

FIRST DIVISION

[CA-G.R. SP No. 136337, December 18, 2014]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE HONORABLE JOSELITO C. VILLAROSA IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66, NYX CORPORATION AND EMELYN C. HATCHO, RESPONDENTS.

D E C I S I O N

BRUSELAS, JR. J.:

This is a *Petition for Certiorari* that seeks to nullify the order of the trial court that allowed the plaintiffs in Civil Case No. 11-600 to present evidence *ex-parte* due to the failure of the defendant's counsel to appear at the preliminary conference twice.

Private respondent NYX Corporation is a client of petitioner Bank of the Philippine Islands while private respondent Emelyn Hatcho is the president of NYX Corporation. NYX Corporation maintains a dollar savings account under Account Number 0244-0138-48 with the petitioner's Pasig Boulevard Branch, City of Pasig.

On 10 June 2011, the petitioner filed an action for a sum of money with prayer for preliminary attachment against the private respondents. The case was raffled to the Regional Trial Court (RTC) of Makati City, Branch 58 and docketed as Civil Case No. 11-542.

In its *Complaint*,^[1] the petitioner alleged that on 25 November 2008, an amount of US\$234,401.50 was manually credited to the dollar account of NYX Corporation on the basis of a remittance from one of its foreign client. On 08 December 2008, a similar amount was inadvertently credited to the same dollar account of NYX Corporation. NYX Corporation, through its president, made several withdrawals from 10 December 2008 to 13 February 2009 in the total amount of US\$234,130.00.

The petitioner discovered that it double credited with funds the dollar account of NYX Corporation arising from a singular transaction. It informed NYX Corporation of the double crediting and debited the amount of US\$31,250.07 from Account Number 0244-0138-48. Because the account had an insufficient balance, the petitioner sent letters to NYX Corporation demanding it to remit the amount of US\$203,151.07 allegedly withdrawn from its account. But, NYX Corporation refused to heed the petitioner's demand to return.

Thereafter, the RTC gave due course to the petitioner's application for the issuance of a Writ of Preliminary Attachment conditioned upon the posting of a bond by the petitioner.^[2] Upon posting of a bond by the petitioner, the RTC issued a Writ of Preliminary Attachment and the corresponding summons upon the private respondents.

The private respondents filed an *Extremely Urgent Motion to Dismiss with Prayer to Suspend Proceedings* claiming, among others, that there was improper service. This motion was denied^[3] by the RTC but we reversed the RTC in a petition for *certiorari*^[4] filed by the private respondents.

On 27 June 2011, NYX Corporation filed an action for a sum of money against the petitioner to recover the amount of US\$31,250.07 which was debited by the latter from the former's dollar account. The case was raffled to the RTC of Makati City, Branch 143 and docketed as Civil Case No. 11-600.

Upon motion by the petitioner, Civil Case No. 11-600 and Civil Case No. 11-542 were consolidated.^[5] After NYX Corporation's motion for reconsideration was denied, the consolidated cases were submitted for a judicial dispute resolution but no settlement was reached by the parties. The consolidated cases were thereafter set for preliminary conference on 19 March 2013 but the same was reset to 18 April 2013 due to the unavailability of the branch clerk of court. On the new schedule, the petitioner's counsel failed to appear. The preliminary conference was moved to 06 May 2013 but still the petitioner's counsel failed to attend.

In an *Order*^[6] dated 06 May 2013, the RTC declared the petitioner in default in Civil Case No. 11-600 and dismissed Civil Case No. 11-542, thus:

"During the preliminary conference, only Atty. Paul E. Chavez was present and moved for the application of Section 5 of Rule 18 of the Rules of Court for both Civil Cases No. 11-600 and 11-542. In view of the continued absence of herein party Bank of the Philippine Islands, in the above mentioned cases, the same are declared to be in default in Civil Case No. 11-600 and Civil Case No. 11-542 is hereby DISMISSED.

Accordingly, plaintiff is directed to present its evidence ex-parte in Civil Case No. 11-600 on June 6, 2013 at 2:00 in the afternoon.

SO ORDERED."^[7]

The petitioner sought reconsideration but the RTC affirmed^[8] its earlier order and held that:

"Acting on the Motion for Reconsideration filed by Defendant Bank of the Philippines Island (Civil Case no. 11-600) and finding the said motion not to be impressed with merit; the same is hereby DENIED. The Court affirms its Order dated May 6, 2013 for the Rules of Court was formulated not without a purpose. The application of the liberal construction of the rules is wanting in the case at hand.

Moreover, the manifestation filed by NYX Corporation and Evelyn Hatcho last April 15, 2014 is hereby NOTED. Accordingly Civil Case No. 11-542

is hereby DISMISSED pursuant to the decision of the Honorable Court of Appeals Sixth (6th) Division in CA G.R. SP. No. 12-4695.

WHEREFORE, premises considered, Civil Case No. 11-600 is set on June 4, 2014 at 2:00 in the afternoon for plaintiffs' ex-parte presentation.

SO ORDERED."^[9]

The petitioner filed the instant petition for *certiorari* to nullify that portion of the 06 May 2013 and 30 April 2014 *Orders* of the RTC that allowed the private respondents to present evidence *ex-parte* in Civil Case No. 11-600. It contends that the RTC committed grave abuse of discretion in making such order because it had actively participated in the proceedings below and the non-appearance of its counsel during the preliminary conference was due to inadvertence and miscommunication, which was explained in this manner:

"4. Undersigned informed Atty. Sarcida about the next schedule and said counsel undertook to inform the counsel to whom this case was assigned about the resetting. Due to Atty. Sarcida's preparations for his retirement, he failed to relay the said information to the counsel assigned to this case. As such, no one from the undersigned law office was able to attend the April 18, 2013 preliminary conference. The preliminary conference was reset to May 6, 2013.

5. Due to inadvertence, however, the Notice of Hearing for May 6, 2013 was not forwarded to the handling counsel. While the Notice of Hearing was attached to the folder of this case, the folder for this case was not forwarded to the handling counsel as the staff of undersigned law firm were not informed to whom the case was re-assigned. In fact, the folder remained in the cubicle of Atty. Sarcida."^[10]

The petitioner insists that the absence of its counsel in the preliminary conference is not sufficient to preclude it from prosecuting its cause and setting forth its defenses in the case filed against it by the private respondents. It therefore submits that technicalities should not prevail over substantial justice because a liberal construction of the Rules of Court has always been favored.

In their *Comment/Opposition*,^[11] the private respondents maintain that the failure on the part of Atty. Sarcida to relay the information about the preliminary conference and the *Notice of Hearing* to the assigned lawyer is not a valid excuse. They also assert that the act of not attending the preliminary conference twice constitutes a violation of the Code of Professional Responsibility. Furthermore, they posit that the mistake of the petitioner's counsel binds the petitioner.

We find no merit in the instant petition for *certiorari*.

Section 4, Rule 18 of the Revised Rules of Court provides that it is the duty of the