

RCBC SAVINGS BANK, PLAINTIFF-APPELLANT, ARTEMIO B. CAROLINO, JR., SHIRLEY C. CAROLINO AND JOHN DOE, DEFENDANTS-APPELLEES.

Ponente: BARZA, J.

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BARZA, J.:

On appeal before this Court is the Order[1] of the Regional Trial Court of Dagupan City, Branch 41 (hereinafter referred to as “RTC”), dismissing Civil Case No. 2010-0160-D for the failure of herein plaintiff-appellant RCBC Savings Bank (RCBC) to comply with the Order dated March 17, 2011.

THE FACTS

The present case stemmed from a Complaint for Recovery of Possession and Replevin[2] filed on July 5, 2010 by RCBC against herein defendants-appellees Artemio Carolino, Jr. and Shirley C. Carolino (hereinafter collectively referred to as “the Carolinos”) for the recovery of possession of an Isuzu Crosswind Sportivo MT JS with plate no. ZSU-904. The said vehicle was mortgaged by the Carolinos to RCBC as security for their debt of P1,133,712.00. When the Carolinos failed to pay the remaining balance of P825,651.28, RCBC foreclosed the chattel mortgage on the vehicle. Since the vehicle was no longer in the possession of the Carolinos, RCBC impleaded the unknown person in possession thereof as a John Doe.

Summons and a Writ of Replevin was served by the sheriff on the Carolinos on October 10, 2010, but the mortgaged chattel was not seized as it was not in their possession.

The Sheriff made the Return of the Summons and the writ of replevin on November 3, 2010.

On January 24, 2011, an Order[3] was issued by the RTC which stated:

“For failure of the plaintiff and counsel to take necessary steps in the prosecution of this case for an unreasonable length of time and pursuant to Section 3, Rule 17 of the 1997 Revised Rules of Civil Procedure, this case is hereby dismissed without prejudice and with cost de officio.

SO ORDERED”

RCBC filed a Motion for Reconsideration informing the RTC that it has deferred action of the case as the Carolinos had been negotiating for the settlement of their loan.

On March 17, 2011, the RTC issued an Order[4] granting RCBC's motion for reconsideration and set aside its previously issued order of dismissal but nevertheless commanded RCBC to take the necessary steps in the prosecution of the case within five days from the receipt of the said order.

On May 24, 2012, the RTC issued the presently assailed Order dismissing again the complaint filed by RCBC for its failure to prosecute the same. Unlike the previous dismissal, however, this the time the RTC deemed to dismiss the case with prejudice under Section 3, Rule 17 of the Rules of Court, viz:

“For failure of the plaintiff and counsel to comply with the Order dated March 17, 2011 despite receipt thereof on March 29, 2011 and March 28, 2011 respectively:

Wherefore, pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure, this case is hereby dismissed with cost de-officio.

SO ORDERED.

RCBC then filed a Motion for Reconsideration with Motion to Archive[5] on June 6, 2011, begging the kind indulgence of the RTC to reconsider the order of dismissal, explaining that it was not able to prosecute the case because the Carolinos have submitted a proposal for settlement of their debt at their main office and that they are only waiting for the approval of the same upon which they will move for the dismissal of the case.

In its Order dated August 29, 2012, the RTC denied RCBC's Motion for Reconsideration with Motion to Archive.

Hence, the present appeal wherein RCBC prays for the setting aside of the order of dismissal or at the very least, the dismissal be declared without prejudice.

ISSUES

RCBS raises the following issues for Our resolution, to wit:

I

THE LOWER COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE, WHICH DEPRIVED PLAINTIFF-APPELLANT OF ITS RIGHT TO RECOVER THE SUMS IT HAD LOANED TO THE DEFENDANTS-APPELLEES.

II

THE LOWER COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE WHICH WOULD FOREVER BARRED PLAINTIFF-APPELLANT FROM COLLECTING THE OUTSTANDING BALANCE OF THE LOAN OF DEFENDANTS-APPELLEES IN THE SUM OF P825,651.28, EXCLUDING INTEREST AND PENALTIES AS OF APRIL 18, 2010.

III

THE LOWER COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE WHEN PLAINTIFF-APPELLANT HAS NOT ENGAGED IN A PATTERN OR SCHEME TO DELAY THE DISPOSITION OF THE CASE OR WANTON FAILURE TO OBSERVE THE MANDATORY REQUIREMENT OF THE RULES.[6]

RULING OF THE COURT

Essentially, the issues raised by RCBC may reduced into one: whether the RTC erred in dismissing its complaint with prejudice.

The appeal is not meritorious.

The RTC acted properly in ordering the dismissal of the case

The record of the case reveals that the complaint of RCBC was dismissed by the RTC on the ground of failure to prosecute after it failed to take any steps regarding the prosecution of the case for almost two months from receipt of the Order of the RTC requiring them take action within five days from receipt thereof.

It appears RCBC has previously already incurred the ire of the RTC when it failed to take steps in the prosecution of the case after filing the same on July 5, 2010. Hence, the RTC ordered the dismissal of the case on January 24, 2011 without prejudice. The RTC has also already reconsidered the dismissal of the case and condoned RCBC's apparent lack of interest when it granted the latter's motion for reconsideration asking for the reversal of the order of dismissal.

Yet, even after being afforded a second chance by the court a quo, RCBC still chose to not mend its ways even with the apparent warning in the March 17, 2011 Order of the RTC that it is being given a "one last golden opportunity to prosecute its case" and that it must take the necessary steps to prosecute the same within five days from the receipt of the said order. Thereafter, based from the record, nothing was done by RCBC from the time of the receipt of the said order until finally the RTC, for a second time, ordered the dismissal of the case.

Against this factual backdrop, We cannot help but agree with the RTC when it ordered the dismissal of the case in its May 24, 2012 Order under Section 3,[7] Rule 17 of the Rules of Court which provides as follows:

Section 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (3a)

For failing to take any step in the prosecution of its case, or at the very least, informing the RTC the reasons for such inaction, We found the RTC acted properly in ordering the dismissal of the complaint filed by the RCBC.

As provided above, a dismissal premised on Section 3, Rule 17 has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, unless otherwise provided in the order of dismissal. In here, the RTC deemed to dismiss the case with prejudice unlike its previous order specifically stating the contrary.

We agree with the RTC.

No evidence was presented to show the existence of a negotiation between RCBC and the Carolinos

In its brief, RCBC explained that the reason for its inordinate delay in prosecuting its complaint was because the Carolinos were negotiating for a settlement of their loan obligation and that the same was waiting approval by the board of directors of RCBC.

However, after an examination of the records of the case, We find no evidence was ever submitted by RCBC to prove its contention of an ongoing negotiation between it and the Carolinos. Settled is the rule in this jurisdiction that mere allegation is not evidence and is not equivalent to proof.[8] Absent any evidence to prove its contention that the Carolinos have submitted a proposal for settlement of their debt which was pending approval at the main office of RCBC, the same remains as a mere allegation on the part of RCBC which will not operate to absolve it in this case for failing to diligently prosecute the complaint it has filed before the RTC.

Section 3, Rule 17 of the Rules of Court expressly provides that a dismissal for failure to prosecute is an adjudication on the merits. As sad a reality this maybe on the part of RCBC, We find it only has itself to blame for its present predicament for, as a prominent bank, it is subjected to a higher standard of action in the conduct of its affairs.

Thus, in *Producer's Bank of the Philippines v. Court of Appeals*, [9] which similarly involved an action dismissed

for failure to prosecute, the Supreme Court held:

“By way of exception to the rule that a dismissal on the ground of failure to prosecute under Section 3 of Rule 17 is a dismissal with prejudice, *Delos Reyes v. Capule*, 102 Phil 467 (1957), held that in a case not tried on the merits and whose dismissal was due to the negligence of counsel rather than the plaintiff, in the interest of justice, the dismissal of the case should be decreed to be without prejudice to the filing of a new action. However, unlike *De los Reyes*, the present case involves as plaintiff/petitioner a prominent bank, that employs a staff of lawyers and possesses significant resources. It cannot plead paucity of means, including legal talent it could retain. Petitioner's counsel inexplicably failed to secure the presence of witnesses when required, failed to appear during pre-trial and trial duly set, failed to seasonably appeal, failed to timely move for reconsideration, failed to brief his substitute lawyer; and failed to diligently pursue the service of summonses. These are acts of negligence, laxity and truancy which the bank management could have very easily avoided or timely remedied. One's sympathy with the bank and its counsel could not avail against apparent complacency, if not delinquency, in the conduct of a litigation. For failure to diligently pursue its complaint, it trifled with the right of respondent to speedy trial. It also sorely tried the patience of the court and wasted its precious time and attention.”

WHEREFORE, the foregoing considered, the instant appeal is DENIED. The Order of the Regional Trial, in Civil Case No. 2010-0160-D, is hereby AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Records, p. 61.

[2] Records, pp. 2-4.

[3] Records, p. 48.

[4] Records, p. 56.

[5] Records, pp. 64-65.

[6] Rollo, p. 16.

[7] Section 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. (3a)

[8] *Top Art Shirt Manufacturing, Incorporated v. Metropolitan Bank and Trust Company*, G.R. No.184005, August 04, 2009.

[9] G.R. No. 125468, October 9, 2000.

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