

**SPS. HENRY LUNA AND ANNABELLE LUNA, HECTOR LUNA, HELEN LUNA-NOESSLER AND FERDINAND SERNA,
PLAINTIFFS-APPELLANTS, VS. THE HEIRS OF ELINO AND PERPETUA TINOSA, NAMELY: BENITA TINOS...**

Ponente: BORJA, J.

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BORJA, J.:

This is an appeal from the July 5, 2010 Resolution[1] of the Regional Trial Court (RTC), 10th Judicial Region, Branch 3, Libertad, Butuan City, dismissing the complaint in Civil Case No. 5690, an action for “Breach of Contract, Specific Performance, Recovery of Realty and Damages”.

The Facts of the Case

The subject of this case is a 202,874-square-meter parcel of land (Lot 2824-C, being a portion of Lot 2824, Pls-22) situated at Barangay Dumalagan, Butuan City, and covered by Transfer Certificate of Title (TCT) No. RT-11725,[2] issued in the names of:

Elino Tinoso, married to Perpetua Mission

4.2874 hectares

Benita Tinoso, married to Jorge Besas

3.2000 hectares

Linda Tinoso, married to Sulpicio Culob

3.2000 hectares

Lolita Tinoso, married to Ricardo dela Paz

3.2000 hectares

Thelma Tinoso, single

3.2000 hectares

Camilo Tinoso, single

3.2000 hectares

In 1981, the above-mentioned registered owners (“the Tinosas”) mortgaged the subject lot to the Development Bank of the Philippines (DBP) to secure a loan of P44,800.00.[3] Upon the Tinosas’ failure to pay the loan, DBP foreclosed the mortgage. At the public auction, the D & L Lending Corporation (D & J Lending) emerged as the highest bidder. On May 9, 2001, the Tinosas redeemed the mortgaged property by paying P485,463.00 which the office of the provincial and city sheriff determined to be the redemption price. The following day, Sheriff Arthur

Calo executed a Sheriff's Certificate of Redemption. On May 16, 2001, the Registrar of Deeds for Butuan City wrote D & L Lending to surrender the owner's duplicate of TCT No. RT-11725. A second letter of the same tenor was sent to D & L Lending on May 25, 2001. The said corporation did not comply with either letter.[4]

Thus, on August 6, 2001, the Tinosas filed Civil Case No. 5133 before the RTC, Branch 3, Butuan City, against D & L Lending and DBP alleging that they had paid the redemption price despite the fact that the action for foreclosure had already prescribed; that they paid mistakenly believing in good faith that the redemption was their only option; that D & L Lending refused to comply with the order of the Register of Deeds to surrender the owner's duplicate of the certificate of title of the subject property.[5]

On February 20, 2002, the spouses Henry and Annabelle Luna, Hector Luna, Helen Luna-Noessler and Ferdinand Serna filed a complaint-in-intervention in Civil Case No. 5133 alleging that they had bought the subject property from the Tinosas for P80,000.00 - agreeing to pay P5,000.00 in December, 1986 and the balance to be amortized at P1,000.00 per month until fully paid and that the Lunas would assume the payment of the loan with DBP; that after the Lunas had paid over half the price of the sale, Elinio Tinosa (by then a widower) and the other heirs of Perpetua Mission Tinosa executed a "Deed of Waiver of Redemption Rights" in favor of the Lunas;[6] that on July 9, 2003, after the Lunas had fully paid the price of the sale, the Tinosas executed a Deed of Sale[7] in favor of the Lunas; that unbeknownst to the Lunas, the DBP had foreclosed the subject property and D & L Lending had acquired it for P450,000.00; that in May 2001, the Tinosas redeemed the property from DBP for P485,463.00; that the Lunas thus demanded that the Tinosas transfer to them whatever rights they had acquired from DBP; thus, the Lunas prayed for the possession of the subject property and the execution and delivery of the necessary documents to transfer ownership thereof to them. The Lunas deposited the amount of P480,000.00 allegedly representing the redemption price.[8]

The RTC, however, denied the motion to intervene finding that plaintiffs' cause of action could be better ventilated in a separate case. Thereupon, the plaintiffs withdrew the P480,000.00 deposit.[9]

On November 7, 2006, the Lunas filed the present case, Civil Case No. 5690, before the branch of the RTC of Butuan City where Civil Case No. 5133 was pending. In their complaint against the Tinosas, DBP and D & J Lending, the Lunas alleged essentially the same facts they had set forth in their complaint-in-intervention in Civil Case No. 5133. The complaint included a prayer for injunctive relief. At the ex-parte hearing on the application of a temporary restraining order in Civil Case No. 5690, the Lunas moved for the consolidation of Civil Cases Nos. 5133 and 5690. The trial court granted the motion to consolidate.[10]

In their answer to the complaint in Civil Case No. 5690, the Tinosas asserted that the purported Deed of Waiver of Redemption Rights and the Deed of Sale were null and void; that they were obtained by the Lunas based on inexistent facts and contrived circumstances; that the Lunas were guilty of laches for failing to notify DBP about the two instruments; that the Lunas had abandoned their rights and interests, if any, on the property when they withdrew the supposed redemption money in Civil Case No. 5133; that assuming that plaintiffs had the right over the property by virtue of the "Deed of Waiver" and the "Deed of Sale" documents, executed in 1989 and 1993, respectively, it had already prescribed when they filed the case (Civil Case No. 5690) only on November 7, 2006 based thereon.[11]

In its answer in Civil Case No. 5690, D & L Lending alleged that the Lunas had "no more cause of action since they failed to redeem the property within the one (1) year period" from its sale on December 20, 2000; that, the Lunas were not privies to the transaction D & J Lending had entered into with the Tinosas.[12]

The trial court resolved to hear D & J Lending's affirmative defenses on April 30, 2007.[13] On April 12, 2007, the trial court, realizing that it had inadvertently failed to schedule a hearing on the Tinosas' affirmative defenses,

set the simultaneous hearing on the affirmative defenses of both defendants on April 30, 2007.[14] At that hearing, Atty. Agustin Tarroza appeared on behalf of Atty. Dollfuss Go, counsel for the Lunas. Atty. Tarroza asked the court for 15 days within which to file a “Memorandum on the Answers with Counterclaims”. The court granted Atty. Tarroza’s motion and gave the defendants the same period from receipt of said memorandum to file a reply. The court set the preliminary conference before the branch clerk of court on August 31, 2007 and pre-trial on September 6, 2007.[15]

On May 30, 2007, the Lunas filed their “Opposition to Affirmative Defenses of Defendants” arguing that the Tinosas had abandoned their affirmative defenses when they sought the dismissal of the complaint-in-intervention in Civil Case No. 5133 and that, consequently, when the trial court denied their (Lunas’) intervention in Civil Case No. 5133, which was without prejudice to the Lunas’ right to re-file the same cause of action, the Tinosas could no longer argue that Civil Case No. 5690 was dismissible. The Lunas traversed the claim that they were guilty of laches and insisted that they had litigious issues which should be tried on the merits and not just resolved on the basis of the affirmative defenses.[16]

At the September 6, 2007 pre-trial conference, Atty. Wilfred de Asis, counsel for all the defendants, asked for time to submit a reply to the Lunas’ “Opposition to Affirmative Defenses”. The trial court granted the same and reset the preliminary conference to November 13, 2007 and the pre-trial to November 20, 2007.[17] On November 13, 2007, the preliminary conference was subsequently reset to January 25, 2008 because of the non-availability of the branch clerk of court. By agreement of the parties, pre-trial was reset to February 4, 2008.[18] Because of an electoral protest pending before the trial court, all settings between January 15 and January 25, 2008 were canceled. Thus:

WHEREFORE, reset the pre-trial conference to February 4, 2008, at 8:30 in the morning as previously scheduled.[19]

On February 12, 2008, the Lunas filed their Pre-Trial Brief with the court.[20]

On February 4, 2008, the trial judge was indisposed; pre-trial was reset to May 7, 2008.[21]

On April 8, 2008, the Tinosas filed their “Reply to Opposition”, i.e., the Lunas’ “Opposition to Affirmative Defenses”, arguing that the court’s dismissal without prejudice of the Lunas’ complaint-in-intervention did not preclude the Tinosas from setting up affirmative defenses in Civil Case No. 5690.[22]

On April 28, 2008, D & L Lending filed its Pre-trial Brief.[23] The Tinosas filed their Pre-Trial Brief on May 7, 2008.[24]

At the May 7, 2008 pre-trial, counsel for the Tinosas manifested in open court that there was a need to hear Civil Case No. 5133 first since the outcome of that case would affect the resolution of Civil Case No. 5690. Finding merit in the manifestation, the lower court issued an Omnibus Order ordering thus –

WHEREFORE, the proceedings in Civil Case No. 5690 is held in abeyance pending the receipt of the Court to the filing [sic] of Atty. Asis of the appropriate pleading. The proceedings in Civil Case No. 5133 is reset to May 23, 2008 at 2:00 o’clock in the afternoon.

SO ORDERED.[25]

On May 23, 2008, however, the counsel for the Tinosas filed an “Omnibus Manifestation and Motion” arguing that their affirmative defenses raised in Civil Case No. 5690 should be resolved first to determine if the Lunas’ complaint should be dismissed. Otherwise, it was argued, Civil Case No. 5690 should be held in abeyance to await the decision in Civil Case No. 5133. The Tinosas pointed out that since Civil Case No. 5133 dealt with the

issue of redemption, if the court were declare that the Tinosas had validly exercised their redemption rights on the subject property, the issue of ownership involved in Civil Case No. 5690 would subsist; the Lunas would then have the right to pursue their claim of ownership of the property against the Tinosas. On the other hand, if the Tinosas's redemption was not valid, ownership would already have already been consolidated in favor of D & L Lending and, thus, there would be no more triable subject matter in Civil Case No. 5690.[26]

On June 24, 2008, the Lunas filed a Manifestation pointing out that the trial court, in its Order of May 7, 2008, had suspended proceedings in Civil Case No. 5690 pending receipt by the court of an "appropriate pleading" from Atty. Asis; that "it would be unjust to keep the proceedings in Civil Case No. 5690 suspended indefinitely"; that "the period for the filing of the projected pleading be FIXED".[27]

On June 23, 2008, the trial court issued an Order giving Atty. Asis twenty days to file his reply and Atty Go fifteen days to file his rejoinder. The court added: "Tentatively reset the pre-trial conference of these cases to September 25, 2008 at 2:00 o'clock in the afternoon in chambers and the pre-trial conference [sic] to October 7, 2008 at 9:00 o'clock in the morning." [28]

On July 1, 2008, the Lunas filed their "Opposition to the Motion to Dismiss / Suspend the Proceeding in Civil Case No. 5690" contending that the nature of their claim in Civil Case No. 5690 was the identical to their claim in their complaint-in-intervention in Civil Case No. 5133. Thus, when the court denied the Lunas' intervention in Civil Case No. 5133 and pronounced that their claim could be the subject of a separate case, the said court had no reason to dismiss Civil Case No. 5690. Moreover, the Lunas argued, the allegation of fraud supposedly committed by the Lunas in securing the questioned documents were at best evidentiary and may only be threshed out in a trial on the merits. It was further argued that suspending the proceedings in Civil Case No. 5690 would only unduly delay the disposition of the case. Except for the Lunas, all other parties in Civil Case No. 5133 were also parties in Civil Case No. 5690. All of them had the same causes, defenses and pieces of evidence to be presented in a joint trial of the cases. It was precisely for these reasons that the court had ordered a joint preliminary conference and pre-trial of the cases.[29]

On July 1, 2008, Atty. Go filed his "Opposition to Motion to Dismiss / Suspend Proceedings in Civil Case No. 5690".[30]

On August 7, 2008, the trial court issued an Omnibus Resolution decreeing thus –

WHEREFORE, PREMISES CONSIDERED, the Court resolves not to suspend the hearing of Civil Case No. 5690 but resolves to hear the cases separately.

SO ORDERED.[31]

On October 2, 2008, the trial court reset the preliminary conference in Civil Case No. 5690 to December 4 and the pre-trial conference to December 9, both in 2008.[32] These dates, however, were again reset in view of the presiding judge was availing of his forfeitable leaves. The preliminary conference was reset to February 23 and the pre-trial conference was reset to March 30, both in 2009.[33] Once more, the dates were moved: preliminary conference on April 22 and pre-trial conference on April 28, both in 2009.[34]

On March 16, 2009, DBP filed a Motion to Admit Answer,[35] attaching therewith its Answer Ad Cautelam,[36] in Civil Case No. 5690, denying knowledge of any contract or agreement entered between the Lunas and the Tinosas in relation to the subject property. The answer was "filed without prejudice to the Honorable Court's leave for defendant DBP to adopt its Answer filed in Civil Case No. 5133 previously consolidated with the instant case and is still pending before this same Honorable Court".

The Lunas opposed the motion arguing that that it was a litigious motion which should have been set for hearing

and that the answer attached thereto was already filed out of time.[37]

In its Order of March 18, 2009, the trial court set DBP's motion for hearing on April 24, 2009 and canceled the April 22, 2009 preliminary conference and the April 28, 2009 pre-trial conference.[38]

On different dates, Attys. Asis and counsel for DBP, Lyndon Romero, filed respective motions to reset the preliminary and pre-trial conferences.[39] Whereupon, on April 28, 2009, the trial court made the following resettings in Civil Case 5690: June 6, June 8, and June 30, all of 2009 for, respectively, the hearing on the motion to admit answer, the preliminary conference and the pre-trial. On April 28, 2009, to accommodate all the parties, the trial court reset once more the schedule thus: June 5, June 8, and June 30, all in 2009, for, respectively, the hearing on the motion to admit answer, the preliminary conference and the pre-trial.[40]

On June 8, 2009, the preliminary conference proceeded; all parties and their respective counsels were present. The branch clerk of court noted that "All counsels agreed that Pre-Trial Conference shall proceed at date available when the Presiding Judge will come back from his major health operation and after all the counsels will submit their pre-trial conference [sic] and/or amended pre-trial conference [sic]."[41]

On June 16, 2009, DBP filed its Pre-Trial Brief with the court.[42] On August 17, 2009, the Tinosas also filed their Amended Pre-Trial Brief.[43]

On November 9, 2009, the trial court set the pre-trial conference on January 21, 2010 at 8:30 in the morning.[44] This date was subsequently reset to February 18, 2010 at 8:30 in the morning.[45]

At the February 18, 2010 pre-trial conference, all the parties were present and were represented by their respective counsels except for the Lunas who were not present and not represented by their counsel of record, Atty. Go. Atty. Tarroza, who manifested that he was not aware of the whereabouts of the Lunas, appeared for Atty. Go who was in Manila. Atty. Tarroza claimed that his only purpose for appearing was to inform the court "that pre-trial stage was not yet ripe considering that there are pending incidents yet to be resolved by the court including DBP's Motion to Admit Answer as well as the Lunas' opposition thereto. Whereupon, the lower court reset pre-trial anew to April 13, 2010, granting the Tinosas in the meanwhile ten (10) days to file an "appropriate pleading" in response to Atty. Tarroza's manifestation and giving Atty. Go the same period to reply thereto.[46]

On March 2, 2010, the Tinosas filed a "Motion to Dismiss Complaint for Unjustified Failure of Plaintiffs to Appear at the Pre-Trial Conference." Citing Rule 18, Sections 4 and 5, of the Rules of Court, the Tinosas said:

4. Herein movants Heirs of Elino and Perpetua Tinosas, with due respect, are not involved in any manner with the question of whether DBP's answer in the case should be admitted or not since their cause against DBP is already the subject of a separate and distinct case, Civil Case No. 5133 xxx.

5. It follows that the issues between plaintiffs Lunas and the herein movant-defendants, in this case, should only be confined to the extent of the pleadings between them. The pendency of the admission of DBP's answer to the Lunas' complaint is extraneous, immaterial and irrelevant to the issues between plaintiff Lunas and herein movant-defendant Heirs of Elino and Perpetua Tinosas.

X X X

8. There was no written pleading or motion to explain the physical absence of all the plaintiffs in the pre-trial conference of 18 February 2010. There was also no motion to postpone the pre-trial conference filed by the plaintiffs. Atty. Tarroza likewise did not have an explanation about such absence. He, however, did say that it was Atty. Dollfuss R. Go who was their counsel and Atty. Go, likewise, was absent at the time for being in Manila.

