

**LUCIANO A. SAULOG, PLAINTIFF-APPELLEE, VS. CUSTOMBUILT
MANUFACTURING CORPORATION, ET AL., DEFENDANTS,
CUSTOMBUILT MANUFACTURING CORPORATION,
DEFENDANT-APPELLANT.**

G.R. No. L-29612. November 15, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The question shaped out by this case is the propriety of the trial court's denial of defendant's petition for relief from judgment.[1]

On September 12, 1961, plaintiff Luciano A. Saulog sued in the City Court of Manila for damages and attorneys' fees against defendants Custombuilt Manufacturing Corporation (Custombuilt), Northwest Insurance & Surety Co., Inc. (Northwest), and the City Sheriff of Manila.[2] Plaintiff complained that Custombuilt caused to be sold on execution certain properties belonging to him which he leased to one Adriano Go, Custombuilt's judgment debtor in another case.[3] Those properties consisted of a piano with a stool, and a rattan dinner and sala set. Plaintiff filed a third-party claim thereon to stave off levy. But Custombuilt posted a P1,200-bond issued by Northwest in favor of the City Sheriff. This paved the way for the execution sale of said properties on July 29, 1961. The prayer in plaintiff's complaint: For the three defendants to pay, jointly and severally, P1,200; against Custombuilt, for P1,000 as actual and moral damages and P500 as attorneys' fees; and against all of them, the costs of suit.

On March 3, 1962, the City Court of Manila rendered judgment on plaintiff's evidence introduced ex-parte against Custombuilt, the City Sheriff, and the defaulting Northwest - all of whom failed to appear on the date set for the trial despite due notice. The city court's judgment directed defendants, jointly and severally, to pay plaintiff the sum of P1,200 plus P100 for attorneys' fees, and the costs.

Custombuilt appealed to the Court of First Instance of Manila,[4] substantially reiterated its answer in the inferior court. Defendant Sheriff reproduced his answer.

On November 5, 1964, pre-trial was had. Custombuilt's counsel was in the courtroom that day, but left before the case was called. On plaintiff's motion, the judge, on the same day, dismissed the appeal and revived the city court's judgment, without costs.

Copy of this order was received by Custombuilt's counsel on November 10. On November 14, he filed a petition for relief. On November 19, plaintiff opposed. On November 27, the court below denied the petition for lack of merit. Custombuilt appealed.

The city court's judgment as revived by the Court of First Instance must be sustained.

1. Concededly, at the start of the pre-trial on November 5, Custombuilt's attorney was present. But he

unceremoniously left the courtroom. Counsel averred in his petition for relief that he had to leave posthaste because "he was summoned home all too suddenly" as "(h)is pregnant wife had been having labor pains" which "were cause for alarm" because "his wife was due for confinement x x x and she finally delivered on November 10, 1964."

Counsel did not have the foresight required of him. Pursuant to Section 1, Rule 20 of the Rules of Court, both client and counsel must appear at the pre-trial. This is mandatory. Failure of the client to appear is ground for dismissal.[5] If one representing his client - a corporation - was present, counsel could have easily left word for the former to tell the judge that he was suddenly summoned to his home. If the client were not present, then the case just the same would have been dismissed. But, the point is that allegedly someone summoned said attorney to go back home. If this were true, then it would have been quite easy for the lawyer to have asked that man to stay around and tell the judge or the clerk or the branch deputy clerk of court of his, predicament. Or, he himself could have as easily told the judge, or either clerk, or the adverse counsel, the court steno-grapher, the interpreter, the bailiff, or anyone for that matter, of his inability to wait for the pre-trial. He failed to do any one of these.

In his petition for relief, Custombuilt's lawyer also made the statement that his wife did not give birth until five days later, that is, on November 10. It is unreasonable to assume that during the whole period of time - from November 5 to November 10 - his mind was in blank, such that it was impossible for him to have taken steps to tell the court personally or otherwise that his absence during the pre-trial was excusable. Again, he did not. He received copy of the decision on November 10. He did not file the petition for relief until November 14.

The foregoing are not isolated instances. The fact is that even when the trial was held in the City Court of Manila, neither was there appearance for appellant Custom-built - "despite due notice".

All of these facts point to one conclusion: lack of interest on the part of appellant to defend itself against the complaint. Rather, the pattern of conduct discloses a desire to delay disposal of the present case. Failure to prosecute is a ground for dismissal of the appeal and revival of the judgment of the city court under Section 9, Rule 40 of the Rules of Court.

We have not overlooked Section 2, Rule 20 of the Rules of Court, which says that "a party who failed to appear at the pre-trial conference may be non-suited or considered as in default." So that, as held in the two cases heretofore cited, namely, *American Insurance Company vs. Republic*, supra, and *Home Insurance Company vs. United States Lines Co.*, supra, a complaint may be dismissed failure of the party plaintiff to appear at the pre-trial. But, this remedy is by no means exclusive. It goes hand in hand with the right of the court of first instance - upon a showing of failure to prosecute - to dismiss a defendant's appeal from the judgment of an inferior court pursuant to Section 9, Rule 40.

2. In Custombuilt's notice of appeal,[6] we note that defendant gave notice that he would "appeal the judgment on the merits, upon the ground that it is not supported by the evidence and is contrary to law." Indeed, his second assignment of error challenges the correctness of the judgment of the city court on the merits.

One important roadblock stands astride any discussion of the judgment of the City Court of Manila. Pursuant to Section 9, Rule 40, supra, that judgment "shall be deemed revived and shall forthwith be remanded to the justice of the peace court or municipal court for execution." Implicit in this rule is that that judgment of the City Court of Manila may no longer be reopened. For, the appeal to the Court of First Instance of Manila has already been dismissed by the latter court. All that is left is to execute the city court's judgment.

FOR THE REASONS GIVEN, the trial court's order of November 5, 1964 is hereby affirmed.

Costs against appellant Custombuilt Manufacturing Corporation.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Capistrano, JJ., concur.

[1] This petition seeks to set aside the trial court's order dismissing defendant's appeal.

[2] Civil Case 90779.

[3] The execution was by virtue of a judgment in Civil Case 30325, Court of First Instance of Manila, entitled "Custombuilt Manufacturing Corporation, Plaintiff, versus Adriano Go, Defendant".

[4] Civil Case 49935.

[5] American Insurance Company vs. Republic, 1967D Phild. 63, 64; Home Insurance Company vs. United States Lines Co., 1967D Phild. 401, 403-404.

[6] Record on Appeal, p. 33.

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