

FIRST DIVISION

[G.R. No. 175409, September 07, 2011]

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER,
VS. EXPLORER MARITIME CO., LTD., OWNER OF THE VESSEL M/V
"EXPLORER", WALLEM PHILS. SHIPPING, INC., ASIAN
TERMINALS, INC. AND FOREMOST INTERNATIONAL PORT
SERVICES, INC., RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals dated July 20, 2006 in CA-G.R. CV No. 78834, which affirmed the Order^[2] of Branch 37, Regional Trial Court (RTC) of Manila dated February 14, 2001 dismissing the Complaint for failure of the plaintiff to prosecute the same for an unreasonable length of time.

On March 22, 1995, petitioner Philippine Charter Insurance Corporation (PCIC), as insurer-subrogee, filed with the RTC of Manila a Complaint against respondents, to wit: the unknown owner of the vessel M/V "Explorer" (common carrier), Wallem Philippines Shipping, Inc. (ship agent), Asian Terminals, Inc. (arrastre), and Foremost International Port Services, Inc. (broker). PCIC sought to recover from the respondents the sum of P342,605.50, allegedly representing the value of lost or damaged shipment paid to the insured, interest and attorney's fees. The case was docketed as Civil Case No. 95-73340 and was raffled to Branch 37. On the same date, PCIC filed a similar case against respondents Wallem Philippines Shipping, Inc., Asian Terminals, Inc., and Foremost International Port Services, Inc., but, this time, the fourth defendant is "the unknown owner of the vessel M/V "Taygetus." This second case was docketed as Civil Case No. 95-73341 and was raffled to Branch 38.

Respondents filed their respective answers with counterclaims in Civil Case No. 95-73340, pending before Branch 37. PCIC later filed its answer to the counterclaims. On September 18, 1995, PCIC filed an *ex parte* motion to set the case for pre-trial conference, which was granted by the trial court in its Order dated September 26, 1995. However, before the scheduled date of the pre-trial conference, PCIC filed on September 19, 1996 its Amended Complaint. The "Unknown Owner" of the vessel M/V "Explorer" and Asian Terminals, Inc. filed anew their respective answers with counterclaims.

Foremost International Port Services, Inc. filed a Motion to Dismiss, which was later denied by the trial court in an Order dated December 4, 1996.

On December 5, 2000, respondent common carrier, "the Unknown Owner" of the vessel M/V "Explorer," and Wallem Philippines Shipping, Inc. filed a Motion to

Dismiss on the ground that PCIC failed to prosecute its action for an unreasonable length of time. PCIC allegedly filed its Opposition, claiming that the trial court has not yet acted on its Motion to Disclose which it purportedly filed on November 19, 1997. In said motion, PCIC supposedly prayed for the trial court to order respondent Wallem Philippines Shipping, Inc. to disclose the true identity and whereabouts of defendant "Unknown Owner of the Vessel M/V ` Explorer."

On February 14, 2001, the trial court issued an Order dismissing Civil Case No. 95-73340 for failure of petitioner to prosecute for an unreasonable length of time. Upon receipt of the order of dismissal on March 20, 2001, PCIC allegedly realized that its Motion to Disclose was inadvertently filed with Branch **38** of the RTC of Manila, where the similar case involving the vessel M/V "Taygetus" (Civil Case No. 95-7334**1**) was raffled to, and not with Branch **37**, where the present case (Civil Case No. 95-7334**0**) was pending.

Thus, PCIC filed a Motion for Reconsideration of the February 14, 2001 Order, explaining that its Motion to Disclose was erroneously filed with Branch 38. PCIC claimed that the mistake stemmed from the confusion created by an error of the docket section of the RTC of Manila in stamping the same docket number to the simultaneously filed cases. According to PCIC, it believed that it was still premature to move for the setting of the pre-trial conference with the Motion to Disclose still pending resolution. On May 6, 2003, the trial court issued the Order denying PCIC's Motion for Reconsideration.

On May 21, 2003, PCIC, through new counsel, appealed to the Court of Appeals. On July 20, 2006, the Court of Appeals rendered the assailed Decision affirming the February 14, 2001 Order of the RTC. On November 6, 2006, the Court of Appeals issued its Resolution^[3] denying PCIC's Motion for Reconsideration.

Hence, this Petition for Review on *Certiorari*. On June 27, 2007, this Court required the counsel of the "Unknown Owner" of the vessel M/V Explorer and Wallem Philippines Shipping, Inc. to submit proof of identification of the owner of said vessel.^[4] On September 17, 2007, this Court, pursuant to the information provided by Wallem Philippines Shipping, Inc., directed its Division Clerk of Court to change "Unknown Owner" to "Explorer Maritime Co., Ltd." in the title of this case.^[5]

In affirming the dismissal of Civil Case No. 95-73340, the Court of Appeals held that PCIC should have filed a motion to resolve the Motion to Disclose after a reasonable time from its alleged erroneous filing. PCIC could have also followed up the status of the case by making inquiries on the court's action on their motion, instead of just waiting for any resolution from the court for more than three years. The appellate court likewise noted that the Motion to Disclose was not the only erroneous filing done by PCIC's former counsel, the Linsangan Law Office. The records of the case at bar show that on November 16, 1997, said law office filed with Branch 37 a Pre-trial Brief for the case captioned as "Philippine Charter Insurance Corporation v. Unknown Owners of the Vessel MV `Taygetus', *et al.*, Civil Case No. 95-73340." The firm later filed a Manifestation and Motion stating that the same was intended for Civil Case No. 95-73341 which was pending before Branch 38. All these considered, the Court of Appeals ruled that PCIC must bear the consequences of its counsel's inaction and negligence, as well as its own. ^[6]

PCIC claims that the merits of its case warrant that it not be decided on technicalities. Furthermore, PCIC claims that its former counsel merely committed excusable negligence when it erroneously filed the Motion to Disclose with the wrong branch of the court where the case is pending.

The basis for the dismissal by the trial court of Civil Case No. 95-73340 is Section 3, Rule 17 and Section 1, Rule 18 of the Rules of Court, which respectively provide:

Section 3. *Dismissal due to the fault of the plaintiff.* - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of adjudication upon the merits, unless otherwise declared by the court.

x x x x

Section 1. *When conducted.* - After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

In the fairly recent case of *Espiritu v. Lazaro*,^[7] this Court, in affirming the dismissal of a case for failure to prosecute on account of the omission of the plaintiff therein to move to set the case for pre-trial for almost one year from their receipt of the Answer, issued several guidelines in effecting such dismissal:

Respondents Lazaro filed the Cautionary Answer with Manifestation and Motion to File a Supplemental/Amended Answer on July 19, 2002, a copy of which was received by petitioners on August 5, 2002. Believing that the pending motion had to be resolved first, petitioners waited for the court to act on the motion to file a supplemental answer. **Despite the lapse of almost one year,**^[8] petitioners kept on waiting, without doing anything to stir the court into action.

In any case, petitioners should not have waited for the court to act on the motion to file a supplemental answer or for the defendants to file a supplemental answer. As previously stated, the rule clearly states that the case must be set for pre-trial after the last pleading is served and filed. Since respondents already filed a cautionary answer and [petitioners did not file any reply to it] the case was already ripe for pre-trial.

It bears stressing that **the sanction of dismissal may be imposed even absent any allegation and proof of the plaintiff's lack of interest to prosecute the action, or of any prejudice to the defendant resulting from the failure of the plaintiff to comply with**