

## SIXTH DIVISION

[ CA-G.R. SP NO. 73188, August 18, 2006 ]

**SAMSUNG MABUHAY CORPORATION, PETITIONER, VS. REAL BANK, INC., AND HON. MARIVIC T. BALISI UMALI, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 20, RESPONDENTS.**

### D E C I S I O N

**TAGLE, J.:**

This Court is called upon to resolve the *Petition for Certiorari under Rule 65*<sup>[1]</sup> filed by petitioner Samsung Mabuhay Corporation, seeking the reversal of the *Order*<sup>[2]</sup> dated June 5, 2002 issued by the **RTC Br. 20** of Manila dismissing the *Complaint*<sup>[3]</sup> in Civil Case No. 97-86265 entitled "Samsung Mabuhay Corporation and Mabuhay Electronics Corporation vs. Real Bank, Inc./Real Bank, Inc. vs. Reynaldo A. Senson, alias Edgardo Bacea", in view of petitioner's failure to attend the mediation conference scheduled on April 3, 2001. Petitioner also assails the *Order*<sup>[4]</sup> dated August 2, 2002 denying its *Motion for Reconsideration*.<sup>[5]</sup>

The undisputed facts are as follows:

On November 27, 1997, petitioner Samsung filed a complaint for damages against respondent Real Bank, Inc. The case was originally raffled to RTC **Branch 9** of Manila. Respondent-bank filed its *Answer*<sup>[6]</sup> on February 23, 1998, to which a Reply was filed by petitioner on March 5, 1998.<sup>[7]</sup>

Subsequently on March 12, 1998, petitioner filed an *Ex-Parte Motion*,<sup>[8]</sup> asking that the case be set for pre-trial. In a *Pre-Trial Notice*<sup>[9]</sup> dated March 24, 1998, Judge Amelia Tria- Infante of RTC Br. 9 set the case for pre-trial on June 25, 1998.

Meantime, respondent bank filed a *Motion to Admit Third Party Complaint*<sup>[10]</sup> against Reynaldo A. Senson alias Edgardo Bacea, with the attached *Third Party Complaint* on May 26, 1998.

On June 22, 1998, petitioner filed its Pre-trial Brief.<sup>[11]</sup> The pre-trial was originally set on June 25, 1998 but was reset to July 17, 1998 upon motion of respondent bank on the ground that its Motion to Admit Third Party Complaint is still pending resolution by RTC Branch 9. Thus, the pre-trial was rescheduled and reset to September 10, 1998.

Private respondent once again moved for the resetting of the pre-trial thereof on the same ground that its Motion to Admit Third Party Complaint has still not yet been resolved.

On February 22, 1999, the Presiding Judge of RTC Branch 9 issued an *Order*<sup>[12]</sup> granting private respondent's Motion to Admit Third Party Complaint and also ordered that summons be issued to third -party defendant Reynaldo A. Senson alias Edgardo Bacea.

On May 25, 1999, petitioner filed a *Motion to Dismiss the Third Party Complaint (For Failure to Prosecute) and Motion to Set the Case for Pre-Trial*.<sup>[13]</sup> On the other hand, respondent bank filed a *Motion to Serve Summons by Publication*<sup>[14]</sup> to the third-party defendant.

Feeling exasperated by the undue delay of Presiding Judge Amelia Tria-Infante of RTC Branch 9 in resolving the several motions pending before her, petitioner filed a **Motion For Inhibition**<sup>[15]</sup> on September 20, 1999.

Six (6) months thereafter or on March 15, 2000, the Presiding Judge of Branch 9 issued an *Order*<sup>[16]</sup> reading as follows:

"Before this Court are three (3) motions.

The Motion to Serve Summons by Publication is hereby GRANTED.

The Motion to Dismiss Third-Party Complaint is hereby DENIED and considering that this Honorable Court can administer justice on this case with impartiality and without bias, the Motion for Inhibition is likewise DENIED.

Let therefore, service of summons by publication be made on third-party defendant, Reynaldo Senson alias Edgardo Bacea doing business under the name and style "Mabuhay Electronics Company" in a newspaper of general circulation for three (3) consecutive weeks.

SO ORDERED."<sup>[17]</sup>

On October 19, 2000, the counsel of petitioner, V.E. Del Rosario & Partners, filed a Notice of Withdrawal of Appearance.<sup>[18]</sup>

For its part, respondent bank filed a Motion To Declare Third-Party defendant Reynaldo Senson in Default.<sup>[19]</sup>

On March 7, 2001, the judge of RTC Branch 9 issued an *Order*<sup>[20]</sup> dated March 17, 2001 requiring both petitioner and respondent to appear in a mediation proceeding set on April 3, 2001. Even before the issuance of said Order, however, the former counsel of petitioner (V.E. Del Rosario) had already withdrawn on October 2000.

In a pleading dated June 4, 2001, the new counsel of petitioner (Ortega, Del Castillo, Bacorro, Odulio, Calma & Carbonell) entered their appearance.<sup>[21]</sup> This was filed and received by **RTC Br. 9** on June 6, 2001.

Subsequently, RTC Branch 9 was designated as a Family Court. Hence, the case was

re-raffled to RTC Judge Marivic Balisi-Umali of RTC **Br. 20**.

After a year or on June 5, 2002, an Order<sup>[22]</sup> was issued by the Presiding Judge of **Br. 20** dismissing the complaint of petitioner for failure to appear at the mediation conference **previously scheduled by the trial judge of Branch 9** in her Order dated March 17, 2001.

Petitioner's new counsel impugned the Order dated June 5, 2002 in a *Motion for Reconsideration*<sup>[23]</sup> alleging that the dismissal is improper and inappropriate as it was not notified of the scheduled mediation conference. Besides, the notice was sent to the previous counsel of petitioner who had already withdrawn and not to the new lawyers.

Respondent Judge Balisi-Umali denied the Motion for Reconsideration in her Order<sup>[24]</sup> dated August 2, 2002.

Hence, this *Petition* to set aside and reverse the aforementioned Orders dated June 5, 2002 and August 2, 2002 for grave abuse of discretion amounting to lack of or excess of jurisdiction committed by respondent Judge in dismissing the complaint for damages.

The grounds relied upon by petitioners are as follows:

a) Public respondent gravely abused her discretion and exceeded her jurisdiction in dismissing the complaint on the ground that petitioner failed to attend the mediation conference set on April 3, 2001 despite the fact that petitioner was not notified of said conference.

b) Public respondent gravely abused her discretion and exceeded her jurisdiction in not finding merit in petitioner's argument that the holding of a pre-trial on April 3, 2001 through a mediation conference was not in accordance with the Rules of Court.

c) Public respondent gravely abused her discretion and exceeded her jurisdiction when she sweepingly ruled that petitioner was guilty of neglect when it failed to prosecute its complaint.

d) Public respondent gravely abused her discretion and exceeded her jurisdiction when she dismissed petitioner's complaint on a very technical ground despite the fact that no trial has yet been conducted and that it has not yet presented its evidence."

According to petitioner, it was never notified of the mediation proceedings scheduled on April 3, 2001 because the notice sent to it was returned unserved, while the other notice was sent to its previous counsel after the latter have already filed their withdrawal of appearance. As such, it was highly impossible for petitioner and its new counsel to attend the scheduled mediation conference.

Respondent bank countered that the absence of petitioner at the mediation conference was due to its negligence. Although a Notice of Withdrawal was already filed by petitioner's previous counsel (V.E. Del Rosario), it never became effective as it was without the approval of the court.