

FIRST DIVISION

[G.R. No. 175862, October 13, 2010]

REAL BANK, INC., PETITIONER, VS. SAMSUNG MABUHAY CORPORATION, RESPONDENT.

DECISION

PEREZ, J.:

This is a Petition for Review under Rule 45 of the Rules of Court filed by petitioner Real Bank, Inc., assailing the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 73188 dated 18 August 2006, which granted the Petition filed by herein respondent Samsung Mabuhay Corporation (respondent Samsung) and set aside the Orders dated 5 June 2002 and 2 August 2002 of the Regional Trial Court (RTC), Branch 20 of Manila, which dismissed Civil Case No. 97-86265 for failure of respondent Samsung to appear at the scheduled mediation conference. Likewise assailed is the Resolution^[2] of the appellate court dated 13 December 2006 denying petitioner Real Bank, Inc.'s Motion for Reconsideration.

The generative facts are:

On 27 November 1997, respondent Samsung filed a Complaint^[3] for damages against petitioner Real Bank, Inc. docketed as Civil Case No. 97-86265. The case was originally raffled to the RTC, Branch 9 of Manila. In its complaint, respondent Samsung alleged:

Plaintiff SAMSUNG MABUHAY ELECTRONIC CORPORATION is a joint venture corporation between SAMSUNG ELECTRONICS CO. LTD., a foreign corporation duly organized and existing under Korean laws, and plaintiff MABUHAY ELECTRONICS CORPORATION, a corporation organized and existing under Philippine laws x x x.

As a result of the Joint Venture Agreement, Samsung Mabuhay Electronics Corporation became the exclusive distributor for Samsung products in the Philippines.^[4]

x x x x

2.1. Sometime in December of 1996, Conpinco Trading, a regular dealer of [respondent] Samsung Mabuhay Corporation in Davao City, issued five (5) postdated [United Coconut Planters Bank] UCPB checks payable to the order of Samsung Mabuhay Corporation, to wit:

Check No.	Date	Amount
1869863	December 31, 1996	P 363,750.00

1869864	December 31, 1996	400,000.00
1869865	January 30, 1997	800,000.00
1869866	February 28, 1997	800,000.00
1869867	March 30, 1997	599,093.20

These five (5) checks were picked-up by Reynaldo Senson, former Collection Supervisor of Samsung Mabuhay Corporation for Visayas and Mindanao, at Conpinco Trading's place of business at J.P. Laurel Avenue, Bajada Drive, Davao City last December 14, 1996. x x x.

2.1.1. All of the five (5) checks were denominated to the "PAYEE'S ACCOUNT" only, the payee being Mabuhay Electronics Corporation although the proceeds of the checks were actually intended for Samsung Mabuhay Corporation. After the Joint Venture Agreement, Samsung dealers were duly requested by Samsung Mabuhay Corporation to make all checks payable to the order of Samsung Mabuhay Corporation instead of Mabuhay Electronics Corporation. Nevertheless, some dealers, like Conpinco Trading, still made out checks payable to Mabuhay Electronics Corporation.

2.1.2. Plaintiff Samsung Mabuhay Corporation continued to received checks from its local dealers payable to the order of Mabuhay Electronics Corporation. Plaintiff [Samsung Mabuhay Corporation] deposited the said checks to its bank account with Far East Bank and Trust Company (FEBTC), Adriatico Branch under Account No. 0113-26238-8. FEBTC accepted for deposit into Samsung Mabuhay Corporation's account therein all checks payable to Mabuhay Electronics Corporation.

2.2. Two (2) of the five (5) checks picked-up by Reynaldo Senson were remitted to Samsung Mabuhay Corporation. These checks [1869866 and 1869867] in the total amount of P1,399,093.20 were cleared by the drawee bank, UCPB, and the amount credited to the account of Samsung Mabuhay Corporation with FEBTC.

2.3. However, the three (3) remaining UCPB checks, *i.e.*, check nos. 1869863, 1869864, and 1869865 amounting to P1,563,750.00, were not remitted by Reynaldo Senson to Samsung Mabuhay Corporation. Instead, Reynaldo Senson, using an *alias* name, Edgardo Bacea, opened an account with defendant Real Bank, Malolos, Bulacan branch under the account name of one Mabuhay Electronics Company, a business entity in no way related to plaintiff Mabuhay Electronics Corporation. Mabuhay Electronics Company is a single proprietorship owned and managed by Reynaldo Senson, *alias* Edgardo Bacea.

2.4. Reynaldo Senson, *alias* Edgardo Bacea, opened an account with defendant [Real Bank] by presenting an identification card bearing Mabuhay Electronics Company, the *alias* name Edgardo Bacea identifying him as the General Manager of Mabuhay Electronics Company, and the photograph of Reynaldo Senson, x x x. Reynaldo Senson and Edgardo Bacea are one and the same person as shown in the identification card issued by Samsung Mabuhay Corporation to Reynaldo Senson x x x.

2.5. Reynaldo Senson, *alias* Edgardo Bacea, through the negligence of defendant [Real Bank], indorsed the checks and then deposited all the three (3) checks in the account of Mabuhay Electronics Company under Savings Account No. 1102-01944-2. The dorsal portion of the said checks (check nos. 1869863, 1869864, and 1869865) x x x and made integral parts hereof.

2.6. Defendant [Real Bank] then sent the three (3) checks for clearing and for payment through Far East Bank and Trust Company, Malolos, Bulacan Branch after stamping at the back of the checks the usual endorsements: "ALL PRIOR ENDORSEMENT and/or LACK OF ENDORSEMENT GUARANTEED." Conpinco Trading's account with the drawee bank, UCPB, was eventually debited for the value of the three (3) checks and Mabuhay Electronics Company's account with defendant [Real Bank] was credited for the same amount although it was not the payee nor the person authorized by the payee.

2.7. Subsequently, Reynaldo Senson, *alias* Edgardo Bacea again through the negligence of defendant bank, was able to withdraw the amount of P1,563,750.00. The value of the three (3) checks were negligently credited by defendant [Real Bank] to the account of Mabuhay Electronics Company, a single proprietorship, although the check was payable only to Mabuhay Electronics Corporation, a juridical entity, and to no one else.

x x x x

2.9. Despite plaintiffs' [Samsung Mabuhay Corporation's] demands, defendant [Real Bank] ignored and refused to reimburse them with the value of the three (3) checks. Thus, plaintiffs were constrained to hire the legal services of the law firm of V.E. Del Rosario and Partners.^[5]

Petitioner Real Bank, Inc. filed its Answer^[6] on 23 February 1998, to which a Reply^[7] was filed by respondent Samsung on 5 March 1998.

On 12 March 1998, respondent Samsung filed an *Ex-Parte* Motion To Set Case for Pre-Trial, asking that the case be set for pre-trial.^[8] In a notice dated 24 March 1998, Judge Amelia Tria-Infante (Judge Infante) of RTC, Br. 9 of Manila, set the case for pre-trial on 25 June 1998.^[9]

Meantime, petitioner Real Bank, Inc. filed on 26 May 1998 a Motion to Admit Third Party Complaint against Reynaldo A. Senson *alias* Edgardo Bacea, to which was attached the Third Party Complaint.

On 22 June 1998, respondent Samsung filed its Pre-trial Brief. The pre-trial was originally set on 25 June 1998 but was reset to 17 July 1998 upon motion of petitioner Real Bank, Inc. on the ground that its Motion to Admit Third Party Complaint was still pending resolution. Thus, the pre-trial was re-scheduled and reset to 10 September 1998.^[10]

Petitioner Real Bank, Inc. once again moved for the resetting of the pre-trial conference scheduled on 10 September 1998^[11] on the same ground that its

Motion to Admit Third Party Complaint has yet to be resolved.

On 22 February 1999, the trial court issued an Order granting petitioner Real Bank, Inc.'s Motion to Admit Third Party Complaint and also ordered that summons be issued to third-party defendant Reynaldo A. Senson *alias* Edgardo Bacea.

On 25 May 1999, respondent Samsung filed a Motion to Dismiss the Third Party Complaint for failure of petitioner Real Bank, Inc. to prosecute its case and Motion to Set the Case for Pre-Trial.^[12] On the other hand, petitioner Real Bank, Inc. filed a Motion to Serve Summons by Publication on the third-party defendant Reynaldo A. Senson *alias* Edgardo Bacea.

Citing the undue delay of Presiding Judge Infante in resolving the several motions pending before her, respondent Samsung filed a Motion for her inhibition of Judge Infante on 20 September 1999.

On 15 March 2000, the Presiding Judge of Branch 9 issued an Order^[13] reading:

Before this Court are three (3) motions.

The Motion to Serve Summons by Publication is hereby GRANTED.

The Motion to Dismiss Third-Party Complaint is hereby DENIED and considering that this Honorable Court can administer justice on this case with impartiality and without bias, the Motion for Inhibition is likewise DENIED.

Let therefore, service of summons by publication be made on third-party defendant, Reynaldo Senson *alias* Edgardo Bacea doing business under the name and style "Mabuhay Electronics Company" in a newspaper of general circulation for three (3) consecutive weeks.

On 19 October 2000, the counsel of respondent Samsung, V.E. Del Rosario and Partners, filed a Notice of Withdrawal of Appearance with the conformity of respondent Samsung.^[14]

For its part, petitioner Real Bank, Inc. filed a Motion To Declare Third-Party defendant Reynaldo Senson in Default.

On 7 March 2001, the trial court issued an Order dated 17 March 2001 requiring both petitioner Real Bank, Inc. and respondent Samsung to appear in a mediation proceeding set on 3 April 2001.^[15] This Order of the trial court was sent to respondent Samsung's former counsel, V.E. Del Rosario and Partners which had at that time already filed a notice of withdrawal of appearance.^[16]

The mediation proceedings took place as scheduled on 3 April 2001 and Mediator Tammy Ann C. Reyes, who handled the mediation proceedings submitted her report to the Court stating therein that no action was taken on the case referred for mediation because respondent Samsung failed to appear.^[17]

On 4 June 2001, the new counsel of respondent Samsung (Ortega, Del Castillo, Bacorro, Odulio, Calma and Carbonell) entered its appearance. This was filed and received by the court on 6 June 2001.^[18]

Subsequently, RTC Branch 9 of Manila, where the case was pending was designated as a Family Court. Hence, the case was re-raffled to RTC Judge Marivic Balisi-Umali (Judge Umali) of RTC Branch 20 of Manila.

On 5 June 2002, an Order was issued by Judge Umali of Branch 20 dismissing the complaint of respondent Samsung for failure to appear at the mediation conference previously scheduled by the trial judge of Branch 9 in her Order dated 17 March 2001.^[19]

The Order of Judge Umali states:

This is a re-raffled case from Branch 9 of this Court, pursuant to Supreme Court's Resolution A.M. 99-11-07 dated February 1, 2000 and August 22, 2000 designating the Branch as a Family Court.

Perusal of the record reveals that in its order dated March 7, 2001, the Court referred the case for mediation, per Sec. 29, Rule 18, 1997 Rules on Civil Procedure and the Guidelines of the Supreme Court dated November 16, 1999. On April 3, 2001, Mediator Tammy Ann C. Reyes, who handled the mediation proceedings, submitted her Report to the Court stating therein that no action was taken for the case referred for mediation because the plaintiff failed to appear.

Mediation is part of pre-trial, Sec. 5, Rule 18, Rules of Court, explicitly provides that failure of the plaintiff to appear at the pre-trial shall be ground for the dismissal of the action for non-suit.

Premises considered the above-entitled case is hereby DISMISSED for non-suit.^[20]

Respondent Samsung's new counsel challenged the Order dated 5 June 2002 in a Motion for Reconsideration alleging that the dismissal is improper and inappropriate as it was not notified of the scheduled mediation conference. Besides, the notice of the scheduled mediation was sent to the previous counsel of respondent Samsung who had already withdrawn and not to the new lawyers.^[21]

Judge Umali denied the Motion for Reconsideration of respondent Samsung in her Order dated 2 August 2002.^[22]

Respondent Samsung then filed before the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 73188. The Court of Appeals rendered a decision in favor of respondent Samsung dated 18 August 2006, the *fallo* of which reads: