

SAMSUNG MABUHAY CORPORATION, PETITIONER, VS. REAL BANK, INC., AND HON. MARIVIC T. BALISI UMALI, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH ...

Ponente: TAGLE, J.

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TAGLE, J.:

This Court is called upon to resolve the Petition for Certiorari under Rule 65[1] filed by petitioner Samsung Mabuhay Corporation, seeking the reversal of the Order[2] dated June 5, 2002 issued by the RTC Br. 20 of Manila dismissing the Complaint[3] in Civil Case No. 97-86265 entitled “Samsung Mabuhay Corporation and Mabuhay Electronics Corporation vs. Real Bank, Inc./Real Bank, Inc. vs. Reynaldo A. Senson, alias Edgardo Bacea”, in view of petitioner’s failure to attend the mediation conference scheduled on April 3, 2001. Petitioner also assails the Order[4] dated August 2, 2002 denying its Motion for Reconsideration.[5]

The undisputed facts are as follows:

On November 27, 1997, petitioner Samsung filed a complaint for damages against respondent Real Bank, Inc. The case was originally raffled to RTC Branch 9 of Manila. Respondent-bank filed its Answer[6] on February 23, 1998, to which a Reply was filed by petitioner on March 5, 1998.[7]

Subsequently on March 12, 1998, petitioner filed an Ex-Parte Motion,[8] asking that the case be set for pre-trial. In a Pre-Trial Notice[9] dated March 24, 1998, Judge Amelia Tria- Infante of RTC Br. 9 set the case for pre-trial on June 25, 1998.

Meantime, respondent bank filed a Motion to Admit Third Party Complaint[10] against Reynaldo A. Senson alias Edgardo Bacea, with the attached Third Party Complaint on May 26, 1998.

On June 22, 1998, petitioner filed its Pre-trial Brief.[11] The pre-trial was originally set on June 25, 1998 but was reset to July 17, 1998 upon motion of respondent bank on the ground that its Motion to Admit Third Party Complaint is still pending resolution by RTC Branch 9. Thus, the pre-trial was rescheduled and reset to September 10, 1998.

Private respondent once again moved for the resetting of the pre-trial thereof on the same ground that its Motion to Admit Third Party Complaint has still not yet been resolved.

On February 22, 1999, the Presiding Judge of RTC Branch 9 issued an Order[12] granting private respondent’s Motion to Admit Third Party Complaint and also ordered that summons be issued to third –party defendant Reynaldo A. Senson alias Edgardo Bacea.

On May 25, 1999, petitioner filed a Motion to Dismiss the Third Party Complaint (For Failure to Prosecute) and Motion to Set the Case for Pre-Trial.[13] On the other hand, respondent bank filed a Motion to Serve Summons by Publication[14] to the third-party defendant.

Feeling exasperated by the undue delay of Presiding Judge Amelia Tria-Infante of RTC Branch 9 in resolving the several motions pending before her, petitioner filed a Motion For Inhibition[15] on September 20, 1999.

Six (6) months thereafter or on March 15, 2000, the Presiding Judge of Branch 9 issued an Order[16] reading as follows:

“Before this Court are three (3) motions.

The Motion to Serve Summons by Publication is hereby GRANTED.

The Motion to Dismiss Third-Party Complaint is hereby DENIED and considering that this Honorable Court can administer justice on this case with impartiality and without bias, the Motion for Inhibition is likewise DENIED.

Let therefore, service of summons by publication be made on third-party defendant, Reynaldo Senson alias Edgardo Bacea doing business under the name and style “Mabuhay Electronics Company” in a newspaper of general circulation for three (3) consecutive weeks.

SO ORDERED.”[17]

On October 19, 2000, the counsel of petitioner, V.E. Del Rosario & Partners, filed a Notice of Withdrawal of Appearance.[18]

For its part, respondent bank filed a Motion To Declare Third-Party defendant Reynaldo Senson in Default.[19]

On March 7, 2001, the judge of RTC Branch 9 issued an Order[20] dated March 17, 2001 requiring both petitioner and respondent to appear in a mediation proceeding set on April 3, 2001. Even before the issuance of said Order, however, the former counsel of petitioner (V.E. Del Rosario) had already withdrawn on October 2000.

In a pleading dated June 4, 2001, the new counsel of petitioner (Ortega, Del Castillo, Bacorro, Odulio, Calma & Carbonell) entered their appearance.[21] This was filed and received by RTC Br. 9 on June 6, 2001.

Subsequently, RTC Branch 9 was designated as a Family Court. Hence, the case was re-raffled to RTC Judge Marivic Balisi-Umali of RTC Br. 20.

After a year or on June 5, 2002, an Order[22] was issued by the Presiding Judge of Br. 20 dismissing the complaint of petitioner for failure to appear at the mediation conference previously scheduled by the trial judge of Branch 9 in her Order dated March 17, 2001.

Petitioner's new counsel impugned the Order dated June 5, 2002 in a Motion for Reconsideration[23] alleging that the dismissal is improper and inappropriate as it was not notified of the scheduled mediation conference. Besides, the notice was sent to the previous counsel of petitioner who had already withdrawn and not to the new lawyers.

Respondent Judge Balisi-Umali denied the Motion for Reconsideration in her Order[24] dated August 2, 2002.

Hence, this Petition to set aside and reverse the aforementioned Orders dated June 5, 2002 and August 2, 2002 for grave abuse of discretion amounting to lack of or excess of jurisdiction committed by respondent Judge in dismissing the complaint for damages.

The grounds relied upon by petitioners are as follows:

a) Public respondent gravely abused her discretion and exceeded her jurisdiction in dismissing the complaint on the ground that petitioner failed to attend the mediation conference set on April 3, 2001 despite the fact that petitioner was not notified of said conference.

- b) Public respondent gravely abused her discretion and exceeded her jurisdiction in not finding merit in petitioner's argument that the holding of a pre-trial on April 3, 2001 through a mediation conference was not in accordance with the Rules of Court.
- c) Public respondent gravely abused her discretion and exceeded her jurisdiction when she sweepingly ruled that petitioner was guilty of neglect when it failed to prosecute its complaint.
- d) Public respondent gravely abused her discretion and exceeded her jurisdiction when she dismissed petitioner's complaint on a very technical ground despite the fact that no trial has yet been conducted and that it has not yet presented its evidence."

According to petitioner, it was never notified of the mediation proceedings scheduled on April 3, 2001 because the notice sent to it was returned unserved, while the other notice was sent to its previous counsel after the latter have already filed their withdrawal of appearance. As such, it was highly impossible for petitioner and its new counsel to attend the scheduled mediation conference.

Respondent bank countered that the absence of petitioner at the mediation conference was due to its negligence. Although a Notice of Withdrawal was already filed by petitioner's previous counsel (V.E. Del Rosario), it never became effective as it was without the approval of the court.

The petition is meritorious.

It should be borne in mind that there was a reraffle of this case from RTC Br. 9, after it was designated as a Family Court, to RTC Br. 20. The Order referring the case for mediation was issued by Br. 9 on March 17, 2001 requiring the parties to appear at a mediation conference on April 3, 2001. [25] But in said Order, there is a notation thereat that petitioner Samsung is no longer holding office at the given address since December, 2000.

Moreover, even before the Order of March 17, 2001 was issued, the former counsel for petitioner (V.E. Del Rosario and Partners) had already filed their withdrawal of appearance[26] on October 19, 2000, bearing the conformity of petitioner.

In a pleading dated June 4, 2001, the new counsel for petitioner (Ortega del Castillo Bacorro Odulio Calma and Carbonell Law Firm) entered their appearance, which was received by RTC Br. 9 on June 6, 2001.

After a year or, more specifically on June 5, 2002, the respondent judge of RTC Br. 20 issued the assailed Order dismissing the complaint for failure of petitioner to attend the mediation conference. In so doing, respondent judge did not even peruse or verify the records of the case. Had she done so, she would have discovered that the former counsel of petitioner to whom she sent the Notice of the order had already withdrawn and that a new counsel for petitioner had already entered their appearance. Likewise, she should have discovered that at the time the Order dated March 7, 2001 was issued by RTC Br. 9, petitioner was no longer holding office at its given address. This fact is clearly indicated in the Order of March 7, 2001[27] itself. Clearly, therefore, respondent judge committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the Order dated June 5, 2002.

As borne by the records, it is respondent bank which asked for a resetting of the pre-trial twice. On the other hand, the petitioner was the one egging and repeatedly requesting Presiding Judge Infante of Br. 9 to set the case for pre-trial. It has reached the point that petitioner got exasperated for the unreasonable delay of the judge of RTC, Br. 9 in resolving the incidents pending before her that it was constrained to file a motion for inhibition.

As to the contention of respondent bank that the withdrawal of the previous counsel of petitioner is ineffective because it was not approved by the judge of RTC Br. 9, there is nothing in Sec. 26 of Rule 138[28] that requires

such approval. What is important is that the withdrawal of counsel is with the consent of the client.

Besides, the blame for the lack of approval, if at all, rests on the Presiding Judge of RTC Br. 9 in not acting on the motion for withdrawal of appearance of counsel for more than a year.

WHEREFORE, in view of the foregoing, the Petition is hereby GRANTED. The Orders dated June 5, 2002 and August 2, 2002 are hereby REVERSED and SET ASIDE.

SO ORDERED. Buzon, (Chairman) and Maambong, JJ., concur.

[1] Rollo, pp. 2-31.

[2] Id., p. 35.

[3] Id., pp. 52-63.

[4] Id., pp. 36-37.

[5] Id., pp. 250-261.

[6] Id., pp. 131-152.

[7] Id., pp. 153-166.

[8] Id., pp. 168-169.

[9] Id., p. 171.

[10] Id., pp. 172-190.

[11] Id. pp. 214-223.

[12] Id., p. 227.

[13] Id., pp. 228-231.

[14] Id., pp. 232-235.

[15] Id., pp. 236-241.

[16] Id., p. 242.

[17] Ibid.

[18] Id., p. 243.

[19] Id., pp. 244-246.

[20] I., p. 247.

[21] Id., pp. 248-249.

[22] Supra note 2.

[23] Supra note 5.

[24] Supra note 4.

[25] Rollo, p. 262.

[26] Rollo, p. 243.

[27] Ibid, p. 242.

[28] "SEC. 26. Change of attorneys. – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. "

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