

**CAPITOL RURAL BANK OF QUEZON CITY, INC.,
PLAINTIFF-APPELLEE, VS. MERIDIAN ASSURANCE CORPORATION,
DEFENDANT-APPELLANT.**

G.R. No. 54416. October 17, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

The city court of Quezon City in its judgment dated November 10, 1967 ordered Elsie Romero and Meridian Assurance Corporation to pay solidarily to the Capitol Rural Bank of Quezon City, Inc. the sum of P4,750.30 with twelve percent interest per annum from September 29, 1965 plus two hundred pesos as attorney's fees (pp. 28-29, Record on Appeal).

The judgment was based on a promissory note executed in favor of the bank by Elsie Romero and Meridian Assurance Corporation as solidary debtors. At the hearing on October 20, 1967, Elsie Romero's counsel did not appear. Meridian's substitute counsel appeared. The city court directed that the evidence should be presented before the deputy clerk of court who was commissioned to receive it. The reception of the evidence on Meridian's cross-claim was scheduled at two o'clock in the afternoon of October 24, 1967.

Before the said judgment was rendered, or on October 24, 1967, the city court issued an order, dismissing Meridian's cross-claim against Elsie Romero for having failed to prosecute it, since Meridian's counsel failed to appear at the scheduled hearing for the submission of evidence on its cross-claim (pp. 26-28, Record on Appeal).

On December 7, 1967, Meridian's counsel filed a motion to set aside the judgment and the order dismissing its cross-claim. He alleged that his failure to appear at the hearing was due to excusable negligence and that Meridian had a good and valid defense to the bank's action and a good cause of action in its cross-claim. The bank opposed that motion.

Because Meridian's counsel did not appear at the hearing of his motion to set aside, the city court regarded the motion as "abandoned" and denied it for lack of merit (p. 50, Record on Appeal).

Meridian Assurance Corporation then appealed to the Court of First Instance from (a) the order dismissing its cross-claim, (b) the adverse judgment against it and (c) the order denying its motion to set aside. Elsie Romero also appealed but her appeal was subsequently dismissed (pp. 53-54 and 56, Record on Appeal). Her appeal to the Court of Appeals was also dismissed (p. 33, Rollo).

However, the city court in giving due course to Meridian's appeal specified that the appeal embraced only the decision of November 10, 1967. No mention was made of Meridian's appeal from the order of October 24, 1967, dismissing its cross-claim (pp. 52-53, Record on Appeal).

On October 10, 1968, the lower court issued an order suspending the pre-trial because of Elsie Romero's appeal to the Court of Appeals from the order dismissing her appeal. The trial court required the parties to submit memoranda on the legal issue of whether Meridian's cross-claim could still be included in the appeal in spite of

the fact that the city court's order dismissing it had already become final or was no longer appealable (pp. 56, 67 and 73, Record on Appeal). As to Elsie Romero, the judgment against her became final and steps were taken to execute the city court's judgment against her (pp. 64 and 75, Record on Appeal).

Meridian did not file its memorandum. The sala of the lower court to which the case was assigned was vacant for about two years, 1969-1970. On May 18, 1971, the bank filed a motion to dismiss Meridian's appeal because of its failure to comply with the 1968 order and to prosecute its appeal (67-68, Record on Appeal). Meridian opposed the motion.

Judge Pacifico P. de Castro in his order of August 3, 1971 granted the motion to dismiss and directed that the case be remanded to the city court for the execution of its revived judgment (p. 77, Record on Appeal).

From that order of dismissal, Meridian appealed to the Court of Appeals which in its resolution of June 30, 1980 certified the case to this Court because the appeal involves only a question of law (CA-G.R. No. 51271-R).

The issue is whether the lower court properly dismissed Meridian's appeal for failure to prosecute it for an unreasonable length of time and for noncompliance with the order to submit the aforementioned memorandum.

We hold that the appeal is devoid of merit. The trial court was justified in dismissing Meridian's appeal for failure to prosecute it and for failure to comply with the 1968 order requiring the filing of a memorandum on the issue of whether the city court's dismissal of Meridian's cross-claim was included in the appeal.

Section 9, Rule 40 of the Rules of Court clearly implies that an appeal to the Court of First Instance from the inferior court's judgment may be dismissed for appellant's failure to prosecute it.

A case originally filed in the Court of First Instance may be dismissed for plaintiff's failure to prosecute it for an unreasonable length of time or for failure to comply with any order of the court (Sec. 3, Rule 17, Rules of Court).

On the other hand, in a case appealed to the Court of First Instance, it is the duty of the appellant (whether plaintiff or defendant) to prosecute his appeal with due diligence and to comply with any order of the court. Failure to do so warrants the dismissal of the appeal.

The appellant stands in the same position as the plaintiff in a case originally filed in the Court of First Instance. Hence, the rulings under section 3 of Rule 17 with respect to plaintiff's inaction in prosecuting his case apply to the appellant in an appealed case if he does not bother to prosecute his appeal for an unreasonable length of time (*Racimo vs. Diño*, L-27804, February 27, 1976, 69 SCRA 421).

If, according to Meridian Assurance Corporation, the trial court should have held a trial de novo, then Meridian should have moved that the case be set for hearing. It failed to do so. (Note that the appeal in this case was made before the passage of Republic Act No. 6031 which abolished trial de novo).

Meridian's counsel cites the ruling that, while it is the duty of the clerk of court to calendar the case for pre-trial or trial, that obligation does not relieve the plaintiff of his duty to prosecute the case diligently (*Smith Bell & Co. vs. American President Lines*, 94 Phil. 879).

Meridian's counsel implies that in this case it was plaintiff bank's duty to move that the case be set for pre-trial or trial. That ruling applies to a case originally filed in the Court of First Instance.

The instant case is an appealed case, not a case originally filed in the Court of First Instance. Hence, the ruling in the *Smith Bell* case would apply to the appellant or to Meridian in this case and not to plaintiff bank.

WHEREFORE, the trial court's order of dismissal is affirmed. Costs against the defendant-appellant.

SO ORDERED.

Fernandez and Guerrero, JJ., concur.

Abad Santos, J., concurs in the result.

Barredo, (Chairman), J., In the result, because he is not yet convinced that a defendant-appellant from an inferior court's judgment is under obligation to prosecute the appeal. He believes it is plaintiff who has that duty. But under the peculiar circumstances herein, he joins the judgment in the main opinion.

De Castro, J., took no part.

Concepcion, Jr., J., is abroad.

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