



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**BOSTON EQUITY RESOURCES,
 INC.,**

G.R. No. 173946

Petitioner, - -

Present:

-versus-

CARPIO, J.,
 Chairperson,
 BRION,
 DEL CASTILLO,
 VILLARAMA, JR.,* and
 PEREZ, JJ.

**COURT OF APPEALS AND
 LOLITA G. TOLEDO,**
 Respondents.

Promulgated:

JUN 19 2013

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DECISION

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside: (1) the Decision,¹ dated 28 February 2006 and (2) the Resolution,² dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88586. The challenged decision granted herein respondent's petition for *certiorari* upon a finding that the trial court committed grave abuse of discretion in denying respondent's motion to dismiss the complaint against her.³ Based on this finding, the Court of Appeals reversed and set aside the

* Designated Additional Member per raffle dated 19 June 2013.

¹ Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe (now an Associate Justice of this Court) concurring. *Rollo*, pp. 23-29.

² *Id.* at 31.

³ *Id.* at 28.

Orders, dated 8 November 2004⁴ and 22 December 2004,⁵ respectively, of the Regional Trial Court (RTC) of Manila, Branch 24.

The Facts

On 24 December 1997, petitioner filed a complaint for sum of money with a prayer for the issuance of a writ of preliminary attachment against the spouses Manuel and Lolita Toledo.⁶ Herein respondent filed an Answer dated 19 March 1998 but on 7 May 1998, she filed a Motion for Leave to Admit Amended Answer⁷ in which she alleged, among others, that her husband and co-defendant, Manuel Toledo (Manuel), is already dead.⁸ The death certificate⁹ of Manuel states “13 July 1995” as the date of death. As a result, petitioner filed a motion, dated 5 August 1999, to require respondent to disclose the heirs of Manuel.¹⁰ In compliance with the verbal order of the court during the 11 October 1999 hearing of the case, respondent submitted the required names and addresses of the heirs.¹¹ Petitioner then filed a Motion for Substitution,¹² dated 18 January 2000, praying that Manuel be substituted by his children as party-defendants. It appears that this motion was granted by the trial court in an Order dated 9 October 2000.¹³

Pre-trial thereafter ensued and on 18 July 2001, the trial court issued its pre-trial order containing, among others, the dates of hearing of the case.¹⁴

The trial of the case then proceeded. Herein petitioner, as plaintiff, presented its evidence and its exhibits were thereafter admitted.

On 26 May 2004, the reception of evidence for herein respondent was cancelled upon agreement of the parties. On 24 September 2004, counsel for herein respondent was given a period of fifteen days within which to file a demurrer to evidence.¹⁵ However, on 7 October 2004, respondent instead

⁴ CA *rollo*, pp. 9-11.

⁵ Id. at 12-15.

⁶ Id. at 16-21.

⁷ Id. at 23-28.

⁸ Id. at 24.

⁹ Id. at 49.

¹⁰ Id. at 31-33.

¹¹ Id. at 36.

¹² Id. at 34-35.

¹³ Petitioner Boston's Opposition to Defendant's Motion to Dismiss, dated 20 October 2004, filed before the trial court, id. at 52; Respondent Toledo's Memorandum dated 8 December 2005 filed before the CA, id. at 176.

¹⁴ Id. at 95-97.

¹⁵ Order of the trial court dated 8 November 2004. Id. at 10.

filed a motion to dismiss the complaint, citing the following as grounds: (1) that the complaint failed to implead an indispensable party or a real party in interest; hence, the case must be dismissed for failure to state a cause of action; (2) that the trial court did not acquire jurisdiction over the person of Manuel pursuant to Section 5, Rule 86 of the Revised Rules of Court; (3) that the trial court erred in ordering the substitution of the deceased Manuel by his heirs; and (4) that the court must also dismiss the case against Lolita Toledo in accordance with Section 6, Rule 86 of the Rules of Court.¹⁶

The trial court, in an Order dated 8 November 2004, denied the motion to dismiss for having been filed out of time, citing Section 1, Rule 16 of the 1997 Rules of Court which states that: “[W]ithin the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made x x x.”¹⁷ Respondent’s motion for reconsideration of the order of denial was likewise denied on the ground that “defendants’ attack on the jurisdiction of this Court is now barred by estoppel by laches” since respondent failed to raise the issue despite several chances to do so.¹⁸

Aggrieved, respondent filed a petition for *certiorari* with the Court of Appeals alleging that the trial court seriously erred and gravely abused its discretion in denying her motion to dismiss despite discovery, during the trial of the case, of evidence that would constitute a ground for dismissal of the case.¹⁹

The Court of Appeals granted the petition based on the following grounds:

It is elementary that courts acquire jurisdiction over the person of the defendant x x x only when the latter voluntarily appeared or submitted to the court or by coercive process issued by the court to him, x x x. In this case, it is undisputed that when [petitioner] Boston filed the complaint on **December 24, 1997**, defendant Manuel S. Toledo was already dead, x x x. Such being the case, the court *a quo* could not have acquired jurisdiction over the person of defendant Manuel S. Toledo.

x x x the court *a quo*’s denial of [respondent’s] motion to dismiss was based on its finding that [respondent’s] attack on the jurisdiction of the court was already barred by *laches* as [respondent] failed to raise the said ground in its [sic] amended answer and during the pre-trial, despite

¹⁶ Id. at 37-48.

¹⁷ Id. at 10-11.

¹⁸ Id. at 13.

¹⁹ Id. at 4.

her active participation in the proceedings.

However, x x x it is well-settled that issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal. By timely raising the issue on jurisdiction in her motion to dismiss x x x [respondent] is not *estopped* [from] raising the question on jurisdiction. Moreover, when issue on jurisdiction was raised by [respondent], the court *a quo* had not yet decided the case, hence, there is no basis for the court *a quo* to invoke estoppel to justify its denial of the motion for reconsideration;

It should be stressed that when the complaint was filed, defendant Manuel S. Toledo was already dead. The complaint should have impleaded the *estate* of Manuel S. Toledo as defendant, not only the wife, considering that the estate of Manuel S. Toledo is an indispensable party, which stands to be benefited or be injured in the outcome of the case. x x x

x x x x

[Respondent's] motion to dismiss the complaint should have been granted by public respondent judge as the same was in order. Considering that the obligation of Manuel S. Toledo is solidary with another debtor, x x x, the claim x x x should be filed against the estate of Manuel S. Toledo, in conformity with the provision of Section 6, Rule 86 of the Rules of Court, x x x.²⁰

The Court of Appeals denied petitioner's motion for reconsideration. Hence, this petition.

The Issues

Petitioner claims that the Court of Appeals erred in not holding that:

1. Respondent is already estopped from questioning the trial court's jurisdiction;
2. Petitioner never failed to implead an indispensable party as the estate of Manuel is not an indispensable party;
3. The inclusion of Manuel as party-defendant is a mere misjoinder of party not warranting the dismissal of the case before the lower court; and
4. Since the estate of Manuel is not an indispensable party, it is not

²⁰ *Rollo*, pp. 25-27.

necessary that petitioner file its claim against the estate of Manuel.

In essence, what is at issue here is the correctness of the trial court's orders denying respondent's motion to dismiss.

The Ruling of the Court

We find merit in the petition.

Motion to dismiss filed out of time

To begin with, the Court of Appeals erred in granting the writ of *certiorari* in favor of respondent. Well settled is the rule that the special civil action for *certiorari* is not the proper remedy to assail the denial by the trial court of a motion to dismiss. The order of the trial court denying a motion to dismiss is merely interlocutory, as it neither terminates nor finally disposes of a case and still leaves something to be done by the court before a case is finally decided on the merits.²¹ Therefore, "the proper remedy in such a case is to appeal after a decision has been rendered."²²

As the Supreme Court held in *Indiana Aerospace University v. Comm. on Higher Education*:²³

A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts – acts which courts or judges have no power or authority in law to perform. **It is not designed to correct erroneous findings and conclusions made by the courts.** (Emphasis supplied)

Even assuming that *certiorari* is the proper remedy, the trial court did not commit grave abuse of discretion in denying respondent's motion to dismiss. It, in fact, acted correctly when it issued the questioned orders as respondent's motion to dismiss was filed SIX YEARS AND FIVE

²¹ *Malicdem v. Flores*, 532 Phil. 689, 697 (2006) citing *East Asia Traders, Inc. v. Republic of the Philippines*, G.R. No. 152947, 7 July 2004, 433 SCRA 716.

²² *Indiana Aerospace University v. Comm. on Higher Education*, 408 Phil. 483, 501 (2001) cited in *Bonifacio Construction Management Corporation v. Judge Perlas-Bernabe*, G.R. No. 185011, 501 Phil. 79, 84 (2005).

²³ *Id.*

MONTHS AFTER SHE FILED HER AMENDED ANSWER. This circumstance alone already warranted the outright dismissal of the motion for having been filed in clear contravention of the express mandate of Section 1, Rule 16, of the Revised Rules of Court. Under this provision, a motion to dismiss shall be filed within the time for but before the filing of an answer to the complaint or pleading asserting a claim.²⁴

More importantly, respondent's motion to dismiss was filed after petitioner has completed the presentation of its evidence in the trial court,²⁵ giving credence to petitioner's and the trial court's conclusion that the filing of the motion to dismiss was a mere ploy on the part of respondent to delay the prompt resolution of the case against her.

Also worth mentioning is the fact that respondent's motion to dismiss under consideration herein is not the first motion to dismiss she filed in the trial court. It appears that she had filed an earlier motion to dismiss²⁶ on the sole ground of the unenforceability of petitioner's claim under the Statute of Frauds, which motion was denied by the trial court. More telling is the following narration of the trial court in its Order denying respondent's motion for reconsideration of the denial of her motion to dismiss:

As can be gleaned from the records, with the admission of plaintiff's exhibits, reception of defendants' evidence was set on March 31, and April 23, 2004 x x x . On motion of the defendant[s], the hearing on March 31, 2004 was cancelled.

On April 14, 2004, defendants sought the issuance of subpoena ad testificandum and duces tecum to one Gina M. Madulid, to appear and testify for the defendants on April 23, 2004. Reception of defendants' evidence was again deferred to May 26, June 2 and June 30, 2004, x x x.

On May 13, 2004, defendants sought again the issuance of a subpoena duces tecum and ad testificandum to the said Gina Madulid. On May 26, 2004, reception of defendants [sic] evidence was cancelled upon the agreement of the parties. On July 28, 2004, in the absence of defendants' witness, hearing was reset to September 24 and October 8, 2004 x x x.

On September 24, 2004, counsel for defendants was given a period of fifteen (15) days to file a demurrer to evidence. On October 7, 2004, defendants filed instead a Motion to Dismiss x x x.²⁷

²⁴ *Chan v. Court of Appeals*, 468 Phil. 244, 251 (2004) citing *Kho v. Court of Appeals*, G.R. No. 115758, 19 March 2002, 379 SCRA 410, 421.

²⁵ *CA rollo*, p. 10.

²⁶ *Id.* at 11 and 13.

²⁷ *Id.* at 10.

Respondent's act of filing multiple motions, such as the first and earlier motion to dismiss and then the motion to dismiss at issue here, as well as several motions for postponement, lends credibility to the position taken by petitioner, which is shared by the trial court, that respondent is deliberately impeding the early disposition of this case. The filing of the second motion to dismiss was, therefore, "not only improper but also dilatory."²⁸ Thus, the trial court, "far from deviating or straying off course from established jurisprudence on [the] matter, x x x had in fact faithfully observed the law and legal precedents in this case."²⁹ The Court of Appeals, therefore, erred not only in entertaining respondent's petition for *certiorari*, it likewise erred in ruling that the trial court committed grave abuse of discretion when it denied respondent's motion to dismiss.

On whether or not respondent is estopped from questioning the jurisdiction of the trial court

At the outset, it must be here stated that, as the succeeding discussions will demonstrate, jurisdiction over the person of Manuel should not be an issue in this case. A protracted discourse on jurisdiction is, nevertheless, demanded by the fact that jurisdiction has been raised as an issue from the lower court, to the Court of Appeals and, finally, before this Court. For the sake of clarity, and in order to finally settle the controversy and fully dispose of all the issues in this case, it was deemed imperative to resolve the issue of jurisdiction.

1. Aspects of Jurisdiction

Petitioner calls attention to the fact that respondent's motion to dismiss questioning the trial court's jurisdiction was filed more than six years after her amended answer was filed. According to petitioner, respondent had several opportunities, at various stages of the proceedings, to assail the trial court's jurisdiction but never did so for six straight years. Citing the doctrine laid down in the case of *Tijam, et al. v. Sibonghanoy, et al.*³⁰ petitioner claimed that respondent's failure to raise the question of jurisdiction at an earlier stage bars her from later questioning it, especially since she actively participated in the proceedings conducted by the trial court.

Petitioner's argument is misplaced, in that, it failed to consider that

²⁸ *Suntay v. Cojuangco-Suntay*, 360 Phil. 932, 941 (1998).

²⁹ *Id.*

³⁰ 131 Phil. 556 (1968).

the concept of jurisdiction has several aspects, namely: (1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction over the *res* or the thing which is the subject of the litigation.³¹

The aspect of jurisdiction which may be barred from being assailed as a result of estoppel by laches is **jurisdiction over the subject matter**. Thus, in *Tijam*, the case relied upon by petitioner, the issue involved was the authority of the then Court of First Instance to hear a case for the collection of a sum of money in the amount of ₱1,908.00 which amount was, at that time, within the exclusive original jurisdiction of the municipal courts.

In subsequent cases citing the ruling of the Court in *Tijam*, what was likewise at issue was the jurisdiction of the trial court over the subject matter of the case. Accordingly, in *Spouses Gonzaga v. Court of Appeals*,³² the issue for consideration was the authority of the regional trial court to hear and decide an action for reformation of contract and damages involving a subdivision lot, it being argued therein that jurisdiction is vested in the Housing and Land Use Regulatory Board pursuant to PD 957 (The Subdivision and Condominium Buyers Protective Decree). In *Lee v. Presiding Judge, MTC, Legaspi City*,³³ petitioners argued that the respondent municipal trial court had no jurisdiction over the complaint for ejectment because the issue of ownership was raised in the pleadings. Finally, in *People v. Casuga*,³⁴ accused-appellant claimed that the crime of grave slander, of which she was charged, falls within the concurrent jurisdiction of municipal courts or city courts and the then courts of first instance, and that the judgment of the court of first instance, to which she had appealed the municipal court's conviction, should be deemed null and void for want of jurisdiction as her appeal should have been filed with the Court of Appeals or the Supreme Court.

In all of these cases, the Supreme Court barred the attack on the jurisdiction of the respective courts concerned over the subject matter of the case based on estoppel by laches, declaring that parties cannot be allowed to belatedly adopt an inconsistent posture by attacking the jurisdiction of a court to which they submitted their cause voluntarily.³⁵

³¹ *Hasegawa v. Kitamura*, G.R. 149177, 23 November 2007, 538 SCRA 261, 273-274 citing Regalado, *Remedial Law Compendium*, Volume 1, 8th Revised Ed., pp. 7-8. See also Riano, *Civil Procedure (The Bar Lecture Series)*, Volume I, 2011 edition, pp. 64-65.

³² 442 Phil. 735, 740 (2002).

³³ 229 Phil. 405, 412 (1986).

³⁴ 153 Phil. 38, 42-43 (1973).

³⁵ *Lee v. Presiding Judge, MTC, Legaspi City* supra, note 33 at 415.

Here, what respondent was questioning in her motion to dismiss before the trial court was that court's jurisdiction over the person of defendant Manuel. Thus, the principle of estoppel by laches finds no application in this case. Instead, the principles relating to jurisdiction over the person of the parties are pertinent herein.

The Rules of Court provide:

RULE 9
EFFECT OF FAILURE TO PLEAD

Section 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

RULE 15
MOTIONS

Sec. 8. *Omnibus motion.* – Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

Based on the foregoing provisions, the “objection on jurisdictional grounds which is not waived even if not alleged in a motion to dismiss or the answer is lack of jurisdiction over the *subject matter*. x x x Lack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived x x x subject, however, to the principle of estoppel by laches.”³⁶

Since the defense of lack of jurisdiction over the *person* of a party to a case is not one of those defenses which are not deemed waived under Section 1 of Rule 9, such defense must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver of the defense.³⁷ If the objection is not raised either in a motion to dismiss or in the answer, the objection to the jurisdiction over the person of the plaintiff or the defendant is deemed waived by virtue of the first sentence of the above-quoted Section 1 of Rule 9 of the Rules of Court.³⁸

³⁶ Regalado, Remedial Law Compendium, Volume One, Tenth Edition, p. 187.

³⁷ Riano, Civil Procedure (The Bar Lecture Series), Volume I, 2011 Edition, p. 90.

³⁸ Id. at 89.

The Court of Appeals, therefore, erred when it made a sweeping pronouncement in its questioned decision, stating that “issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal” and that, therefore, respondent timely raised the issue in her motion to dismiss and is, consequently, not estopped from raising the question of jurisdiction. As the question of jurisdiction involved here is that over the person of the defendant Manuel, the same is deemed waived if not raised in the answer or a motion to dismiss. In any case, respondent cannot claim the defense since “lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence.”³⁹

2. Jurisdiction over the person of a defendant is acquired through a valid service of summons; trial court did not acquire jurisdiction over the person of Manuel Toledo

In the first place, jurisdiction over the person of Manuel was never acquired by the trial court. A defendant is informed of a case against him when he receives summons. “Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court acquires jurisdiction over his person.”⁴⁰

In the case at bar, the trial court did not acquire jurisdiction over the person of Manuel since there was no valid service of summons upon him, precisely because he was already dead even before the complaint against him and his wife was filed in the trial court. The issues presented in this case are similar to those in the case of *Sarsaba v. Vda. de Te.*⁴¹

In *Sarsaba*, the NLRC rendered a decision declaring that Patricio Sereno was illegally dismissed from employment and ordering the payment of his monetary claims. To satisfy the claim, a truck in the possession of Sereno’s employer was levied upon by a sheriff of the NLRC, accompanied by Sereno and his lawyer, Rogelio Sarsaba, the petitioner in that case. A complaint for recovery of motor vehicle and damages, with prayer for the delivery of the truck *pendente lite* was eventually filed against Sarsaba, Sereno, the NLRC sheriff and the NLRC by the registered owner of the truck. After his motion to dismiss was denied by the trial court, petitioner Sarsaba filed his answer. Later on, however, he filed an omnibus motion to dismiss citing, as one of the grounds, lack of jurisdiction over one of the

³⁹ *Carandang v. Heirs of Quirino A. De Guzman*, 538 Phil. 319, 331 (2006).

⁴⁰ *Romualdez-Licaros v. Licaros*, G.R. No. 150656, 449 Phil. 824, 833 (2003) citing *Cano-Gutierrez v. Gutierrez*, G.R. No. 138584, 2 October 2000, 341 SCRA 670.

⁴¹ G.R. No. 175910, 30 July 2009, 594 SCRA 410.

principal defendants, in view of the fact that Sereno was already dead when the complaint for recovery of possession was filed.

Although the factual milieu of the present case is not exactly similar to that of *Sarsaba*, one of the issues submitted for resolution in both cases is similar: whether or not a case, where one of the named defendants was already dead at the time of its filing, should be dismissed so that the claim may be pursued instead in the proceedings for the settlement of the estate of the deceased defendant. The petitioner in the *Sarsaba Case* claimed, as did respondent herein, that since one of the defendants died before summons was served on him, the trial court should have dismissed the complaint against all the defendants and the claim should be filed against the estate of the deceased defendant. The petitioner in *Sarsaba*, therefore, prayed that the complaint be dismissed, not only against Sereno, but as to all the defendants, considering that the RTC did not acquire jurisdiction over the person of Sereno.⁴² This is exactly the same prayer made by respondent herein in her motion to dismiss.

The Court, in the *Sarsaba Case*, resolved the issue in this wise:

x x x We cannot countenance petitioner's argument that the complaint against the other defendants should have been dismissed, considering that the RTC never acquired jurisdiction over the person of Sereno. ***The court's failure to acquire jurisdiction over one's person is a defense which is personal to the person claiming it.*** Obviously, it is now impossible for Sereno to invoke the same in view of his death. ***Neither can petitioner invoke such ground, on behalf of Sereno, so as to reap the benefit of having the case dismissed against all of the defendants.*** Failure to serve summons on Sereno's person will not be a cause for the dismissal of the complaint against the other defendants, considering that they have been served with copies of the summons and complaints and have long submitted their respective responsive pleadings. In fact, the other defendants in the complaint were given the chance to raise all possible defenses and objections personal to them in their respective motions to dismiss and their subsequent answers.⁴³ (Emphasis supplied.)

