

## THIRD DIVISION

[ G.R. NO. 141860, August 31, 2006 ]

**MALAYAN INSURANCE CO., INC., PETITIONER, VS. ANCHOR ORIENT LINES-SINGAPORE, MED-LINES PHILIPPINES, BALTMED SHIPPING CO., AND OCEAN MARINE MUTUAL PROTECTION & INDEMNITY ASSOCIATION, LTD., RESPONDENTS.**

### DECISION

**TINGA, J.:**

In this Petition for Review <sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Malayan Insurance Co., Inc. (Malayan) assails the Decision <sup>[2]</sup> dated 6 October 1999 of the Fifteenth Division of the Court of Appeals in C.A.-G.R. CV No. 56922 and its Resolution <sup>[3]</sup> dated 2 February 2000 denying its Motion for Reconsideration. <sup>[4]</sup>

Following are the factual and legal antecedents.

On 25 January 1995, Malayan filed before the Regional Trial Court (RTC) of Manila, Branch 1, a complaint for civil damages, docketed as Civil Case No. 95-72660 (the civil case), against respondents Anchor Orient Lines-Singapore (Anchor), a foreign corporation, and its agent, Ipil International, Inc. (Ipil). Ipil and Anchor then filed their Answer on 27 March 1995. <sup>[5]</sup> Having received a copy of the Answer on 4 April 1995, Malayan filed a motion to have the pre-trial set by the trial court. <sup>[6]</sup> The trial court set the case for pretrial on 28 June 1995. <sup>[7]</sup>

The pre-trial on 28 June 1995 did not push through as Malayan requested that it be reset to either 19 or 20 July 1995. The trial court set it for 26 July 1995, on which date Ipil, Anchor and their counsels failed to appear. As a consequence, they were declared as in default and Malayan was allowed to present evidence ex parte on 1 August 1995. <sup>[8]</sup>

Subsequently, however, the trial court lifted the order of default per Ipil and Anchor's prayer in their motion filed on 3 August 1995. In addition, the trial court set the pretrial on 13 September 1995, <sup>[9]</sup> but which was again re-scheduled on 18 October 1995 by the trial court acting upon the Joint Motion to Reset Pre-trial filed by Malayan, Ipil and Anchor. <sup>[10]</sup>

On 18 October 1995, Malayan filed a Motion for Leave to File Amended Complaint, together with the Amended Complaint which the trial court admitted on 4 December 1995. <sup>[11]</sup> The Amended Complaint impleaded additional defendants namely, Baltmed Shipping Company (Baltmed), Med-Lines Philippines (Med-lines), Ocean Marine Mutual Protection and Indemnity Association Ltd. (P&I Club) and Pandiman

Philippines, Inc (Pandiman).<sup>[12]</sup> In view of this, the trial court on 6 December 1995, reset the pre-trial until further notice.<sup>[13]</sup>

After summons were duly served upon the newly-impleaded defendants, Pandiman filed a Motion to Dismiss on 26 January 1996. Med-lines, on the other hand, had been granted two extensions before finally filing its Answer With Compulsory Counterclaim on 7 March 1996.<sup>[14]</sup>

On the scheduled hearing of Pandiman's Motion to Dismiss, Malayan was granted ten (10) days to file its Comment thereto which it did file on 8 March 1996. Pandiman subsequently filed its Reply to the Comment. Thereafter, the trial court ordered Pandiman to be dropped as party-defendant per its Order<sup>[15]</sup> dated 7 June 1996.<sup>[16]</sup>

Then on 7 February 1997, the trial court issued an Order<sup>[17]</sup> dismissing the Civil case for failure to prosecute for an unreasonable length of time pursuant to Section 3, Rule 17 of the Rules of Court. Malayan filed a motion for reconsideration of the order which the trial court likewise denied per Order<sup>[18]</sup> dated 23 May 1997, the pertinent portions of which we quote as follows:

The last order of the court is dated June 7, 1996. After said order, the case was ready for pre-trial. It is admitted by the plaintiff that it should have moved for pre-trial. However, it failed to do so. The plaintiff claims that its failure was due to inadvertence.

x x x x

Is the admitted neglect on the part of the plaintiff, excusable negligence? Excusable neglect means a failure to take the proper steps at the proper time, not in consequence of [the] party's own carelessness, inattention or willful disregard of the process of unavoidable hindrance or accident on (sic) reliance on the care and vigilance of his counsel or on promises made by the adverse party. (Black's Law Dictionary, 5<sup>th</sup> Edition); (p. 122, Remedial Law, Vol. II, by Herrera).

In the present case, the inadvertence alleged is the plaintiff's counsel forming a new partnership and having moved its office from Oriental Mindoro to Quezon City.

It appears on record that when plaintiff filed its opposition to the motion to dismiss by defendant Pandiman, plaintiff's counsel was already at Suites B and C, 12th Floor, G.E. Antonio Building, T.M. Kalaw Street, Ermita, Manila. And that was March 6, 1996.

The last order of the court was dated June 6, 1996. Seven months passed from June 6, 1996 up to January 10, 1997, the date of the pleading when the counsel informed the court of the change of address. The said pleading informing the court of such change of address was mailed on February 25, 1997 and reached this court on March 10, 1997.

This court is of the opinion that the pleading informing the court of the change of address was made only after the plaintiff's counsel received the order of dismissal on February 12, 1997, as shown by the return card attached to the record. The pleading is[,] no doubt, antedated to justify the herein movant's ground for his motions.

From the foregoing, this court is of the view, that the failure of plaintiff to take the necessary steps in prosecuting its case is not an excusable negligence.<sup>[19]</sup>

Malayan filed an appeal before the Court of Appeals alleging that: (1) the trial court erred in not setting the Civil case in the pre-trial calendar pursuant to Section 5, Rule 20 of the Revised Rules of Court, the applicable rule at the time of dismissal; (2) the trial court did not decide in accord with law and jurisprudence when it imputed inexcusable negligence to Malayan for its failure to have the Civil case for pre-trial; (3) the trial court gravely abused its discretion in dismissing the Civil case; (4) the trial court gravely erred in dismissing the Civil case without considering Malayan's meritorious cause of action.<sup>[20]</sup>

The Court of Appeals denied the appeal. Citing *Montejo v. Urotia*,<sup>[21]</sup> it held that the question of what constitutes an unreasonable length of time to prosecute a case depends upon the circumstances of each case and is a matter best left to the sound discretion of the trial court, which will not be disturbed in the absence of any showing of abuse thereof. The appellate court moreover declared that while it is the duty of the Clerk of Court to include a case in the trial calendar after the issues are joined, fix the date for trial, and cause the corresponding notices to be served upon the parties, the plaintiff is not relieved of his own duty to prosecute a case diligently. If the clerk in the instant case had been negligent, it was Malayan's duty to call the trial court's attention to that fact so that the administration of justice would not suffer delay.<sup>[22]</sup>

The Court of Appeals moreover stressed that Malayan was less than honest in explaining why it failed to prosecute the case within a reasonable time. The appellate court in addition believed that due process was complied with when Malayan was given an opportunity to explain its side through its motion for reconsideration.<sup>[23]</sup>

In the instant Petition, Malayan asserts that the Court of Appeals' reliance on *Montejo v. Urotia* is misplaced as the facts in the cited case are different from the those in the case at bar. Malayan points out that the cause for the dismissal of the case in *Montejo* was therein plaintiff's failure to comply, for a period of more than two years, with the trial court's order to cause the service of summons to seventeen (17) of the twenty (20) additional defendants. The dismissal thus involved the evasion for an unreasonable length of time by therein plaintiff of a positive duty imposed by the trial court.<sup>[24]</sup> In the case at bar, Malayan only failed to have the case set for pre-trial which was the duty and obligation of the Clerk of Court, according to the Revised Rules of Court.

Moreover, Malayan submits that the cases cited in *Montejo* involved special circumstances which warranted the dismissal of the actions therein. For instance in the cited case of *See Chuan v. De La Fuente*,<sup>[25]</sup> the Court in ruling that therein

petitioner failed to prosecute his action for an unreasonable length of time, *i.e.*, one (1) year, four (4) months and four (4) days, considered that the petitioner was prosecuting not an ordinary action but the provisional remedy of a writ of preliminary injunction.<sup>[26]</sup>

Malayan likewise claims that the appellate court gravely abused its discretion in failing to consider the circumstances surrounding the present case and in giving more weight to the rule of technicality than to the rule of equity and substantial justice.<sup>[27]</sup>

Ipil, in its two (2)-page Comment,<sup>[28]</sup> states in the main that the determination of what constitutes an unreasonable length of time is discretionary on the part of the trial court and is a factual issue which may not be reviewed on a petition filed under Rule 45 of the 1997 Rules of Civil Procedure.<sup>[29]</sup>

Med-Lines, in its Comment,<sup>[30]</sup> avers that the dismissal of the Civil case was proper even if the duty to have the case set for trial devolved on the Clerk of Court as Malayan failed to take the necessary steps to prosecute the case within a reasonable length of time.<sup>[31]</sup> It maintains that the appellate court correctly applied the doctrine in *Montejo* to the instant case.<sup>[32]</sup>

Malayan, in its Reply,<sup>[33]</sup> while admitting that it was remiss in moving for the resumption of the pre-trial, submits that there was no unjustified inaction on its part. It maintains that it actively prosecuted the Civil case even after the trial court suspended the pre-trial until further orders. It contends that it did not violate any positive duty mandated by the Revised Rules of Court or by the trial court. To the contrary, the trial court unilaterally imposed on itself the duty to order the resumption of the pre-trial when it suspended the same until further orders.<sup>[34]</sup>

In a Resolution dated 12 December 2005, the Court noted that Anchor, Baltmed and P&I Club are not registered with the Securities and Exchange Commission and have no resident agents in the Philippines. Thus, we dispense with their respective Comments and resolve the instant case on the basis of the pleadings at hand.

There is merit in the petition.

The crux of the controversy is whether Malayan failed to prosecute the Civil case for an unreasonable length of time for no justifiable cause. The relevant provision is Section 3, Rule 17 of the Revised Rules of Court which reads:

SEC. 3. *Failure to prosecute.*— If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action **may** be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court. (Emphasis supplied.)

while the related Section 3, Rule 17 of the 1997 Rules of Civil Procedure states:

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.)

The rules contemplate certain instances where the complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear during a scheduled trial, especially on the date for the presentation of his evidence in chief; (2) if he fails to prosecute his action for an unreasonable length of time; (3) if he fails to comply with the rules or any order of the court; or (4) where the plaintiff fails to appear when so required at the pre-trial.<sup>[35]</sup>

There is failure to prosecute when the plaintiff, being present, is not ready or is unwilling to proceed with the scheduled trial or when postponements in the past are due to the plaintiff's own making, intended to be dilatory or cause substantial prejudice on the part of the defendant.<sup>[36]</sup> The failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in his complaint; hence, the court is authorized to order the dismissal of the complaint on its own motion or on motion of the defendants. The presumption is not, by any means, conclusive because the plaintiff, on a motion for reconsideration of the order of dismissal, may allege and establish a justifiable cause for such failure.<sup>[37]</sup>

Considering the circumstances of the case and the reasons given by Malayan, it cannot be concluded that it failed to prosecute the case for an unreasonable length of time for no justifiable cause. The dismissal of the Civil case on 7 February 1997 was mainly attributed to Malayan's failure to have the case set for pre-trial **anew** for eight (8) months since the last order of the trial court.<sup>[38]</sup> The last order of the court was dated 7 June 1996 wherein Pandiman was ordered to be dropped as defendant in the Amended Complaint. Previously on 6 December 1995, the trial court issued an order resetting the pre-trial "until further notice."<sup>[39]</sup> At that time too, the duty to have the case set for pre-trial devolved on the Clerk of Court, according to Section 5, Rule 20 of the Revised Rules of Court, to wit:

SEC. 5. *Pre-trial calendar.* — The court shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. Upon submission of the last pleading in a particular case, it shall be the duty of the clerk of court to place such case in the pre-trial calendar.

While we agree with the appellate court that this duty imposed on the clerk of court does not excuse the plaintiff from prosecuting his case diligently, bearing the foregoing in mind, we believe Malayan's failure to have the case set for pre-trial is attended by justifiable cause. There is reason to believe that Malayan awaited the further orders of the trial court which explains its failure to have the case set for pretrial. Relatedly, the span of time involved is not unreasonably that long to give rise to the inference that Malayan has lost interest in the case. As to whether the other reasons offered are truthful, namely that counsel for Malayan had moved its office owing to the formation of a new partnership and that there was a delay in the