

**PERPERTUAL SAVINGS BANK, PETITIONER-APPELLANT, VS.
VICTORINA A. NAZARENO, SEGUNDINA A. AMALINGAN, SANDIGAN
LENDING INVESTMENTS, INC. AND RUSTICO E. CARADA, IN HIS
CAPACITY AS TH...**

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GALAPATE-LAGUILLES, J:

Before Us is an Appeal[1] under Rule 41 of the Rules of Court challenging the Order[2] dated 20 May 2009 of the Regional Trial Court (RTC) of Tagaytay City, Branch 18, in Civil Case No. TG-1324, dismissing the Petition of petitioner-appellant Perpetual Savings Bank (hereinafter appellant Bank) for “lack of interest to prosecute the case.” Likewise impugned is the Order[3] dated 12 March 2010 denying the Motion for Reconsideration thereof.

The instant controversy arose from a Petition[4] filed on April 16, 1993 before the RTC of Tagaytay City, Branch 18, by appellant Bank to compel the surrender of Transfer Certificate of Title No. T-15421[5] to appellee Rustico E. Carada, in his capacity as the Register of Deeds of Tagaytay City.

Among the four (4) respondents-appellees, only appellee Victorina Nazareno (appellee Nazareno) filed her Answer.[6] The rest of the respondents-appellees were declared in default in separate Orders[7] by the trial court, through Assisting Judge Eleuterio F. Guerrero.

On 13 June 1996, appellant Bank's counsel, Atty. Eleanor Roque, who was armed with a Special Power of Attorney to represent appellant Bank, was thirteen (13) minutes late during the pre-trial conference.[8] Thus, in its Order[9] on even date, the trial court dismissed the Petition declaring appellant Bank non-suited upon prayer of appellee Nazareno's counsel.

On 13 December 1996, the RTC granted appellant Bank's Motion for Reconsideration, thereby setting aside the Order of dismissal.[10]

For failure again of appellant Bank's counsel, this time through Atty. Jesus C. Nalupta, Jr., to appear despite due notice at the scheduled continuation of the pre-trial conference on 15 May 1997, the case was ordered dismissed.[11] Atty. Nalupta, Jr. then moved to reconsider the dismissal of the case claiming that he failed to attend the pre-trial conference on 15 May 1997 because he was physically indisposed due to a leg injury. However, the Motion was denied by the lower court in its Order[12] dated 14 April 1998.

Feeling aggrieved, appellant Bank filed a Notice of Appeal[13] on 12 May 1998, to which the trial court gave due course in its Order[14] dated 14 May 1998.

On 9 October 2002, this Court rendered a Decision[15] reversing and setting aside the 15 May 1997 Order of the RTC. Thus, the complaint was reinstated and remanded to the lower court for further proceedings. The said Decision became final and executory and an Entry of Judgment[16] was forthwith issued by this Court on 11 December 2002. Hence, pursuant to the Decision of this Court, the RTC, through Assisting Judge Reuben P. Dela Cruz, issued an Order[17] dated 27 October 2003 setting the pre-trial conference of the case on 10 December 2003.

After the parties had filed their respective Pre-Trial Briefs,[18] the court a quo issued its Pre-Trial Order[19] dated 10 December 2003 setting the case for hearing on 17 March, 14 and 28 April 2004 for the reception of appellant Bank's evidence.

Appellant Bank subsequently filed on 16 January 2004 its Manifestation and Motion to Amend and/or Correct Pre-Trial Order[20] and in an Order[21] dated 30 January 2004, appellee Nazareno was given ten (10) days to file her comment thereto. However, in another Order[22] dated 14 March 2004, appellee Nazareno was given anew ten (10) days to file her comment or objection on appellant Bank's same Manifestation and Motion and the hearing was reset on 14 April 2004. With the filing of appellee Nazareno's Counter Manifestation and Opposition[23] to appellant Bank's Manifestation and Motion, the hearing scheduled on 14 April 2004 was cancelled and reset on 28 April 2004.[24]

On 27 April 2004, the RTC issued an Order[25] in open court cancelling the hearing on the said day and resetting the same on 4 August 2004. Thereafter, the court a quo denied appellant Bank's Manifestation and Motion to Amend and/or Correct Pre-Trial Order in its Order[26] dated 28 April 2004.

On 7 May 2004, appellant Bank filed its Motion for Reconsideration[27] from the Order dated 28 April 2004 of the lower court denying its Manifestation and Motion to Amend and/or Correct Pre-Trial Order. Appellee Nazareno, on the other hand, filed her Comment[28] on the Motion of appellant Bank on 22 June 2004.

The hearing scheduled on 4 August 2004 was reset on 14 October 2004 in view of the absence of the parties and their respective counsel.[29]

Later, the scheduled hearing of 17 March 2005 was cancelled and reset on 29 June 2005 as per Notice[30] issued by Court Legal Researcher Diana H. Gloriani Ruiz. Another Notice[31] was issued by Court Interpreter Solita Parra postponing the 29 June 2005 hearing and resetting it to 28 September 2005. Again, the hearing on 28 September 2005 was reset on 5 December 2005.[32]

The scheduled hearing of 5 December 2005 was postponed and reset on 6 March 2006 by Presiding Judge Edwin G. Larida, Jr. considering that only the representative of appellee Nazareno's counsel appeared. There was likewise no appearance for appellant Bank.[33]

In the hearing conducted on 6 March 2006, Judge Larida, Jr. granted appellant Bank's Motion to Amend and/or Correct Pre-Trial Order. Thus, the hearing on the said date was cancelled and reset on 26 June 2006.[34]

By agreement of the parties, the hearing on 26 June 2006 was cancelled and reset to 25 September and 20 November 2006, respectively.[35] But the hearing scheduled on 25 September 2006 had to be postponed because appellee Nazareno's new counsel, Atty. Elias O. Lelina, Jr., had just entered his appearance.[36] The hearing likewise set on 20 November 2006 was cancelled and reset on 12 March 2007 as per Notice[37] issued by Branch Clerk of Court VI, Stanlee D. Calma.

The new handling lawyer of appellant Bank, Atty. Trina San Diego, then filed an Urgent Ex-Parte Motion to Cancel Hearing Set on March 12, 2007[38] as she needed more time to study the case. Thus, the trial court granted the said Motion in its Order[39] dated 12 March 2007 and the hearing was moved to 25 June 2007.

On 20 June 2007, appellant Bank's counsel again filed an Urgent Ex-Parte Motion to Cancel Hearing Set on 25 June 2007,[40] this time, that due to out of town hearings, particularly in Panabo, Davao, on 25-26 June 2007. The said counsel further reasoned out that the other lawyers in the law firm cannot substitute for her at that time because they were out of the country and the remaining lawyer was also unavailable because of his previous engagements and other work assignments.

Consequently, appellee Nazareno filed a Motion to Dismiss[41] on 29 June 2007 supplicating the trial court to dismiss the Petition for failure to prosecute for an unreasonable length of time as the said Petition was filed as early as 16 April 1993 without appellant Bank presenting a single witness. She further pointed out that the said Petition had already been dismissed twice for non-suit. Although the case was reinstated by this Court, appellee Nazareno claimed that since then, appellant Bank failed to present even a single witness. Appellant Bank, however, filed an Opposition[42] on 26 July 2007 to the said Motion to Dismiss arguing that an action due to the fault of the plaintiff may only be dismissed if there is no justifiable cause for the delay in the prosecution as it is an insolvent entity undergoing liquidation proceedings under the auspices of the Philippine Deposit Insurance Corporation.

On 20 May 2009, the RTC, through Acting Presiding Judge Emma S. Young, issued an Order dismissing the case for lack of interest to prosecute the case, to wit:

The case has been dismissed twice – one on June 13, 1996 and then on May 15, 1997 – and this is the third time that counsel for respondent is moving for the dismissal of the case for failure of the petitioner to prosecute. Since the case had been pending in this Court for more than sixteen (16) years without the petitioner presenting a single witness, the case is DISMISSED for lack of interest to prosecute this case.

SO ORDERED.

Appellant Bank moved for reconsideration,[43] but the same was denied by the trial court in its Order dated 12 March 2010, to wit:

Twice dismissal for lack of interest to prosecute is considered as adjudication on the merit. Therefore, the Motion for Reconsideration is denied based on Rule 17, Sec. 3 of the Revised Rules of Court.

SO ORDERED.

Aggrieved, appellant Bank filed the instant Appeal imputing the following assignment of errors[44] to the RTC, viz:

2.1. THE REGIONAL TRIAL COURT BRANCH 18 OF TAGAYTAY CITY ERRED IN DISMISSING THE CASE FOR FAILURE TO PROSECUTE WHEN THE PETITIONER-APPELLANT WAS NOT REMISS IN ITS DUTY TO PROSECUTE THE CASE.

2.2. THE REGIONAL TRIAL COURT BRANCH 18 OF TAGAYTAY CITY ERRED IN DISMISSING THE CASE ON THE BASIS OF THE TWO-TIME DISMISSAL OF THE CASE DESPITE VALID AND JUSTIFIABLE REASONS NOT TO ATTEND THE COURT-SCHEDULED HEARING ON 25 JUNE 2007.

2.3. THE REGIONAL TRIAL COURT BRANCH 18 OF TAGAYTAY CITY ERRED IN DISMISSING THE CASE AS IT EFFECTIVELY DEPRIVED THE PETITIONER-APPELLANT OF ITS FUNDAMENTAL

RIGHT TO DUE PROCESS RESULTING TO AN ACT DETRIMENTAL TO THE CREDITORS OF THE
INSOLVENT BANK, WHICH IS ALREADY CURRENTLY UNDERGOING LIQUIDATION.

The Appeal is meritorious.

The relevant rule in this case is Section 3, Rule 17 of the Rules of Court, which 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.

As can be gleaned from the rule, there are three instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; and (3) if he fails to comply with the rules or any order of the court.[45] Here, the Petition was dismissed by the trial court for failure to prosecute for an unreasonable length of time.

There is failure to prosecute when the plaintiff, being present, is not ready or is unwilling to proceed with the scheduled trial[46] or when postponements in the past are due to the plaintiff's own making, intended to be dilatory or cause substantial prejudice on the part of the defendant.[47]

Considering the circumstances of the case, it cannot be concluded that the appellant Bank failed to prosecute the case for an unreasonable length of time. While it is true that the case had been pending for sixteen (16) years from the time the Petition was filed on 16 April 1993 until its dismissal on 20 May 2009, We find that the delay is not to be attributed entirely to the appellant Bank in this case. There were also delays caused by appellee Nazareno and the trial court itself. What is evident is that when this Court rendered the Decision remanding the case to the lower court for further proceedings and after the RTC had issued the Pre-Trial Order, the scheduled hearings were either cancelled and/or postponed by the court *motu proprio* or by agreement of the parties.

Records would reveal that when appellant Bank filed its Manifestation and Motion to Amend and/or Correct Pre-Trial Order, the lower court had to issue an Order twice, i.e., 30 January 2004 and 14 March 2004, requiring appellee Nazareno to file her comment or objection to said Manifestation and Motion as she failed to comply with the RTC's first Order dated 30 January 2004. Likewise, the scheduled hearing on 25 September 2006 had to be postponed when appellee Nazareno's new counsel, Atty. Elias O. Lelina, Jr., entered his appearance. It cannot be gainsaid therefore that the delay in the disposition of the case is solely attributable to appellant Bank.

Moreover, during the interregnum between the filing of appellant Bank's Motion for Reconsideration from the Order of the lower court denying its Manifestation and Motion to Amend and/or Correct Pre-Trial Order on 16 January 2004 and the issuance by the RTC of the Order dated 6 March 2006 granting the said Manifestation and Motion on reconsideration, the scheduled hearings were again postponed and reset six (6) times. It appears also that during this lull, no judge was designated in Branch 18 of the RTC of Tagaytay City between 17 March 2005 and 28 September 2005, or for six (6) months.

Another factor which, to the mind of the Court, contributed largely to the delay in the case when it was remanded to the RTC for further proceedings, no less than three (3) judges handled the case — Judges Reuben P. Dela Cruz,

Edwin G. Larida, Jr., and Emma S. Young. We take note also of the fact that while appellee Nazareno filed a Motion to Dismiss on 29 June 2007 to appellant Bank's Urgent Ex-Parte Motion to Cancel Hearing Set on 25 June 2007, the lower court only acted on the Motion to Dismiss after almost two (2) years or on 20 May 2009 thus delaying the disposition of the case further. Significantly, after appellant Bank received the first assailed Order dismissing the case, it duly filed a Motion for Reconsideration. This should have easily persuaded the RTC that the appellant Bank intended to advance its case against appellee Nazareno.

Thus, the court a quo should have been more circumspect and indulgent by giving appellant Bank another opportunity when its counsel filed the Urgent Ex-Parte Motion to Cancel Hearing Set on 25 June 2007 due to out of town hearings since the records of the case do not show that the said Motion was dilatory and cannot justify an inference that appellant Bank had lost its interest to prosecute its case. As correctly pointed out by appellant Bank, in rendering the assailed issuances, the lower court should not have considered the earlier dismissals of the case since these were reversed and set aside by the RTC itself and this Court, respectively.[48] If the lower court thinks that the Urgent Ex-Parte Motion to Cancel Hearing Set on 25 June 2007 had upset the schedule of the court, a stern warning that any further postponement of the trial shall cause the dismissal of the case would have sufficed, instead of dismissing the Petition outright.

In fine, appellant Bank cannot be said to have lost interest in fighting the civil case to the end. Truly, the Supreme Court has held in the past that a court may dismiss a case on the ground of non prosecutur, but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, i.e., equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. In the absence of a pattern or scheme to delay the disposition of the case or of 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 with rather than wield their authority to dismiss.[49]

It is well to quote the doctrine laid in *Padua v. ERICTA*[50] as accentuated in the subsequent case of *Marahay v. Melicor*: [51]

Courts should not brook undue delays in the ventilation and determination of causes. It should be their constant effort to assure that litigations are prosecuted and resolved with dispatch. Postponements of trials and hearings should not be allowed except on meritorious grounds; and the grant or refusal thereof rests entirely in the sound discretion of the Judge. It goes without saying, however, that discretion must be reasonably and wisely exercised, in the light of the attendant circumstances. Some reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party. The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either in plaintiff's being non-suited or of the defendant's being pronounced liable under an *ex parte* judgment.

"... (T)rial courts have ... the duty to dispose of controversies after trial on the merits whenever possible. It is deemed an abuse of discretion for them, on their own motion, 'to enter a dismissal which is not warranted by the circumstances of the case' (*Municipality of Dingras v. Bonoan*, 85 Phil. 458-59 [1950]). While it is true that the dismissal of an action on grounds specified under Section 3, Rule 17 of the Revised Rules of Court is addressed to their discretion (*Flores v. Phil. Alien Property Administrator*, 107 Phil. 778 [1960]; *Montelibano*

v. Benares, 103 Phil. 110 [1958]; Adorable v. Bonifacio, 105 Phil. 1269 [1959]; Inter-Island Gas Service, Inc. v. De la Gerna, L-17631, October 19, 1966, 18 SCRA 390), such discretion must be exercised soundly with a view to the circumstances surrounding each particular case (Vernus-Sanciangco v. Sanciangco, L-12619, April 28, 1962, 4 SCRA 1209). If facts obtain that serve as mitigating circumstances for the delay, the same should be considered and dismissal denied or set aside (Rudd v. Rogerson, 15 ALR 2d 672; Cervi v. Greenwood, 147 Colo. 190, 362 P.2d 1050 [1961]), especially where the suit appears to be meritorious and the plaintiff was not culpably negligent and no injury results to defendant (27 C.J.S. 235-36; 15 ALR 3rd 680).” (Abinales vs. Court of First Instance of Zamboanga City, Br. I, 70 SCRA 590, 595).

“It is true that the allowance or denial of petitions for postponement and the setting aside of orders previously issued, rest principally upon the sound discretion of the judge to whom they are addressed, but always predicated on the consideration that more than the mere convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby (Camara Vda. de Zubiri v. Zubiri, et al., L-16745, December 17, 1966). When no substantial rights are affected and the intention to delay is not manifest, the corresponding motion to transfer the hearing having been filed accordingly, it is sound judicial discretion to allow them (Rexwell Corp. v. Canlas, L-16746, December 30, 1961).”

It bears stressing that the subject matter of the Petition is a valuable parcel of land measuring Nine Thousand and Six (9,006) square meters. Appellant Bank stands to lose much on account of a mere technicality. Aside from the lack of intent to employ any dilatory tactic prejudicial to appellee Nazareno and trifling with the judicial processes, the substantial merit of the case should have been taken into consideration by the trial court. In the interest of substantive justice, We allow the appellant Bank an opportunity to present its side during a trial on the merits, to obviate the possibility of jeopardizing substantive justice. This liberality underscores the importance of an appeal in our judicial grievance structure to give party-litigants the amplest opportunity for the just disposition of their cause freed from the noose of technicalities.

While it is discretionary on the trial court to dismiss cases, dismissal of actions should be made with care. The repressive or restraining effect of the rule amounting to adjudication upon the merits may cut short a case even before it is fully litigated; a ruling of dismissal may forever bar a litigant from pursuing judicial relief under the same cause of action. Hence, sound discretion demands vigilance in duly recognizing the circumstances surrounding the case to the end that technicality shall not prevail over substantial justice.[52]

WHEREFORE, premises considered, the Order dated 20 May 2009 of the Regional Trial Court of Tagaytay City, Branch 18, in Civil Case No. TG-1324, dismissing the Petition of appellant Perpetual Savings Bank for lack of interest to prosecute the case, and the Order dated 12 March 2010 denying the Motion for Reconsideration thereof are hereby REVERSED and SET ASIDE. The Petition is REINSTATED and REMANDED to the RTC of Tagaytay City, Branch 18, for further proceedings.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Appellant's Brief, Rollo, pp. 15-56.

[2] Original Records, p. 392.

[3] Id., p. 428.

[4] Id., pp. 1-11.

[5] Id., pp. 71-72.

[6] Id., pp. 46-50.

[7] Segundina Amalingan was declared in default on August 30, 1994, id., p. 115; The Register of Deeds of Tagaytay City was declared in default on January 31, 1995, id., p. 121; and Sandigan Lending Investments was declared in default on January 23, 1996, id., p. 134.

[8] Id., p. 220.

[9] Id., p. 188.

[10] Id., pp. 219-221. See Order dated December 13, 1996.

[11] Id., p. 225.

[12] Id., pp. 250-252.

[13] Id., p. 253.

[14] Id., p. 255.

[15] Id., pp. 258-263.

[16] Id., p. 257.

[17] Id., p. 266.

[18] Appellant Bank's Pre-Trial Brief, id., pp. 270-275; Appellee Nazareno's Pre-Trial Brief, id., pp. 276-278

[19] Id., pp. 280-282.

[20] Id., pp. 283-286.

[21] Id., p. 288.

[22] Id., p. 290.

[23] Id., pp. 291-293.

[24] Id., p. 294. See Order dated April 14, 2004.

[25] Id., p. 296.

[26] Id., p. 295.

[27] Id., pp. 297-299.

[28] Id., pp. 305-306.

[29] Id., p. 307. See Order dated August 4, 2004.

[30] Id., p. 347. See Notice dated March 17, 2005.

[31] Id., p. 349.

[32] Id., p. 350.

[33] Id., p. 351. See Order dated December 5, 2005.

[34] Id., pp. 352-353. See Order dated March 6, 2006.

[35] Id., p. 355. See Order dated June 26, 2006.

[36] Id., p. 358. See Order dated September 25, 2006.

[37] Id., p. 360. See Notice dated November 20, 2006.

[38] Id., pp. 363-365.

[39] Id., p. 366.

[40] Id., pp. 371-373.

[41] Id., pp. 380-382.

[42] Id., pp. 386-388.

[43] See Motion for Reconsideration, id., pp. 393-396.

[44] Rollo, p. 22.

[45] *Belonio v. Rodriguez, et al.*, G.R. No. 161379, August 11, 2005, citing *Olave v. Mistas*, G.R. No. 155193, 26 November 2004, 444 SCRA 479 and *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 117385, 11 February 1999, 303 SCRA 19.

[46] *Belonio v. Rodriguez, et al.*, supra, citing *Marahay v. Melicor*, G.R. No. L-44980, February 6, 1990.

[47] Id.

[48] Rollo, p. 45.

[49] *Gomez v. Alcantara*, G.R. No. 179556, February 13, 2009, citing *Rizal Commercial Banking Corporation v. Magwin Marketing Corporation*, 450 Phil. 721, 741-742 (2003).

[50] G.R. No. L-38570, 24 May 1988. See *Belonio v. Rodriguez, et al.*, supra.

[51] Supra.

[52] *Shimizu Philippines Contractors, Inc. v. Magsalin, et al.*, G.R. No. 170026, June 20, 2012, citing *Ruiz v. Estenzo*, G.R. No. 50082, June 4, 1990, 186 SCRA 8; see also *Macasa et al. v. Herrera*, 101 Phil. 44, 48 (1957); and *Dayo, et al. v. Dayo, et al.*, 95 Phil. 703 (1954).

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