

## THIRD DIVISION

[ G.R. No. 195236, February 08, 2021 ]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK (NOW KNOWN AS BANCO DE ORO UNIBANK, INC.), PETITIONER, VS. LAGUNA NAVIGATION, INC., BENIGNO D. LIM, CARMEN LIZARES LIM, AND VICENTE F. ALDANESE, RESPONDENTS.**

### D E C I S I O N

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the October 11, 2010 Decision<sup>[2]</sup> and the January 19, 2011 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R CV No. 90158, which affirmed the September 25, 2001<sup>[4]</sup> and October 23, 2001<sup>[5]</sup> Orders of the Regional Trial Court (RTC) of the City of Manila, Branch 6 in Civil Case No. 88426 that dismissed petitioner Philippine Commercial International Bank's (PCIB)<sup>[6]</sup> complaint for collection of a sum of money against respondents Laguna Navigation, Inc. (Laguna Navigation), Benigno D. Lim, Carmen Lizares Lim (Spouses Lim), and Vicente F. Aldanese (Aldanese) (collectively, respondents).

#### **The Factual Antecedents:**

PCIB and Laguna Navigation are corporations duly organized and existing under the laws of the Philippines.<sup>[7]</sup> The Spouses Lim and Aldanese are individuals who transacted with PCIB.

On September 8, 1972, PCIB filed a complaint for collection of a sum of money against the respondents before the then Court of First Instance of Manila,<sup>[8]</sup> praying that judgment be rendered ordering respondents, jointly and severally, to pay PCIB the following amounts: (a) P2,083,598.00, inclusive of interests, penalty and bank charges as of May 31, 1972, plus interests and bank charges on the total amount until full payment; and, (b) P208,359.80 as attorney's fees and expenses of litigation.<sup>[9]</sup>

PCIB alleged that on March 30, 1965, the Spouses Lim executed a real estate mortgage over a parcel of land in favor of PCIB to secure letters of credit.<sup>[10]</sup> Eventually, PCIB foreclosed the mortgage on failure of the Lims to satisfy their obligation. The property was then awarded to the highest bidder.<sup>[11]</sup> A deficit in the amount of P1,578,695.65 remained after the auction of the mortgaged property.<sup>[12]</sup>

Between March 1967 and February 1969, Laguna Navigation applied with PCIB for the opening of various letters of credit in favor of Overseas Investors, Inc.<sup>[13]</sup> As of May 31, 1972, Laguna Navigation's outstanding obligation amounted to P504,902.35, inclusive of interest and other charges.<sup>[14]</sup>

Meanwhile, on January 19, 1967, the Spouses Lim and Aldanese executed a Contract of Continuing Guaranty in favor of PCIB, for and in consideration of Laguna Navigation's indebtedness.<sup>[15]</sup>

The obligations became overdue, but the respondents failed to pay despite PCIB's repeated demands.<sup>[16]</sup> Hence, PCIB filed the complaint.

Laguna Navigation claimed that the suit was premature because it has executed a chattel mortgage over one of its vessels in PCIB's favor as security for its debts and obligations.<sup>[17]</sup> The vessel, however, was subjected to an admiralty action in Singapore and was sold in a public auction.<sup>[18]</sup> Laguna Navigation alleged that PCIB failed to intervene and protect its preferential claim on the vessel. Further, Laguna Navigation sold one of its vessels upon PCIB's insistence on the condition that the proceeds would be applied to the obligation.

However, the bank allegedly refused to accept the assignment of the proceeds, leaving Laguna Navigation an uncollected receivable that has not been applied to the debt.<sup>[19]</sup> Laguna Navigation also averred that the applications for letters of credit were improperly prepared by PCIB, making them invalid.<sup>[20]</sup>

On the other hand, the Spouses Lim and Aldanese insisted that PCIB's causes of actions have not yet accrued at the time.<sup>[21]</sup> Their liability under the Contract of Continuing Guaranty is not solidary with Laguna Navigation.<sup>[22]</sup> As for the Lims, they claimed that the amount of the proceeds of the foreclosure sale on their property should be deducted from their liability as the mortgage was intended to secure both the principal obligation and the guaranty.<sup>[23]</sup>

