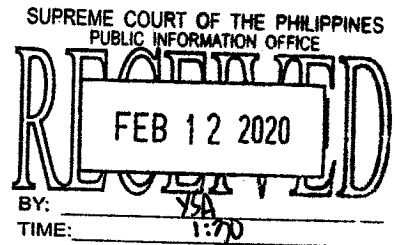




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 6, 2020**, which reads as follows:

“G.R. No. 203506 (*Alfredo and Cecilia Roxas v. Asiatrust Development Bank, Inc., now substituted by Asia United Bank [AUB]*) –The Court **NOTES WITHOUT ACTION** the letter dated November 14, 2019 of the *Rollo* Room, Office of the Chief Justice, addressed to the Clerk of Court, Third Division, requesting the complete records of this case, entitled *Alfredo and Cecilia Roxas vs. Asiatrust Development Bank, Inc., substituted by Schuykill Asset Strategist [SPV-AMC], now substituted by Asia United Bank*, docketed before the Court of Appeals, Manila as CA-G.R. CV No. 89871.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the April 11, 2012 Decision¹ and September 19, 2012 Resolution² issued by the Court of Appeals (CA) in CA-G.R. CV No. 89871 entitled *Asiatrust Development Bank, Inc., substituted by Schuykill Asset Strategists (SPV-AMC) v. Alfredo and Cecilia Roxas*. The CA Decision ordered the spouses Alfredo and Cecilia Roxas (*petitioners*) to pay SPV-AMC the sum of ₱8,000,000.00 plus interest at the rate of 18.5% *per annum* from the filing of the complaint on August 15, 2003 until full payment, and an additional amount equivalent to 12% *per annum* as penalty charges until full payment.

There is no dispute on the factual antecedents of the case, which the CA summarized as follows:

On March 31, 1999, Kamakura Food Corporation was granted a Credit Line in the amount of ₱13,000,000.00 by the Asiatrust Development Bank, Inc. In consideration thereof, its Vice-President, Nancy Dy, along with its authorized signatories, Alfredo and Cecilia Roxas, executed a Continuing Suretyship on May 19, 1999, whereby they jointly and severally

¹ *Rollo*, pp. 34-45; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Remedios A. Salazar-Fernando and Florito S. Macalino, concurring.

² *Id.* at 47-48.

bound themselves with Kamakura and guaranteed the full and due payment and performance of all the obligations of Kamakura. They likewise guaranteed that if such obligation was not fully or duly paid or performed on due date thereof, they shall pay and perform the same together with any and all interests, penalties and other fees and charges thereon. Subsequently, on May 30 and September 23, 2000, Kamakura, through Nancy Dy, Alfredo and Cecilia Roxas, obtained a loan from Asiatrust in the amount of ₱7,000,000.00 and ₱1,000,000.00 evidenced by Promissory Notes Nos. 37839 and 38380, respectively. Upon maturity of the promissory notes and despite several demands, Kamakura failed to pay its indebtedness.

Consequently, on August 15, 2003, Asiatrust filed a Complaint for *Sum of Money and Damages* against Kamakura, Nancy Dy, Alfredo and Cecilia Roxas before the Regional Trial Court [Branch 218, Quezon City; xxx], docketed as Civil Case No. Q-03-50380, wherein it alleged that its demands remained unheeded and the loan obligation remains unpaid. Asiatrust alleged that as of June 15, 2003, their aggregate solidary obligation amounted to ₱25,851,218.72 [₱22,849,863.82 under PN #37839 and ₱3,001,354.90 under PN #38380]. Thus, it prayed that judgment be rendered ordering the [petitioners] to pay the following: ₱25,851,218.72, plus legal interests, judicial expenses and other charges; ₱500,000.00 as moral damages; ₱250,000.00 as exemplary damages; ₱250,000.00 as attorney's fees.

Summonses were issued by the court. Several attempts were made by the sheriff to serve the summonses and the copies of the complaint to Kamakura, Nancy Dy, Alfredo and Cecilia Roxas, but to no avail. The summons for Nancy Dy was eventually served through substituted service while the summonses for Kamakura and Alfredo and Cecilia Roxas remained unserved. With prior leave of court, Asiatrust caused the publication of the summons in *Saksi Ngayon* on July 23, 30 and August 6, 2004. Thereafter, it submitted the affidavit of publication of the publisher/editor-in-chief thereof and an affidavit of mailing of Asiatrust's employee to the effect that he sent a copy of the summons by registered mail to the last known addresses of Kamakura and Alfredo and Cecilia Roxas. However, Nancy Dy and the [petitioners] failed to file their Answers within the prescribed period and they were declared in default.

On May 6, 2005, Alfredo and Cecilia Roxas xxx filed an omnibus motion to set aside the order of default and to admit answer which was denied in the Order dated July 1, 2005. Asiatrust was subsequently allowed to present its evidence *ex parte*. Meanwhile, Asiatrust sold all of its rights and interest to [petitioners'] loan to Schuykill Asset Strategists (SPV-AMC) xxx, which was substituted in its stead. After the formal offer of [SPV-AMC's] evidence, the court *a quo* rendered the assailed Decision on May 17, 2006. x x x³ (citations omitted)

The dispositive portion of the Regional Trial Court (*RTC*) decision reads:

³ Id. at 35-36.

WHEREFORE, judgment is hereby rendered in favor of plaintiff Asiitrust Development Bank, Inc., as substituted by Schuykill Asset Strategists (SPV-AMC) and against the [petitioners], ordering the latter (1) to pay the total loan obligation of ₱25,851,218.72 plus legal interest from the date this case is filed in court until fully paid; and (2) the costs of suit.

X X X X

SO ORDERED.⁴

Feeling aggrieved, petitioners filed an Appeal with the CA, raising the following issues: a) the RTC did not acquire jurisdiction over their persons due to improper service of summons; b) the RTC erred in denying their motion (to set aside order of default and to admit appended answer); c) petitioners cannot be held jointly liable with Kamakura Food Corp. (*Kamakura*) for its obligations; and d) the unilateral authority of Asiitrust to impose increased interest rates in the Promissory Notes is null and void, and the penalty charges at the rate of 36% *per annum* is iniquitous and unconscionable.⁵

On April 11, 2012, the CA rendered the assailed Decision which partially modified the RTC Decision. On the first issue, it held that summons was properly served. Personal service of summons upon petitioners failed because their address could not be located. For that reason, plaintiff sought, and was granted, leave of court to effect service of summons by publication in *Saksi Ngayon*, which is a newspaper of general circulation. The customary affidavit of the publisher or editor-in-chief of the newspaper constitutes *prima facie* evidence that this newspaper is of general circulation. In this view, petitioners' allegation that "only a few buy and read this kind of newspaper" must fail. Besides, service of summons by publication was complemented by service of summons by registered mail to petitioners' last known address.⁶

The CA also held that even assuming that the service of summons was defective or flawed, the RTC acquired jurisdiction over petitioners when they made a voluntary appearance in the proceedings. They filed an Entry of Appearance and Very Urgent Omnibus Motion (to set aside order of default and to admit appended answer)⁷ which did not question the jurisdiction of the RTC over their persons. The filing of a pleading that seeks affirmative relief amounts to voluntary appearance which consequently renders the issue of lack of jurisdiction moot.⁸

The CA furthermore found to be in order the RTC's denial of petitioners' motion (to set aside order of default and to admit appended answer) based on the record which reveals that a representative of petitioner Alfredo Roxas requested for a copy of the order of default on February 22,

⁴ Id. at 34-35.

⁵ Id. at 37.

⁶ Id. at 38-39.

⁷ Id. at 59-64.

⁸ Id. at 39.

2005, but it was only on May 6, 2005 that petitioners filed their motion. Petitioners gave no explanation on why it took them almost three (3) months to file the motion. There being no satisfactory reason adduced to explain the tardiness of the motion and justify the admission of petitioners' answer, the CA ruled that the denial of the motion must be upheld.⁹

On the substantive issues, the CA observed that petitioners did not deny that they voluntarily executed the document denominated as Continuing Suretyship, which expressly states that they are jointly and severally liable with Kamakura for the full and due payment and performance of all its obligations.¹⁰ Consequently, they bound themselves to pay Kamakura's loans amounting to ₱7,000,000.00 and ₱1,000,000.00, evidenced by Promissory Note Nos. 37839 and 38380 respectively, along with interest, penalty charges, attorney's fees and other expenses.¹¹ The CA, however, modified the applicable interest rate from 24% to 24.5% *per annum* to 18.5% *per annum*, which was the rate agreed upon by the parties. It also reduced the penalty charges of 36% *per annum*, which it held to be iniquitous and unconscionable, to 12% *per annum*.¹²

Issues

Undaunted, petitioners filed the present Petition alleging grave and reversible error on the part of the CA in holding that: 1) the RTC acquired jurisdiction over their persons despite improper service of summons; 2) summons by publication is valid despite the case being for sum of money; 3) petitioners never questioned the jurisdiction of the RTC over their persons; and 4) petitioners' voluntary appearance rendered the issue of lack of jurisdiction over their persons moot.¹³

The Court's Ruling

We find no sufficient ground to reverse the findings of the CA, which are in accord with the Rules of Court (*Rules*), jurisprudence, and the evidence on record.

Jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court.¹⁴ Here, the sheriff attempted several times to serve the summons on petitioners personally, but failed since petitioners' address could not be found and no one can give their possible location.¹⁵ The impossibility of personal service of

⁹ Id. at 40.

¹⁰ Id.

¹¹ Id. at 41.

¹² Id. at 42-43.

¹³ Id. at 23.

¹⁴ See *Navale v. Court of Appeals*, 324 Phil. 70, 74-75 (1996).

¹⁵ *Rollo*, p. 58. The Sheriff's Return of Summons states:

summons warranted the resort to service by publication pursuant to Section 14, Rule 14 of the Rules.¹⁶

The Court will not delve into factual issues raised by petitioners pertaining to perceived defects in the service of summons by publication.¹⁷ The Court is not a trier of facts. The rule is that factual findings of the trial court, when affirmed by the CA, are deemed conclusive and binding upon the Court.¹⁸ This is subject to exceptions, but none of those are present in this case.

Petitioners' argument that service of summons by publication is improper in a suit for the collection of sum of money lacks merit. We had occasion to clarify the matter in the case of *Santos, Jr. v. PNOC Exploration Corporation*.¹⁹ The petitioner in that case claimed that substituted service may be availed of only in an action *in rem*. However, We declared this argument wrong, ruling that the *in rem/in personam* distinction was significant under the old rule²⁰ because it was silent as to the kind of action to which the rule was applicable. This silence impelled the Court to limit the application of the old rule to *in rem* actions only. However, the rule has been changed. The present Sec. 14, Rule 14 of the Rules expressly states that service of summons by publication applies "in any action." Thus, service of summons by publication may now be made in *any* action, whether *in personam*, *in rem* or *quasi in rem*.

In any event, as correctly held by the CA, even assuming that the service of summons in this case was defective, the RTC acquired jurisdiction over the persons of petitioners when they made a voluntary appearance in the proceedings.²¹ Sec. 20, Rule 14 of the Rules provides that the defendant's voluntary appearance in the action shall be equivalent to service of summons. Here, petitioners voluntarily appeared in the action when they filed an entry

This is to certify that on 18 December 2003 and on several occasions the undersigned tried to cause the service of Summons issued by the Honorable Court in the above-entitled case together with the copy of the complaint and its annexes upon the following defendants, to wit:

1. x x x x
2. ALFREDO ROXAS and CECILIA ROXAS—UNSERVED; tried to cause the service of said Summons at No. 51 Wack Wack Street, Addition Hills, San Juan, M.M., but failed, because given address cannot be found along Wack Wack Street, Addition Hills, San Juan, M.M.

