

**RURAL BANK OF THE SEVEN LAKES (S.P.C.), INC., PETITIONER, VS.
BELEN A. DAN, RESPONDENT.***G.R. No. 174109. December 24, 2008*

Ponente: CHICO-NAZARIO, J.

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Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Rural Bank of the Seven Lakes (RBSL), seeking to reverse and set aside the Decision[1] dated 21 October 2002 and its Resolution[2] dated 7 August 2006 of the Court of Appeals in CA-G.R. SP No. 59193. In its assailed Decision, the appellate court reversed the Decision[3] dated 9 May 2000 of the Securities and Exchange Commission (SEC) en banc, which upheld the dismissal by the SEC Hearing Officer of SEC Case No. 03-99-6229, instituted by respondent Belen A. Dan (Dan), for failure to prosecute.

The factual and procedural antecedents of this instant Petition are as follows:

RBSL is a domestic corporation duly authorized by the Central Bank of the Philippines to engage in the banking business.

In 1975, Dan was employed by RBSL as an assistant bookkeeper. She rose from the ranks and, in 1982, she was appointed bank manager by the RBSL Board of Directors.[4]

Sometime in 1998, RBSL discovered that Dan committed unsound banking practices, which included the granting of loans to herself, her relatives, and close friends. Accordingly, Dan was charged with the following offenses: (a) violation of Section 5 of Republic Act No. 7353;[5] (b) loss of confidence; (c) serious misconduct; (d) willful disobedience to the lawful order of the employer; (e) willful breach of trust; and (f) incompetence. On 30 September 1998, Dan was preventively suspended from employment by the RBSL pending the investigation of the charges against her. After the hearing held before the RBSL, Dan was determined to have committed the offenses charged. Consequently, Dan's appointment as bank manager was revoked by the RBSL Board of Directors through Board Resolution No. 1998-127 dated 10 November 1998.[6]

On 4 March 1999, Dan filed a Petition[7] before the SEC, docketed as SEC Case No. 03-99-6229, praying, inter alia, for the nullification of (a) her preventive suspension and (b) the revocation of her appointment as bank manager; as well as the payment of her backwages and moral and exemplary damages.

During the pendency of SEC Case No. 03-99-6229, Dan instituted an action for damages against RBSL before the Regional Trial Court (RTC) of San Pablo City, Branch 32, docketed as Civil Case SP No. 5734-2000. In her Complaint in said civil case, Dan alleged that she suffered serious anxiety as a result of her wrongful separation from employment by RBSL. RBSL filed a motion to dismiss Civil Case SP No. 5734-2000 on the ground of forum shopping, averring that the said case was based exactly on the same cause of action as that in SEC Case No. 03-99-6229 pending before the SEC, namely, the wrongful termination of Dan's employment. The RTC, in its Order dated 4 September 2000, granted the motion of RBSL and dismissed Civil Case SP No. 5734-2000. The

RTC denied Dan's Motion for Reconsideration in an Order dated 3 December 2000. Dan challenged the RTC Orders dated 4 September 2000 and 3 December 2000, dismissing Civil Case SP No. 5734-2000, in her appeal before the Court of Appeals.[8]

In the meantime, the SEC Hearing Officer called SEC Case No. 03-99-6229 for hearing on 3 November 1999, but Dan failed to appear on the said date.[9] Thus, the SEC Hearing Officer was prompted to reset the hearing to 29 November 1999, with a warning that should Dan again fail to appear on the date set, the SEC Hearing Officer would already be constrained to dismiss the case.[10] On 24 November 1999, Dan's counsel filed an Urgent Motion for Cancellation of the 29 November 1999 hearing, since he had another hearing scheduled on the same date. In an Order[11] dated 24 November 1999, the SEC Hearing Officer granted the motion and reset the hearing to 6 December 1999, with a stern warning that he would no longer entertain further postponement. Notwithstanding the explicit warning of the SEC Hearing Officer, Dan's counsel still failed to attend the hearing set on 6 December 1999, finally causing the Hearing Officer to dismiss SEC Case No. 03-99-6229 for failure to prosecute.[12]

On appeal, the SEC en banc rendered its Decision[13] dated 9 May 2000, affirming the Order dated 6 December 1999 of the SEC Hearing Officer, which dismissed SEC Case No. 03-99-6229 for non-suit.

Unyielding, Dan filed before the Court of Appeals a Petition for Review[14] under Rule 43 of the Revised Rules of Court assailing the Decision dated 9 May 2000 of the SEC en banc. Dan invoked in her Petition equitable justice to justify her counsel's several postponements of the hearing before the SEC Hearing Officer. Dan urged the appellate court to afford her ample opportunity to fully ventilate her side of the controversy, in consonance with the Constitutional dicta on due process; and not dispose of her case on technicality. Dan also argued that the issue involving the postponements of the hearing was rendered moot and academic, considering the issuance by the SEC Hearing Officer, with the conformity of RBSL, of the orders granting her counsel's motions for postponement. Lastly, Dan asserted that the failure of her counsel to appear on the hearing scheduled on 6 December 1999 constituted gross and inexcusable neglect which should not bind her.[15]

In response, the RBSL underscored the procedural lapses flagrantly committed by Dan. RBSL alleged that Dan violated the rule against forum shopping by stating in her Complaint in Civil Case SP No. 5734-2000 before the RTC, that she had no knowledge of the pendency of any action involving the same party and the same subject matter, despite her prior institution of SEC Case No. 03-99-6229 before the SEC. RBSL also pointed out that Dan's appeal before the SEC En Banc lacked verification as required by Section 2, Rule II of the 1999 SEC Rules of Procedure. Aside from these procedural flaws, RBSL further contended that, in repeatedly disregarding the hearings set in SEC Case No. 03-99-6229, Dan only showed that she was not interested in prosecuting the case.[16]

On 21 October 2002, the Court of Appeals promulgated its Decision[17] in favor of Dan, thus, reversing the Decision dated 9 May 2000 of the SEC en banc. According to the appellate court, the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. In the highest interest of justice and equity, the Court of Appeals directed the SEC Hearing Officer to allow Dan to complete the presentation of her evidence.

The Motion for Reconsideration of RBSL was denied by the Court of Appeals in its Resolution[18] dated 7 August 2006.

Hence, this instant Petition for Review on Certiorari[19] filed by RBSL assigning the following errors:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT [DAN] HAD NOT VIOLATED THE RULE AGAINST FORUM-SHOPPING.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE REQUIREMENT OF A VERIFICATION IN APPEALS BEFORE THE SEC CAN BE RELAXED.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DISREGARDING [DAN'S] FAILURE TO PROSECUTE HER CASE.

RBSL accuses Dan of forum shopping in instituting SEC Case No. 03-99-6229 before the SEC and Civil Case SP No. 5734-2000 before the RTC. RBSL alleged that Dan had trifled with the courts and abused their processes by improperly instituting several cases from the same cause of action.

Forum shopping is a deplorable practice of litigants of resorting to two different fora for the purpose of obtaining the same relief, to increase his or her chances of obtaining a favorable judgment. What is pivotal to consider in determining whether forum shopping exists or not is the vexation caused to the courts and the parties-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora upon the same issues.[20]

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate, and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[21]

To stamp out this abominable practice which seriously impairs the efficient administration of justice, this Court promulgated Administrative Circulars No. 28-91 and No. 04-94, which are now embodied as Section 5, Rule 7 of the Rules of Court, which reads:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the

following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites are also constitutive of the requisites for auter action pendant or lis pendens.[22]

The Court holds that the afore-mentioned requisites are all present in the instant case. First, the parties in SEC Case No. 03-99-6229 and Civil Case No. SP No. 5734-2000 are the same, no other than Dan and RBSL. Second, there is also the identity of rights asserted and reliefs prayed for in these two cases. Dan's Complaint in Civil Case No. SP No. 5734-2000 before the RTC was for the payment of moral damages and litigation expenses premised on the alleged wrongful revocation of her appointment as bank manager of RBSL. While the primary relief sought by Dan in filing SEC Case No. 03-99-6229 was for the nullification of the revocation of her appointment as bank manager of RBSL, she also prayed in the same Petition for the payment of the moral damages she suffered by reason thereof. Undeniably, the damages Dan seeks to recover in these two cases arose from the same set of facts and a singular cause of action: the purportedly unjust revocation of her appointment as bank manager of RBSL. And thirdly, a judgment rendered in either SEC Case No. 03-99-6229 and Civil Case No. SP No. 5734-2000 shall constitute res judicata on the other. Before they could award the moral damages Dan prayed for, both the SEC and the RTC must first resolve the issue of whether the revocation of Dan's appointment was valid. Should the SEC determine that the revocation of Dan's appointment was proper and, consequently, refuse to award moral damages, then the RTC would be bound thereby and could not render a contrary ruling on the very same issue.

Dismissal of the case and contempt is the inevitable consequence of Dan's violation of the prohibition against forum shopping. As discussed in *Sps. Ong v. Court of Appeals*[23]:

The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt. x x x. (Emphasis supplied.)

Dan committed another procedural faux pas in filing an appeal before the SEC en banc without the required verification.

The SEC Rules of Procedure on verification under Section 2, Rule III thereof states:

SECTION 2. Verification. — All pleadings filed with the Commission shall be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his own knowledge and belief. A pleading which "contains a verification based on information and belief," or upon "knowledges, information and belief," or which lacks a proper verification, shall be treated as an unsigned pleading and shall not be considered as filed.

It is not controverted that Dan's appeal was not verified at all. The Court of Appeals, however, held that the absence of verification in Dan's appeal before the SEC en banc is excusable and does not warrant the dismissal of the same. Echoing the ruling of the appellate court, Dan pleads for the liberal interpretation of the procedural rules in the interest of substantial justice.

The Court is not persuaded.

The Court cannot sanction Dan's utter disregard of procedural rules. It must be emphasized that procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules, for these rules illumine the path of the law and rationalize the pursuit of justice.[24] It is this symbiosis between form and substance that guarantees that discernible result.[25]

The use of the words "substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[26] Thus, as called upon by the respondents, the Court yields to the time-honored principle "Justice is for all." Litigants must have equal footing in a court of law; the rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.[27]

Considering the circumstances in the instant case, the Court finds no justification for the relaxation of the procedural rules. Other than invoking the Court's liberality, Dan miserably failed to give any reason for her failure to comply with the procedural requirement of submitting a verification with her appeal to the SEC en banc. Without a valid explanation, the Court cannot be expected to be liberal or indulgent.

Finally, the Court finds that the Court of Appeals erred in pronouncing that the dismissal of SEC Case No. 03-99-6229 for failure to prosecute by the SEC Hearing Officer, as affirmed by the SEC en banc, was unjustified. It cannot sustain the reasoning of the appellate court that the postponements of the hearing were not intended to delay the proceedings before the SEC and caused no substantial prejudice to RBSL.

To the contrary, this Court sees no fault on the part of the SEC Hearing Officer when it finally decided to dismiss SEC Case No. 03-99-6229 after the repeated non-appearance of Dan and/or her counsel on the scheduled dates for the hearing of her case.

The true test for the exercise of the power to dismiss a case on the ground of failure to prosecute is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. [28]

It must be recalled that the hearing of SEC Case No. 03-99-6229 was originally set on 3 November 1999. It was reset to 24 November 1999 for non-appearance of Dan's counsel. However, the hearing was postponed again upon motion of Dan's counsel, who already had another hearing scheduled on the same date; hence, the hearing was moved to 6 December 1999. Despite the fact that the hearing was reset on her account, Dan's counsel still failed to appear before the Hearing Officer on 6 December 1999. Neither Dan nor her counsel provided an explanation for their latest absence. These events demonstrate a total lack of regard and respect for the proceedings taking place before the SEC on the part of Dan and her counsel.

Dan blames her counsel for being negligent in handling her case before SEC Case No. 03-99-6229. However, other than her counsel's failure to attend the scheduled hearings, Dan did not allege or present evidence demonstrative of her counsel's gross or inexcusable negligence, sufficient to release her from the binding effects

of her counsel's acts.

It is a well-settled rule that a client is bound by his counsel's conduct, negligence, and mistakes in handling the case; the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently.[29]

The only exception to the general rule — that a client is bound by the mistakes of his counsel — which this Court finds acceptable is when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the rule results in the outright deprivation of one's property through a technicality.[30] None of the exceptions exist in the instant case.

Moreover, Dan herself is guilty of some measure of negligence. If only she kept herself updated as to the developments in SEC Case No. 03-99-6229, she would have come to know that there had already been several postponements of the hearings therein. She could have reminded and/or demanded of her counsel to give due attention to her case and to attend the next hearing set. It must be stressed that a plaintiff is bound to prosecute his complaint with assiduousness. Plaintiff is obliged to give the necessary assistance to his counsel, as his interest in the outcome of the case is at stake.[31] Failure to do so would justify the dismissal of the case.[32] It is wrong for plaintiff to expect that all he needs to do is sit back, relax and await a favorable outcome.[33]

The actuations of Dan and her counsel concerning SEC Case No. 02-99-6229 are replete with negligence, laxity, and truancy, which justify the dismissal of the said case. The evident complacency, if not delinquency, of Dan and her counsel in SEC Case No. 02-99-6229 does not merit the Court's sympathy and consideration. For failure to diligently pursue her Petition in SEC Case No. 02-99-6229, Dan violated the right of RBSL to speedy trial. She also sorely tried the patience of the administrative agency and wasted its precious time and attention. And given the foregoing finding of this Court of negligence and fault on the part of Dan herself, Dan cannot seek protection behind the protective veil of equity in consonance with the basic principle in law that he who comes to court must come with clean hands.[34]

A final word. Equitable relief is not the supremacy but the entitlement of due process previously denied the litigant.[35] There was no denial of due process in the instant case that would warrant us to restore a right that was already lost upon the initiative and fault of Dan.

WHEREFORE, in view of the foregoing, the instant Petition is GRANTED. The Decision dated 21 October 2002 and Resolution dated 7 August 2006 of the Court of Appeals in CA-G.R. SP No. 59193 are REVERSED and SET ASIDE. The Decision of the Securities and Exchange Commission en banc, dated 9 May 2000, affirming the dismissal of SEC Case No. 03-99-6229, is hereby REINSTATED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring; rollo, pp. 9-14.

[2] Rollo, pp. 15-16.

[3] Id. at 103-104.

[4] Id. at 74-84.

[5] Rural Banks Act of 1992.

[6] Rollo, pp. 206-207.

[7] Id. at 74-84.

[8] Records do not show the docket no. of Dan's appeal before the Court of Appeals. Dan herself did not provide any updates on the status thereof.

[9] Rollo, p. 85.

[10] Id. at 86.

[11] Id.

[12] Id. at 87.

[13] Id. at 103-104.

[14] Id. at 105-121.

[15] Id.

[16] Id. at 143-173.

[17] Id. at 9-14.

[18] Id. at 15-16.

[19] Id. at 39-66.

[20] Guevara v. BPI Securities Corporation, G.R. No. 159786, 15 August 2006, 498 SCRA 613, 637.

[21] Id.

[22] Saura v. Saura, Jr., 372 Phil. 337, 349 (1999).

[23] 433 Phil. 490, 501-502 (2002).

[24] Land Bank of the Philippines v. Natividad, G.R. No. 127198, 16 May 2005, 458 SCRA 441, 450.

[25] Rivera v. Sandiganbayan, G.R. No. 157824, 17 January 2005, 448 SCRA 623, 639.

[26] Pedrosa v. Spouses Hill, 327 Phil. 153, 159 (1996).

[27] Far Corporation v. Magdaluyo, G.R. No. 148739, 19 November 2004, 443 SCRA 218, 230.

[28] Suarez v. Judge Villarama, Jr., G.R. No. 124512, 27 June 2006, 493 SCRA 74, 84.

[29] People v. Kawasa, 327 Phil. 928, 933 (1996).

[30] RTransport Corporation v. Philippine Hawk Transport Corporation, G.R. No. 155737, 19 October 2005, 473 SCRA 342, 347-348; Trust International Paper Corporation v. Pelaez, G.R. No. 164871, 22 August 2006, 499 SCRA 552, 563.

[31] See Spouses Zarate v. Maybank Philippines, Inc., G.R. No. 160976, 8 June 2005, 459 SCRA 785, 796-797.

[32] Suarez v. Judge Villarama, Jr., *supra* note 28 at 84.

[33] See Spouses Zarate v. Maybank Philippines, Inc., *supra* note 31 at 796.

[34] Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank, 441 Phil. 1, 42-45 (2002).

[35] Reliance Surety and Insurance Co., Inc. v. Amante, Jr., G.R. No. 150994, 30 June 2005, 462 SCRA 399, 418.

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