MEDARDO PAGOBO, ATTYORNEY-IN-FACT OF MARCELO EYAS, PLAINTIFF-APPELLANT, VS. SULPICIO LAO, MARRIED TO SABINA YU, ROBERT YU, VICKY YU, JAMES YU, AND ANTONIO R. SANTOS DEFENDANTS-A...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Challenged in this Appeal is the Order[1] dated 30 July 2007 Decision of the Regional Trial Court, Branch 53, Lapu-lapu City. The dispositive portion[2] of which reads:

> WHEREFORE, all the foregoing premises considered, the instant case is hereby DISMISSED for lack of cause of action.
>
> FURTHERMORE, the "Motion to Substitute Deceased Plaintiff Marcelo Eyas with his Heirs" filed by the plaintiff's counsel is hereby DENIED.

FACTS
The facts are as follows:

On 25 March 1996 plaintiff-appellant filed an action for "Declaration of Nullity of Documents, Redemption, etc."[3] originally against Sulpicio Lao, married to Sabina Lao. The said defendants filed a Motion to Dismiss[4] the complaint on 2 May 1996 on the ground of res judicata vis-à-vis Civil Case No. 2192-L, filed by Francisco Eyas, et.al. against Ursulo Eyas, et.al. According to the appellant, this latter case was dismissed by the Lapu-lapu City Regional Trial Court, Branch 53.

On 29 May 1996, Medardo Pagobo, still as Attorney-in-fact of Marcelo Eyas, filed an Amended Complaint[5], impleading additional defendants Robert Yu, Vicky Yu, James Yu, and Antonio Santos.

According to the appellees, after the appellant filed his Amended Complaint, which impleaded additional defendants, they filed a Supplementary Motion to Dismiss[6] on 24 February 2003. In an Order[7] dated 29 May 2007, the aforementioned motions were denied by the trial court for failure to comply with the requisite notice of hearing.

On 19 June 2007, appellees filed a Motion for Reconsideration[8], which was however denied for being pro-forma.

On 27 June 2007, through collaborating counsel, appellees filed a Second Supplemental Motion to Dismiss[9] based on the following grounds:

- The action is not being prosecuted in the name of the real-party-in-interest;

- Marcelo Eyas died on 17 June 2004, and hence, Medrado Pagobo has lost any authority;

- Forum shopping;

Appellant filed a written Opposition[10] to the said Second Supplemental Motion. Subsequently, appellant filed a Motion[11] to Substitute deceased plaintiff Marcelo Eyas with his heirs.

On 30 July 2007, the RTC issued the challenged Order[12], dismissing the case for lack of cause of action, as the same is not being prosecuted in the name of the real party in interest.

Hence, this appeal.

ISSUES

Seeking the reversal of the challenged Order, appellants assign the following errors for our consideration:

> I.
> THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN DISMISSING THE CASE ON THE BASIS OF [THE] SECOND SUPPLEMENTAL MOTION TO DISMISS FILED BY REPONDENT-APPELLEES, WHICH IS A VIOLATION OF OMNIBUS MOTION RULE UNDER RULE 15, SECTION 8 IN RELATION TO RULE 9, SECTION 1 OF THE RULES OF COURT;
>
> II.
> THE HONORABLE REGIONAL TRIAL COURT LIKEWISE ERRED IN DISMISSING THIS FOR LACK OF CAUSE OF ACTION, NOT HAVING BEEN FILED AND PROSECUTED FOR AND IN THE NAME OF MARCELO EYAS, THE [SIC] REAL PARTY IN INTEREST.

OUR RULING

The appeal is meritorious.

Since the issues are interrelated, we shall discuss them jointly.

Appellant points out that appellees filed a Motion to Dismiss and Supplementary Motion to Dismiss prior to the filing of a Second Supplementary Motion to Dismiss on 4 July 2007. These motions were denied or dismissed by the court a quo for lack of the requisite notice of hearing.

For the appellant, appellees' act of filing piecemeal objections to the complaint were intended to delay his cause of action, in clear violation of the Omnibus Motion Rule. He further argues that appellees are barred from raising the ground that the action is not prosecuted by or in the name of the real party in interest or lack of cause of action, in their Second Supplemental Motion to Dismiss, because this particular ground for the dismissal of the complaint is deemed waived when they failed to include it in their first Motion to Dismiss, since such ground was already available at that time, but appellees failed to include it.

For their part, appellees counter by saying that the court a quo did not commit any error in considering the Supplemental Motion to Dismiss filed by them.

We agree with the appellant.

Sec. 8, Rule 15 of the Rules of Court embodies what is referred to as the Omnibus Motion Rule. The rule is a procedural principle which requires that every motion that attacks a pleading, judgment, order or proceeding shall include all the grounds then available, and all objections not so included shall be deemed waived.[13]

A motion to dismiss is a typical example of a motion subject to the omnibus motion rule, since a motion to dismiss attacks a complaint which is not a pleading.[14] Following the omnibus motion rule, if a motion to dismiss is filed, then the motion must invoke all objections which are available at the time of the filing of said motion. If the objection which is available at the time is not included in the motion, that ground is deemed waived.[15] It can no longer be invoked as an affirmative defense in the answer which the movant may file following the denial of his motion to dismiss.[16]

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In this case, appellees' Supplemental Motion to Dismiss and Second Supplemental Motion to Dismiss[17] were clearly in violation of Rule 15, Section 8 in relation to Rule 9, Section 1 of the Rules.

Rule 15, Section 8 of the Rules provides:

> Sec. 8. Omnibus motion. - Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or a proceeding shall include all objections then available, and all objections not to included shall be deemed waived.

Rule 9, Section 1, in turn, states:

> Sec.1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim.

Applying the foregoing rules, appellees' failure to raise the alleged non-prosecution of the case in the name of the real party in interest, in their very first motion to dismiss was fatal to their cause. They are already deemed to have waived that ground for dismissal of the complaint.

In a very recent case, the Supreme Court even ventured to say that the Rules of Court only allows the filing of a motion to dismiss once.[18] In that case, the Court signified that the act of filing successive motions to dismiss under the guise of "supplemental motion to dismiss" is not only improper but dilatory.[19]

Thus, the trial court plainly erred when it dismissed the complaint on the ground of non-prosecution of the case in the name of the real party in interest. Under the Rules, the only grounds that the court could take cognizance of, even if not pleaded in the motion to dismiss or answer, are: (a) lack of jurisdiction over the subject matter; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior judgment or by statute of limitations.[20]

In Anunciacion vs. Bocanegra[21], the Supreme Court emphatically said that:

> We likewise cannot approve the trial court's act of entertaining supplemental motions to dismiss which raise grounds that are already deemed waived. To do so would encourage lawyers and litigants to file piecemeal objections to a complaint in order to delay the prosecution of the plaintiff's cause of action.

More importantly, dismissing a case based on perceived errors in the title of the action goes against the essence of justice. Rules of Procedure are mere tools designed to facilitate the attainment of justice. Hence, their strict application that would result in technicalities and tend to frustrate rather than promote substantial justice must, accordingly, "always be eschewed."[22] The Rules itself expressly states in Section 2 of Rule 1 that the rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.

The foregoing especially applies in this case since Medardo Pagobo (hereinafter "Pagobo") does not make any pretension that he is the real-party-in-interest. He was properly authorized to file the case through a Special Power of Attorney (SPA) executed by Marcelo Eyas. The cases cited by the trial court and the appellee fails to persuade since those cases are not in all fours with the present controversy. Here, the opening paragraph of the Amended Complaint's[23] body clearly states: "Plaintiff, represented by his attorney in fact Medardo Pagobo xxx".

Insufficiency in form and substance, as a ground for dismissal of the complaint, should not be based on the title or caption, especially when the allegations of the pleading support an action.[24]

Thus, we are of the opinion that Rules have been substantially complied with. The complaint sufficiently establishes that the action was brought in the name, and in behalf of, Marcelo Eyas, who is the real party-in-interest. The body of the Complaint also sufficiently states Marcelo Eyas' cause of action against the appellees.

As a necessary consequence of the foregoing, the "Motion to Substitute Deceased Plaintiff Marcelo Eyas with his heirs"[25] must be admitted.

When a party to a pending action dies and the claim is not extinguished, the Rules of Court require a substitution of the deceased.[26]

The procedure is specifically governed by Section 16 of Rule 3, which reads:

> "Section 16. Death of a party; duty of counsel. –Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate.[27]

Here, since Marcelo Eyas died during the pendency of the case, his counsel properly filed a Motion for Substitution. In view of our finding that that this suit was sufficiently brought in the name of Marcelo Eyas, the Motion to Substitute must be given due course. However, since there is no evidence that the Heirs of Marcelo Eyas executed a Special Power of Attorney (SPA) authorizing Pagobo to continue representing them, the latter can no longer be considered as their attorney-in-fact since agency is extinguished upon death of the principal.[28]

We therefore remand this case to the trial court so that its merits be finally adjudicated.

WHEREFORE, the appeal is GRANTED. The Order of the trial court dated 30 July 2007 is hereby SET ASIDE. Let this case be REMANDED to the Regional Trial Court for further proceedings.

SO ORDERED.

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

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[1] Rollo, pp. 50-52.

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[2] Rollo, p. 52

[3] Records, pp.1-4

[4] Records, pp.19-25

[5] Records, pp.44-50

[6] Records, pp.59-66

[7] Records, p.131

[8] Records, pp.142-145

[9] Records, pp.133-138

[10] Records, pp.153-155

[11] Records, pp.147-148

[12] Records, pp.156-158

[13] Home Development Mutual Fund vs. Spouses See and Sheriff Arimado, G.R. No. 170292, June 22, 2011.

[14] Riano, Civil Procedure (The Bar Lecture Series), Volume I, 2011, 370-371.

[15] Ibid

[16] Id.

[17] Rollo, p.133-139

[18] Tung Ho Steel Enterprises Corporation vs. Ting Guan Trading Corporation, G.R. No. 182153 April 7, 2014, citing Section 8, Rule 15 of the Rules of Court in relation to Section 1, Rule 9 of the Rules of Court.

[19] Id.

[20] Section 8, Rule 15 of the Rules of Court in relation to Section 1, Rule 9 of the Rules of Court.

[21] G.R. No. 152496, July 30, 2009.

[22] Apo Fruits Corporation vs. Land Bank of the Philippines, G.R. No. 164195, October 12, 2010 citing Ginete vs. Court of Appeals, 292 SCRA 38.

[23] Records, p.44

[24] G.R. No. 167181, December 23, 2008.

[25] Records, p.147

[26] De la Cruz v. Joaquin, G.R. No. 162788, July 28, 2005.

[27] Spouses Julita de la Cruz and Felipe de la Cruz vs. Pedro Joaquin, G.R. No. 162788, July 28, 2005.

[28] New Civil Code, Article 1919 (3).

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