

**PLAINTIFF-APPELLANT, VS. GENERAL SANTOS CITY-SARANGANI
FRUIT COOPERATIVE (GENSAFCO), HEREIN REPRESENTED BY ITS
PRESIDENT REX RIVERA, VICE CHAIRMAN LUPE HERAMIL,
TREASURER/SECRET...**

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/90a351864b90/>

FRANCISCO, J.:

This is an appeal under Rules 41 and 44 of the Rules of Court from the Orders dated August 16, 2004[1] and March 23, [2] of the Regional Trial Court (RTC), 11th Judicial Region, Branch 39, Polomolok, South Cotabato, in Civil Case No. 408-03 for “Sum of Money, Damages, Attorney's Fees, with Prayer for Preliminary Attachment.”

The Facts of the Case

On November 19, 2003, plaintiff DOLE-TropiFresh, a division of DOLE Philippines, Inc. filed a complaint against defendant General Santos City-Sarangani Fruit Cooperative before the RTC, 11[th] Judicial Region, Branch 39, Polomok, South Cotabato docketed as Civil Case No. 408-03 for “Sum of Money, Damages, Attorney's Fees, with Prayer for Preliminary Attachment.” [3]

On December 30, 2003, defendant filed a Notice of Appearance with Urgent Motion for Extension of Time to File Answer until January 16, 2004.[4] The RTC granted defendant's prayer for extension.[5]

On January 21, 2004, defendant filed its 2[nd] Motion for Extension of Time to File Answer until the said date.[6] Attached to the motion is its Answer to the complaint with counterclaim.[7]

On July 7, 2004, defendant filed a Motion to Dismiss[8] stating that-

- Since the filing of the answer on 21 January 2004, the plaintiff took no steps whatsoever towards prosecuting it's cause or completely ignored it's duty as directed by Section 1, Rule 18 of the 1997 Code of Civil Procedure;

- Consequently, the instant case should now be dismissed pursuant to Section 3 of Rule 17 of the 1997 Code of Civil Procedure, to wit:

X X X

X X X

X X X

SEC. 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. xxx

x x x

x x x

x x x

- The sanction was well-expounded by the Honorable Supreme Court in Arellano vs. CFI of Sorsogon, to wit:

x x x

x x x

x x x

"To begin with, instead of seeing to it that every step is expeditiously taken so that his complaint may be placed in the calendar for trial, by his own transparent dilatory moves, plaintiff in this case contributed actively to the unreasonable and unexplained delay of the preliminary incidents.....In other words, it can be said that somehow plaintiff was guilty of failure to prosecute his case for an unreasonable length of time, by failing to keep the progress thereof in motion for almost two years. Under the rules, it is the duty of a plaintiff to always take the initiative in keeping the proceedings active and going until it is terminated, otherwise his case may be dismissed either upon motion of his adversary or the court itself." (65 SCRA 46)

x x x

x x x

x x x

WHEREFORE, it is most respectfully prayed of this Honorable Court that the Complaint be dismissed and correspondingly, the reception of evidence for the counterclaim be scheduled on 13 July 2004, at 2:00 in the afternoon. The defendants further pray for such other and further reliefs as may be just and equitable under the premises.[9]

On July 21, 2004, plaintiff filed its Comment or Opposition to Motion to Dismiss asserting that respondent's Motion to Dismiss has no legal basis to stand on since the former has not violated any court order or provision of the Rules of Court. Plaintiff claimed that the delay of 6 months normally happens in every court in SocSargen and that the cited case is inapplicable since it involves a delay of 2 years.[10] Plaintiff posited that while it has the obligation to move the case for pre-trial, the trial court also has discretion to call the same motu proprio. Furthermore, plaintiff added that the reason why its counsel failed to call the case for pre-trial was because "he was grossly preoccupied with the campaigning of his brother's reelection bid for mayor in Surallah, South Cotabato, and for that, he is conveying his utmost apology." [11]

On August 16, 2004, the RTC issued the first assailed Order[12] dismissing the case, thus -

IN VIEW OF THE FOREGOING, finding the reasons advanced by the plaintiffs in their Comment or Opposition to the Motion To Dismiss flimsy and insubstantial and the Motion To Dismiss to be in accordance with the Rules, this case is hereby ordered DISMISSED.

SO ORDERED.[13]

On September 8, 2004, plaintiff filed a Motion for Reconsideration of the August 16, 2004 Order,[14] while defendant filed a Motion for Reception of Evidence on the Counterclaim.[15]

On March 23, 2007, the RTC issued the second assailed Order denying plaintiff's motion for reconsideration of its August 16, 2004 Order and giving due course to defendant's Motion for Reception of Evidence on the Counterclaim.[16]

Ex-Parte Hearing for defendant's counterclaim evidence ensued.

On June 27, 2011, the RTC rendered a Decision,[17] the fallo of which reads-

IN LIGHT OF ALL THE FOREGOING, xxx defendant (President) Rex Rivera's counterclaim is hereby GIVEN DUE COURSE while other defendants' claims are DENIED DUE COURSE for failing to substantiate them.

