

FIRST DIVISION

[CA-G.R. SP No. 132666, December 18, 2014]

**ONSHORE STRATEGIC ASSETS (SPV-AMC), INC., PETITIONER,
VS. SPS. FERDINAND E. CALINGASAN & EVANGELINE RIVERA
CALINGASAN, AND HON. WILFREDO P. CASTILLO, IN HIS
CAPACITY AS THE PRESIDING JUDGE OF RTC LIPA CITY,
BATANGAS, BRANCH 85, RESPONDENTS.**

D E C I S I O N

BRUSELAS, JR. J.:

The issue brought to fore is whether or not refusal to dismiss a complaint on the ground of failure to prosecute an action for an unreasonable length of time due to the plaintiff's failure to move that the case be set for pre-trial constitutes grave abuse of discretion.

Briefly, on 28 October 2010, herein private respondents spouses Ferdinand and Evangeline Calingasan instituted a *Complaint for Annulment of Mortgage and Certificate of Sale with Damages* against herein petitioner Onshore Strategic Assets (SPV-AMC), Inc.. The case was raffled to the Regional Trial Court of Lipa City, Branch 85 and docketed as Civil Case No. 2010-0496.

After the private respondents' *Amended Complaint* was admitted by the trial court, the petitioner filed its *Answer with Compulsory Counterclaims* on 19 March 2012.

On 30 October 2012, the petitioner filed a *Motion to Dismiss*^[1] on the ground of failure to prosecute for an unreasonable length of time pursuant to Section 3, Rule 17 of the Rules of Court due to the private respondents' failure to set the case for pre-trial. It relied on the cases of *Espiritu v. Lazaro*,^[2] *Producers Bank of the Philippines v. Court of Appeals*,^[3] where the Supreme Court upheld the dismissal of a case because of the therein plaintiff's failure to prosecute for an unreasonable length of time.

In an *Order*^[4] dated 22 April 2013, the trial court denied the petitioner's *Motion to Dismiss*. The petitioner moved for a reconsideration^[5] but the trial court likewise denied said motion in an *Order*^[6] dated 15 July 2013.

Imputing grave abuse of discretion on the part of the trial court in issuing the 22 April 2013 and 15 July 2013 *Orders*, the petitioner resorts to this *Petition for Certiorari*. The petitioner simply reiterates the arguments in its *Motion to Dismiss*. Thus, as earlier mentioned, the only issue here is whether or not the trial court committed grave abuse of discretion in refusing to dismiss the private respondents' complaint on the ground of failure to prosecute for an unreasonable length of time.

We rule in the negative.

It has long been settled that the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court.^[7] The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. As to what constitutes "unreasonable length of time," it depends on the circumstances of each particular case and that "the sound discretion of the court" in the determination of the said question will not be disturbed, in the absence of patent abuse.^[8]

The only basis of the petitioner in concluding that the private respondents failed to prosecute their case was the fact that the latter did not file a motion to set the case for pre-trial as required by Section 1, Rule 18 of the Rules of Court. We are fully aware that under the said provision, 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 *Resolution* of the Supreme Court in Administrative Matter No.03-1-09-SC, however, this provision was amended such that, if the plaintiff fails to set the case for pre-trial, the branch clerk of court has the duty to have the case set for pre-trial. In point is the case of **Soliman v. Fernandez**,^[9] where the Supreme Court upheld the conclusion of the appellate court that the trial court need not immediately dismiss the case only because the plaintiff failed to set the case for pre-trial, thus:

"xxx For after all, and to underscore the point, the resolution of the Court in A.M. No. 03-1-09-SC provides that: "Within five (5) days from date of filing of the reply, the plaintiff must move *ex parte* that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch Clerk of Court shall issue a notice of pre-trial." Dismissal of the case for failure to prosecute is not the result stated in the rule. The trial court is required to proceed to pre-trial through the notice of pre-trial and setting the case for pre-trial by the Branch Clerk of Court."

While it may be true that the private respondents failed to file a motion to set the case for pre-trial within the given period, the trial court was correct in not dismissing the complaint because it was the duty of the branch clerk of court to set the case for pre-trial.

Moreover, the period of seven (7) months from the receipt of the last pleading or from 30 March 2012 to 30 October 2012, when the petitioner filed its *Motion to Dismiss*, may not be considered an unreasonable length of time to warrant the dismissal of the case. We also add that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in this case, courts should decide to dispense with rather than wield their authority to dismiss. This is in line with the time-honoured principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as basis of decisions.^[10]