

EXCHANGE CAPITAL CORPORATION, PETITIONER, VS. BANK OF COMMERCE AND BANCAPITAL DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 224511. September 23, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated January 4, 2016 and the Resolution[2] dated April 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136949, which reversed and set aside the Order[3] dated August 14, 2014, of the Regional Trial Court (RTC) of Makati City, Branch 149 in Civil Case Nos. 01-974 and 01-855 which dismissed the said cases for failure to prosecute.

The Facts

The present case is an offshoot of G.R. No. 172393, entitled *Bank of Commerce v. Hon. Estela Perlas-Bernabe* (Bank of Commerce),[4] promulgated on October 20, 2010 and became final and executory on January 11, 2011.[5] The present case, thus, shares some factual antecedents with the Bank of Commerce case. As could be gathered from the Bank of Commerce, the background facts could be summarized as follows:

On February 7, 1996, herein respondent Bank of Commerce (BANCOM) filed with the Securities and Exchange Commission (SEC) a petition for the involuntary dissolution, liquidation, and receivership of respondent Bancapital Development Corporation (BANCAP), docketed as SEC Case No. 02-96-5259 (Receivership case). BANCOM alleged that BANCAP defrauded it by engaging in the unauthorized trade of government securities and deliberately transferring its assets to petitioner Exchange Capital Corporation (EXCAP) in order to keep them beyond the reach of its creditors. EXCAP was allowed to intervene in the case. Thereafter, a Receivership Committee was constituted by the SEC.

After evaluating the evidence of the parties, the Receivership Committee submitted a report to the SEC stating that it found BANCAP to be insolvent. The Receivership Committee further admitted that it was unable to take custody or control of any of BANCAP's assets. Commenting on the report, EXCAP advanced that the hearing officer must only affirm the Receivership Committee's finding that it (EXCAP) had never been in possession of BANCAP's assets. In reply, BANCOM pointed out that contrary to EXCAP's understanding, the Receivership Committee did not make a categorical finding that EXCAP was not in possession of BANCAP's assets.

On October 22, 1999, Hearing Officer Marciano Bacalla, Jr. (Hearing Officer Bacalla) issued an Order accepting the Committee Report and holding, in explicit terms, that EXCAP was not in possession of BANCAP's assets. BANCOM moved for reconsideration, but it was denied. This prompted BANCOM to file on January 18, 2000, a Petition for Certiorari dated January 6, 2006 before the SEC, docketed as SEC EB Case No. 692 (Certiorari case), against Hearing Officer Bacalla. On April 19, 2000, Hearing Officer Bacalla issued another order dismissing the Receivership case.

Meanwhile, Republic Act (R.A.) No. 8799, otherwise known as "The Securities Regulation Code" was approved on July 19, 2000 and came into effect on August 8, 2000. Section 5.2 of R.A. No. 8799 transferred to the courts of general jurisdiction the SEC's jurisdiction over some cases, including jurisdiction over the Receivership and Certiorari cases. On the basis of this statutory development, the SEC En Banc in the Certiorari case, issued an Order dated November 23, 2000 expressly declaring that it should not be acting on the petition and supposedly denying due course to it on the ground that the SEC's oversight functions relative to the acts of its hearing officers had become *functus officio* with the jurisdictional transfer thereof to the regional trial courts. Nevertheless, the SEC En Banc ordered the transfer of the records to the RTC of Makati City, Branch 138 for inclusion in the main records. Consequently, the Certiorari case was transferred to the RTC of Makati City, Branch 142 and was docketed as Civil Case No. 01-974; while the Receivership case was transferred to the RTC of Makati City, Branch 138 and was docketed as Civil Case No. 01-855.

BANCOM, seeking the consolidation of the aforesaid cases, filed a Motion to Consolidate before Branch 142, but the same was denied. BANCOM brought the case to the CA via a petition for certiorari under Rule 65 of the Rules of Court, but the same was dismissed. In denying the petition, the CA ruled that there was nothing more to consolidate with the Certiorari case since the dismissal of the Receivership case had already attained finality. The CA noted that no appeal was taken from Hearing Officer Bacalla's Order dated April 19, 2000. It likewise ruled that the SEC's November 23, 2000 Order already attained finality. As such, there is nothing more to consolidate. This prompted BANCOM to elevate an appeal to this Court.

