

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Represented by the BUREAU OF CUSTOMS,
Plaintiff,

C.T.A. OC NO. 001

Members:

ACOSTA, P.J.
BAUTISTA, and
CASANOVA, JJ.,

- versus -

**INTEGRATED MULTI-COTTON MILLS
INC., BERNARDO F. REYES, ALFREDO G.
CAMPOS, RODOLFO C. BAUTISTA,
NORMA S. DIAZ, AND SHERWIN C.
ALCORIZAS,**

Promulgated:

JUN 18 2008 *in cc* 

Defendants.

X ----- X

RESOLUTION

On April 24, 2008, this Court ordered plaintiff to explain its failure to comply with the Resolution dated February 11, 2008. The said February 11, 2008 Resolution ordered the publication of the summonses in a newspaper of general circulation, and the submission of proofs of publication. Likewise, plaintiff was ordered to submit its affidavit setting forth the ground/s for its application to serve the summonses upon the defendants through publication, pursuant to Section 17 of Rule 14 of the 1997 Rules of Court, as amended.

On May 12, 2008, plaintiff filed a *Manifestation and Motion* informing this Court that the summonses were not published as ordered, due to lack of funds, and that the present case may be dismissed without prejudice to its re-filing, should the needed funds become available.

The recourse chosen by plaintiff, which is, to seek the dismissal of the case without prejudice, is in accord with the provisions of Section 1 of Rule 17 of the Rules of Court, as amended, to quote:

“**Section 1.** Dismissal upon notice by plaintiff. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at anytime before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.”

Indubitably, the provision ordained the dismissal of the complaint by the plaintiff as a matter of right at any time before service of the answer. The plaintiff is accorded the right to dismiss the complaint without the necessity of alleging in the notice of dismissal any ground nor of making any reservation. The Court has no discretion or option to deny the motion. Even if the motion cites the most ridiculous of grounds for dismissal, the Court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of ground.¹

The dismissal under the above-stated section is “without prejudice”, except: (a) where the notice of dismissal so provides, and (b) where the plaintiff has previously dismissed the same case in a court of competent jurisdiction.

In the case at bar, no answer or motion for summary judgment had been served, and the plaintiff filed the instant *Manifestation and Motion* seeking for the dismissal of the case “without prejudice.” Clearly, Section 1 of Rule 17 is applicable. The exceptions to “dismissal without prejudice” are wanting, it is proper to dismiss

¹ O.B. Jovenir construction and Development Corp. vs. Macamir Realty and Development Corp., G.R. No. 135803, March 28, 2006.

the present case “without prejudice.” Further, although plaintiff filed a motion instead of a mere notice of dismissal, such “error”, if it could be called as such, should hardly be of fatal consequence².

In view of the foregoing, the Court finds merit in plaintiff’s *Manifestation and Motion* and hereby **GRANTS** the same.

WHEREFORE, this case is hereby **DISMISSED** *without prejudice* pursuant to Section 1 of Rule 17 of the Rules of Court, as amended.

SO ORDERED.



ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice



CAESAR A. CASANOVA
Associate Justice

² *Supra*