

## **SILVERSTAR SHUTTLE AND TOURS, INC., PLAINTIFF-APPELLANT, VS. PHILTRANCO SERVICE ENTERPRISES, INC. AND JIMUEL ARIENZA Y DEBERTO, DEFENDANTS-APPELLEES.**

Ponente: DICDICAN, J.

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### **DICDICAN, J.:**

Before this Court is an ordinary appeal[1] from the Order, dated February 7, 2013[2], issued by the Regional Trial Court, Branch 93 of San Pedro, Laguna, dismissing the complaint filed by plaintiff-appellant Silverstar Shuttle and Tours, Inc. in Civil Case No. SPL-1524-10, for failure of the plaintiff as well as its counsel to appear, despite due notice, during the pre-trial. Likewise assailed is the Order, dated May 23, 2013[3], denying plaintiff-appellant's Motion for Reconsideration of the Order dated February 7, 2013.

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

On September 3, 2010, plaintiff-appellant Silverstar Shuttle and Tours, Inc., through its counsel, filed a complaint for damages based on tort against defendants-appellees Philtranco Service Enterprises, Inc. and Jimuel Arienza y Deberto. The complaint was based on the incident of January 9, 2010, involving a collision in Brgy. Monbon, Sta. Margarita, Samar, between a Silverstar Shuttle and Tours, Inc. bus, bearing plate no. TYL-290, and Philtranco Service Enterprises, Inc. bus, having plate no. PYK-883, driven by defendant-appellee Jimuel Arienza y Deberto. Alleging that the collision occurred due to the fault and negligence of defendants-appellees, the plaintiff-appellant prayed for P241,890.00 as actual damage, P300,000.00 as compensatory damage, and P150,000.00 as litigation expenses, apart from P5,000.00 as attorney's fees for every appearance fee paid to its counsel on every hearing date.

In response to the complaint, defendants-appellees filed an Answer with Counterclaim[4] on November 22, 2010, claiming, among others, that the vehicular accident was the result of plaintiff-appellant driver's own fault and negligence.

Plaintiff-appellant thereafter filed a motion to set the case for pre-trial at the earliest possible date.[5] Pre-trial was thereafter set by the court a quo to be had on November 10, 2011.[6] The pre-trial was eventually canceled and reset to February 10, 2012 as the counsels of both parties were both absent at the November 10, 2011 scheduled pre-trial.[7]

On the next scheduled date of February 10, 2012, both counsels appeared and submitted their pre-trial briefs.[8] Upon agreement of both parties, the pre-trial was reset to May 3, 2012.[9] On the agreed date, however, the presiding judge attended a seminar and the case was reset for pre-trial to June 15, 2012.[10] Not being available, counsel for plaintiff-appellant filed an Urgent Motion to Reset which was granted by the court a quo, thereby resetting the pre-trial from June 15, 2012 to August 24, 2012.[11]

By agreement of the parties, the August 24, 2012 scheduled pre-trial was in time canceled and reset to October 24, 2012, with both counsels signing on the Appearance Sheet, dated August 24, 2012, provided by the court a

quo.[12] On the agreed date of pre-trial scheduled for October 24, 2012, however, counsel for plaintiff-appellant was absent and the presiding judge ordered the resetting of the pre-trial to February 7, 2013. A copy of the Order, dated October 24, 2012, resetting the case to February 7, 2013 for pre-trial was duly received by the counsel of plaintiff-appellant on November 19, 2012.[13]

On that fateful day of February 7, 2013, however, the counsel of plaintiff-appellant again failed to appear, prompting the court a quo to issue the assailed Order, dismissing the case, upon motion of the defendants-appellees' counsel.[14] The said Order thus states as follows:

“Upon motion of Atty. M. Regondola, considering the failure of the plaintiff, as well as its counsel to appear despite due notice, the above-entitled case is hereby dismissed.

“SO ORDERED.”

Protesting the dismissal of the case, the plaintiff-appellant filed a Motion for Reconsideration thereof, dated March 8, 2013, stating therein that it is very much interested in the prosecution of its complaint and that it has a legitimate cause of action against the defendants-appellees for damages.[15] Defendants-appellees objected to the Motion for Reconsideration, pointing out that there was no valid ground raised by plaintiff-appellant to justify its failure to appear at the pre-trial.[16]

On May 23, 2013, the court a quo issued the second challenged Order, declaring as follows:

“Acting on the Motion for Reconsideration filed by plaintiff, through counsel, with the Comments/Objections thereto filed by defendants, likewise, through counsel, the Court hereby resolves to deny the said motion for reconsideration in view of the failure of the plaintiff to appear during the scheduled pre-trial for no valid reason which has an adverse consequence – the dismissal of his complaint. The Court notes that plaintiff's counsel even failed to adequately explain their failure to attend the scheduled pre-trial. By their unexpected non-appearance during the pre-trial, the dismissal of the complaint is warranted.

“SO ORDERED.”

Feeling aggrieved, the plaintiff-appellant filed the instant appeal, with the assignment of errors as follows:

I.

THE TRIAL COURT ERRED IN READILY AND QUICKLY DISMISSING THE COMPLAINT IN ITS ORDER DATED FEBRUARY 7, 2013 AND IN DENYING THE MOTION FOR RECONSIDERATION DATED MAY 23, 2013.

II.

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DISALLOWING PLAINTIFF-APPELLANT THE RIGHT TO PRESENT EVIDENCE IN COURT.

In a nutshell, the issue raised by plaintiff-appellant is whether or not the court a quo acted correctly when it dismissed the case upon failure of plaintiff-appellant to appear at the pre-trial.

Plaintiff-appellant claims that the court a quo committed an error of law when it dismissed the case even as defendants-appellees showed willingness to consider settlement in their pre-trial brief. This readiness to enter into amicable settlement allegedly indicates partial admission of the truth of some of the facts stated in the complaint. Furthermore, raising the issue of due process, the plaintiff-appellant contends that the case should have been decided on the merits, on the basis of substantial evidence.

We find plaintiff-appellant's arguments unconvincing.

Plaintiff-appellant cannot claim deprivation of due process for it was given the opportunity to be heard. Thus, the pre-trial was initially set by the court a quo for November 10, 2011 and continuously reset several times in a span of more or less than fifteen (15) months but plaintiff-appellant failed to take advantage thereof. Hence, as appearing in the records of the case, cancellation of the pre-trial was made for the following reasons, to wit: both counsels were absent (once); cancellation by agreement of both parties (twice); the presiding judge was attending a seminar (once); cancellation upon motion of the plaintiff-appellant (once); and cancellation due to the absence of plaintiff-appellant's representative or counsel (during the October 24, 2012 pre-trial).

Notably, the February 7, 2013 pre-trial, during which the case was dismissed by the court a quo, was not the first time that plaintiff-appellant failed to appear as it also neglected to send a representative or counsel at the earlier pre-trial date of October 24, 2012. The plaintiff-appellant was likewise well informed of both pre-trial dates of October 24, 2012 and February 7, 2013, as evidenced by the Appearance Sheet[17] dated August 24, 2012, and Registry Receipt dated November 19, 2012.[18]

The court a quo is given the discretion to dismiss the case should the plaintiff therein not appear at the pre-trial[19]. Hence, Sections 4 and 5 of Rule 18 of the Revised Rules of Court reads as follows:

“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 admissions 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.”

From the foregoing, the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence ex parte and the court shall render judgment on the basis thereof.[20]

Although the above-quoted Rule allows room for non-appearance of a party, such non-appearance may only be tolerated if a valid cause is shown therefor or if a representative shall appear in the party's 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 admissions of facts and of documents.

No such valid cause is present in the instant case. In fact, no reason at all was given by the plaintiff-appellant as to why it failed to send a representative at the pre-trial of the case or by the plaintiff-appellant's counsel why he neglected to attend the October 24, 2012 and February 7, 2013 scheduled pre-trial dates.

In *Azucena vs Citibank*[21] and *Citibank vs Azucena*[22] the non-appearing party therein, explaining their failure to attend the pre-trial, reasoned that they themselves were busy and that their counsel failed to note down the date of pre-trial and was beset with heavy case load and conflict of schedule. In *United Coconut Planters Bank vs Magpayo*[23], a party's counsel arrived late during the pre-trial and forgot to bring with him a special power of attorney, authorizing him to enter into amicable settlement in behalf of his client. The said counsel cited the heavy traffic caused by the construction of the Skyway along the South Superhighway as the cause of his troubles. In both cases, the Supreme Court ruled that the reasons given by the non-appearing parties hardly constitute compelling exigencies or situations which warrant occasional flexibility of litigation rules. With the Supreme Court's strict adherence to the Rules and interpretation of what a valid cause consists of, there is all the more reason for us to declare that the court a quo correctly dismissed the instant case upon failure of a representative for

plaintiff-appellant to appear, specially in light of the fact that plaintiff-appellant never even attempted to explain why its representative was absent at the pre-trial.

Pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation.[24]

Plaintiff-appellant's repeated failure to appear at the pre-trial thus amounted to a failure to comply with the Rules.[25] Verily, rules of procedure exist for a noble purpose and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party[26].

The further contention of plaintiff-appellant, postulating that defendants-appellees' readiness to enter into amicable settlement indicates partial admission of the truth of some of the facts stated in the complaint, thus providing a basis for non-dismissal of the case, holds no water.

Hence, Section 27 of Rule 130 of the Revised Rules of Court specifically provides as follows:

“Section 27. Offer of compromise not admissible. —

“In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

“In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromised by the accused may be received in evidence as an implied admission of guilt.

“A plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to lesser offense, is not admissible in evidence against the accused who made the plea or offer.

“An offer to pay or the payment of medical, hospital or other expenses occasioned by an injury is not admissible in evidence as proof of civil or criminal liability for the injury.”

No admission of liability was thus made by the defendants-appellees when they stated in their pre-trial brief that they were willing to enter into amicable settlement. Significantly, unlike in the above-quoted Rule of evidence, no actual offer to pay was even made by defendants-appellees. All that the defendants-appellees declared was their readiness to enter into amicable settlement. A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that it is legally liable, or on the part of a plaintiff, that its claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.[27] The above rule on compromises is anchored on public policy of the most insistent and basic kind; that the incidence of litigation should be reduced and its duration shortened to the maximum extent feasible.[28]

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED and, consequently, DISMISSED. The Orders, dated February 7, 2013 and May 23, 2013, issued by the Regional Trial Court, Branch 93 of San Pedro, Laguna, in Civil Case No. SPL-1524-10, are hereby AFFIRMED.

**SO ORDERED.**

Paredes[\*] and Galapate-Laguilles,[\*\*] JJ., concur.

[\*]Acting Senior Member per Office Order No. 258-14-ABR dtd. June 2, 2014

[\*\*]Acting Junior Member per Office Order No. 258-14-ABR dtd. June 2, 2014

[1] Rollo, Plaintiff-Appellant's Brief pp. 10-24

[2] Records, Order, page 50

[3] Ibid., Order, page 64

[4] Ibid., Answer with Counterclaim, pp. 10-13

[5] Ibid., Motion, page 14

[6] Ibid., Notice of Pre-Trial Conference, page 16

[7] Ibid., Order, page 20

[8] Ibid., Pre-Trial Brief of Silverstar Shuttle and Tours, Inc., pp. 21-26 and Pre-Trial Brief of Philtranco Service Enterprises, Inc. and Jimuel Arienza y Deberto, pp. 26-29

[9] Ibid., Order, page 32

[10] Ibid., Constancia, page 34

[11] Ibid., Order, page 40

[12] Ibid., Order, page 43; Appearance Sheet, page 42

[13] Ibid., Order with registry receipt attached at the back, page 46

[14] Ibid., Order, page 50

[15] Ibid., Motion for Reconsideration, page 52

[16] Ibid., Comment/Objections to Motion for Reconsideration, pp. 59-60

[17] *supra*

[18] *supra*

[19] Home Insurance Company vs United States Lines Co, G.R. No. L-25593, November 15, 1967

[20] Tolentino vs Laurel, G.R. No. 181368, February 22, 2012

[21] G.R. No. 175677, July 31, 2009

[22] G.R. No. 177133, July 31, 2009

[23] G.R. No. 149908, May 27, 2004

[24] The Philippine American Life & General Insurance Company v. Enario, G.R. No. 182075, September 15, 2010, 630 SCRA 607, 616.

[25] See Tolentino vs Laurel, *supra*

[26] Ama Computer College-Santiago City, Inc. vs Heirs of Nacino, G.R. No. 162739, February 12, 2008

[27] See Pentagon Steel Corporation vs Court of Appeals, G.R. No. 174141, June 26, 2009

[28] Smith Bell and Company (Philippines), Inc. vs Court of Appeals, G.R. No. L-56294, May 20, 1991

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