On October 20, 2010, the Court granted BANCOM's Petition and ordered the consolidation of the Certiorari case with the Receivership case before Branch 138. It further ordered the transfer of the records of the Certiorari case to Branch 138. The Court disagreed with the CA that Hearing Officer Bacalla's Order dated April 19, 2000 had become final and executory noting BANCOM's Motion (to Recall the April 19, 2000 Order) dated May 4, 2000, which unfortunately has not been acted upon. The Court treated BANCOM's motion to recall as a motion for reconsideration which prevented the April 19, 2000 Order from attaining finality.

Likewise, the Court did not consider the SEC En Banc's November 23, 2000 Order as a final disposition of the Certiorari case. The Court explained that the SEC En Banc merely acknowledged that it lost its jurisdiction over the Certiorari case. As a consequence, the SEC En Banc chose not to act on BANCOM's Petition for Certiorari.

EXCAP moved for reconsideration, but the same was denied by the Court in its Resolution[6] dated December 15, 2010. On January 11, 2011, the Bank of Commerce case has been recorded in the Book of Entries of Judgments and has become final and executory.[7]

Meanwhile, on June 27, 2006, or before the promulgation of the Bank of Commerce, the Court issued a Resolution revoking the designation of Branch 138 as a special commercial court and in its stead, designating Branch 149 of the RTC of Makati City as the special commercial court. Pursuant to this resolution, on July 28, 2006, Judge Jenny Lind R. Aldecoa-Delorino of Branch 138 issued two Orders[8] separately directing the immediate transmittal of the records of the Receivership and Certiorari cases to Branch 149. Judge Cesar O. Untalan (Judge Untalan), then the Presiding Judge of Branch 149, noted the transmittal in an Order dated August 29, 2006.

Later, or on November 26, 2010 and after notice of the Court's decision in Bank of Commerce, Judge Untalan issued an Order[9] setting the case for hearing on February 8, 2011. After the hearing on February 8, 2011, several dates were set for the continuation of the hearing of the case. During the March 7, 2011 hearing, Judge Untalan noted that Branch 149 have not yet received the records of the consolidated cases.[10] Subsequently, during the April 25, 2011 hearing of the case, Judge Untalan issued an Order[11] suspending the consolidated cases in view of the "pending" matters before this Court in connection with Bank of Commerce. Apparently, EXCAP filed another motion for reconsideration before this Court in Bank of Commerce. Judge Untalan further

enjoined the parties to "make a follow-up with the Supreme Court on the return of the records" of the consolidated cases.

Meanwhile, on June 1, 2011, the Court denied EXCAP's second motion for reconsideration.[12] Subsequently, the Court's Judicial Records Office, Judgment Division (JRO-JD) sent a letter[13] dated July 5, 2011 informing BANCOM, EXCAP, BANCAP, as well as the CA and the RTC of Makati City Branches 138 and 142 of the Entry of Judgment in Bank of Commerce. Also attached to the said letter is a copy of the aforementioned Entry of Judgment.[14]

It would appear that the Court's Office of the Clerk of Court, through the then Deputy Clerk of Court, also sent a letter[15] dated July 5, 2011 to the RTC of Makati City, Branch 138, informing the latter that it is returning the records of the Receivership and Certiorari cases. The said letter was received by Branch 138 on July 20, 2011 as indicated by the receiving stamp. Branches 142 and 149 were also furnished copies of the said letter.

In his Order[16] dated July 28, 2011, Judge Untalan noted the JRO-JD's July 5, 2011 letter and the attached Entry of Judgment. In the same Order, Judge Untalan again enjoined the parties to follow-up for the return of the records of the consolidated cases.

BANCOM claimed that in compliance with the July 28, 2011 Order, its counsel sent a messenger to this Court to follow-up the return of the records of the consolidated cases.[17] The messenger, however, reported that the subject records have already been transmitted to the CA and to the RTC of Makati as shown by the JRO-JD's transmitted letter[18] dated July 5, 2011 which states that the JRO-RD is returning the records of the consolidated cases to Branch 138. It would appear from the said transmittal letter that Branches 142 and 149 were also furnished with copies of the transmittal letter.

The August 14, 2014 Order of Branch 149

On August 19, 2014, BANCOM received a copy of Branch 149's August 14, 2014 Order dismissing the consolidated cases for failure to prosecute. In dismissing the subject cases, Judge Mona Lisa V. Tiongson-Tabora (Judge Tiongson-Tabora), then Acting Presiding Judge of Branch 149, explained that the parties have failed to comply with Judge Untalan's July 28, 2011 Order to follow-up the return of the subject records. Judge Tiongson-Tabora considered this non-compliance as a clear indication that the parties are no longer interested in the final disposition of the consolidated cases.

Aggrieved, BANCOM filed a petition for review under Rule 43 of the Rules of Court before the CA questioning the dismissal of the consolidated cases.

Ruling of the CA

In its Decision dated January 4, 2016, the CA reversed and set aside the RTC's August 14, 2014 Order, and reinstated the Receivership and Certiorari cases. Citing the cases of *Soliman v. Fernandez*[19] and *Malayan Insurance Co., Inc. v. Ipil International, Inc.*,[20] among others, the appellate court opined that the trial court erred when it dismissed the consolidated cases. It explained that the power of the trial court to dismiss cases on the ground of failure to prosecute is not without limitations. It continued that the prerogative of the trial court to dismiss must be soundly exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiffs cause of action. The appellate court further stressed that courts should hear and dispense cases on their merits rather than wield their authority to dismiss in the absence of a pattern or scheme to delay the disposition of the case or wanton failure to observe the mandatory requirement of the rules.

The appellate court opined that it is hard to ascribe failure to prosecute on the part of BANCOM merely on the

premise that it allegedly failed to comply with the July 28, 2011 Order. It noted that BANCOM had not been remiss in asserting its cause of action against EXCAP all these years, and that it actively participated in the proceedings before the SEC, the RTC, and the CA, and even before this Court. The appellate court also lamented that BANCOM was not even given the opportunity to explain its supposed failure to comply with Branch 149's directive. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED. Accordingly, the August 14, 2014 Order of the Regional Trial Court, Branch 149, Makati City dismissing Civil Case Nos. 01-974 & 01-855 is hereby REVERSED and SET ASIDE.

As such, the court a quo is directed to REINSTATE Civil Case Nos. 01-974 & 01-855 in its docket and to further proceed hearing the cases and resolve the same on the merits with dispatch.

No pronouncement as to costs.

SO ORDERED.[21]

EXCAP moved for reconsideration, but the same was denied by the CA in its Resolution dated April 28, 2016.

Hence, this Petition.

The Issue

WHETHER THE [CA] COMMITTED REVERSIBLE ERROR WHEN IT REINSTATED THE RECEIVERSHIP AND CERTIORARI CASES AND ORDER THE CONTINUATION OF THE PROCEEDINGS THEREON.

EXCAP asserts that the RTC properly dismissed the consolidated cases, and that the CA seriously erred when it reversed the Order of the RTC. EXCAP argues that the legal precedents cited by the CA find no application to the present case. It contends that the RTC did not err when it dismissed the consolidated cases due to BANCOM's failure to prosecute the cases for an unreasonable length of time of three years, and for its failure to take steps in ensuring the proper transmittal of the records to Branch 149. EXCAP insists that while the transmittal of the records is the responsibility of the court staff, BANCOM's failure to take any step to ensure the proper transmittal of the records for more than three years is inexcusable.

The Court's Ruling

EXCAP avers that the cases cited by the CA are inapplicable to the present consolidated cases. It insists that the factual antecedents obtaining in the Malayan Insurance and Soliman cases are very different from the factual circumstances involved in these cases. It points out that Branch 149 ordered the dismissal of the consolidated cases on August 19, 2014 due to BANCOM's failure to prosecute the cases for more than three years. Thus, EXCAP insists that the CA erred when it applied Soliman to the consolidated cases. As such, the CA erred in its invocation of the Malayan Insurance and Soliman cases.

The Court is not impressed. Contrary to EXCAP's arguments, the appellate court properly applied the pronouncements in the Malayan Insurance and Soliman cases.

