

## THIRD DIVISION

[ G.R. No. 181020, November 25, 2009 ]

**JAZMIN L. ESPIRITU AND PORFIRIO LAZARO, JR., PETITIONERS,  
VS. VLADIMIR G. LAZARO, MA. CORAZON S. LAZARO, MA.  
ESPERENZA S. LAZARO, VLADI MIGUEL S. LAZARO, CHINA  
BANKING CORPORATION, AND WINIFRIDA B. SISON,  
RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

This petition for review on *certiorari* assails the June 29, 2007 Decision<sup>[1]</sup> of the Court of Appeals (CA), which affirmed the dismissal of the case for failure to prosecute. Likewise assailed in this petition is its Resolution dated December 19, 2007, which denied the motion for reconsideration of the said decision.

On June 29, 1998, petitioners Jazmin L. Espiritu and Porfirio Lazaro, Jr., together with a certain Mariquit Lazaro, filed a complaint for recovery of personal property with damages and preliminary attachment against respondents, Vladimir G. Lazaro, Ma. Corazon S. Lazaro, Ma. Esperanza S. Lazaro, Vladi Miguel S. Lazaro, China Banking Corporation, and Winifrida B. Sison. Petitioners, Mariquit Lazaro and respondent Vladimir Lazaro are the legitimate children and only surviving heirs of the late Porfirio Lazaro, Sr. who died on March 13, 1998. Respondent Ma. Corazon Lazaro is the wife of Vladimir Lazaro, while respondents Ma. Esperanza Lazaro and Vladi Miguel Lazaro are their children.

The complaint alleged that (1) the deceased had two dollar time deposit accounts with respondent China Banking Corporation in the amounts of US\$117,859.99 and US\$163,492.32; (2) petitioners demanded from respondents Vladimir and Ma. Corazon Lazaro their share in the said amounts but the latter told them that the deposits had already been transferred to their children; (3) they requested respondent Winifrida Sison, branch manager of the bank, to freeze the time deposit accounts in the names of said children; (4) respondent Sison subsequently replied that there were no existing accounts under the children's names; (5) petitioners then requested respondent Sison to apprise them of the status of the two dollar time deposit accounts; and (6) respondent Sison refused to comply, saying that, unless there is a court order, she may not give out the details of the time deposit accounts because of the Bank Secrecy Law. Petitioners prayed that respondents be ordered to pay them their three-fourths share in the time deposit accounts or US\$211,014.23, with interest, P1,000,000.00 as moral damages, P1,000,000.00 as exemplary damages, P300,000.00 as attorney's fees and costs of the suit.<sup>[2]</sup>

The trial court granted the prayer for preliminary attachment and the corresponding writ was subsequently issued after petitioners posted a bond. Five real properties were levied upon.<sup>[3]</sup> Respondents Lazaro filed an urgent motion to set aside and

discharge the attachment,<sup>[4]</sup> which was opposed by petitioners. They, likewise, filed a motion to dismiss<sup>[5]</sup> the complaint for failure to state a cause of action. Respondent Sison also filed a motion to dismiss<sup>[6]</sup> on the same ground.

On February 12, 1999, the trial court denied the motion to discharge the attachment and the two motions to dismiss and directed respondents to file their answer. Respondents Lazaro and Sison filed their respective motions for reconsideration,<sup>[7]</sup> which were again opposed by petitioners.<sup>[8]</sup> In an Omnibus Order dated January 20, 2000, the trial court partially granted respondents Lazaro's prayer for a partial discharge of their attached properties.

On **March 31, 2000**, respondent Sison filed her Answer with Counterclaim and Crossclaim.<sup>[9]</sup>

Respondents Lazaro questioned the February 12, 1999 Order in a petition for *certiorari* filed with the CA. When the latter did not rule favorably, they elevated the case to this Court. In a Resolution dated January 21, 2002, this Court denied the petition. The Resolution became final and executory on July 17, 2002.<sup>[10]</sup>

On **July 19, 2002**, respondents Lazaro filed a Cautionary Answer with Manifestation and a Motion to File a Supplemental/Amended Answer. On August 5, 2002, petitioners received a copy of the cautionary answer, pertinent portions of which are quoted as follows --

3. Undersigned counsel, on account of his heavy workload in equally important cases, would be needing more time to file herein defendants' Answer. In the meantime however, **by way of a Cautionary Answer**, herein defendants hereby manifest that they are adopting **subject to further qualification** part of co-defendant Sison's Answer dated March 29, 2000, more particularly, **portions** of sub-headings **I. Denials and Admissions, II. Special and Affirmative Defenses and III. Counterclaim** which are personal, relevant and pertinent to their defense.

4. Nonetheless, herein defendants reserve their right to file a Supplemental/Amended Answer in due time;

WHEREFORE, in view of the foregoing, it is respectfully prayed that the instant Cautionary Answer with Manifestation be admitted and herein defendants given a twenty (20)-day period within which to file a Supplemental/Amended Answer.<sup>[11]</sup>

On **July 24, 2003**, the trial court dismissed the complaint due to petitioners' failure to prosecute for an unreasonable length of time. The court noted that despite the lapse of time since respondents filed a cautionary answer, petitioners failed to file a motion to set the case for pre-trial, which under Section 1, Rule 18 of the 1997 Rules of Civil Procedure is petitioners' duty as plaintiffs.<sup>[12]</sup> The trial court denied petitioners' Motion for Reconsideration of the said order.<sup>[13]</sup>

On June 29, 2007, the CA affirmed the dismissal of the case.<sup>[14]</sup> Citing *Olave v. Mistas*,<sup>[15]</sup> the CA stressed that it is plaintiff's duty to promptly set the case for pre-trial, and that failure to do so may result in the dismissal of the case. According to the CA, petitioners should not have waited for a supplemental answer or an order by the trial court and done nothing for more than 11 months from the receipt of the last pleading.

The CA also denied petitioners' motion for reconsideration of the said decision;<sup>[16]</sup> hence, this petition.

Petitioners assign the following errors to the CA:

- A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE RULING OF THE SUPREME COURT IN OLAVE vs. MISTAS [TO THE] CASE.
- B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE CASE WAS NOT YET RIPE FOR PRE-TRIAL.
- C. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE APPEAL BASED ON SECTION 3, RULE 17 OF THE RULES OF COURT.
- D. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT TAKING COGNIZANCE OF SECTION 1.2 OF A.M. NO. 03-1-09-SC, IN EFFECT SINCE AUGUST 16, 2004.<sup>[17]</sup>

On the grounds of equity, due process and fair play, petitioners urge the Court to set aside technicalities and to allow the case to proceed and be resolved on the merits. They, likewise, point out that, in accordance with the Court's pronouncement in *Olave v. Mistas*,<sup>[18]</sup> dismissal of their case is not warranted since no substantial prejudice was caused to respondents, and strong and compelling reasons justify a liberal application of the rule. They explain that the reason why they did not move to set the case for pre-trial was that the case was not yet ripe for it. They point out that the trial court had not yet resolved respondents' motion for extension to file a supplemental answer and respondents had not yet filed their supplemental answer. Petitioners stress that the delay was, therefore, not due to their inaction; hence, the dismissal of their case was not justified.

Further, petitioners cite A.M. No. 03-1-09-SC (Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures) which allegedly provides that it is not solely the duty of the plaintiff to set the case for pre-trial as the Clerk of Court is likewise directed to issue the notice of pre-trial should the plaintiff fail to do so.

The petition has no merit.

In every action, the plaintiffs are duty-bound to prosecute their case with utmost diligence and with reasonable dispatch to enable them to obtain the relief prayed for