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 30, 2023**,*which reads as follows:*

"G.R. No. 259471 (Heirs of Estrella G. Mabborang, Petitioners **v. Rosalind Laura Hagos,** Respondent).—This Court resolves to **DENY** the instant Petition for Review on *Certiorari*[1] and **AFFIRM** the Decision[2] and the Resolution[3] of the Court of Appeals (CA) for failure of the Heirs of Estrella G. Mabborang (petitioners) to show that the CA committed any reversible error in dismissing their Appeal, and in denying the motion for reconsideration thereof, respectively, in CA-G.R. CV No. 112429.

Records tellingly indicate that the Complaint,[4] docketed as Civil Case No. R-QZN-16-00996-CV, was filed by Rosalind Laura Hagos (respondent) before Branch 95 of the Regional Trial Court of Quezon City, against petitioners, represented by Flor Norma Ludovice[5] (Ludovice), who was the niece of Estrella G. Mabborang.[6] Thereafter, an alias summons, with a copy of the complaint as well as its attachments, was duly received by Ludovice herself. Undisputably then, the trial court acquired jurisdiction over her person.

In actual fact, Ludovice herself deferred to the trial court's jurisdiction when she unconditionally filed a motion for extension to file summon(s) through counsel. Upon this point, jurisprudentially settled is the rule that one who seeks an affirmative relief, such as the *filing of a motion*

---

1 *Rollo*, pp. 14-31.
2 *Id.* at 41-50. The Decision dated February 4, 2021 was penned by Associate Justice Louis P. Acosta, with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Bonifacio S. Pascua.
3 *Id.* at 60-61. Dated February 28, 2022.
4 *Id.* at 68-79.
5 Spelled as Ludevice in the records of the trial court.
6 *Id.* at 26 & 43.

for additional time to file answer,[7] is deemed to have voluntarily submitted to the jurisdiction of the court.[8] Thus, the CA unerringly held:

> As borne by the records, Ludovice personally received the Alias Summons on 22 November 2016 as evidenced by her signature affixed to the document. Her due receipt of the summons was confirmed when she subsequently filed a motion for extension of time to file answer.
>
> Even supposing that there had been no valid service of summons on Ludovice, the court *a quo* still acquired jurisdiction over the person of Ludovice. The Supreme Court, in *Carson Management & Realty Corporation [v.] Red Robin Security Agency et al.*,[9] explained:
>
> "[We have] time and again, held that the filing of a motion for additional time to file answer is considered voluntary submission to the jurisdiction of the court. If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to him, like voluntarily appearing in the action, he is deemed to have submitted himself to the jurisdiction of the court. 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."
>
> There is no denying that Ludovice is the named defendant in the case. When she filed a motion for extension to file answer without indicating that the filing of the same was by way of conditional appearance to question the regularity of the service of summons, Ludovice voluntarily submitted to the jurisdiction of the court *a quo*. Writing to the Branch Clerk of Court to allegedly rectify her error of filing such pleading, as she later on denied to be a real[] party-in-interest, does not abrogate this voluntary submission.[10]

Indeed, when Ludovice did not explicitly object to the jurisdiction of the court over her person, she was deemed to have submitted herself thereto.[11] The defect in the service of summons, if any, was therefore cured.[12]

In view of the foregoing, the trial court judiciously rendered the default judgment. As adumbrated above, the complaint in this case was filed against petitioners, as represented by **Ludovice**. All the same, she never raised the purported non-inclusion of petitioners or the supposed fact that

---

7 See *Villongco, et al. v. Yabut, et al.*, G.R. No. 225022, 825 Phil. 61, 72-73 (2018) [Per J. Tijam, First Division].

8 See *Jorgenetics Swine Improvement Corp. v. Thick & Thin Agri-Products, Inc.*, G.R. No. 201044, May 5, 2021 [Per J. Hernando, Third Division].

9 G.R. No. 225035, 805 Phil. (2017) [Per J. Velasco, Jr., Third Division].

10 *Rollo*, pp. 48-49; citations omitted.

11 *Supra* note 5.

12 See *People's General Insurance Corp. v. Guansing*, 843 Phil. 197, 211 (2018) [Per J. Leonen, Third Division] at 211. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

she was not their representative, either in a motion to dismiss or in an answer, as in fact, she never filed any responsive pleading despite due notice. Thus, pursuant to Section 1, Rule 9 of the Rules of Court which provides that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived," such objection was clearly abandoned.[13] This being the case, petitioners cannot anymore raise the same in the present Petition.

In the same vein, their logical remedy after having been declared in default would have been to pray for the lifting of such declaration *via* a motion, explaining therein why no answer was filed notwithstanding the court's directive to do so.[14] As it happened, despite notice of the order of default, Ludovice merely moved for reconsideration thereof *sans* filing any answer, waited until the trial court rendered the default judgment, and then filed an appeal therefrom.

In synthesis, while the courts should avoid orders of default, they could not validly ignore the abuse of procedural rules by litigants, like petitioners herein, who only have themselves to blame for the default judgment against them.[15] This being so, the Court cannot heed their plea that the case be remanded to the trial court and be tried anew.

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby **DENIED**.

SO ORDERED." (***Inting, J.***, recused himself from the case due to prior participation in the Regional Trial Court, Branch 95, Quezon City; ***Hernando, J.***, designated additional Member per Raffle dated September 20, 2022)

By authority of the Court:

Misael DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court 03-15-23

---

[13] See *City of Valenzuela v. Roman Catholic Archbishop of Manila*, G.R. No. 236900, April 28, 2021 [Per J. Delos Santos, Third Division].

[14] See *Momarco Import Co., Inc. v. Villamena*, G.R. No. 192477, 791 Phil 457 2016) [Per J. Bersamin, First Division] at 463. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

[15] See *Id.* at 467.

Atty. Omar D. Vigilia
Counsel for Petitioners
THE LAW FIRM OF ATTY. OMAR D. VIGILIA
40 V. Kalaw St., Tierra Bella Homes
1100 Quezon City

COURT OF APPEALS
CA G.R. CV No. 112429
1000 Manila

Ms. Rosalind Laura Hagos
Respondent
No. 29-1 Ramos St., Brgy. Krus na Ligas
1100 Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 95, 1100 Quezon City
(Civ. Case No. R-QZN-16-00996-CV)

PHILIPPINE JUDICIAL ACADEMY
Research Publications and Linkages Office
Supreme Court, Manila
[research_philja@yahoo.com]

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila