THIRD DIVISION
DECEMBER 31, 2013

No. 1-11-1353

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BOB MINOR, Plaintiff-Appellee, v. VALEX CAB CORP., Defendant-Appellant, and SYLVIA RODRIGUEZ and IBRAHIM MAHMOUD, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. 06 M1 21191 The Honorable Sidney A. Jones, III Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 HELD: (1) The trial court did not abuse its discretion in allowing hearsay evidence

because hearsay evidence is allowed in a small claims case pursuant to Supreme Court Rule 286(b) (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)). (2) The trial court's judgment was not against the manifest weight of the evidence despite the lack of any evidence as to how the collision occurred where the defendant admitted it owned the cab, the driver was its agent, the cab hit plaintiff's vehicle and plaintiff's vehicle was parked in the opposite direction across the street, and defendant failed to present any evidence in its own defense. (3) The trial court did not err in determining that settlement between the plaintiff and Rodriguez was reached in good faith and did not abuse its discretion in not holding a hearing, as a hearing is not required. (4) There was no violation committed by plaintiff in moving for entry of a good faith finding for the settlement without prior notice, as there is no requirement for notice of motions pursuant to local rule for cases on the daily trial call or during trial and also pursuant to Supreme Court Rules for smalls claims cases. (5) The trial court also did not abuse its discretion in failing to sanction Rodriguez and enter a default judgment on the defendant's counterclaim against a joint tortfeasor's failure to appear on the day of trial pursuant to a Rule 237(b) notice to appear because that party was dismissed pursuant to her settlement and was no longer a party so Rule 237(b) no longer applied and there was no evidence that she deliberately disregarded the court's rules, or that her noncompliance with the Rule 237(b) notice was unreasonable.

¶ 2 BACKGROUND

¶ 3 This action arises from a multiple-vehicle accident which occurred on June 16, 2005, involving plaintiff, Bob Minor, defendant Sylvia Rodriguez and defendant Ibrahim Mahmoud, a cab driver. Defendant Valex Cab Corp. (Valex) was the owner of the cab and Mahmoud's employer. Mahmoud was driving north on Clybourn Ave. in Chicago, Illinois, near 1871 N. Clybourn Ave. Plaintiff's vehicle was parked in a southerly direction on Clybourn Ave. Rodriguez was parked in a northerly position near 1871 N. Clybourn. Rodriguez allegedly pulled out her vehicle from a parked position into the lane of moving traffic, causing Mahmoud to collide the cab with plaintiff's vehicle. Plaintiff filed a complaint against Rodriguez, Mahmoud, and Valex. Valex then filed a counterclaim for contribution against Rodriguez to the extent Rodriguez caused the property damage to plaintiff. In its answer to plaintiff's complaint, Valex

admitted plaintiff's allegation that Valex owned, operated and controlled the vehicle and that there was a collision with plaintiff's vehicle, but denied that its agent was negligent.

¶ 4 The case proceeded to a mandatory arbitration hearing. Valex did not present any evidence for its counterclaim for contribution against Rodriguez. The arbitration award found in favor of plaintiff and against Rodriguez in the amount of $10,015.55, and found Valex not guilty as to plaintiff's claim. The arbitration award found against Valex and in favor of Rodriguez on the counterclaim, however, for Valex's "failure to put on [its] case." The arbitration award stated that Mahmoud Ibrahim was not present and that there was "no service on Mahmoud Ibrahim - cab driver." Defendant Rodriguez rejected the arbitration award.

¶ 5 On November 9, 2010, the court set the case for trial on December 29, 2010. The court also ordered the attorneys to confer at least 24 hours before the trial to determine whether the case could be settled and ordered all attorneys to report to the courtroom promptly at the time designated for trial.

¶ 6 Either the night before trial, December 28, 2010, or about an hour before trial on December 29, 2010 (the record is unclear), Rodriguez entered into a settlement agreement with Minor in the amount of $1,800. The day of trial, December 29, 2010, the case was on the daily trial call and plaintiff and Valex appeared. Neither Rodriguez nor Rodriguez's counsel appeared. Plaintiff advised the court of the settlement agreement in the amount of $1,800 and advised the court that this settlement exhausted Rodriguez's insurance policy limit. Valex objected and plaintiff sought time to file a motion for a good faith finding for the settlement. The trial court determined that a written petition for a good faith settlement finding was unnecessary due to the

representations of counsel and found that the settlement was reached in good faith. Based on the settlement agreement, the trial court entered an order dismissing Rodriguez and also dismissing Valex's counterclaim for contribution against Rodriguez.

¶ 7 The court held a bench trial and the trial proceeded against Valex only. Defendant Mahmoud, the cab driver, was never served and could not be found. Plaintiff waived certain portions of his claim for damages and the amount sought was reduced to less than $10,000, thus subjecting the case to the rules for small claims actions. The court conducted a bench trial informally under the provisions of Illinois Supreme Court Rule 286(b) for informal hearings in small claims cases (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)).

¶ 8 Rodriguez did not appear at trial. Valex states in its brief on appeal and in the bystander's report that it orally moved for a default judgment against Rodriguez on its contribution counterclaim based on its Supreme Court Rule 237(b) (Ill. S. Ct. R. 237(b) (eff. July 1, 2005)) notice to Rodriguez to appear and that the court denied the motion. Rodriguez's amendment to the bystander's report states that "[d]uring the trial, the attorney for Valex Cab did not make a Motion to Defendant Sylvia Rodriguez nor did he perfect his [Rule] 237 by calling Sylvia Rodriguez to testify." We find no independent evidence in the record that Valex moved for a default judgment.

¶ 9 The following summary of testimony is taken from the bystanders' report filed on appeal.

¶ 10 Plaintiff testified regarding the damage to his vehicle, but he did not witness the collision occur. Plaintiff testified as follows: He was not present when the accident occurred. He did not see or hear the accident occur. At the time of the accident his car was parked on Clybourn Ave.,

Chicago, Illinois. He was at work when the accident occurred. When he returned to his car after work he noticed damage to the front driver's side and damage to the rear of his car. Plaintiff testified that a bystander told him a cab had hit his car. On hearsay grounds, the defense objected to plaintiff's testimony of what a bystander had told him. The judge overruled the objection. Plaintiff's repair bill was offered as an exhibit and admitted into evidence over defendant's objection that the bill contained numerous repairs to portions of the car which were unharmed in the accident.

¶ 11 The only witness for Valex was Ghulam Muhiuddin, who testified that the driver of the cab, Ibrahim Mahmoud, was no longer employed by Valex and his whereabouts were unknown at the commencement of trial.

¶ 12 At the conclusion of trial, the court entered a judgment in favor of plaintiff and against Valex in the amount of $9,615.55, plus costs, with a setoff of $1,800 representing the settlement amount between plaintiff and Rodriguez, for a total amount of $7,815.55. The court entered its judgment on December 29, 2010.

¶ 13 Valex moved for a new trial, arguing that it was not given sufficient notice of Rodriguez's settlement with plaintiff, plaintiff's petition for a good faith settlement finding, and Rodriguez's motion to dismiss the counterclaim. Valex also argued that the court erred in making its finding that the settlement was reached in good faith, and that Rodriguez's failure to appear violated Supreme Court Rule 237(b). Although Valex stated in its recitation of facts in its post-trial motion that it made an oral motion for default judgment against Rodriguez, Valex did not include any argument in its post-trial motion that the trial court erred in denying their motion for a

default judgment on the basis of Rule 237(b). In response, Rodriguez denied ever having received a Rule 237(b) notice to appear at trial. As part of her response to Valex's motion for a new trial, Rodriguez filed an affidavit of Dorothy Pratt, the secretary for Rodriguez's counsel, averring that her review of the file revealed there was no Rule 237(b) notice to produce Rodriguez at trial.

