

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Represented by the Bureau of Customs,
Plaintiff,

- versus -

FILSYN CORPORATION,
Defendant.

C.T.A. OC NO. 005

Members:

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, II.

Promulgated:

OCT 12 2005

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RESOLUTION

For resolution are defendant's (1) "Motion for Partial Reconsideration" filed on July 1, 2005; (2) "Motion to Dismiss" filed on July 18, 2005; (3) "Manifestation and Opposition" filed on August 1, 2005; and (4) "*Ex-Parte* Motion to Resolve" filed on August 18, 2005.

Plaintiff filed its "Comment " to the Motion to Dismiss on July 29, 2005.

The Court issued a Resolution dated June 23, 2005 and ordered plaintiff to file "Answers to Defendant's Interrogatories and Request for Admissions" within a non-extendible period of thirty days from receipt thereof and "Pre-trial Brief" three (3) days before the pre-trial set on July 15, 2005. Plaintiff however failed to comply thereto.

We must point out that the rationale behind the recognition accorded the modes of discovery is that they enable a party to discover the evidence of the adverse party and thus facilitate an amicable settlement or expedite the trial of the case (*Ong vs. Mazo*, 431 SCRA 56)

For plaintiff failure to comply with the Court's order, the case may be dismissed pursuant to Section 5, Rule 29 of the Revised Rules of Court. We quote:

SEC. 5. Failure of party to attend or serve answers. – If a party or an officer or managing agent of a party willfully fails to appear before the officer who is to take his deposition, after being served with proper notice, or fails to serve answers to interrogatories submitted under Rule 25 after proper service of such interrogatories, the Court on motion and notice, may strike out all or any part of any pleading of that party, or **dismiss the action or proceeding or any part thereof**, or enter a judgment by default against that party, and in its discretion, order him to pay reasonable expenses incurred by the other, including attorney's fees.

The Court finds no reason why plaintiff failed to comply with the order and to file its Answer to defendant's Interrogatories to Party and Request for Admission considering that it received a copy of the Request for Admission on February 1, 2005; it filed two Motion for Extension of Time to File Answer (To [Defendant's] Interrogatories to Party and Request for Admission) on March 10, 2005 and April 7, 2005; and it received a copy of the Court's June 23, 2005 Resolution on July 1, 2005. Three months had passed since the plaintiff received the said Resolution that requires the filing of an answer to Answers to the Interrogatories and Request for Admission.

The Court furthermore agrees with defendant that plaintiff failed to comply with the rules on pre-trial and that the case should be dismissed.

The Revised Rules of Court mandates the appearance of both parties and their respective counsels during the pre-trial conference. Absence of the party is excused (a) if good cause is shown or (b) a representative is allowed to appear with authority in writing to enter into an amicable settlement, submit to alternative modes of dispute resolution and enter into stipulations or admissions of facts and of documents (Section 4, Rule 18 of the Revised Rules of Court). Defendant correctly pointed out that Atty. Bragas was not armed with any special power of attorney ("SPA") to appear on behalf of the plaintiff during the pre-trial. Plaintiff therefore failed to appear during the pre-trial in the absence of any representative to appear with the required authority.

Moreover, plaintiff's omission in filing his pre-trial brief warrants the dismissal of the case as provided in Sections 5 and 6 Rule 18 of the Rules of Court, we quote:

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) days before the date of the pre-trial, their respective pre-trial briefs, their respective pre-trial briefs which shall contain, among others:

x x x x x x x x x

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

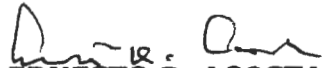
SEC.5. *Effect of Failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for the dismissal of the action. xxx

The failure of plaintiff to file its pre-trial brief and Answers to the Interrogatories and Request for Admission is an obstinate refusal to comply with the directives of the Court. Section 3, Rule 17 of the Rules of Court is clear:

SEC. 3. *Dismissal due to fault of plaintiff.* - If for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the Court.

Premises considered, Petition is hereby **DISMISSED** without prejudice. The resolution of other pending motions of the plaintiff is dispensed with for being moot.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice