

## SECOND DIVISION

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

**UNITED COCONUT PLANTERS BANK, PETITIONER, VS. MIGUEL  
"MIKE" MAGPAYO, RESPONDENT.**

### R E S O L U T I O N

**QUISUMBING, J.:**

This petition for review on certiorari seeks to reverse the decision<sup>[1]</sup> of the Court Appeals dated September 7, 2001, in CA-G.R. CV No. 59532, which overturned the Order of Dismissal<sup>[2]</sup> of the Regional Trial Court (RTC) of Parañaque, Branch 257, in Civil Case No. 97-06.

The facts, as found by the Court of Appeals, are as follows:

On January 9, 1997, respondent filed a complaint against petitioner with the RTC, Branch 257, for reimbursement of a sum of money and consequent damages. After petitioner's answer was filed, pre-trial was set on September 26, 1997 at 1:30 p.m. When the case was called, only the respondent's counsel was present. Asked if he had a special power of attorney, counsel replied that he had, but he left it in the office. Hence, the petitioner moved to declare the respondent non-suited, pursuant to Rule 18, Sec. 5,<sup>[3]</sup> of the 1997 Rules of Civil Procedure. Accordingly, the trial court issued an Order of Dismissal for failure to prosecute.<sup>[4]</sup>

On October 22, 1997, respondent filed an omnibus motion,<sup>[5]</sup> stating therein that he arrived at the court at around 2:00 p.m. and that he did not intend to be late for the pre-trial, but the traffic at the South Superhighway was heavy due to construction work. He attached copies of two powers of attorney which were dated May 20, 1997 and September 24, 1997<sup>[6]</sup> respectively as proof that there indeed was a special power of attorney executed but that respondent's counsel forgot to bring it to the pre-trial. Respondent prayed that the dismissal order be reversed and the trial court inhibit itself from hearing the case.<sup>[7]</sup> Respondent added that he and his counsel's omissions were excusable; that he has a valid cause of action against petitioner; and the ends of justice would be served if the trial court's order be reconsidered.<sup>[8]</sup>

The trial court found respondent's plea unmeritorious and affirmed its order of dismissal.<sup>[9]</sup> The matter was then elevated to the Court of Appeals, as CA-G.R. CV No. 59532.

The appellate court found merit in the appeal saying that the Rules of Civil Procedure are not cast in stone.<sup>[10]</sup> It held that this case did not show either an evident scheme to delay the disposition of the case, nor a wanton failure to observe the mandatory requirements of the rules. It found that respondent had appeared in

court, only that he arrived at around 2:20 p.m. rather than 1:30 p.m., so that it was already after the case had been called and an order had already been issued. The appellate court gave credence to the manifestation of respondent's counsel that he had a special power of attorney from his client, which was attached to the appeal. Hence the order of dismissal by the trial court was reversed.<sup>[11]</sup>

Before us now, petitioner sets forth as sole issue:

WHETHER THE COURT OF APPEALS' REVERSAL OF THE TRIAL COURT'S DISMISSAL OF THE COMPLAINT FOR RESPONDENT'S FAILURE TO APPEAR DURING PRE-TRIAL AND HIS COUNSEL'S FAILURE TO PRODUCE A SPECIAL POWER [OF] ATTORNEY WAS IN ACCORD WITH THE RULES OF COURT AND APPLICABLE JURISPRUDENCE.<sup>[12]</sup>

Petitioner argues that it is mandatory for both the party and his counsel to be present at the pre-trial. The severity of the consequence for its non-compliance is evident as the Rules of Court states that it shall be a cause for dismissal of the action with prejudice unless otherwise ordered by the court.<sup>[13]</sup> Petitioner contends that the respondent failed to appear for no valid cause. According to petitioner, respondent knew that road construction had commenced months before and was still ongoing at the South Superhighway. Respondent had the whole morning to travel to Parañaque to make it to court by 1:30 p.m. but failed to leave earlier than he did, so that according to petitioner there was inexcusable negligence on respondent's part. Thus, there was no valid cause under Section 4, Rule 18, of the Rules of Court, as cited by the Court of Appeals,<sup>[14]</sup> for reversing the trial court's order of dismissal.

In addition, the petitioner argues that the feeble excuse given by respondent's counsel that his power of attorney was left at home was just too trite to be accepted. The authority to appear cannot be established after failing to appear fully authorized in writing during the pre-trial conference,<sup>[15]</sup> said the petitioner. Since the respondent's excuse was invalid and respondent's counsel failed to produce a special power of attorney during the pre-trial, the petitioner concluded that the trial court acted in accordance with law and the rules when it dismissed respondent's complaint.<sup>[16]</sup>

Respondent counters that the Court of Appeals did not disregard Section 4, Rule 18, <sup>[17]</sup> of the Rules of Civil Procedure. What it declared is that the mandatory nature of the provision is not absolute, "not cast in stone," and that the respondent had presented a lawful excuse as a valid cause under said Rule.<sup>[18]</sup> Respondent contends that the rules should be liberally construed in order to promote their object and purpose. According to respondent, petitioner had failed to establish sufficiently special and important reasons to justify the review of the assailed CA decision.<sup>[19]</sup>

Heavy traffic as a reason for tardiness cannot be accepted as a valid cause to warrant the relaxation of Section 4, Rule 18 of the Rules of Civil Procedure. In a previous case, *Victory Liner, Inc. v. Court of Appeals*,<sup>[20]</sup> we said:

In this case under scrutiny, petitioner did not come forward with the most persuasive of reasons for the relaxation of the aforestated rules in point. We agree with the trial court that a heavy traffic was an unacceptable