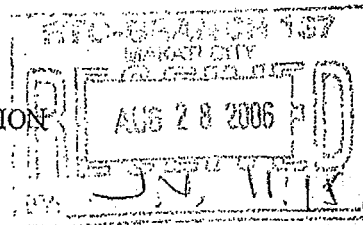


REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 137-MAKATI CITY



PRISCILLA MIJARES, ET AL.,
Plaintiffs,

-versus-

CIVIL CASE NO. 97-1052

ESTATE OF THE LATE FERDINAND
E. MARCOS,
Defendant.

x -----x

REPLY
TO COMMENT/OPPOSITION

Plaintiffs, through counsel, and by way of REPLY to defendant's COMMENT/OPPOSITION (Re: Motion to Declare Defendant in Default) dated 24 July 2006 but a copy of which was received by counsel through the mails on August 18, 2006, to this Honorable Court respectfully state:

1. Defendant's Comment/Opposition is totally bereft of any legal basis.
2. Defendant Estate's Motion to Dismiss, dated 30 January 1998, pertinently

stated:

"MOTION TO DISMISS

Defendant ESTATE OF FERDINAND E. MARCOS, through its duly-appointed Executor, FERDINAND R. MARCOS II, assisted by counsel, respectfully moves to dismiss the COMPLAINT on the following grounds:

- I. PLAINTIFFS HAVE FAILED TO COMPLY WITH THE MANDATORY PROVISIONS OF CIRCULAR NO. 7;
- II. THE HONORABLE COURT HAS NO JURISDICTION OVER THE COMPLAINT FOR IT IS IN THE NATURE OF A CHARGE AGAINST THE ESTATE WHICH IS COGNIZABLE BY BRANCH 156 OF THE REGIONAL TRIAL COURT OF PASIG CITY;

III. THE INSTANT ACTION IS NOT PROPER FOR A CLASS SUIT; AND

IV. THE HONORABLE COURT HAS NO JURISDICTION OVER THE COMPLAINT FOR THE FOREIGN JUDGMENT SOUGHT TO BE RECOGNIZED AND ENFORCED IS CONTRARY TO LAW AND JURISPRUDENCE AND WAS RENDERED WITH EVIDENT MISTAKE OF FACT AND LAW.”

It then sought the following relief, to wit:

“PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that the instant COMPLAINT be dismissed for utter lack of merit.

Other equitable reliefs are further prayed for.

Respectfully submitted.

Quezon City for Makati City, 30 January 1998.”

3. From the foregoing judicial fact, it is indisputably clear that the Motion NEVER raised the ground of lack of jurisdiction over the person of the defendant. And the Motion to Dismiss aforesaid is not and was never a special appearance to question the jurisdiction of the Honorable Court over the person of the defendant. In short, the defendant voluntarily appeared and submitted itself to the jurisdiction of the Honorable Court.

4. It is elementary that lack of jurisdiction over the person of the defendant may be waived by his voluntary appearance. As has been repeatedly ruled by the Honorable Supreme Court:

“The lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction. The decisions promulgated heretofore by this Court would likewise seemingly apply estopped to bar the defendant from pursuing that defense by alleging in his answer any other issue for dismissing the

action." (La Naval Drug Corporation vs. Court of Appeals, 236 SCRA 78, 86)

5. Moreover, instead of raising the ground of lack of jurisdiction over the person of the defendant, the Motion to Dismiss in question raised other grounds. This failure is a clear indication of defendant's voluntary appearance. By raising grounds OTHER THAN lack of jurisdiction over its person, the defendant has waived service of summons.

"A citation of a few of our decisions might be apropos.

In Wang Laboratories, Inc., vs. Mendoza (156 SCRA 44), this Court has ruled that if the defendant, besides setting up in a motion to dismiss his objection to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, he is deemed to have submitted himself to the jurisdiction of the court. In the process, it has equated the matter to a situation where, such as in Immaculata vs. Judge Navarro, et al. (146 SCRA 5), the defendant invokes an *affirmation relief* against his opponent.

In De Midgely vs. Judge Ferandos (64 SCRA 23m 31), the Court elaborated thusly:

'We are of the opinion that the lower court has acquired jurisdiction over the person of Mrs. Midgely by reason of her voluntary appearance. The reservation in her motion to dismiss that she was making a special appearance to contest the court's jurisdiction over her person may be disregarded.

'It may be disregarded because it was nullified by the fact that in her motion to dismiss she relied not only on the ground of lack of jurisdiction over her person but also on the ground that there was no showing that earnest efforts were exerted to compromise the case and because she prayed 'for such other relief as' may be deemed 'appropriate and proper.'

'xxx

xxx

xxx.

'When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. A special appearance by motion made for the purpose of objecting to the jurisdiction of the court over the person will be held to be a general appearance, if the party in said motion should, for example, ask for a dismissal of the action upon the further ground that the court had no jurisdiction over the subject matter. (Syllabus, Flores vs. Zurbito, supra, at page 751. That rule was followed in Ocampo vs. Mina and Arejola, 41 Phil. 308).'

The justification for the rule was expressed in *Republic vs. Ker and Company, Ltd.* (18 SCRA 207, 213-214), in this wise:

“We observe that the motion to dismiss filed on April 14, 1962, aside from disputing the lower court’s jurisdiction over defendant’s person, prayed for dismissal of the complaint on the ground that plaintiff’s cause of action has prescribed. By interposing such second ground in its motion to dismiss, Ker & Co., Ltd., availed of an affirmative defense on the basis of which it prayed the court to resolve controversy in its favor. For the court to validly decide the said plea of defendant Ker & Co., Ltd., it necessarily had to acquire jurisdiction upon the latter’s person, who, being the proponent of the affirmative defense, should be deemed to have abandoned its special appearance and voluntarily submitted itself to the jurisdiction of the court.

“Voluntarily appearance cures defects of summons, if any. Such defect, if any, was further cured when defendant filed its answer to the complaint. A defendant can not be permitted to speculate upon the judgment of the court by objecting to the court’s jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defenses.” (*La Naval Drug Corporation vs. Court of Appeals*, supra, at pp. 86-87.

6. Clearly, therefore, defendant’s present assertion that it was never served with summons and a copy of the complaint is an exercise in futility. It is an inutile argument for the defendant had already waived service of summons when it voluntarily appeared by filing the aforementioned Motion to Dismiss which, as already stated, never raised the ground of lack of jurisdiction over its person.

7. The allegation in the said Motion to Dismiss that neither the Executor nor the Estate “has been duly served with Summons and a copy of the Complaint” is simply a manifestation. It did not question the jurisdiction of the Honorable court over its person. Defendant NEVER entered any special appearance to question the Honorable Court’s jurisdiction over its person. On the contrary, it waived the lack of jurisdiction.

8. Defendant should have carefully read and thereafter understood the decision in *United Coconut Planters Bank vs. Ongpin* that it cited (p. 3, Comment/Opposition).

The said decision clearly states:

“A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground, e.g., invalidity of the service of summons, cannot be considered to have submitted himself to the jurisdiction of the court.”

In the case at bar, defendant Estate never made a special appearance in court and never challenged the jurisdiction based on invalidity of services of summons. Its motion to dismiss was based on grounds OTHER THAN the lack of jurisdiction over its person. In fact, it sought to dismiss the complaint “for utter lack of merit” but NEVER for lack of jurisdiction over its person.

9. It took plaintiffs more than a year after defendant counsel’s receipt of the Supreme Court Decision dated April 12, 2005 to file their Motion To Declare Defendant In Default simply because plaintiffs had to wait until the records were remanded back to this Honorable Court. It is as simple as that.

10. It is defendant that is doing this court a great disservice. Certainly, it is not for this Honorable Court to teach defendant and counsel what to do and what pleadings to file. The Order of 09 May 2006 clearly directs the parties “to file the proper pleadings so that the hearing of this case can proceed without further delay.”

11. A copy of the Order of 09 May 2006 was received by the defendant Estate on May 24, 2006.; Thus, at most it had fifteen (15) days from said date of receipt to file its responsive pleading since its Motion to Dismiss was in effect DENIED by the Hon. Supreme Court when the order of this Honorable Court granting said Motion was REVERSED.

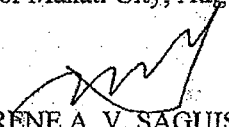
12. The argument that “the court acquires jurisdiction over any case only upon the payment of docket fees” is, at most, simply amusing. The docket fees paid by

the plaintiffs was upheld and ruled to be sufficient by the Honorable Supreme Court. And how this case is "cognizable by Branch 156 of the Regional Trial Court of Pasig City (par. 9, COMMENT/OPPOSITION) is beyond us.

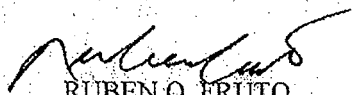
13. Finally, defendant does not have the competence nor the knowledge to spell "out to the plaintiffs just how to do their duty". That is plain to see. It does not even know how to do its duty of filing its Answer to the Complaint on time.

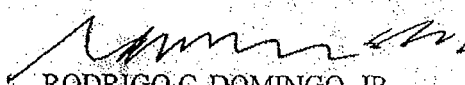
WHEREFORE, the reliefs prayed for in plaintiffs' Motion To Declare Defendant In Default are respectfully reiterated.

Makati City and Manila for Makati City, August 24, 2006.


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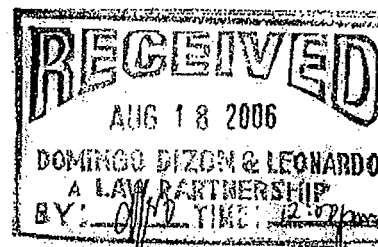
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EXPLANATION

By reason of time and distance constraints and non-availability of office personnel to undertake personal service, copies of this Reply were served on the other parties by registered mail.


RODRIGO C. DOMINGO, JR.

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 137 - MAKATI CITY



PRISCILLA MIJARES, ET AL.,
Plaintiffs,

-- versus --

CIVIL CASE No. 97-1052

ESTATE OF THE LATE FERDINAND
E. MARCOS,
Defendant.

X-----X

COMMENT/OPPOSITION
(Re: Motion to Declare Defendant in Default)

Defendant Estate, by way of undersigned counsel in special appearance therefor, and by way of Opposition to plaintiffs' Motion to Declare Defendant in Default dated 18 July 2006, respectfully states:

1. Customarily, a Motion to Declare Defendant in Default starts with the material dates, namely the date when summons was served and, consequently, the date on which the supposed default occurred.
2. The reason for the lack of the said dates in the instant Motion is simple and clear: defendant was never served with summons and copy of the complaint in this case.

3. The record bears this out. There is neither summons nor an officer's return pertaining to any summons in this case.

4. This has also been made equally clear in the Motion to Dismiss filed by defendant estate through its executor Ferdinand R. Marcos, Jr., "assisted by counsel," on 18 February 1998. On its very first page, it was clearly stated by said executor that "[A]t the outset, undersigned Executor respectfully manifests that to date, neither he nor the Estate of FERDINAND E. MARCOS has been duly served with Summons and a copy of the Complaint in the above-captioned case."

5. Oddly enough, despite such omission and such early manifestation, plaintiffs insist to this day that defendant estate has "been duly served with summons" (par. 2, Motion).

6. In fact, despite knowledge of the same, these same plaintiffs had made a similar claim - under oath - before the Supreme Court no less in their Petition for Certiorari assailing this Court's order dismissing the instant complaint.

7. Those attempts to mislead this Court and the Supreme Court notwithstanding, the fact remains that this is an instance of not even defective service but an absolute lack of service of summons.

8. The plaintiffs would expectedly make much of the fact that defendant had filed and prosecuted the said Motion to Dismiss before this Court and equate the same with voluntary submission to this Court's

jurisdiction, despite the fact that such appearance is "special in nature" and the reality that this supposed issue is not only long- but conclusively settled.

"First. Petitioner maintains that the trial court had already acquired jurisdiction over the person of respondent Ongpin by virtue of the numerous appearances by his counsel and respondents' undeniable knowledge of the complaint against him.

This contention has no merit. A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground, *e.g.*, invalidity of the service of summons, cannot be considered to have submitted himself to the jurisdiction of the court. In fact, in *La Naval Drug Corp. vs. the Court of Appeals*, this Court ruled that even the assertion of affirmative defenses aside from lack of jurisdiction over the person of the defendant cannot be considered a waiver of the defense of lack of jurisdiction over such person.

In the present case, although respondent had indeed filed numerous pleadings, these pleadings were precisely for the purpose of contesting the jurisdiction of the court over the person of respondent on the ground that there was no valid service of summons on him. It would be absurd to hold that respondent, by making such appearance, submitted himself to the jurisdiction of the court." (*United Coconut Planters Bank vs. Ongpin*, 368 SCRA 464, 470-1 [2001]).

9. In the instant case, not only has there been no service of summons to even speak of, defendant estate had precisely questioned this Court's jurisdiction over the case itself, considering that Circular No. 7 mandates that "the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees," and over the complaint, considering that it is in the nature of a charge against the estate, which is cognizable by Branch 156 of the Regional Trial Court of Pasig City;

10. In fact, still pending determination by this Court is the latter-cited ground as well as two others set forth in the Motion to Dismiss.

11. The question then begs to be asked: if plaintiffs indeed believed that default has already set in, after defendant's receipt of the Supreme Court's Decision in the abovementioned certiorari petition, "after a lapse of more than one (1) year," in plaintiffs' own words, why did it take them this long to move for a default declaration?

12. Plaintiffs cite Section 4 of Rule 16 of the Rules of Court to the effect that defendant supposedly only had the balance of the period to file its answer left after the denial of its motion to dismiss but do not bother to inform this Court just how many days are left in that balance, for the obvious reason that they cannot even tell the court when the period to file answer started to run, which of course it never did.

13. They then go on to cite this Court's Order of 09 May 2006 directing the parties "to file the proper pleadings so that the hearing of this case can proceed without further delay," and interpret the same to mean the filing of an answer by the defendant.

13. Plaintiffs do this Court a great disservice. If the Court meant for the defendant to file its Answer to the Complaint, it would have so stated, together with the number of days to do so. To a disinterested reader, it would be far more logical for the Court to have meant that plaintiff, as is its obligation, should move to have summons served finally

- which is the only way "the hearing of the case can proceed without further delay." That is, without going beyond the bounds of judicial propriety by spelling out to the plaintiffs just how to do their duty.

PRAYER

WHEREFORE, premises considered, defendant estate respectfully prays that this Honorable Court deny plaintiffs' Motion to Declare Defendant in Default for utter lack of merit.

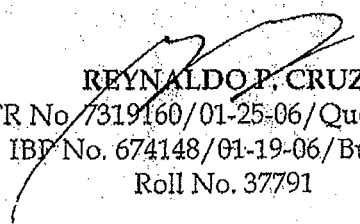
Defendant estate prays for such further or other relief as may be deemed just or equitable.

Quezon City, for Makati City.

24 July 2006.

AGUS CRUZ & MANZANO LAW OFFICES
Counsel for Respondents
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By:


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Explanation

In view of time and distance constraints, and the non-availability of office personnel to undertake personal service, copies of the above Comment/Opposition were served by registered mail.

and filed


REYNALDO P. CRUZ

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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Address:
Palais des Nations
CH-1211 GENEVE 10

REFERENCE: G/SO 215/51 PHIL (20)
MS/KF/sn 1320/2004

18 August 2006

Dear Mr. Swift,

This is to acknowledge receipt of your supplementary information dated 4 July 2006 and to transmit to you herewith copy of the State party's supplementary information dated 1 June 2006, concerning communication No. 1320/2004 which you submitted to the Human Rights Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Mariano Pimentel et al.

A copy of your submission has been sent to the State party, for information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alessio Bruni'.

Alessio Bruni
Officer-in-Charge
Treaties Bodies and Council Branch

Mr. Robert Swift
Kohn, Swift & Graf, P.C.
1 South Broad Street, Suite 2100
Philadelphia
Pennsylvania 19107-3304
U.S.A.



MISYON NG PILIPINAS SA MGA NAGKAKAISANG
BANSA AT IBA PANG SAMAHANG PANDAIGDIG

PHILIPPINE MISSION TO THE UNITED NATIONS
AND OTHER INTERNATIONAL ORGANIZATIONS

GENEVA, SWITZERLAND
47, AVENUE BLANC
TEL. 022 716 19 30
FAX 022 716 19 32

No. 0298 /GKP-06

The Permanent Mission of the Philippines to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and with reference to the latter's Note dated 27 March 2006, transmitting counsel's reply dated 12 January 2006 concerning communication no. 1320/2004 under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Mr. Mariano Pimentel, et. al., has the honor to submit the State party's rejoinder to the aforesaid reply.

Contrary to the allegations of the counsel, the lower court has already ordered the reinstatement of the case. Furthermore, the rejoinder wishes to clarify that the communication refers only to the *Mijares* case and there is no showing that the supposed victims in the *Mijares* and *Manotoc* cases are one and the same.

The Permanent Mission of the Philippines avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Attachment: As stated.

Geneva, 01 June 2006



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
Palais des Nations CH-1211 Geneva 10

OHCHR REGISTRY

- 7 JUN 2006

Recipients : ...M. E.....
.....
.....
.....