

SPECIAL TWELFTH DIVISION

[CA–G.R. CV No. 101036, June 10, 2014]

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

D E C I S I O N

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.