

LBL INDUSTRIES, INC., PETITIONER, VS. CITY OF LAPU-LAPU, RESPONDENT.

G.R. No. 201760. September 16, 2013

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-201760/>

VELASCO JR., J.:

The Case

Before Us is a Petition for Review on Certiorari under Rule 45, assailing and seeking the annulment of the Resolution of the Court of Appeals (CA) dated July 11, 2011 in CA-G.R. SP No. 05877 as well as its Resolution dated April 19, 2012 denying reconsideration of the first assailed issuance.

The Facts

Petitioner is the registered owner of a 40,634-square meter parcel of land. Lot No. 4839, situated in Mactan, Lapu-Lapu City and covered by Transfer Certificate of Title (TCT) No. 34555.

On January 25, 2006, respondent City of Lapu-Lapu (respondent) filed a complaint[1] before the Regional Trial Court seeking to expropriate, among others, a 300-square meter portion of Lot No. 4839 for its road opening project from Saac II to Bag-ong Silingan, Mactan, Lapu-Lapu City. Later, or on February 19, 2006, the complaint was amended, captioned as "Second Amended Complaint," increasing the area sought to be appropriated to 2,750 sq.m.

Upon deposit of an amount equivalent to 15% of the fair market value of the property based on the current tax declaration, respondent took possession of and utilized the property. On February 28, 2006, petitioner filed its Answer, accompanied by a Secretary's Certificate, which states, in part:

That at the Special Meeting of the Board of the Corporation on February 14, 2006, the following resolution had been adopted and approved[.] to wit:

"RESOLVED, as it is hereby resolved, to authorize ELSIE TAN MARIÑO [Mariño], an officer of the corporation, to commence any action for and in behalf of the corporation as she may deem fit and necessary to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation[,] more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu[,] including the execution/signing and verification of the Answer of other necessary pleadings[,] and do such other acts necessary and proper in connection therewith."[2]

Meanwhile, petitioner interposed a Motion to Conduct Joint Survey and Set Case for Pre-trial.

Later, or on March 3, 2006, petitioner filed its Answer to the Amended and Second Amended Complaint.

Meantime, the RTC issued two Orders, dated July 10, 2006 and March 28, 2007, directing the issuance of a writ of possession. The branch clerk of court, however, failed to comply with any of the orders.[3]

A year later, or on January 25, 2008, petitioner moved for the dismissal of the case on the ground that respondent

failed to prosecute the case for an unreasonable length of time as provided for under Section 3, Rule 17 of the Rules of Court. According to petitioner, respondent has yet to move for the setting of the case for pre-trial and it had done nothing to ensure compliance with the Orders for the issuance of the writ of execution. Respondent opposed the motion, explaining that the reason for the delay was that it is awaiting the RTC's resolution on the motion filed by petitioner for the conduct of a joint survey and for the setting of the case for pre-trial. Petitioner filed a Reply to respondent's Opposition and Comment on the Motion to Dismiss on February 14, 2008.

In its Order[4] dated February 18, 2008 denying the motion to dismiss, the RTC ruled that respondent cannot be faulted for the alleged delay in prosecuting the case as, indeed, petitioner's motion for the conduct of a joint survey and for the setting of the case for trial had not yet been resolved. And as an additional reason for its action, the RTC cited the non-observance of the three (3)-day notice rule noting that the motion to dismiss was received by the plaintiff on January 31, 2008, but the motion was set for hearing on the following day, or on February 1, 2008. The fallo of the Order reads:

WHEREFORE, premises considered, the Motion to Dismiss is denied.

Plaintiff [respondent] is directed to prosecute this case within thirty (30) days from receipt of this order.

Furnish copies of this order to counsels.

SO ORDERED.

Petitioner's motion for reconsideration of the RTC's February 18, 2008 Order was likewise denied in that court's January 26, 2011 Order,[5] the dispositive portion of which states:

WHEREFORE PREMISES CONSIDERED, the motion for reconsideration is hereby DENIED.

For the third time, the Branch Clerk of Court is hereby directed to issue a writ of possession.

Furnish copy of this order to counsels.

SO ORDERED.

In the latter Order, the RTC attributed the fault to its branch clerk of court for failing to comply with its twin orders directing the issuance of a writ of possession.

On April 15, 2011, petitioner went to the CA on a Petition for Certiorari under Rule 65 assailing the said February 18, 2008 and January 26, 2011 Orders of the trial court, the recourse docketed as CA-G.R. SP. No. 05877. Attached to the petition is a Secretary's Certificate executed on April 12, 2011, by Elsie T. Mariño, petitioner's assistant corporate secretary. Said certificate states, among others, that at the special meeting of petitioner's board on April 8, 2011, the following resolution was adopted:

RESOLVED, as it is hereby resolved, to authorize Mr. Roberto Z. Sison [Sison] or Ms. Elsie T. Mariño, to commence any action and. or represent the corporation as he/she may deem fit and necessary and to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation more particularly involving the Complaint for Eminent Domain filed with the RTC of Lapu-Lapu City, any proceedings for just compensation for its lots in Lapu-Lapu City including the execution/signing and verification of the necessary documents and do such other acts necessary and proper in connection therewith.[6]

CA Ruling

The CA dismissed the petition in its July 11, 2011 Resolution[7] owing to the following infirmities, viz:

- a One Hundred and Fifty Peso (PhP 150) deficiency in docket fees;

- the absence of the serial number, as well as the province or city of commission of the Notary Public in the Notarial Certificate of the Verification and Certification of Non-Forum Shopping
- lack of proper proof of service; and
- absence of a board resolution evincing the authority of Roberto Sison, petitioner's Chief Operating Officer, to represent it in the case.

The fallo of the CA's July 11, 2011 Resolution reads as follows:

In view of the foregoing premises, petitioners' Petition for Certiorari dated April 11, 2011 is hereby DISMISSED.

SO ORDERED.

As regards the absence of a board resolution, the CA held that "the Petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority." [8] Petitioner, thus, moved for reconsideration, offering explanations for the defects cited by the CA including the absence of the board resolution.

CA Ruling on Motion for Reconsideration

The appellate court, in its April 19, 2012 Resolution, accepted petitioner's explanation as regards the first three (3) defects but ruled that the person signing the petition lacked authority to do so because the Secretary's Certificate appended to the petition is insufficient proof of said authority. The CA ruled that the failure to attach the Board Resolution for the filing of the Petition was fatal x x x. [9] In disposing of the case, the CA stated:

WHEREFORE, in view of the foregoing premises, petitioner's Motion for Reconsideration dated August 10, 2011, is hereby DENIED.

SO ORDERED. [10]

The Issues

Petitioner now comes before this Court assailing the foregoing Resolutions of the CA and raising the following issues, to wit:

- [WHETHER THE CA] SERIOUSLY ERRED IN HOLDING THAT THE SECRETARY'S CERTIFICATE EXECUTED BY ASSISTANT CORPORATE SECRETARY ELSIE T. MARIÑO AUTHORIZING ROBERTO Z. SISON TO ACT FOR AND ON BEHALF OF THE PETITIONER CORPORATION IN FILING THE PETITION FOR CERTIORARI DOES NOT CONSTITUTE SUFFICIENT PROOF OF [SISON'S] AUTHORITY TO REPRESENT THE CORPORATION.

- [WHETHER THE CA] SERIOUSLY ERRED IN DISMISSING THE CASE BASED ON A TECHNICALITY WHEN PETITIONER HAS SUBSTANTIALLY RAISED VALID GROUNDS TO SET ASIDE THE ORDERS OF THE TRIAL COURT DENYING PETITIONER'S MOTION TO DISMISS THE CASE FOR FAILURE OF THE RESPONDENT TO PROSECUTE THE CASE FOR AN UNREASONABLE LENGTH OF TIME. [11]

Accompanying the Petition is a copy of the April 8, 2011 Minutes of the Special Meeting of the Board of Directors of petitioner authorizing Sison to represent petitioner in the expropriation case. [12]

The Court's Ruling

The petition is partly meritorious.

On the first issue, petitioner argues that the Secretary's Certificate executed by Assistant Corporate Secretary Marina—reflecting the Board's resolution that authorized its Chief Operating Officer, Sison, to file the Petition for Certiorari under Rule 65 with the CA—is sufficient proof of authority. We agree.

The Court, in several cases, has recognized the sufficiency of a Secretary's Certificate as proof of authority for an individual named in it to represent a corporation in a suit.[13] In *Vicar International Construction, Inc. v. FEB Leasing and Finance Corp.*,[14] We held:

In *Shipside Incorporated v. Court of Appeals*, the petitioner had not attached any proof that its resident manager was authorized to sign the Verification and the non-forum shopping Certification, as a consequence of which the Petition was dismissed by the Court of Appeals. Subsequent to the dismissal, however, the petitioner filed a motion for reconsideration, to which was already attached a Certificate issued by its board secretary who stated that, prior to the filing of the Petition, the resident manager had been authorized by the board of directors to file the Petition.

