

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILWEB CORPORATION,
Petitioner,

CTA CASE No. 10563

Members:

- versus -

UY, Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 02 2022

10:00 AM [Signature]

X ----- X

RESOLUTION

For the Court's resolution is petitioner Philweb Corporation's (**petitioner's**) "Motion for Reconsideration with Leave of Court to Set Date for Pre-Trial Conference"¹ (**MR**), filed on 18 May 2022, with respondent Commissioner of Internal Revenue's (**respondent's**) "Comment (on Petitioner's Motion for Reconsideration dated 18 May 2022)"² filed on 13 June 2022.

In the Order dated 02 May 2022³ (**Assailed Order**), the Court granted respondent's oral motion for the dismissal of the instant case on the ground that petitioner's counsel failed to attend the Pre-Trial Conference on even date. Accordingly, the Court dismissed petitioner's Petition for Review and the instant case was declared closed and terminated.

In its MR, petitioner moves for reconsideration of the assailed Order for the following reasons:

¹ Division Docket, Volume II, pp. 1054-1063.
² Id., pp. 1067-1071.
³ Id., pp. 1053.

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1. The handling lawyer, Atty. Dyan Angela A. de la Fuente (**Atty. de la Fuente**), experienced high fever, cough and colds on the morning of the hearing date. She claimed that due to her medical condition, she failed to inform her fellow lawyers and the Court of her situation;
2. Co-counsel, Atty. Edrian M. Apaya (**Atty. Apaya**), had a scheduled hearing on the same date, 02 May 2022, before Branch 7 of the Regional Trial Court (**RTC Branch 7**) of Malolos, Bulacan; and,
3. Even if Atty. de la Fuente was able to notify her colleagues of her medical emergency, it would have been of short notice to arrange for another lawyer to secure the case docket and attend the Pre-Trial Conference.

To prove her claimed illness, Atty. de la Fuente attached: (1) a notarized Medical Certificate⁴ where it is stated that she was attended to by Dr. Astley Justine H. Golosinda, who diagnosed her as possible COVID-19 suspect and who recommended for her to take antigen/PCR test, and to isolate for the next seven (7) days; and, (2) a negative result of the rapid COVID-19 antigen testing⁵ from Hero Laboratories. The antigen testing was actually done on 04 May 2022. For the scheduled hearing of Atty. Apaya, petitioner attached copy of the Order⁶ dated 25 March 2022 from RTC Branch 7.

Additionally, petitioner claimed that it has no intention to disregard the Court nor to deliberately delay the proceedings. The absence of petitioner's counsel was mainly due to an unforeseen event that is beyond its control.

On the other hand, respondent contended that petitioner is not excused from not attending the Pre-Trial Conference. Although he sympathized with the plight of petitioner's counsel, petitioner is being represented by a law firm and not by just one associate or lawyer.

We resolve.

After considering the parties' arguments, the Court is constrained to reconsider.

⁴ Annex "A" to the Motion for Reconsideration, notarized on 16 May 2022, id., pp. 1055-1056.

⁵ Annex "B" to the Motion for Reconsideration, id., p. 1057.

⁶ Annex "C" to the Motion for Reconsideration, id., p. 1058.

Section 4, Rule 18 of the 2019 Amendments to the 1997 Rules of Civil Procedure⁷, provides that it is the duty of the parties and their counsel to appear at the pre-trial conference. The effect of their failure to appear is provided by Section 5 of the same Rule.⁸ The provisions read:

...
SEC. 4. *Appearance of Parties.* — It shall be the duty of the parties and their counsel to appear at the pre-trial, court-annexed mediation, and judicial dispute resolution, if necessary. The non-appearance of a party and counsel may be excused only for acts of God, force majeure, or duly substantiated physical inability.

A representative may appear on behalf of a party, but shall be 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 documents.

SEC. 5. *Effect of failure to appear.* — When duly notified, the failure of the plaintiff and counsel to appear without valid cause when so required, pursuant to the next preceding Section, shall cause the 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 and counsel shall be cause to allow the plaintiff to present his or her evidence *ex parte* within ten (10) calendar days from termination of the pre-trial, and the court to render judgment on the basis of the evidence offered.

...

Indeed, a party's failure to appear at the pre-trial has adverse consequences. However, by way of exception, the non-appearance of a party and counsel may be excused due to (1) acts of God or (2) *force majeure* or (3) duly substantiated physical inability in accordance with Section 4 of the said Rule.⁹

In the instant case, the reason for the non-appearance of petitioner's counsel was due to her physical condition, rendering her a suspected COVID-19 case (although the antigen test turned out negative later on).

⁷ A.M. No. 19-10-20-SC.
⁸ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10263 (Resolution), 18 December 2020.
⁹ *Id.*

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As stated, although petitioner's counsel subsequently tested negative for the said virus, the prevailing health protocols, and even prudence, dictate that Atty. de la Fuente should isolate herself once her symptoms have become manifest.

Moreover, it can be gleaned from the records that petitioner demonstrated its interest to pursue the case. On 18 February 2022, petitioner filed its Pre-Trial Brief¹⁰ and the Judicial Affidavit of its witness, Ricky E. Rosario.¹¹ On 28 March 2022, petitioner also appeared before the Philippine Mediation Center Unit-CTA (**PMC-CTA**)¹², and on 25 April 2022, attended the Commissioner's Hearing¹³ for the marking of its documentary evidence. Based on the records, it was only on 02 May 2022 hearing that petitioner's lawyer failed to attend.

In the case of *Fernando Go v. Michael Tan, et al.*¹⁴, the Supreme Court held:

...

The fundamental purpose of procedural rules is to afford each litigant every opportunity to present evidence on his behalf in order that substantial justice is achieved. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.

...

Thus, "what should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities".¹⁵ In light of the foregoing, the Court deems it proper to give petitioner the fullest opportunity to establish the merits of its case.

Lastly, it is noted that the parties already filed their respective pre-trial briefs.

¹⁰ Division Docket, Volume II, pp. 1011-1036.

¹¹ Exhibit "P-54", id., pp. 918-940.

¹² See "No Agreement to Mediate", submitted to the Court on 29 March 2022, id., p. 1044.

¹³ Commissioner's Report, id., 1047.

¹⁴ G.R. No. 130330, 26 September 2003; Citation omitted.

¹⁵ *Fredierose Tamboa y Laday v. People of the Philippines*, G.R. No. 248264, 27 July 2020 citing *Heirs of Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014), citing *Aguam v. CA*, 388 Phil. 587, 594 (2000).

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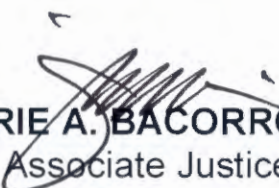
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WHEREFORE, premises considered, petitioner's "Motion for Reconsideration with Leave of Court to Set Date for Pre-Trial Conference" is **GRANTED**. Thus, the Order dated 02 May 2022 is **REVERSED** and **SET ASIDE**.

Accordingly, set this case for Pre-Trial Conference on **17 October 2022 at 1:30 p.m.**

SO ORDERED.


ERLINDA P. UY
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice