



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

ALLIED BANKING CORPORATION,
 Petitioner,

G.R. No. 196670

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

-versus-

**SPOUSES RODOLFO and GLORIA
 MADRIAGA,**
 Respondents.

Promulgated:

October 12, 2016

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DECISION

PEREZ, J.:

This petition for review challenges the reinstatement and remand of Civil Case No. 2059 to the Regional Trial Court (RTC) of Bangued, Abra, Branch 2 by the Court of Appeals in its Decision¹ dated 19 October 2010 in CA-G.R. CV No. 83413. The RTC had earlier dismissed the case for respondents' failure to prosecute.

The factual background is as follows:

Respondent Spouses Rodolfo and Gloria Madriaga obtained a ₱750,000.00 loan from Allied Bank (the Bank) secured by a real estate mortgage on their property. Respondents alleged to have religiously paid

¹ *Rollo*, pp. 100-110; Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Romeo F. Barza and Jane Aurora C. Lantion concurring

the loan from June 1996 to August 1999 through Leo Nolasco (Nolasco), the Bank's Creditor Investigator/Appraiser, in the aggregate amount of ₱628,953.96. In July 1999, respondents converted the remaining balance of their loan, including interest, in the amount of ₱380,000.00 to a term loan. Payments were regularly coursed to Nolasco.

On 25 May 2001, respondents received a demand letter from the Bank for the payment of ₱399,898.56. Upon further inquiry, respondents discovered that said amount represented their unpaid obligation from June 2000 to May 2001. Respondents claimed to have paid for the same. They requested for a copy of the ledger and/or record of their loan obligation but the Bank ignored the same.

On 1 January 2002, the Bank filed a petition for extrajudicial foreclosure of mortgage over respondents' property. Respondents, through Atty. Wilfredo Santos (Atty. Santos), countered with a Complaint for Specific Performance with prayer for a Writ of Preliminary Injunction, before the RTC of Bangued, Abra, to enjoin the extrajudicial foreclosure and to compel the Bank to allow them to examine their loan record. The Bank, in turn, filed its Answer with Compulsory Counterclaim.

On 22 April 2002, Atty. Eliseo Cruz (Atty. Cruz) entered his appearance as new counsel of respondents and requested leave of court to amend the Complaint. The RTC gave the new counsel fifteen (15) days from receipt of the order, or until 21 May 2002, to file their Amended Complaint.² Instead, Atty. Cruz filed a Reply and Answer to the Bank's Counterclaim on 21 April 2002. On 10 May 2002, the Bank filed a Rejoinder.

Respondents failed to file their Amended Complaint within the given period. During the 24 June 2002 hearing, Atty. Cruz explained that he just received the receipts from the original counsel, Atty. Santos; thus, he requested an extension. The case was reset to 5 August 2002.³

On 5 August 2002, a new counsel, Atty. Meliton Balagtey (Atty. Balagtey) appeared in behalf of respondents and requested additional time to study the case. Upon agreement of the parties, the case was reset to 21 October 2002.⁴

² Id. at 40.

³ Id. at 41.

⁴ Id. at 42.

Claiming that no amended complaint had yet been filed, the Bank filed a Motion to Dismiss on 8 October 2002 on the ground of failure of respondents to comply with the Orders of the trial court.⁵ Hence, respondents' counsel was directed by the trial court to file his Opposition/Comment.⁶

On 31 October 2002, respondents filed their Comment to Motion to Dismiss with Apology essentially stressing that the fault of the former counsel should not bind the present counsel and that the case should be heard on the merits. Atty. Balagtey also manifested he could not yet file the Amended Complaint.⁷

On 4 December 2002, Atty. Balagtey filed a Motion withdrawing his appearance as counsel for respondents. In said motion, Atty. Balagtey also asked that an order be issued to compel the Bank to produce the following documents in court: 1) Original copy of the loan ledger with Main Office of Allied Bank and that the copy of the loan ledger with Allied Bank Branch at Bangued, Abra; 2) Contracts of loan; 3) Promissory Notes; 4) Copy of the withdrawal and deposit slips; and 5) Duplicate copy of receipts of payment made.⁸

During the 24 March 2003 hearing, the trial court granted the motion of Atty. Balagtey to withdraw from the case and gave respondents forty-five (45) days to secure the services of new counsel.⁹

In the 28 July 2003 hearing, respondents announced Atty. Narciso Bolislis of the Public Attorney's Office (PAO) as their new counsel but the latter did not enter his appearance on record.

On 7 August 2003, the trial court dismissed the case on the grounds of failure on the part of respondents to prosecute the case and to comply with the orders of the trial court. The dispositive portion of the Order¹⁰ reads:

IN VIEW HEREOF and as prayed for by [the Bank] this case is dismissed pursuant to Sec. 3 Rule 17 of the Rules of Court.¹¹

⁵ Id. at 43-46.
⁶ Id. at 48.
⁷ Id. at 49-50.
⁸ Id. at 52-53.
⁹ Id. at 60.
¹⁰ Issued by Judge Corpus B. Alzate.
¹¹ *Rollo*, pp. 63.



Respondents, through their new counsel, the Public Attorney's Office (PAO), moved to reconsider the above order. The PAO stressed that the failure of respondents to present evidence was due to successive withdrawals and changes of their counsels. The PAO also explained its belated appearance was due to failure of respondents to meet the indigency test.¹²

On 15 April 2004, the trial court denied the motion for reconsideration for lack of merit. The trial court ruled that respondents' failure to prosecute their case for an unreasonable length of time cannot be justified by the successive withdrawals and changes of their counsel. The trial court held that respondents have blatantly abused the judicial system, and the leniency of the trial court and the Bank.¹³

Aggrieved, respondent appealed to the Court of Appeals arguing that the trial court gravely erred in dismissing the case for failure to prosecute considering that the successive withdrawals and changes of their counsels were not their fault; their engagement of PAO to provide them assistance was a manifest indication of their desire to prosecute the action; and their subsequent counsels were under no obligation to amend the complaint.

In a Decision dated 19 October 2010, the Court of Appeals reversed the trial court's 15 April 2004 Order affirming its earlier order dismissing the case. The dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The Regional Trial Court's Order dated April 15, 2004 is **REVERSED** and **SET ASIDE**. The case (Civil Case No. 2059) is **REINSTATED** and **REMANDED** to the court of origin for continuance of the proceedings. The trial court is hereby directed to order its branch clerk of court to immediately set the case for pre-trial.¹⁴

The Court of Appeals found that the trial court's dismissal of the case was precipitate and unwarranted. The Court of Appeals observed that all previous resettings of the case were granted by the trial court without the objection of the Bank. The Court of Appeals found the dismissal of the Complaint too harsh and that the trial court should have, at most, waived the right of respondents to amend the Complaint. The Court of Appeals also did not find the delay of five (5) or eight (8) months before the setting of pre-trial as unreasonable.

¹² Id. at 64-65.

¹³ Id. at 70-71.

¹⁴ Id. at 109.



The Court of Appeals also denied the motion for reconsideration filed by the Bank.

The Bank contends that respondents failed to exercise their utmost diligence and reasonable promptitude in prosecuting their action for an unreasonable length of time. The Bank points out that respondents did not promptly set the case for pre-trial; that they did not promptly amend their Complaint despite being given ample chances; that they did not also promptly engage the services of a counsel. The Bank expounds that respondents must promptly move ex parte that the case be set for pre-trial within five (5) days after the last pleading joining the issues has been filed and served. The Bank asserts that respondents' failure to file their announced Amended Complaint despite being given two chances to do so is inexcusable. The Bank emphasizes that respondents' dilatory tactics were meant to thwart the foreclosure of their property.

For their part, respondents insist that the delay in the proceeding was caused by the successive withdrawals and changes in their counsels which are beyond their control.

The Bank adds in its Reply that respondents failed to obey the following orders of the trial court:

1. 22 April 2002 Order giving Atty. Cruz fifteen (15) days to file the Amended Complaint;
2. 24 June 2002 Order for Atty. Cruz to file the Amended Complaint; and
3. 24 March 2003 Order for respondents to engage the services of new counsel.¹⁵

The lone issue to be resolved is whether the trial court correctly dismissed respondents' complaint for failure to prosecute. Stated otherwise, was the Court of Appeals correct in reinstating the case?

The petition is meritorious.

¹⁵ Id. at 234-235.

Under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, the failure on the part of the plaintiff, without any justifiable cause, to comply with any order of the court or the Rules, or to prosecute his action for an unreasonable length of time, may result in the dismissal of the complaint either *motu proprio* or on motion by the defendant. There are three (3) instances when the trial court may dismiss an action *motu proprio*, namely: 1) where the plaintiff fails to appear at the time of the trial; 2) where he fails to prosecute his action for an unreasonable length of time; and, 3) when he fails to comply with the rules or any order of the court.¹⁶

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, however, 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.¹⁷

True, there is nothing in the Rules that sanctions the non-filing of an Amended Complaint. But the dismissal of the complaint by the trial court was not *per se* due to the non-filing of an amended complaint. A scrutiny of the records shows that the commitment to file the amended complaint was but a mere ruse to delay the proceedings. It was respondents themselves through Atty. Cruz who sought leave of court to file an amended complaint on 22 April 2002. At that time, the Bank had already filed its Answer to the original Complaint. And despite filing their Reply, respondents pursued their intention to file the amended complaint during the 24 June 2002 hearing. Come 5 August 2002, a new counsel, Atty. Balagtey, entered his appearance for respondents. Atty. Balagtey requested additional time to study the case, without however abandoning respondents' intention to file the amended complaint. The case was reset, not once but thrice in a span of four (4) months because respondents made repeated requests for time to file the amended complaint. Instead of filing the amended complaint for which additional time had been frequently requested, Atty. Balagtey filed a motion for issuance of an order requiring the Bank to produce certain records. In the same motion for which additional time had been requested as frequently done before, Atty. Balagtey surprisingly prayed for his withdrawal from the case. Respondents appeared during the 24 March 2003 hearing without counsel. At that juncture, enough events have transpired indications that

¹⁶ *Goldloop Properties, Inc. v. Court of Appeals*, G.R. No. 99431, 11 August 1992, 212 SCRA 498, 505.

¹⁷ *Malayan Insurance, Co. Inc. v. Ipil International Inc.*, 532 Phil. 70, 81-82 (2006).

respondents have abandoned the filing of the amended complaint and shifted to a different strategy. The trial court was kind enough to give respondents forty-five (45) days to secure the services of another counsel. But this leniency was once again abused by respondents when they failed to secure the services of a new counsel within the 45-day period. It is of record that respondents' alleged new counsel did not enter his appearance during the 28 July 2003 hearing. This prompted the trial court, upon motion of the Bank, to issue an order dismissing the case for failure to prosecute. It can be inferred from respondents' actuations that they were not serious in pursuing the case. In fact, we lend credence to the Bank's claim that respondents were employing dilatory tactics to thwart the foreclosure of their property.

Apart from the failure to file the amended complaint as manifested and the numerous changing of counsels, respondents are deemed to have failed to comply with the order of the court to secure a new counsel within forty-five (45) days.

Respondents' failure to prosecute is indicated, underscored even, by their failure to set the case for pre-trial.

Section 1, Rule 18 of the 1997 Rules of Civil Procedure, as amended, mandates that after the last pleading has been served and filed, it is the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

In this case, respondents should have set the case for pre-trial right after their receipt of the Bank's Rejoinder in May 2002. Instead, respondents sought to delay the proceedings by manifesting that an amended complaint will be filed. Respondents' offered excuse that their financial status forced the successive withdrawals of their counsels deserves scant consideration. PAO even admitted that respondents failed the indigency test. The failure of respondents to promptly set the case for pre-trial, without justifiable reason, is tantamount to failure to prosecute. Respondents cannot blame their counsels because they too had been remiss in their duty to diligently pursue the case when they failed to secure the services of a counsel within the given period. Respondents' laxity in attending to their case ultimately led to its dismissal. Indeed, respondents were in the brink of losing their property to foreclosure. This situation should all the more pursue the case relentlessly. The law aids the vigilant, not those who slumber on their rights. *Vigilantibus, sed non dormientibus Jura subverniunt.*¹⁸

¹⁸ *Pangasinan v. Disonglo-Almazora*, G.R. No. 200558, 1 July 2015, 761 SCRA 220, 223.

Finally, the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court. 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,” this Court has ruled that it depends on the circumstances of each particular case and that “the sound discretion of the court” in the determination of the said question will not be disturbed, in the absence of patent abuse.¹⁹

Finding no patent abuse on the part of the trial court, we grant the petition.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated 19 October 2010 and Resolution dated 7 April 2011 of the Court of Appeals in CA-G.R. CV No. 83413 are hereby **REVERSED** and **SET ASIDE**. The 7 August 2003 Order of the Regional Trial Court, Branch 2 in Bangued, Abra, in Civil Case No. 2059 dismissing the Complaint is hereby **REINSTATED**.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

¹⁹ *Soliman v. Fernandez*, G.R. No. 176652, 4 June 2014, 724 SCRA 525, 531.



DIOSDADO M. PERALTA
Associate Justice



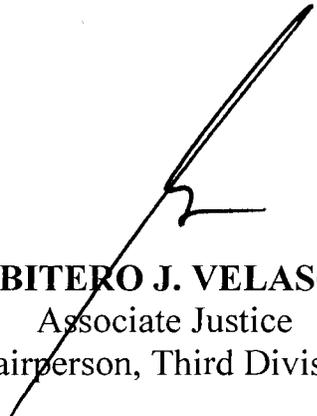
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice