



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 March 2020** which reads as follows:*

**“G.R. No. 247672 (Banco de Oro [formerly Equitable PCI Bank] v. Carmelita T. Borlongan).** — This is a petition for review on *certiorari*<sup>1</sup> filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision<sup>2</sup> dated May 2, 2018 and the Resolution<sup>3</sup> dated May 30, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 134664. In these issuances, the CA granted respondent Carmelita T. Borlongan’s (Carmelita) petition for annulment of judgment, on the ground of lack of jurisdiction.

This case arose from the complaint<sup>4</sup> for a collection of sum of money, which petitioner Banco De Oro (BDO) initiated against Tancho Corporation, the principal debtor of several loan obligations. Other individuals were also impleaded in the complaint in their capacity as accommodation parties, including Carmelita.

The Regional Trial Court (RTC) of Makati City then issued an order for the service of summons to all defendants at the address of Tancho Corporation. The alleged address of Tancho Corporation, as stated in the complaint, is: Fumikilla Compound, Amang Rodriguez Avenue, Barangay Dela Paz, Pasig City (Fumikilla Compound).<sup>5</sup>

On July 31, 2003, the process server prepared a report stating that summons was unserved because the defendants no longer hold office at Fumikilla Compound.<sup>6</sup> After this failed attempt, BDO moved for leave to

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<sup>1</sup> *Rollo*, pp. 12-43.

<sup>2</sup> Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Ricardo R. Rosario and Ronaldo Roberto R. Martin; *id.* at 53-61.

<sup>3</sup> *Id.* at 63-67.

<sup>4</sup> *Id.* at 87-100.

<sup>5</sup> *Id.* at 88.

<sup>6</sup> *Id.* at 139.

serve the summons by publication. The Makati RTC granted this motion on October 28, 2003.<sup>7</sup>

Thereafter, BDO filed an *ex-parte* motion for issuance of writ of preliminary attachment<sup>8</sup> because the whereabouts of the defendants were unknown. BDO thus prayed to attach the properties of the defendants, including Carmelita. During the hearing, BDO presented a copy of a Transfer Certificate of Title registered in Carmelita's name, involving a real property located in Valle Verde II, Pasig City (Valle Verde property). The Makati RTC thus granted the motion and issued a writ of preliminary attachment against the properties of the defendants.<sup>9</sup>

On December 20, 2005, BDO filed another motion, praying that the summons and complaint be personally served on Carmelita at the Valle Verde property, simultaneously with the writ of attachment. BDO also prayed, in the alternative, that should personal service be impossible, the same be served through publication. In an Order dated December 22, 2005, the Makati RTC granted the motion.<sup>10</sup>

In the Sheriff's Return dated February 9, 2006, the sheriff reported that Carmelita was not personally served with summons because she is "no longer residing at the given address and the said address is for 'rent,' as per information gathered from the security guard on duty."<sup>11</sup> This prompted BDO to file another *ex-parte* motion, praying that the writ of attachment be enforced against the Valle Verde Carmelita's property. In the meantime, publication of the summons, complaint, and the October 28, 2003 Order of the Makati RTC was done in a newspaper of general circulation, or more specifically, People's Taliba, on May 15, 2006.<sup>12</sup>

Upon the motion<sup>13</sup> of BDO, the Makati RTC declared the defendants in default, including Carmelita.<sup>14</sup> This enabled BDO to present evidence *ex-parte*.<sup>15</sup>

On November 29, 2007, the Makati RTC promulgated a Decision<sup>16</sup> in favor of BDO. Tancho Corporation and the individual defendants, including Carmelita, were deemed solidarily liable for the payment of the loan obligation in the amount of ₱32,543,856.33, including interest and attorney's

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<sup>7</sup> Id. at 144.  
<sup>8</sup> Id. at 145-149.  
<sup>9</sup> Id. at 156-157.  
<sup>10</sup> Id. at 165.  
<sup>11</sup> Id. at 166.  
<sup>12</sup> Id. at 167-189.  
<sup>13</sup> Id. at 190-193.  
<sup>14</sup> Id. at 213.  
<sup>15</sup> Id. at 192.  
<sup>16</sup> Id. at 214-218.

fees.<sup>17</sup> BDO likewise moved to publish the Decision, which the trial court granted on March 10, 2008.<sup>18</sup>

On June 9, 2008, the Makati RTC Decision<sup>19</sup> dated November 29, 2007 was published in a newspaper of general circulation.<sup>20</sup> Eventually, the execution of the Decision proceeded, and the Valle Verde property was sold during the auction sale.<sup>21</sup>

Carmelita and her spouse, Eliseo Borlongan, Jr. (Eliseo) discovered the sale of the Valle Verde property in 2012. In the meantime, the Makati RTC proceeded to issue a writ of possession over the Valle Verde property in favor of BDO—the highest bidder during the auction sale. This constrained Carmelita to file a petition for annulment of judgment with the CA, on the ground of defective service of summons. She also included an urgent prayer for the issuance of an injunctive relief. The case was docketed as CA-G.R. SP No. 134664.<sup>22</sup>

The CA denied the prayer for injunction and the subsequent motion for reconsideration of Carmelita.<sup>23</sup> She then filed a Rule 45 petition with the Court, docketed as G.R. No. 217617. In a Resolution promulgated on April 5, 2017, the Court granted the petition in the case entitled *Borlongan v. Banco de Oro*:<sup>24</sup>

**WHEREFORE**, the petitions are **GRANTED**.

(1) The January 20, 2015 Decision and May 26, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 133994 are hereby **REVERSED** and **SETASIDE**. The Regional Trial Court of Pasig, Branch 155 is ordered to continue with the proceedings and decide Civil Case No. 73761 with reasonable dispatch.

(2) The November 12, 2014 and March 23, 2015 Resolutions of the appellate court in CA-G.R. SP No. 134664 are **REVERSED** and **SETASIDE**.

Accordingly, let a Temporary Restraining Order (TRO) be issued enjoining, prohibiting, and preventing respondent Banco De Oro, its assigns, transferees, successors, or any and all other persons acting on its behalf from possessing, selling, transferring, encumbering or otherwise exercising acts of ownership over the property subject of the controversy. Said TRO shall remain valid and effective until such time as the rights and interests of the parties in CA-G.R. SP No. 134664 shall have been determined and finally resolved.

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<sup>17</sup> Id. at 218.  
<sup>18</sup> Id. at 224.  
<sup>19</sup> Id. at 214-218.  
<sup>20</sup> Id. at 229-230.  
<sup>21</sup> Id. at 225-252.  
<sup>22</sup> Id. at 282-352.  
<sup>23</sup> Id. at 354-355.  
<sup>24</sup> 808 Phil. 505 (2017).

**SO ORDERED.**<sup>25</sup>

The Court ruled that the CA indeed erred in failing to issue the injunctive reliefs, despite a showing that Carmelita has a clear and unmistakable right that must be protected.<sup>26</sup> Notably, the Court also found that there was improper service of summons because publication was immediately made after a single attempt at personal service in the Fumikilla Compound.<sup>27</sup> For this reason, the Court held that BDO does not have an absolute right to possess the Valle Verde property, since the validity of the attachment is directly put in issue before the CA.<sup>28</sup>

The Court thus granted the petition, and reversed and set aside the CA resolutions denying her application for an injunctive relief. A TRO was issued enjoining BDO from disposing of the Valle Verde property until the resolution of CA-G.R. SP No. 134664.<sup>29</sup>

The CA, in CA-G.R. SP No. 134664, proceeded to resolve the case. In the first assailed Decision<sup>30</sup> dated May 2, 2018, the CA held that there was indeed a defective service of summons, which rendered the judgment of the Makati RTC null and void. The CA found that earnest efforts to serve the summons personally were not exerted, and as such, resort to the publication of the summons is improper. The dispositive portion of the CA's decision reads:

**WHEREFORE**, in the light of the foregoing premises, the Petition for Annulment of Judgment [With Prayer for Issuance of a Temporary Restraining Order [TRO] and/or Writ of Preliminary Injunction] is hereby **GRANTED** and the Decision dated November 29, 2007 of the court below is hereby **SET ASIDE**.

**SO ORDERED.**<sup>31</sup>

The motion for reconsideration of BDO was also denied in the CA's Resolution<sup>32</sup> dated May 30, 2019.<sup>33</sup>

Aggrieved, BDO filed this petition,<sup>34</sup> arguing that the service of summons by publication was not improper in this case. According to BDO, the cases cited in the decision of the CA were all promulgated after the process server attempted to serve the summons on Carmelita and her co-defendants in 2006. Furthermore, BDO alleges that the service of summons at that time was consistent with the prevailing rules under Sections 6 and 7

<sup>25</sup> Id. at 527.  
<sup>26</sup> Id. at 516-517.  
<sup>27</sup> Id. at 521.  
<sup>28</sup> *Supra* note 25.  
<sup>29</sup> Id.  
<sup>30</sup> *Rollo*, pp. 53-61.  
<sup>31</sup> Id. at 61.  
<sup>32</sup> Id. at 63-67.  
<sup>33</sup> Id. at 63-68.  
<sup>34</sup> Id. at 12-43.

of Rule 14 of the Rules of Court. BDO asserts that service was attempted twice, first, at the Fumikilla Compound, and second, at the Valle Verde property. For this reason, the petitioner maintains that the publication of summons was warranted under the circumstances.<sup>35</sup>

The Court finds the petition completely bereft of merit.

Section 6, Rule 14 of the Rules of Court clearly states that summons should be personally served on the defendant, whenever practicable. This is followed by Section 7 of the same rule, allowing substituted service if the defendant cannot be served within a reasonable time.

As early as 2003, the Court ruled in *Sps. Jose v. Sps. Boyon*<sup>36</sup> that:

As can be gleaned from the above-quoted Sections, personal service of summons is preferred to substituted service. Only if the former cannot be made promptly can the process server resort to the latter. **Moreover, the proof of service of summons must (a) indicate the impossibility of 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.** It is likewise required that the pertinent facts proving these circumstances be stated in the proof of service or in the officer's return. The failure to comply faithfully, strictly and fully with all the foregoing requirements of substituted service renders the service of summons ineffective.<sup>37</sup> (Emphasis ours)

The Court also explained in *Umandap v. Judge Sabio, Jr.*<sup>38</sup> that substituted service is "extraordinary in character,"<sup>39</sup> which must be preceded by impossibility of service of summons within a reasonable time. The Court also required a description of efforts to locate the person subject of the service.<sup>40</sup>

The last tier in the hierarchy and rules in the service of summons is governed by Section 14, Rule 14 of the Rules of Court, which provides for service by publication. Under the rules, summons may be served through publication when the whereabouts of the defendant is unknown and cannot be ascertained with diligent inquiry.

Evidently, even prior to the failed attempt at personally serving summons to Carmelita and her co-defendants at the Fumikilla Compound in 2003, and the subsequent attempt to serve Carmelita with summons and the

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<sup>35</sup> Id. at 28-35.

<sup>36</sup> 460 Phil. 354 (2003).

<sup>37</sup> Id. at 363.

<sup>38</sup> 393 Phil. 657 (2000).

<sup>39</sup> Id. at 664; citing *Spouses Venturanza v. Court of Appeals*, 240 Phil. 306, 314-315 (1987).

<sup>40</sup> Id. at 666.

writ of attachment at the Valle Verde property in 2006, **the extant rule has always been that earnest efforts should be exerted prior to resorting to the other modes of service of summons.** As such, the CA did not err in ruling that there must be a justification and narration of circumstances in the sheriff's report before dispensing with personal service of summons.

More importantly, it should be borne in mind that the first attempt of the sheriff to serve the summons on Carmelita and her co-defendants would necessarily fail. As found by the Court in the consolidated cases of *Borlongan v. Banco de Oro*,<sup>41</sup> ownership over the Fumikilla Compound, which the BDO alleged in the complaint as the office address of Carmelita and her co-defendants, was consolidated in favor of BDO as early as November 16, 2001. BDO was obviously acting in bad faith when it provided an obsolete address for the defendants impleaded in its complaint, thus:

Consider: in July 2003, the sheriff attempted to serve the summons on the defendants, including petitioner Carmelita, at Fumakilla Compound, i.e., at the property already foreclosed, acquired, and possessed by the respondent bank as early as August 2001. **Immediately after this single attempt at personal service in July 2003, the respondent bank moved in October 2003 for leave to serve the summons by publication (and not even substituted service), which motion the RTC granted.**

Clearly, there was no diligent effort made to find the petitioner and properly serve her the summons before the service by publication was allowed. **Neither was it impossible to locate the residence of petitioner and her whereabouts.**

It should be noted that the principal obligor in CC No. 03-0713 was Tancho Corporation and petitioner Carmelita was impleaded only because she supposedly signed a surety agreement as a director. As a juridical person, Tancho Corporation is required to file mandatory corporate papers with the Securities and Exchange Commission (SEC), such as its General Information Sheet (GIS). In 1997 and 2000, the GIS filed by Tancho Corporation with the SEC provided the names of its directors and their addresses. One of these directors included petitioner Carmelita with her address listed at 41 Chicago St., Quezon City. The GIS of Tancho Corporation was readily available to the public including the RTC's process server and respondent bank.

Patently, it cannot be plausibly argued that it was impossible to find the petitioner and personally serve her with summons. In like manner, it can hardly be stated that the process server regularly performed his duty.<sup>42</sup> (emphasis supplied)

For this reason, the supposed second attempt to serve summons on Carmelita at the Valle Verde property is actually the first earnest attempt.

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<sup>41</sup> *Supra* note 24.

<sup>42</sup> *Id.* at 521-522.

However, aside from stating that the property was being leased to another person, there was no satisfactory indication of the attempts, if any, to determine the address of Carmelita. Neither did it narrate the circumstances that prove the impossibility of locating Carmelita's whereabouts.

Furthermore, despite the invalid service of summons on Carmelita, the trial court proceeded to implement the writ of attachment on the Valle Verde property. While the provisional remedy of attachment may be granted at the commencement of the action or at any time thereafter, the court must first acquire jurisdiction over the defendant upon the implementation of the writ.<sup>43</sup> In *Mangila v. Court of Appeals*,<sup>44</sup> the Court explained that the belated service of summons does not serve to cure the defective implementation of the writ of attachment, thus:

x x x [W]e have held that the grant of the provisional remedy of attachment involves three stages: first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. *For the initial two stages, it is not necessary that jurisdiction over the person of the defendant be first obtained. However, once the implementation of the writ commences, the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.*

x x x x<sup>45</sup>

In conclusion, we hold that the alias summons belatedly served on petitioner cannot be deemed to have cured the fatal defect in the enforcement of the writ. The trial court cannot enforce such a coercive process on petitioner without first obtaining jurisdiction over her person. **The preliminary writ of attachment must be served after or simultaneous with the service of summons on the defendant whether by personal service, substituted service or by publication as warranted by the circumstances of the case.** The subsequent service of summons does not confer a retroactive acquisition of jurisdiction over her person because the law does not allow for retroactivity of a belated service.<sup>46</sup> (Emphasis ours)

In this case, there was an attempt to serve the summons, together with the writ, on Carmelita at the Valle Verde property. But as previously discussed, BDO immediately asked for leave from the trial court to effect service through publication after a single failed attempt at personal service. Lacking any proof that it is impossible to ascertain the whereabouts of Carmelita, the service through publication is invalid. Worse, the records show that BDO did not even attempt to serve the summons and writ of preliminary attachment through substituted service.

<sup>43</sup> *Mangila v. Court of Appeals*, 435 Phil. 870, 880-881 (2002).

<sup>44</sup> *Id.*

<sup>45</sup> *Rollo*, p. 881.

<sup>46</sup> *Id.* at 883.

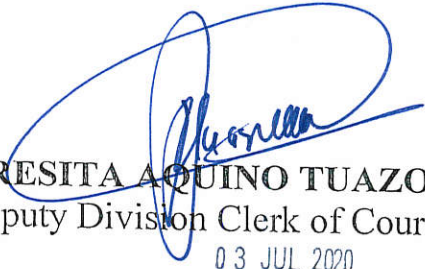
The haste by which BDO moved for the publication of the summons and the writ of preliminary attachment is a clear manifestation of an attempt to defeat the due process rights of Carmelita. She was not duly notified of the proceedings before the Makati RTC, which eventually resulted in the auction sale of the Valle Verde property. This is precisely the situation that the rule on summons seeks to avoid.

In light of the foregoing, the annulment of judgment under Rule 47 of the Rules of Court is proper. The trial court failed to obtain jurisdiction over the person of Carmelita, one of the defendants in the case before the Makati RTC.<sup>47</sup> As a corollary matter, the CA did not commit a reversible error in annulling the judgment of the Makati RTC in Civil Case No. 03-713.

**WHEREFORE**, premises considered, the present petition is hereby **DENIED**. The Decision dated May 2, 2018 and the Resolution dated May 30, 2019 of the Court of Appeals in CA-G.R. SP No. 134664 are **AFFIRMED in toto**.

**SO ORDERED.**"

Very truly yours,

  
**TERESITA AQUINO TUAZON**  
Deputy Division Clerk of Court *with 7/2*  
03 JUL 2020

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 134  
Makati City  
(Civil Case No. 03-713)

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<sup>47</sup> See *Guiguinto Credit Cooperative, Inc. v. Torres*, G.R. No. 170926, September 15, 2006, 533 Phil. 476, 485.