

**BANCO DE ORO UNIBANK, INC. (FORMERLY EQUITABLE PCI BANK,
FORMERLY PHILIPPINE COMMERCIAL INTERNATIONAL BANK),
PLAINTIFF-APPELLANT, VS. FIL NETWORK REALTY CORPORATION,
FIL NETWORK...**

Ponente: SORONGON, J.

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SORONGON, J.:

This is an appeal under Rule 41 of the Rules of Court assailing the Order[1] dated August 1, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 136 which dismissed Civil Case No. 95-1127.

The facts are as follows:

On November 25, 1994, defendants-appellees Fil-Network Realty Corporation and Fil-Network Development Corporation, through their Chief Executive Officer, Angelito Santiago (defendants-appellees), entered into a Bills Purchase Line Agreement with plaintiff-appellant, which was then known as the Philippine Commercial International Bank, wherein the former shall avail of a bills purchase credit line in the amount of Ten Million Pesos (Php10,000,000.00) from the latter. This credit line shall be effected through negotiations and /or indorsements to plaintiff-appellant with recourse by the defendants-appellees of the trade checks drawn and/or negotiated in their favor in the normal course of their business. They stipulated that if the negotiated checks are returned or dishonored upon presentment for payment with the drawee banks or should there be any violation of the terms and conditions under the agreement, defendants-appellees shall immediately pay the amount stated in the checks, without need of demand, plus the prevailing interest and penalty charges of twelve (12%) percent per annum computed from the date of purchase/deposit of the check to the date of full payment.

On May 5, 1995, plaintiff-appellant purchased four (4) checks amounting to Six Million One Hundred Thousand Pesos (Php6,100,000.00) from defendants-appellees which were then indorsed to Fil-Network Realty Corporation, Angelito Santiago, Eduardo Gaerlan, and Jocelyn Peralta. The amount was then credited to the savings account of Fil-Network Realty Corporation maintained with plaintiff-appellant's branch at West Avenue, Quezon City. On same date, Angelito Santiago as the authorized representative of defendants-appellees withdrew Five Million Nine Hundred Eighty Thousand Pesos (Php5,980,000.00) from the said savings account via three (3) manager's checks drawn in his favor.

Meanwhile, the four (4) checks purchased from defendants-appellees were then presented for payment by plaintiff-appellant to the drawee banks but to its surprise, the checks were all dishonored by the latter. Plaintiff-appellant also discovered that those checks were not trade checks drawn in favor of defendants-appellees in the ordinary course of their business, thus not in accordance with the purchase line agreement. Accordingly, plaintiff-appellant demanded from defendants-appellees for the payment of the whole amount of the dishonored checks which the latter refused. The obligation already ballooned to Six Million Four Hundred Eighteen Thousand Four Hundred Seventy Pesos and Eighty Three Centavos (P6,418,470.83) including interests and penalty charges.

On July 28, 1995, plaintiff-appellant filed a collection suit with prayer for writ of preliminary injunction against defendants-appellees with the RTC of Makati City. In an Order[2] dated October 27, 1995, the trial court granted the writ and ordered herein plaintiff-appellant to post an injunction bond.

On May 27, 1998[3], the case was dismissed without prejudice for failure of plaintiff-appellant to prosecute its case for a considerable period of time. Plaintiff-appellant moved for a reconsideration thereof which the trial court granted.[4]

On March 10, 2000, plaintiff-appellant filed a motion to archive the case on the ground that individual defendants-appellees cannot be served with summons since they cannot be located at their last known addresses. On April 24, 2000[5] the trial court archived the case until such time plaintiff-appellant secures information relative to the actual location of any or all of the individual defendants-appellees. On August 1, 2011, the trial court dismissed the case because plaintiff-appellant has done nothing to prosecute its case since April 24, 2000.

Plaintiff-appellant filed a Motion for Reconsideration which the trial court denied by Order[6] dated September 30, 2011.

Felt aggrieved, plaintiff-appellant went to Us for redress alleging:

I.

THE LOWER COURT ERRED IN DISMISSING THE CASE UNDER THE CIRCUMSTANCES.

II.

(A)

THE LOWER COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE;

(B)

IN THE HIGHER INTEREST OF SUBSTANTIAL JUSTICE, THE HONORABLE COURT SHOULD SET ASIDE AND REVERSE THE APPEALED ORDERS OF THE LOWER COURT.

The core issue here is whether or not the trial court was correct in dismissing the case on the ground of non prosecutur.

We start with the pronouncement that in every action, it is the duty of the plaintiff as much as the court to have the case resolved with reasonable dispatch not only to enable him to obtain the relief he tenaciously prayed in his complaint but most importantly, to minimize the clogging of the court dockets[7]. Section 3, Rule 17 of the 1997 Rules of Court, as amended, explicitly sanctioned the dismissal of the case should a plaintiff unreasonably fail to prosecute his case within a period of time, thus:

"Failure to prosecute — If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any other order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

The dismissal of the case due to the failure of plaintiff to prosecute the case for unreasonable length of time is a matter addressed to the sound discretion of the court. However, this discretion must not be exercised capriciously and with reckless abandon that it becomes a panacea to unclog court dockets. In the case of *Bank of the Philippine Islands v. Court of Appeals*[8], the Supreme Court cautioned the courts for impetuous dismissals under Section 3, Rule 17 of the 1997 Rules of Court, viz:

"While a court can dismiss a case on the ground of non prosecutur, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.

Indeed, the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, may gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case. There must be sufficient reason to justify the dismissal of a complaint. We certainly do not find any in the instant case." (Emphasis is Ours)

At bar, plaintiff-appellant justified its failure to prosecute the case on two grounds, i.e.: (1) The acquisition of Philippine Commercial International Bank by Equitable Banking Corporation, followed by the acquisition of Equitable PCI Bank, Inc. by Banco De Oro Universal Bank, which sale and merger resulted in the retirement of personnel handling the account, organizational changes within the bank and the transfer of records; and (2) Summons were not served upon the individual defendants-appellees for the reason that defendants-appellees corporations have already closed down and the individual defendants-appellees apparently went into hiding.[9]

Under said circumstances, plaintiff-appellant cannot be faulted for not being able to proceed with the case promptly. The sale and merger of the bank which led to the retirement of bank personnel handling the account and changes in the bank's organizational set up not to mention the transfer of bank records, made it too difficult for the plaintiff-appellant to have its case moved like any ordinary civil case. Besides, defendants-appellees corporations closed down and the individual defendants-appellees cannot be served with summons as their whereabouts became unknown after they went into hiding. Albeit, there was a delay, such delay was justifiable and cannot be considered as intentional on the part of plaintiff-appellant so as to cause prejudice and damage to defendants-appellees. We cannot blame plaintiff-appellant in failing to proceed with its case with reasonable promptness like any litigation proceedings because of the circumstances we have aboved discussed. In this regard, a lenient application of Section 3, Rule 17 of the Rules of Court is in order. In *Marahay v. Melicor*[10], the Supreme Court held in this wise:

While a court can dismiss a case on the ground of non prosecutur, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss. (emphasis supplied)

In the interest of substantial justice and to afford plaintiff-appellant the opportunity to substantiate the merits of its claim and for the defendants-appellees to rebut the same, the reinstatement of herein case is in order. In hindsight, per Manifestation and Compliance[11] dated August 22, 2012 filed by plaintiff-appellant that the whereabouts of defendants-appellees Angelito G. Santiago and Eduardo T. Gaerlan can now be ascertained, summons and other court processes may now be served upon them.

Thus, we wind up emphasizing that rules of procedure are designed to facilitate the prompt administration of justice and should its strict implementation will frustrate rather than attain the ends of justice, the Court is sanctioned to suspend the same and apply the exception.

WHEREFORE, the appeal is GRANTED. The impugned August 1, 2011 Order of the Regional Trial Court, of

Makati City, Branch 136 is REVERSED and SET ASIDE. Consequently, plaintiffs-appellant's complaint is REINSTATED, with a caveat that any further and continued delay in the prosecution thereof will result in the dismissal of the case with prejudice. Further, the trial court is ordered to serve with dispatch the summons to defendants-appellees Angelito G. Santiago and Eduardo T. Gaerlan on their latest known respective addresses.

SO ORDERED.

Carandang, (Chairperson), and Gonzales-Sison, JJ., concur.

[1] Rollo, p.54

[2] Records, pp. 30-31

[3] Records, p. 72

[4] Order of May 28, 1999, Records, p. 115

[5] Order, Records, p. 127.

[6] Records, p. 140

[7] Olave, et al. vs. Mistas, et al., G.R. No. 155193, November 26, 2004

[8] 303 SCRA 19

[9] Appellants' Bief, Rollo. pp.

[10] G.R. No. 44980, February 6, 1990

[11] RRollo, pp. 9-102

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