

## THIRD DIVISION

[ G.R. No. 177456, September 04, 2009 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. DOMINGO R. DANDO, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review under Rule 45 of the Rules of Court, filed by petitioner Bank of the Philippine Islands (BPI), assailing (1) the Decision<sup>[1]</sup> dated 20 November 2006 of the Court of Appeals in CA-G.R. SP No. 82881, which granted the Petition for *Certiorari* under Rule 65 of the Rules of Court filed by herein respondent Domingo R. Dando (Dando); and (2) the Resolution dated 4 April 2007 of the appellate court in the same case denying the Motion for Reconsideration of BPI. The Court of Appeals, in its assailed Decision, annulled the Orders dated 13 January 2004 and 3 March 2004 of the Regional Trial Court (RTC) of Makati City, Branch 149, setting Civil Case No. 03-281 for pre-trial conference; and reinstated the earlier Order dated 10 October 2003 of the RTC dismissing Civil Case No. 03-281 for failure of BPI to file its pre-trial brief.

The instant Petition stemmed from a Complaint for Sum of Money and Damages<sup>[2]</sup> filed on 13 March 2003 by BPI against Dando before the RTC, docketed as Civil Case No. 03-281. The Complaint alleged that on or about 12 August 1994, Dando availed of a loan in the amount of P750,000.00 from Far East Bank and Trust Company (FEBTC), under a *Privilege Cheque Credit Line Agreement*.<sup>[3]</sup> The parties agreed that Dando would pay FEBTC the principal amount of the loan, in lump sum, at the end of 90 days; and interest thereon every 30 days, the periods reckoned from the time of availment of the loan. Dando defaulted in the payment of the principal amount of the loan, as well as the interest and penalties thereon. Despite repeated demands, Dando refused and/or failed to pay his just and valid obligation.<sup>[4]</sup> In 2000, BPI and FEBTC merged, with the former as the surviving entity,<sup>[5]</sup> thus, absorbing the rights and obligations of the latter.<sup>[6]</sup>

After Dando filed with the RTC his Answer with Counterclaim,<sup>[7]</sup> BPI filed its Motion to Set Case for Pre-Trial. Acting on the said Motion, the RTC, through Acting Presiding Judge Oscar B. Pimentel (Judge Pimentel), issued an Order<sup>[8]</sup> on 11 June 2003 setting Civil Case No. 03-281 for pre-trial conference on 18 August 2003. Judge Pimentel subsequently issued, on 16 June 2003, a Notice of Pre-Trial Conference,<sup>[9]</sup> which directed the parties to submit their respective pre-trial briefs at least three days before the scheduled date of pre-trial. Dando submitted his Pre-trial Brief<sup>[10]</sup> to the RTC on 11 August 2003. BPI, on the other hand, filed its Pre-trial Brief<sup>[11]</sup> with the RTC, and furnished Dando with a copy thereof, only on 18 August 2003, the very day of the scheduled Pre-Trial Conference.

When the parties appeared before the RTC on 18 August 2003 for the scheduled Pre-Trial Conference, Dando orally moved for the dismissal of Civil Case No. 03-281, citing Sections 5 and 6, Rule 18 of the Rules of Court. The RTC, through an Order issued on the same day, required Dando to file a written motion within five days from the receipt of the said Order and BPI to file its comment and/or opposition thereto. The RTC order reads:

On calling this case for the pre-trial conference, counsel for both parties appeared and even [respondent] Domingo R. Dando appeared. The attention of the Court was called by the counsel for the [respondent Dando] that the counsel for the [petitioner BPI] only filed her Pre-Trial Brief today at 9:00 o'clock in the morning instead of at least three days before the pre-trial conference, as required by the Rules. This prompted the counsel for the [respondent Dando] to ask for the dismissal of the case for violation of Rule 18 of the Rules of Civil Procedure.

Counsel for the [respondent Dando] even claims that he has not received a copy of the pre-trial brief, but then according to the counsel for the [petitioner BPI], a copy thereof was sent by registered mail to counsel for the [respondent Dando] since (sic) August 18, 2003, and considering the nature of the motion of the counsel for the [respondent Dando], it is best that the [respondent Dando's] counsel reduce the same in writing within five days from today, furnishing personally a copy thereof the counsel for the [petitioner BPI] who is hereby given five days from receipt thereof within which to file her comment and/or opposition thereto, thereafter, the incident shall be considered submitted for Resolution.

Meanwhile, no pre-trial conference shall be held until the motion is resolved.<sup>[12]</sup>

On 25 August 2003, Dando filed with the RTC his written Motion to Dismiss Civil Case No. 03-281, for violation of the mandatory rule on filing of pre-trial briefs.<sup>[13]</sup> BPI filed an Opposition<sup>[14]</sup> to Dando's Motion, arguing that its filing with the RTC of the Pre-Trial Brief on 18 August 2003 should be considered as compliance with the rules of procedure given that the Pre-Trial Conference did not proceed as scheduled on said date.

In an Order dated 10 October 2003, the RTC granted Dando's Motion to Dismiss Civil Case No. 03-281, for the following reasons:

In resolving this motion, this Court should be guided by the mandatory character of Section 6, Rule 18 of the Revised Rules of Court which: strictly mandates the parties to the case to file with the Court and serve on the adverse party and SHALL ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. The aforesaid rule does not merely sanction the non-filing thereof

of the parties' respective pre-trial briefs but likewise imposed upon the parties the mandatory duty to seasonably file and serve on the adverse party their respective pre-trial briefs. Pre-trial briefs are meant to serve as a device to clarify and narrow down the basic issues between the parties so that at pre-trial, the proper parties may be able to obtain the fullest possible knowledge of the issues and the facts before civil trials and this prevent said trials from being carried in the dark.<sup>[15]</sup>

Consequently, the RTC decreed:

WHEREFORE, premises considered, finding the [herein respondent Dando's] motion to dismiss to be impressed with merit the same is hereby GRANTED. Accordingly, the instant case is hereby dismissed with prejudice.<sup>[16]</sup>

BPI filed a Motion for Reconsideration<sup>[17]</sup> of the 10 October 2003 Order of the RTC, praying for the liberal interpretation of the rules. Expectedly, Dando filed his Comment/Opposition thereto.<sup>[18]</sup>

On 13 January 2004, the RTC, now presided by Judge Cesar O. Untalan (Judge Untalan), issued an Order resolving the Motion for Reconsideration of BPI as follows:

The Court finds merit in plaintiff's motion.

Considering that although reglementary periods under the Rules of Court are to be strictly observed to prevent needless delays, jurisprudence nevertheless allows the relaxation of procedural rules. Since technicalities are not ends in themselves but exist to protect and promote substantive rights of litigants [Sy vs. CA, et al., G.R. No. 127263, April 12, 2000; Adamo vs. IAC, 191 SCRA 195 (1990); Far East Marble (Phils.), Inc. vs. CA, 225 SCRA 249, 258 (1993)], in the interest of substantial justice, and without giving premium to technicalities, the motion for reconsideration is hereby granted.<sup>[19]</sup>

At the end of its 13 January 2004 Order, the RTC disposed:

Wherefore, the Order dated October 10, 2003 is hereby reconsidered and set aside.

Let this case be set for pre-trial anew on February 13, 2004 at 8:30 in the morning. Notify both parties and their respective counsel of this setting.<sup>[20]</sup>

It was then Dando's turn to file a Motion for Reconsideration,<sup>[21]</sup> which the RTC

addressed in its Order dated 3 March 2004, thus:

Finding no new issue raised in defendant's motion, as to warrant a reconsideration of the assailed Order dated January 13, 2004, the instant motion is hereby denied.

The Pre-trial set on March 19, 2004 at 8:30 in the morning shall proceed accordingly.<sup>[22]</sup>

Dando sought recourse from the Court of Appeals by filing a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 82881.<sup>[23]</sup> Dando averred that RTC Judge Untalan committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing its Order dated 13 January 2004. The Court of Appeals rendered a Decision on 20 November 2006 where it held that:

In this case, the BPI stated in its motion for reconsideration of the order dismissing its action that the delay in the filing of the pre-trial brief was solely due to the heavy load of paper work of its counsel, not to mention the daily hearings the latter had to attend. We find this excuse too flimsy to justify the reversal of an earlier order dismissing the action. The BPI did not come forward with the most convincing reason for the relaxation of the rules, or has not shown any persuasive reason why it should be exempt from abiding by the rules. We therefore find the public respondent to have gravely abused his discretion in considering and granting the BPI's motion for reconsideration. The BPI failed to even try to come up with a good reason for its failure to file its pre-trial brief on time in order to relax the application of the procedural rules. Heavy work load and court hearings cannot even be considered an excuse. The trial court cannot just set aside the rules of procedure and simply rely on the liberal interpretation of the rules. Clearly, public respondent ignored the mandatory wordings of Sections 5 and 6 of Rule 18. Under Section 6, the plaintiff's failure to file the pre-trial brief at least three days before the pre-trial shall have the same effect as failure to appear at the pre-trial. Under Section 5 of the same Rule, failure by plaintiff to appear at the pre-trial shall be cause for dismissal of the action. There is grave abuse of discretion when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.<sup>[24]</sup>

The *fallo* of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the petition is GRANTED. The Orders dated January 13, 2004 and March 3, 2004, of the Regional Trial Court of Makati City, Branch 149, in Civil Case No. 03-281 are hereby ANNULLED and SET ASIDE. The October 10, 2003 Order is hereby REINSTATED.<sup>[25]</sup>

The Court of Appeals, in a Resolution dated 4 April 2007,<sup>[26]</sup> denied the Motion for