

SEVENTH DIVISION

[CA-G.R. SP No. 134474, February 12, 2015]

**MACTAN ROCK INDUSTRIES, INC. AND ANTONIO P. TOMPAR,
PETITIONERS, VS. HON. ANTONIETTA PABLO- MEDINA, IN HER
CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT,
BRANCH 276, MUNTINLUPA AND BENFRIE S. GERMO,
RESPONDENTS.**

DECISION

LAMPAS PERALTA, J.:

Assailed in the present petition for certiorari^[1] filed under Rule 65, 1997 Rules of Civil Procedure, as amended, are the (i) **Order** dated **October 1, 2013**^[2] in *Civil Case No. 11-029* of Branch 276, Regional Trial Court ("RTC"), Muntinlupa City granting private respondent's "Fourth Motion to Declare Defendants (herein petitioners) in Default" and allowing private respondent to present his evidence *ex parte*; and (ii) **Order** dated **December 10, 2013**^[3] denying petitioners' motion for reconsideration^[4] of the Order dated October 1, 2013.

THE ANTECEDENTS

This case stemmed from a **complaint for sum of money with damages**^[5] filed on March 14, 2011 by private respondent Benfrie S. Germa against petitioner Mactan Rock Industries, Inc. and its Chairman, petitioner Antonio P. Tompar, alleging that (i) private respondent was employed by petitioners as marketing consultant in charge of marketing the company's products and services and representing the company in the negotiation and perfection of its sale/order contracts;^[6] (ii) as compensation, private respondent was to receive a monthly allowance of P5,000.00 per agreed area of business, and commission of a certain percentage based on the contract/sales price;^[7] and, (iii) despite private respondent's successful negotiation for a supply contract with International Container Terminal Services, Inc. ("ICTSI"), petitioners failed to pay the commission they agreed upon. Private respondent prayed that petitioners be ordered to pay private respondent's unpaid commissions, interest, and moral damages.^[8]

On June 27, 2011, petitioners filed their **answer**,^[9] denying the allegations in the complaint and praying for its dismissal on the ground of lack of cause of action.^[10]

On September 5, 2011, the trial court issued a pre-trial notice setting the pre-trial conference on October 18, 2011 and directing the parties to file their respective pre-trial briefs.^[11] Private respondent filed his pre-trial brief on September 19, 2011 while petitioners filed theirs on October 14, 2011.^[12]

From the first setting of the pre-trial conference on October 18, 2011 up to the last setting on August 15, 2013, or in a span of almost two (2) years, ten (10) postponements had been made, six (6) of which were due to the failure of petitioners to appear. Private respondent had filed four (4) motions to declare petitioners as in default. The first motion, done verbally by private respondent, was granted by the trial court^[13] but eventually reconsidered^[14] upon petitioners' motion for reconsideration.^[15] The second motion was denied.^[16] The third motion was granted^[17] but later reconsidered.^[18] Then came the fourth motion which the trial court granted in the subject Order dated October 1, 2013.

For expediency, only the relevant proceedings pertaining to the fourth motion to declare petitioners as in default, are hereunder mentioned.

In an **Order** dated April 3, 2013, the trial court reset the pre-trial on May 21, 2013, with the further directive for the parties to file the judicial affidavits of witnesses and their documentary and object evidence not later than five (5) days before the pre-trial, pursuant to the Judicial Affidavit Rule.^[19]

On **May 14, 2013**, petitioners' counsel, Atty. Juanito C. Neumeran, filed an omnibus motion for leave to withdraw as counsel and for postponement.^[20] The trial court granted the motion in an Order dated May 21, 2013,^[21] on conditions that the same will be the last resetting, that petitioners' failure to comply with the Order dated April 3, 2013 or to appear in the next scheduled hearing will be cause for them to be declared as in default, and that no further postponements will be allowed.^[22] The case was again reset for pre-trial conference on June 13, 2013.^[23]

On **June 11, 2013**, *i.e.*, two (2) days before the scheduled hearing, Muntuerto Miel Duyongco Law Offices, represented by Atty. Chad Rodolfo Miel, entered its appearance as petitioners' new counsel and moved that the hearing be suspended to give them sufficient time to study the records of the case and submit the necessary pleadings.^[24]

On **June 13, 2013**, the trial court issued a *constancia* setting the hearing on August 15, 2013, since the trial court judge was on emergency leave.^[25] On even date, private respondent filed its fourth motion to declare defendants (herein petitioners) in default, asserting that petitioners' failure to appear in court and their failure to submit their judicial affidavits and documentary evidence were in blatant disregard of the ultimatum given by the trial court in its Order dated May 14, 2013.^[26]

On **August 13, 2013**, the trial court issued an **Order** cancelling the hearing set on August 15, 2013, in view of private respondent's pending motion to declare petitioners as in default.^[27]

On **August 15, 2013**, an entry of appearance with comment/opposition to the motion to declare petitioners in default^[28] was filed by one Atty. Mario Cavada, petitioners' counsel allegedly in collaboration with Atty. Chad Rodolfo Miel.

On **October 1, 2013**, the trial court issued an **Order** granting private respondent's fourth motion to declare petitioners in default and allowing private respondent to

present his evidence *ex parte*.^[29] The trial court stressed that petitioners failed to comply with the conditions set in the **Order** dated May 14, 2013 and that the new counsel's entry of his appearance on the very day of the scheduled hearing was demonstrative of their intention to delay the proceedings. Moreover, Atty Chad Rodolfo Miel, one of petitioners' new counsels, was not totally unaware of the proceedings, having previously appeared as representative of petitioner corporation in the December 6, 2012 hearing. Thus:

"WHEREFORE, premises considered, the plaintiffs Fourth Motion to Declare Defendants in Default is hereby GRANTED. Accordingly, the plaintiff is hereby allowed to present his evidence ex-parte and the court to render judgment on the basis thereof pursuant to Section 5, Rule 18 of the Rules on Civil Procedure."^[30]

Petitioners moved for reconsideration,^[31] but the same was denied by the trial court in an Order dated December 10, 2013.^[32]

Hence, petitioners filed the present petition based on this lone ground:

THE PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDER DATED OCTOBER 1, 2013 GRANTING THE PRIVATE RESPONDENT'S MOTION TO DECLARE PETITIONERS IN DEFAULT FOR ITS FAILURE TO APPEAR ON THE SCHEDULED PRE-TRIAL ON JUNE 13, 2013 DESPITE THE FACT OF ITS CANCELLATION AND RESETTING TO AUGUST 15, 2013 DUE TO THE EMERGENCY LEAVE OF THE JUDGE AND IN ISSUING THE ORDER DATED DECEMBER 10, 2013 DENYING PETITIONERS' MOTION FOR RECONSIDERATION AND/OR TO SET ASIDE THE ORDER OF DEFAULT.^[33]

THE ISSUE

Whether the trial court committed grave abuse of discretion in declaring petitioners as in default for their repeated failure to appear at the pre-trial and to file judicial affidavits.

THE COURT'S RULING

Petitioners contend that the trial court gravely abused its discretion in granting private respondent's fourth motion to declare them as in default for their failure to attend the pre-trial conference on June 13, 2013. Allegedly, there was no pre-trial to speak of since the pre-trial conference on June 13, 2013 was cancelled and reset to August 15, 2013 because respondent judge was on emergency leave.^[34]

Private respondent, on the other hand, stresses that petitioners did not only become remiss in their duty to appear at the pre-trial but they brazenly disregarded the trial court's Orders and stern warnings as well.^[35] The pre-trial conference had been set and reset by the trial court for several times due mainly to the absence of petitioners and/or their counsel;^[36] and petitioners daringly violated all the conditions imposed in the Order dated May 21, 2013, *i.e.*, that the June 13, 2013 hearing will be the last resetting and that petitioners should comply with the Order

dated April 3, 2013 directing the parties to submit their judicial affidavits.^[37]

The petition is bereft of merit.

Pre-trial, by definition, is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering.^[38] It is an answer to the clarion call for the speedy disposition of cases.^[39]

Sections 4 and 5, Rule 18 of the Rules of Court, as amended, provides:

"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." (emphasis supplied)

Like all rules of procedure, the rule on pre-trial admits of exceptions for **valid and justifiable reasons**.^[40] In *Sanchez v. Court of Appeals*,^[41] the Supreme Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.^[42] The present case does not fall under any of the aforementioned exceptions.

There is no question that the pre-trial conference had been rescheduled several times for over a period of almost two (2) years. From October 18, 2011 to August 15, 2013, pre-trial hearings were reset **six (6) times** due to the failure of petitioners to appear before the trial court. Thus:

(i) On October 14, 2011, petitioners filed an urgent motion for resetting of the pre-trial conference set on **October 18, 2011** on the ground that their officers were on business trip to New York, U.S.A. This is despite the fact that a pre-trial notice^[43] was issued by the trial court as early as September 5, 2011;

(ii) On the next scheduled pre-trial date, **February 28, 2012**, petitioners again moved for resetting by reason of their counsel's travel to Canada.