In Malayan Insurance, the petitioner therein failed to have the case set for pre-trial despite the lapse of eight months from the date of the last order of the trial court. Thereafter, the trial court issued an order dismissing the case for the petitioner's "failure to take the necessary steps in prosecuting its case." The appellate court concurred with the trial court when the case was brought to it on appeal. Subsequently, the case reached this Court where it was declared that there was no failure to prosecute. In reversing both the trial and appellate courts, the Court noted that the Clerk of Court has the duty to have the case set for pre-trial. While it agreed with the appellate court that this duty does not excuse the plaintiff, the petitioner therein, from prosecuting its case diligently, it opined

that there is reason to believe that the petitioner therein awaited further orders from the trial court which would explain its failure to have the case set for pre-trial. The Court also noted that the petitioner had been diligent in the prosecution of its case before the order of dismissal.

Ultimately, the Court ruled that the trial court erred in dismissing the case as there was no apparent pattern to delay the case and the supposed period of delay is insufficient for one to conclude the party's disinterest in pursuing its case.

In Soliman, the respondent therein failed to set the case for trial despite receipt of the copy of the petitioner's answer. After four months, the trial court ordered the dismissal of the case on the ground of respondent's failure to prosecute. On appeal, the CA reversed the order of dismissal and remanded the case to the trial court. Thereafter, the petitioner therein elevated the case to this Court. The Court eventually affirmed the CA. The Court ruled that the trial court erred when it ordered the dismissal of the case considering that the duty to set the case for pre-trial is not the sole responsibility of the therein respondent, but also of the branch clerk of court. Moreover, the Court did not consider the delay to be unreasonable to warrant dismissal considering that it was only a little over four months.

The Court also emphasized 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 on the part of the plaintiff, the courts should decide to dispense with rather than wield their authority to dismiss, as in the case at bar.

The considerations which moved this Court to rule for the reinstatement of the cases in Malayan Insurance and Soliman are also present here.

Here, similar to the petitioner in Malayan Insurance and the respondent in Soliman, the duty to perform the task in question does not fall on BANCOM — the duty to transmit the records of final and executory cases from this Court to the court of origin belongs to the Clerk of Court. In fact, pursuant to this duty, the Clerk of Court transmitted the records pertaining to Bank of Commerce to the Makati RTC as shown by its letter[22] dated July 5, 2011. In the said letter which was addressed to the RTC of Makati, Branch 138, the Clerk of Court, through the then Deputy Clerk of Court, stated that it returned the records of Receivership and Certiorari cases together with a photocopy of the October 20, 2010 Decision in Bank of Commerce, and a photocopy of the Entry of Judgment therein.

Considering that the said letter was received by Branch 138 on July 20, 2011, it could be presumed that the records of the Receivership and Certiorari cases have also been received by Branch 138 on the said date. Thus, for all intents and purposes, the Clerk of Court fulfilled its duty to transmit the records of the subject cases to the court of origin which is the RTC of Makati, albeit not to the proper branch. Nonetheless, from that point, it has become a simple matter of transmitting the records of the subject cases from Branch 138 to Branch 149. And as admitted by EXCAP, the duty to transmit the records of the case to Branch 149 belongs to the court staff,[23] not with BANCOM. Indeed, as explained by BANCOM in its Comment, after the return of the records from this Court to the RTC of Makati, it had no reason to believe that the same would not be transmitted to the custody of Branch 149 especially considering that Branch 138 had long indicated in its July 28, 2006 Orders that its designation as a special commercial court had been revoked, and directed that the records of the Receivership and Certiorari cases be immediately transmitted to Branch 149.[24]

EXCAP also insists that Malayan Insurance and Soliman find no application here because BANCOM's delay in taking any action for three years could not be equated with the four-month delay in Soliman or the eight-month delay in Malayan Insurance. It asserts that BANCOM's failure to prosecute its action for an unreasonable length of time of three years is utterly inexcusable.

Ordinarily, the Court would agree with EXCAP that inaction for three years may constitute a ground for the dismissal of a case for failure to prosecute. Nevertheless, a careful review of the case would reveal that, just like in *Malayan Insurance*, there is reason to believe that BANCOR awaited further orders from Branch 149 which would explain its inaction during the said period.

As explained by BANCOR in its Comment, it was of the belief that Judge Untalan was in the process of issuing a resolution on the pending incidents, which include, among others, its Motion (to Recall Order dated April 19, 2000) dated May 4, 2000.

It must be recalled that in *Bank of Commerce*, the Court merely resolved the issue of whether the Receivership and Certiorari cases could still be consolidated. It never touched on the propriety and correctness of Hearing Officer Bacalla's April 19, 2000 Order. As such, it is clear that there was no resolution yet as to BANCOR's Motion (to Recall Order dated April 19, 2000) dated May 4, 2000. Thus, the Court opines that BANCOR is justified into thinking that Judge Untalan was then in the process of resolving BANCOR's motion.

It must also be considered that on April 25, 2011, Judge Untalan issued an Order suspending the consolidated cases pending the final resolution of Bank of Commerce. However, even after being informed of the finality of Bank of Commerce, Judge Untalan never formally resumed the hearing on the consolidated cases. Instead, he only enjoined the counsels for the respective parties to follow-up the return of their records in his Order dated July 28, 2011. And as already stated, BANCOR was justified into believing that Judge Untalan's July 28, 2011 Order has already been complied with after the return of the records to the RTC of Makati.

Very clearly, similar to *Malayan Insurance*, there is reason to believe that BANCOR awaited further orders from Branch 149 which would explain its inaction.

To be sure, BANCOR is not entirely faultless for its inaction for more than three years. Indeed, it could have moved the case forward by filing a motion for the early resolution of the pending matters, even if it was of the belief that Judge Untalan was in the process of doing so. It could have also reminded Branch 149 that the records of the consolidated cases have already been returned to the RTC of Makati City, through Branch 138. Even a simple inquiry with Branch 149's staff regarding the status of the cases could have dispelled the notion that it was no longer interested in pursuing its causes of action. Nevertheless, the Court is not convinced that BANCOR's failure to do any of these acts or any similar act would constitute sufficient reason for dismissal on the ground of failure to prosecute.

As stressed by the Court in *Malayan Insurance* and *Soliman*, the power of trial courts to dismiss cases for failure to prosecute is not unlimited. Courts should dispose cases on their merits, rather than exercise their discretion to dismiss on the ground of failure to prosecute if there is no pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirements of the rules on the part of the complainant.

Here, there is no pattern or scheme to delay the case or a wanton failure to observe the mandatory requirements of the rules. BANCOR is not even guilty of failing to perform an order of the court. As already stated, BANCOR's inaction has been sufficiently explained by it. While Judge Untalan enjoined its counsel to follow-up the transmittal of the records to Branch 149, it believed, in good faith, that the said directive has already been complied with upon the receipt of the records by the RTC of Makati City.

Further, as aptly observed by the CA, BANCOR has actively prosecuted the cases, particularly the Receivership case, from 1996. In fact, the cases have already weathered numerous proceedings, from the SEC, to the RTC of Makati City, to the CA, to this Court, until they were finally remanded to the RTC of Makati City. The Court concurs with the CA that these efforts by BANCOR are clear manifestations of its determination to pursue its

causes of action. Certainly, dismissing these cases on mere technicality would not serve the interest of substantial justice.

WHEREFORE, the present Petition for Review on Certiorari is DENIED. The Decision dated January 4, 2016 and the Resolution dated April 28, 2016 of the Court of Appeals in CA-G.R. SP No. 136949 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson)*, Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[*] Designated as Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; rollo (Vol. I), pp. 67-76.

[2] Id. at 78-80.

[3] Penned by Acting Presiding Judge Mona Lisa V. Tiongson-Tabora; id. at 81.

[4] 648 Phil. 326 (2010).

[5] Rollo (Vol. II), p. 731.

[6] Rollo (Vol. II), pp. 679-680.

[7] Supra note 5.

[8] Rollo (Vol. I), pp. 655-656.

[9] Rollo (Vol. II), p. 681.

[10] Id. at 714.

[11] Id. at 726.

[12] Id. at 727-728.

[13] Id. at 729-730.

[14] Id. at 731.

[15] Rollo (Vol. I), pp. 118-119.

[16] Rollo (Vol. II), p. 732.

[17] Id. at 733-734.

[18] Id. at 735-736.

[19] 735 Phil. 45 (2014).

[20] 532 Phil. 70 (2006).

[21] Rollo (Vol. I), p. 75.

[22] Rollo (Vol. I), pp. 118-119.

[23] Id. at 54.

[24] Id. at 568.

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