That diligent effort was exerted by the undersigned to serve the said Summons personally upon said defendants, but to no avail, because no one can give their possible location. x x x x.

¹⁶ **Rule 14. Summons**

Sec. 14. Service upon defendant whose identity or whereabouts are unknown. — In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

¹⁷ Particularly, whether *Saksi Ngayon* is a newspaper of general circulation (*Rollo*, p. 24) and generally whether all requisites before substituted service may be resorted to was complied with (*Rollo*, pp. 24-27).

¹⁸ See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 537 (2015).

¹⁹ 587 Phil. 713 (2008).

²⁰ The predecessor of the current Sec. 14, Rule 14 is Section 16, Rule 14 of the 1964 Rules of Procedure which provided:

SEC. 16. Service upon an unknown defendant. — Whenever the defendant is designated as an unknown owner, or the like, or whenever the address of a defendant is unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

²¹ *Rollo*, p. 39.

of appearance and very urgent omnibus motion to: a) set aside order of default; and b) admit appended answer.²²

The entry of appearance was made without qualification or objection to the RTC's jurisdiction. This in itself amounts to voluntary appearance in the proceedings. The motion, on the other hand, mainly alleged that summons, together with copies of the complaint and annexes, were published in *Saksi Ngayon*, which is not a newspaper of general circulation. Petitioners argued that had plaintiff published the summons in a newspaper of general circulation, they would have read it and could have filed the necessary pleading.²³ Petitioners urged the RTC to take a liberal view of the rules in light of their "valid and meritorious defense," and prayed, among others, for the order of default dated February 17, 2005 to be set aside and their answer admitted "in the broader interest of justice."²⁴ Notably, petitioners sought affirmative relief from the RTC without raising the issue of lack of jurisdiction over their persons. We have held that seeking an affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief without the proper objection necessitates submission to the Court's jurisdiction.²⁵ Hence, petitioners' entry of appearance with motion amounts to service of summons and vested the trial court with jurisdiction over their persons.

Petitioners argue that they raised the issue of the RTC's lack of jurisdiction over their persons due to improper service of summons in their *Answer with Compulsory Counter-claim*.²⁶ They allegedly did not waive their defense of lack of jurisdiction since the rule is that any form of appearance in court is equivalent to service of summons except when such appearance was made precisely to object to the jurisdiction of the court.²⁷ Indeed, a party who makes a special appearance to challenge the court's jurisdiction over his person cannot be considered to have submitted himself to the trial court's authority.²⁸ However, petitioners' answer with counterclaim is not equivalent to a special appearance.

Petitioners lost sight of the fact that they have been declared in default by the RTC and had consequently lost their standing in court. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings will be acted upon by the court, nor may he object to or refute evidence or motions filed against him.²⁹ Having lost their standing in court, petitioners had no right to file an Answer with counterclaim, more so, expect

²² Supra note 7.

²³ Id. at 60.

²⁴ Id. at 61-62.

²⁵ *Carson Realty & Management Corp. v. Red Robin Security Agency*, 805 Phil. 562, 577 (2017).

²⁶ *Rollo*, pp. 65-71.

²⁷ Id. at 28-29.

²⁸ *Carson Realty & Management Corp. v. Red Robin Security Agency*, supra at 576, citing *PCIB v. Sps. Dy.*, 606 Phil. 615, 633-634 (2009).

²⁹ *Otero v. Tan*, 692 Phil. 714, 724 (2012).

the RTC to act upon it. Their recourse was to file a Motion to set aside the order of default under Rule 9, Sec. 3(b) of the Rules.³⁰ Since this is the pleading that they are authorized to file under the Rules, it should have been in their very urgent motion to set aside order of default and admit appended Answer that petitioners raised their objection to the jurisdiction of the RTC. Having failed to do so, they are deemed to have submitted themselves to the jurisdiction of the court by the very filing of that Motion.

A special appearance operates as an exception to the general rule on voluntary appearance. Hence, objections to the jurisdiction of the court over the person of the defendant must be explicitly made. Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution,³¹ such as petitioners' very urgent motion.

In view of the foregoing, the RTC validly acquired jurisdiction over the persons of petitioners as defendants in the complaint.

On another point, even if the petition prayed for the reversal of the Decision and Resolution rendered by the CA, it did not challenge the substantive ruling of the CA which dealt with petitioners' monetary liability. We thus deem the CA's findings in this regard as conclusive - except on the amount of the principal obligation and imposition of interest rates. The Court notes that while the CA acknowledged payment by petitioners of the amount of ₱55,077.58 out of their total obligation of ₱8,000,000.00, the former amount was not deducted from the principal amount payable as contained in the dispositive portion of the CA Decision. An adjustment in the amount of the principal obligation is thus in order.

As regards the interest rates that may be charged on the obligation, We apply the guideline established in *Lara's Gifts and Decors, Inc. v. Midtown Industrial Sales, Inc.*³² pertaining to a breach of obligation consisting in the payment of sum of money, to wit:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, goods, credits or judgments, the interest due shall be that which is stipulated by the parties in writing, provided it is not excessive and unconscionable, which, in the absence of a stipulated reckoning date, shall be computed from default, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, UNTIL FULL PAYMENT, without compounding any interest unless compounded interest is expressly stipulated by the parties,

³⁰ Rule 9, Sec. 3(b) states:

Sec. 3. *Default; declaration of.* -

(b) *Relief from order of default.* - A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake, or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

³¹ *Carson Realty & Management Corp. v. Red Robin Security Agency*, supra note 24 at 576-577 (2017).

³² G.R. No. 225433, August 28, 2019.

by law or regulation. Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT. (emphasis and citations omitted)

The 18.5% *per annum* interest rate on the loan agreed upon by the parties, as well as the 12% *per annum* penalty charge imposed by the CA, are not excessive or unconscionable.³³

Moreover, in accordance with Article 2212³⁴ of the Civil Code, the 18.5% interest *per annum* due on the principal obligation shall earn legal interest from the filing of the complaint on August 15, 2003 until June 30, 2013 at the rate of 12% *per annum*, which is the prevailing legal interest at the time, and from July 1, 2013 until full payment, 6% *per annum* as prescribed under *Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799* which took effect on July 1, 2013.

WHEREFORE, the petition is **DENIED**. The assailed April 11, 2012 Decision and September 19, 2012 Resolution issued by the Court of Appeals in CA-G.R. CV No. 89871 are **AFFIRMED with MODIFICATION**. Petitioners are **ORDERED** to pay respondent the following:

1. Seven Million Nine Hundred Forty-Four Thousand Nine Hundred Twenty-Two Pesos and 42/100 (₱7,944,922.42) representing the principal amount due, plus the stipulated interest at the rate of 18.5% *per annum* to be computed from the filing of the complaint on August 15, 2003 until full payment;
2. Legal interest on the 18.5% *per annum* interest due on the principal amount at the rate of 12% *per annum* from the filing of the complaint on August 15, 2003 until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment;
3. Penalty charges at the rate of 12% *per annum* computed from the filing of the complaint on August 15, 2003 until full payment; and
4. Costs of suit.

³³ See *Sps. Mallari v. Prudential Bank*, 710 Phil. 490, 499 (2013), *Sps. Villanueva v. Court of Appeals*, 671 Phil. 467 (2011), *Lara's Gifts and Decors, Inc. v. Midtown Industrial Sales, Inc.*, supra, and *Ruiz v. Court of Appeals*, 449 Phil. 419 (2003).

³⁴ Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

SO ORDERED. (Delos Santos, J., designated as Additional Member per Special Order No. 2754 dated December 6, 2019.)

Very truly yours,

Misael D C Battung III
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court *1/6/20*

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