

**WILHESMINA COQUIA, ET AL., PLAINTIFFS-APPELLANTS VS.
ALLFONSO CHEONG, ET AL., DEFENDANTS-APPELLEES.***G.R. No. L-12288. May 30, 1958*

Ponente: REYES, A., J.

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This is an action brought by the parents of two minor children on behalf of the latter to recover damages for food poisoning which the said minors were alleged to have contracted by eating ice cream bought from the restaurant of one of the defendants but manufactured by the other defendants. The food poisoning was contracted on March 7, 1952 but the action was not brought until more than 3 years thereafter, or on March 12, 1955.

The defendants denied liability, and after the issues were joined, the case was, at the instance of plaintiffs, set for hearing on May 17, 1955. Actual trial, however, was not held until the 16th of the following month, and the trial was not finished because plaintiffs' counsel, Atty. Gualberto Cruz, after presenting five witnesses, asked for a continuance. The continuance was granted and at said attorney's request the next hearing was set for June 20. When that day came, however, Atty. Cruz asked for another postponement, alleging that he was sick. The court granted the motion and reset the hearing for June 24. But on the following day, that is, on June 21, Atty. Cruz filed a motion asking that he be allowed to withdraw from the case because of illness and also because of alleged conflict of opinion between him and his clients as to how the case should be handled. Plaintiffs gave their conformity to this motion and on that same day lodged a complaint with the city fiscal of Manila against the defendants, for a violation of the Foods and Drugs Act, and then, invoking section 1 (c) of Rule 107, petitioned the court to suspend proceedings in the civil case until final judgment in the criminal case shall have been rendered. The petition was filed on June 23 and set for hearing on the following day, June 24, which, it is to be noted, was also the date set for the continuation of the trial. But the court, in an order handed down on June 24, denied the petition, holding that the rule cited which requires the suspension of the civil case after the criminal action has been commenced, refers to the commencement of the criminal action in court and not to the mere filing of a complaint with the prosecuting officer. In the same order, the court approved Atty. Cruz' withdrawal from the case and also dismissed plaintiffs' action, with costs, because of their failure to appear at the continuation of the hearing. From this order, plaintiffs appealed to the Court of Appeals but the appeal has been certified to us on the ground that the amount involved exceeds P50,000.00.

Appellants contend in the first place that the trial court erred in dismissing the case on the ground that their petition to suspend proceedings did not comply with the rule on three days notice. But this assignment of error is based on an erroneous supposition, for actually, plaintiffs' civil action was not dismissed on that ground. The lower court, it is true, did take notice of the fact that the petition to suspend was presented in violation of the rule on notice, but it also appears that the court waived, such technicality and denied the motion to suspend on the ground that section 1 (c) of Rule 107, referring to the suspension of the civil action, does not operate before the criminal action has been filed in court. We find this ruling to be a correct interpretation of that section and we find no reason for disturbing it.

It is next contended that the trial court erred in basing its order of dismissal on mere supposition that plaintiffs mean to blackmail the defendants and in determining defendants liability only on partial evidence. Giving its reason for believing that a blackmail was intended, the lower court in its order says:

"But admitting this contention to be true (the court here refers to the contention that the mere filing of a complaint with the prosecuting officer would require the suspension of the civil action), it is apparent that there is bad faith on the part of the plaintiffs and a desire to blackmail the defendants. This action was presented to this court on March 12, 1955. for a supposed commission of an act committed on May 7, 1952. After the presentation of the civil action, when things stand out not as the plaintiffs expected to be, because the evidence so far presented does not show any liability on the part of the defendants, they now present a criminal action dated July 12, 1955, according to Slip No. 13217 of the City Fiscal's Office. It can be seen clearly that this criminal action has been frustrated and failed to materialize. The presentation of this criminal action, therefore, in order to suspend the civil proceedings which has failed or is bound to fail, is an attempt to force these defendants to enter into a settlement which they have vainly tried to do since May 7, 1955."

We gather from this pronouncement that what is therein characterized as an attempt at blackmail refers to the filing of the criminal complaint in the fiscal's office, which the court took to be nothing more than an attempt on plaintiffs' part to force the defendants "to enter into a settlement", which, according to the court, the plaintiffs had "vainly tried to do since May 7, 1955." Considering that the present action was filed more than 3 years after the accrual of Its cause and taking notice of the various moves for delay coupled with the lower court's impression as to the strength of proof so far presented, we think that court's "supposition" that plaintiffs had filed a criminal complaint as a means of forcing a compromise is not entirely unfounded. However, we notes that this case was dismissed not exactly on that ground - although that matter had exerted some influence on the mind of the court - but rather because of plaintiffs' failure to appear on the day set for the continuation of the hearing. Such non-appearance is not denied. Neither is it satisfactorily explained. And that in itself is, under the Rules, a ground to dismiss for failure to prosecute (Rule 4, sec. 12).

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Montemayor, Bautisa Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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