

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPOUSES ROBERTO AND TERESITA GENUINO, RESPONDENTS.

G.R. No. 208792. July 22, 2015

Ponente: LEONEN, J.

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LEONEN, J.:

A.M. No. 03-1-09-SC[1] does not remove the plaintiff's duty under Rule 18, Section 1 of the Rules of Court to promptly move ex-parte to set his or her case for pre-trial after the last pleading has been served and filed.[2] While pre-trial promotes efficiency in court proceedings and aids in decongesting dockets, A.M. No. 03-1-09-SC did not give sole burden on the courts to set cases for pre-trial.

A.M. No. 03-1-09-SC, providing that "[w]ithin 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 [and] [i]f the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial,"[3] must be read together with Rule 17, Section 3 of the Rules of Court on dismissals due to plaintiff's fault. Plaintiff should thus sufficiently show justifiable cause for its failure to set the case for pre-trial; otherwise, the court can dismiss the complaint outright.

The trial court dismissed without prejudice the Bank of the Philippine Islands' Complaint against Spouses Roberto and Teresita Genuino for failure to prosecute under Rule 17, Section 3 of the Rules of Court.[4] The Bank of the Philippine Islands concedes that dismissal is justified under the Rules of Court, but submits that dismissal for non-filing of a Motion to Set Case for Pre-trial Conference is no longer proper beginning August 16, 2004 when A.M. No. 03-1-09-SC was issued.[5]

This Petition[6] assails the Court of Appeals February 26, 2013 Decision[7] that dismissed Bank of the Philippine Islands' Petition for Certiorari, and August 13, 2013 Resolution[8] that denied reconsideration.[9]

On October 6, 2009, Bank of the Philippine Islands filed a Complaint for Sum of Money/Judgment on the Deficiency against the Spouses Genuino before the Regional Trial Court of Makati.[10]

The Complaint alleged that on May 27, 1997 and May 11, 1999, the Spouses Genuino executed a Deed of Real Estate Mortgage over a 10,000-square-meter[11] parcel of land in General Trias, Cavite City, together with its improvements, to secure loans and other credit accommodations obtained or to be obtained from the bank.[12]

The Spouses Genuino availed themselves of this credit accommodation in the amount of P8,840,000.00 as evidenced by various promissory notes. They defaulted in their installment payments, and their failure to pay despite demand resulted in the entire outstanding balance of the loan, plus interests and other charges, becoming due and demandable.[13]

On April 18, 2004, Bank of the Philippine Islands foreclosed the mortgaged property after due notice and publication, and sold it to the highest bidder at the public auction for P2,900,000.00. A deficiency of P27,744,762.49 remained after the tendered bid price had been deducted from the Spouses Genuino's total obligation of P30,644,762.49. The Spouses Genuino failed to pay the deficiency despite written demands by the

bank.[14]

Thus, Bank of the Philippine Islands filed the Complaint. It prayed for the reduced amount of P10,626,121.69, waiving partly the stipulated interest, and waiving totally the late payment charges and attorney's fees.[15]

On November 25, 2009, the Spouses Genuino filed their Answer with Special and Affirmative Defenses. They argued nullity of the auction sale for lack of notice or demand made to them before and after the alleged foreclosure. Even assuming the auction sale was valid, they argued that Bank of the Philippine Islands waived the remedy of collection when it chose to foreclose the security. The Spouses Genuino included a Compulsory Counterclaim for moral damages, exemplary damages, and attorney's fees.[16]

On December 2, 2009, Bank of the Philippine Islands received a copy of the Answer and opted not to file any Reply.[17]

The Regional Trial Court, in its Order[18] dated May 17, 2010, dismissed the case without prejudice for lack of interest to prosecute under Rule 17, Section 3 of the Rules of Court. The Spouses Genuino's counterclaim was also dismissed without prejudice pursuant to Rule 17, Section 4 of the Rules of Court.[19]

In its Motion for Reconsideration,[20] Bank of the Philippine Islands explained that the case folder was misplaced in the office bodega together with the records of terminated cases. The assigned secretary of counsel had already left the firm, and the bank could no longer seek an explanation for the misfiling of the case after it had been unloaded by previous counsel. The bank argued for the application of A.M. No. 03-1-09-SC. The court denied reconsideration.[21]

The Court of Appeals, in its Decision dated February 26, 2013, denied due course and dismissed Bank of the Philippine Islands' Petition for Certiorari.[22] It found no grave abuse of discretion by the trial court in dismissing without prejudice the bank's Complaint.[23]

Hence, Bank of the Philippine Islands filed this Petition.

The bank submits that with the issuance of A.M. No. 03-1-09-SC, "it is no longer proper to dismiss a case for failure to prosecute starting August 16, 2004 due to the non-filing by the plaintiff of a Motion to Set Case for Pre Trial Conference but instead the Clerk of Court should issue an Order setting the case for Pre Trial Conference." [24] It quotes *Espiritu, et al. v. Lazaro, et al.* [25] that "clarified the application of [A.M.] No. 03-1-09[SC] to cases filed after its effectivity on August 16, 2004[.]" [26] Cases should also be resolved based on its merits and not on mere technicalities.[27]

The Spouses Genuino counter that "[w]hile the clerk of court has the duty to include a case in the trial calendar after the issues are joined and to fix the date for trial as well as to notify the parties of the same, plaintiff may not rely upon said duty of the clerk, nor is it relieved of its own duty to prosecute the case diligently, calling if necessary the attention of the court to the need of putting the case back to its calendar if the court, because of numerous cases, has neglected to attend thereto." [28] They cite *Olave v. Mistas* [29] where the trial court dismissed the case with prejudice when plaintiff failed to move for pre-trial after more than three months.[30]

The Spouses Genuino submit that "notwithstanding A.M. No. 03-1-09-SC it is the duty of the plaintiff to prosecute its action within a reasonable length of time and the failure to do so would justify the dismissal of the case." [31]

The issue for resolution is whether the trial court acted with grave abuse of discretion in dismissing the case without prejudice on the ground of failure to prosecute when Bank of the Philippine Islands failed to file a motion to set case for pre-trial conference.

We deny this Petition by Bank of the Philippine Islands.

The trial court dismissed the Complaint pursuant to Rule 17, Section 3 of the Rules of Court. This dismissal operated as an adjudication on the merits:

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 supplied)

A.M. No. 03-1-09-SC entitled Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures took effect on August 16, 2004. This provides that:

I. Pre-Trial
A. Civil Cases

1. . .

.....

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 COC shall issue a notice of pre-trial.[32] (Emphasis supplied, citations omitted)

Respondents Spouses Genuino cannot rely on Olave v. Mistas as this involved a trial court Order dated October 20, 1997 dismissing the Complaint with prejudice.[33] The facts in Olave took place before the effectivity of A.M. No. 03-1-09-SC on August 16, 2004.

Espiritu, et al. v. Lazaro, et al. quoted by petitioner Bank of the Philippine Islands "clarified the application of [A.M.] No. 03-1-09[SC] to cases filed after its effectivity on August 16, 2004":[34]

In every action, the plaintiffs are duty-bound to prosecute their case with utmost diligence and with reasonable dispatch to enable them to obtain the relief prayed for and, at the same time, to minimize the clogging of the court dockets. Parallel to this is the defendants' right to have a speedy disposition of the case filed against them, essentially, to prevent their defenses from being impaired.

Since the incidents occurred prior to the effectivity of A.M. No. 03-1-09-SC on August 16, 2004, the guidelines stated therein should not be made applicable to this case. Instead, the prevailing rule and jurisprudence at that time should be utilized in resolving the case.

Section 1 of 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. Under Section 3 of Rule 17, failure to comply with the said duty makes the case susceptible to dismissal for failure to prosecute for an unreasonable length of time or failure to comply with the rules.[35] (Emphasis supplied, citation omitted)

Nevertheless, nowhere in the text of A.M. No. 03-1-09-SC does it remove the plaintiff's duty under Rule 18, Section 1 of the Rules of Court to set the case for pre-trial after the last pleading has been served and filed. Nowhere does it repeal Rule 17, Section 3 of the Rules of Court that allows dismissals due to plaintiff's fault, including plaintiff's failure to comply with the Rules for no justifiable cause. Nowhere does it impose a sole burden on the trial court to set the case for pre-trial.

Reading A.M. No. 03-1-09-SC together with Rule 17, Section 3 and Rule 18, Section 1 of the Rules of Court accommodates the outright dismissal of a complaint upon plaintiff's failure to show justifiable reason for not setting the case for pre-trial within the period provided by the Rules. Thus, trial courts must consider the facts of each case.

This court has allowed cases to proceed despite failure by the plaintiff to promptly move for pre-trial when it finds that "the extreme sanction of dismissal of the complaint might not be warranted":[36]

It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified.

.....

While "heavy pressures of work" was not considered a persuasive reason to justify the failure to set the case for pre-trial in *Olave v. Mistas*, however, unlike the respondents in the said case, herein respondent never failed to comply with the Rules of Court or any order of the trial court at any other time. Failing to file a motion to set the case for pre-trial was her first and only technical lapse during the entire proceedings. Neither has she manifested an evident pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules. Accordingly, the ends of justice and fairness would best be served if the parties are given the full opportunity to litigate their claims and the real issues involved in the case are threshed out in a full-blown trial. Besides, petitioners would not be prejudiced should the case proceed as they are not stripped of any affirmative defenses nor deprived of due process of law.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application. Indeed, on several occasions, the Court relaxed the rigid application of the rules of procedure to afford the parties opportunity to fully ventilate the merits of their cases. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.

Finally, A.M. No. 03-1-09-SC or the new Guidelines To Be Observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures, which took effect on August 16, 2004, aims to abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99 dated January 15, 1999. A.M. No. 03-1-09-SC states that: 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 COC shall issue a notice of pre-trial.[37] As such, the clerk of court of Branch 17 of the Regional Trial Court of Malolos should issue a notice of pre-trial to the parties and set the case for pre-trial. (Emphasis supplied, citations omitted)

On the other hand, this court has sustained dismissals due to plaintiff's fault after finding that plaintiff's failure to prosecute or comply with the rules was without justifiable reason. The Court of Appeals Decision cited *Spouses Zarate v. Maybank Philippines, Inc.*[38] and *Eloisa Merchandising, Inc. v. Banco de Oro Universal Bank*[39] on the need for vigilance in prosecuting one's case, and *Regner v. Logarta*[40] on the right to speedy trial.[41]

In *Zarate*, the trial court "dismiss[ed] the complaint for lack of interest to prosecute the case." [42] Pre-trial and presentation of evidence-in-chief were reset several times due to plaintiff spouses' and/or their counsel's failure to appear, without offering any explanation for most of their absences.[43] This court sustained the trial court's dismissal of the complaint after finding that "petitioners inexorably delayed the trial of the case without any justifiable reasons[.]"[44]

In *Eloisa Merchandising, Inc.*, the case "had been at the pre-trial stage for more than two years and petitioners have not shown special circumstances or compelling reasons to convince [this court] that the dismissal of their complaint for failure to prosecute was unjustified." [45] The case remained at pre-trial stage when A.M. No. 03-1-09-SC took effect. [46] The trial court already dismissed the complaint twice due to petitioners' non-appearance at pre-trial. [47] This court sustained the third dismissal since "despite the trial court's leniency and admonition, petitioners continued to exhibit laxity and inattention in attending to their case." [48]

This court discussed that "[w]hile under the present Rules, it is now the duty of the clerk of court to set the case for pre-trial if the plaintiff fails to do so within the prescribed period, this does not relieve the plaintiff of his own duty to prosecute the case diligently." [49]

Regner does not involve the non-filing of a motion to set case for pre-trial, but the failure to serve summons on respondents in a Complaint for declaration of nullity of deed of donation filed in June 1999. [50]

Nevertheless, we can apply by analogy *Regner's* ruling that "[although Section 1, Rule 14 of the Rules imposes upon the clerk of court the duty to serve summons, this does not relieve the petitioner of her own duty as the plaintiff in a civil case to prosecute the case diligently[,] [and] [i]f the clerk had been negligent, it was petitioner's duty to call the court's attention to that fact." [51] A plaintiff's failure to vigilantly pursue his or her case also affects respondent's right to speedy trial. [52]

The Court of Appeals Decision discussed that petitioner Bank of the Philippine Islands "cannot simply 'fold its hands' and say that it was the duty of the clerk of court to set the case for pre-trial for the prompt disposition of its case." [53]

Trial courts should be more proactive in ensuring the progression of cases to pre-trial considering the significance of this stage in civil actions:

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:

(a)

The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b)

The simplification of the issues;

(c)

The necessity or desirability of amendments to the pleadings;

(d)

The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e)

The limitation of the number of witnesses;

(f)

The advisability of a preliminary reference of issues to a commissioner;

(g)

The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h)

The advisability or necessity of suspending the proceedings; and

(i)

Such other matters as may aid in the prompt disposition of the action.[54]

Pre-trial promotes efficiency of case proceedings by allowing the parties to stipulate on facts and admissions that no longer need proof, and to agree on key issues, among others. It protects the right to speedy trial without compromising substantive justice.

A.M. No. 03-1-09-SC upholds this purpose in requiring the Clerk of Court to issue a notice of pre-trial "[i]f the plaintiff fails to file [the] said motion [to set case for pre-trial] within the given period[.]"[55]

However, petitioner Bank of the Philippine Islands also has the duty to set the case for pre-trial after the last pleading has been served and filed,[56] and to diligently pursue its case and comply with the rules. Failure to do so without justifiable cause warrants an outright dismissal of the Complaint.[57]

Petitioner Bank of the Philippine Islands' explanation of misfiling by previous counsel's secretary of the case records together with terminated cases in the office bodega cannot be considered as justifiable cause for its failure to set the case for pre-trial. This court has held that "a counsel is required to inquire, from time to time, and whenever necessary, about the status of handled cases, as well as motions filed for a client."[58] Also, petitioner Bank of the Philippine Islands is one of the oldest and more established banks in the country. There is reasonable expectation that it has the necessary organizational structures, system flows, and procedures to address urgent matters and meet litigation deadlines.

Between the parties, petitioner Bank of the Philippine Islands is in a better position to bear the costs of a procedural misstep of its own doing as compared with respondents Spouses Genuine The bank may have had its reasons to waive payment or the pursuit of its claims. For instance, it could have weighed that the costs of pursuing its litigation against respondents Spouses Genuino outweigh the potential benefits. It could be that their business with the bank was far more valuable than the incidental rupture in their relationship caused by this transaction. In all these possible cases, respondents Spouses Genuino and other debtors have a right to rely on the non-action of the plaintiff. In their view, the non-filing of the basic motion for setting of pre-trial would have been, at best, a reasonable economic signal that the bank was no longer interested. At worse, it was clearly negligence of an entity with enough institutional resources to maintain a large arsenal of in-house and external counsel. The bank's explanation for its own negligence is unavailing. While it is true that A.M. No. 03-1-09-SC does provide that the Clerk of Court set the date of pre-trial,[59] plaintiff should not be rewarded for his or her negligence.

WHEREFORE, the Petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.

- [1] Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (2004).
- [2] RULES OF COURT, Rule 18, sec. 1.
- [3] A.M. No. 03-1-09-SC (2004), sec. I, A, 1, last paragraph.
- [4] Rollo, p. 88.
- [5] Id. at 25.
- [6] Id. at 20-29. The Petition was filed pursuant to Rule 45 of the Rules of Court.
- [7] Id. at 34-43. The Decision was penned by Associate Justice Rosalinda Asuncion-Vicente (Chair) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio of the Eighth Division.
- [8] Id. at 45-47. The Resolution was penned by Associate Justice Rosalinda Asuncion-Vicente (Chair) and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio of the Eighth Division.
- [9] Id. at 20-21.
- [10] Id. at 34-35.
- [11] Id. at 139.
- [12] Id. at 35.
- [13] Id. at 35.
- [14] Id.
- [15] Id. at 140.
- [16] Id. at 35-36.
- [17] Id. at 36.
- [18] Id. at 88. The Order was penned by Presiding Judge J. Cedrick O. Ruiz of Makati Regional Trial Court, Branch 61.
- [19] Id.
- [20] Id. at 89-92.
- [21] Id. at 37-38.
- [22] Id. at 42.
- [23] Id. at 41.
- [24] Id. at 26 and 142.
- [25] 620 Phil. 584 (2009) [Per J. Nachura, Third Division].
- [26] Rollo, p. 142.
- [27] Id. at 144-145.
- [28] Id. at 116-117 and 151-152, citing I Justice JOSE Y. FERIA (Ret.), Civil Procedure Annotated 467 (2001),

citing *Insurance Company of North America v. Republic, et al.*, 129 Phil. 113, 116 (1967) [Per J. J. P. Bengzon, En Banc] and *Smith Bell & Co., Ltd., et al. v. American Pres. Lines, et al.*, 94 Phil. 879, 880 (1954) [Per J. Reyes, En Banc].

[29] 486 Phil. 708 (2004) [Per J. Callejo, Sr., Second Division].

[30] Rollo, pp. 117 and 152.

[31] Id.

[32] A.M. No. 03-1-09-SC (2004), sec. I, A, 1, last paragraph.

[33] *Olave v. Mistas*, 486 Phil. 708, 717 (2004) [Per J. Callejo, Sr., Second Division].

[34] Rollo, p. 142.

[35] *Espiritu, et al. v. Lazaro, et al.*, 620 Phil. 584, 591 (2009) [Per J. Nachura, Third Division].

[36] *Polanco, et al. v. Cruz*, 598 Phil. 952, 959 (2009) [Per J. Ynares-Santiago, Third Division].

[37] Id. at 959-961.

[38] 498 Phil. 825 (2005) [Per J. Callejo, Sr., Second Division].

[39] G.R. No. 192716, June 13, 2012, 672 SCRA 533 [Per J. Villarama, Jr., First Division].

[40] 562 Phil. 862 (2007) [Per J. Chico-Nazario, Third Division].

[41] Rollo, pp. 40-41.

[42] *Spouses Zarate v. Maybank Philippines, Inc.*, 498 Phil. 825, 831 (2005) [Per J. Callejo, Sr., Second Division].

[43] Id. at 830 and 838-839.

[44] Id. at 840.

[45] *Eloisa Merchandising, Inc. v. Banco de Oro Universal Bank*, G.R. No. 192716, June 13, 2012, 672 SCRA 533, 547 [Per J. Villarama, Jr., First Division].

[46] Id. at 545.

[47] Id. at 546.

[48] Id.

[49] Id. at 547.

[50] *Regner v. Logarta*, 562 Phil. 862, 870, 885-886 (2007) [Per J. Chico-Nazario, Third Division].

[51] Id. at 885.

[52] Id.

[53] Rollo, p. 39.

[54] *The Philippine American Life & General Insurance Company v. Enario*, 645 Phil. 166, 176 (2010) [Per J. Perez, First Division], citing *Balatico Vda. De Agatep v. Rodriguez, et al.*, 619 Phil. 632, 642-643 (2009) [Per J. Peralta, Third Division], quoting *Tiu v. Middleton*, 369 Phil. 829, 835 (1999) [Per J. Panganiban, Third Division].

[55] A.M. No. 03-1-09-SC (2004), sec. I, A, 1, last paragraph.

[56] RULES OF COURT, Rule 18, sec. 1.

[57] RULES OF COURT, Rule 17, sec. 3.

[58] *Spouses Zarate v. Maybank Philippines, Inc.*, 498 Phil. 825, 837 [Per J. Callejo, Sr., Second Division], citing *Oriental Assurance Corp. v. Solidbank Corp.*, 392 Phil. 847, 856 (2000) [Per J. Panganiban, Third Division].

[59] A.M. No. 03-1-09-SC (2004), sec. 1, A, 1, last paragraph.

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