Accordingly, plaintiff Dole Tropifresh (a Division of Dole Philippines, Inc.) is hereby ORDERED to PAY defendant Rex Rivera the following:

- i) Two Hundred Thousand Pesos (P200,000.00) as moral damages;
- ii) Fifty Thousand Pesos (P50,000.00) as exemplary damages; and
- iii) One Hundred Thousand Pesos (P100,000.00) as attorney's fees including appearance fees.

SO ORDERED.[18]

Plaintiff TropiFresh undertakes the present appeal raising the following issues-

I

WHETHER OR NOT THE HONORABLE TRIAL COURT CAN DISMISS THE COMPLAINT UPON FAILURE OF THE PLAINTIFF TO FILE A NOTICE OF PRE-TRIAL WITHIN SIX MONTHS SINCE THE LAST PLEADING WAS FILED[;]

II

WHETHER OR NOT THE HONORABLE TRIAL COURT CAN DISMISS THE COMPLAINT ON THE BASIS OF FAILURE TO PROSECUTE DESPITE THE MANDATES OF A.M. NO. 03-1-09-SC, August 16, 2004[;]

III

WHETHER OR NOT THE HONORABLE TRIAL COURT SHOULD ALLOW THE RECEPTION OF EVIDENCE DESPITE THE APPEAL OF THE DISMISSAL OF THE COMPLAINT FILED BY THE PLAINTIFF-APPELLANT.[19]

The Ruling of the Court

The pivotal issue in this case is whether the RTC erred in dismissing the case due to plaintiff-appellant's failure to set the case for pre-trial.

The appeal is meritorious.

While Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly

move ex parte to have the case set for pre-trial after the last pleading has been served and filed, nowhere in the said section and rule does it provide for any sanction for failure of the plaintiff to do so.

Moreover, A.M. No. 03-1-09-SC or the new Guidelines To Be Observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures, which took effect on August 16, 2004, states that: "Within five (5) days from date of filing of the reply, the plaintiff must promptly move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial." As such, the clerk of court of Branch 39 of the Regional Trial Court of Polomolok, South Cotabato should have issued a notice of pre-trial to the parties and set the case for pre-trial, instead of the Court a quo dismissing peremptorily the case.

Furthermore, in this case, Section 3, Rule 17 of the 1997 Rules of Civil Procedure, which allows the dismissal of the case for failure of the plaintiff to prosecute his action for an unreasonable length of time, cannot be applied in conjunction with Section 1, Rule 18 thereof because to the mind of this Court, the lapse of six months is not an unreasonable length of time. So far, after the effectivity of A.M. No. 03-1-09-SC, the High Court has dismissed cases for failure to prosecute on account of the omission of the plaintiffs therein to set the case for pre-trial for almost one year, at the least, from receipt of the Answer. In *Espiritu v. Lazaro*, promulgated on November 25, 2009,[20] the trial court therein dismissed the complaint on July 24, 2003, slightly less than one year from the plaintiff's receipt of the Answer on August 5, 2002. In the more recent case of *Philippine Charter Insurance Corporation v. Explorer Maritime, Co. Ltd, et al.*, promulgated on September 7, 2011,[21] the respondents therein filed the Motion to Dismiss on December 5, 2000 when plaintiff's inaction was already almost three years.

All considered, this Court finds that the RTC erred in dismissing the instant case for plaintiff-appellant's failure to set the case for pre-trial. Consequently, the RTC also erred in proceeding with the ex parte hearing of the defendant-appellee's counterclaim.

WHEREFORE, the appeal is GRANTED. The Orders dated August 16, 2004 and March 23, 2007 of the Regional Trial Court, 11th Judicial Region, Branch 39, Polomolok, South Cotabato, in Civil Case No. 408-03, are SET ASIDE. Likewise, its June 27, 2011 Decision is SET ASIDE. Furthermore, its clerk of court is DIRECTED to issue a notice of pre-trial to the parties.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Ch., and Badelles, JJ., concur.

[1] Records, pp. 47-48.

[2] Id., pp. 67-68.

[3] Id., pp. 2-8.

[4] Id., pp. 21-22.

[5] Id., p. 24.

- [6] Id., pp. 25-26.
- [7] Id., pp. 28-35.
- [8] Id., pp. 38-40.
- [9] Ibid. Emphasis in the original.
- [10] Id., p. 43.
- [11] Id., p. 44.
- [12] Note 1, supra.
- [13] Records, p. 48.
- [14] Id., pp. 49-51.
- [15] Id., pp. 52-53.
- [16] Note 2, supra.
- [17] Records, pp. 148-158.
- [18] Id., pp. 157-158.
- [19] Rollo, p. 27.
- [20] G.R. 181020, November 25, 2009.
- [21] G.R. 175409, September 7, 2011.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.