

ATOM TELECOMMUNICATIONS, INC., PLAINTIFF-APPELLEE, VS. DESTINY SATELLITE CORPORATION, DEFENDANT-APPELLANT.

Ponente: CRUZ, J.

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CRUZ, J.:

Before the Regional Trial Court of Pasig City (Branch 167) was an action for sums of money filed by Atom Telecommunications, Inc. (or “appellee”) against Destiny Satellite Corporation (or “appellant”). Filed on October 12, 2001, the complaint sought payment of the cost of installation of a Software Upgrade on appellant’s Power VU Digital TV Uplink for Y2K Compliance, damages and attorney’s fees.

In its answer, appellant denied liability for the reasons that although appellee upgraded the Power VU Digital TV Uplink to make its (appellant) systems Y2K compliant pursuant to Rep. Act No. 8747, appellee did not issue the requisite certificate of Y2K compliance; and that the complaint was premature as no demand was made on appellant.

Issues having been joined, the case was set for pre-trial on May 28, 2002, during which the trial court referred the case to a mediator. As there was failure of mediation, the pre-trial was scheduled on October 14, 2002, at 10:00 a.m.

On October 14, 2002, appellee’s counsel and a representative of appellant’s counsel appeared in court. Said representative presented appellant’s Manifestation and Motion (or “motion for postponement”) asking for postponement of the pre-trial on account of its counsel’s previous court engagement. Then and there, the trial court, without acting on the motion for postponement and at the instance of appellee, issued an order dated October 14, 2002 allowing the latter to present its evidence ex-parte.

On October 15, 2002, appellant filed a motion for reconsideration of the October 14, 2002 order. However, the motion was denied per order dated November 25, 2002. Appellant filed a second motion for reconsideration but it met the same fate pursuant to the order dated January 2, 2003.

On the basis of the evidence presented ex-parte by appellee, the trial court rendered a decision dated February 18, 2003 disposing, as follows:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the former the following sums, namely:

- a) US\$23,000.00 or its equivalent in Philippine Currency at the rate of exchange at the time of payment, in addition to the payment of interest of 12% per annum from the filing of the complaint until full payment;
- b) A sum equivalent to 12% of the principal obligation, as and for reasonable attorney’s fees; and
- c) Costs of suit.

SO ORDERED.”

Appealing the decision, appellant presented these issues for resolution:

1. “Whether or not the Regional Trial Court erred and abused its discretion in not accepting appellant’s Manifestation and Motion in the morning of Oct. 14, 2002, that lead (sic) to the questioned decision”; and
2. “Whether or not the Regional Trial Court was too strict in interpreting the rules in civil procedure that denied substantial justice and due process to appellant.”

Appellant contends that the trial court should have demonstrated “little leniency” to it by granting its motion for postponement, instead of allowing appellee to present its evidence ex-parte and depriving it (appellant) of the opportunity to present its side.

The case was submitted for decision sans an appellee’s brief.

At the outset, it is observed that appellant’s absence on October 14, 2002 was the first time it failed to appear for pre-trial. Despite appellant’s absence, a representative of its counsel appeared, armed with the motion for postponement. More importantly, there is no showing of intent on the part of appellant to delay the proceedings or to prejudice appellee.

The ends of substantial justice would have been better served had the lower court granted the motion for postponement or, at least, reconsidered its October 14, 2002 order. Thus, in *Padua vs. Ericta* (161 SCRA 458), it was held:

“The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party’s right to present evidence and either in the plaintiff’s being non-suited or the defendant’s being pronounced liable under an ex parte judgment.”

In the case at bench, the trial court did not act on appellant’s motion for postponement but granted appellee’s motion for ex-parte presentation of evidence, although the motion for postponement was anchored on a valid and justifiable reason, i.e., appellant’s counsel had to appear for hearing on the same date and time before another court. As it was only the second scheduled pre-trial, prudence dictates that the motion for postponement should have been granted and the pre-trial reset to another date. It would have then given appellant its day in court and served the ends of justice.

A trial is always susceptible to reasonable delays and postponements and as long as the same are not capricious, a party should not be deprived of a reasonable opportunity to present his side or cross-examine the adverse party’s witness (*Tai Lim vs. Court of Appeals*, 317 SCRA 521). More important than writing finis to a litigation is the need to finish it justly but there can be no justice unless the litigants are given the opportunity to be heard (*Salud vs. Court of Appeals*, 233 SCRA 384). In an analogous case (*Calalang vs. Court of Appeals*, 217 SCRA 462) involving a non-suit order, the Supreme Court said:

“Unless a party’s conduct is so negligent, irresponsible, contumacious, or dilatory as to provide substantial grounds for dismissal for non-appearance, the courts should consider lesser sanctions which would still amount into achieving the desired end.”

Although a speedy determination of an action implies a speedy trial, speed is not the chief objective of a trial. The granting or denial of a motion for postponement and the setting aside of an order authorizing the ex-parte presentation of evidence “should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness would be served thereby are more important than a race to end the trial” (*Yñiguez vs. Court of Appeals*, 176 SCRA 235, citing *Amberti vs. Court of*

Appeals, 89 SCRA 240).

WHEREFORE, the order dated October 14, 2002 and decision dated February 18, 2003 of the Regional Trial Court of Pasig City (Branch 167) are ANNULLED and SET ASIDE and the case reverted to the pre-trial stage. Let this case be remanded to that court for further proceedings.

SO ORDERED.

Reyes, Jr., and Lanzas, JJ., concur.

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