Citing several cases excusing noncompliance with the requirement of a certificate of non-forum shopping, the Court held that "with more reason should x x x the instant petition [be allowed,] since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so." The Court further said that the subsequent submission of the Secretary's Certificate, attesting that the signatory to the certification was authorized to file the action on behalf of petitioner, mitigated the oversight. (Emphasis supplied; citations omitted.)

A simple perusal of the records shows that separate authorizing board resolutions, as evidenced by the Secretary's Certificate, were executed a few days prior to the filing of the Answer to the basic complaint to expropriate and the petition for certiorari interposed before the CA. The Answer was filed on February 28, 2006. Prior to this date, the board of petitioner already authorized Mariño "to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation, more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu" during its February 14, 2006 special meeting. Similarly, the Petition for Certiorari before the CA was filed on April 15, 2011, accompanied by a secretary's certificate executed on April 12, 2011 by Mariño, which states, among others, that the latter, as well as Sison, was authorized by the Board on April 8, 2011 to represent petitioner in said eminent domain case.

Clearly then, Sison, petitioner's representative, was duly authorized to sign the verification and certificate of non-forum shopping and that a Secretary's Certificate is sufficient proof of said authority, it not being limited to the Board Resolution itself. Accordingly, We hold that the CA erred in dismissing petitioner's certiorari petition and in denying its motion for reconsideration.

This is not to say, however, that the petition before the CA is meritorious. Taking into consideration the length of dormancy of Civil Case No. 653 8-L and a review of the developments in said case convinces Us that the issue of whether the denial of petitioner's Motion to Dismiss by the RTC is proper, which issue the CA has yet to resolve, should be resolved in respondent's favor. The Court likewise finds it apt to settle said issue once and for all instead of directing the appellate court to proceed with CA-G.R. SP. No. 05877 in order to avert further delays in its resolution.[15] Thus, for practical reasons and in the greater interest of justice, the Court shall now address the issue of whether the RTC erred in denying petitioner's motion to dismiss.

Petitioner contends that the trial court erred in not dismissing the case for respondent's failure to prosecute the case for an unreasonable length of time in violation of Sec. 1, Rule 18 and Sec. 3, Rule 17 of the Rules of Court.

Sec. 1, Rule 18 on Pre-Trial, reads:

Sec. 1. When conducted. - After the last pleading has been served and filed, it shall be the duty of the plaintiff

to promptly move ex parte that the case be set for pre-trial.

Related to the above section is Sec. 3 of Rule 17, which states:

Sec. 3. Dismissal due to fault of plaintiff. - If, for no justifiable cause, the plaintiff fails x x x to prosecute his action for an unreasonable length of time, x x x the complaint may be dismissed upon motion of the defendant or upon the court's own motion x x x.

Sec. 1, Rule 18 of the Rules of Court imposes upon the plaintiff the duty to set the case for pre-trial after the last pleading is served and filed. With this in mind, We have, in several cases,[16] ruled that the plaintiffs omission to promptly move that the case be set for pre-trial is a ground for the dismissal of the complaint due to his fault, particularly for failing to prosecute his action for an unreasonable length of time, pursuant to Sec. 3, Rule 17.

The parties, as well as the courts below, however, failed to consider that the afore-quoted Sec. 1 of Rule 18 had already been superseded by A.M. No. 03-1-09-SC,[17] which took effect on August 16, 2004, Item 1.2 of which states:

I. PRE-TRIAL

A. Civil Cases

1. Within one day from receipt of the complaint:

1.1. Summons shall be prepared and shall contain a reminder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defences in the Answer, in conformity with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. xxx.

1.2 x x x Within five (5) days from date of filing of the reply, the plaintiff must promptly move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch [Clerk of Court] shall issue a notice of pre-trial.

Thus, the present rule is that if the plaintiff fails to file a motion to set the case for pre-trial within five (5) days from the filing of a reply, the duty to set the case for pre-trial falls upon the branch clerk of court. However, this does not relieve the plaintiff of his own duty to prosecute the case diligently.

For a plaintiff, as herein respondent, to be excused from its burden to promptly prosecute its case, it must convince the court that its failure to do so was due to justifiable reasons. If the neglect is justified, then a dismissal of the case on said ground is not warranted.

In an attempt to convince Us that it was not remiss in its duty to diligently prosecute its case, respondent proffered the following reasons, to wit:

- Respondent was constrained to await the trial court's resolution of petitioner's Motion to Conduct Joint Survey and Set the Case for Pre-Trial, which the RTC has not yet resolved to this date;[18]
- Respondent's right to due process—i.e., the right to be given a reasonable or ample opportunity to be heard—is violated since the RTC has not yet resolved said Motion to Conduct Joint Survey;[19]
- Petitioner's Motion to Dismiss is a mere scrap of paper, petitioner having violated the three-day notice rule under Sec. 4, Rule 15 of the Rules of Court;[20] and
- Respondent cannot be faulted for the alleged delay not only because of the pendency of the resolution of said Motion and because of petitioner's failure to strictly comply with the three-day notice rule, but also because the branch clerk of court failed to comply with the July 10, 2006 and March 28, 2007 directives of the RTC that a writ

of possession be issued.[21]

A consideration of the events that transpired in the said expropriation case readily shows that the delay cannot solely be attributed to respondent City of Lapu Lapu but is in fact due to the failure of the branch clerk of court to set the case for pre-trial pursuant to A.M. No. 03-1-09-SC, as well as the trial court's delay in resolving petitioner's Motion to Conduct Joint Survey and Set the Case for Pre-Trial. We find good reason to believe respondent's assertion that it acted in good faith when it did not move to set the case for pre-trial, since petitioner already moved for the pre-trial setting. Another motion from respondent can be simply repetitive of petitioner's earlier motion.

The Court, however, is mindful of petitioner's predicament that the delay in the resolution of the expropriation case and respondent's continued occupation and enjoyment of the subject property for more than half a decade is extremely disadvantageous and prejudicial to said corporation without any payment of just compensation. To prevent further damage to petitioner, the trial court is directed to immediately resolve petitioner's Motion to Conduct Joint Survey, set the case for pre-trial, and take all appropriate measures to expedite the resolution of said case.

WHEREFORE, in view of the foregoing pronouncements, the petition is hereby **PARTIALLY GRANTED**. The assailed CA Resolutions dated July 11, 2011 and April 19, 2012 in CA-G.R. SP. No. 05877 are hereby **REVERSED** and **SET ASIDE** for the reason that petitioner's representative was duly authorized to sign the verification and certification against forum shopping.

The February 18, 2008 and January 26, 2011 Orders of the RTC are hereby **AFFIRMED**. However, in the interest of substantial justice, the RTC, Branch 27 in Lapu-Lapu City is hereby **DIRECTED** to take immediate action on all pending matters in Civil Case No. 6538-L, set the case for pre-trial, and expedite the resolution of said case.

No pronouncement as to costs.

SO ORDERED.

Del Castillo,[*] Abad, Mendoza, and Leonen, JJ., concur.

[*] Acting member per Special Order No. 1541 (Revised) dated September 9, 2013.

[1] Docketed as Civil Case No. 6538-L before the RTC, Branch 27 in Lapu-Lapu City, entitled City of Lapu-Lapu v. Sps. Lhullier, et al.

[2] Rollo p. 139.

[3] Id. at 172.

[4] Id. at 162.

[5] Id. at 172.

[6] Id. at 186.

[7] Id. at 32-34. Penned by Associate Justice Eduardo B. Peralta Jr. and concurred in by Associate Justices Pampio A. Abarirrtbs and Gabriel T. Ingles.

[8] Id. at 33.

[9] Id. at 37.

[10] Id. at 38.

[11] Id. at 14.

[12] Id. at 219.

[13] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981 (2001); *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories Philippines, Inc.*, G.R. No. 164757, October 18, 2010, 633 SCRA 320; *Mediserv, Inc. v. CA*, G.R. No. 161368, April 5, 2010, 617 SCRA 284.

[14] 496 Phil. 467, 475 (2005).

[15] See *Golangco v. Court of Appeals*, 347 Phil. 771, 778 (1997). [The next most logical step would then be for the Court to simply set aside the challenged resolutions, remand the case to the CA and direct the latter to resolve on the merits of the petition in CA-G.R. SP No. 58799. But that would further delay the case. Considering the issues raised which can be resolved on the basis of the pleadings and documents filed, and the fact that petitioner itself has asked the Court to decide its petition on the merits, the Court deems it more practical and in the greater interest of justice not to remand the case to the CA but, instead, to resolve the controversy once and for all.]

[16] *Olave v. Mistas*, G.R. No. 155193, November 26, 2004, 444 SCRA 479; *Samson v. Fiel-Macaraig*, G.R. No. 166356, February 2, 2010, 611 SCRA 345; *New Japan Motors, Inc. v. Pemcho*, 165 Phil. 636 (1976).

[17] Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

[18] Rollo, p. 151.

[19] Id. at 152.

[20] Id. at 153.

[21] Id. at 172.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.