¶ 14 The court denied Valex's post-trial motion. In its written order entered April 14, 2011, the court found, in relevant part, as follows:

> "The court finds that settlement between Minor and Rodriguez was made in good faith. The court finds that a formal petition for good faith is not required. Valex Cab was afforded due process because of representations of counsel pertaining to the settlement in the amount of $1[,]800.00 exhausted defendant's policy coverage. These facts in addition to a consideration of the totality of the circumstances provided a[n] adequate basis for good faith. Valex Cab's counterclaim for contribution was not prejudiced since Valex Cab was defaulted [sic] on negligence and admitted agency between Mahmoud and Valex in their answer.
>
> Valex Cab's 237 notice upon Rodriguez was moot once *** Valex Cab was defaulted [sic]. The amount of judgment was less than $10,000. Judgement of 12-29-10 in favor of Minor and against Valex Cab to stand."

¶ 15 Valex timely appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, Valex makes the following arguments: (1) the court erred in allowing hearsay

testimony at trial; (2) the judgment was against the manifest weight of the evidence; (3) the court erred in making its good faith finding for the settlement between plaintiff and Rodriguez; (4) prior notice of the settlement was required and plaintiff failed to give Valex notice; and (5) the court erred in dismissing Valex's counterclaim against Rodriguez for contribution and in striking Valex's Rule 237(b) notice on Rodriguez to appear and abused its discretion in denying Valex's motion for a default judgment against Rodriguez and refusing to enter any sanction whatsoever against Rodriguez for her failure to appear pursuant to Rule 237(b).

¶ 18 We note that Valex did not include the first two arguments in its post-trial motion, but because the case was tried in a bench trial, and not a jury trial, pursuant to Illinois Supreme Court Rule 366(b)(3), the failure to include an argument in a post-judgment motion does not limit our scope of review (Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994)), and the sufficiency of the evidence is subject to review without preservation of the question (Ill. S. Ct. R. 366(b)(3)(i) (eff. Feb. 1, 1994)). We therefore review all five issues raised on appeal.

¶ 19 I. Hearsay

¶ 20 Valex first argues on appeal that the court erred in allowing hearsay at trial. "The decision to admit or exclude evidence rests within the sound discretion of the trial court, and that decision will not be disturbed in the absence of an abuse of that discretion." *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp*., 2011 IL App (1st) 101849, ¶ 28 (citing *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 518-19 (2010), citing *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 847 (2010)). "An abuse of discretion occurs in the admission of evidence when no reasonable person would take the view adopted by the trial

court." *Law Offices of Colleen M. McLaughlin*, 2011 IL App (1st) 101849, ¶ 28 (citing *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 45 (2009), citing *Bauer v. Memorial Hospital*, 377 Ill. App. 3d 895, 912 (2007)).

¶ 21 This case proceeded under the rules for an informal hearing as a small claims case which has relaxed rules and requirements. Illinois Supreme Court Rule 286(b) provides:

> "(b) Informal Hearings in Small Claims Cases. In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court shall render judgment and explain the reasons therefor to all parties." Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992).

¶ 22 A trial court does not abuse its discretion by proceeding under subsection (b) of the small claims rule or by admitting otherwise inadmissible hearsay into evidence. *Majid v. Stubblefield*, 226 Ill. App. 3d 637, 648 (1992). Valex does not cite to any contrary authority, nor can we find any. The court therefore correctly allowed the testimony by plaintiff that a bystander told him that a cab hit his vehicle. Because Supreme Court Rule 286(b) governing small claims cases allows hearsay, there was no error. As such, we reject this argument.

¶ 23 II. Judgment Was Not Against the Manifest Weight of the Evidence

¶ 24 Valex also argues that the judgment was against the manifest weight of the evidence. The

standard of review in a bench trial is whether the court's judgment is contrary to the manifest weight of the evidence. *Law Offices of Colleen M. McLaughlin*, 2011 IL App (1st) 101849, ¶ 43 (citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995); *First Baptist Church of Lombard v. Toll Highway Authority*, 301 Ill. App. 3d 533, 542 (1998). "A judgment is against the manifest weight of the evidence 'if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *Law Offices of Colleen M. McLaughlin*, 2011 IL App (1st) 101849, ¶ 43 (quoting *Best v. Best*, 223 Ill. 2d 342, 350 (2006), citing *In re D.F.*, 201 Ill. 2d 476, 498 (2002)).

¶ 25 Valex argues that "there was no evidence that Valex owned that car or that Valex was negligent; there was no evidence whatsoever to connect Valex to the hearsay cab," and that "no witness identified the drivers or owners of the vehicles involved in the accident." According to Valex, "no evidence whatsoever was presented that Valex owned, operated, controlled, or was otherwise responsible for the vehicle that hit the plaintiff's car." Valex's argument on these points is contrary to its own admissions in this case. In its answer to paragraph two of plaintiff's complaint, Valex admitted it owned the cab, admitted that its agent drove the cab, and also admitted that the collision of its cab with plaintiff's vehicle occurred. To the extent that Valex argues there was insufficient evidence of its ownership of the cab or its agency relationship with the driver or that it had no connection with the cab that hit plaintiff's vehicle, we reject this argument outright based on Valex's own admissions and caution that pleadings, including briefs on appeal, must be well grounded in fact. See Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994).

¶ 26 Valex also argues that the judgment was against the manifest weight of the evidence

because "no witness testified as to how the accident happened," and that the mere fact that an accident occurred "does not raise any presumption of negligence." We note that plaintiff's burden of persuasion was preponderance of the evidence, where the plaintiff was " 'required to establish that it is more probably true than not true' " that the defendant " 'was negligent in such a fashion that [ ]he proximately caused the accident.' " *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 10 (quoting *Payne v. Mroz*, 259 Ill. App. 3d 399, 403 (1994).

¶ 27 In this case, plaintiff presented evidence showing that it was more probably true than not true that Valex's cab driver was negligent in hitting plaintiff's vehicle, and the court's judgment was not against the manifest weight of the evidence. We note that the court's order denying Valex's post-trial motion indicated that Valex was "defaulted," which is not correct since Valex was not defaulted. We take the court's use of the word "default" to indicate the complete lack of evidence by Valex.

¶ 28 Defendant's admissions in its answer established that Valex's cab driver traveled in a northbound direction on Clybourn Avenue. At trial, plaintiff testified that his vehicle was parked facing southbound on Clybourn Avenue, ostensibly across the street from the cab. Plaintiff testified that a bystander told plaintiff that a cab hit his vehicle. As noted above, Valex admitted the cab was its cab and the driver was its agent. Even if Valex could have presented some evidence that Rodriguez was negligent, the fact remains that it presented no evidence explaining how or why its driver collided with plaintiff's parked vehicle across the street. Although Valex claims it was prejudiced by the lack of testimony from Rodriguez, the lack of testimony from Valex's own former driver, Mahmoud, to explain the circumstances of the collision was more

fatal to its case. The evidence before the court was undisputed that the cab hit plaintiff's parked car across the street facing in the opposite direction. Regardless of the lack of explanation for exactly how this collision occurred, the manifest weight of the evidence before the court supported its finding of negligence. We affirm the judgment of the trial court.

¶ 29 III. Good Faith Settlement Finding

¶ 30 Next, Valex argues the court erred in finding that plaintiff's settlement with Rodriguez was made in good faith, and that the court erred in not holding a hearing. Under the Illinois Joint Tortfeasor Contribution Act, a tortfeasor is not entitled to recover contribution from another tortfeasor who has settled with the injured party in good faith. 740 ILCS 100/2(c) (West 2010). "A settlement is not made in good faith where the practical effect of the settlement is to shift a disproportionally large and inequitable portion of the settling defendant's liability to the shoulders of another. [Citation]." *Palmer v. Freightliner, LLC*, 383 Ill. App. 3d 57, 61 (2008).

¶ 31 The decision whether to hold hearing on settlement is entirely within the discretion of trial court. *Van Berkum v. Christian*, 175 Ill. App. 3d 62, 67 (1988). The Illinois Supreme Court specifically held and reiterated in *Johnson v. United Airlines*, 203 Ill. 2d 121, 135 (2003), the long-standing recognition that an evidentiary hearing is not required:

> "Courts have repeatedly and consistently held that a separate evidentiary hearing is not required and that a trial court need not decide the merits of the tort case or rule on the relative liabilities of the parties before making a good-faith determination. [Citations.] A court is capable of ruling on 'good faith' without a precise determination of the overall damages suffered by the plaintiff and the settling tortfeasor's proportionate liability."

Johnson, 203 Ill. 2d at 139.

¶ 32 In its reply brief, Valex concedes that *Johnson* does not require an evidentiary hearing, but maintains that the court nevertheless erred in finding that the settlement was in good faith because *Johnson* instructed that "[t]he amount of a settlement must be viewed in relation to the probability of recovery, the defenses raised, and the settling party's potential legal liability. [citations]." *Johnson*, 203 Ill. 2d at 137. Valex contends that "[a]bsent any evidence or testimony regarding the details of the automobile accident, the trial court had no rational basis to conclude that an 18% apportionment of fault was in good-faith or a reasonable allocation of negligence between the defendants."

¶ 33 But Valex does not explain how or why Rodriguez's potential legal liability was for more than the settled amount, given that it was Valex's driver who actually hit and damaged plaintiff's vehicle. It is Valex's burden to show, by clear and convincing evidence, that the settlement was not in good faith. From the facts in the bystander's report, Rodriguez was parked in a northerly direction on Clybourn and plaintiff's vehicle was parked in a southerly direction on Clybourn, which we infer means plaintiff's vehicle was across the street. Even if we assume that Rodriguez negligently pulled out of the parking spot on Clybourn and that Valex's driver, Mahmoud, had to swerve to avoid Rodriguez's vehicle, Valex does not explain how its driver was not negligent in hitting plaintiff's car across the street. From these facts, an 18% apportionment of liability for Rodriguez as an approximation of fault between the joint tortfeasors Rodriguez and Valex was within the trial court's discretion in making its good faith determination.

¶ 34 Valex argues that "by settling with Rodriguez, plaintiff was allowed to steamroll due

process by circumventing the jury demand filed by Rodriguez, *** amending the *ad damnum*, and forcing the case into an informal small claims hearing at the outset of the trial so that inadmissible hearsay might be allowed." Plaintiff was entirely within his rights to settle and dismiss one of the defendants and proceed in the proper forum of his choice, and Valex is not allowed to thwart the plaintiff's choice regarding his cause of action. Valex does not have a right to trump plaintiff's decision and force the case to proceed in a way that would decrease judicial economy. See *Crowell v. Golz*, 319 Ill. App. 3d 184, 192 (2001) (where a patient and a mother who had filed two medical malpractice actions tried to voluntarily dismiss one of their cases, the defendant doctor and clinic's attempt to bar the dismissal was viewed as thwarting the patient's forum choice; held this practice was not condoned because it only served to decrease judicial economy). The only bar to plaintiff proceeding as he did was if the settlement was not reached in good faith. The standard of review of the circuit court's determination is a low one – abuse of discretion – and Valex has not shown an abuse of discretion.

¶ 35 IV. Notice of Settlement in Small Claims Court

¶ 36 Fourth, Valex argues that it was not provided proper notice of the settlement with Rodriguez, relying on section 2-1009 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1009 (West 2010)), Illinois Supreme Court Rule 11 (Ill. S. Ct. R. 11 (eff. Dec. 29, 2009)), and Circuit Court of Cook County Rule 2.1(a) and (c)(1) (Cook Co. Cir. Ct. R. 2.1(a), (c)(3) (Aug. 21, 2000)).

¶ 37 Section 2-1009, however, governs voluntary dismissals generally. See 735 ILCS 5/2-1009 (West 2010). The requirements under section 2-1009 apply to voluntary dismissals without

prejudice, meaning a party would be allowed to refile its actions within the limitations period pursuant to section 13-217 (735 ILCS 5/13-217 (West 2010)). There are protections in section 2-1009 to ensure that a party does not abuse the right to voluntary dismissals. 735 ILCS 5/2-1009 (West 2010). The three requirements which must be satisfied in order to qualify for and receive a voluntary dismissal are: (1) no trial or hearing shall have begun; (2) costs must be paid; and (3) notice must be given. *Vaughn v. Northwestern Memorial Hospital*, 210 Ill. App. 3d 253, 257 (1991), *appeal denied*, 139 Ill. 2d 605 (1991). When a party complies with the requirements of section 2–1009, the right to a dismissal without prejudice is, with very limited exceptions, unfettered. *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 328 Ill. App. 3d 255, 265 (2002) (citing *Morrison v. Wagner*, 191 Ill.2d 162, 165 (2000)).

¶ 38 In this case, we are not presented with a general voluntary dismissal without prejudice; rather, there was a voluntary dismissal pursuant to a settlement agreement *with* prejudice. Dismissals based on a settlement agreement are with prejudice and the party cannot refile its action against the settling party. A settlement agreement is final and binding upon the parties and acts as a bar to further proceedings. *Figgie Int'l Inc. v. Department of Revenue*, 167 Ill. App. 3d 196, 202 (1988). Section 2-1009 is not dispositive of dismissals pursuant to a settlement agreement.

¶ 39 Supreme Court Rule 11 governs the manner of service of pleadings other than the complaint and does not govern settlement agreements. See Ill. S. Ct. R. 11(b)(1) (eff. Dec. 29, 2009).

¶ 40 Valex also cites to Cook County Circuit Court Local Rule 2.1, which governs notice for

motions. Rodriguez argues that Circuit Court of Cook County Rule 2.1 does not apply and in any event, by its terms, does not require notice when the action appears on the daily trial call, and the case was on the daily trial call. We agree with Rodriguez.

¶ 41 As Rodriguez correctly points out, Local Rule 2.1(a) provides that notice of motions is not required where the action appears on the daily trial call:

> "(a) Notice required - *Except in actions appearing on the daily trial call or during the course of trial*, written notice of the hearing of all motions shall be given to all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead, and to all parties whose time to appear has not expired on the date of notice. Notice that additional relief has been sought shall be given in accordance with Supreme Court Rule 105." (Emphasis added.) Cook Co. Cir. Ct. R. 2.1(a) (Aug. 21, 2000).

¶ 42 Valex does not dispute that the case was on the daily trial call. By the plain terms of Rule 2.1(a), no notice of any motion for a good faith finding for the settlement agreement was required.

¶ 43 We also do not find any other statute or rule which requires a specific amount of notice prior to a party moving for a good-faith finding for entry of a settlement agreement and dismissal of a joint tortfeasor. Our courts have "f[ou]nd nothing in the language of the Contribution Act which requires that a tortfeasor immediately seek a good-faith finding after entering a settlement agreement." *Solimini v. Thomas*, 293 Ill. App. 3d 430, 441 (1997).

¶ 44 In a case with multiple tortfeasors where contribution is at issue, the nonsettling parties

whose contribution rights may be at issue should receive notice to be brought into the action or have an opportunity to intervene prior to the court's approval of the settlement, if they are not already parties to the action. *In re Babb*, 162 Ill. 2d at 153, 163-64 (1994). But there is no specific rule or precedent requiring prior notice of settlement to a party of a settlement where the non-settling tortfeasor is already a party in the litigation and has an opportunity to respond to the settlement. Rather, as noted above, the procedure to follow in reviewing settlements for good faith is left to the discretion of the court.

¶ 45 In any event, in this case no motion for a good-faith finding for entry of a settlement agreement and dismissal would have been allowed because it was a small claims case. Illinois Supreme Court Rule 287(b) specifically prohibits the filing of motions in small claims cases, except for dispositive motions and motions for substitution of judge:

> "(b) Motions. Except as provided in sections 2-619 and 2-1001 of the Code of Civil Procedure, no motion shall be filed in small claims cases, without prior leave of court." Ill. S. Ct. R. 287(b) (eff. Aug. 1, 1992).

¶ 46 Sections 2-619 and 2-1005 govern dispositive motions (735 ILCS 5/2-619, 2-1005 (West 2010)), and section 2-1001 governs motions for substitution of judge (735 ILCS 5/2-1001 (West 2010)), neither of which is implicated in this case. There is not only no provision requiring filing a motion for dismissal based on a settlement agreement; the rules actually prohibit motions unless leave of court is obtained.

¶ 47 The Committee Comments to Rules 287 indicate why motions are not allowed without leave of court in small claims cases:

> "The basic purposes of the Supreme Court Rules applicable to small claims cases are to simplify procedures and reduce the cost of litigation. In keeping with these objectives, motions in such cases should only be permitted to the extent that the motion may be dispositive of the claim and to the extent that the trial judge, in his discretion, may allow in the interests of justice." Ill. S. Ct. R. 287 (eff. Aug. 1, 1992), Committee Comments.

¶ 48 "The purpose of the small claims rules *** is to provide an expeditious, simplified, and inexpensive procedure for the litigation of disputes involving small amounts." *Darwin Co. v. Sweeney*, 110 Ill. App. 3d 331, 333 (1982) (citing *Wroclawski v. Waszczyk*, 35 Ill. App. 3d 408 (1976)). We note that Supreme Court Rule 286 even eliminates the need for written pleadings in small claims cases. Ill S. Ct. R. 286(a) (eff. Aug. 1, 1992). "Other practice rules, as well as the provisions of the Code of Civil Procedure, are applicable to small claims proceedings if consistent with the aims of the small claims rules." *Darwin Co. v. Sweeney*, 110 Ill. App. 3d at 333 (citing *Peoria Housing Authority v. Roberson*, 74 Ill. App. 3d 326 (1979)).

¶ 49 We therefore conclude that Valex's arguments regarding any requirement of prior notice are without merit. No notice of motion is required for actions appearing on the daily trial call or during the course of trial. In addition, the Supreme Court Rules specifically do not allow, without leave of court, the filing of any motions except dispositive motions and motions for substitute of judge in small claims cases.

¶ 50 The settlement in this case occurred either the night before trial or about an hour before trial, and the court immediately assessed the settlement amount, nature of the claims, and noted the fact that the settlement was for Rodriguez's policy limits, finding that the settlement was

reached in good faith. This representation by plaintiff's counsel that the settlement was for Rodriguez's policy limits was not disputed by Valex. We therefore affirm the court's order finding that the settlement was in good faith.

¶ 51 V. Excusing Rodriguez's Appearance At Trial Despite Rule 237 Notice to Appear

¶ 52 Finally, Valex argues that the court erred in dismissing Rodriguez when Rodriguez failed to appear at trial despite Valex's Illinois Supreme Court Rule 237(b) (Ill. S. Ct. R. 237 (eff. July 1, 2005) notice to appear, despite the fact that Rodriguez had settled with the plaintiff. Valex argues that the court erred in not entering a default judgment against Rodriguez on Valex's counterclaim when Rodriguez failed to appear at the arbitration hearing after being served notice to appear pursuant to Illinois Supreme Court Rule 237(b).

¶ 53 Rule 237 governs a request by a party for a witness to appear at trial as follows:

> "(b) Notice of Parties *et al*. at Trial or Other Evidentiary Hearings. The appearance at the trial or other evidentiary hearing of a party or a person who at the time of trial or other evidentiary hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial or other evidentiary hearing of the originals of those documents or tangible things previously produced during discovery. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial or other evidentiary hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just,

including any sanction or remedy provided for in Rule 219(c) that may be appropriate." Ill. S. Ct. R. 237(b) (eff. July 1, 2005).

¶ 54 "Compelling the appearance of a party at trial pursuant to subsection (b) of this Rule is a matter of the court's discretion and not a mandatory requirement." *Pros Corporate Management Services, Inc. v. Ashley S. Rose, Ltd.*, 228 Ill. App. 3d 573, 581 (1992). "A court's power to order a party to appear should only be exercised for good cause and not to subject a party to harassment, oppression or hardship." *Pros Corporate Management Services,* 228 Ill. App. 3d at 580 (citing *Pacemaker Food Stores, Inc. v. Seventh Mont Corp*., 117 Ill. App. 3d 636, 648 (1983). "Sanctions for Rule 237 violations are to be imposed only when noncompliance is determined to be unreasonable." *Polk v. Cao*, 279 Ill. App. 3d 101, 105 (1996) (citing *Hawkins v. Wiggins*, 92 Ill. App. 3d 278 (1980)). "In determining whether noncompliance is unreasonable, the court should consider whether the offending party's conduct was the result of a deliberate and pronounced disregard for court rules." *Polk*, 279 Ill. App. 3d at 105 (citing *Hawkins v. Wiggins*, 92 Ill. App. 3d 278 (1980)).

