# HANJIN SHIPPING CO., LTD. & MOF COMPANY, INC., PETITIONERS, VS. NDC TERMINAL INCORPORATED REPRESENTED BY RODERICK N. FULGENCIO, HON. ZALDY B. DOCENA, PRESIDING JUDGE, RTC-BRANCH...

Ponente: BARRIOS, M. M., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/29dd537b4c8c/

**BARRIOS, M. M., J.:**

This is a Petition for Certiorari assailing the Order dated 28 October 2011 of the Regional Trial Court (RTC), Branch 170, Malabon City in Civil Case No. CV-398-MN that allowed respondent company to present its evidence ex- parte.

Also assailed is the Order dated 12 July 2012 that was later rendered by the Regional Trial Court, Branch 74, Malabon City denying petitioners' motion for reconsideration.

## THE FACTS

In July 2011, a complaint for collection of sum of money with damages was filed by private respondent NDC Terminal, Inc. against petitioners Hanjin Shipping Co. Ltd. (Hanjin) and its Philippine agent, MOF Company, Inc. (MOF) as well as its other agent Eagle Express Lines, Inc. (Eagle Express) seeking to recover the amount of Php1,276,747.97 plus interest as compensation for various services rendered for petitioner Hanjin for the years 2003 up to 2010. The case was initially raffled to RTC, Branch 170, Malabon City presided by respondent Judge Zaldy B. Docena.

After petitioners (Hanjin and MOF) and Eagle Express filed their respective Answers, RTC-Branch 170 set[1] the case for Pre-Trial Conference on 28 October 2011 at 8:30 A.M. Accordingly, notices of Pre-Trial Conference were served on the parties. Meanwhile, three (3) days before the pre-trial or on 25 October 2011, Eagle Express filed a Motion to Reset the Pre-Trial Conference[2] “to 11 November 2011 or to any other dates convenient to the court” due to the unavailability of its counsel on the date set. Also, on same date, petitioners filed their Pre-Trial Brief through registered mail.[3]

On 28 October 2011, only the counsel for private respondent appeared. The representatives of petitioners and Eagle Express as well as their respective counsels were absent. Incidentally, a certain Omar Mata appeared in court supposedly to represent petitioners, but he was not recognized by the court because he was not armed with a valid documentary authority. As a consequence of their absence, therefore, private respondent moved that it be allowed to present ex-parte evidence in support of its complaint. Thus, in the assailed Order[4] dated 28 October 2011, respondent Judge Docena of RTC-Branch 170 granted private respondent's motion, and private respondent NDC was allowed to adduce its evidence on 04 and 11 November 2011.

Petitioners and Eagle Express, respectively, moved to reconsider the Order. Petitioners asserted that the non-appearance of their authorized representative and counsel at the pre-trial/hearing held on 28 October 2011 was justified and was not meant to delay the disposition of the case nor to disobey the court since they honestly

assumed that the Pre-Trial Conference would be canceled and rescheduled to a later date following the Motion to Reset Pre-Trial filed earlier by co-defendant Eagle Express. They ask for a liberal application of the Rules on Pre-Trial to enable them to adduce evidence in their behalf and be given full opportunity to be heard on their defenses. They also averred that they have filed a Pre-Trial Brief by mail and sent a representative to attend the hearing. On the part of Eagle Express, it contended that their counsel had a previously set engagement that day, which fact was duly communicated to the trial court beforehand.

In its opposition, private respondent asserted that the trial court was correct in allowing it to present evidence ex-parte in view of the absence of defendants' authorized representative or counsels during the pre-trial, and by failing to file their Pre-Trial Briefs at least three (3) days before the pre-trial. Moreover, the parties should not cursorily assume that their motion to postpone will always be granted, especially since personal appearance at pre-trial as well as the filing of Pre-Trial Brief are mandatory.

In the meantime, sensing bias and partiality on the part of respondent Judge Docena for not ruling on their Motion for Reconsideration for more than three (3) months from its filing, and for permitting the continuous ex-parte presentation of private respondent's evidence despite the pendency of the motion, on 20 March 2012, petitioners moved[5] to inhibit said judge. In an Order[6] dated 15 June 2012, respondent Judge Docena voluntarily inhibited from hearing the case, and the same was re-raffled to respondent Judge Celso Magsino, Jr. of the RTC- Branch 74.

On 12 July 2012, respondent Judge Magsino issued the other assailed Order denying the motions for reconsideration, and ruling that private respondent's presentation of evidence ex-parte was in order in view of the admitted failure of Eagle Express and petitioners, along with their respective counsels, to attend pre-trial and to file their respective Pre-Trial Briefs.

From these rulings, only petitioners Hanjin and MOF filed the instant Petition for Certiorari before this Court, raising the following argument:

> I.
>
> THE HONORABLE PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION (1) IN GRANTING PRIVATE RESPONDENT'S MOTION TO PRESENT ITS EVIDENCE EX-PARTE, (2) IN ACTUALLY ALLOWING THE PRIVATE RESPONDENT TO PRESENT ITS EVIDENCE EX-PARTE DESPITE THE PENDENCY OF THE MOTIONS FOR RECONSIDERATION THAT WERE FILED BY THE PETITIONERS AND CO-DEFENDANT EAGLE EXPRESS, AND (3) IN DENYING THE SAID MOTIONS FOR RECONSIDERATION.
>
> OUR RULING

It has been held time and again that to grant a Petition for Certiorari under Rule 65 of the Rules of Court, there must be a clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent court or tribunal.[7] There is grave abuse of discretion where there is a capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[8]

In this case, the issue that presents before Us is whether public respondents gravely abused their discretion in allowing the plaintiff to present evidence ex-parte when the defendants failed to appear during the pre-trial hearing.


*Bar review courses, mock exams and a study planner that keeps you on pace - batas.org*

In the instant case, it is the admitted fact that neither the authorized representative of the herein petitioners nor their counsel were present during the scheduled Pre-Trial Conference held on 28 October 2011, of which they were duly notified. Pursuant to the Rules, both the parties and their attorneys are obliged to appear at the pre-trial so as to facilitate the attainment of the objectives of pre-trial as provided in Section 2 of Rule 18. Their appearance is mandatory. Indeed, the application of procedural rules may be relaxed only upon a showing of a plausible reason or just cause for their non-compliance, and a compelling reason to convince the court that outright dismissal of the petition would seriously impair the orderly administration of justice.[9] Stated differently, only strong considerations of equity would lead to allow non-compliance with the procedural rules in the interest of substantial justice.[10]

Here, it is the argument of petitioners that counsel for a co-defendant Eagle Express had filed a Motion for Postponement and had requested its resetting to another day; hence, they did not go to court anymore.

This posture is untenable. Note that Section 4 makes it the duty of the party and counsel to appear at the pre-trial; and their presence may be excused only if there is a valid cause. In this instance, however, the excuse given is that counsel for a co-defendant (Eagle Express) had filed a motion for postponement due to another engagement. This is not the valid cause referred to in the Rules. A party should not assume that a motion for postponement will be granted by the trial court. As persistently held by the Supreme Court,[11] a motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter to be addressed to the sound discretion of the trial court. Moreover, petitioners' other excuse that they sent somebody to attend the hearing is immaterial since that person was not armed with the proper Board resolution granting him the comprehensive authority needed at the pre-trial hearing. Additionally, said person does not appear to be a responsible officer of the petitioners-corporations to whom can be delegated the power to stipulate, admit, or compromise, among other things.

Accordingly, it was within the reasonable exercise of the court's discretion to allow the ex-parte presentation of plaintiff's evidence. In this regard, We rule that the disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court.[12]

In a pre-trial conference, the parties are notified of the date of the pre-trial and are obliged to obey the orders of the court to that effect. It is a recognized right of the trial court that where a plaintiff failed to appear at a pre-trial conference, the case could or might be dismissed. This being the case, applying the rule a converso, where a defendant and his counsel refused without justifiable reasons to appear in the pre-trial hearing, the court as a matter of equity and impartiality may or can also order the plaintiff to present his evidence on the merits of the case. Once jurisdiction has been acquired over the person and the subject of the case, the trial court has the full control and disposition thereof. To allow a defendant to appear or not in a pre-trial hearing “would be to submit a pre-trial conference to the whims and caprices of the defendant without any corresponding sanction and action against him in court.” The pre-trial hearing should not be left to the will and wishes of either party, to cause disadvantage to the other and hamper the court in its duty to implement the spirit of the pre-trial, which is the beginning and part of the trial itself.[13]

In fine, as We see it, public respondents did not act with grave abuse of discretion that amounts to lack or excess of jurisdiction; in fact, their assailed issuances are in accord with the Rules.

WHEREFORE, foregoing considered, the petition is hereby DENIED.

**SO ORDERED.**

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

---

[1] Order dated 12 September 2011, Rollo, p. 52.

[2] Motion to Re-Set Hearing, Rollo, pp. 53 – 54.

[3] Pre-Trial Brief with Registry Return Receipt, Id. pp. 55 – 58.

[4] Id. p. 167.

[5] Motion for Inhibition, Rollo, pp. 91 – 140.

[6] Id., pp. 150 - 161.

[7] Casent Realty & Development Corporation vs. Premiere Development Bank, G.R. No. 163902, January 27, 2006.

[8] Megaworld Globus Asia, Inc. vs. DSM Construction and Development Corporation, G.R. No. 153310, March 2, 2004.

[9] Domingo vs. Court of Appeals, G.R. No. 169122, February 2, 2010, citing the case of Tible & Tible Company, Inc. vs. Royal Savings and Loan Association, G.R. No. 155806, April 8, 2008.

[10] Garcia, Jr. vs. Court of Appeals, G.R. No. 171098, February 26, 2008.

[11] Philippine American Life and General Insurance Co. vs. Enario, GR No. 182075, September 15, 2010. (see from 630 SCRA 607).

[12] Kilosbayan Foundation vs. Janolo, Jr., GR No. 180543, July 27, 2010. (see 625 SCRA 684).

[13] J. Bellosillo's “Effective Pre-Trial Technique”, pp. 179-180.


*Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org*

ABOUT BATAS.ORG

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

### The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

### Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

### Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

### The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

### Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

### A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at https://batas.org**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.