Proceedings ensued. The trial court issued an Order recognizing the parties' agreement to enter into a partial stipulation of facts to simplify the issues.<sup>[24]</sup> On March 19, 1973, the parties submitted their Partial Stipulation of Facts.<sup>[25]</sup> During the trial, PCIB presented Atty. Leonardo De Jesus (Atty. De Jesus) as witness.<sup>[26]</sup> PCIB then filed its Offer of Documentary Evidence, which the trial court admitted as part of the testimony of its witness despite the respondents' objection and opposition.<sup>[27]</sup> The respondents on the other hand did not present any witnesses, but submitted documentary evidence, which the trial court likewise admitted.<sup>[28]</sup>

After the parties' submission of their respective memoranda, the case was submitted for decision.

The trial court subsequently ordered Court Stenographers Rogelio Bugtong and Angelina Nambayan to submit their transcripts of stenographic notes (TSN) on the case.<sup>[29]</sup> However, they failed to do so since court records including their TSNs on the case were destroyed in a fire that gutted the fourth floor of the Manila City Hall on November 21, 1981.<sup>[30]</sup>

The now RTC, Branch 6, of Manila thus ordered the parties to appear to discuss the proper disposition of the case.<sup>[31]</sup> They were able to provide copies of the TSNs for trial dates July 2, 1976 and March 28, 1979.<sup>[32]</sup> However, the TSNs for trial dates March 26 & 31, 1976, and February 4, 1980 which pertained to the direct examination of Atty. De Jesus, PCIB's witness, were not restored.<sup>[33]</sup>

On July 24, 1997, the parties, except for Laguna Navigation, filed a Joint Formal Manifestation submitting the case for decision *sans* the missing TSNs.<sup>[34]</sup> The Spouses Lim, however, subsequently withdrew the Manifestation.<sup>[35]</sup>

The RTC ordered the parties to appear anew.<sup>[36]</sup> Several postponements and re-settings of the trial followed. On June 2, 1998, PCIB moved for a re setting as its lone witness had already terminated his relationship with the bank and needed more time to refresh his memory with the facts and proceedings of the case, which the RTC granted.<sup>[37]</sup> Several postponements and re-settings again transpired thereafter.<sup>[38]</sup>

PCIB moved for another re-setting on September 8, 1998 due to the unavailability of its witness, which the RTC again granted on the condition that if the witness is not present on the next scheduled hearing, it shall be constrained to dismiss the case.<sup>[39]</sup> During the hearing, PCIB again asked for another re-setting, stating that its witness refused to testify due to personal reasons; it asked for re-setting for it to present a different witness.<sup>[40]</sup>

In its October 20, 1998 Order, the RTC dismissed the case for PCIB's utter lack of interest and failure to prosecute for an unreasonable length of time.<sup>[41]</sup> PCIB moved for reconsideration which the trial court granted with a warning that its failure to present its witness in the next scheduled hearing will result to a dismissal.<sup>[42]</sup> On the scheduled hearing date, PCIB stated that its witness no longer wished to testify and again asked the RTC for an opportunity to present a different witness.<sup>[43]</sup>

### **Ruling of the Regional Trial Court:**

In its Order dated September 25, 2001, the RTC finally dismissed the case. It ruled that PCIB failed to prove its case by preponderance of evidence despite several opportunities afforded to it.<sup>[44]</sup> The trial court held that it cannot base its findings on Atty. De Jesus' testimony without considering his direct examination.<sup>[45]</sup>

The dispositive portion of the RTC Order reads:

WHEREFORE, premises considered, in view of the failure of plaintiff to prove its case by mere preponderance of evidence, despite several opportunities afforded by the Court to do so, the Court hereby DISMISSES the present case against defendants Laguna Navigation, Inc., Benigno D. Lim, Carmen Lizares Lim[,], and Vicente F. Aldanese.

Without pronouncement as to costs.

