

**SOFIA VIOLETA T. GUNABE-ROA, PLAINTIFF-APPELLANT, VS.
GEORGINA BALLIETT, NAPOLEON ROQUE AND ALFREDO ROA III,
DEFENDANTS-APPELLEES.**

Ponente: DACUDAO, J.

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DACUDAO, J.:

This appeal by the defendants-appellees and the third-party plaintiffs-appellants Georgina Balliet, Napoleon Roque and Alfredo Roa III seeks to overturn: (1) The Order issued on May 19, 2003,[1] by the Regional Trial Court of Quezon City, Branch 81, in Civil Case No. Q-97-31329, (Sofia Violeta T. Gunabe-Roa, Plaintiff v. Michael McGinity, Alfredo D. Roa, III, Napoleon S. Roque, Prudencio R. Flores, William D. Balliet and Georgina D. Balliet, Defendants, an action for sum of money and damages, with preliminary attachment filed therewith on June 16, 1997) insofar as it dismissed their third-party complaint “with prejudice”; and (2) the Order issued by the same Court on May 6, 2004, denying the motions for reconsideration thereon. Because of its immediate relevance and materiality, we take leave to quote the said third-party complaint. Thus:

“Third Party Plaintiffs GEORGINA BALLIETT, NAPOLEON ROQUE, and ALFREDO ROA, III, upon leave granted by this Honorable Court to file the defendant Third Party Complaint, respectfully allege:

“1. Third Party Plaintiffs GEORGINA BALLIETT, NAPOLEON ROQUE, ALFREDO ROA, III, Filipinos, are all of legal age, with office address at Corporation, Unit 345, 3rd Floor, Mile Long Center, Amorsolo cor. Herrera Streets, Legaspi Village, Makati City, where they may be served with notices, orders, and other court processes.

“2. Third-Party Defendant Michael McGinity is of legal age, an American Citizen, and residing at 330 Mabolo St., Ayala Alabang Village, 1790 Muntinlupa City, where he may be served with summons and other court processes.

COMMON ALLEGATIONS

“3. Plaintiff filed a complaint for collection of Sum of Money with damages against Third-Party Plaintiffs for the personal loans of substantial amount obtained by Third-Party Defendant from plaintiff.

“4. Third-Party Plaintiffs were former members of the Board of Directors of TransPacific Oil and Gas Phils., Inc. (TOGPI) which was owned, established and managed by Third-Party Defendant Michael McGinity who was also the controlling stockholder of TransPacific Inc. (TPI).

“5. As owner-manager of TOGPI, Third-Party Defendant appointed Third-Party Plaintiff to various key positions of the corporation.

“6. Third-Party Plaintiff Georgina Balliet and Napoleon Roque were also appointed by Third-Party Defendant McGinity as co-signatories of the Corporation's account in Metropolitan Bank and Trust Company (Metrobank), together with Prudencio R. Flores, who was also an officer of TOGPI and Third-Party Defendant's right hand man.

“7. As co-signatories of TOGPI's account, Third-Party Plaintiffs Georgina Balliet and Napoleon Roque were made to sign checks, for the usual and standard operating expenses of TOGPI.

“8. Unknown to Third-Party Plaintiffs Roa, Georgina Balliet and Roque, and without the necessary authority from TOGPI's Board of Directors, Third-Party Defendant and defendant Prudencio Flores entered into several personal transactions with plaintiff using TOGPI's corporate entity as a guise to entice plaintiff to lend substantial amount of money to Third-Party Defendant.

“9. On several occasions, Third-Party Defendant and defendant Prudencio Flores obtained personal loans of considerable amount from plaintiff using the corporate name of TOGPI.

“10. Third-Party Defendant and defendant Flores enticed Third-Party plaintiffs Georgina Balliet and Napoleon Roque to sign blank TOGPI checks on pretext and that these would be used to finance usual office expenses, and without the knowledge and consent of Third-Party Plaintiffs, Third-Party Defendant filled up said checks with substantial amount and issued these checks favor of plaintiff to pay for his personal loans to her.

“11. In enticing Third-Party Plaintiffs Georgina Balliet and Napoleon Roque to sign the blank checks, Third-Party Defendant assured Third-Party Plaintiffs that as Chairman of TransPacific Inc. (TPI), Third-Party Defendant will guarantee the obligation incurred by TOGPI.

“12. Prior to the dishonor of the checks issued by Third-Party Defendant to all, Third-Party Plaintiffs did not know plaintiff as they had never met her before, nor had they ever dealt with her with respect to either personal matters TOGPI's business.

“13. Third-Party Plaintiffs Roque and Balliet were not present in the meeting which allegedly took place on March 13, 1995 at the Petroleum Club in McKinley Road, Makati City, between plaintiff and McGinity, Prudencio Flores, Efren Vargas and Victor Lavadia.

“14. Third-Party Plaintiff Alfredo Roa, III, who happened to be around in vicinity for other purpose, was merely introduced by Third-Party Defendant Plaintiff but Roa had no knowledge of the transactions that Third-Party Defendant, Prudencio Flores, Efren Vargas and Victor Lavadia, wanted to enter with the plaintiff. Neither did Third-Party Plaintiff Roa know that Third-Party Defendant and his group were securing a loan from plaintiff.

“15. Plaintiff admitted in her sworn Complaint Affidavit and Reply-Affidavit filed before the Makati City Prosecutor's Office in I.S., No. 96-896 that it was McGinity who secured the loan from her, and not Third-Party Plaintiffs.

“16. Considering that it was only Third-Party Defendant and defendant Prudencio R. Flores, who personally secured personal loans from plaintiff, Third-Party Plaintiffs are not liable to plaintiff for the said obligation.

“17. In the event that Third-Party Plaintiff are held liable to plaintiff for the personal monetary obligation incurred by Third-Party Defendant and defendant Prudencio Flores, Third-Party Defendant and defendant Prudencio Flores should be made and compelled to personally answer for any award that this Honorable Court may grant in favor of plaintiff or to be made to subrogate and/or Indemnity Third-Party Plaintiffs for any and all liabilities and/or damages that this Honorable Court may grant against them in favor of plaintiff.”

In its Order of May 19, 2003, the Trial Court explained-

“For resolutions are the following: (1) motion for reconsideration of the February 6, 2003 Order, filed by third-party defendant McGinity thru counsel and (2) verbal motion by counsel for defendant Roque during the March 14, 2003 pre-trial to declare plaintiff Roa non-suited.

“A comment-opposition to third-party defendant's motion for reconsideration was filed by third-party plaintiff Roque, thru counsel, on March 12, 2003. Defendants and third-party plaintiffs Balliet and Roa III, thru

counsel, likewise filed their opposition (to third-party defendant's motion for reconsideration) on April 1, 2003.

“In the said motion for reconsideration, third-party defendant’s counsel advances the argument that since he failed to contact his client for the purpose of obtaining the latter’s authorization to be represented at the pre-trial, said counsel realized that his presence at the scheduled pre-trial would be useless. Hence, said counsel failed to appear during the scheduled January 10, 2003 pre-trial.

“However, counsel for third-party defendant failed to realize that, as counsel on record for third-party defendant and as an officer of the court, he was duty bound to inform the Court of such predicament. Counsel did not bother to even ask for a resetting of the pre-trial. Records would show that he received the November 15, 2002 Order on November 27, 2002, or long before the scheduled January 10, 2003 pre-trial. For this, the Court is constrained to deny the foregoing motion.

“On the part of the third-party plaintiffs, the Court finds that they are not entirely faultless. Per record, said parties did not have their respective pre-trial briefs submitted as of January 10, 2003 pre-trial. It was only on May 8, 2003 that third-party plaintiff Roque submitted his pre-trial brief, and for Balliett and Roa III, on May 15, 2003.

“Section 6, Rule 18 of the 1997 Rules of Civil Procedure (provides) ‘The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs. xxx. Failure to file the pre-trial brief shall have the effect as failure to appear at the pre-trial.’

“Section 5, Rule 18 of the 1997 Rules of Civil Procedure (provides) ‘Effect of failure to appear – The failure of the plaintiff to appear when so required pursuant to the next preceding section (Section 4, Rule 18 of the 1997 Rules of Civil Procedure) shall be cause for dismissal of the action.’

“Anent the second incident, per March 14, 2003 Order, plaintiff Sofia Violeta Gunabe-Roa, who was reportedly suffering from a migraine, failed to appear during the pre-trial. No valid excuse having been shown however or a duly authorized representative present in her behalf, this Court finds the same to be inexcusable.

“Section 4, Rule 18 of the 1997 Rules of Civil Procedure – ‘Appearance of parties – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefore or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.’

“In *American Ins. vs. Republic*, 21 SCRA 464, ‘Both client and counsel must appear at the pre-trial. This is mandatory. Failure of the client to appear is a ground for dismissal.’ Further, in *Tiu vs. Middletown*, 310 SCRA 580, the Supreme Court said that ‘pre-trial and its governing rules are not technicalities which the parties may ignore or trifle with.’

“In view of the foregoing, the Court resolves to deny the motion for reconsideration of the February 6, 2003 Order, filed by third-party defendant McGinity thru counsel. For failure of third-party plaintiffs Roque, Balliet and Roa III to submit their pre-trial briefs before the January 10, 2003 pre-trial, the same amounts to non-appearance and warrants the dismissal of the third-party complaint.

“Likewise, for the inexcusable failure of plaintiff Roa to appear during the March 14, 2003 pre-trial, the complaint should be dismissed.

“Dismissals for failure to appear at the pre-trial is similar to dismissals for failure to prosecute or to comply with an order of the court under Section 3, Rule 17 of the Rules of Court and is, therefore an adjudication on the merits unless otherwise provided by the court (*Gutierrez vs. CA*, 193 SCRA 437).

“WHEREFORE, premises considered, the complaint and the third-party complaint are hereby DISMISSED

with prejudice.

“SO ORDERED.

“Given in Chambers this 19th day of May (sic) in Quezon City.

“MA. THERESA L. DELA TORRE-YADAO

“Presiding Judge”

Accordingly in its Order of May 6, 2004, the Trial Court ruled, thus:

“Finding no cogent reason to set aside the Order dated May 19, 2003, the Motion for Reconsideration filed by defendants and third-party plaintiffs Balliet and Roa III thru’ counsel and the Motion for partial reconsideration, filed by defendant and third-party plaintiff Roque thru’ counsel, are hereby DENIED.

“SO ORDERED.

“Given in Chambers this 6th day of May, 2004 at Quezon City.

“(SGD.) MA. THERESA L. DELA TORRE-YABAO

“Presiding Judge.”

Taking exception thereto, the defendants-appellees and the third-party plaintiffs-appellants interposed an appeal to this Court.

For her part, the plaintiff-appellant Sofia Violeta Gunabe-Roa contested the dismissal of her complaint.

On March 30, 2005, the said plaintiff-appellant filed before this Court a manifestation with motion for time,[2] alleging, thus:

“1. Sometime in the second week of March, 2005, plaintiff-appellant approached undersigned counsel on the matter of the January 17, 2005 Notice of this Court;

“2. Representations were thereafter made with this Honorable Court and it was only then that it was learned that a previous notice (to file appeal brief) was served upon plaintiff-appellant’s former counsel, Atty. Leopoldo C. Sta. Maria, who had, however, already withdrawn as counsel for plaintiff-appellant as early as March 2004 (and who, undersigned counsel was informed, may have passed away shortly thereafter).

“The original copy of said counsel’s notice of withdrawal is hereto attached and submitted for the consideration of the Court.

“3. Records also show that an attempt was made to serve, by registered mail, similar notice at plaintiff-appellant’s New Manila address but the same never reached plaintiff-appellant on account of the fact that plaintiff-appellant now mainly stays in Tagaytay City.

“4. The January 17, 2005 Notice, also served by registered mail, was unfortunately received by the good graces of a neighbor/overseer of the property and thus reached plaintiff-appellant.

“5. It is upon these circumstances that plaintiff-appellant failed to file and serve the required appellant’s brief. Plaintiff-appellant begs the indulgence of the Court and submits that the same is due to a series of circumstances that have prevented plaintiff-appellant to comply mainly due to lack of notice and force majeure (See Monticines, et al. vs. CA, G.R. No. L-35913, September 4, 1973, and other cases therein cited; See also Infantado vs. Liwanag, G.R. No. L-23697, December 28, 1968).

“Plaintiff-appellant appeals to this Honorable Court’s better judgment and sense of justice that in view of these premises, her appeal be not dismissed and instead she be given time of at least thirty (30) days from date of receipt of the Order resolving this incident to draft an appropriate appellant’s brief, to file and serve the same.

“6. It is further respectfully requested that the appearance of the law firm indicated below be entered into the records of this case as counsel for plaintiff-appellant; and, in this connection, to order service unto said law firm any and all notices, pleadings, motions and such other papers that may be filed or served in regard to the instant case at the referenced address.

“7. Undersigned counsel likewise begs the indulgence of this Honorable Court as well as adverse counsels, to order that the defendant-appellant’s brief, appellee’s brief and other significant papers thus filed prior to this appearance be served upon undersigned counsel.

“PRAYER

“WHEREFORE, it is respectfully prayed that: (1) The appeal of Plaintiff-appellant Sofia Violeta T. Gunabe-Roa be not dismissed and instead she be given an opportunity to file and serve the required appellant’s brief; (2) Plaintiff-appellant be given at least thirty (30) days reckoned from receipt of the Order resolving this incident to prepare and file the required appellant’s brief; (3) The appearance of counsel for plaintiff-appellant be entered into the records of the instant case; and

“Such other relief and remedies as may be deemed just and equitable under the circumstances.

“Manila, March 28, 2005.

“J.G. SERRANO & ASSOCIATES

“Mezzanine, Renadar Bldg.

“Leon Guinto Street, Ermita, Manila

“Counsel for Plaintiff-Appellant S. Violeta T. Gunabe

“by:

“JESUS G. SERRANO

“PTR No. 01/13/05, Mla

“IBP O.R. No. 635286, 01/10/05, Mla. I

“Atty.’s Roll No. 35058”

However, in a Resolution dated June 3, 2005, this Court, thru its Special Twelfth Division,[3] denied plaintiff-appellant’s motion for time to file brief and dismissed her appeal.

This Court ruled:

“For resolution is the Manifestation with Motion for Time to file brief filed by the new counsel for plaintiff-appellant Sofia Violeta T. Gunabe-Roa, to which a Comment was filed by the counsel for defendants-appellees and third-party plaintiffs-appellants Balliet and Roa III.

“We find no merit in plaintiff-appellant Gunabe-Roa’s motion. Her failure to file the required brief was not due to force majeure or circumstances beyond her control but due to inexcusable negligence.

“The previous counsel for plaintiff-appellant was Atty. Leopoldo C. Sta. Maria who withdrew his appearance in March 2004 with the conformity of Sofia Violeta T. Gunabe-Roa herself. However, as claimed by her new counsel, Atty. Jesus G. Serrano, in his Manifestation with Motion for Time, plaintiff-appellant Gunabe-Roa engaged him as lawyer only in March, 2005 or after one-year from the withdrawal of Atty. Sta. Maria.

“From March, 2004 and up to the time she engaged her new lawyer in March, 2005, or for a period of one (1) whole year, plaintiff-appellant Gunabe-Roa did not take any step to pursue the appeal despite her receipt of a copy of the notice to file brief.

“Under the circumstances, thus, plaintiff-appellant Gunabe-Roa is guilty of laches.”

The foregoing resolution became final and executory on June 27, 2005, and was recorded in the book of entries of judgment as certified in the Partial Entry of Judgment.[4]

With the dismissal of plaintiff-appellant's appeal, the appeal of the defendants-appellees and third party plaintiffs-appellants, to which it is inextricably tied up, has thus become mooted, and must likewise be dismissed.

Controlling this case is *Lim v. Ang*,[5] where the Supreme Court declared: "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition (*Ocampo v. House of Representatives Electoral Tribunal*, G.R. No. 158466, June 15, 2004, 432 SCRA 144)."

Here, as elsewhere noted, the plaintiff-appellant alleged in her complaint[6] that the defendants-appellees and the third party plaintiffs-appellants induced her into granting them personal loans upon their representation that the same would constitute their respective capital contributions to Transpacific Oil & Gas Philippines (or TOGPI).

But in their answer[7] and in their third-party complaint,[8] the defendants and third-party plaintiffs pointedly countered that the third-party defendant Michael McGinity practically owned and managed the TOGPI; and that, moreover, that they knew, or were aware of, this fact.

Since the defendants-appellees and the third-party plaintiffs-appellants themselves could no longer be held liable under the main complaint, it must necessarily follow? under the same parity of reasoning and upon broad principles of justice and equity? that they themselves could no longer sue, and that they have no more cause of action against, the third party defendant under the third-party complaint.[9]

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal of the defendants-appellees and third-party plaintiffs-appellants must be, as it hereby is, DISMISSED. Without costs in this instance.

SO ORDERED.

Carandang and Arevalo-Zenarosa, JJ., concur.

* This case, although submitted for decision on November 30, 2005 yet, was raffled off to the ponente only on April 27, 2006.

[1] Record, pp. 1011-1012.

[2] Rollo, pp. 103-105.

[3] Composed of Acting Chairman, J. Danilo B. Pine, vice J.M.S. Villarama, on leave, and J. Lucas P. Bersamin, vice J.R.E. Maambong, also on leave, and the ponente J. Lucenito N. Tagle, Id., pp. 120-122.

[4] Id., p. 145.

[5] G.R. No. 152429, March 18, 2005, 453 SCRA 802, 811.

[6] Record, pp. 1-10.

[7] Id., pp. 351-361.

[8] Id., pp. 476-481.

[9] Cf. Bañez v. Court of Appeals, *supra*.

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