

## THIRD DIVISION

**[ G.R. No. 196670, October 12, 2016 ]**

**ALLIED BANKING CORPORATION, PETITIONER, VS. SPOUSES  
RODOLFO AND GLORIA MADRIAGA, RESPONDENTS.**

### 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 Decision<sup>[1]</sup> 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 P750,000.00 loan from Allied Bank (the Bank) secured by a real estate mortgage on their property. Respondents alleged to have religiously paid the loan from June 1996 to August 1999 through Leo Nolasco (Nolasco), the Bank's Creditor Investigator/Appraiser, in the aggregate amount of P628,953.96. In July 1999, respondents converted the remaining Balance of their loan, including interest, in the amount of P380,000.00 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 P399,898.56. 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.<sup>[2]</sup> 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.<sup>[3]</sup>

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.<sup>[4]</sup>

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.<sup>[5]</sup> Hence, respondents' counsel was directed by the trial court to file his Opposition/Comment. <sup>[6]</sup>

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.<sup>[7]</sup>

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.<sup>[8]</sup>

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.<sup>[9]</sup>

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 Order <sup>[10]</sup> 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.<sup>[11]</sup>

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.<sup>[12]</sup>

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.<sup>[13]</sup>

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.<sup>[14]</sup>

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.

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: