

**REXWELL CORPORATION, PLAINTIFF AND APPELLANT, VS.
DOMINADOR P. CANLAS, DEFENDANT AND APPELLEE.***G.R. No. L-16746. December 30, 1961*

Ponente: DE LEON, J.

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On October 28, 1959, a complaint was filed with the Court of First Instance of Manila by the Rexwell Corporation against Dominador Canlas, alleging that, pursuant to a previous agreement, plaintiff dug or drilled a well for defendant in the latter's riceland at Minalin, Pampanga, and that after the work was finished, the said well was turned over to the satisfaction of defendant, but that the latter failed and neglected to pay the plaintiff the balance of P5,014.74 on the contract price including services rendered and materials, and to provide for proper facilities of egress for moving out plaintiff's equipment from the job site, to the prejudice of plaintiff in the aggregate sum of P17,940.74 representing actual damages, attorney's fees and expenses of litigation.

On November 12, 1959, defendant answered the complaint, admitting that he contracted the services of plaintiff for the drilling of said water well and that he agreed to provide the latter with the proper facilities of egress in moving out its equipment from his land upon completion of the work. Defendant asserted, however, by way of special defenses, that he had tendered the sum of P2,000.00 subject to adjustment after the final completion of the well; that the well was not completed by plaintiff in good order and condition; and that the materials used were in accordance with specifications. Defendant also raised a counterclaim for P30,000.00 representing damages allegedly resulting from plaintiff's failure to finish the work in accordance with the contract.

On November 18, 1959, plaintiff filed its answer to the counterclaim. Issues having been joined, the case was subsequently set for hearing on December 4, 1959.

On or about November 23, 1959, defendant's counsel filed a motion to transfer the hearing date on the ground that on the said date, December 4, he would be appearing in another case assigned to a different branch of the Court of First Instance of Manila, and praying therein that the case be included in the 1960 calendar of the court. On November 28, the court reset the hearing for December 18, 1959.

Before receipt of the order postponing the hearing to December 18, the plaintiff also filed an urgent motion for postponement of hearing (originally scheduled December 4) upon the ground that its principal witnesses, the president and manager of the company, had left for the United States on November 28, and praying that the case be reset for hearing in February, 1960, as the said witnesses would be returning to the Philippines in the latter part of January.

Acting on the aforesaid motion, the court, on December 5, 1959, issued the following order:

"This is an urgent motion for transfer. The motion is based on the fact that according to the movant plaintiff is indisposed to appear on the date of trial because plaintiff is in Europe. Considering that this case was set for hearing much many days prior to the sailing of plaintiff and considering that plaintiff's counsel did not protest nor make any manifestation to the contrary when the case was set for hearing the Court believes that the

motion is not well-founded.

"In view hereof, the motion is denied."

The case, however, was not called for hearing on December 4, obviously because of the order of November 28 transferring the hearing to December 18.

On December 8, 1959, plaintiff reiterated his motion for postponement on the same ground that its two principal witnesses are still abroad and their testimonies are very material and indispensable in the case. Two days later, defendant likewise filed a similar motion on the ground that his counsel would appear in the trial of another case before Branch X of the same court. Both motions were denied in an order of the court dated December 12, 1959.

When the case was finally called for trial on December 18, plaintiff's counsel again moved that the case be reset for hearing in February 1960 on the same ground stated in its previous motions for postponement. This motion was denied in open court and so was a motion for reconsideration of the order of denial. On the same day, the court issued an order dismissing the case "in view of the failure of the plaintiff to present its evidence this morning."

The plaintiff has appealed direct to this court putting up only the issue of whether or not it was proper for the court to deny his motions for postponement and to dismiss the case under the circumstances.

Section 2, Rule 115 of the Rules of Court reads:

"SEC. 2. Continuance or postponement of the trial.—The court on the application of either party or on its own motion may, in its discretion for good cause postpone the trial of the case for such period of time as the ends of justice and the right of the defendant to a speedy trial require."

Applications for continuance are, in accordance with this rule, addressed to the sound discretion of the court, but the exercise of that discretion must be judicial and not arbitrary (*People vs. Romero*, 93 Phil., 128; 49 Off. Gaz., [11] 4851). When, for instance, a party, without malice, fault, or inexcusable negligence on his part, is not really prepared for trial, the court would be abusing its discretion, if a reasonable opportunity is denied him for preparing therefor (*Ching Heng So vs. Tan Boon Kong*, 53 Phil. 437). There is even authority for the view that the right to a speedy trial is not violated by granting a continuance on the ground of the absence of material witnesses (14 Am. Jur. pp. 860-861, cited in *People vs. Romero*, supra). Thus, it seems that postponements and continuances of trial are parts and parcel of our procedural system of dispensing justice, and when no substantial rights are affected and the intention to delay is not manifest, it is sound judicial discretion to allow them.

In the case at bar, plaintiff-appellant consistently maintained that its principal witnesses, the president and manager of the corporation, left the Philippines on November 28, and there is nothing to show that on or prior to the date when plaintiff's counsel received the notice of hearing for December 4, these witnesses had not yet made arrangements and booked passage for their trip abroad. Anyway, appellant's counsel filed the motion to transfer the hearing reset for December 18 on December 8, and scheduled the same for resolution on December 12, or more than 3 days before the hearing, as required by section 4, Rule 26 of the Rules of Court.

It is important to note that even the adverse party in this case, in his counsel's motion of November 23, 1959, has signified his desire to have the hearing date included in the 1960 calendar of the lower court. There is, therefore, no gainsaying the fact that defendant-appellee would not be prejudiced by the postponement asked for by the plaintiff-appellant.

Moreover, it is unlikely that appellant wanted to delay the trial and final termination of the case. For, without in the least prejudging the merits of the case, it appears to Us that appellant has a meritorious cause of action.

Defendant-appellee admitted that he hired the services of plaintiff in the drilling of his well in Minalin, Pampanga. He also indirectly admitted that there has never been a final accounting between him and plaintiff when he averred in his answer that he had tendered the sum of P2,000.00 "subject to future adjustment." At any rate, even if there could have been delay, We are not prepared to consider it as one for an unreasonable length of time. The case had been pending for more than one month only when it was dismissed on December 28, 1959, and the motions for postponement filed by appellant prayed therein for the inclusion of the case for hearing in February, 1960, when the president and manager of the corporation, the plaintiff's material witnesses, would have returned from abroad.

Upon the foregoing, We agree with appellant that the lower court has acted rather hastily in refusing a continuance and in dismissing the case. To subserve the interests of justice, it would have been better if the order of dismissal were without prejudice.

Wherefore, the order of dismissal, dated December 12, 1959, as well as the order denying postponement of the hearing set for December 18, 1959, are hereby set aside and declared of no force and effect. Let the record of the case be remanded to the court below for trial or further proceedings, without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

REYES, J. B. L., J.:

I reserve my vote. I see no reason why the depositions of witnesses were not taken before they left the Islands.

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