

## THIRD DIVISION

[ G.R. No. 236924. March 29, 2023 ]

**DIVERSIFIED PLASTIC FILM SYSTEM, INC., PETITIONER, VS. PHILIPPINE INVESTMENT ONE (SPV-AMC), INC., RESPONDENT.**

## DECISION

### GAERLAN, J.:

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> dated March 15, 2018 filed by Diversified Plastic Film System, Inc. (Diversified), assailing the Decision<sup>[2]</sup> dated July 20, 2017 and the Resolution<sup>[3]</sup> dated January 17, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 107210, which affirmed the Decision<sup>[4]</sup> dated January 19, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 143, appointing Philippine Investment One (SPV-AMC), Inc. (PI-One) as trustee in Special Proceedings No. M-7875.

As summarized by the CA, the facts are as follows:

On December 29, 1997, Development Bank of the Philippines (DBP) granted All Asia Capital and Trust Corporation (All Asia) a loan in the aggregate amount of P265,000,000.00. On the same date, All Asia, by virtue of the authority extended by DBP to re-lend the loan, granted Diversified a loan in the amount of P265,000,000.00, as evidenced by a Continuing Suretyship dated December 17, 1997, executed by Diversified's Chairman, Ramon Garcia.<sup>[5]</sup>

As a continuing security for the loan, Diversified executed in favor of All Asia a Mortgage Trust Indenture<sup>[6]</sup> (MTI) dated July 22, 1998, with an initial drawdown of P100,000,000.00. The MTI also established mortgages over several properties of Diversified, and likewise designated All Asia as trustee in behalf of and for the benefit of Diversified's lenders.<sup>[7]</sup>

Thereafter, a Supplemental Indenture (SI) was executed between Diversified and All Asia, for the inclusion of an additional lender - ING Bank - for an additional credit facility amounting to P213,463,000.00. In addition to this credit facility, Diversified further obtained several loans and credit facilities to finance the construction of its buildings and to procure equipment and machinery.<sup>[8]</sup>

On December 25, 2006, All Asia executed a dation in payment, transferring, conveying, and assigning, in an absolute and irrevocable manner, all of its rights, titles, and interests in the MTI to DBP. Thereafter, on August 10, 2007, DBP executed a Deed of Assignment, covering the loan of Diversified in the amount of P100,000,000.00, in favor of PI-One.<sup>[9]</sup>

For failure of Diversified to pay the loan, PI-One, as assignee of the loan, demanded payment from Diversified. However, the loan remained unsettled despite demand. Resultantly, PI-One was constrained to file a Petition<sup>[10]</sup> for the extra-judicial foreclosure of Diversified's mortgaged properties. Thereafter, a Notice of Sheriffs Sale was issued for the public auction of the mortgaged properties.<sup>[11]</sup>

To oppose the foreclosure of its mortgaged properties, Diversified filed a Complaint<sup>[12]</sup> for injunction with prayer for the issuance of a writ of preliminary injunction (WPI) and/or temporary restraining order (TRO) before the RTC of Mariveles, Bataan, Branch 4. The RTC of Mariveles, Bataan issued a 72-hour TRO, and after due proceedings, granted Diversified's application for a WPI,<sup>[13]</sup> thereby enjoining PI-One from proceeding with the foreclosure of the mortgaged properties.<sup>[14]</sup>

#### *Injunction case before the CA*

Aggrieved, PI-One filed a Petition for *Certiorari*<sup>[15]</sup> before the CA, docketed as CA-G.R. SP No. 139594. In the petition, PI-One argued that the RTC of Mariveles, Bataan committed grave abuse of discretion when it granted Diversified's application for a WPI. PI-One emphasized that Diversified failed to establish all the elements for a WPI to issue, considering that PI-One, as assignee of all of the rights, titles, and interests, of DBP over the loan (which DBP previously acquired from All Asia), has the right: (1) to be the trustee of Diversified in the case; and (2) to foreclose the mortgaged properties.<sup>[16]</sup>

On May 4, 2016, the CA ruled that the RTC of Mariveles, Bataan committed grave abuse of discretion, and ordered the dissolution of the WPI issued in favor of Diversified, to wit:

Thus the granting of writ of preliminary injunction on the basis of lack of authority on the part of Petitioner to foreclose the mortgaged properties amounted to the prejudgment of the merits of the case, something Public Respondent could not validly do. It apparently forgot that the function of a writ of preliminary injunction was not to determine the merits of the case, or to decide the controverted facts, because an interlocutory injunction was but a preliminary

and preparatory order that still looked to a future final hearing, and, although contemplating what the result of the hearing would be, it should not settle what the result should be. Therefore, in issuing the 2<sup>nd</sup> assailed Order, Public Respondent undeniably committed grave abuse of discretion amounting to lack or excess of jurisdiction.

**WHEREFORE**, premises considered, x x x the 2<sup>nd</sup> assailed Order also dated 19 March 2015 granting the writ of preliminary injunction is **ANNULLED and SET ASIDE**. The writ of preliminary injunction issued pursuant to the said 2<sup>nd</sup> assailed Order is hereby **DISSOLVED**.

**SO ORDERED.**<sup>[17]</sup> (Emphases in the original)

Diversified filed its Motion for Reconsideration<sup>[18]</sup> and Supplement to the Motion for Reconsideration.<sup>[19]</sup> However, the CA denied the same.

#### *Injunction case before this Court*

Thereafter, Diversified filed a Petition for Review on *Certiorari*<sup>[20]</sup> dated March 6, 2017 before the Court, which was docketed as G.R. No. 229229. In the said petition, Diversified prayed, among others, for the reinstatement of the WPI issued by the RTC of Mariveles, Bataan.

However, on July 19, 2017, the Court issued a Resolution,<sup>[21]</sup> which denied Diversified's petition:

**G.R. No. 229229 (*Diversified Plastic Film Systems, Inc. vs. Philippine Investment One [SPV-AMC], Inc.*)**. – Acting on the petition for review on certiorari assailing the Decision and Resolution dated May 4, 2016 and January 3, 2017, respectively, of the Court of Appeals, Manila, in CA-G.R. SP No. 139594, the Court resolves to **DENY** the petition for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.<sup>[22]</sup> (Emphases in the original)

#### *Petition for Appointment as Trustee*

Taking note that Diversified's main contention in the injunction case is that PI-One has no capacity to act as trustee under the MTI, PI-One filed before the RTC of Makati City, Branch 143 a Petition for Appointment as Trustee.<sup>[23]</sup>

In the petition, PI-One alleged that under the Deed of Assignment executed by DBP in its favor, PI-One became the new creditor of Diversified under the MTI, as it stepped into the shoes of the former creditor, DBP, as well as the then trustee/creditor, All Asia. Furthermore, PI-One averred that it is the only creditor left under the MTI and the SI because its credit is the only unpaid debt under the same.<sup>[24]</sup>

Additionally, PI-One stated in the petition that it can file for the appointment of trustee, and prayed that it be appointed/confirmed as such, in accordance with Section 7.08 of the MTI,<sup>[25]</sup> which provides:

7.08. If at any time the **TRUSTEE** shall resign or shall be removed or shall be dissolved, or otherwise shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or if the **TRUSTEE** or substantially all of its property shall be placed under receivership, or if any public officer shall take control of the **TRUSTEE** or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, a vacancy shall be deemed to exist in the office of the **TRUSTEE** and a successor Trustee shall be immediately appointed by the **BORROWER** and by the Majority Lenders by an instrument jointly signed by the **BORROWER** and by the Majority Lenders. Notice of such appointment shall be given by the **BORROWER** to the **TRUSTEE** as well as to the successor Trustee. Until a successor Trustee shall be appointed by the **BORROWER** and the Majority Lenders, as herein provided, the **BORROWER** may appoint a Trustee to temporarily fill the vacancy. The **BORROWER** shall give notice of the appointment of such temporary Trustee. The temporary Trustee so appointed by the **BORROWER** shall, without further act, cease in tenure as such upon the appointment of successor Trustee by the **BORROWER** and the Majority Lenders in accordance with the provisions of this Section. Every Trustee appointed by the Majority Lenders, as herein authorized, shall always meet the qualifications prescribed in Section 7.02. If in a proper case, no appointment of a successor Trustee shall be made pursuant to the provisions of Section 7.08 within two (2) months after a vacancy shall have occurred in the office of the **TRUSTEE**, any Lender may apply to any court of competent jurisdiction for the appointment of a

successor Trustee.<sup>[26]</sup> (Emphases in the original)

Diversified opposed the petition by way of special appearance in its *Answer Ad Cautelam* and *Amended Answer Ad Cautelam*, with express reservation as to the RTC's jurisdiction. In the said pleadings, Diversified argued that the RTC has not acquired jurisdiction over its person because of improper service of summons, and likewise raised the following special and affirmative defenses: (1) the MTI and the SI secured other loan obligations, and that there were other creditors apart from All Asia; (2) All Asia remained as the trustee, as it never resigned nor had been removed as such under the MTI; (3) the RTC has no jurisdiction to appoint PI-One as trustee, as the power to appoint the same is vested in the borrower and the majority lenders, pursuant to Section 7.08 of the MTI; (4) assuming *arguendo* that the position of trustee is vacant, the MTI requires that the position be filled through appointment by the borrower and the majority lenders; (5) the Deed of Assignment in favor of PI-One (including the dation in payment between DBP and All Asia) did not assign the duties of a trustee to PI-One; (6) even assuming that the Deed of Assignment covers the assignment of the duties of a trustee, PI-One is not qualified as it failed to allege that it is an institution duly authorized and engaged in the trust business, as required by the MTI; and (7) PI-One cannot unilaterally institute the petition for appointment as trustee, as it is not the only creditor of Diversified, nor majority lender under the MTI.<sup>[27]</sup> Thus, Diversified prayed for the dismissal of PI-One's petition.

On January 19, 2016, the RTC rendered its Decision,<sup>[28]</sup> which granted PI-One's petition and appointed it as trustee under the MTI, to wit:

**WHEREFORE**, viewed in the light of the foregoing premises, the petition is **GRANTED**. Accordingly, PHILIPPINE INVESTMENT ONE, INC. is hereby appointed TRUSTEE. Said Trustee is allowed to enter into the office of his Trust under the Mortgage Trust Indenture (MTI) and to exercise its duties and powers as such and to make a report to this Court pursuant to existing laws.

**SO ORDERED.**<sup>[29]</sup> (Emphases in the original)

The RTC found that the position of trustee had long been vacant. As such, the RTC appointed PI-One as trustee, emphasizing that: (1) PI-One is the only remaining creditor under the MTI; and (2) pursuant to the assignments made by All Asia and DBP, PI-One

inherited all of their rights, interests, and titles relating to the MTI, including the position as trustee. Meanwhile, as regards the issue of jurisdiction, the RTC held that Section 7.08 of the MTI expressly provides that the court may take cognizance of petitions for the appointment of trustee. Moreover, while the RTC noted that PI-One is not engaged in the trust business, the RTC nevertheless ruled that PI-One has the ability and capability to carry out the duties of a trustee. Finally, with respect to the issue of improper service of summons, the RTC declared that such issue had become moot and academic upon the filing of Diversified's Answer because it was tantamount to voluntary appearance.<sup>[30]</sup>

Diversified filed its Motion for Reconsideration,<sup>[31]</sup> but the RTC denied the same in its Decision<sup>[32]</sup> dated April 19, 2016.

### *Proceedings before the CA*

Aggrieved, Diversified elevated the case before the CA, where it raised the following issues:

I. THE TRIAL COURT GRAVELY AND PALPABLY ERRED IN RULING THAT IT HAS JURISDICTION TO APPOINT PI-ONE AS TRUSTEE;

II. THE TRIAL COURT GRAVELY AND PALPABLY ERRED IN RULING THAT IT HAS ACQUIRED JURISDICTION OVER THE PERSON OF DIVERSIFIED DESPITE THE IMPROPER SERVICE OF SUMMONS;

III. THE TRIAL COURT GRAVELY AND PALPABLY ERRED IN RULING THAT PI-ONE IS QUALIFIED TO BE THE TRUSTEE OF THE MORTGAGE TRUST INDENTURE AND APPOINTING IT AS TRUSTEE OF THE MORTGAGE TRUST INDENTURE; AND

IV. THE TRIAL COURT GRAVELY AND PALPABLY ERRED WHEN IT FAILED TO RULE THAT THERE IS NO URGENCY IN APPOINTING IT AS THE TRUSTEE OF THE MORTGAGE TRUST INDENTURE.<sup>[33]</sup>

On July 20, 2017, the CA rendered its Decision,<sup>[34]</sup> which denied Diversified's appeal:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The assailed *Decision* dated 19 January 2016 and 19 April 2016 appointing PI-One as trustee in Special Proceedings No. M-7875 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[35]</sup> (Emphases in the original)

In resolving the case against Diversified, the CA ruled that while the power to appoint a trustee under the MTI is jointly lodged in both Diversified and the majority of its lenders, Section 7.08 of the MTI expressly provides that if no appointment of a successor trustee is made within two months from vacancy, any lender may apply for the appointment of such before any court of competent jurisdiction. Likewise, the CA agreed with the findings of the RTC with respect to the assignment made by All Asia and DBP in favor of PI-One. As noted by the CA, Section 13 of Republic Act (R.A.) No. 9182, otherwise known as the “Special Purpose Vehicle Act of 2002,” provides that the provisions on subrogation and assignment of credits under the New Civil Code of the Philippines applies in the transfer of assets and non-performing loans to Special Purpose Vehicles (SPV). Thus, pursuant to the assignments made, PI-One acquired all the rights of All Asia, including the position of trustee under the MTI.<sup>[36]</sup>

On August 24, 2017, Diversified filed its Motion for Reconsideration.<sup>[37]</sup> However, in the Resolution<sup>[38]</sup> dated January 17, 2018, the CA denied the same.

