

## FIRST DIVISION

[ G.R. No. 95533, November 20, 2000 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK (SANTA ANA BRANCH DAVAO CITY),\* RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

On December 28, 1988, a complaint for escheat<sup>[1]</sup> was filed by petitioner, Republic of the Philippines, with the Regional Trial Court of Davao City against several banks which had branches within the jurisdiction of the said court.<sup>[2]</sup>

The complaint alleged that pursuant to Act No. 3936 as amended by P.D. 679,<sup>[3]</sup> the respective managers of the defendant banks submitted to the Treasurer of the Republic of the Philippines separate statements prepared under oath which listed all deposits and credits held by them in favor of depositors or creditors either known to be dead, have not been heard from, or have not made deposits or withdrawals for ten years or more since December 31, 1970.

The complaint prayed that after due notice to the defendant banks, and after hearing, judgment be rendered declaring that the deposits, credits and unpaid balances in question be escheated to petitioner, commanding defendant banks to forthwith deposit the same with the Treasurer of the Philippines.<sup>[4]</sup>

On April 12, 1989, the lower court issued an order directing petitioner to show cause why the complaint should not be dismissed for failure to state a cause of action. According to the order, the complaint contained no allegation that defendant banks have complied with two of the conditions in Section 2 of Act No. 3936,<sup>[5]</sup> compliance with the requirements being necessary for the complaint to prosper.<sup>[6]</sup>

On April 27, 1989, petitioner submitted its manifestation and motion to allow amendment of the petition to allege compliance with the conditions set forth in Section 2 of Act. No. 3936 as amended by P.D. 679 ("*Unclaimed Balances Law*").<sup>[7]</sup>

The amended complaint prayed that judgment be rendered ordering that the amount of P97,263.38, deposited with the defendant banks by depositors who are known to be dead or have not made further deposits or withdrawals during the preceding ten years or more be escheated in favor of the Republic of the Philippines in accordance with Section 1, Act 3936 as amended by P.D. 679.

The trial court found the amendment sufficient and issued an order dated June 7, 1989 requiring petitioner to publish a notice in the Mindanao Forum Standard once a week for two consecutive weeks, containing the summons, notice to the public, the

amended petition incorporated in the summons and the list of unclaimed balances. The notice was estimated to occupy 27 pages of the said newspaper at an estimated cost of P50,000.00.<sup>[8]</sup>

On July 11, 1989, petitioner submitted a manifestation to the lower court praying that the publication of the list of the unclaimed balances be dispensed with. Petitioner posited that under Section 3, Act No. 3936, only the following are required to be published: (1) summons to respondent banks; and (2) notice to all persons other than those named defendants therein. Petitioner submitted that to require it to publish the names and list of unclaimed balances would only result in additional and unnecessary expense to the government.<sup>[9]</sup>

On August 1, 1989, the trial court issued the following Order:

"WHEREFORE, this Court will not dispense with the publication of the list of unclaimed balances and, unless the plaintiff, through the Office of the Solicitor General, agrees to the publication thereof as stated in the Order of this Court dated June 7, 1989, and shoulder the cost thereof as also mentioned in said Order, and manifests its agreement to this Court in writing within thirty (30) days from receipt thereof, this case will be DISMISSED WITHOUT PREJUDICE.

SO ORDERED."

Petitioner filed a motion for reconsideration of the above Order,<sup>[10]</sup> which was denied by the lower court for lack of merit.<sup>[11]</sup>

Subsequently, the trial court issued an Order dated October 31, 1989 dismissing Civil Case No. 19488-89 without prejudice for plaintiff's failure to agree to the required publication and shoulder the costs thereof.<sup>[12]</sup>

Petitioner received a copy of the aforesaid Order on November 15, 1989. On January 10, 1990, petitioner filed with the Court of Appeals a petition for mandamus and certiorari, alleging grave abuse of discretion on the part of respondent judge in ordering the publication of the list of unclaimed balances.<sup>[13]</sup> The petition for certiorari and mandamus was dismissed by the Court of Appeals, on the ground that the proper remedy was ordinary appeal. Thus:<sup>[14]</sup>

It is axiomatic that the extraordinary remedy of certiorari is available only in the absence of a plain, speedy and adequate remedy like appeal. The order of the respondent court dated October 31, 1989 dismissing the case is final and appealable (*Monares vs. CWA Enterprises*, 105 Phil. 1333; Vol. I, Francisco, Rules of Court, at pp. 967-968). No timely appeal having been taken therefrom, the same became final and executory and this petition for certiorari filed on January 10, 1989 to review the interlocutory orders issued by the court before the case was dismissed can no longer be entertained.

WHEREFORE, the petition for certiorari is dismissed for lack of merit.

SO ORDERED.

Aggrieved, petitioner filed an appeal under Rule 45 of the Rules of Court raising the following issues:<sup>[15]</sup>

- (1) Whether or not respondent RTC judge committed grave abuse of discretion tantamount to lack of jurisdiction in ordering the publication of the list of unclaimed balances listed under annexes "A" to "P" of the complaint.
- (2) Whether or not the remedy of appeal, though available, was the speedy and adequate remedy.
- (3) Whether or not respondent RTC judge in issuing the interlocutory orders dated June 7, 1989 and August 1, 1990 - which are contrary to Sec. 1, Act 3936, as amended by PD 679, otherwise known as the "Unclaimed Balances Law" acted in excess of and without jurisdiction; consequently thus making the Orders of Sept. 1, 1989 (denying the motion for reconsideration) and the Order dated October 31, 1989 dismissing the case, patently null and void.
- (4) Whether or not the decision of the Honorable Court of Appeals is in accord with law.

The petition is without merit.

The Order of the trial court dismissing the complaint, albeit without prejudice, was a final order in the sense that it finally disposed of the case. As such, petitioner's remedy was to file an ordinary appeal to the Court of Appeals within fifteen (15) days from receipt hereof.

This Court has previously held that an order dismissing a case without prejudice is a final order if no motion for reconsideration or appeal therefrom is timely filed.

In *Olympia International vs. Court of Appeals*,<sup>[16]</sup> we stated thus:

The dismissal without prejudice of a complaint does not however mean that said dismissal order was any less final. Such order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint.

The law grants an aggrieved party a period of fifteen (15) days from his receipt of the court's decision or order disposing of the action or proceeding to appeal or move to reconsider the same.

After the lapse of the fifteen-day period, an order becomes final and executory and is beyond the power or jurisdiction of the court which