

SEVENTEENTH DIVISION

[CA-G.R. CV No. 100885, February 17, 2015]

PCI LEASING AND FINANCE, INC NOW BDO LEASING AND FINANCE, INC., PLAINTIFF-APPELLANT, VS. SPOUSES KENNETH DALE AND RUTH ELLEN MANGAOANG, AND JOHN DOE, DEFENDANTS-APPELLEES.

DECISION

GARCIA, R. R. J.:

Before Us is an Appeal under Rule 41 of the 1997 Rules of Civil Procedure assailing the Order^[1] dated December 28, 2012 and the Resolution^[2] dated March 4, 2013 of the Regional Trial Court, Branch 44, Dagupan City which dismissed with prejudice the complaint for Replevin and Damages docketed as Civil Case No. 2003-0438-D filed by plaintiff-appellant PCI Leasing and Finance, Inc. against defendants-appellees spouses Kenneth Dale and Ruth Ellen Mangaoang for lack of interest to pursue the case.

THE FACTS

Records show that on January 25, 2002, defendants-appellees spouses Kenneth Dale and Ruth Ellen Mangaoang obtained a loan from plaintiff-appellant PCI Leasing and Finance, Inc. in the principal amount of P735,000.00 payable in twenty-four (24) equal monthly installments of P42,900.00 as evidenced by a Promissory Note^[3] of even date. As security for the payment of said loan, appellees executed a chattel mortgage^[4] over their two (2) units of Isuzu Elf Mini Dump Truck.

Appellees defaulted in the payment of several installments. As of July 18, 2003, appellees' unpaid obligation amounted to P436,782.09 plus interest thereon. Despite repeated demands made by appellant, appellees still refused to pay said amount.

On October 14, 2003, appellant filed a Complaint for Replevin with Damages before the Regional Trial Court of Dagupan City. The complaint prayed for the issuance of a writ of replevin over the two (2) mortgaged dump trucks and alternatively, if manual delivery of the said vehicles cannot be effected, appellees be ordered to pay appellant the amount of P436,782.09 plus five percent (5%) monthly interest thereon from default until fully paid; and in either case, appellees be directed to pay appellant attorney's fees, liquidated damages, replevin bond premium and other expenses incurred in the seizure of the said motor vehicles and cost of suit.

After posting of the required bond^[5], the court *a quo* granted the motion for issuance of a writ of replevin in an Order^[6] dated January 28, 2004 and thereafter, directed the sheriff to seize and take possession of the mortgaged vehicles.^[7] However, summons was not served upon appellees and the writ of replevin was not

implemented. Consequently, in an Order^[8] dated August 31, 2004, the court *a quo* dismissed the instant complaint for appellant's failure to take any step for the further prosecution of the case since the issuance of the writ of replevin.

Appellant then filed an Ex-Parte Motion for Reconsideration^[9] alleging that its failure to take further action was due to appellees' overtures to settle the case. In an Order^[10] dated March 6, 2006, the court *a quo* set aside the order of dismissal and reinstated the complaint.

On June 14, 2006, appellant filed a Motion to Archive Case^[11] because appellees cannot be located. The court *a quo* granted the said motion in an Order^[12] dated June 15, 2006 and directed the case be archived subject to the right of plaintiff to revive the same.

After almost four (4) years, appellant received information as to the whereabouts of appellees. On March 10, 2010, appellant filed a Motion to Revive with Motion for *Alias* Summons^[13] enumerating therein appellees' possible addresses where summons may be served. In a Resolution^[14] dated January 26, 2011, the court *a quo* granted the motion to revive and directed the issuance of *alias* summons upon appellees subject to appellant's payment of additional kilometrage fees for the given addresses.

For failure, however, of appellant to pay additional kilometrage fees, the court *a quo* dismissed the complaint in an Order^[15] dated February 27, 2012. Appellant filed a Motion for Reconsideration^[16] of the said order asserting that the request for the release of payment of additional kilometrage fees in appellant's Head Office in Manila may have been misplaced due to Banco de Oro's takeover of the company. In a Resolution^[17] dated May 25, 2012, the court *a quo* granted the same and directed the issuance of *alias* summons. As per Sheriff's^[18] Return dated August 15, 2012, *alias* summons was successfully served upon appellees on August 14, 2012.

Meanwhile, in an Order^[19] dated December 28, 2012, the court *a quo* dismissed the case due to appellant's lack of interest to pursue the same. Appellant timely filed a Motion for Reconsideration on February 8, 2012 alleging that its inaction was due to the fact that it was not furnished the Sheriff's Return dated August 15, 2012 indicating that summons had already been served upon appellees. The order of dismissal with prejudice will preclude appellant from recovering appellees' indebtedness and the same will result in the unjust enrichment of appellees at the expense of the appellant.

In a Resolution^[20] dated March 4, 2013, the court *a quo* refused to reconsider and affirmed instead the dismissal of the complaint. It ratiocinated that the case has been pending for almost a decade and the fact that the case was dismissed three times shows appellant's lack of interest to pursue the same. That appellant has not been furnished a copy of the Sheriff's Return dated August 15, 2012 indicating that *alias* summons had been served upon appellees was a flimsy excuse as its representative or its counsel could have inquired whether there has been a return on the summons issued upon appellees. The pertinent portions of the resolution are quoted:

After going over the record of this case, the Court resolves to deny the subject motion.

This case has been pending for almost ten (10) years now and it has not even reached the pre-trial stage. If indeed the plaintiff is interested in further pursuing this case, the same would not have been pending for so long a time.

Further, a simple perusal of the record shows that this case has been dismissed, not only once but thrice, first, in an Order dated August 31, 2004, but the same was reconsidered and set aside in an Order dated March 6, 2006, archived in an Order dated June 15, 2006 upon motion of the plaintiff dated June 14, 2006 but the same was revived in a Resolution dated January 26, 2011; second, dismissed on February 27, 2012 for failure to comply with the Resolution dated January 26, 2011; but again reconsidered in a Resolution dated May 12, 2012 with a warning nonetheless that failure of the plaintiff to comply with the said Resolution shall cause the dismissal of this case with prejudice and third, dismissed in an Order dated December 28, 2012 for lack of interest on the part of the plaintiff to further pursue the same.

If indeed the plaintiff was not furnished copy of the Sheriff's Return dated August 15, 2012, which was received by this Court as early as September 19, 2012, its representative or counsel could have conveniently inquire from the staff of this Court the status of this case or check if there had been Return on the Summons issued upon defendants.

Lastly it is worthy to note that it is the duty of the plaintiff to prosecute its action and comply with the Rules and lawful Court Orders. Failure to do so would justify the dismissal of the case.

IN VIEW OF THE FOREGOING, the subject Motion for Reconsideration filed by the plaintiff is hereby denied.

SO ORDERED.^[21]

Unsatisfied, petitioner appealed to the Regional Trial Court, Branch 81, Malolos City which, in a Decision^[22] dated February 7, 2014, affirmed *in toto* the decision of the MTCC. The dispositive portion of the said decision is quoted:

WHEREFORE, premises considered, the decision dated August 15, 2013 rendered by the Municipal Trial Court in Cities of San Jose del Monte City, Bulacan in Civil Case No. 006-SJ-2012 is hereby affirmed *in toto*.

SO ORDERED.^[23]

Hence, the instant petition for review raising the lone issue^[24], to wit:

WHETHER OR NOT THE COURT A QUO COMMITTED REVERSIBLE ERROR IN DISMISSING THE CASE FOR ALLEGED LACK OF INTEREST ON THE PART OF PLAINTIFF-APPELLANT TO FURTHER PURSUE THE SAME.

THE ISSUE

The pivotal issue to be resolved is whether or not the court *a quo* erred in dismissing appellant's complaint for failure to prosecute the same.

THE RULING

Appellant contends that the court *a quo* committed a reversible error when it dismissed with prejudice the complaint for replevin and damages for alleged lack of interest to pursue the case. Appellant never intentionally caused any delay in the prosecution of the case. On the other hand, appellees have deviously transferred residence to an undisclosed place thereby evading service of summons and delaying the implementation of the writ of replevin. Appellant's inaction was due to the fact that it has not received any notice that an *alias* summons had already been served upon appellees. Further, with the dismissal of the complaint, appellant would be left with no remedy to collect the amount from appellees thus resulting in the latter's unjust enrichment at the expense of appellant.

We agree.

In the instant case, appellant's complaint for replevin and damages was dismissed with prejudice by the court *a quo* for its failure to prosecute the case within reasonable time in accordance with Section 3, Rule 17 of the Rules of Court which reads:

Section 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.

In *Soliman vs. Fernandez*^[25], the Supreme Court held that the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court. Pursuant to Rule 17, Section 3 of the Rules of Court, a court can dismiss a case on the ground of failure to prosecute. The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. As to what constitutes "unreasonable length of time" depends on the circumstances of each particular case.

In the case at bench, the court *a quo* committed a reversible error in dismissing the case with prejudice on the ground of failure to prosecute. The facts of the case do not warrant the dismissal of the case under Section 3, Rule 17 of the Rules of Court.

Records show that the complaint was first dismissed in an Order dated August 31, 2004 for appellant's failure to prosecute its action. On motion for reconsideration, appellant explained that its failure to take any step was on account of appellees' overtures to settle the case. In an Order dated March 26, 2006, the court *a quo* set