### **The Instant Petition**

Unfazed by the adverse rulings of the CA, Diversified filed the instant petition, raising the following issues for the Court’s resolution:

- The Court of Appeals gravely and palpably erred in ruling that the trial court has jurisdiction to appoint respondent Philippine Investment One (SPV-AMC), Inc. as the Trustee of the MTI simply because the position of Trustee is vacant and respondent Philippine Investment One (SPV-AMC), Inc. is the assignee of Development Bank of the Philippines.**
- I. ***The appointment of the Trustee of the MTI is a management and business policy. Pursuant to Section 7.08 of the MTI, only the borrower and majority lenders can appoint the Trustee of the MTI. Respondent Philippine Investment One (SPV-AMC), Inc. cannot unilaterally commence a Petition for Appointment as Trustee because it is not the only creditor under the MTI. There are other creditors who even hold a bigger loan under the MTI than respondent Philippine Investment One (SPV-AMC), Inc. At the same time, the presence of the other creditors renders the filing of the Petition for Appointment as Trustee premature.***

**II. The Court of Appeals gravely and palpably erred in not granting the appeal on the basis of lack of jurisdiction over the person of petitioner Diversified Plastic Film Systems, Inc.**

*The Summons was served only to the receiving officer of*

**A. petitioner Diversified Plastic Film Systems, Inc. in violation of Section 11, Rule 14 of the Rules of Court.**

*The filing of the Answer by petitioner Diversified cannot be*

**B. construed as voluntary submission to the jurisdiction of the trial court.**

**III. The Court of Appeals gravely and palpably erred in ruling that respondent Philippine Investment One (SPV-AMC), Inc. is ultimately the assignee of All Asia's rights under the MTI and thus it has the personality to file the Petition for Appointment as Trustee. The assignment by Development Bank of the Philippines to respondent Philippine Investment One (SPV-AMC), Inc. is in violation of Section 12 of R.A. 9182 of the Special Purpose Vehicle Act. Hence, it is null and void.**

*The Deed of Assignment executed by Development Bank of the*

**A. Philippines to respondent Philippine Investment One (SPV-AMC), Inc. is null and void.**

*Assuming arguendo that the assignment of the loan under the*

**B. MTI to respondent Philippine Investment One (SPV-AMC), Inc. is valid, the assignment did not include the duty to be the Trustee of the MTI.**

*Assuming arguendo that the assignment of the loan under the*

**C. Philippine Investment One (SPV-AMC), Inc. still cannot be the Trustee of the MTI because it is not an institution duly authorized to engaged in trust business in Manila.<sup>[39]</sup> (Emphases in the original)**

## **The Court's Ruling**

The petition is meritorious.

### *Issue of Jurisdiction*

To recapitulate, Diversified argues in the petition that: (1) the RTC does not have jurisdiction to appoint a trustee because under the MTI, the power to appoint a trustee is lodged in both Diversified and the majority of its lenders; and (2) the RTC did not acquire jurisdiction over the person of Diversified because of improper service of summons.

Anent the RTC's jurisdiction to appoint a trustee, the Court agrees with the findings of the CA that the RTC has the authority to take cognizance of PI-One's petition for the



appointment of trustee. To recall, Section 7.08 of the MTI expressly provides that in the event that no trustee is appointed within two months from vacancy, any lender may file with the court a petition for the appointment of trustee, thus:

7.08. If at any time the **TRUSTEE** shall resign or shall be removed or shall be dissolved, or otherwise shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or if the **TRUSTEE** or substantially all of its property shall be placed under receivership, or if any public officer shall take control of the **TRUSTEE** or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, a vacancy shall be deemed to exist in the office of the **TRUSTEE** and a successor Trustee shall be immediately appointed by the **BORROWER** and by the Majority Lenders by an instrument jointly signed by the **BORROWER** and by the Majority Lenders. Notice of such appointment shall be given by the **BORROWER** to the **TRUSTEE** as well as to the successor Trustee. Until a successor Trustee shall be appointed by the **BORROWER** and the Majority Lenders, as herein provided the **BORROWER** may appoint a Trustee to temporarily fill the vacancy. The **BORROWER** shall give notice of the appointment of such temporary Trustee. The temporary Trustee so appointed by the **BORROWER** shall, without further act, cease in tenure as such upon the appointment of successor Trustee by the **BORROWER** and the Majority Lenders in accordance with the provisions of this Section. Every Trustee appointed by the Majority Lenders, as herein authorized, shall always meet the qualifications prescribed in Section 7.02. If in a proper case, no appointment of a successor Trustee shall be made pursuant to the provisions of Section 7.08 within two (2) months after a vacancy shall have occurred in the office of the **TRUSTEE**, any Lender may apply to any court of competent jurisdiction for the appointment of a successor Trustee.<sup>[40]</sup> (Emphases in the original; underscoring supplied)

Moreover, Section 19 of Batas Pambasa Blg. 129 provides that in civil actions in which the subject of litigation is incapable of pecuniary estimation, jurisdiction lies with the RTC. In this regard, the Court succinctly explained in *First Sarmiento Property Holdings, Inc. v. Philippine Bank of Communications*,<sup>[41]</sup> that:

To determine the nature of an action, whether or not its subject matter is capable or incapable of pecuniary estimation, the nature of the principal action or relief

sought must be ascertained. If the principal relief is for the recovery of a sum of money or real property, then the action is capable of pecuniary estimation. However, if the principal relief sought is not for the recovery of sum of money or real property, even if a claim over a sum of money or real property results as a consequence of the principal relief, the action is incapable of pecuniary estimation.<sup>[42]</sup>

Considering that the principal relief sought in the petition for the appointment of trustee does not pertain to any claim over a sum of money or real property, the case is one which is incapable of pecuniary estimation. Thus, the CA correctly found that the RTC has jurisdiction to take cognizance of PI-One's petition for the appointment of trustee.

However, as regards the RTC's jurisdiction over the person of Diversified, the Court finds that by virtue of the improper service of summons, the RTC failed to acquire jurisdiction over Diversified.

Section 11, Rule 14 of the Rules of Court explicitly enumerates the persons to whom summons may be served:

**Section 11.** *Service upon domestic private juridical entity.* - When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the **president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.** (Emphases supplied)

Notably, the enumeration found in Section 11, Rule 14 of the Rules of Court of those to whom summons may be served is exclusive. As succinctly stated in *DOLE Philippines, Inc. (Tropifresh Div.) v. Judge Quilala*:<sup>[43]</sup>

Well-settled is the rule that service of summons on a domestic corporation is restricted, limited and exclusive to the persons enumerated in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, following the rule in statutory construction that *expressio unius est exclusio alterius*. Service must therefore be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.<sup>[44]</sup> (Citation omitted)

In this case, however, the service of summons was not made upon those persons enumerated in Section 11, Rule 14 of the Rules of Court. Instead, the summons was served upon Diversified's receiving officer. Therefore, there was defective service of summons, by virtue of which, the RTC did not acquire jurisdiction over the person of Diversified.

Yet, in this case, instead of ruling in favor of Diversified, the RTC concluded that the issue of improper service of summons had become moot and academic because Diversified's act of filing its Answer *Ad Cautelam* and Amended Answer *Ad Cautelam* was supposedly tantamount to voluntary appearance.

The Court is unconvinced.

Indeed, while the Court recognizes that despite improper service of summons, jurisdiction over the person of the defendant may still be acquired *via* voluntary appearance,<sup>[45]</sup> it must be emphasized that not all those who seek affirmative relief are deemed to have voluntarily submitted to the jurisdiction of the court. As held in *Interlink Movie Houses, Inc. v. Court of Appeals*:<sup>[46]</sup>

As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held 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 trial 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.**

As summarized by the Court in *Philippine Commercial International Bank v. Spouses Dy*, a special appearance operates as an exception to the general rule on voluntary appearance. **Such special appearance, however, requires that the defendant must explicitly and unequivocally pose objections to the jurisdiction of the court over his person; otherwise, such failure would constitute 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.<sup>[47]</sup> (Emphases supplied; citations omitted)

Clearly, a special appearance made precisely to challenge the court's jurisdiction is not tantamount to voluntary appearance. This is the import of *Frias v. Alcayde*,<sup>[48]</sup> citing *Prudential Bank v. Magdamit, Jr.*,<sup>[49]</sup> thus:

In *Prudential Bank v. Magdamit, Jr.* We had the occasion to elucidate the concept of voluntary or 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**, thus:

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 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.

Measured against these standards, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.

The records show that the petitioner never received any copy of the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. As explained earlier, the copy of the said petition which was served to Ms. Gonzales was defective under the Rules of Court. Consequently, in order to question the trial court's jurisdiction, the petitioner filed the following pleadings and motions: *Special Appearance/Submission (Jurisdictional Infirmary Raised)*; *Preliminary Submission to Dismiss Petition (Special Appearance Raising Jurisdictional Issues)*; *Manifestation and Omnibus Motion to Dismiss Petition for Annulment of Judgment and to Set Aside and/or Reconsider the RTC's December 3, 2007 Order*; *Consolidated Opposition, Manifestation and Reply (to Alcayde's Comment dated August 19, 2008 and Supplement dated November 12, 2008)*; and *Motion for Reconsideration against the RTC's February 2, 2009 Order*.

In all these pleadings and motions, **the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons**. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person.<sup>[50]</sup> (Emphases supplied; citations omitted)

Following the above-cited jurisprudential guides, it is undeniable that Diversified did not make any voluntary submission to the RTC's jurisdiction. While it is true that Diversified filed and submitted pleadings before the RTC, Diversified consistently challenged and questioned the jurisdiction of the RTC over its person due to improper service of summons.<sup>[51]</sup> Even on appeal before the CA, and in the instant petition, Diversified continued to challenge the RTC's jurisdiction over its person.<sup>[52]</sup> More, Diversified's lone prayer for relief has always been the same - to dismiss the case for lack of jurisdiction.

Significantly, it is, likewise, worthy to note that Diversified was able to aptly explain the reason it filed its *Answer Ad Cautelam* and *Amended Answer Ad Cautelam*. As expounded by Diversified, the summons improperly served upon its receiving officer categorically stated that its failure to file an Answer may result to a judgment in default in favor of PI-One:

You are reminded of the provision in the IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002 to observe restraint in filing a motion to dismiss. Instead, allege the grounds thereof as defenses in your Answer. If you fail to answer within the time fixed, the plaintiff will take judgment by default and may be granted the relief applied for in the complaint.<sup>[53]</sup>

Thus, for fear that PI-One's petition would be granted by the RTC and that Diversified would be declared in default, Diversified filed its Answer *Ad Cautelam* and Amended Answer *Ad Cautelam* (with express reservation as to the jurisdiction of the RTC), instead of a Motion to Dismiss based on lack of jurisdiction.

All things considered, it cannot be gainsaid that all the standards of a special appearance had been met in this case. Invariably, the RTC did not acquire jurisdiction over the person of Diversified, and as such, all the proceedings and the judgment rendered by the RTC in the instant case are null and void.<sup>[54]</sup>

#### *Validity of Assignment*

In the petition, Diversified, likewise, argues that the Deed of Assignment executed between DBP and PI-One is invalid because it was done in violation of Section 12 of R.A. No. 9182. This argument is well-taken.

Section 12 of R.A. No. 9182 provides:

Section 12. *Notice and Manner of Transfer of Assets.* - (a) No transfer of NPLs to an SPV shall take effect **unless the FI concerned shall give prior notice**, pursuant to the Rules of Court, **thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI.** The borrower and the FI shall be given a period of at most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.

(b) The transfer of NPAs from an FI to an SPV shall be subject to **prior certification of eligibility** as NPA by the appropriate regulatory authority

having jurisdiction over its operations which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.

**(c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.** (Emphases supplied)

From the above-quoted provision, it is clear that for the transfer of non-performing loans to an SPV, two notices are required: *first*, prior written notice to the borrower and all those with holding prior encumbrances; and *second*, written notice to the borrower after such sale or transfer of the non-performing loans. Moreover, a prior certification of eligibility must, likewise, be secured.

In this case, nowhere in the records does it show that Section 12 of R.A. No. 9182 was complied with. At most, PI-One presented a Letter dated August 10, 2007, addressed to the Chairman of Diversified, informing the latter of the Deed of Assignment executed between DBP and PI-One. Relevantly, the Letter was executed at the same date when the Deed of Assignment between DBP and PI-One was made.

Considering the requirements under Section 12 of R.A. No. 9182, it is clear that the Letter is insufficient as it lacks the essential conditions imposed by R.A. No. 9182. As seen above, the duty to notify the borrower (in this case, Diversified) is lodged in the financial institution (in this case, DBP). However, there is no proof that DBP sent the required notices. Neither is there proof that a certificate of eligibility was secured.

In *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals*,<sup>[55]</sup> the Court declared that the failure to comply with the notice requirement under Section 12 of R.A. No. 9182 effectively entails that the transfer of non-performing loans to an SPV is invalid:

x x x As the notice requirement under Section 12 of Article III of the SPV law was not amended, **the same was still necessary to effect transfer of Non-Performing Loans to an SPV, like petitioner, to be effective.** There being no compliance with such notice requirement at the time of the assignment to petitioner of the subject PN during the effectivity of the SPV law, as amended, it could not substitute BPI as party plaintiff-appellee. x x x<sup>[56]</sup> (Emphasis supplied)

Moreover, in *Grandholdings Investments (SPV-AMC), Inc. v. Court of Appeals*,<sup>[57]</sup> the Court reiterated that Section 12 of R.A. No. 9182 must be complied with for the transfer of non-performing loans to an SPV to take effect:

The CA emphasized that petitioner did not adduce evidence to prove that private respondents were notified prior to, or even after the execution of the Deed of Assignment. Consequently, the transfer of the NPLs to petitioner cannot take effect. In so ruling, the CA appears to have overlooked Section 12 (a) of the law which explicitly imposes upon the financial institution concerned (Allied Bank) the duty to inform its borrowers (private respondents) about the transfer of the NPLs. **It is a condition that the transferring financial institution should first satisfy for the deed of assignment to fully produce legal effects.** Hence, contrary to private respondents' contention, petitioner is under no obligation to notify the borrowers of the impending transfer of NPLs considering that it merely assumes the rights and obligations of Allied Bank in collecting and restructuring its NPLs. The duty to conform to the notice requirement rests solely upon the financial institution concerned which conveyed its NPLs to the SPV. It is Allied Bank which carries the burden of proving that its borrowers have been acquainted with the terms of the deed of assignment, as well as the legal effect of the transfer of the NPLs.<sup>[58]</sup> (Emphasis supplied)

All in all, the Court agrees with the contention of Diversified that the assignment made between DBP and PI-One is invalid for failure to comply with Section 12 of R.A. No. 9182. In other words, because of the invalid transfer between DBP and PI-One, PI-One did not acquire any rights, interest, or titles under the MTI.

#### *Assignment of the position of Trustee*

Even assuming that there was a valid transfer between DBP and PI-One, PI-One cannot automatically be regarded as the trustee under the MTI.

As held by the CA, Section 13 of R.A. No. 9182 provides that any transfer of assets or non-performing loans to an SPV follows the rule on subrogation and assignment of credits under the New Civil Code of the Philippines.

On this note, the Court has had numerous occasions to discuss that in assignments of credit,



the assignee is subrogated to all the rights and obligations of the assignor, and is bound by exactly the same conditions as those which bound the assignor.

In *Casabuena v. Court of Appeals*,<sup>[59]</sup> the Court expressly pronounced that assignees cannot acquire greater rights than that of their assignors, and that such assignees are restricted by the same conditions that their assignors must comply with:

x x x An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, transfers his credit and its accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could have enforced it against the debtor. Stated simply, it is the process of transferring the right of the assignor to the assignee, who would then be allowed to proceed against the debtor. The assignment involves no transfer of ownership but merely effects the transfer of rights which the assignor has at the time, to the assignee. Benin having been deemed subrogated to the rights and obligations of the spouses, **she was bound by exactly the same conditions to which the latter were bound. This being so, she and the Casabuenas were bound to respect the prohibition against selling the property within the five-year period imposed by the City government.**

The act of assignment could not have operated to efface liens or restrictions burdening the right assigned, because **an assignee cannot acquire a greater right than that pertaining to the assignor.** At most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise. In the case at bar, the Casabuenas merely stepped into Benin's shoes, who was not so much an owner as a mere assignee of the rights of her debtors. Not having acquired any right over the land in question, it follows that Benin conveyed nothing to defendants with respect to the property.<sup>[60]</sup> (Emphases supplied; citations omitted)

Such ruling is reiterated in *Fort Bonifacio Development Corporation v. Fong*:<sup>[61]</sup>

Case law states that when a person assigns his credit to another person, the latter is deemed subrogated to the rights as well as to the obligations of the

former. **By virtue of the Deed of Assignment, the assignee is deemed subrogated to the right and obligations of the assignor and is bound by exactly the same conditions as those which bound the assignor.** Accordingly, an assignee cannot acquire greater rights than those pertaining to the assignor. The general rule is that an assignee of a non-negotiable chose in action acquires no greater right than what was possessed by his assignor and simply stands into the shoes of the latter.<sup>[62]</sup> (Emphasis supplied; citations omitted)

Applying the foregoing, it is undeniable that PI-One, as the assignee of DBP (and All Asia), is bound by the conditions set forth in the MTI, and must comply with the same.

Pertinently, in this case, the MTI provides for certain conditions for a trustee. Section 7.02 of the MTI states:

7.02. The **TRUSTEE** shall at all times be an institution duly authorized to engage in the trust business in Metro Manila, Philippines. In the performance of the duties and in the exercise of the rights and powers vested in the **TRUSTEE** by the Indenture, the **TRUSTEE** shall use such degree of care and skill as a prudent man would under similar circumstances, exert or use in the conduct of his affairs.<sup>[63]</sup> (Emphases in the original; underscoring supplied)

Simply put, to be a trustee under the MTI, one must be an institution duly authorized to engage in the trust business in Metro Manila. However, it is undisputed that PI-One is not engaged in the trust business. This means that it cannot comply with the conditions set forth under the MTI, which it is bound by. Thus, despite any assignment executed in favor of PI-One, assuming that such assignment is valid, PI-One is still disqualified from serving as the trustee under the MTI and cannot be appointed as such.

