



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**PRUDENTIAL BANK (now
Bank of the Philippine Islands) as
the duly appointed
ADMINISTRATOR OF THE
ESTATE OF JULIANA DIEZ
VDA. DE GABRIEL,**

Petitioner,

- versus -

G.R. No. 183795

Present:

**LEONARDO-DE CASTRO J.,
Acting Chairperson,
DEL CASTILLO,*
PEREZ,
REYES,** and
PERLAS-BERNABE, JJ.**

**AMADOR A. MAGDAMIT, JR.,
on his behalf and as substituted
heir (son) of AMADOR
MAGDAMIT, SR., and AMELIA
F. MAGDAMIT, as substituted
heir (Widow) of AMADOR
MAGDAMIT, SR.,**

Respondents.

Promulgated:

NOV 12 2014

X -----X

DECISION

PEREZ, J.:

Before us is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision¹ and Resolution² of the Court of

* Per Special Order No. 1862, dated 4 November 2014.

** Per Raffle dated 13 October 2014.

¹ Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; CA *rollo*, pp. 490-511.

² Id. at 576-577.

Appeals (CA) dated 3 September 2007 and 18 July 2008, respectively, in CA-G.R. SP No. 93368, affirming the Decision of the Regional Trial Court (RTC),³ dated 18 January 2006, in Civil Case No. 05-112499, which reversed the ruling of the Metropolitan Trial Court (MeTC) on the ground that the MeTC did not acquire jurisdiction over the person of the respondents due to invalid service of summons.

The facts as culled from the records are as follows:

This is a case of unlawful detainer filed by petitioner Prudential Bank, now Bank of the Philippine Islands (petitioner), in its capacity as administrator of the Estate of Juliana Diez *Vda. De Gabriel* (Estate). It is based on the ground of respondents' failure to pay rentals and refusal to vacate the subject property, which is allegedly part of the Estate located at 1164 Interior, Julio Nakpil St., Paco, Manila, covered by Transfer Certificate of Title No. 118317 of the Registry of Deeds of Manila.

In the Original Complaint⁴ filed before the MeTC, Branch 15 of Manila, petitioner impleaded Amador A. Magdamit, Jr. (Magdamit, Jr.), as respondent.

Instead of filing an Answer, Magdamit, Jr. filed a Notice of Special Appearance with Motion to Dismiss. Among others, Magdamit, Jr. argued that (1) petitioner was not duly authorized through a Board Resolution to institute the complaint, (2) he was not the occupant of the subject property but instead, his parents, as grantees or awardees of Juliana Diez *Vda. De Gabriel*, and (3) the MeTC did not acquire jurisdiction over his person because the summons was served at his former address at 1164 Interior Julio Nakpil St., Paco, Manila. On 30 April 2003, petitioner filed a Motion to Strike Out this pleading on the ground that it is prohibited. Petitioner then filed an Amended Complaint, this time, impleading both Magdamit, Jr. and Amador Magdamit, Sr. (Magdamit, Sr.).

In an Order⁵ dated 26 June 2003, the MeTC granted petitioner's Motion to Strike Out Magdamit, Jr.'s Notice of Special Appearance with Motion to Dismiss and ordered Magdamit, Jr. to file an Answer. The Order reads:

³ Penned by Presiding Judge Concepcion S. Alarcon-Vergara; records, vol. 2, pp. 244-251.

⁴ *Prudential Bank, as the duly appointed Administrator of the Estate of Juliana Diez Vda. De Gabriel v. Atty. Amador A. Magdamit, Jr. and Amador Magdamit, Sr.*, Civil Case No. 174798; records, vol. 1, pp. 15-18.

⁵ *Id.* at 72.

After due consideration of the matter and arguments stated therein, the Court resolves to DENY the defendant's Motion to dismiss, it appearing that the summons issued in this case was served, albeit substituted nevertheless valid. It is of no consequence that defendant is also presently residing in Bacoor, Cavite. Suffice it to say that summons was served upon him (although substituted) on the leased premises which plaintiff is justified in assuming that he is also residing thereat. Moreover, it appears that he knew the person on whom summons was served (together with a copy of the complaint) as a certain Dara Cabug only that he claims that the latter is not of "suitable age and discretion" to receive the summons. Simply put, the requirement of due process has been satisfied. Be that as it may, it would not unduly prejudice the rights of the plaintiff if defendant is given additional period of five (5) days from notice hereof within which to file his Answer.⁶

In response to the Amended Complaint, both Magdamit, Jr. and Magdamit, Sr. filed their Answers separately. On 9 July 2003, Magdamit, Jr., filed his Answer with Counterclaim⁷ (In a Special Appearance Capacity). On the other hand, Magdamit, Sr. filed his Answer⁸ on 13 November 2003. Magdamit, Sr. argued that the MeTC did not acquire jurisdiction over his person because the summons was not properly served as the summons was received by Madel Magalona, who is not authorized to receive summons being a mere housemaid of Magdamit, Sr.'s daughter, Arleen Marie Cabug. Also, Magdamit, Sr. argued that in the 1960s, the Spouses Francisco and Juliana Gabriel assigned the subject property to him free of charge as a reward and in recompense for the long, faithful, and devoted services he rendered to them. Since then, he had been continuously exercising acts of ownership over the subject property, including payment of real estate taxes. Magdamit, Sr. further argued that amendment of the Complaint in order to implead him is improper. According to Magdamit, Sr., amendment cannot be allowed so as to confer jurisdiction upon a court that never acquired it in the first place, and the ejectment case cannot be instituted against Magdamit, Jr. because an action to recover possession cannot be maintained against one who is not in actual or legal possession thereof.⁹

Pending litigation of the case, Magdamit, Jr., who was made an original defendant in the MeTC, substituted his deceased father, Magdamit, Sr.

Ruling of the MeTC

⁶ Id.

⁷ Id. at 77-82.

⁸ Id. at 207-217.

⁹ Id. at 210; CA Decision in CA-G.R. No. 93368; CA *rollo*, p. 504.

After trial, the MeTC ruled in favor of petitioner. According to the MeTC, “[t]he fact that the person who received the summons was a 13-year old girl does not make the service of summons invalid. That she was of sufficient age and discretion is shown by the fact that she was intelligent enough to immediately bring to the attention of defendant Atty. Amador Magdamit, Jr. the summons and copy of the complaint she received.”¹⁰ The MeTC went on further, stating that Magdamit Sr.’s claim of ownership is beyond its jurisdiction because the only issue in an ejectment case is “*possession de facto*”. The dispositive portion of the MeTC Decision dated 21 March 2005 reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Amador Magdamit, Sr.:

1. ordering said defendant and all persons claiming right under him to vacate the subject three (3) lots covered by TCT No. 118317 of the Registry of Deeds of Manila, located at and also known as 1164 Interior J. Nakpil St., Paco, Manila and to peacefully surrender possession thereof to plaintiff;
2. ordering said defendant to pay plaintiff the sum of ₱180,000.00 representing rentals or reasonable compensation for the use of the property due from August 2003 up to February 2005 and ₱10,000.00 per month thereafter until defendants fully vacate the subject property;
3. ordering said defendant to pay plaintiff the sum of ₱20,000.00 as attorney’s fees; and
4. to pay the costs.

The complaint is dismissed as against defendant Amador Magdamit, Jr. and the latter’s counterclaim is likewise dismissed.

SO ORDERED.¹¹

Ruling of the RTC

On appeal, the RTC set aside the decision of the MeTC and dismissed the case for lack of jurisdiction over the person of the respondents.¹² According to the RTC, amending the original complaint to implead Magdamit, Sr. to cure a defect in the complaint and introduce a non-existing

¹⁰ Records, vol. 1, p. 551.

¹¹ Penned by Presiding Judge Sarah Alma M. Lim; id. at 552.

¹² Records, vol. 2, pp. 244-251.

cause of action, which petitioner did not possess at the outset, and to confer jurisdiction upon the court that never acquired jurisdiction in the first place renders the complaint dismissible. The RTC further stated that because the Return did not clearly indicate the impossibility of service of summons within a reasonable time upon the respondents, the process server's resort to substituted service of summons was unjustified. The decision of the RTC reads:

WHEREFORE, this Court finds merit on the appeal and consequently, the decision on appeal is hereby set aside, and this case is accordingly dismissed for lack of jurisdiction over the persons of the defendants.¹³

Ruling of the CA

Aggrieved, petitioner filed an appeal via a petition for review under Rule 42 of the Rules of Court before the CA. The petitioner argued that the RTC erred in ruling that the MeTC did not acquire jurisdiction over the person of the respondents due to improper service of summons considering that the respondents participated in the proceedings in the MeTC by filing a Notice of Appearance with Motion to Dismiss, Answer with Counterclaim, entering into pre-trial, submitting position papers, and presenting evidence, which militate against the alleged improper service of summons. On 3 September 2007, the CA denied the petition and affirmed the decision of the RTC.

According to the CA, the Return, with only a general statement and without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, will not suffice for purposes of complying with the rules of substituted service of summons. The CA also rejected petitioner's contention that respondents' voluntary submission to the jurisdiction of the court cured any defect in the substituted service of summons when as early as during the infancy of the proceedings in the MeTC, Magdamit, Jr. seasonably raised the ground of lack of jurisdiction over his person by filing a Notice of Appearance with Motion to Dismiss, which the respondents incessantly reiterated in their pleadings even when the case was elevated to the RTC, then to the CA. The dispositive portion of the decision of the CA reads:

¹³

Id. at 251.

Having found that the MeTC did not acquire jurisdiction over the persons (sic) of respondents, it would be futile on Our part to still pass upon the other errors assigned by petitioner.

WHEREFORE, premises considered, the petition is DENIED.
Costs against petitioner.

SO ORDERED.¹⁴

The motion for reconsideration was likewise denied for lack of merit.

Hence, this Petition, raising the following assignment of errors:

- “I. Whether or not the Court of Appeals erred in dismissing the Petition for Review of the Decision of the Regional Trial Court of Manila dated January 18, 2006; and disposing of only the issue of lack of jurisdiction over the person of respondents for alleged improper service of summons;
- II. Whether or not the Court of Appeals erred in not ruling on the material and substantial issues in the case; and
- III. Whether or not the Court of Appeals erred in affirming the decision of the Metropolitan Trial Court of Manila dismissing of the Complaint against Magdamit, Jr., based on the ground that he was no longer residing at the subject property prior to, and at the time of the filing of the ejectment complaint.”¹⁵

The pivotal issue is whether or not the MeTC acquired jurisdiction over the person of the respondents.

The petition is bereft of merit.

Both respondents, Magdamit, Jr. and Magdamit, Sr. argued that the MeTC did not acquire jurisdiction over their persons due to defective or improper service of summons. Magdamit, Sr. argued that the MeTC could not have acquired jurisdiction over his person due to improper/defective service of summons because it was served upon an incompetent person, the housemaid of his daughter. Magdamit Sr. also argued that the MeTC did not acquire jurisdiction over him because he was impleaded as a respondent only

¹⁴ CA *rollo*, pp. 510-511.

¹⁵ *Rollo*, pp. 24-25.

after the inherently invalid original complaint was amended. According to Magdamit, Sr., the original complaint was inherently invalid because it was instituted against Magdamit, Jr., against whom an action to recover possession cannot be maintained, because he is not in actual or legal possession thereof. Thus, the amendment of the inherently invalid original complaint for the purpose of curing a defect to confer jurisdiction was invalid as the MeTC never acquired jurisdiction in the first place.¹⁶ Pertinent to the position of Magdamit, Sr. is the Sheriff's Return dated 24 October 2003 on the service of summons on Magdamit, Jr. which reads:

1. That, on October 22, 2003, he proceeded to the place of defendant Amador Magdamit, Sr. at No. 1164 Int. Julio Nakpil St., Paco, Manila, for the purpose of serving the Summons issued in the above-entitled case, but no service was effected because he was not around;
2. That, on October 23, 2003, undersigned repaired (sic) anew to the said place but for the second time, he failed to reached (sic) said defendant. Thus, he elected (sic) substituted service by serving the said summons together with the copy of the complaint and annexes attached thereat (sic) to Ms. Madel Magalona, a person of sufficient age and living thereat who however refused to acknowledge(d) receipt thereof;
3. That, undersigned explained to (this) Ms. Magalona the contents of the said process in a language she fully understood and advised (sic) her to gave (sic) the same to her employer as soon as he arrives.¹⁷

On the other hand, Magdamit, Jr. argued that the MeTC did not acquire jurisdiction over his person because the summons was not served at his residence but at the house of Magdamit, Sr., and on a person not authorized to receive summons. The Sheriff's Return dated 25 March 2003 reads:

This is to certify, that on the 24th day of March, 2003, xxx served copy of the Summons together with the copy of the Complaint and its attachment, upon defendant/s Amador A. Magdamit, Jr. at 1164 Int., J. Nakpil St., Paco, Manila, by tendering the copy to Dara Cabug (grand daughter), a person of sufficient age, discretion and residing therein who however refused to acknowledged (sic) receipt thereof.

That on several occasions despite diligent (sic) efforts exerted to serve the said processes personally to defendant/s herein the same proved futile. Thus, substituted service was effected in accordance with the provision of Sec. 8, Rule 14, Rules of Court.

¹⁶ Id. at 504.

¹⁷ Records, vol. 1, p. 148.

In view of the foregoing, the original summons is now respectfully returned to the Honorable Court, DULY SERVED.¹⁸

Fundamental is the rule that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. In the absence or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.¹⁹

In actions *in personam* such as ejectment, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons.²⁰ Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.²¹

In *Manotoc v. Court of Appeals*,²² we have succinctly discussed a valid resort to substituted service of summons:

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relvng 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.

¹⁸ Id. at 28.

¹⁹ *Spouses Belen v. Judge Chavez, et al.*, 573 Phil. 58, 67 (2008).

²⁰ *Tam-Wong v. Factor-Koyama*, 616 Phil. 239, 250 (2009).

²¹ *Sps. Jose v. Sps. Boyon*, 460 Phil. 354, 363 (2003).

²² 530 Phil. 454 (2006).

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.

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 prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably 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.²³ (Emphasis and underscoring supplied; citations omitted)

The service of summons on Magdamit, Sr. failed to comply with the rule laid down in *Manotoc*. The resort to substituted service after just two (2) attempts to personally serve the summons on Magdamit, Sr., is premature under our pronouncement that:

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

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Id. at 468-471.

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.²⁴

Then too, the proof of service failed to specify the details of the attendant circumstances. The Return merely expressed a general statement that because the Sheriff failed to reach Magdamit, Sr., he elected substituted service of summons. The Return failed to state the impossibility to serve summons within a reasonable time. And the further defect in the service was that the summons was served on a person not of sufficient discretion, an incompetent person, Madel Magalona, a housemaid of Magdamit Sr.’s daughter, Arleen Marie Cabug.

Similar to the case of Magdamit, Sr., the service of summons on Magdamit, Jr. also failed to comply with the rules laid down in *Manotoc*. The summons was served at 1163 Int., J. Nakpil St., Paco, Manila, Magdamit, Jr.’s former residence when at the time, Magdamit, Jr. was residing at 0369 Jupiter St., Progressive Village 20 and 21, Molino I, Bacoar, Cavite. In *Keister v. Navarro*,²⁵ we have defined “dwelling house” or “residence” to refer to a place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time to the time of service. Therefore, it is not sufficient for the Sheriff “to leave the copy at defendant’s former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom”.²⁶

Worse, the Return did not make mention of any attempt to serve the summons at the actual residence of Magdamit, Jr. The Return merely expressed a general statement that the sheriff exerted efforts to serve the summons and that the same was futile, “[t]hat on several occasions despite diligent (sic) efforts exerted to serve the said processes personally to defendant/s herein the same proved futile,” without any statement on the impossibility of service of summons within a reasonable time. Further, the summons was served on a certain Dara Cabug, a person not of suitable age and discretion, who is unauthorized to receive the same.

Notably, the requirement additionally is that

²⁴ Id. at 469.

²⁵ 167 Phil. 567 (1977).

²⁶ Id. at 573-574; *Filmerco Commercial Co., Inc. v. Intermediate Appellate Court*, 233 Phil. 197, 203 (1987).

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.²⁷

The readily acceptable conclusion in this case is that the process server at once resorted to substituted service of summons without exerting enough effort to personally serve summons on respondents. In *Sps. Jose v. Sps. Boyon*,²⁸ we discussed the effect of failure to specify the details of the effort exerted by the process server to personally serve summons upon the defendants:

The Return of Summons shows no effort was actually exerted and no positive step taken by either the process server or petitioners to locate and serve the summons personally on respondents. **At best, the Return merely states the alleged whereabouts of respondents without indicating that such information was verified from a person who had knowledge thereof. Certainly, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.**²⁹ (Emphasis and underscoring supplied)

In the case at bar, the Returns contained mere general statements that efforts at personal service were made. Not having specified the details of the attendant circumstances or of the efforts exerted to serve the summons,³⁰ there was a failure to comply strictly with all the requirements of substituted service, and as a result the service of summons is rendered ineffective.³¹

Filing an Answer does not amount to voluntary appearance

²⁷ *Manotoc v. Court of Appeals*, supra note 22, at 471.

²⁸ Supra note 21.

²⁹ Id. at 364.

³⁰ Id.

³¹ *Ang Ping v. Court of Appeals*, 369 Phil. 607, 614 (1999).

The petitioner asserted that assuming *arguendo* that the service of summons was defective, respondents' filing of their respective Answers and participation in the proceedings in the MeTC, such as attending the pre-trial and presenting evidence, amount to voluntary appearance which vested the MeTC jurisdiction over their persons.

Indeed, despite lack of valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. Section 20, Rule 14 of the Rules of Court clearly states:

Sec. 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 shall not be deemed a voluntary appearance.

However, such is not the case at bar. Contrary to petitioner's contention, respondents are not deemed to have voluntarily submitted to the court's jurisdiction by virtue of filing an Answer or other appropriate responsive pleadings and by participating in the case.

The mandate under the Rules on Summary Proceedings that govern ejectment cases, is expeditious administration of justice such that the filing of an Answer is mandatory. To give effect to the mandatory character and speedy disposition of cases, the defendant is required to file an answer within ten (10) days from service of summons, otherwise, the court, *motu proprio*, or upon motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint, limited to the relief prayed for by the petitioner.³² Through this rule, the parties are precluded from resorting to dilatory maneuvers.

Compliantly, respondents filed their respective Answers. In the MeTC, at first, Magdamit, Jr. filed a Notice of Special Appearance with Motion to Dismiss, where he seasonably raised the issue of lack of jurisdiction, which the MeTC later ordered to be stricken out. In lieu thereof, Magdamit, Jr. filed an Answer with Counterclaim (In a Special Appearance Capacity). Again, Magdamit, Jr. reiterated the lack of jurisdiction over his person and the subject matter. On the other hand, Magdamit, Sr. filed an Answer with an allegation by special defense that the original complaint

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Section 6, B.P. Blg. 129.

should be dismissed outright because the MeTC did not acquire jurisdiction over his person and the subject matter. In sum, both respondents filed their Answers via special appearance.

In *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi and Lolita Dy*,³³ we held that filing of an answer in a special appearance cannot be construed as voluntary appearance or submission to the court's jurisdiction:

Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, *is tempered by the concept of conditional appearance*, such that **a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.**

Prescinding from the foregoing, it is thus clear that:

- (1) **Special appearance** operates as an exception to the general rule on voluntary appearance;
- (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and
- (3) **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.**³⁴
(Emphasis supplied and underscoring supplied)

Parallel to our ruling in *Philippine Commercial International Bank*, the respondents' act of filing their respective Answers with express reservation should not be construed as a waiver of the lack of jurisdiction of the MeTC over their person because of non-service/defective/improper service of summons and for lack of jurisdiction over the subject matter. Hence, *sans* voluntary submission to the court's jurisdiction, filing an answer in compliance with the rules on summary procedure in lieu of obtaining an adverse summary judgment does not amount to voluntary submission. As we already held, a

³³ 606 Phil. 615 (2009).

³⁴ Id. at 633-634.

party who makes a special appearance in court, challenging the jurisdiction of said court, is not deemed to have submitted himself to the jurisdiction of the court.³⁵ It should not be construed as voluntary submission to the jurisdiction of the court.

In view of the foregoing, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 93368, which upheld the ruling of the Regional Trial Court that the Metropolitan Trial Court in Civil Case No. 174798 did not acquire jurisdiction over the person of the respondents due to invalid service of summons, are **AFFIRMED**.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



TERESITA J. LEONARDO-DE CASTRO
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice




BIENVENIDO L. REYES
Associate Justice

³⁵ *Rapid City Realty and Development Corporation v. Villa*, G.R. No. 184197, 11 February 2010, 612 SCRA 302, 306.


ESTELA M. PERLAS-BERNABE
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.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's attestation, it is hereby certified 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.


ANTONIO T. CARPIO
Acting Chief Justice