

**FIRST AGRO-INDUSTRIAL RURAL BANK, INC. (FAIRBANK),
PETITIONER, VS. THE HONORABLE RAPHAEL B. YRASTORZA, SR. IN
HIS PUBLIC CAPACITY AS ACTING PRESIDING JUDGE OF RTC
BRANCH 28 MAND...**

Ponente: QUIJANO-PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/73bc0b82751b/>

QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Orders dated July 22, 2013[1] and September 30, 2013[2] of the Regional Trial Court (RTC), Branch 28, Mandaue City in Civil Case No. MAN-6910.

The Antecedents

Private respondents Spouses Chito and Angie Cosico (Spouses Cosico) obtained a P6,000,000.00 loan[3] from petitioner first Agro Industrial Rural Bank, Inc. (Fairbank) on September 26, 2008. The loan was secured by a real estate mortgage on Spouses Cosico's lot and building in Maguikay, Mandaue City. For non-payment thereof, Fairbank filed a Petition for Extrajudicial Foreclosure on the mortgaged properties of Spouses Cosico on June 22, 2012.

On August 28, 2012, Spouses Cosico filed Civil Case No. 6910 which was principally for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage and Specific Performance.[4] In the said case, Spouses Cosico applied for a temporary restraining order (TRO) and writ of preliminary injunction (WPI) to restrain Fairbank and its agents from proceeding with the foreclosure sale of the mortgaged properties. The application for TRO was denied.

Subsequently, the RTC heard Spouses Cosico's application for WPI. Chito Cosico testified for the plaintiff and thereafter, Spouses Cosico formally offered their exhibits.

On April 29, 2013, Mary Ann Calisura (Calisura) testified as Fairbank's witness in the bank's opposition against the issuance of a WPI. After identifying her judicial affidavit, Spouses Cosico's counsel, Atty. Edward Anthony Ramos, conducted cross-examination on Calisura.[5] In the course of the proceedings, the following exchanges transpired, viz.:

[Atty. Ramos]

Q:

Do you have that record with you of the payment history?

A:

No.

Q:

But there is such a record?

A:

Yes.

Q:

And where is it now?

A:

In the bank.

Q:

Can you bring that document in the next hearing?

A:

Yes, Sir.

Atty. Ramos:

At this juncture Your Honor, may I ask for continuance?

Court:

Are you ____ so you can specify what document?

Atty. Ramos:

But in the meantime Your Honor, I will require the witness to bring on the next setting the disclosure statement as well as the bank history payment.[6]

After that April 29, 2013-hearing, the next setting for the case was on May 20, 2013. On May 7, 2013, Fairbank filed a Motion To Excuse Witness Mary Ann Calisura[7] alleging that Spouses Cosico's counsel had already propounded all his cross-examination on Calisura. According to Fairbank, months prior to her court appearance, Calisura already resigned from the bank since a job was waiting for her in Singapore. The bank, however, persuaded her to wait for her April 29, 2013 appearance in court. According to Fairbank, it would be unjust to require Calisura to appear during the next hearing on May 20, 2013 as she had already disposed of her judicial duty. To do so would amount to compelling Calisura to suspend her flight to Singapore, waive her ticket and possibly lose the job that was waiting for her there.

Spouses Cosico opposed Fairbank's motion claiming that the bank had no basis in alleging that Spouses Cosico's counsel had already propounded all his cross-examination questions on Calisura. Spouses Cosico also pointed out that Fairbank acted in bad faith when it did not disclose to the court that its witness was set to leave the country. Spouses Cosico moved to strike out Calisura's testimony from the record for being incomplete.[8]

Fairbank filed its opposition to Spouses Cosico's motion to strike out the testimony of Calisura.

Acting on the incidents, public respondent rendered the first assailed Order, the material and dispositive portions of which are quoted, viz.:

Since it is apparent from defendant bank's motion that its witness is no longer available to testify on cross-examination, this Court is constrained to strike off the record the testimony of Mary Ann Calisura. Considering further, that Ms. Calisura was the only witness of the defendant bank based on the latter's

manifestations, this Court declares defendant bank to have waived its right to present evidence and considers the incident on plaintiff's prayer for the issuance of a writ of preliminary injunction submitted for resolution.