9. Given the foregoing factual proceedings of 18 February 2010, it is respectfully submitted that there is no valid excuse for all the plaintiff's absence in the said pre-trial conference. Nor were they represented by any person authorized in writing to appear in their behalf for pre-trial purposes. [47]

On March 16, 2010, when the case was called for hearing on the above-cited "Motion to Dismiss," Attys. Asis and Romero appeared in court. Atty. Go failed to appear. While a notice of hearing on the motion was earlier sent to Atty. Go, there was as yet no proof whether Atty. Go received the notice of the day's hearing. Atty. Asis moved that the Tinosas' motion to dismiss Civil Case No. 5690 be deemed submitted for resolution unless Atty. Go opposed the motion. The court granted Atty. Asis's motion and deemed the motion to dismiss submitted for resolution upon lapse of 15 days from notice with or without the opposition of Atty. Go.[48]

On April 12, 2010, Atty. Asis filed a "Supplemental Manifestation in Support of the Motion to Dismiss Complaint for Unjustified Failure of Plaintiffs to Appear at the Pre-Trial Conference" alleging that a copy of the motion to dismiss had been sent to and received by Atty. Go on March 4, 2010, as shown from the Registry Return Card of the Post Master. Atty. Asis further alleged that Atty. Go received the court's notice of hearing on the motion to dismiss on March 16, 2010 but had not filed any opposition thereto.[49]

On April 13, 2010 – the date of the rescheduled pre-trial - Attys. Go (for plaintiffs), Asis (for Tinosas) and Pocalan (for D & L Lending Corp.) were present. Atty. Romero, counsel for DBP was not present. The Court granted Atty. Go a period of 10 days from notice to submit his opposition on the Tinosas' "Supplemental Manifestation in Support of the Motion to Dismiss Complaint for Unjustified Failure of plaintiffs to Appear at the Pre-Trial Conference." The court also gave Atty. Pocalan the same period to submit his comment on the said motion. Atty. Asis was also given the same period from receipt of Tinosas' opposition to file his reply thereto.[50]

On April 21, 2010, Atty. Go filed his "Comment on / Opposition to the Motion to Dismiss" arguing that the case was not yet ripe for pre-trial considering that there was still a pending "Motion to Admit Answer" filed by DBP. Atty. Go added that while he failed to appear at the hearing, his law partner Atty. Tarroza appeared and manifested in his behalf that the principal party-plaintiff, Henry Luna, was ill and could not attend the pre-trial conference. Atty. Go, thus, prayed that the motion to dismiss be denied and that a pre-trial conference be set anew.[51]

On May 5, 2010, the Tinosas replied arguing that the Lunas had unjustifiably failed to appear at the originally scheduled pre-trial; that, contrary to Atty. Go's allegations, Atty. Tarroza had merely said that Atty. Go could not appear at the hearing since he was Manila and denied knowledge of the plaintiffs' whereabouts thus Atty. Go was less than candid with the court; that the illness of Henry Luna was a lame excuse for his absence at the hearing; that Henry Luna had all the opportunity to equip his co-defendants or Atty. Tarroza with a Special Power of Attorney to represent him at the pre-trial conference.[52]

On July 5, 2010, the trial court issued the herein assailed Resolution decreeing thus –

WHEREFORE, pursuant to Sections 4 and 5 of Rule 18 and Section 3, Rule 17 of the Rules of Court, the Court GRANTS the Motion to Dismiss dated February 26, 2010 filed by defendants Heirs of Tinosas, et al.

SO ORDERED.[53]

Hence, this appeal.

The Lunas (hereinafter, appellants) assign the following as errors of the trial court:

I

WITH ALL DUE RESPECT, THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN DISMISSING THE CASE FOR FAILURE TO APPEAR IN THE PRE-TRIAL CONFERENCE WHEN THE CASE WAS NOT READY FOR SUCH CONFERENCE THERE BEING A PENDING MOTION FOR DEFENDANT-APPELLEE DBP TO ADMIT ITS BELATED ANSWER WHICH SAID COURT HAD NOT RESOLVED AS OF THE DATE THE ORDER DISMISSING THE CASE WAS ISSUED ON JULY 5, 2010.

