

SECOND DIVISION

[G.R. No. 224511, September 23, 2019]

EXCHANGE CAPITAL CORPORATION, PETITIONER, VS. BANK OF COMMERCE AND BANCAPITAL DEVELOPMENT CORPORATION, RESPONDENTS.

DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision^[1] dated January 4, 2016 and the Resolution^[2] dated April 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136949, which reversed and set aside the Order^[3] dated August 14, 2014, of the Regional Trial Court (RTC) of Makati City, Branch 149 in Civil Case Nos. 01-974 and 01-855 which dismissed the said cases for failure to prosecute.

The Facts

The present case is an offshoot of G.R. No. 172393, entitled *Bank of Commerce v. Hon. Estela Perlas-Bernabe (Bank of Commerce)*,^[4] promulgated on October 20, 2010 and became final and executory on January 11, 2011.^[5] The present case, thus, shares some factual antecedents with the *Bank of Commerce* case. As could be gathered from the *Bank of Commerce*, the background facts could be summarized as follows:

On February 7, 1996, herein respondent Bank of Commerce (BANCOM) filed with the Securities and Exchange Commission (SEC) a petition for the involuntary dissolution, liquidation, and receivership of respondent Bancapital Development Corporation (BANCAP), docketed as SEC Case No. 02-96-5259 (Receivership case). BANCOM alleged that BANCAP defrauded it by engaging in the unauthorized trade of government securities and deliberately transferring its assets to petitioner Exchange Capital Corporation (EXCAP) in order to keep them beyond the reach of its creditors. EXCAP was allowed to intervene in the case. Thereafter, a Receivership Committee was constituted by the SEC.

After evaluating the evidence of the parties, the Receivership Committee submitted a report to the SEC stating that it found BANCAP to be insolvent. The Receivership Committee further admitted that it was unable to take custody or control of any of BANCAP's assets. Commenting on the report, EXCAP advanced that the hearing officer must only affirm the Receivership Committee's finding that it (EXCAP) had never been in possession of BANCAP's assets. In reply, BANCOM pointed out that contrary to EXCAP's understanding, the Receivership Committee did not make a categorical finding that EXCAP was not in

possession of BANCAP's assets.

On October 22, 1999, Hearing Officer Marciano Bacalla, Jr. (Hearing Officer Bacalla) issued an Order accepting the Committee Report and holding, in explicit terms, that EXCAP was not in possession of BANCAP's assets. BANCAP moved for reconsideration, but it was denied. This prompted BANCAP to file on January 18, 2000, a Petition for *Certiorari* dated January 6, 2000 before the SEC, docketed as SEC EB Case No. 692 (*Certiorari* case), against Hearing Officer Bacalla. On April 19, 2000, Hearing Officer Bacalla issued another order dismissing the Receivership case.

Meanwhile, Republic Act (R.A.) No. 8799, otherwise known as "The Securities Regulation Code" was approved on July 19, 2000 and came into effect on August 8, 2000. Section 5.2 of R.A. No. 8799 transferred to the courts of general jurisdiction the SEC's jurisdiction over some cases, including jurisdiction over the Receivership and *Certiorari* cases. On the basis of this statutory development, the SEC *En Banc* in the *Certiorari* case, issued an Order dated November 23, 2000 expressly declaring that it should not be acting on the petition and supposedly denying due course to it on the ground that the SEC's oversight functions relative to the acts of its hearing officers had become *functus officio* with the jurisdictional transfer thereof to the regional trial courts. Nevertheless, the SEC *En Banc* ordered the transfer of the records to the RTC of Makati City, Branch 138 for inclusion in the main records. Consequently, the *Certiorari* case was transferred to the RTC of Makati City, Branch 142 and was docketed as Civil Case No. 01-974; while the Receivership case was transferred to the RTC of Makati City, Branch 138 and was docketed as Civil Case No. 01-855.

BANCAP, seeking the consolidation of the aforesaid cases, filed a Motion to Consolidate before Branch 142, but the same was denied. BANCAP brought the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court, but the same was dismissed. In denying the petition, the CA ruled that there was nothing more to consolidate with the *Certiorari* case since the dismissal of the Receivership case had already attained finality. The CA noted that no appeal was taken from Hearing Officer Bacalla's Order dated April 19, 2000. It likewise ruled that the SEC's November 23, 2000 Order already attained finality. As such, there is nothing more to consolidate. This prompted BANCAP to elevate an appeal to this Court.

On October 20, 2010, the Court granted BANCAP's Petition and ordered the consolidation of the *Certiorari* case with the Receivership case before Branch 138. It further ordered the transfer of the records of the *Certiorari* case to Branch 138. The Court disagreed with the CA that Hearing Officer Bacalla's Order dated April 19, 2000 had become final and executory noting BANCAP's Motion (to Recall the April 19, 2000 Order) dated May 4, 2000, which unfortunately has not been acted upon. The Court treated BANCAP's motion to recall as a motion for reconsideration which prevented the April 19, 2000 Order from attaining finality.

Likewise, the Court did not consider the SEC *En Banc*'s November 23, 2000 Order as

a final disposition of the *Certiorari* case. The Court explained that the SEC *En Banc* merely acknowledged that it lost its jurisdiction over the *Certiorari* case. As a consequence, the SEC *En Banc* chose not to act on BANCOM's Petition for *Certiorari*.

EXCAP moved for reconsideration, but the same was denied by the Court in its Resolution^[6] dated December 15, 2010. On January 11, 2011, the *Bank of Commerce* case has been recorded in the Book of Entries of Judgments and has become final and executory.^[7]

Meanwhile, on June 27, 2006, or before the promulgation of the *Bank of Commerce*, the Court issued a Resolution revoking the designation of Branch 138 as a special commercial court and in its stead, designating Branch 149 of the RTC of Makati City as the special commercial court. Pursuant to this resolution, on July 28, 2006, Judge Jenny Lind R. Aldecoa-Delorino of Branch 138 issued two Orders^[8] separately directing the immediate transmittal of the records of the Receivership and *Certiorari* cases to Branch 149. Judge Cesar O. Untalan (Judge Untalan), then the Presiding Judge of Branch 149, noted the transmittal in an Order dated August 29, 2006.

Later, or on November 26, 2010 and after notice of the Court's decision in *Bank of Commerce*, Judge Untalan issued an Order^[9] setting the case for hearing on February 8, 2011. After the hearing on February 8, 2011, several dates were set for the continuation of the hearing of the case. During the March 7, 2011 hearing, Judge Untalan noted that Branch 149 have not yet received the records of the consolidated cases.^[10] Subsequently, during the April 25, 2011 hearing of the case, Judge Untalan issued an Order^[11] suspending the consolidated cases in view of the "pending" matters before this Court in connection with *Bank of Commerce*. Apparently, EXCAP filed another motion for reconsideration before this Court in *Bank of Commerce*. Judge Untalan further enjoined the parties to "make a follow-up with the Supreme Court on the return of the records" of the consolidated cases.

Meanwhile, on June 1, 2011, the Court denied EXCAP's second motion for reconsideration.^[12] Subsequently, the Court's Judicial Records Office, Judgment Division (JRO-JD) sent a letter^[13] dated July 5, 2011 informing BANCOM, EXCAP, BANCAP, as well as the CA and the RTC of Makati City Branches 138 and 142 of the Entry of Judgment in *Bank of Commerce*. Also attached to the said letter is a copy of the aforementioned Entry of Judgment.^[14]

It would appear that the Court's Office of the Clerk of Court, through the then Deputy Clerk of Court, also sent a letter^[15] dated July 5, 2011 to the RTC of Makati City, Branch 138, informing the latter that it is returning the records of the Receivership and *Certiorari* cases. The said letter was received by Branch 138 on July 20, 2011 as indicated by the receiving stamp. Branches 142 and 149 were also furnished copies of the said letter.

In his Order^[16] dated July 28, 2011, Judge Untalan noted the JRO-JD's July 5, 2011 letter and the attached Entry of Judgment. In the same Order, Judge Untalan again enjoined the parties to follow-up for the return of the records of the consolidated cases.

BANCOM claimed that in compliance with the July 28, 2011 Order, its counsel sent a

messenger to this Court to follow-up the return of the records of the consolidated cases.^[17] The messenger, however, reported that the subject records have already been transmitted to the CA and to the RTC of Makati as shown by the JRO-JD's transmitted letter^[18] dated July 5, 2011 which states that the JRO-RD is returning the records of the consolidated cases to Branch 138. It would appear from the said transmittal letter that Branches 142 and 149 were also furnished with copies of the transmittal letter.

The August 14, 2014 Order of Branch 149

On August 19, 2014, BANCOM received a copy of Branch 149's August 14, 2014 Order dismissing the consolidated cases for failure to prosecute. In dismissing the subject cases, Judge Mona Lisa V. Tiongson-Tabora (Judge Tiongson-Tabora), then Acting Presiding Judge of Branch 149, explained that the parties have failed to comply with Judge Untalan's July 28, 2011 Order to follow-up the return of the subject records. Judge Tiongson-Tabora considered this non-compliance as a clear indication that the parties are no longer interested in the final disposition of the consolidated cases.

Aggrieved, BANCOM filed a petition for review under Rule 43 of the Rules of Court before the CA questioning the dismissal of the consolidated cases.

Ruling of the CA

In its Decision dated January 4, 2016, the CA reversed and set aside the RTC's August 14, 2014 Order, and reinstated the Receivership and *Certiorari* cases. Citing the cases of *Soliman v. Fernandez*^[19] and *Malayan Insurance Co., Inc. v. Ipil International, Inc.*,^[20] among others, the appellate court opined that the trial court erred when it dismissed the consolidated cases. It explained that the power of the trial court to dismiss cases on the ground of failure to prosecute is not without limitations. It continued that the prerogative of the trial court to dismiss must be soundly exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiffs cause of action. The appellate court further stressed that courts should hear and dispense cases on their merits rather than wield their authority to dismiss in the absence of a pattern or scheme to delay the disposition of the case or wanton failure to observe the mandatory requirement of the rules.

The appellate court opined that it is hard to ascribe failure to prosecute on the part of BANCOM merely on the premise that it allegedly failed to comply with the July 28, 2011 Order. It noted that BANCOM had not been remiss in asserting its cause of action against EXCAP all these years, and that it actively participated in the proceedings before the SEC, the RTC, and the CA, and even before this Court. The appellate court also lamented that BANCOM was not even given the opportunity to explain its supposed failure to comply with Branch 149's directive. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED. Accordingly, the August 14, 2014 Order of the Regional Trial Court, Branch 149, Makati City dismissing Civil Case Nos. 01-974 & 01-855 is hereby REVERSED and SET ASIDE.