a single attempt to personally serve summons upon respondent. Further, he merely made a general statement in the Return that earnest efforts were made to personally serve the summons, without any detail as to the circumstances surrounding such alleged attempted personal service. Clearly, this does not suffice. In addition, this Court observed that the sheriff even made a mistake in the identity of the person who received the summons, stating in his Return that the same was left to respondent's niece,[20] when it turned out that the recipient is respondent's daughter.[21]

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18 Id. at 34-36.

19 530 Phil. 454 (2006).

20 *See* Sheriff's Return, *rollo*, p. 61.

21 *See* Motion to Set Aside/Lift Order of Default and Re-Open Trial, id. at 68-69.

Despite the defective service of summons, petitioner insists that such defect has already been cured by respondent's filing of a Motion to Set Aside/Lift Order of Default and to Re-Open Trial, which is deemed as a voluntary submission to the jurisdiction of the trial court.

We resolve.

Contrary to the appellate court's ruling, respondent has indeed already submitted herself to the jurisdiction of the trial court when she moved for the setting aside of the order of default against her and asked the trial court for an affirmative relief to allow her to participate in the trial. Such voluntary submission actually cured the defect in the service of summons.[22] Contrary, however, to petitioner's theory, while the defect in the service of summons was cured by respondent's voluntary submission to the RTC's jurisdiction, it is not sufficient to make the proceedings binding upon the respondent without her participation. This is because the service of summons or, in this case the voluntary submission, merely pertains to the "notice" aspect of due process. Equally important in the concept of due process is the "hearing" aspect or the right to be heard. This aspect of due process was not satisfied or "cured" by respondent's voluntary submission to the jurisdiction of the trial court when she was unjustifiably disallowed to participate in the proceedings before the RTC. Consider:

The effect of a defendant's failure to file an answer within the time allowed therefor is primarily governed by Section 3, Rule 9 of the Rules of Court.[23] Pursuant to said provision, a defendant who fails to file an answer may, upon motion, be declared by the court in default. A party in default then loses his or her right to present his or her defense, control the proceedings, and examine or cross-examine witnesses.[24]

Nevertheless, the fact that a defendant has lost standing in court for having been declared in default does not mean that he or she is left without any recourse to defend his or her case. In *Lina v. Court of Appeals*,[25] the Court enumerated the remedies available to a party who has been declared in default, *viz.*:

> **a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defense [under Section 3, Rule 18];**

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22 *Navale v. Court of Appeals*, 324 Phil. 70 (1996); *See* also *La Naval Drug Corporation v. Court of Appeals*, 306 Phil. 84 (2004).

23 SEC. 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence.

24 *Otero v. Tan*, G.R. No. 200134, August 15, 2012.

25 220 Phil. 311 (1985).

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him [in accordance with Section 2, Rule 41]. (Emphasis supplied)

In this case, at a certain point of the proceedings, upon respondent's discovery of the case against her and her property, or specifically, after issuance of default order, petitioner's presentation of evidence *ex parte*, and submission of the case for resolution, she filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial, where she averred that her failure to file an answer was due to the defective service of summons. At this juncture, it is important to emphasize that the fact of improper service of summons in this case is undisputed and established. Despite such meritorious justification for failure to file answer, the trial court insisted on the validity of the default order and continuously disallowed respondent to participate in the proceedings and defend her case. Such improper service of summons rendered the subsequent proceedings before the trial court null and void as it deprived respondent her right to due process.

The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process,[26] which is the cornerstone of our justice system. Due process consists of notice and hearing. Notice means that the persons with interests in the litigation be informed of the facts and law on which the action is based for them to adequately defend their respective interests. Hearing, on the other hand, means that the parties be given an opportunity to be heard or a chance to defend their respective interests.

Here, it cannot be denied that respondent has already been notified of petitioner's action against her and her mortgaged property, which prompted her to file the Motion to Set Aside/Lift Order of Default and to Re-Open Trial, questioning the trial court's jurisdiction on the ground of defective service of summons and asking for affirmative relief to allow her to participate in the proceedings. It is, thus, only at this point when respondent was deemed, for purposes of due process, to have been notified of the action involving her and her mortgaged property. It is also only at this point when respondent was deemed to have submitted herself to the jurisdiction of the RTC. Jurisprudence states that one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[27]

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26 *Express Padala (Italia) S.P.A., now BDO Remittance (Italia) S.P.A. v. Ocampo*, G.R. No. 202505, September 6, 2017.

27 *Interlink Movie Houses, Inc. and Lim v. Court of Appeals*, G.R. No. 203298, January 17, 2018

To reiterate, the concept of due process consists of the twin requirements of notice *and* hearing. Thus, while respondent had been notified of the proceedings, she was however, deprived of the opportunity to be heard due to the RTC's insistence on the validity of the default order despite improper service of summons. Considering, therefore, the defective service of summons, coupled with respondent's plea to be allowed to participate upon learning about the proceedings, it was erroneous on the part of the RTC to insist on disallowing respondent to defend her case. This, to be sure, is tantamount to a violation of respondent's right to due process – a violation of her right to be heard. The CA, therefore, did not err when it nullified the Orders dated August 15, 2016 and September 22, 2017 of the RTC. Accordingly, the RTC Decision rendered during the pendency of the case before the CA should perforce be nullified.

Considering further, however, respondent's voluntary submission to the trial court's jurisdiction and her consistent plea to be allowed to participate in the proceedings before the trial court despite violation of her right to due process, it is only proper to allow the trial to proceed with her participation in the interest of substantial justice, to expedite the proceedings, and to avoid multiplicity of suits. After all, nothing is more fundamental in our Constitution than the guarantee that no person shall be deprived of life, liberty, and property without due process of law.[28]

WHEREFORE, the present petition is **DENIED**. The Decision dated June 29, 2018 and the Resolution dated November 23, 2018 of the Court of Appeals in CA-G.R. SP No. 153771 are hereby **AFFIRMED**. Accordingly, the Decision dated May 25, 2018 of the Regional Trial Court of Mandaluyong City, Branch 208, in Civil Case No. MC15-9374 is **ANNULLED and SET ASIDE**. The Regional Trial Court, Branch 208, Mandaluyong City is **DIRECTED** to allow Carlita C. Marcantonio to file a responsive pleading within the terms and period as provided for under the Rules of Court; to participate in the foreclosure proceedings; and thereafter, to resolve the case with utmost dispatch.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

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28 *See Aberca v. Ver*, G.R. No. 166216, March 14, 2012.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

Please see Concurring Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO A. LOPEZ
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.

DIOSDADO M. PERALTA
Chief Justice