THAT ERROR IS JURISDICTIONAL SINCE PRE-TRIAL CONFERENCE COULD ONLY BE MADE WHEN ISSUES ARE ALREADY JOINED UPON SUBMISSION OF THE PLEADINGS OF THE PARTIES. AT BEST, THE HONORABLE TRIAL COURT SHOULD HAVE FIRST DENIED OR GRANTED THE MOTION TO ADMIT THE BELATED ANSWER OF DEFENDANT-APPELLEE DBP BEFORE SCHEDULING THE CASE FOR PRE-TRIAL CONFERENCE SO THAT THE PARTIES, INCLUDING APPELLANTS WOULD BE PROPERLY NOTIFIED THAT THE CASE IS READY FOR PRE-TRIAL CONFERENCE;

II

LIKEWISE, THE HONORABLE COURT A QUO SERIOUSLY ERRED IN DISMISSING THE COMPLAINT FOR FAILURE TO APPEAR IN THE PREMATURE PRE-TRIAL CONFERENCE WHEN THERE WAS A PENDING UNRESOLVED MOTION TO DISMISS FILED BY DEFENDANT-APPELLEE HEIRS OF ELINO TINOSA, WHICH IN THE ORDER OF JUNE 18, 2010, THE HONORABLE TRIAL COURT CONSIDERED AS SUBMITTED FOR RESOLUTION. IT CANNOT, THEREFORE, SET THE CASE FOR PRE-TRIAL CONFERENCE BEFORE THE MOTION IS RESOLVED, THE DISMISSAL FOR FAILURE TO ATTEND THE PREMATURE SCHEDULE OF PRE-TRIAL CONFERENCE BEING AN ACT IN EXCESS OF JURISDICTION.

III

FURTHER, THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN FAILING TO CONSIDER THAT DEFENDANT-APPELLEE HEIRS OF ELINO TINOSA SOLD ALREADY THEIR RIGHTS TO APPELLANTS FOR A SUBSTANTIAL SUM OF MONEY BUT FAILED TO COMPLY WITH THEIR WARRANTY AGAINST EVICTION SUCH THAT A DISMISSAL OF THE COMPLAINT OF APPELLANTS WOULD BE A SERIOUS AND INJURIOUS VIOLATION OF THE CONSTITUTIONAL AND STATUTORY RIGHTS OF APPELLANTS TO DUE PROCESS OF LAW.[54]

The Ruling of the Court

Sections 4 and 5 of Rule 18 of the Rules of Court provide –

SEC. 4. 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 therefor 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 of documents.

SEC. 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

Section 3 of Rule 17 of the said Rules also provides –

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.

The foregoing provisions, invoked by the lower court in dismissing appellants' complaint, are couched in mandatory language. It is a settled rule in legal construction that when the word "shall" or other words of command are used, they are regarded as mandatory and not merely directory. In the above-cited Rules and Sections, the use of the word "shall" imports mandatory duties on the part of the parties as well as on the part of the court including the duty on the part of the lower court to dismiss the case upon failure of appellants and their counsel to appear at pre-trial.

The Court must nonetheless be mindful of its duty to weigh the mandatory character of the rules with a party's substantial right lest such party be deprived of his day in court. In *Bank of the Philippine Islands vs. Dando*,^[55] the High Court said:

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

Indeed, courts are cautioned against improvident dismissal of cases for failure to appear at the pre-trial, or other lapses amounting to failure to prosecute. In *Marahay v. Melicor*,^[56] the High Court emphatically instructs that:

While a court can dismiss a case on the ground of non prosecution, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.

Indeed, the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case. There must be sufficient reason to justify the dismissal of a complaint.^[57]

In *Sanchez v. Court of Appeals*,^[58] the High Court enumerated possible grounds which may justify a court from strict adherence to procedural rules. The grounds include –

- (a) matters of life, liberty, honor or property;
- (b) the existence of special or compelling circumstances;

- (c) the merits of the case;
- (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
- (e) a lack of any showing that the review sought is merely frivolous and dilatory; and
- (f) the fact that the other party will not be unjustly prejudiced thereby.[59]

The Court finds that a number of the enumerated circumstances attended the proceedings below.

First. Appellants' complaint in Civil Case No. 5690 was necessitated by the denial of their motion to intervene in Civil Case No. 5133. Both cases involve a property or rights derived from it. The dismissal of their complaint in the present case would have the effect of denying them the opportunity to substantiate their allegations. That is, it would deny them their day in court. To the mind of this Court, this constitutes a "matter of property" which, according to the Sanchez case, *supra*, warrants a relaxation of the strict rules of procedure.

Second. On the other hand, the Court discerns no prejudice on the part of appellees Tinosas if their motion to dismiss were to be denied. None of the Tinosas would be prejudiced should the court proceed with the hearing of Civil Case No. 5690 since all of them may still plead their defenses; none of them were deprived of due process of law.

Third. The failure of appellants and their counsel to appear at pre-trial is not entirely attributable to appellants. The Court notes that there have been innumerable cancellations, postponements and resetting of the preliminary conference and the pre-trial. The Court counts about thirteen (13) such cancellations, postponements or resetting. The bulk of these are on motion, or upon the request, or with the agreement of the Tinosas. A number of them are also attributable to the lower court itself.

There have been as well numerous twists and turns in the case including the lower court's consolidation and subsequent severance of the two cases.

Finally, a number incidents remain unresolved by the lower court. Chief among them is the matter of the motion of DBP for the admission of its answer in Civil Case No. 5690. While DBP had already filed its answer in Civil Case No. 5133, it pleaded to be allowed to file its answer and not merely adopt its answer in Civil Case No. 5133. This move was prompted by the lower court's flip-flopping on the matter of whether to conduct a joint or several trial.

To the mind of the Court, these constitute causes for the delay or the prolongation of the proceedings below. The proper course of action would have been for the lower court to allow all parties to complete the pleadings stage before calling for pre-trial.

Fourth. The records do not disclose any evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. Plaintiffs raised a reasonable issue of prematurity to conduct pre-trial considering that there was yet a pending incident, i.e. DBP's Motion to Admit Answer and Plaintiffs' Opposition thereto, for the court to resolve. Unless the court had already conducted a hearing to resolve the matter, and issues are thereafter joined, the pre-trial conference was indeed hastily set.

Fifth. There are indications that the lower court itself felt there were matters it had to address before proceeding to pre-trial. Hereunder is the chronology of dates which showed that the court was initially cautious not to proceed with the pre-trial unless the pending incidents were resolved. However, in its subsequent Orders, the court wittingly or unwittingly obliterated the need of hearing these pending incidents by setting the case for pre-trial conference. Viz –

In an Order dated March 18, 2009, the court received the March 16, 2009 “Motion to Admit Answer” with attached “Answer Ad Cautelam” (With Affirmative Allegations/Defenses) filed by DBP. The court resolved to hear the motion on April 24, 2009, hence, pre-trial conference set on April 28, 2009 was cancelled.[60]

In its Amended Order of April 28, 2009, the court reset the hearing on DBP’s Motion to Admit Answer and the Opposition thereto to June 5, 2009. Accordingly, the pre-trial conference was reset to June 30, 2009.[61] In its Order of November 9, 2009, the court set the case for pre-trial on January 21, 2010[62] which was later cancelled considering that the court was conducting its semestral inventory of cases. Hence, the pre-trial was postponed and reset to February 18, 2010.[63]

In its Order of February 18, 2010, during the scheduled date of pre-trial, the court noted that plaintiffs and their counsel were not present. Nevertheless, the court set the case for pre-trial conference again on April 13, 2010, without prejudice to the filing of the appropriate pleading by the opposing counsel.[64]

In its Order of April 13, 2010, the date set for pre-trial, the court noted that plaintiffs’ counsel was present but the latter opposed to the day’s setting of pre-trial considering that there were still pending motions to be resolved. The court then ordered the plaintiffs to file their opposition to Tinosas’ Motion to Dismiss and, within the same period, for the Tinosas to file a reply thereto.[65]

Clearly, it was an afterthought for the court to say that precisely it ordered the pre-trial conference (without resolving the pending motion) because it had already deemed the DBP’s Answer in Civil Case No. 5133 sufficient. Had it found DBP’s Answer in Civil Case No. 5133 already sufficient, from the start, it would have explicitly held so. DBP’s motion to dismiss - and the plaintiffs’ opposition thereto - were litigious in character and the court should not have dispensed with the requirement of hearing before setting the case for pre-trial.

The High Court has frowned upon precipitate dismissal of cases, resulting in loss of the party’s opportunity to present his evidence, and dispose of them on blind adherence to technicalities. This would produce a false impression of speedy disposition of cases while actually resulting in more delay, if not miscarriage of justice.[66] The rules of procedure are designed to facilitate the attainment of justice, hence, courts must avoid the rigid application of the rules which tends to frustrate rather than promote the ends of justice. The ends of justice and fairness would be better served if the parties in Civil Case No. 5690 are given full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Prudence dictates that the case should be allowed to continue until its full termination.

WHEREFORE, the assailed Resolution dated July 5, 2010 is REVERSED and SET ASIDE. The Regional Trial Court, 10[th] Judicial Region, Branch 3, Libertad, Butuan City, is DIRECTED to conduct a pre-trial conference and then to proceed to trial on the merits of the case with utmost dispatch.

SO ORDERED.

Francisco and Badelles, JJ., concur.

[1] Rollo, pp. 9-14.

[2] See Records, pp. 60-61

[3] See Records, pp. 20-22

[4] See copy of complaint; Records, p.101-105. Only a portion of the said pleading is attached to the records.

[5] Id.

- [6] See Records, p. 28
- [7] See Records, pp. 29-31
- [8] Complaint in Civil Case No. 5690; Records, pp. 1-17.
- [9] Id. See also Records, 32-33.
- [10] Records, pp. 1-17.
- [11] Records, pp. 86-94
- [12] Records, pp. 107-111
- [13] Records, p. 112.
- [14] Records, p. 114.
- [15] Records, p. 115.
- [16] Records, pp. 125-134.
- [17] Records, p. 135.
- [18] Records, p. 139.
- [19] Records, p. 147.
- [20] Records, pp. 148-156
- [21] Records, 157.
- [22] Records, pp. 159-165.
- [23] Records, pp. 166-168
- [24] Records, pp. 171-174
- [25] Records, p. 175.
- [26] Records, pp. 176-178
- [27] Records, pp. 180-181.
- [28] Records, p. 183.
- [29] Records, p. 184-196
- [30] Records, pp. 184-196.
- [31] Records, pp. 197-202.
- [32] Records, p. 203.
- [33] Records, p. 210.
- [34] Records, p. 218.
- [35] Records, pp. 225-226
- [36] Records, pp. 227-230

- [37] Records, pp. 231-233
- [38] Records, p. 234.
- [39] Records, pp. 236-238 and 239-240.
- [40] Records, p. 243; p. 243-A.
- [41] Records, pp. 259-264.
- [42] Records, pp. 251-253
- [43] Records, pp. 254-258
- [44] Records, p. 265.
- [45] Records, p. 267.
- [46] Record, pp. 277-278
- [47] Records, pp. 280-286
- [48] Records, p. 288
- [49] Records, pp. 289-296
- [50] Records, p. 305
- [51] Records, pp. 297-303
- [52] Records, pp. 307-314
- [53] Note 1, *supra*, p. 14.
- [54] Appellant's Brief; Rollo,, pp. 23-44. See pp. 29-32.
- [55] G.R. No. 177456, September 04, 2009, citing *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, *Reyes v. Torres*, 429 Phil. 95, 101 (2002).
- [56] G.R. No. L-44980, February 6, 1990
- [57] see *RN Development Corporation v. A.I.I. System, Inc*, G.R. No. 166104, June 26, 2008
- [58] 452 Phil. 665, 674 (2003); *Macasasa v. Sicad*, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 383, citing *Barnes v. Padilla*, 482 Phil. 903, 915 (2004).
- [59] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006
- [60] Records, p. 234
- [61] Records, p. 243-A
- [62] Records, p. 265
- [63] Records, p. 267-A
- [64] Records, pp. 277-278
- [65] Records, p. 305

[66] Agulto, et al. v. Tecson, G.R. No. 145276, November 29, 2005

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