SO ORDERED.<sup>[46]</sup>

PCIB moved for a reconsideration but it was subsequently denied by the RTC in its Order dated October 23, 2001.<sup>[47]</sup> Aggrieved, PCIB filed a Notice of Appeal.<sup>[48]</sup>

### **Ruling of the Court of Appeals:**

In its October 11, 2010 Decision, the CA agreed with the RTC that the case cannot be fairly and justly disposed without the records being complete and intact, especially since all the parties were asserting diametrically opposed versions of the

facts.<sup>[49]</sup> The appellate court stated that either party could have filed a petition for reconstitution of the records of the case under Act No. 3110<sup>[50]</sup> or Section 5(h), Rule 135 of the Rules of Court.<sup>[51]</sup>

Moreover, the appellate court found that PCIB, which had the burden of proving its case, showed no interest to reconstitute the lost TSNs.<sup>[52]</sup> It was the RTC which initiated the retaking of the testimony of witnesses.<sup>[53]</sup> Hence, the trial court cannot then be faulted for dismissing the case as it was evident that it had given PCIB numerous opportunities to present its case anew.<sup>[54]</sup> The CA held that PCIB 's several motions for postponements and re-settings showed that it was not interested in continuing with the proceedings.<sup>[55]</sup>

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the appealed Orders dated September 25, 2001 and October 23, 2001 of the Regional Trial Court (RTC) of Manila, Branch 6, in Civil Case No. 88426 are hereby AFFIRMED.

SO ORDERED.<sup>[56]</sup>

PCIB moved for a reconsideration but it was denied by the appellate court in its January 19, 2011 Resolution.<sup>[57]</sup>

Hence this Petition.

### **Issue**

Whether or not the CA erred in affirming the RTC's dismissal of the instant case.

### **Our Ruling**

The Petition is denied. The CA correctly affirmed the RTC's dismissal of the case.

Preliminarily, on the issue of reconstitution, the RTC was correct in ordering the parties to provide their copies of the destroyed TSNs, and in setting subsequent hearing dates for PCIB to present a witness in lieu of the testimony contained in the lost TSNs. Sections 3 and 4 of Act No. 3110 provide for the procedure for reconstitution in civil cases that are pending in the trial court:

Section 3. The parties to civil cases, or their counsels, shall appear and file, within thirty days after having been notified in accordance with the next preceding section, an application for the reconstitution of the records in which they are interested, and the clerk of the court, upon receiving such application, shall send notice to all parties interested, or their counsels, of the day, hour, and place when the Court will proceed to the reconstitution, requesting them to present, on said day and hour, and at said place, all copies of motions, decrees, orders, and other documents in their possession, having reference to the record or records to be reconstituted.

Section 4. Civil cases pending trial shall be reconstituted by means of the copies presented and certified under oath as correct by the counsels or the parties interested. In case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the

reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the parties interested, which shall be reduced to writing and attached to the proper record.

The provisions require the parties to initially apply for reconstitution. The destroyed records may be reconstituted by authentic copies certified by the parties or their respective counsels. Section 4 of Act No. 3110 covers civil cases that are still pending trial in the trial court when the records are lost or destroyed.<sup>[58]</sup>

As there were no available authentic copies of TSNs for trial dates March 26 & 31, 1976, and February 4, 1980, the trial court allowed PCIB to present a new witness. In this regard, Section 3 of Act No. 3110 which requires either party to file an application for reconstitution becomes irrelevant since the trial court took the initiative to order the appearance of the parties for purposes of reconstitution. It cannot be said then that the bank was at fault in not applying for reconstitution. Further, courts have the inherent power to "authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings."<sup>[59]</sup>

Corollary to this, it cannot be said that there was failure on the part of PCIB to prosecute its case as contended by respondents. As discussed in *Gomez v. Alcantara* (*Gomez*):<sup>[60]</sup>

This Court is not unaware that, although the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court, that judgment, however, must not be abused. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence of the plaintiff to proceed therein...

Truly, the Court has held in the past that a court may dismiss a case on the ground of *non prosecitur*, but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.<sup>[61]</sup>

There is failure to prosecute when the party evidently no longer desires to pursue its case by not appearing or by showing a pattern to delay the disposition of the case.<sup>[62]</sup> In the instant case, it is not accurate to state that the PCIB failed to prosecute its case considering its repeated failure to present a new witness after the destruction of the TSNs pertaining to its witness.

To recall, the bank actively participated in the proceedings before the fire that destroyed the TSNs; it also entered into a Joint Stipulation of Facts with respondents, presented its witness, and formally offered documentary evidence. To