

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

SPECIAL SECOND DIVISION

**R2B2 REALTY
DEVELOPMENT
CORPORATION**, represented
by its President, **Mr. Rosauro
Mangaser**,

Petitioner,

-versus-

CTA CASE NO. 10976

Members:

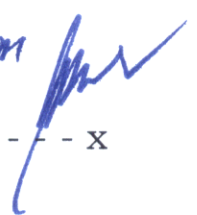
BACORRO-VILLENA, and
CUI-DAVID, JJ.

**BUREAU OF INTERNAL
REVENUE**,

Respondent.

Promulgated:

AUG 01 2023

3:35 PM 

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RESOLUTION

For resolution of this Court is petitioner's ***Motion for Reconsideration*** filed on May 17, 2023, with respondent's ***Comment*** filed through a courier and received by this Court on June 15, 2023.

Petitioner seeks reconsideration of the *Order* of the Court promulgated on April 13, 2023. The *Order* had the following dispositive portion:

In view of the absence of petitioner's counsel in today's Pre-Trial Conference despite due notice, and considering its failure to file the Pre-Trial Brief, the oral motion of respondent's counsel to dismiss the instant case, is hereby **GRANTED**. Accordingly, the instant Petition for Review is hereby **DISMISSED**, and all other pending incidents are deemed moot.

In the instant *Motion*, petitioner's counsel informed the Court that her failure to attend the pre-trial conference scheduled on April 13, 2023 was due to "severe pain on (sic) her stomach and headache," which she felt "on the evening of April

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12, 2023.” According to her, her attending physician found out she was suffering from acute gastritis, and she attached her Medical Certificate to the *Motion*.

While We find the absence of petitioner’s counsel excusable on the ground of her medical condition on the said day, petitioner offered no reason for its failure to file a Pre-trial Brief. It is axiomatic that failure to file a pre-trial brief shall have the same effect as failure to appear at the pre-trial,¹ and the failure to appear at the pre-trial shall cause the dismissal of the action.²

We find it apropos to quote the Supreme Court in *Eubanas v. Chuanico*,³ viz.:

... The Court finds that the RTC and the CA correctly ruled that Eubanas' failure to appear during pre-trial and his failure to file his pre-trial brief warrant the dismissal of the case.

Sections 4, 5, and 6, Rule 18 of the Rules of Civil Procedure provide:

Sec. 4. *Appearance of parties.* — It shall be the duty of the parties and their counsel to appear at the pre-trial. The nonappearance 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.

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 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 shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

¹ Section 6, Rule 18, Rules of Court.

² Section 5, Rule 18, Rules of Court.

³ G.R. No. 218772 (Notice), March 29, 2022.

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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 which shall contain, among others:*

XXX

XXX

XXX

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. [*Emphasis supplied*]

Undeniably, the above-quoted provisions are clear that both non-appearance during pre-trial and failure to file a pre-trial brief are valid causes for the dismissal of the case.

In this regard, while Eubanas' counsel's illness may be a ground to justify his absence during the scheduled pre-trial, the same does not excuse Eubanas for his non-appearance, considering that, as aptly pointed out by the RTC, Rule 18 of the Rules of Civil Procedure expressly requires **both** the plaintiff and the counsel to appear.

XXX

XXX

XXX

In this case, however, not only did Eubanas **fail to file his pre-trial brief within the prescribed period**, he and his counsel also failed to appear during the scheduled pre-trial. ... As held in *Daaco v. Yu*:

Concomitant to a liberal application of the rules of procedure should be **an effort on the part of the party invoking liberality to at least promptly explain its failure to comply with the rules.** Indeed, technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. **Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.**

In view of all the foregoing, the Court finds no reason to relax or suspend the strict adherence to the mandatory provisions of Rule 18 of the Rules of Civil Procedure. As such, the RTC and the CA did not err when they dismissed the case for Eubanas' failure to file his pre-trial brief and his non-appearance during the scheduled pre-trial. (*Emphasis supplied; citations omitted*)

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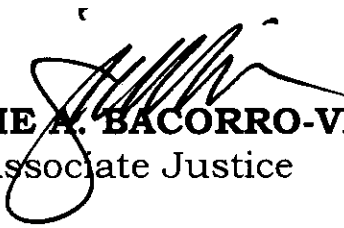
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Accordingly, We see no cogent reason to reverse our *Order* dated April 13, 2023. Further, We note that petitioner has not filed its Pre-trial Brief as of this Resolution's writing.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is **DENIED**.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice