

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MILLIONSTAR GRAINS
CORPORATION, represented
by its President, MS. JAENA
BAUTISTA-MANUNTAG,
Petitioner,

CTA CASE NO. 10599

- versus -

Members:

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

HON. DISTRICT COLLECTOR
OF CUSTOMS and HON. REY
LEONARDO GUERRERO,
Commissioner of Customs,
Respondents.

Promulgated: AUG 02 2022

10:17 AM 

X ----- X

RESOLUTION

On the scheduled pre-trial conference on 23 March 2022, the Court dismissed the instant case, pursuant to the 2019 Amendments to the 1997 Rules of Civil Procedure¹, for failure of both petitioner Millionstar Grains Corporation, represented by its President, Ms. Jaena Bautista-Manuntag (**petitioner**) and respondents Hon. District Collector of Customs and Hon. Rey Leonardo Guerrero, Commissioner of Customs (**respondents**) to file their pre-trial briefs. In addition, the counsels of both parties failed to appear on the said hearing.

On 31 March 2022, the Court belatedly received the respondents' "Urgent Motion to Reset Pre-Trial Conference"², filed through registered mail on 21 March 2022.

¹ A.M. No. 19-10-20-SC.

² Division Docket, pp. 121-125.

On 06 May 2022, petitioner filed a “Manifestation and Motion for Reconsideration [Re: Order of Dismissal without Prejudice of March 23, 2022]”³ (**MR**) alleging that it did not receive any order from the Court to file a pre-trial brief nor a notice of the pre-trial conference. To prove its intent to pursue the case, petitioner attached its Pre-Trial Brief⁴ and the judicial affidavits of its witnesses⁵ to the MR.

On 24 May 2022, the Court issued a Resolution⁶ ordering respondents to comment on the said MR within ten (10) days from receipt thereof, after which, the motion was to be submitted for resolution.

On 31 May 2022, respondents received the said Resolution. Hence, they have until 10 June 2022 to file their comment. On 09 June 2022, respondents, filed through registered mail, a “Motion for Extension”⁷, praying that they be given an extension of five (5) days from 10 June 2022, or until 15 June 2022, to file their comment.

On 14 June 2022, respondents filed their “Comment (Re: Petitioner’s Manifestation and Motion for Reconsideration dated April 29, 2022)” (**Comment**). They alleged that petitioner’s failure to file a pre-trial brief and to attend the pre-trial conference justified the outright dismissal of the instant case.

We resolve.

Sections 4, 5 and 6, Rule 18 of the Rules of Court, as amended⁸, read:

...
RULE 18
PRE-TRIAL
...

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-

³ Id., pp.127-129.
⁴ Id., pp. 146-164.
⁵ Id., pp. 135-145.
⁶ Id., p. 167.
⁷ Received by the Court on 16 June 2022.
⁸ Supra at note 1.

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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 pre-trial, and the court to render judgment on the basis of the evidence offered.

Sec. 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) calendar days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

...

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.⁹

...

From the foregoing, it is clear that the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his/her case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof.¹⁰

Although there are no cases similar to what has been provided in the aforementioned provision, the attendance of the parties to the pre-trial conference could not have been expected without proper notice to them.

⁹ Underscoring supplied.

¹⁰ *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10263 (Resolution), 18 December 2020.

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A perusal of the Court records will show that the “Notice of Pre-trial Conference”¹¹ (**Notice**) dated 17 February 2022 was sent to petitioner through a private courier (**LBC**). The LBC receipt with transaction number 1270 8841 4399 was attached at the back of the second page¹² of the said notice.

A scrutiny of the LBC transaction number, along with the online Track and Trace¹³, reveals that the notice was never delivered to petitioner. Worse, on 23 April 2022, the shipment containing the notice was disposed after LBC exhausted all means to deliver and contact the sender for the disposition.

In the case of *Clodualda D. Daaco v. Valeriana Rosaldo Yu*¹⁴, the Supreme Court ruled that the non-appearance of a party litigant may be excused if a valid cause is shown. The relevant part states:

...

In certain instances, however, the non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his non-appearance will not be disturbed.

...

Considering that petitioner never received the Notice of Pre-Trial Conference dated 17 February 2022 and was not notified to file the pre-trial brief, the Court is thus constrained to reconsider its previous assailed action in this case.

WHEREFORE, premises considered, petitioner's “Manifestation and Motion for Reconsideration [Re: Order of Dismissal without Prejudice of March 23, 2022]” is **GRANTED**. Thus, the Order dated 23 March 2022 is **SET ASIDE**.

Accordingly, set this case for the pre-trial conference on **17 October 2022 at 1:30 p.m.** The Court **NOTES** that petitioner has attached its pre-trial brief and judicial affidavits to the MR. Hence,

¹¹ Division Docket, pp. 116-117.

¹² Id., p. 117.

¹³ <https://www.lbcexpress.com/track/>.

¹⁴ G.R. No. 183398, 22 June 2015; Citation omitted.

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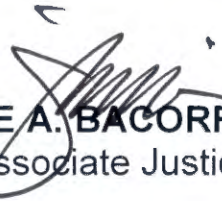
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respondents are **ORDERED** to file with the Court and serve on the adverse party, at least three (3) days before the date of the pre-trial, their pre-trial brief. Further, pursuant to Section 2 of the Judicial Affidavit Rule (A.M. No. 12-8-8-SC), respondents are **ORDERED** to submit the judicial affidavits of their witnesses not later than five (5) days before the pre-trial.

SO ORDERED.



ERLINDA P. UY
Associate Justice



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



LANEE S. CUI-DAVID
Associate Justice