REAL BANK, INC., PETITIONER, VS. SAMSUNG MABUHAY CORPORATION, RESPONDENT.

G.R. No. 175862. October 13, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

This is a Petition for Review under Rule 45 of the Rules of Court filed by petitioner Real Bank, Inc., assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 73188 dated 18 August 2006, which granted the Petition filed by herein respondent Samsung Mabuhay Corporation (respondent Samsung) and set aside the Orders dated 5 June 2002 and 2 August 2002 of the Regional Trial Court (RTC), Branch 20 of Manila, which dismissed Civil Case No. 97-86265 for failure of respondent Samsung to appear at the scheduled mediation conference. Likewise assailed is the Resolution[2] of the appellate court dated 13 December 2006 denying petitioner Real Bank, Inc.'s Motion for Reconsideration.

The generative facts are:

On 27 November 1997, respondent Samsung filed a Complaint[3] for damages against petitioner Real Bank, Inc. docketed as Civil Case No. 97-86265. The case was originally raffled to the RTC, Branch 9 of Manila. In its complaint, respondent Samsung alleged:

> Plaintiff SAMSUNG MABUHAY ELECTRONIC CORPORATION is a joint venture corporation between SAMSUNG ELECTRONICS CO. LTD., a foreign corporation duly organized and existing under Korean laws, and plaintiff MABUHAY ELECTRONICS CORPORATION, a corporation organized and existing under Philippine laws x x x.
>
> As a result of the Joint Venture Agreement, Samsung Mabuhay Electronics Corporation became the exclusive distributor for Samsung products in the Philippines.[4]
>
> x x x x
>
> 2.1. Sometime in December of 1996, Conpinco Trading, a regular dealer of [respondent] Samsung Mabuhay Corporation in Davao City, issued five (5) postdated [United Coconut Planters Bank] UCPB checks payable to the order of Samsung Mabuhay Corporation, to wit:
>
> Check No.
>
> Date
>
> Amount
>
> 1869863
>
> December 31, 1996
>
> P 363,750.00

1869864

December 31, 1996

400,000.00

1869865

January 30, 1997

800,000.00

1869866

February 28, 1997

800,000.00

1869867

March 30, 1997

599,093.20

These five (5) checks were picked-up by Reynaldo Senson, former Collection Supervisor of Samsung Mabuhay Corporation for Visayas and Mindanao, at Conpinco Trading's place of business at J.P. Laurel Avenue, Bajada Drive, Davao City last December 14, 1996. x x x.

2.1.1. All of the five (5) checks were denominated to the "PAYEE'S ACCOUNT" only, the payee being Mabuhay Electronics Corporation although the proceeds of the checks were actually intended for Samsung Mabuhay Corporation. After the Joint Venture Agreement, Samsung dealers were duly requested by Samsung Mabuhay Corporation to make all checks payable to the order of Samsung Mabuhay Corporation instead of Mabuhay Electronics Corporation. Nevertheless, some dealers, like Conpinco Trading, still made out checks payable to Mabuhay Electronics Corporation.

2.1.2. Plaintiff Samsung Mabuhay Corporation continued to received checks from its local dealers payable to the order of Mabuhay Electronics Corporation. Plaintiff [Samsung Mabuhay Corporation] deposited the said checks to its bank account with Far East Bank and Trust Company (FEBTC), Adriatico Branch under Account No. 0113-26238-8. FEBTC accepted for deposit into Samsung Mabuhay Corporation's account therein all checks payable to Mabuhay Electronics Corporation.

2.2. Two (2) of the five (5) checks picked-up by Reynaldo Senson were remitted to Samsung Mabuhay Corporation. These checks [1869866 and 1869867] in the total amount of P1,399,093.20 were cleared by the drawee bank, UCPB, and the amount credited to the account of Samsung Mabuhay Corporation with FEBTC.

2.3. However, the three (3) remaining UCPB checks, i.e., check nos. 1869863, 1869864, and 1869865 amounting to P1,563,750.00, were not remitted by Reynaldo Senson to Samsung Mabuhay Corporation. Instead, Reynaldo Senson, using an alias name, Edgardo Bacea, opened an account with defendant Real Bank, Malolos, Bulacan branch under the account name of one Mabuhay Electronics Company, a business entity in no way related to plaintiff Mabuhay Electronics Corporation. Mabuhay Electronics Company is a single proprietorship owned and managed by Reynaldo Senson, alias Edgardo Bacea.

2.4. Reynaldo Senson, alias Edgardo Bacea, opened an account with defendant [Real Bank] by presenting an identification card bearing Mabuhay Electronics Company, the alias name Edgardo Bacea identifying him as the General Manager of Mabuhay Electronics Company, and the photograph of Reynaldo Senson, x x x. Reynaldo Senson and Edgardo Bacea are one and the same person as shown in the identification card issued by

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> Samsung Mabuhay Corporation to Reynaldo Senson x x x.
>
> 2.5. Reynaldo Senson, alias Edgardo Bacea, through the negligence of defendant [Real Bank], indorsed the checks and then deposited all the three (3) checks in the account of Mabuhay Electronics Company under Savings Account No. 1102-01944-2. The dorsal portion of the said checks (check nos. 1869863, 1869864, and 1869865) x x x and made integral parts hereof.
>
> 2.6. Defendant [Real Bank] then sent the three (3) checks for clearing and for payment through Far East Bank and Trust Company, Malolos, Bulacan Branch after stamping at the back of the checks the usual endorsements: "ALL PRIOR ENDORSEMENT and/or LACK OF ENDORSEMENT GUARANTEED." Conpinco Trading's account with the drawee bank, UCPB, was eventually debited for the value of the three (3) checks and Mabuhay Electronics Company's account with defendant [Real Bank] was credited for the same amount although it was not the payee nor the person authorized by the payee.
>
> 2.7. Subsequently, Reynaldo Senson, alias Edgardo Bacea again through the negligence of defendant bank, was able to withdraw the amount of P1,563,750.00. The value of the three (3) checks were negligently credited by defendant [Real Bank] to the account of Mabuhay Electronics Company, a single proprietorship, although the check was payable only to Mabuhay Electronics Corporation, a juridical entity, and to no one else.
>
> x x x x
>
> 2.9. Despite plaintiffs' [Samsung Mabuhay Corporation's] demands, defendant [Real Bank] ignored and refused to reimburse them with the value of the three (3) checks. Thus, plaintiffs were constrained to hire the legal services of the law firm of V.E. Del Rosario and Partners.[5]

Petitioner Real Bank, Inc. filed its Answer[6] on 23 February 1998, to which a Reply[7] was filed by respondent Samsung on 5 March 1998.

On 12 March 1998, respondent Samsung filed an Ex-Parte Motion To Set Case for Pre-Trial, asking that the case be set for pre-trial.[8] In a notice dated 24 March 1998, Judge Amelia Tria-Infante (Judge Infante) of RTC, Br. 9 of Manila, set the case for pre-trial on 25 June 1998.[9]

Meantime, petitioner Real Bank, Inc. filed on 26 May 1998 a Motion to Admit Third Party Complaint against Reynaldo A. Senson alias Edgardo Bacea, to which was attached the Third Party Complaint.

On 22 June 1998, respondent Samsung filed its Pre-trial Brief. The pre-trial was originally set on 25 June 1998 but was reset to 17 July 1998 upon motion of petitioner Real Bank, Inc. on the ground that its Motion to Admit Third Party Complaint was still pending resolution. Thus, the pre-trial was re-scheduled and reset to 10 September 1998.[10]

Petitioner Real Bank, Inc. once again moved for the resetting of the pre-trial conference scheduled on 10 September 1998[11] on the same ground that its Motion to Admit Third Party Complaint has yet to be resolved.

On 22 February 1999, the trial court issued an Order granting petitioner Real Bank, Inc.'s Motion to Admit Third Party Complaint and also ordered that summons be issued to third-party defendant Reynaldo A. Senson alias Edgardo Bacea.

On 25 May 1999, respondent Samsung filed a Motion to Dismiss the Third Party Complaint for failure of petitioner Real Bank, Inc. to prosecute its case and Motion to Set the Case for Pre-Trial.[12] On the other hand, petitioner Real Bank, Inc. filed a Motion to Serve Summons by Publication on the third-party defendant Reynaldo A. Senson alias Edgardo Bacea.

Citing the undue delay of Presiding Judge Infante in resolving the several motions pending before her, respondent

Samsung filed a Motion for her inhibition of Judge Infante on 20 September 1999.

On 15 March 2000, the Presiding Judge of Branch 9 issued an Order[13] reading:

> Before this Court are three (3) motions.
>
> The Motion to Serve Summons by Publication is hereby GRANTED.
>
> The Motion to Dismiss Third-Party Complaint is hereby DENIED and considering that this Honorable Court can administer justice on this case with impartiality and without bias, the Motion for Inhibition is likewise DENIED.
>
> Let therefore, service of summons by publication be made on third-party defendant, Reynaldo Senson alias Edgardo Bacea doing business under the name and style "Mabuhay Electronics Company" in a newspaper of general circulation for three (3) consecutive weeks.

On 19 October 2000, the counsel of respondent Samsung, V.E. Del Rosario and Partners, filed a Notice of Withdrawal of Appearance with the conformity of respondent Samsung.[14]

For its part, petitioner Real Bank, Inc. filed a Motion To Declare Third-Party defendant Reynaldo Senson in Default.

On 7 March 2001, the trial court issued an Order dated 17 March 2001 requiring both petitioner Real Bank, Inc. and respondent Samsung to appear in a mediation proceeding set on 3 April 2001.[15] This Order of the trial court was sent to respondent Samsung's former counsel, V.E. Del Rosario and Partners which had at that time already filed a notice of withdrawal of appearance.[16]

The mediation proceedings took place as scheduled on 3 April 2001 and Mediator Tammy Ann C. Reyes, who handled the mediation proceedings submitted her report to the Court stating therein that no action was taken on the case referred for mediation because respondent Samsung failed to appear.[17]

On 4 June 2001, the new counsel of respondent Samsung (Ortega, Del Castillo, Bacorro, Odulio, Calma and Carbonell) entered its appearance. This was filed and received by the court on 6 June 2001.[18]

Subsequently, RTC Branch 9 of Manila, where the case was pending was designated as a Family Court. Hence, the case was re-raffled to RTC Judge Marivic Balisi-Umali (Judge Umali) of RTC Branch 20 of Manila.

On 5 June 2002, an Order was issued by Judge Umali of Branch 20 dismissing the complaint of respondent Samsung for failure to appear at the mediation conference previously scheduled by the trial judge of Branch 9 in her Order dated 17 March 2001.[19]

The Order of Judge Umali states:

> This is a re-raffled case from Branch 9 of this Court, pursuant to Supreme Court's Resolution A.M. 99-11-07 dated February 1, 2000 and August 22, 2000 designating the Branch as a Family Court.
>
> Perusal of the record reveals that in its order dated March 7, 2001, the Court referred the case for mediation, per Sec. 29, Rule 18, 1997 Rules on Civil Procedure and the Guidelines of the Supreme Court dated November 16, 1999. On April 3, 2001, Mediator Tammy Ann C. Reyes, who handled the mediation proceedings, submitted her Report to the Court stating therein that no action was taken for the case referred for mediation because the plaintiff failed to appear.
>
> Mediation is part of pre-trial, Sec. 5, Rule 18, Rules of Court, explicitly provides that failure of the plaintiff to appear at the pre-trial shall be ground for the dismissal of the action for non-suit.

> Premises considered the above-entitled case is hereby DISMISSED for non-suit.[20]

Respondent Samsung's new counsel challenged the Order dated 5 June 2002 in a Motion for Reconsideration alleging that the dismissal is improper and inappropriate as it was not notified of the scheduled mediation conference. Besides, the notice of the scheduled mediation was sent to the previous counsel of respondent Samsung who had already withdrawn and not to the new lawyers.[21]

Judge Umali denied the Motion for Reconsideration of respondent Samsung in her Order dated 2 August 2002.[22]

Respondent Samsung then filed before the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 73188. The Court of Appeals rendered a decision in favor of respondent Samsung dated 18 August 2006, the fallo of which reads:

> WHEREFORE, in view of the foregoing, the Petition is hereby GRANTED. The Orders dated 5 June 2002 and 2 August 2002 are hereby REVERSED and SET ASIDE.[23]

The Court of Appeals explained its decision in this wise:

> [R]espondent judge did not even peruse or verify the records of the case. Has she done so, she would have discovered that the former counsel of petitioner to whom she sent the Notice of the order had already withdrawn and that a new counsel for petitioner had already entered their appearance. Likewise, she should have discovered that at that time the Order dated March 7, 2001 was issued by RTC Br. 9, petitioner was no longer holding office at its given address. This fact is clearly indicated in the Order of March 7, 2001 itself. Clearly, therefore, respondent judge committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the Order dated June 5, 2002. [24]

Petitioner Real Bank, Inc.'s Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated 13 December 2006.[25]

Hence, this petition.

Petitioner Real Bank, Inc. submits the following issues for our resolution.

> I. WHETHER THE COURT OF APPEALS ERRED IN SETTING ASIDE THE ORDER OF THE TRIAL COURT DISMISSING THE CASE BEFORE IT DUE TO THE FAILURE OF RESPONDENT AND ITS COUNSEL TO ATTEND THE MEDIATION CONFERENCE.
>
> II. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT WAS NOT NOTIFIED OF THE MEDIATION CONFERENCE.
>
> III. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE WITHDRAWAL OF RESPONDENT'S COUNSEL WAS SUFFICIENT NOTWITHSTANDING THE FACT THAT THE SAID WITHDRAWAL WAS NOT APPROVED BY THE TRIAL COURT, AND DESPITE THE FACT THAT AT THE TIME, RESPONDENT HAS NOT YET ENGAGED THE SERVICES OF A NEW COUNSEL.
>
> IV. WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING RESPONDENT GUILTY OF NEGLIGENCE IN FAILING TO INQUIRE ABOUT THE STATUS OF ITS CASE AND TO ENGAGE THE SERVICES OF A NEW COUNSEL FOR A PERIOD OF ALMOST EIGHT (8) MONTHS.[26]

In this petition, it is petitioner Real Bank, Inc.'s position that RTC Branch 20 of Manila acted properly in dismissing Civil Case No. 97-86265 for failure on the part of respondent Samsung to appear on the scheduled mediation conference.

In Senarlo v. Judge Paderanga,[27] this Court accentuated that mediation is part of pre-trial and failure of the

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plaintiff to appear thereat merits sanction on the part of the absent party. This court held:

> A.M. No. 01-10-5-SC-PHILJA dated 16 October 2001, otherwise known as the Second Revised Guidelines for the Implementation of Mediation Proceedings and Section 5, Rule 18 of the Rules of Court grant judges the discretion to dismiss an action for failure of the plaintiff to appear at mediation proceedings.
>
> A.M. No. 01-10-5-SC-PHILJA considers mediation a part of pre-trial and provides sanctions for the absent party:
>
> 12. Sanctions.
>
> Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

Under Rule 18, Section 5 of the Rules of Court, failure of the plaintiff to appear at pre-trial shall be cause for dismissal of the action:

> Sec. 5. Effect of failure to appear. - The failure of the plaintiff to appear 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.[28]

However, the ruling in Senarlo will not resolve the present case where the basic issue is whether or not respondent's Samsung non-appearance at the mediation proceedings is justifiable from the records.

We sustain the ruling of the Court of Appeals.

Rule 138, section 26 of the Rules of Court outlines the procedure in case of withdrawal of counsel. It states:

> RULE 138
> Attorneys and Admission to Bar
>
> Sec. 26. Change of attorneys. - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

Under the first sentence of Section 26, the withdrawal of counsel with the conformity of the client is completed once the same is filed in court. No further action thereon by the court is needed other than the mechanical act of the Clerk of Court of entering the name of the new counsel in the docket and of giving written notice thereof to the adverse party.[29]

In this case, it is uncontroverted that the withdrawal of respondent Samsung's original counsel, V.E. Del Rosario and Partners on 19 October 2000, was with the client's consent. Thus, no approval thereof by the trial court was required because a court's approval is indispensable only if the withdrawal is without the client's consent.[30]

It being daylight clear that the withdrawal of respondent Samsung's original counsel was sufficient as the same carried the stamp of approval of the client, the notice of mediation sent to respondent Samsung's original counsel was ineffectual as the same was sent at the time when such counsel had already validly withdrawn its representation. Corollarily, the absence of respondent Samsung during the scheduled mediation conference was

excusable and justified. Therefore, the trial court erroneously dismissed Civil Case No. 97-86265.

We cannot sustain petitioner Real Bank, Inc.'s argument that respondent Samsung was negligent in the conduct of its case.

The calendar of hearings document the fact that respondent Samsung has been willing and able to prosecute its case. Except for the lone instance, reasonable as already shown, of absence during the scheduled mediation conference on 3 April 2001, respondent Samsung had, till then, promptly and religiously attended the hearings set by the RTC. In fact, respondent Samsung exhibited diligence and dispatch in prosecuting its case against petitioner Real Bank, Inc. by immediately moving to set the case for pre-trial after it had filed its reply and momently filing a motion for reconsideration of the RTC Order dismissing Civil Case No. 97-86265.

The following observation of the Court of Appeals is worth noting:

> As borne by the records, it is [petitioner] [Real Bank, Inc.] which asked for a resetting of the pre-trial twice. On the other hand, the [respondent Samsung] was the one egging and repeatedly requesting Presiding Judge Infante of Br. 9 to set the case for pre-trial. It has reached the point that [respondent Samsung] got exasperated for the unreasonable delay of the judge of RTC, Br. 9 in resolving the incidents pending before her that it was constrained to file a motion for inhibition.[31]

Herein respondent Samsung instituted Civil Case No. 97-86265 before the RTC, to recover the amount it claims to have lost due to the negligence of petitioner Real Bank, Inc., clearly a property right. The substantive right of respondent Samsung to recover a due and demandable obligation cannot be diminished by an unwarranted strictness in the application of a rule of procedure.[32]

In Calalang v. Court of Appeals,[33] this Court underscored that unless a party's conduct is so negligent, irresponsible, contumacious or dilatory as to provide substantial grounds for dismissal for non-appearance, the court should consider lesser sanctions which would still amount into achieving the desired end.

In Bank of the Philippine Islands v. Court of Appeals,[34] we ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, courts should decide to dispense rather than wield their authority to dismiss.

While not at the fore of this case, it may be stated that the state of the court docket cannot justify injudicious case dismissals. Inconsiderate dismissals, even without prejudice, do not constitute a panacea or a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of cases before the court.[35]

Accordingly, the ends of justice and fairness would be best served if the parties in Civil Case No. 97-86265 are given the full opportunity to thresh out the real issues in a full blown trial. Besides, petitioner Real Bank, Inc. would not be prejudiced should the RTC proceed with Civil Case No. 97-86265 as it is not stripped of any affirmative defenses nor deprived of due process of law.[36]

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit and the Decision of the Court of Appeals in CA-G.R. SP No. 73188 dated 18 August 2006 and the Resolution of the same court dated 13 December 2006 are AFFIRMED. This case is ordered REMANDED to the RTC Manila, Branch 20 for continuation of proceedings until its conclusion with utmost dispatch.

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SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

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[1] Penned by Associate Justice Lucenito N. Tagle with Associate Justices Marina L. Buzon and Regalado E. Maambong, concurring. Rollo, pp. 37-47.

[2] Id. at 34-35.

[3] Id. at 18.

[4] Id. at 48.

[5] Id. at 49-53.

[6] Id. at 60.

[7] Id. at 82.

[8] Id. at 96.

[9] Id. at 98-99.

[10] Id. at 101.

[11] Id. at 102.

[12] Id. at 105.

[13] Id. at 109.

[14] Id. at 110.

[15] CA rollo, p. 247

[16] Rollo, p. 110.

[17] CA rollo, p. 251.

[18] Id. at 248.

[19] Rollo, p. 113.

[20] Id.

[21] Id. at 114.

[22] Id. at 126-128.

[23] Id. at 46.

[24] Id. at 45.

[25] Id. at 34.

[26] Id. at 253-254.

[27] A.M. No. RTJ-06-2025, 5 April 2010.

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[28] Id.

[29] Arambulo v. Court of Appeals, G.R. No. 105818, 17 September 1993, 226 SCRA 589, 597-598.

[30] Id. at 597.

[31] Rollo, p. 45.

[32] Gosiaco v. Ching, G.R. No. 173807, 16 April 2009, 585 SCRA 471, 480.

[33] G.R. No. 103185, 22 January 1993, 217 SCRA 462, 470.

[34] 362 Phil. 362, 369 (1999).

[35] Anson Trade Center, Inc. v. Pacific Banking Corporation, G.R. No. 179999, 17 March 2009, 581 SCRA 751, 759.

[36] Bank of the Philippine Islands v. Dando, G.R. No. 177456, 4 September 2009, 598 SCRA 378, 387 citing Polanco v. Cruz, G.R. No. 182426, 13 February 2009, 579 SCRA 489, 498.

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