



Republic of the Philippines
Supreme Court
 Manila

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Wesley Legido
 WILFREDO M. MORALES
 Division Clerk in Charge
 Third Division
 FEB 10 2017

THIRD DIVISION

**SPOUSES SERGIO C. PASCUAL
 and EMMA SERVILLION
 PASCUAL,**

Petitioners,

- versus -

**FIRST CONSOLIDATED RURAL
 BANK (BOHOL), INC.,
 ROBINSONS LAND
 CORPORATION and ATTY.
 ANTONIO P. ESPINOSA, Register
 of Deeds, Butuan City,**
 Respondents.

G.R. No. 202597

Present:

VELASCO, JR., J., *Chairperson*,
 BERSAMIN,
 REYES,
 JARDELEZA, and
 CAGUIOA,* JJ.

Promulgated:

February 8, 2017

Wesley Legido

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DECISION

BERSAMIN, J.:

On February 14, 2011, the petitioners filed a petition for annulment of judgment in the Court of Appeals (CA) in order to nullify and set aside the decision rendered in Special Proceedings Case No. 4577 by the Regional Trial Court in Butuan City (RTC) ordering the cancellation of their notice of *lis pendens* recorded in Transfer Certificate of Title No. RT-42190 of the Register of Deeds of Butuan City.¹

After the responsive pleadings to the petition were filed, the CA scheduled the preliminary conference on October 4, 2011, and ordered the parties to file their respective pre-trial briefs.² Instead of filing their pre-trial brief, the petitioners filed a *Motion for Summary Judgment* and a *Motion to*

* Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

¹ *Rollo*, p. 8.

² *Id.*

*Hold Pre-Trial in Abeyance.*³ At the scheduled preliminary conference, the petitioners and their counsel did not appear.⁴

On November 16, 2011, the CA promulgated the first assailed resolution dismissing the petition for annulment of judgment,⁵ stating:

Section 4 through 6 of Rule 18 of the Rules of Court provide, *viz*:

Sec. 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admission of facts and of documents.

Sec. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

Sec. 6. Pre-trial brief. – x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

Petitioners, instead of complying with our order, filed the twin motions, averring that it behooves us to rule first on their motions before pre-trial could be conducted, “especially with the incompatibility of a pending *Motion for Summary Judgment* vis-à-vis the conduct of pre-trial conference.”

Considering that a *Petition for Annulment of Judgment* is an original action before the Court of Appeals, pre-trial is mandatory, per Section 6 of Rule 47 of the Rules of Court, whereby the failure of the plaintiff to appear would mean dismissal of the action with prejudice. The filing of a pre-trial brief has the same import.

In fact, contrary to petitioners’ assertion, it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2 (g) of Rule 18 of the Rules of Court, *viz*:

Sec. 2. Nature and purpose. – *The pre-trial is mandatory. The court shall consider:*

x x x x

³ Id. at 8-9.

⁴ Id. at 31.

⁵ Id. at 31-34; penned by Associate Edgardo T. Lloren and concurred in by Associate Justice Romulo V. Borja and Associate Justice Zenaida T. Galapat-Laguilles.

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist.

Moreover, in an *Order* dated October 20, 2011, we noted petitioners and counsel's special appearance *via* a new counsel, but failed to accept the same as the latter was not armed with the appropriate documents to appear as such. Therefore, it was as if petitioners did not appear during the Preliminary Conference.

It is not for the petitioners to arrogate whether or not pre-trial may be suspended or dispensed with, or that their motions be resolved first, as the same are discretionary upon the court taking cognizance of the petition. Furthermore, their failure to furnish private respondent Robinsons Land Corporation a copy of their *Motion for Reconsideration* of our denial of their TRO and/or WPI, and to submit proof of service thereof to this court is tantamount to failure to obey lawful orders of the court.

This we cannot countenance. Strict compliance with the Rules is indispensable for the prevention of needless delays and the promotion of orderly and expeditious dispatch of judicial business. Hence, petitioners' failure to comply with our directives merits dismissal of their petition. We find support in the provision of Section 1 of Rule 50 of the Rules of Court, *viz.*:

Sec. 1. Grounds for dismissal of appeal.

x x x x

(h) Failure of the appellant to appear at the preliminary conference under Rule 48, or to comply with orders, circulars, or directives of the court without justifiable cause...

The Supreme Court has invariably ruled that while "litigation is not a game of technicalities," it is equally important that every case must be prosecuted in accordance with the procedure to insure an orderly and speedy administration of justice.⁶

Aggrieved, the petitioners filed their *Motion for Reconsideration (on the Resolution dated 16 November 2011)*,⁷ which the CA denied on January 9, 2012 for being filed out of time.⁸ Unrelenting, they presented a *Respectful Motion for Reconsideration (on the Resolution dated 9 January 2012)*, which the CA also denied on June 20, 2012.⁹

Hence, this appeal by petition for review on *certiorari*.

Ruling of the Court

We deny the petition for review for its lack of merit.

⁶ Id. at 32-34.

⁷ Id. at 98-106.

⁸ Id. at 36.

⁹ Id. at 39-41.

1.

**Motions and other papers sent to the CA
by private messengerial services are deemed
filed on the date of the CA's actual receipt**

The petitioners received the assailed resolution of November 16, 2011 on November 24, 2011.¹⁰ Under Section 1, Rule 52 of the *Rules of Court*,¹¹ they had 15 days from receipt (or until December 9, 2011) within which to move for its reconsideration or to appeal to the Supreme Court. They dispatched the *Motion for Reconsideration (on the Resolution dated 16 November 2011)* on December 9, 2011 through private courier (LBC). The CA actually received the motion on December 12, 2011.¹² Considering that Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals* provided that motions sent through private messengerial services are deemed filed on the date of the CA's *actual receipt* of the same,¹³ the motion was already filed out of time by December 12, 2011.

Needless to remind, the running of the period of appeal of the final resolution promulgated on November 16, 2011 was not stopped, rendering the assailed resolution final and executory by operation of law.¹⁴

2.

**Although motions for summary judgment
can be filed before the pre-trial, their
non-resolution prior to the pre-trial should
not prevent the holding of the pre-trial**

The petitioners contend that their *Motion for Summary Judgment and Motion to Hold Pre-Trial in Abeyance* needed to be first resolved before the pre-trial could proceed; that the CA erred in declaring that "it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2(g) of Rule 18 of the Rules of Court;" and that the CA overlooked their submission in their *Opposition with Explanation* to the effect that Section 2(g), Rule 18 of the *Rules of*

¹⁰ Id. at 7.

¹¹ Section 1. *Period for Filing*. — A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party. (n)

¹² *Rollo*, p. 36.

¹³ Section 1(d) of Rule III of the *2009 Internal Rules of the Court of Appeals* provides:

x x x x

(d) Pleadings, motions and other papers may also be filed by ordinary mail, private messengerial service or any mode other than personal delivery and registered mail as may be allowed by law or the Rules. However, **they shall be deemed filed on the date and time of receipt by the Court, which shall be legibly stamped by the receiving clerk on the first page thereof and on the envelope containing the same, and signed by him/her.** (Sec. 4, Rule 3, RIRCA[a])

¹⁴ *Ibasco v. Private Development Corporation of the Philippines*, G.R. No. 162473, October 12, 2009, 603 SCRA 317, 320.

Court was superseded by Administrative Circular No. 3-99 dated January 15, 1999 and A.M. No. 03-1-09-SC dated August 16, 2004.

The petitioners' contentions have no merit.

We consider it erroneous on the part of the CA to declare that "it is only at the pre-trial that the rules allow the courts to render judgment on the pleadings and summary judgment, as provided by Section 2(g) of Rule 18 of the Rules of Court." The filing of the motion for summary judgment may be done prior to the pre-trial. Section 1, Rule 35 of the *Rules of Court* permits a party seeking to recover upon a claim, counterclaim, or cross-claim or seeking declaratory relief to file the motion for a summary judgment upon all or any part thereof in his favor (and its supporting affidavits, depositions or admissions) "at any time after the pleading in answer thereto has been served;" while Section 2 of Rule 35 instructs that a party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may file the motion for summary judgment (and its supporting affidavits, depositions or admissions) upon all or any part thereof "at any time." As such, the petitioners properly filed their motion for summary judgment prior to the pre-trial (assuming that they thereby complied with the requirement of supporting affidavits, depositions or admissions).

We remind that the summary judgment is a procedural technique that is proper under Section 3, Rule 35 of the *Rules of Court* only if there is no genuine issue as to the existence of a material fact, and that the moving party is entitled to a judgment as a matter of law.¹⁵ It is a method intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record.¹⁶ The term *genuine issue* is defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and/or counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.¹⁷ The party moving for the summary judgment has the burden of clearly demonstrating the absence of any genuine issue of fact.¹⁸ Upon the plaintiff rests the burden to prove the cause

¹⁵ See *Solid Manila Corporation v. Bio Hong Trading Co., Inc.*, G.R. No. 90596, April 8, 1991, 195 SCRA 748, 756; *Arradaza v. Court of Appeals*, G.R. No. 50422, February 8, 1989, 170 SCRA 12, 20; *De Leon v. Faustino*, L-15804, 110 Phil. 249, 253 (1960).

¹⁶ *Bayang v. Court of Appeals*, G.R. No. 53564, February 27, 1987, 148 SCRA 91, 94; *Viajara v. Estenzo*, No. L-43882, April 30, 1979, 89 SCRA 685, 696.

¹⁷ *Excelsa Industries, Inc. v. Court of Appeals*, G.R. No. 105455, August 23, 1995, 247 SCRA 560, 566; citing *Paz v. Court of Appeals*, G.R. No. 85332, January 11, 1990, 181 SCRA 26, 30; *Caderao v. Estenzo*, No. L-42408, September 21, 1984, 132 SCRA 93, 100.

¹⁸ *Excelsa Industries, Inc. v. Court of Appeals*, supra at 566-567, citing *Viajar v. Estenzo*, supra at 697; and *Paz v. Court of Appeals*, supra at 31.

of action, and to show that the defense is interposed solely for the purpose of delay. After the plaintiff's burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend.¹⁹

The CA could have misconceived the text of Section 2(g), Rule 18 of the *Rules of Court*, to wit:

Section 2. *Nature and purpose.* — The pre-trial is mandatory. The court shall consider:

x x x x

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

x x x x

To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion*. Indeed, such motion is required by either Rule 34²⁰ (*Judgment on the Pleadings*) or Rule 35²¹ (*Summary Judgment*) of the *Rules of Court*. The pre-trial judge cannot *motu proprio* render the judgment on the pleadings or summary judgment. In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.

¹⁹ *Excelsa Industries, Inc. v. Court of Appeals*, supra at 567, citing *Estrada v. Consolacion*, No. L-40948, June 29, 1976, 71 SCRA 523, 529.

²⁰ Section 1. *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, **on motion of that party**, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (1a, R19)

²¹ Section 1. *Summary judgment for claimant.* — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, **move with supporting affidavits, depositions or admissions for a summary judgment** in his favor upon all or any part thereof. (1a, R34)

Sec. 2. *Summary judgment for defending party.* — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought **may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.** (2a, R34)

Sec. 3. *Motion and proceedings thereon.* — **The motion shall be served at least ten (10) days before the time specified for the hearing.** The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (3a, R34)

Even so, the petitioners cannot validly insist that the CA should have first resolved their *Motion for Summary Judgment* before holding the pre-trial. They could not use the inaction on their motion to justify their non-appearance with their counsel at the pre-trial, as well as their inability to file their pre-trial brief. In that regard, their appearance at the pre-trial with their counsel was mandatory.

The petitioners argue that their non-appearance was not mandatory, positing that Section 2(g), Rule 18 of the *Rules of Court* had been amended by Administrative Circular No. 3-99 and A.M. No. 03-1-09-SC issued on July 13, 2004 but effective on August 16, 2004.

The petitioners' argument was unwarranted.

Administrative Circular No. 3-99 dated January 15, 1999 still affirmed the mandatory character of the pre-trial, to wit:

x x x x

V. The mandatory continuous trial system in civil cases contemplated in Administrative Circular No. 4, dated 22 September 1988, and the guidelines provided for in Circular No. 1-89, dated 19 January 1989, must be effectively implemented. For expediency, these guidelines in civil cases are hereunder restated with modifications, taking into account the relevant provisions of the 1997 Rules of Civil Procedure:

A. *Pre-Trial*

x x x x

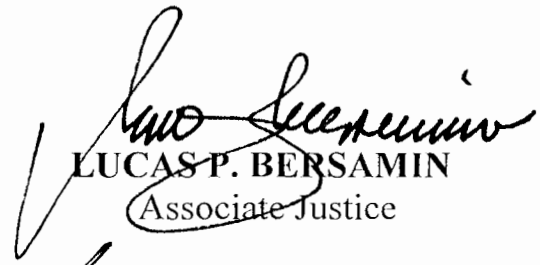
6. Failure of the plaintiff to appear at the pre-trial shall be a cause for dismissal of the action. A similar failure of the defendant shall be a cause to allow the plaintiff to present his evidence *ex-parte* and the court to render judgment on the basis thereof. (Underlining supplied for emphasis)

A.M. No. 03-1-09-SC (*Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures*) – adopted for the purpose of abbreviating court proceedings, ensuring the prompt disposition of cases, decongesting court dockets, and further implementing the pre-trial guidelines laid down in Administrative Circular No. 3-99 – similarly underscored the mandatory character of the pre-trial, and reiterated under its heading *Pre-Trial* in civil cases that, among others, the trial court could then determine “the propriety of rendering a summary judgment dismissing the case based on the disclosures made at the pre-trial or a judgment based on the pleadings,


evidence identified and admissions made during pre-trial.”²² As such, they could have urged the trial court to resolve their pending *Motion for Summary Judgment* during the pre-trial..

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals promulgated in CA-G.R. SP No. 04020-MIN; and **ORDERS** the petitioners to pay the costs of suit.

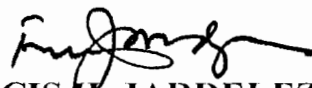
SO ORDERED.

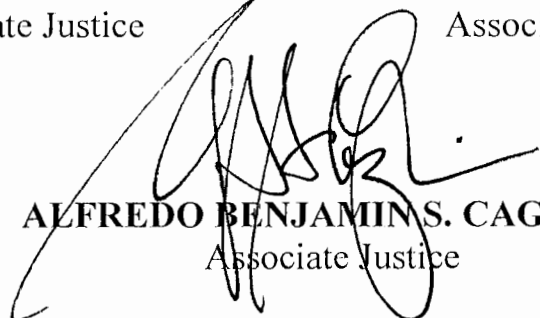

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

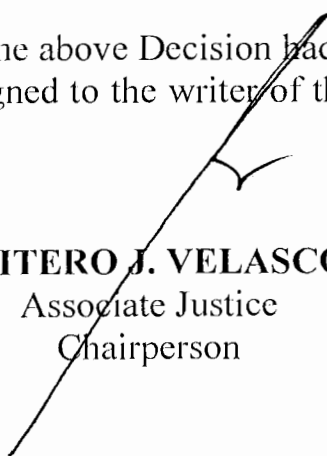

BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

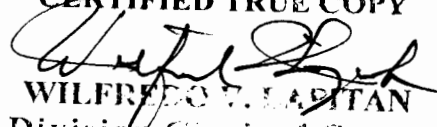
²² A.M. No. 03-i-09-SC, 1.A,5,h.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 20 2017