¶ 55 Here, the court did not abuse its discretion in refusing to enforce the Rule 237(b) notice and refusing to enter a default judgment against Rodriguez on Valex's counterclaim as a sanction. There is no evidence that Rodriguez deliberately disregarded the court's rules, or that her noncompliance with the Rule 237(b) notice was unreasonable.

¶ 56 As stated above, the court correctly dismissed Rodriguez upon the finding of good faith of the settlement reached between Rodriguez and plaintiff. Upon dismissal of Rodriguez, she was no longer a party to the case and Rule 237(b) no longer applied to her. There was no basis to

grant a default judgment pursuant to Rule 237(b).

¶ 57 We also note that the court's order setting trial specified that the attorneys appear and report to the courtroom on the date and time set for trial. The court's order did not similarly state that the parties themselves were required to appear. There is no basis in this case to conclude that Rodriguez deliberately disregarded the court rules.

¶ 58 We further note that Valex only moved for entry of a default judgment and did not move for a continuance of the trial for the purpose of issuing a subpoena to Rogriguez pursuant to Supreme Court Rule 237(a). See *Lisowski v. MacNeal Mem. Hosp. Ass'n*, 381 Ill. App. 3d 275, 285 (2008) (noting that a "reasonably prudent" party would produce a witness by subpoena where he or she believes the witness would discredit the opposing party's case and support his or her complaint).

¶ 59 Nor was Valex unfairly prejudiced as it contends. Valex knew of the possibility of a settlement right before trial because the court had ordered the parties to confer with each other within 24 hours prior to the date and time set for trial.

¶ 60 Valex also was not prejudiced where its right to a set-off was protected. The Act specifically provides for a set-off:

> "(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant,

> or in the amount of the consideration actually paid for it, whichever is greater." 740 ILCS 100/2(c) (West 2010).

See also *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 369 (1995); *Maher v. Chicago Park District*, 269 Ill. App. 3d 136, 140 (1994); *Kipnis v. Meltzer*, 253 Ill. App. 3d 67, 68 (1993) ("a defendant need not file a contribution action to invoke the defense of setoff"). The court in this case applied a set-off. Dismissal of Valex's contribution counterclaim was proper.

¶ 61 Valex has failed to establish any error in this case. Therefore, we affirm the orders and judgment entered by the court.

¶ 62 CONCLUSION

¶ 63 The trial court did not abuse its discretion in allowing hearsay evidence because hearsay evidence is allowed in a small claims case pursuant to Supreme Court Rule 286(b) (Ill. S. Ct. R. 286(b) (eff. Aug. 1, 1992)).

¶ 64 The trial court's judgment was not against the manifest weight of the evidence despite the lack of any evidence as to how the collision occurred where Valex admitted it owned the cab, the driver was its agent, the cab hit plaintiff's vehicle and plaintiff's vehicle was parked in the opposite direction across the street, and failed to present any evidence in its own defense.

¶ 65 The trial court did not err in determining that settlement between the plaintiff and Rodriguez was reached in good faith and did not abuse its discretion in not holding a hearing, as a hearing is not required.

¶ 66 There also was no violation committed by plaintiff in moving for entry of a good faith finding for the settlement without prior notice, as there is no requirement for notice of motions

for cases that are on the daily trial call or during trial, and motions are not even permitted in smalls claims court without prior leave of court.

¶ 67 Finally, the trial court did not abuse its discretion in failing to sanction Rodriguez and enter a default judgment on Valex's counterclaim against Rodriguez' failure to appear on the day of trial pursuant to Valex's Rule 237(b) notice because the court correctly dismissed Rodriguez upon the finding of good faith of the settlement reached between Rodriguez and plaintiff and upon her dismissal she was no longer a party to the case and Rule 237(b) no longer applied to her and there was no evidence that Rodriguez deliberately disregarded the court's rules, or that her noncompliance with the Rule 237(b) notice was unreasonable.

¶ 68 Affirmed.