

THIRTEENTH DIVISION

[CA-G.R. CV NO. 78274, September 27, 2006]

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

DECISION

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