REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF CUSTOMS, *Petitioner,*	**C.T.A. EB NO. 358 (C.T.A. OC NO. 006)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
KULTURA KNITEX CORPORATION, FERNAN T. ALBANO, EDGARDO S. CABALLES, MARIANO ABAN and BELLA IGNACIO, *Respondents.*	**Promulgated:** SEP 0 2 2008 2:40 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended*, once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice *(De Knecht vs. Court of Appeals, 290 SCRA 238)*.

THE CASE

This is a Petition for Review filed by the Republic of the Philippines, represented by the Bureau of Customs (hereafter "petitioner") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* which seeks to set aside and/or to amend the Resolutions dated July 26, 2007 and January 8, 2008 issued by the First Division of this Court in C.T.A. OC No. 006, the respective dispositive portions of which read, as follows:

> "Confirming the order in open court on July 17, 2007, for failure on the part of the plaintiff to prosecute its case within an unreasonable length of time, this case is **DISMISSED WITH PREJUDICE.**
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, this Court hereby **DENIES** plaintiff's Motion for Reconsideration.
>
> **SO ORDERED.**"

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner, the Republic of the Philippines, is a sovereign political entity with capacity to sue, represented by the Bureau of Customs, which may be served with summons and other court processes at the Bureau of Customs, Port Area, Manila.

Respondent Kultura Knitex Corporation, on the other hand, is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at Overland Drive, Sumulong Subdivision, Valenzuela, Metro Manila.

On August 23, 2004, petitioner filed a complaint for Recovery of Sum of Money in the amount of P41,535,379.00, representing duties and taxes on the various importations of defendants/respondents, P500,000.00 as and for litigation expenses; and P500,000.00 as and for exemplary damages, with prayer for a writ of preliminary attachment, with the First Division of this Court, docketed as C.T.A. OC No. 006.

On March 30, 2005, the Bureau of Customs filed a "Joint Motion to Archive" six (6) cases, including C.T.A. OC No. 006, on the ground that the defendants/respondents could not be served with summons, notwithstanding earnest efforts to locate said defendants.

The First Division granted said motion during the hearing on April 29, 2005, subject to the condition that the Office of the Solicitor General shall inform the Court the status and development of this case and the whereabouts of the defendants/respondents, within sixty (60) days from notice.

Plaintiff/petitioner, thereafter, filed several motions for extension of time within which to inform the Court of the status and development of the case and whereabouts of the defendants/respondents.

On October 27, 2005, plaintiff filed a "Motion for Leave of Court to Serve Summons by Publication". On December 23, 2005, the Court granted the motion and plaintiff/petitioner was granted thirty (30) days from notice to effect the publication.

On February 10, 2006, plaintiff/petitioner filed a "Manifestation and Motion" informing the Court that the OSG had already coordinated with the BOC regarding the publication and moved for extension of time to effect the publication of the complaint. On February 21, 2006, it filed a "Manifestation/Compliance", with proof of publication in Manila Times.

In a Resolution dated March 10, 2006, plaintiff/petitioner was directed to submit the affidavit of the printer or editor of the Manila Times, pursuant to *Section 19, Rule 15 of the 1997 Rules of Civil Procedure, as amended.* On April 3, 2006, petitioner complied thereto.

At the hearing on August 22, 2006, plaintiff/petitioner moved that the defendants/respondents be declared in default for failure to file their answer to the complaint despite the expiration of the 15-day reglementary period, which the First Division granted and the ex-parte presentation of the evidence for the plaintiff/petitioner was set on October 19, 2006.

On October 18, 2006, plaintiff/petitioner filed a "Manifestation and Motion" praying for the resetting of the ex-parte presentation of evidence for the plaintiff/petitioner set on October 19, 2006 on the ground that it has still no available witnesses and the documents needed for the trial have not yet been turned over by the Office of the Special Prosecutor to the Office of the Solicitor General, which the Court granted and the hearing was reset to November 23, 2006.

On November 7, 2006, plaintiff/petitioner filed another "Motion to Reset" praying that the scheduled ex-parte presentation of evidence for the plaintiff/petitioner set on November 23, 2006 be reset to February on the ground that the Solicitor handling the case has another hearing in Camarines Sur on the same date. The Court granted the motion and the hearing was reset to January 16, 2007.

At the scheduled hearing on January 16, 2007, counsel for plaintiff/petitioner failed to appear, and the ex-parte presentation of evidence for the plaintiff/ petitioner was reset to February 27, 2007.

On January 25, 2007, the Office of the Solicitor General (OSG) filed a "Manifestation and Motion" praying that it be excused from further participating in this case and that all resolutions/orders of the Court be sent to the Bureau of Customs. The OSG manifested that it sent several letters to the Department of Finance, the Office of the Special Prosecutor and the Commissioner of Customs for the transmittal of the documents needed for the prosecution of this case, but to no avail.

At the scheduled ex-parte presentation of the evidence for the plaintiff/petitioner on February 27, 2007, counsel for plaintiff/petitioner failed to appear.

In a Resolution dated March 6, 2007, the First Division denied OSG's motion to be excused from further participating in this case for lack of merit and ordered the Clerk of Court to issue *subpoena duces tecum* to the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance, for its duly authorized representative to produce duly authenticated copies of the following documents: Audit Report, Cancellation Memoranda, Tax Credit Memoranda, Tax Credit Certificates, Tax Credit Certificate Dockets, Evaluation Reports and other pertinent documents to be presented in the case, and further directed the Commissioner of Customs to set an immediate conference between its duly authorized representative, Attys. Malabed and Bauson, and the OSG to determine the witnesses to be presented and the nature of their testimonies and to submit to the Court a list thereof.

On March 23, 2007, Ernesto Q. Hiansen of the Department of Finance filed a "Compliance and Request for Extension" alleging that it had attached therewith some of the documents that were subpoenaed and prayed for an extension of another fifteen (15) days to submit the other documents, which the Court granted.

On April 17, 2007, plaintiff/petitioner filed a "Compliance" submitting the names of its intended witnesses and the nature of their testimonies.

At the ex-parte presentation of the evidence for the plaintiff/ petitioner, on April 24, 2007, counsels for plaintiff Bureau of Customs manifested that the Solicitor handling the case informed him that she is not available for today's hearing and moved for a resetting, which the Court granted and the hearing was reset for the last time to June 5, 2007, with warning that should counsel for plaintiff again fail to appear in the next scheduled hearing, the case will be dismissed for failure to prosecute.

At the ex-parte presentation of the evidence for the plaintiff/ petitioner on June 5, 2007, counsels for the Bureau of Customs appeared, without the Solicitor as the latter has withdrawn as counsel for the Bureau of Customs for non-cooperation of the witnesses from the Department of Finance. The First Division directed the counsels for the Bureau of Customs to collaborate with the Office of the Solicitor General, or to secure authority from the OSG to prosecute the case. The ex-parte presentation of the evidence for the plaintiff/petitioner was then reset for the last time to July 17, 2007.

During the hearing on July 17, 2007, counsel for plaintiff/petitioner moved that the case be temporarily archived on the ground that they have still no witnesses and no documents to present. The Court denied the oral motion, and ordered the dismissal of the case for failure to prosecute for an unreasonable length of time.

Not satisfied, on August 16, 2007, plaintiff/petitioner filed a "Motion for Reconsideration and/or to Amend Resolution", which the First Division denied in a Resolution dated January 8, 2008.

On February 13, 2008, petitioner filed the instant Petition for Review with this Court *En Banc* raising the sole issue:

ISSUE

> THE HONORABLE COURT'S FIRST DIVISION ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND/OR TO AMEND RESOLUTION.

On May 9, 2008, We required the respondents to file their comment thereto, within ten (10) days from notice. Despite notice, respondents failed to comply.

Hence, the petition is now deemed submitted for decision.

THE COURT *EN BANC'S* RULING

The petition is devoid of merit.

Petitioner contends that technicalities should yield to the substantive right of the party. Every litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. For the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder, but to promote the administration of justice. Further, respondents in this case failed to file their answer to the complaint, as a consequence of which they were declared in default. Thus, it cannot be said that respondents will be prejudiced by petitioner's request to declare the dismissal of the case "without prejudice".

In this regard, *Section 3* of *Rule 17* of the *1997 Rules of Civil Procedure, as amended*, provides:

> "SEC. 3. Dismissal due to fault of 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 an adjudication upon the merits, unless otherwise declared by the court."

The aforequoted Rule contemplates of three (3) instances whereby the Court may dismiss an action on its own volition for failure to prosecute; namely: (1) where the plaintiff fails to appear at the time of the trial; (2) where he fails to prosecute his action for an unreasonable length of time; and, (3) where he fails to comply with these rules or any order of the Court.

Under the above provision, if plaintiff fails to prosecute his action for an unreasonable length of time, the action may be dismissed upon motion of the defendant or upon the Court's own motion.

In the disputed Resolution, the First Division obviously relied on the second ground in dismissing the complaint. Notably, that petitioner, as plaintiff in C.T.A. OC No. 006, failed to take further steps to prosecute this action for an unreasonable length of time.

As to what constitutes an "unreasonable length of time" within the purview of the aforequoted provision, the Supreme Court has ruled that it depends upon the circumstances of each particular case; that "the sound discretion of the court" in the determination of said question will not be disturbed, in the absence of patent abuse; and that the burden of showing abuse of judicial discretion is upon appellant since every presumption is in favor of the correctness of the Court's action. Thus, the Supreme Court refused to disturb orders of dismissal for failure to prosecute for a period of four (4) years, about three (3) years, over a year, less than a year, and even less than three (3) months (*Montejo v. Urotia, 40 SCRA 41, 51-52; Goldloop Properties, Inc. v. Court of Appeals, 212 SCRA 508-509*).

In this case, records show:

1) On August 23, 2004, plaintiff/petitioner filed its complaint for Recovery of Sum of Money with the First Division of this Court, docketed as C.T.A. OC No. 006;

2) It was only on March 30, 2005 or after the lapse of more than seven (7) months that plaintiff/petitioner filed a "Joint Motion To Archive" six (6) cases, including C.T.A. OC NO. 006, on the ground that the defendants could not be served with summons at their addresses of record, which the First Division granted on August 29, 2005, subject to the condition that the Office of the Solicitor General shall inform the Court the status and development of the case and

the whereabouts of the defendants, within 60 days from notice;

3) Again, it was only on October 27, 2005 or after the lapse of more than one (1) year from the filing of the complaint, that plaintiff/petitioner filed a "Motion for Leave of Court to Serve Summons By Publication", which the Court granted, and plaintiff was given thirty (30) days from notice to effect the publication;

4) On February 11, 2006, defendants/respondents were summoned by publication;

5) At the hearing on August 22, 2006, defendants/respondents were declared in default for failure to file their answer to the complaint;

6) The ex parte presentation of the evidence for the plaintiff was set on October 19, 2006;

7) Prior to the ex parte presentation of the evidence for the plaintiff scheduled on October 19, 2006, plaintiff/petitioner filed on October 18, 2006, a "Manifestation and Motion" praying for the resetting of the

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hearing, which the Court granted, and the ex parte presentation of evidence for the plaintiff/petitioner was reset to November 23, 2006;

8) On November 7, 2006, plaintiff/petitioner filed another "Motion to Reset" the scheduled hearing on November 23, 2006 to February, which the Court granted, and the ex parte presentation of the evidence for the plaintiff/petitioner was reset to January 16, 2007;

9) At the scheduled ex parte presentation of evidence for the plaintiff/petitioner on January 16, 2007, counsel for plaintiff/petitioner failed to appear, and the hearing was reset to February 27, 2007;

10) On January 25, 2007, the OSG filed a "Manifestation and Motion" praying that it be excused from further participating in this case;

11) At the scheduled ex parte presentation of the evidence for the plaintiff/petitioner on February 27, 2007, again counsel for plaintiff/petitioner failed to appear, and the hearing was reset to April 24, 2007;

12) At the ex parte presentation of the evidence for the plaintiff/petitioner on April 24, 2007, counsels for BOC appeared, and manifested that the Solicitor handling the case is not available and moved for a resetting, which the Court granted. The hearing was reset to June 5, 2007;

13) At the scheduled ex parte presentation of the evidence for the plaintiff/petitioner on June 5, 2007, counsels for the BOC appeared. The Solicitor again failed to appear, and the hearing was reset for the last time to July 17, 2007; and

14) Finally, at the scheduled ex parte presentation of the evidence for the plaintiff on July 17, 2007, counsel for the BOC appeared and moved to archive the case on the ground that the documents needed for the prosecution of the case are not yet available. The First Division denied the motion and dismissed the case for failure to prosecute for an unreasonable length of time.

From the very start, petitioner was extended by the Court liberal patience even when it filed its "Joint Motion to Archive" only on March

30, 2005 or after the lapse of seven (7) months from the filing of the complaint on August 23, 2004, and the Court granted the motion, subject to conditions. Petitioner moved for several extensions to comply with the conditions of the Court. Subsequently, on August 22, 2006, after defendants were declared in default for failure to file their answer to the complaint and the case was set for the ex parte presentation of evidence for the plaintiff, counsel for plaintiff/petitioner filed six (6) motions to reset the ex parte presentation of the evidence for the plaintiff scheduled on October 19, 2006, November 23, 2006, January 16, 2007, February 27, 2007, April 24, 2007, June 5, 2007 and July 17, 2007, all anchored on the same ground that the documents needed for the prosecution of the case are not yet available. At the scheduled ex parte presentation of evidence for the plaintiff/petitioner on January 16, 2007 and February 27, 2007, counsel for plaintiff/petitioner also failed to appear.

Records show that from the time the ex parte presentation of the evidence for the plaintiff/petitioner was originally set on October 19, 2006 up to the last resetting on July 17, 2007, nine (9) months had lapsed. This, notwithstanding, petitioner still failed to present any witness or document, despite several extensions granted by the Court. There were also a number of instances where counsel for plaintiff/petitioner failed to appear at the scheduled ex parte presentation of evidence for the plaintiff or the counsels for BOC appeared, but without authorization from the OSG. Plaintiff inexplicably failed to secure the presence of witnesses and the documents needed to prosecute the case. In sum, petitioner failed to pursue the case for almost three (3) years.

Settled in the rule is that it is incumbent upon the parties, especially the plaintiff, to take the initiative on the prompt disposal of cases, as duty to themselves, to the courts and to the public in general (*Masiglot v. Mayor of Pasay City, 104 Phil. 319*).

Given the circumstances elucidated above, We hold that the First Division did not err in dismissing the case for failure to prosecute for almost three years.

While a court can dismiss a case on the ground of *non-prosequitur*, the real test for the exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude (*Goldloop Properties, Inc. vs. Court of Appeals, 212 SCRA 498, 509)*. It cannot plead paucity of means, including legal ability it could retain. These are acts of negligence, laxity and truancy which petitioner could have very easily avoided or timely remedied. One's sympathy, petitioner could not avail against apparent complacency, if not delinquency, in the conduct of litigation. For failure to diligently pursue its complaint, it trifled with the right of respondents to speedy trial. It also sorely tried the patience of the court and wasted its precious time and attention.

Length of time alone is not a test of due diligence in prosecuting a pending action. Laches does not depend, unlike the statute of limitations, upon the lapse of a certain time since the cause of action accrued, but whether, under all the facts and circumstances of a particular case, the plaintiff is chargeable with want of due diligence in failing to proceed with unreasonable promptitude. The reckoning point is the unjustified failure to take such steps as may have been ordered by the court or required by procedure and without which the court could not proceed with the hearing to the final termination of the case *(Civil Procedure Annotated, Justice Jose Y. Feria, Volume I, pp.467-468).*

Pursuant to *Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended,* the final dismissal under said section is a bar to a subsequent action based on the same cause, unless the court orders it to be without prejudice *(Civil Procedure Annotated, Justice Jose Y. Feria, Volume I, p.465)*.

In the light of the foregoing circumstances, to declare the dismissal in this case without prejudice would open the floodgate to possible circumvention of *Section 3, Rule 17 of the Revised Rules of Court* on dismissal with prejudice for failure to prosecute. It would frustrate the protection against unreasonable delay in the prosecution of cases and violate the constitutional mandate of speedy dispensation of justice which would in time erode the people's confidence in the judiciary. We rule that, as aptly held by the First Division, the dismissal of petitioner's complaint is with prejudice and should have the effect of adjudication on the merits.

Thus, in the case of *De Knecht vs. Court of Appeals, 290 SCRA 238-240*, the Supreme Court ruled:

> "xxx. 'Lack of interest' is analogous to 'failure to prosecute.' Section 3 of Rule 17 of the Revised Rules of Court provides:
>
> *'Section 3. Failure to Prosecute.-- If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.'*
>
> An action may be dismissed for failure to prosecute in any of the following instances: (1) if the plaintiff fails to appear at the time of

> trial; or (2) if he fails to prosecute the action for an unreasonable length of time; or (3) if he fails to comply with the Rules of Court or any order of the court. Once a case is dismissed for failure to prosecute, this has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In other words, unless there be a qualification in the order of dismissal that it is without prejudice, the dismissal should be regarded as an adjudication on the merits and is with prejudice.
>
> xxx xxx.
>
> The order of dismissal was based on the following factors: (1) pendency of the complaint for a considerable length of time; (2) failure of counsel to appear at the scheduled hearing despite notice; and (3) lack of interest of the petitioners. Under Section 3, Rule 17, a dismissal order which does not provide that it is without prejudice to the filing of another action is understood to be an adjudication on the merits. Hence, it is one with prejudice to the filing of another action."

Since under the rules it is the duty of the plaintiff/petitioner to make the necessary move for the prompt disposal of its case, We conclude that the dismissal of the case with prejudice for failure to prosecute for an unreasonable length of time is in accordance with law and settled jurisprudence, considering that the plaintiff had failed to move in the premises for almost three (3) years. We, therefore, affirm the assailed Resolutions dated July 26, 2007, and January 8, 2008 issued by the First Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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