All told, the Court finds that the CA erred when it affirmed the RTC's appointment of PI-One as the trustee under the MTI.

**WHEREFORE**, the Petition for Review on *Certiorari* dated March 15, 2018 filed by Diversified Plastic Film System, Inc. is **GRANTED**, and the Decision dated July 20, 2017 and the Resolution dated January 17, 2018 of the Court of Appeals in CA-G.R. CV No. 107210 are **REVERSED** and **SET ASIDE**. The Petition for Appointment as Trustee in Special

Proceedings No. M-7875 filed by Philippine Investment One (SPV-AMC), Inc. is hereby **DISMISSED**.

**SO ORDERED.**

*Caguioa (Chairperson), Inting, Dimaampao, and Singh, JJ., concur.*

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<sup>[1]</sup> *Rollo*, pp. 10-74.

<sup>[2]</sup> *Id.* at 76-88-B. Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

<sup>[3]</sup> *Id.* at 90-91.

<sup>[4]</sup> *Id.* at 414-425. Penned by Presiding Judge Maximo M. De Leon.

<sup>[5]</sup> *Id.* at 79.

<sup>[6]</sup> *Id.* at 98-117.

<sup>[7]</sup> *Id.* at 79-80.

<sup>[8]</sup> *Id.* at 80.

<sup>[9]</sup> *Id.*

<sup>[10]</sup> *Id.* at 195-208.

<sup>[11]</sup> *Id.* at 81.

<sup>[12]</sup> *Id.* at 209-233.

<sup>[13]</sup> *Id.* at 234-237.

<sup>[14]</sup> *Id.* at 81.

<sup>[15]</sup> *Id.* at 238-279.

<sup>[16]</sup> *Id.* at 250-255.

<sup>[17]</sup> *Id.* at 280-281.

<sup>[18]</sup> *Id.* at 280-291.

<sup>[19]</sup> *Id.* at 296-318.

<sup>[20]</sup> *Id.* at 337-393.

<sup>[21]</sup> *Id.* at 394.

<sup>[22]</sup> *Id.*

<sup>[23]</sup> *Id.* at 395-413.

<sup>[24]</sup> *Id.* at 400-401.

<sup>[25]</sup> *Id.* at 402-407.

<sup>[26]</sup> *Id.* at 111.

<sup>[27]</sup> *Id.* at 82-83.

<sup>[28]</sup> *Id.* at 414-425.

<sup>[29]</sup> *Id.* at 425.

<sup>[30]</sup> *Id.* at 423-425.

<sup>[31]</sup> *Id.* at 426-445.

<sup>[32]</sup> *Id.* at 451-454.

<sup>[33]</sup> *Id.* at 85.

<sup>[34]</sup> *Id.* at 76-88-B.

<sup>[35]</sup> *Id.* at 88-A.

<sup>[36]</sup> *Id.* at 86-88.

<sup>[37]</sup> *Id.* at 627-667.

[38] *Id.* at 90-91.

[39] *Id.* at 25-26.

[40] *Id.* at 111.

[41] 833 Phil. 400 (2018).

[42] *Id.* at 407-408.

[43] 579 Phil. 700 (2008).

[44] *Id.* at 704.

[45] RULES OF COURT, Rule 14, Section 20; See **People's General Insurance Corporation v. Guansing**, 843 Phil. 197 (2018).

[46] 823 Phil. 1032 (2018).

[47] *Id.* at 1041-1042.

[48] 826 Phil. 713 (2018).

[49] 746 Phil. 649 (2014).

[50] **Frias v. Alcayde**, *supra* note 46 at 740-741.

[51] *Rollo*, pp. 426-433.

[52] *Id.* at 38-50, 637-647.

[53] *Rollo*, pp. 48-49.

[54] See **Titan Dragon Properties Corporation v. Veloso-Galenzoga**, G.R. No. 246088, April 28, 2021; see also **United Coconut Planters Bank v. Spouses Ang-Sy**, G.R. No. 204753, March 27, 2019.

[55] 597 Phil. 663 (2009).

[56] *Id.* at 667.

[57] **G.R. No. 221271**, June 19, 2019.

<sup>[58]</sup> *Id.*

<sup>[59]</sup> 350 Phil. 237 (1998).

<sup>[60]</sup> *Id.* at 243-244.

<sup>[61]</sup> 757 Phil. 314 (2015).

<sup>[62]</sup> *Id.* at 324.

<sup>[63]</sup> *Rollo*, p. 110.

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