Hence, the Supreme Court affirmed the dismissal by the trial court of the complaint against Sereno only.

Based on the foregoing pronouncements, there is no basis for dismissing the complaint against respondent herein. Thus, as already emphasized above, the trial court correctly denied her motion to dismiss.

⁴² Id. at 425.

⁴³ Id. at 427.

On whether or not the estate of Manuel Toledo is an indispensable party

Rule 3, Section 7 of the 1997 Rules of Court states:

SEC. 7. Compulsory joinder of indispensable parties. – Parties-in-interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

An indispensable party is one who has such an interest in the controversy or subject matter of a case that a final adjudication cannot be made in his or her absence, without injuring or affecting that interest. He or she is a party who has not only an interest in the subject matter of the controversy, but “an interest of such nature that a final decree cannot be made without affecting [that] interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable.” Further, an indispensable party is one who must be included in an action before it may properly proceed.⁴⁴

On the other hand, a “person is not an indispensable party if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him or her and those already parties to the action, or if he or she has no interest in the subject matter of the action.” It is not a sufficient reason to declare a person to be an indispensable party simply because his or her presence will avoid multiple litigations.⁴⁵

Applying the foregoing pronouncements to the case at bar, it is clear that the estate of Manuel is not an indispensable party to the collection case, for the simple reason that the obligation of Manuel and his wife, respondent herein, is solidary.

The contract between petitioner, on the one hand and respondent and

⁴⁴ *Lagunilla v. Velasco*, G.R. No. 169276, 16 June 2009, 589 SCRA 224, 232 citing *Regner v. Logarta*, G.R. No. 168747, 19 October 2007, 537 SCRA 277, 289 and *Arcelona v. Court of Appeals*, 345 Phil. 250, 267 (1997).

⁴⁵ *Id.* at 232-233.

respondent's husband, on the other, states:

FOR VALUE RECEIVED, I/We **jointly and severally**⁴⁶ (in solemn) promise to pay BOSTON EQUITY RESOURCES, INC. x x x the sum of PESOS: [ONE MILLION FOUR HUNDRED (₱1,400,000.00)] x x x.⁴⁷

The provisions and stipulations of the contract were then followed by the respective signatures of respondent as "MAKER" and her husband as "CO-MAKER."⁴⁸ Thus, pursuant to Article 1216 of the Civil Code, petitioner may collect the entire amount of the obligation from respondent only. The aforementioned provision states: "The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected."

In other words, the collection case can proceed and the demands of petitioner can be satisfied by respondent only, even without impleading the estate of Manuel. Consequently, the estate of Manuel is not an indispensable party to petitioner's complaint for sum of money.

However, the Court of Appeals, agreeing with the contention of respondent, held that the claim of petitioner should have been filed against the estate of Manuel in accordance with Sections 5 and 6 of Rule 86 of the Rules of Court. The aforementioned provisions provide:

SEC. 5. *Claims which must be filed under the notice. If not filed, barred; exceptions.* All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise, they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. x x x.

SEC. 6. *Solidary obligation of decedent.* Where the obligation of the decedent is solidary with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor. x x x.

⁴⁶ Emphasis and underscoring supplied.

⁴⁷ CA *rollo*, p. 22.

⁴⁸ Id., dorsal portion.

The Court of Appeals erred in its interpretation of the above-quoted provisions.

In construing Section 6, Rule 87 of the old Rules of Court, the precursor of Section 6, Rule 86 of the Revised Rules of Court, which latter provision has been retained in the present Rules of Court without any revisions, the Supreme Court, in the case of *Manila Surety & Fidelity Co., Inc. v. Villarama, et. al.*,⁴⁹ held:⁵⁰

Construing Section 698 of the Code of Civil Procedure from whence [Section 6, Rule 87] was taken, this Court held that where two persons are bound *in solidum* for the same debt and one of them dies, the whole indebtedness can be proved against the estate of the latter, the decedent's liability being absolute and primary; x x x. It is evident from the foregoing that Section 6 of Rule 87 provides the procedure *should the creditor desire to go against the deceased debtor*, but there is certainly nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or some or all of them simultaneously. There is, therefore, nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed.

The foregoing ruling was reiterated and expounded in the later case of *Philippine National Bank v. Asuncion*⁵¹ where the Supreme Court pronounced:

A cursory perusal of Section 6, Rule 86 of the Revised Rules of Court reveals that nothing therein prevents a creditor from proceeding against the surviving solidary debtors. Said provision merely sets up the procedure in enforcing collection in case a creditor chooses to pursue his claim against the estate of the deceased solidary debtor. The rule has been set forth that a creditor (in a solidary obligation) has the option whether to file or not to file a claim against the estate of the solidary debtor. x x x

x x x x

It is crystal clear that Article 1216 of the New Civil Code is the applicable provision in this matter. Said provision gives the creditor

⁴⁹ 107 Phil. 891, 897 (1960).

⁵⁰ *Philippine National Bank v. Asuncion*, 170 Phil. 356, 358-359.

⁵¹ *Id.* at 358-360.

the right to “proceed against anyone of the solidary debtors or some or all of them simultaneously.” The choice is undoubtedly left to the solidary creditor to determine against whom he will enforce collection. In case of the death of one of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors without necessity of filing a claim in the estate of the deceased debtors. It is not mandatory for him to have the case dismissed as against the surviving debtors and file its claim against the estate of the deceased solidary debtor, x x x. For to require the creditor to proceed against the estate, making it a condition precedent for any collection action against the surviving debtors to prosper, would deprive him of his substantive rights provided by Article 1216 of the New Civil Code. (Emphasis supplied.)

As correctly argued by petitioner, if Section 6, Rule 86 of the Revised Rules of Court were applied literally, Article 1216 of the New Civil Code would, in effect, be repealed since under the Rules of Court, petitioner has no choice but to proceed against the estate of [the deceased debtor] only. Obviously, this provision diminishes the [creditor’s] right under the New Civil Code to proceed against any one, some or all of the solidary debtors. Such a construction is not sanctioned by principle, which is too well settled to require citation, that a substantive law cannot be amended by a procedural rule. Otherwise stated, Section 6, Rule 86 of the Revised Rules of Court cannot be made to prevail over Article 1216 of the New Civil Code, the former being merely procedural, while the latter, substantive.

Based on the foregoing, the estate of Manuel is not an indispensable party and the case can proceed as against respondent only. That petitioner opted to collect from respondent and not from the estate of Manuel is evidenced by its opposition to respondent’s motion to dismiss asserting that the case, as against her, should be dismissed so that petitioner can proceed against the estate of Manuel.

On whether or not the inclusion of Manuel as party defendant is a misjoinder of party

Section 11 of Rule 3 of the Rules of Court states that “[n]either misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.”

Based on the last sentence of the afore-quoted provision of law, a misjoined party must have the capacity to sue or be sued in the event that the claim by or against the misjoined party is pursued in a separate case. In this

case, therefore, the inclusion of Manuel in the complaint cannot be considered a misjoinder, as in fact, the action would have proceeded against him had he been alive at the time the collection case was filed by petitioner.

This being the case, the remedy provided by Section 11 of Rule 3 does not obtain here. The name of Manuel as party-defendant cannot simply be dropped from the case. Instead, the procedure taken by the Court in *Sarsaba v. Vda. de Te*,⁵² whose facts, as mentioned earlier, resemble those of this case, should be followed herein. There, the Supreme Court agreed with the trial court when it resolved the issue of jurisdiction over the person of the deceased Sereno in this wise:

As correctly pointed by defendants, the Honorable Court has not acquired jurisdiction over the person of Patricio Sereno since there was indeed no valid service of summons insofar as Patricio Sereno is concerned. Patricio Sereno died before the summons, together with a copy of the complaint and its annexes, could be served upon him.

However, the failure to effect service of summons unto Patricio Sereno, one of the defendants herein, does not render the action DISMISSIBLE, considering that the three (3) other defendants, x x x, were validly served with summons and the case with respect to the answering defendants may still proceed independently. Be it recalled that the three (3) answering defendants have previously filed a Motion to Dismiss the Complaint which was denied by the Court.

Hence, only the case against Patricio Sereno will be DISMISSED and the same may be filed as a claim against the estate of Patricio Sereno, but the case with respect to the three (3) other accused [sic] will proceed. (Emphasis supplied.)⁵³

As a result, the case, as against Manuel, must be dismissed.

In addition, the dismissal of the case against Manuel is further warranted by Section 1 of Rule 3 of the Rules of Court, which states that: [o]nly natural or juridical persons, or entities authorized by law may be parties in a civil action.” Applying this provision of law, the Court, in the case of *Ventura v. Militante*,⁵⁴ held:

Parties may be either plaintiffs or defendants. x x x. In order to maintain an action in a court of justice, the plaintiff must have **an actual legal existence**, that is, he, she or it must be a person in law and possessed of a legal entity as either a natural or an artificial person, and no suit can

⁵² *Supra* note 41.

⁵³ *Id.* at 427-428.

⁵⁴ 374 Phil. 562, 571-573 (1999) citing 59 Am Jur 2d, Sec. 19, p. 407, 59 Am Jur 2d, Sec. 41, pp. 438 and 439 and 59 Am Jur 2d, Sec. 20, p. 440.

be lawfully prosecuted save in the name of such a person.

The rule is no different as regards party defendants. It is incumbent upon a plaintiff, when he institutes a judicial proceeding, to name the proper party defendant to his cause of action. In a suit or proceeding *in personam* of an adversary character, the court can acquire no jurisdiction for the purpose of trial or judgment until a party defendant who actually or legally exists and is legally capable of being sued, is brought before it. It has even been held that the question of the legal personality of a party defendant is a question of substance going to the jurisdiction of the court and not one of procedure.

The original complaint of petitioner named the “estate of Carlos Ngo as represented by surviving spouse Ms. Sulpicia Ventura” as the defendant. Petitioner moved to dismiss the same on the ground that the defendant as named in the complaint had no legal personality. We agree.

x x x. Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, **a decedent does not have the capacity to be sued and may not be named a party defendant in a court action.** (Emphases supplied.)

Indeed, where the defendant is neither a natural nor a juridical person or an entity authorized by law, the complaint may be dismissed on the ground that the pleading asserting the claim states no cause of action or for failure to state a cause of action pursuant to Section 1(g) of Rule 16 of the Rules of Court, because a complaint cannot possibly state a cause of action against one who cannot be a party to a civil action.⁵⁵

Since the proper course of action against the wrongful inclusion of Manuel as party-defendant is the dismissal of the case as against him, thus did the trial court err when it ordered the substitution of Manuel by his heirs. Substitution is proper only where the party to be substituted died **during the pendency of the case**, as expressly provided for by Section 16, Rule 3 of the Rules of Court, which states:

Death of party; duty of counsel. – Whenever a party to a **pending action** dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. x x x

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator x x x.

⁵⁵

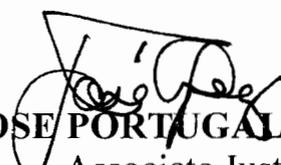
Riano, Civil Procedure (The Bar Lecture Series), Volume I, 2011 Edition, p. 229.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. (Emphasis supplied.)

Here, since Manuel was already dead at the time of the filing of the complaint, the court never acquired jurisdiction over his person and, in effect, there was no party to be substituted.

WHEREFORE, the petition is **GRANTED**. The Decision dated 28 February 2006 and the Resolution dated 1 August 2006 of the Court of Appeals in CA-G.R. SP No. 88586 are **REVERSED and SET ASIDE**. The Orders of the Regional Trial Court dated 8 November 2004 and 22 December 2004, respectively, in Civil Case No. 97-86672, are **REINSTATED**. The Regional Trial Court, Branch 24, Manila is hereby **DIRECTED** to proceed with the trial of Civil Case No. 97-86672 against respondent Lolita G. Toledo only, in accordance with the above pronouncements of the Court, and to decide the case with dispatch.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice