

**SPOUSES AZUCENA B. CORPUZ AND RENATO S. CORPUZ,
PETITIONERS, VS. CITIBANK, N.A. AND HON. RAUL B. VILLANUEVA
AS PRESIDING JUDGE OF BRANCH 255, REGIONAL TRIAL COURT IN
LAS PIÑAS C...**

G.R. No. 175677. July 31, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The facts which spawned the filing of the present consolidated petitions are as follows:

Azucena Corpuz (Azucena) was a cardholder of Citibank Mastercard No. 5423-3925-5788-2007 and Citibank VISA Card No. 4539-7105-2572-2001 both issued by Citibank, N.A. (Citibank). Each card had a credit limit of P40,000.00. In view of her then impending official business trip to Europe, Azucena paid in full on December 7, 1998 her monthly charges[1] on both credit cards via checks and also made advance check payments of P20,000.00 on December 8, 1998 for her VISA Card, and another P20,000.00 for her Mastercard on December 14, 1998, to cover future transactions.[2]

While in Italy on December 9, 1998, Azucena dined at a restaurant. To settle her bill of 46,000 liras, she presented her VISA Card, but to her surprise and embarrassment, the restaurant did not honor it. She then brought out her Mastercard which the restaurant honored. On even date, Azucena incurred a bill of 378,000 liras at a shop which she intended to charge to her credit cards. This time, both her VISA and Mastercard were not honored, drawing her to pay the bill in cash.[3]

Informed of the incidents via overseas telephone calls to Manila, Azucena's husband Renato Corpuz (Renato) inquired why his wife's credit cards were not honored, to which Citibank explained that her check-payments had not yet been cleared at the time.[4]

Upon her return to the country, Azucena wrote Citibank on January 13, 1999 informing it that her credit cards had not been honored and demanding the refund of her overseas call expenses amounting to 132,000 liras or P3,175.00 at the time.[5] Citibank did not respond to the letter, however, drawing Azucena to write Citibank for the cancellation of the cards.[6]

Citibank still sent billing statements to Azucena, however, charging her interest charges and late payment penalties.[7] Only after Azucena's counsel informed Citibank of imminent legal remedies[8] on her part did Citibank indulge Azucena with a written explanation why her credit cards were not honored in Italy.[9]

Azucena and Renato (hereafter the spouses) later filed on November 12, 1999 a complaint for damages against Citibank at the Regional Trial Court of Las Piñas City.

To the Complaint, Citibank filed a motion to dismiss for improper venue.[10] The spouses opposed the motion and moved to have Citibank declared in default.[11] Branch 255 of the RTC, by Order of September 28, 2000,

denied the motion to dismiss as well as the motion to declare Citibank in default.[12]

Citibank thus filed its Answer with Compulsory Counterclaim.[13] After an exchange of pleadings – reply, rejoinder and sur-rejoinder – by the parties, and the issues having been joined, the trial court set the case for pre-trial conference[14] on May 5, 2003 during which the spouses and their counsel failed to appear, despite notice. On Citibank's counsel's motion, the trial court, by Order[15] of even date, dismissed the spouses' Complaint and directed Citibank to present evidence on its Compulsory Counterclaim.

The spouses moved for the reconsideration of the trial court's May 5, 2003 Order, explaining that their failure to attend the pre-trial conference was due to the negligence[16] of their counsel who "failed to inform [them] about [the pre-trial] and include the same in his calendar because . . . the pre-trial was still far away."

The spouses' motion for reconsideration was denied by Order of September 17, 2003.[17] In the same Order, the trial court directed Citibank to present evidence on its Counterclaim within 30 days from receipt thereof. Citibank received copy of this Order on September 29, 2003[18] and, therefore, had up to October 29, 2003 to present evidence on its Counterclaim.

The spouses assailed the trial court's Order dismissing their Complaint via petition for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 80095. During the pendency of this petition or on January 5, 2004, Citibank filed before the trial court a motion to defer the presentation of evidence on its Counterclaim in view of the pendency of said petition of the spouses before the appellate court. The trial court did not act on Citibank's motion, however, as it bore no notice of hearing.[19]

Citibank re-filed on January 30, 2004 the motion to defer, this time containing a notice of hearing.[20] The trial court thereupon set the motion for hearing on February 13, 2004 during which only Azucena appeared. The motion was denied for lack of merit by Order of February 13, 2004.[21]

Citibank having failed to present evidence within 30 days from its receipt[22] on September 29, 2003 of the trial court's Order of September 17, 2003, the trial court dismissed its Counterclaim by Order of June 30, 2005.[23] Its motion for reconsideration of this June 30, 2005 Order having been denied, Citibank went on certiorari to the Court of Appeals, docketed as CA G.R. CV No. 86401.

In the meantime or on May 25, 2006, the appellate court, by Decision of even date in CA-G.R. SP No. 80095, set aside the trial court's September 17, 2003 Order [24] allowing Citibank to present evidence ex parte on its Counterclaim, but upheld the dismissal of the spouses' Complaint, it holding that they should have filed an appeal, instead of a petition for certiorari, as the trial court's order dismissing their complaint was a final decision on the merits. At all events, it underscored that:

[the spouses] did not come forward with the most persuasive of reasons for the relaxation of the rules. We cannot consider the following excuses to be valid and justifiable: 1) the failure to note down the date of pre-trial was because the date of resetting was three months away; 2) the [spouses'] counsel was beset with heavy case load and conflict of schedule; 3) the instant case was a personal case of [spouses'] counsel and not one of the cases assigned by the office where he worked which was the reason why his secretary failed to calendar the pre-trial; and 4) [spouses], being members of the bar, were also busy with their own cases. (Underscoring supplied)

The spouses and Citibank moved for reconsideration and partial reconsideration, respectively, of the appellate court's May 25, 2006 decision. By Resolution of November 30, 2006, the appellate court granted only Citibank's motion for partial reconsideration, ultimately allowing it to prosecute its Counterclaim. Thus the appellate court explained:[25]

Section 3, Rule 17 provides that if a complaint is dismissed due to the fault of the plaintiff, such dismissal is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. Under this new innovation, the dismissal of the complaint due to the fault of plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim. In this case, the private respondent bank, after moving that the case against it be dismissed for failure of the petitioners to prosecute, properly moved that it be allowed to present evidence ex-parte on its counterclaim. (Citations omitted; emphasis and underscoring supplied)

The spouses' motion for reconsideration of the appellate court's Resolution of November 30, 2006 upholding the dismissal of their Complaint having been denied, they filed a petition for review before this Court, docketed as G.R. No. 175677, the first petition subject of this Decision.

In the meantime, the appellate court, by Decision of September 27, 2006 in CA-G.R. CV No. 86401, affirmed the trial court's June 30, 2005 Order dismissing Citibank's Counterclaim, drawing Citibank to file a petition for review before this Court, G.R. No. 177133, the other petition subject of this Decision.

By Resolution of June 6, 2007, the Court denied Citibank's petition for review in G.R. No. 177133 for failure to sufficiently show that the appellate court had committed any reversible error in dismissing its Counterclaim.[26] Citibank filed a Motion for Reconsideration during the pendency of which the Court resolved to consolidate G.R. No. 177133 with G.R. No. 175677.[27]

RE G.R. NO. 175677: The spouses assert that their non-appearance at the pre-trial may be excused if there is a valid cause such as when a party forgets the date of the pre-trial; that the merits of their case should have been considered when their Complaint was dismissed; that Sections 4 and 5 of Rule 18 on pre-trial and Section 3 of Rule 17 on dismissal due to the fault of the plaintiff provide for different and distinct sanctions, citing *Pinga v. Heirs of German Santiago*; and that certiorari was their proper remedy before the appellate court as the trial court's order was not in accord with Section 5 of Rule 18 or even with Section 3 of Rule 17.[28]

The Court denies the spouses' petition.

Section 5[29] of Rule 18 provides that the dismissal of an action due to the plaintiff's failure to appear at the pre-trial shall be with prejudice, unless otherwise ordered by the court. In this case, the trial court deemed the plaintiffs-herein spouses as non-suited and ordered the dismissal of their Complaint. As the dismissal was a final order, the proper remedy was to file an ordinary appeal and not a petition for certiorari. The spouses' petition for certiorari was thus properly dismissed by the appellate court.

Procedural infirmities aside, this Court took a considered look at the spouses' excuse to justify their non-appearance at the pre-trial but found nothing exceptional to warrant a reversal of the lower courts' disposition thereof.

Counsel for the spouses admit having failed to inform his clients of the scheduled pre-trial because he forgot to note the same in his calendar and eventually forgot about it due to "heavy workload." The spouses eventually admitted too having received the notice of pre-trial.[30] Azucena, who is a lawyer herself, advanced the reason that she forgot about the scheduled pre-trial owing to her then forthcoming retirement at the Office of the Solicitor General to thus press her to accomplish her assigned work including winding up all administrative matters in the office prior to her leaving.

While Section 4[31] of Rule 18 of the Rules of Court allows as an exception a valid cause for the non-appearance of a party at the pre-trial, the instances cited by the spouses and their counsel hardly constitute compelling exigencies or situations which warrant occasional flexibility of litigation rules.

In *Quelnan v. VHF Philippines*[32] where the counsel for the therein petitioner failed to calendar a scheduled pre-trial in his diary, the Court held that:

The alleged failure of petitioner's counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner's counsel's failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident. (Underscoring in the original)

Petitioner's counsel's failure to record the date of pre-trial in his 1997 diary reflects his carelessness, his failure to heed his responsibility of not neglecting a legal matter entrusted to him, especially given the fact that he was given a Special Power of Attorney to represent petitioner in the pre-trial and trial of the case and that the repeated resettings of the pre-trial for a period of 1 year and more than 10 months had unduly prolonged the disposition of petitioner's complaint which was filed in 1994 yet.

Petitioner's counsel must know that pre-trial is mandatory. Being mandatory, the trial court has discretion to declare a party non-suited. Absent a showing of grave abuse in the trial court's exercise thereof, as in the case at bar, appellate courts will not interfere.[33] (Citations omitted; underscoring and emphasis supplied)

As for the spouses' assertion that Section 5 of Rule 18 "does not give the defendant [Citibank in this case] the alternative remedy of prosecuting its Counterclaim, whether compulsory or permissive, in the same or separate action because there is no longer any pending action where he can prosecute his claim," consideration thereof has been rendered unnecessary by, as will be dealt with shortly, this Court's denial of Citibank's motion for reconsideration of the dismissal of its herein petition. Suffice it to state that the spouses' view, apparently established in *BA Finance v. Co*,[34] had long been abandoned by the Court.

In the 2006 case of *Pinga v. Heirs of German Santiago*,[35] the Court, after noting the observations of Justice Florenz Regalado in his separate opinion in *BA Finance* on Section 3 of Rule 17 which section, for convenience, is again quoted,[36] viz:

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. (Emphasis and underscoring supplied),

explained:

x x x x

Section 3, [of Rule 17] on the other hand, contemplates a dismissal not procured by plaintiff, albeit justified by causes imputable to him and which, in the present case, was petitioner's failure to appear at the pre-trial. This situation is also covered by Section 3, as extended by judicial interpretation, and is ordered upon motion of defendant or *motu proprio* by the court. Here, the issue of whether defendant has a pending counterclaim, permissive or compulsory is not of determinative significance. The dismissal of plaintiff's complaint is evidently a confirmation of the failure of evidence to prove his cause of action outlined therein, hence the dismissal is considered, as a matter of evidence, an adjudication on the merits. This does not, however, mean that there is likewise such an absence of evidence to prove defendant's counterclaim although the same arises out of the subject matter of the complaint which was merely terminated for lack of proof. To hold otherwise would not only work injustice to defendant but would be reading a further provision into Section 3 and wresting a meaning therefrom although neither exists even by mere implication. x x x x. (Emphasis and italics

in the original; underscoring supplied)[37]

Besides, Section 5 of Rule 18 which is, for convenience, again requoted,[38] provides:

SEC. 5. Effect of failure to appear. "The failure of the plaintiff to appear [at the pre-trial] when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.,

must be read in conjunction with the above-quoted Section 3 of Rule 17.

Thus, in *Perkin Elmer Singapore v. Dakila Trading*,[39] the Court, discussing the application of the dictum in *Pinga* to situations outside of Section 3 of Rule 17, held:

It is true that the aforesaid declaration of the Court refers to instances covered by Section 3, Rule 17 of the 1997 Revised Rules of Civil Procedure on dismissal of the complaint due to fault of the plaintiff. Nonetheless, it does not also preclude the application of the same to the instant case just because the dismissal of respondent's [plaintiff's] Complaint was upon the instance of the petitioner[-defendant] who correctly argued lack of jurisdiction over its person.[40]

As the failure of the spouses to appear at the pre-trial amounted to a failure to comply with the Rules or any order of the court, the dismissal of their Complaint was essentially due to their fault and the therein defendant Citibank could still prosecute its Counterclaim in the same or in a separate action.

RE G.R. NO. 177133: As stated early on, this Court, by Resolution of November 30, 2006, denied Citibank's petition for review from the appellate court's September 27, 2006 Decision in CA-G.R. CV No. 86401, drawing it to file a motion for reconsideration now the subject of consideration. In its Decision[41] of September 27, 2006, the appellate court affirmed the trial court's Orders dated June 30, 2005 and January 13, 2006 dismissing Citibank's Counterclaim. In affirming the trial court's dismissal Orders, the appellate court ratiocinated:

The pending petition with the Court of Appeals does not automatically suspend the proceedings in the lower court. Under Section 7, Rule 65 of the 1997 Rules of Civil Procedure it provides that unless a temporary restraining order or writ of preliminary injunction was issued, the proceedings of the principal case is never suspended.

x x x x

Citibank already knew of the denial [by Order of February 13, 2004] of its request for the deferment of its presentation of evidence pending the spouses' Petition for Certiorari as early as February 23, 2004. It should have proceeded in prosecuting its compulsory counterclaim, but despite that Citibank never presented evidence on its counterclaim. It never sought a reconsideration of the Order dated February 13, 2004, denying Citibank's ex parte Motion to present evidence. It was only on August 4, 2005 when Citibank filed a Motion for Reconsideration. Indeed, it is too late to ask for a reconsideration of an Order that had long become final. (Emphasis and underscoring supplied)

Citibank contends that the appellate court issued two conflicting decisions in CA G.R. SP No. 80095 (the subject of G.R. No. 175677) and CA G.R. CV No. 86401 (the subject of G.R. No. 177133) where "one ruling hold[s] that [Citibank] can prosecute its counterclaims and another ruling hold[s] that it cannot prosecute the same counterclaims;"[42] that the trial court's order for it to present evidence on its Counterclaim "did not acquire finality for being an incomplete order as it failed to provide the period within which the ex parte presentation . . . should be completed;"[43] that the trial court erred in denying its motion to defer the presentation of evidence on its Counterclaim for lack of notice of hearing considering that a hearing on an ex parte motion is not required;[44] and that the motion for deferment was filed out of deference to the appellate court where the spouses' petition

involving the same parties was then still pending.[45]

The Court denies Citibank's Motion for Reconsideration.

To be sure, there is no conflict in the appellate court's rulings in CA G.R. SP No. 80095 and CA G.R. CV No. 86401. The appellate court ruled in CA G.R. SP No. 80095 that Citibank could still prosecute its Counterclaim, while it ruled in CA G.R. CV No. 86401 that Citibank's right to present evidence thereon had lapsed, hence, it denied Citibank's motion to defer and dismissed its Counterclaim.

Complementary as they are, the appellate court's rulings essentially resolved that Citibank could present evidence on its Counterclaim but within the 30-day period, as mandated by the trial court.

The trial court's Order of September 17, 2003, which reiterated its earlier May 5, 2003 Order, is not an incomplete order as it is clear that Citibank was "allowed to present its evidence [ex parte] on its counterclaim within the 30-day period provided therein reckoned anew from the date of receipt hereof." The Order plainly mentioned the allowable period when Citibank was to present its evidence. As to when the ex parte presentation of evidence would terminate, the branch clerk of court, as the commissioner in such a proceeding,[46] has discretion thereon.

It bears noting that Citibank never attempted to present even just initial evidence within the 30-day period ordered by the trial court, despite receipt of such Order on September 29, 2003. It thereafter belatedly filed a motion to defer presentation of evidence on January 5, 2004, or more than two months after the expiration of the 30-day period. The clerk of court, via Commissioner's Report of October 20, 2003, even pointed out Citibank's failure to present evidence.

It bears noting furthermore that Citibank did not seek reconsideration of the trial court's Order of February 13, 2004 denying its ex parte motion to present evidence, and it was only after more than five months or on August 4, 2005 when it, again, belatedly filed a motion for reconsideration of the June 30, 2005 Order dismissing its Counterclaim.

As for Citibank's faulting the trial court for denying its motion for deferment for lack of notice of hearing, it does not lie, given that Citibank re-filed the same motion, this time with the requisite notice of hearing. Clearly, it is estopped from raising this issue.

AT ALL EVENTS, the appellate court was correct in its finding that the trial court did not commit any reversible error in proceeding with the case as no restraining order or injunction was issued in CA G.R. SP No. 80095. Section 7 of Rule 65 of the Rules of Court, as amended, provides that a petition for certiorari shall not interrupt the course of the principal case unless the public respondent is enjoined from further proceeding with the case.[47]

WHEREFORE, the petition for review in G.R. No. 175677 is DENIED for lack of merit.

Petitioner's motion for reconsideration in G.R. No. 177133 is DENIED for lack of merit.

Costs against petitioners in both petitions.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario, Leonardo-De Castro, and Peralta,[*] JJ., concur.

[*] Additional member per Special Order No. 664 dated July 15, 2009.

[1] Amounting to P18,288.40 and P30,402.70 for her Citibank MasterCard and VISA accounts, respectively.

[2] Records, p. 3.

[3] Ibid.

[4] Id. at 4.

[5] Id. at 14-15.

[6] Id. at 16.

[7] Id. at 17-19.

[8] Id. at 20-21.

[9] Id. at 90. Citibank's reply read: x x x x.

A review of our records shows that on December 9, 1998, Ms. Corpuz's outstanding balance for her Citibank MasterCard was P35,718.32 vs. her credit line of P40,000.00. This was broken down as follows:

November 15, 1998 statement -

P18,288.40

Posted purchases after Nov. 15 stmt. -

16,355.45

Pending transactions* -

1,074.47

TOTAL

35,718.32

Similarly, Ms. Corpuz's outstanding balance for her Citibank VISA was P41,041.35 vs. her credit line of P40,000.00. This was broken down as follows:

November 30, 1998 statement -

P30,402.70

Posted purchases after Nov.30 stmt -

9,768.65

Pending transactions* -

870.00

TOTAL

41,041.35

x x x x

We also noted that Ms. Corpuz made check payments of P18,288.40 and P30,402.70 last December 7, 1998 for her Citibank MasterCard and VISA accounts, respectively, but these were not immediately available due to the 3-working day clearing period. The said payments were only credited to her account on December 10, 1998 at 5:00 a.m., when we updated her files. It is for this reason that the Point-of-Sale (POS) terminal triggered a

decline response when her Citibank MasterCard was swiped in Italy on December 10, 1998 at 1:50 a.m. and 1:51 a.m. (Manila time), and when her Citibank VISA was swiped at 1:52 a.m.

x x x x.

[10] Id. at 30-33.

[11] Id. at 52-56.

[12] Id. at 96.

[13] Id. at 97-106.

[14] Due to supervening events the pre-trial conference had been reset on various dates, September 20, 2001; February 13, 2003; and May 5, 2003.

[15] Records, p. 237.

[16] Id. at 240-247.

[17] Id. at 312-316.

[18] Id. at 317.

[19] Id. at 321.

[20] Id. at 325-327.

[21] Id. at 336.

[22] Id. at 324.

[23] Id. at 462.

[24] Rollo (G.R. No. 175677), pp. 43-57; Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Elvi John S. Asuncion and Noel G. Tijam concurring.

[25] Id. at 73-79.

[26] Rollo (G.R. No. 177133), p. 299.

[27] Id. at 321; Per Resolution of November 14, 2007.

[28] Rollo (G.R. No. 175677), pp. 29-30.

[29] SEC. 5. Effect of failure to appear. - The failure of the plaintiff to appear [at the pre-trial] when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[30] Vide: records, p. 235.

[31] SEC. 4. Appearance of parties. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (Underscoring supplied)

[32] G.R. No. 145911, 433 SCRA 631 (2004).

[33] Id. at 639.

[34] G.R. No. 105751, 224 SCRA 163 (1993). In this case, the Court ruled that the dismissal of the complaint for non-appearance of plaintiff at the pre-trial, upon motion of the defendant, carried with it the dismissal of their compulsory counterclaim.

[35] G.R. No. 170354, June 30, 2006, 494 SCRA 393 (2006).

[36] Earlier quoted under note 26.

[37] Id. at 410.

[38] Earlier quoted in note 30.

[39] G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[40] Id. at 200.

[41] Rollo (G.R. No. 177133), pp.45-53; Penned by Associate Justice Juan Q. Enriquez Jr. with Associate Justices Ruben T. Reyes (now a retired Associate Justice of the Court) and Vicente S.E. Veloso concurring.

[42] Rollo (G.R. No. 177133), p. 305.

[43] Id. at 307-308.

[44] Id. at 310-311.

[45] Id. at 309-310.

[46] Section 9 of Rule 31 of the Rules states that: SEC. 9. Judge to receive evidence; delegation to clerk of court. - The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or ex parte hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. The clerk of court shall have no power to rule on objections to any question or to the admission of exhibits, which objections shall be resolved by the court upon submission of his report and the transcripts within ten (10) days from termination of the hearing.

[47] SEC.7. Expediting proceedings; injunctive relief. - x x x

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

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