


FOURTH DIVISION

- versus -

Present:
MUSNGI, J., Chairperson
PAHIMNA, J.
JACINTO, J.



MUSNGI, J.:

The Court resolves the *Motion to Declare Defendants Katrina Polotan Tuvera-Quimbo, Patricia Enrica Tuvera Abogado, Enrico Polotan Tuvera, Patricia Polotan Tuvera, Helen Polotan Tuvera, Kerima Polotan Tuvera, Heirs of Leticia Polotan Tuvera, Victor P. Tuvera, and Twin Peaks Realty Development Corporation in Default* (Motion) dated 25 July 2023¹ filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG) on 02 August 2023. ✓

¹ Sandiganbayan Records, Vol. 2, pp. 202-206.

X-----X

In the said *Motion* dated 25 July 2023, plaintiff prayed for the Court to declare the following defendants in default for their failure to file Answer within the time allowed by the rules, to wit:

1. Defendant Katrina Polotan Tuvera-Quimbo;
2. Patricia Enrica Tuvera Abogado;
3. Enrico Polotan Tuvera;
4. Patricia Polotan Tuvera;
5. Helen Polotan Tuvera;
6. Kerima Polotan Tuvera;
7. Heirs of Leticia Polotan Tuvera;
8. Victor P. Tuvera; and
9. Twin Peaks Realty Development Corporation.

The plaintiff alleged that the Court allowed the service of summons by publication against the above-mentioned defendants in its *Resolutions* dated 25 January 2023² and 04 May 2023.³ Moreover, the plaintiff asserted that it caused the publication of the Summons and the Complaint *sans* Annexes in *Abante Tonite* on 20 May and 27 May 2023 in accordance with Sections 3 and 22, Rule 14 of the Rules of Court. Despite such service, however, plaintiff stated that the above-indicated defendants still failed to file the required Answer and should thus be declared in default pursuant to Section 3, Rule 9 of the Rules of Court.

On 02 August 2023,⁴ the Court directed the defendants to file their respective comments/oppositions to the 25 July 2023 *Motion*, but the latter failed to file the same.

✓

RULING

The Court resolves to deny the motion.

✓

² Sandiganbayan Records, Vol. 2, pp. 1-2.

³ Sandiganbayan Records, Vol. 2, pp. 104-108.

⁴ Sandiganbayan Records, Vol. 2, p. 392.

X-----X

Section 3, Rule 9 of the Rules of Court, as amended provides:

Section 3. *Default; [d]eclaration of.* - If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his or her pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

- (a) *Effect of order of default.* - A party in default shall be entitled to notice[s] of subsequent proceedings but shall not to take part in the trial.
- (b) *Relief from order of default.* - A party declared in default may at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his or her failure to answer was due to fraud, accident, mistake or excusable negligence and that he or she has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.
- (c) *Effect of partial default.* - When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

X x x

In *Momarco Import Company, Inc. v. Villamena*,⁵ the Supreme Court explained that the three requirements to be complied with before the defending party can be declared in default are: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule.

A perusal of the records of the instant case shows that not all the foregoing requirements are present.

Although the plaintiff complied with the first requirement by filing the instant Motion, a scrutiny of the same discloses that the defendants sought to be declared in default were not notified of such Motion as shown by its attached Affidavit of Service dated 27 July 2023. It appears that only defendants Ma. Teresa P. Tuvera and her counsel, Atty. Rafael Polotan

⁵ G.R. No. 192477, 27 July 2016.

X-----X

Tuvera, and the counsel for defendant Mariam Soraya Polotan Tuvera, who were able to file their respective answers to the instant case, were furnished with copies of the said Motion. Thus, the second requisite is absent.

The Court recognizes that the *Compliance* dated 30 June 2023⁶ filed by the plaintiff satisfies the requirements of service of summons through publication under Section 22 of Rule 14 of the Rules of Court, as amended by A.M. No. 19-10-20-SC, to wit:

Section 22. *Proof of service by publication.* — If the service has been made by publication, service may be proved by the affidavit of the publisher, editor, business or advertising manager, to which affidavit a copy of the publication shall be attached and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his or her last known address.

Pursuant to the above rule, the plaintiff attached in its Compliance dated 30 June 2023 the Affidavit of Publication dated 30 May 2023, showing publications made on the May 20 and 27, 2023 issues of Abante Tonite. However, there is no other proof that the defendants sought to be declared in default in the instant Motion have been made aware of such pleading.

The policy of the law has been to have every litigated case tried on the merits. As a consequence, the courts have generally looked upon a default judgment with disfavor because it is in violation of the right of a defending party to be heard. As the Court has said in *Coombs v. Santos*:⁷

A default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside.

⁶ Sandiganbayan Records, Vol. 2, pp. 172-196.

⁷ Momarco Import Company, Inc. v. Villamena, 27 July 2016, G.R. No. 192477.

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WHEREFORE, in light of the foregoing, the Motion to Declare Defendants Katrina Polotan Tuvera-Quimbo, Patricia Enrica Tuvera Abogado, Enrico Polotan Tuvera, Patricia Polotan Tuvera, Helen Polotan Tuvera, Kerima Polotan Tuvera, Heirs of Leticia Polotan Tuvera, Victor P. Tuvera, and Twin Peaks Realty Development Corporation in Default dated 25 July 2023 filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government, through the Office of the Solicitor General, is hereby **DENIED** for lack of merit.

SO ORDERED.

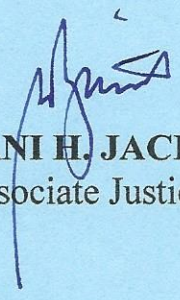
Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI

Associate Justice
Chairperson

WE CONCUR:


LORIFEL LACAP PAHIMNA
Associate Justice


BAYANI H. JACINTO
Associate Justice