

SHIMIZU PHILIPPINES CONTRACTORS, INC., PETITIONER, VS. MRS. LETICIA B. MAGSALIN, DOING BUSINESS UNDER THE TRADE NAME “KAREN’S TRADING,” FGU INSURANCE CORPORATION, GODOFREDO GARC...

G.R. No. 170026. June 20, 2012

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari[1] filed by Shimizu Philippines Contractors, Inc. (petitioner) to challenge the twin resolutions of the Court of Appeals (CA)[2] in CA-G.R. CV No. 83096 which dismissed the appeal of the petitioner on the ground of lack of jurisdiction[3] and denied the petitioner’s subsequent motion for reconsideration.[4] The appeal in CA-G.R. CV No. 83096 had sought to nullify the December 16, 2003 order[5] of the Regional Trial Court (RTC) dismissing the petitioner’s complaint for sum of money and damages on the ground of non prosecutur.

THE ANTECEDENTS

The antecedent facts of the petition before us are not disputed.

An alleged breach of contract was the initial event that led to the present petition. The petitioner claims that one Leticia Magsalin, doing business as “Karen’s Trading,” had breached their subcontract agreement for the supply, delivery, installation, and finishing of parquet tiles for certain floors in the petitioner’s Makati City condominium project called “The Regency at Salcedo.” The breach triggered the agreement’s termination. When Magsalin also refused to return the petitioner’s unliquidated advance payment and to account for other monetary liabilities despite demand, the petitioner sent a notice to respondent FGU Insurance Corporation (FGU Insurance) demanding damages pursuant to the surety and performance bonds the former had issued for the subcontract.

On April 30, 2002, the petitioner filed a complaint docketed as Civil Case No. 02-488 against both Magsalin and FGU Insurance. It was raffled to Branch 61 of the RTC of Makati City. The complaint sought Two Million Three Hundred Twenty-Nine Thousand One Hundred Twenty Four Pesos and Sixty Centavos (P2,329,124.60) as actual damages for the breach of contract.

FGU Insurance was duly served with summons. With respect to Magsalin, however, the corresponding officer’s return declared that both she and “Karen’s Trading” could not be located at their given addresses, and that despite further efforts, their new addresses could not be determined.

In August 2002, FGU Insurance filed a motion to dismiss the complaint. The petitioner filed its opposition to the motion. The motion to dismiss was denied as well as the ensuing motion for reconsideration, and FGU Insurance was obliged to file an answer.

In October 2002, in an effort to assist the RTC in acquiring jurisdiction over Magsalin, the petitioner filed a

motion for leave to serve summons on respondent Magsalin by way of publication. In January 2003, the petitioner filed its reply to FGU Insurance's answer.

In February 2003, FGU Insurance filed a motion for leave of court to file a third-party complaint. Attached to the motion was the subject complaint,[6] with Reynaldo Baetiong, Godofredo Garcia and Concordia Garcia named as third-party defendants. FGU Insurance claims that the three had executed counter-guaranties over the surety and performance bonds it executed for the subcontract with Magsalin and, hence, should be held jointly and severally liable in the event it is held liable in Civil Case No. 02-488.

The RTC admitted the third-party complaint and denied the motion to serve summons by publication on the ground that the action against respondent Magsalin was in personam.

In May 2003, the RTC issued a notice setting the case for hearing on June 20, 2003. FGU Insurance filed a motion to cancel the hearing on the ground that the third-party defendants had not yet filed their answer. The motion was granted.

In June 2003, Baetiong filed his answer to the third-party complaint. He denied any personal knowledge about the surety and performance bonds for the subcontract with Magsalin.[7] Of the three (3) persons named as third-party defendants, only Baetiong filed an answer to the third-party complaint; the officer's returns on the summons to the Garcias state that both could not be located at their given addresses. Incidentally, the petitioner claims, and Baetiong does not dispute, that it was not served with a copy of Baetiong's answer. The petitioner now argues before us that FGU Insurance, which is the plaintiff in the third-party complaint, had failed to exert efforts to serve summons on the Garcias. It suggests that a motion to serve summons by publication should have been filed for this purpose. The petitioner also asserts that the RTC should have scheduled a hearing to determine the status of the summons to the third-party defendants.[8]

THE ORDER OF DISMISSAL

With the above procedural events presented by both parties as the only backdrop, on December 16, 2003 the RTC issued a tersely worded order[9] dismissing Civil Case No. 02-488. For clarity, we quote the dismissal order in full:

O R D E R

For failure of [petitioner] to prosecute, the case is hereby DISMISSED.

SO ORDERED.

The RTC denied the petitioner's motion for reconsideration,[10] prompting the latter to elevate its case to the CA via a Rule 41 petition for review.[11]

The Ruling of the Appellate Court

FGU Insurance moved for the dismissal of the appeal on the ground of lack of jurisdiction. It argued that the appeal raised a pure question of law as it did not dispute the proceedings before the issuance of the December 16, 2003 dismissal order.

The petitioner, on the other hand, insisted that it had raised questions of fact in the appeal.[12] Thus -

While, the instant appeal does not involve the merits of the case, the same involves questions of fact based on the records of the case. It must be emphasized that the lower court's dismissal of the case based on alleged failure to prosecute on the part of plaintiff-appellant was too sudden and precipitate. This being the case, the facts [sic] to be determined is whether based on the records of the case, was there a definite inaction on the part of plaintiff-appellant? A careful examination of all pleadings filed as well as the orders of the lower court

vis-à-vis the rules should now be made in order to determine whether there was indeed a “failure to prosecute” on the part of plaintiff-appellant[.][13] (emphases supplied)

The CA agreed with FGU Insurance and dismissed the appeal, and denied as well the subsequent motion for reconsideration.[14] The petitioner thus filed the present petition for review on certiorari.

The Present Petition

The petitioner pleads five (5) grounds to reverse the CA’s resolutions and to reinstate Civil Case No. 02-488. In an effort perhaps to make sense of the dismissal of the case (considering that the trial court had not stated the facts that justify it), the petitioner draws this Court’s attention to certain facts and issues that we find to be of little materiality to the disposition of this petition:

GROUND/ STATEMENT OF MATTERS INVOLVED

- THE APPELLATE COURT HAS JURISDICTION TO DETERMINE THE MERITS OF THE APPEAL AS THE MATTERS THEREIN INVOLVE BOTH QUESTIONS OF LAW AND FACT.
- THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT PETITIONER NEVER RECEIVED A COPY OF THE ANSWER OF THIRD-PARTY DEFENDANT-RESPONDENT REYNALDO BAETIONG.
- THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT THERE IS NO JOINDER OF INDISPENSABLE PARTIES AND ISSUES YET BECAUSE DEFENDANT-RESPONDENT LETICIA B. MAGSALIN AS WELL AS THIRD-PARTY DEFENDANT-RESPONDENTS GODOFREDO AND CONCORDIA GARCIA’S WHEREABOUTS WERE UNKNOWN, HENCE NO SERVICE YET ON THEM OF THE COPY OF THE SUMMONS AND COMPLAINT WITH ANNEXES[.]
- THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT IT WAS PARTY RESPONDENT FGU WHICH CAUSED THE CANCELLATION OF THE HEARING.
- IT IS EVIDENT THAT THE LOWER COURT’S DISMISSAL OF THE CASE IS A CLEAR DENIAL OF DUE PROCESS.[15]

In our Resolution dated February 13, 2006,[16] we required the respondents to comment. FGU Insurance’s comment[17] alleges that the present petition is “fatally defective” for being unaccompanied by material portions of the record. It reiterates that the appeal in CA-G.R. CV No. 83096 was improperly filed under Rule 41 and should have been filed directly with this Court under Rule 45 of the Rules of Court. Baetiong, in his comment,[18] asserts that the dismissal of the appeal was in accord with existing laws and applicable jurisprudence.

THE RULING OF THE COURT

Preliminarily, we resolve the claim that the petition violates Rule 45 of the Rules of Court on the attachment of material portions of the record. We note that FGU Insurance fails to discharge its burden of proving this claim by not specifying the material portions of the record the petitioner should have attached to the petition. At any rate, after a careful perusal of the petition and its attachments, the Court finds the petition to be sufficient. In other words, we can judiciously assess and resolve the present petition on the basis of its allegations and attachments.

After due consideration, we resolve to grant the petition on the ground that the December 16, 2003 dismissal order is null and void for violation of due process. We are also convinced that the appeal to challenge the dismissal order was properly filed under Rule 41 of the Rules of Court. We further find that the dismissal of Civil Case No.

02-488 for failure to prosecute is not supported by facts, as shown by the records of the case.

THE DISMISSAL ORDER IS VOID

The nullity of the dismissal order is patent on its face. It simply states its conclusion that the case should be dismissed for non prosecution, a legal conclusion, but does not state the facts on which this conclusion is based.

Dismissals of actions for failure of the plaintiff to prosecute is authorized under Section 3, Rule 17 of the Rules of Court. A plain examination of the December 16, 2003 dismissal order shows that it is an unqualified order and, as such, is deemed to be a dismissal with prejudice. “Dismissals of actions (under Section 3) which do not expressly state whether they are with or without prejudice are held to be with prejudice[.]”[19] As a prejudicial dismissal, the December 16, 2003 dismissal order is also deemed to be a judgment on the merits so that the petitioner’s complaint in Civil Case No. 02-488 can no longer be refiled on the principle of *res judicata*. Procedurally, when a complaint is dismissed for failure to prosecute and the dismissal is unqualified, the dismissal has the effect of an adjudication on the merits.[20]

As an adjudication on the merits, it is imperative that the dismissal order conform with Section 1, Rule 36 of the Rules of Court on the writing of valid judgments and final orders. The rule states:

RULE 36

Judgments, Final Orders and Entry Thereof

Section 1. Rendition of judgments and final orders. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

The December 16, 2003 dismissal order clearly violates this rule for its failure to disclose how and why the petitioner failed to prosecute its complaint. Thus, neither the petitioner nor the reviewing court is able to know the particular facts that had prompted the prejudicial dismissal. Had the petitioner perhaps failed to appear at a scheduled trial date? Had it failed to take appropriate actions for the active prosecution of its complaint for an unreasonable length of time? Had it failed to comply with the rules or any order of the trial court? The December 16, 2003 dismissal order does not say.

We have in the past admonished trial courts against issuing dismissal orders similar to that appealed in CA-G.R. CV No. 83096. A trial court should always specify the reasons for a complaint’s dismissal so that on appeal, the reviewing court can readily determine the *prima facie* justification for the dismissal.[21] A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark and is especially prejudicial to the losing party who is unable to point the assigned error in seeking a review by a higher tribunal.[22]

We thus agree with the petitioner that the dismissal of Civil Case No. 02-488 constituted a denial of due process. Elementary due process demands that the parties to a litigation be given information on how the case was decided, as well as an explanation of the factual and legal reasons that led to the conclusions of the court.[23] Where the reasons are absent, a decision (such as the December 16, 2003 dismissal order) has absolutely nothing to support it and is thus a nullity.[24]

For this same reason, we are not moved by respondent FGU Insurance’s statement that the disposition of the present petition must be limited to the issue of whether the CA had correctly dismissed the appeal in CA-G.R. CV No. 83096.[25] This statement implies that we cannot properly look into the validity of the December 16, 2003 dismissal order in this Rule 45 petition. A void decision, however, is open to collateral attack. While we note that the validity of the dismissal order with respect to Section 1, Rule 36 of the Rules of Court was never raised by the

petitioner as an issue in the present petition, the Supreme Court is vested with ample authority to review an unassigned error if it finds that consideration and resolution are indispensable or necessary in arriving at a just decision in an appeal.[26] In this case, the interests of substantial justice warrant the review of an obviously void dismissal order.

The appeal was properly filed
under Rule 41 of the Rules of Court

While the nullity of the December 16, 2003 dismissal order constitutes the ratio decidendi for this petition, we nevertheless rule on the contention that the appeal was erroneously filed.[27]

In dismissing the appeal, the CA relied on the premise that since the facts presented in the petitioner's appeal were admitted and not disputed, the appeal must thereby raise a pure question of law proscribed in an ordinary appeal. This premise was effectively the legal principle articulated in the case of *Joaquin v. Navarro*,[28] cited by the CA in its April 8, 2005 resolution. Respondent FGU Insurance thus contends that the proper remedy to assail the dismissal of Civil Case No. 02-488 was an appeal filed under Rule 45 of the Rules of Court.

The reliance on *Joaquin* is misplaced as it is based on the conclusion the appellate court made in its April 8, 2005 resolution — i.e., that the pleading of undisputed facts is equivalent to a prohibited appeal. The reliance is inattentive to both the averments of the subject appeal and to the text of the cited case. The operative legal principle in *Joaquin* is this: “[W]here a case is submitted upon an agreement of facts, or where all the facts are stated in the judgment and the issue is the correctness of the conclusions drawn therefrom, the question is one of law which [is properly subject to the review of this Court.]”[29] In this case, as already pointed out above, the facts supposedly supporting the trial court's conclusion of non prosecution were not stated in the judgment. This defeats the application of *Joaquin*.

At any rate, we believe that the filing of the appeal in CA-G.R. CV No. 83096 under Rule 41 of the Rules of Court was proper as it necessarily involved questions of fact.

An authority material to this case is the case of *Olave v. Mistas*.^[30] Directly addressed in *Olave* was the CA's jurisdiction over an ordinary appeal supported by undisputed facts and seeking the review of a prejudicial order of dismissal. In this case, a complaint was filed before the RTC in Lipa City to nullify an instrument titled “Affidavit of Adjudication By The Heirs of the Estate of Deceased Persons With Sale.” The RTC dismissed the complaint, with prejudice, after the plaintiffs had moved to set the case for pre-trial only after more than three (3) months had lapsed from the service and filing of the last pleading in the case. The plaintiffs thereafter went to the CA on a Rule 41 petition, contending, among others, that the trial court had erred and abused its discretion. As in the present case, the defendants moved to dismiss the appeal on the ground that the issues therein were legal; they pointed out that the circumstances on record were admitted.^[31] They argued that the proper remedy was a petition for review on certiorari under Rule 45 of the Rules of Court.

The CA denied the motion and entertained the appeal. It rendered a decision reinstating the complaint on the ground that there was no evidence on record that the plaintiffs had deliberately failed to prosecute their complaint.

When the case was elevated to this court on a Rule 45 petition, we squarely addressed the propriety of the plaintiffs' appeal. Though mindful that the circumstances pleaded in the appeal were all admitted, we categorically held in *Olave* that the appeal was correctly filed. We observed that despite undisputed records, the CA, in its review, still had to respond to factual questions such as the length of time between the plaintiffs' receipt of the last pleading filed up to the time they moved to set the case for pre-trial, whether there had been any manifest intention on the plaintiffs' part not to comply with the Rules of Court, and whether the plaintiffs'

counsel was negligent.

Significantly, in *Olave*, we agreed with the plaintiffs that among the critical factual questions was whether, based on the records, there had been factual basis for the dismissal of the subject complaint. This same question is particularly significant in the present case given that the order appealed from in CA-G.R. CV No. 83096 does not even indicate the factual basis for the dismissal of Civil Case No. 02-488. Due to the absence of any stated factual basis, and despite the admissions of the parties, the CA, in CA-G.R. CV No. 83096, still had to delve into the records to check whether facts to justify the prejudicial dismissal even exist. Since the dismissal of Civil Case No. 02-488 appears to have been rendered *motu proprio* (as the December 16, 2003 dismissal order does not state if it was issued upon the respondents' or the trial court's motion), the facts to be determined by the CA should include the grounds specified under Section 3, Rule 17 of the Rules of Court. A court could only issue a *motu proprio* dismissal pursuant to the grounds mentioned in this rule and for lack of jurisdiction over the subject matter.^[32] These grounds are matters of facts. Thus, given that the dismissal order does not disclose its factual basis, we are thus persuaded that the petitioner had properly filed its appeal from the dismissal order under Rule 41 of the Rules of Court.

The Dismissal of Civil Case No. 02-488 is
not Supported by the Facts of the Case

We also find that the dismissal of Civil Case No. 02-488 is not warranted. Based on available records and on the averments of the parties, the following events were chronologically proximate to the dismissal of Civil Case No. 02-488: (a) on March 24, 2003, the court admitted FGU Insurance's third-party complaint; (b) the trial court cancelled the June 20, 2003 hearing upon FGU Insurance's motion; and (c) on June 16, 2003, Baetiong filed his Answer to the third-party complaint but did not serve it upon the petitioner.

None of these events square with the grounds specified by Section 3, Rule 17 of the Rules of Court for the *motu proprio* dismissal of a case for failure to prosecute. These grounds are as follows:

- (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief;
- (b) Failure of the plaintiff to prosecute his action for an unreasonable length of time;
- (c) Failure of the plaintiff to comply with the Rules of Court; or
- (d) Failure of the plaintiff to obey any order of the court.

In our view, the developments in the present case do not satisfy the stringent standards set in law and jurisprudence for a non *prosequitur*.^[33] The fundamental test for non *prosequitur* is whether, under the circumstances, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude.^[34] There must be unwillingness on the part of the plaintiff to prosecute.^[35]

In this case, the parties' own narrations of facts demonstrate the petitioner's willingness to prosecute its complaint. Indeed, neither respondents FGU Insurance nor Baetiong was able to point to any specific act committed by the petitioner to justify the dismissal of their case.

While it is discretionary on the trial court to dismiss cases, dismissals 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.^[36]

This court is thus of the opinion that the dismissal of Civil Case No. 02-488 is not warranted. Neither facts, law or jurisprudence supports the RTC's finding of failure to prosecute on the part of the petitioner.

WHEREFORE, premises considered, the instant petition is GRANTED. The resolutions of the Court of Appeals dated April 8, 2005 and October 4, 2005 are REVERSED and SET ASIDE. The order dated December 16, 2003 of the Regional Trial Court, Branch 61, Makati City, in Civil Case No. 02-488 is declared NULL and VOID, and the petitioner's complaint therein is ordered REINSTATED for further proceedings. No costs.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Filed under Rule 45 of the Rules of Court; rollo, pp. 10-31.

[2] Penned by Associate Justice Marina L. Buzon, and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[3] Rollo, pp. 35-37.

[4] Id. at 39-40.

[5] Id. at 227.

[6] Rollo, pp. 213-220.

[7] Id. at 221-225.

[8] Id. at 17.

[9] Id. at 227.

[10] Id. at 239.

[11] Dated December 3, 2004; id. at 244-248. On December 16, 2004, the petitioner filed a COMMENT/OPPOSITION (To Motion to Dismiss Appeal); id. at 58-64.

[12] Id. at 58-64.

[13] Id. at 59.

[14] Supra note 4.

[15] Rollo, p. 19.

[16] Id. at 42.

[17] Dated March 13, 2006; id. at 47-57.

[18] Filed on April 5, 2006; id. at 70-76.

[19] Vallangca v. Court of Appeals, G.R. No. 55336, May 4, 1989, 173 SCRA 42, 54.

[20] Peninsula Construction, Inc. v. Eisma, G.R. No. 84098, March 5, 1991, 194 SCRA 667, 671, citing Olivares v. Judge Gonzales, 242 Phil. 493 (1988); Vda. de Denoso v. Court of Appeals, 246 Phil. 674 (1988); and Vallangca v. Court of Appeals, supra note 19. Gutierrez v. Court of Appeals, G.R. No. 82475, January 28, 1991, 193 SCRA 437; see also Cruz v. Court of Appeals (Second Division), 517 Phil. 572 (2006).

[21] Cf. *Continental Bank v. Tiangco*, No. 50480, December 14, 1979, 94 SCRA 715, 718. In this case, the trial court granted a motion to dismiss, filed on the grounds of prescription and failure to state a cause of action, in an order which reads: “Considering the allegations contained, the arguments advanced and the doctrine cited in defendants’ motion to dismiss as well as those of the opposition filed thereto by the plaintiff, the Court resolves to grant the motion.” Cf. *Barrera v. Militante*, No. L-54681, May 31, 1982, 114 SCRA 323.

[22] *Nicos Industrial Corp. v. Court of Appeals*, G.R. No. 88709, February 11, 1992, 206 SCRA 127.

[23] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 307, citing *Nicos Industrial Corp. v. Court of Appeals*, supra note 22; *People v. Judge Bellaflor*, June 15, 1994, 233 SCRA 196; and *Anino v. National Labor Relations Commission*, 352 Phil. 1098 (1998).

[24] *Air France v. Carrascoso*, No. L-21438, September 28, 1966, 18 SCRA 155, 157, citing *Edwards v. McCoy*, 22 Phil. 598, 601 (1912); and *Yangco v. Court of First Instance of Manila, et al.*, 29 Phil. 183, 191 (1915).

[25] *Ibid.*

[26] *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, March 13, 2009, 581 SCRA 70; *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244; and *Mendoza v. Bautista*, 493 Phil. 804 (2005).

[27] In *Yao v. Court of Appeals*, 398 Phil. 86 (2000), we held to the effect that even if the mode of appeal to assail a void decision was wrong, a void decision was still a void decision. Cf. *Oscar Herrera, Remedial Law, Vol. II (Rules 23 to 56)*, 2007 ed., p. 140.

[28] 93 Phil. 257 (1953).

[29] *Id.* at 270.

[30] 486 Phil. 708 (2004).

[31] *Id.* at 717.

[32] *Oscar M. Herrera, Remedial Law, Vol. 1 (Rules 1 to 22)*, 2007 ed., p. 1062, citing *Baja v. Macandog*, 158 SCRA 391 (1981 [sic]). There appears to be an error in Herrera’s citation of *Baja v. Macandog* as a 1981 case. The correct citation for the *Baja v. Judge Macandog* containing the doctrine discussed above is 242 Phil. 123 (1988).

[33] Cf. *Calalang v. Court of Appeals*, G.R. No. 103185, January 22, 1993, 217 SCRA 462.

[34] *Producers Bank of the Philippines v. Court of Appeals*, 396 Phil. 497 (2000).

[35] *Gapoy v. Adil*, No. L-46182, February 28, 1978, 81 SCRA 739.

[36] Cf. *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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