WHEREFORE, in view of the foregoing premises, the defendant bank's motion to excuse its witness, Mary Ann Calisura, is hereby DENIED. The testimony of witness Calisura is STRICKEN OFF the record and consequently, defendant FAIRBANK is deemed to have waived its right to present evidence. The incident on the propriety for the issuance of a writ of preliminary injunction is now submitted for resolution.[9]

Fairbank moved for reconsideration[10] but public respondent denied its motion in the second assailed order. Aggrieved, Fairbank brought this petition on the following grounds, thus:

THE JULY 22, 2013 ORDER OF THE TRIAL COURT WAS ISSUED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, HENCE, IT WAS NOT A JUST, VALID, PROPER AND RIGHT ORDER.

THE SEPTEMBER 30, 2013 ORDER OF THE TRIAL COURT WAS ISSUED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, HENCE, IT WAS NOT A JUST, VALID, PROPER AND RIGHT ORDER.

Basically, Fairbank contended that public respondent gravely abused his discretion in rendering the assailed orders as he practically deprived Fairbank of its Constitutional right to present evidence and sanctioned, instead, private respondent's scheme of intentionally not terminating Calisura's cross-examination.

This Court's Ruling

Public respondent gravely abused his discretion, but only when he rendered the second assailed Order refusing to reconsider the earlier order to strike off Calisura's testimony from the records.

We find no such grave abuse of discretion when public respondent issued the first assailed order. His reasons for not excusing Calisura and ordering, instead, the striking off her testimony from the records is hereby quoted to show that the July 22, 2013 order was fully justified by the circumstances attending at that time, viz.:

xxx The records are very clear that witness Calisura's testimony on cross-examination has yet to be completed on the next setting, which was on May 20, 2013. Plaintiff's counsel was obviously not finished with his cross-examination since he still needed to see the disclosure statement and the payment record of the plaintiffs, to which the witness undertook to bring during the next hearing. To deny the plaintiffs their right to cross-examine the witness would be tantamount to a denial of due process. xxx Furthermore, this Court is at a quandary as to why the defendant bank, well aware that its witness was due to leave the country, failed to inform the court in advance of this circumstance, as it could have made the necessary adjustments to facilitate the completion of the testimony of its witness.[11]

When Fairbank presented Calisura on direct-examination, it had the corresponding duty to make her available for cross-examination. Apparently, Fairbank already knew even before the April 29, 2013 hearing that its witness was to leave for Singapore. In fact, in its motion to excuse Calisura, Fairbank pleaded that it just persuaded the resigned bank employee to await for her April 29, 2013 court appearance. Yet, despite such knowledge, Fairbank neither made the pertinent manifestation, nor expressed objection to the continuance requested by Spouses Cosico's counsel during the April 29, 2013 proceedings. It was, thus, Fairbank's fault that its witness was no longer available for further cross-examination during the subsequent hearing.

As there was no adequate opportunity for cross-examination, public respondent aptly ordered, in accordance with tenets of fair play and due process, that Calisura's testimony be stricken off the record. When the cross-examination is not or cannot be done or completed due to causes attributable to the party offering the

witness, or to the witness himself, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence.[12] The uncompleted testimony should be stricken off the record.[13]

However, notwithstanding the validity of the first assailed order, public respondent's subsequent refusal to reconsider such earlier order is tainted with grave abuse of discretion. It should be pointed out that Fairbank timely filed a motion for reconsideration alleging that:

xxx counsel was informed by the mother of witness Mary Ann Calisura that she has just returned from Singapore where she is working. Hence, she is now available to continue with her cross-examination. This development renders moot and academic FAIRBANK's Motion to Excuse Witness Mary Ann Calisura and Plaintiff's Motion to Strike Out Her Testimony. This new development will give the Honorable Court the chance to hear the testimony of witness Mary Ann Calisura in its entirety, and also afford the defendant FAIRBANK the opportunity to establish the merits of its defense in this case.[14]

The motion spoke for itself. The incident that cropped up due to Calisura's departure for Singapore had been mooted by her return and availability to take part in the further proceedings of the case. Under the circumstance, it would have been prudent for public respondent to take the opportunity to fully obtain the bank's position though Calisura's testimony and to have it retained on record for his better assessment of the pending incident.

Unfortunately, public respondent just summarily brushed aside Fairbank's motion for reconsideration by declaring that "the issues raised by the plaintiff in the motion are mere reiteration [sic] which had already been addressed, deliberated upon and resolved definitely in the said order." Public respondent's denial of Fairbank's motion for reconsideration was obviously pro-forma and clearly not well-pondered. The return of Calisura from Singapore and consequently, her availability for further cross-examination was never a subject of the earlier order sought to be reconsidered; hence there was no basis for public respondent to say that the issue in Fairbank's motion for reconsideration had been previously presented for his evaluation and resolution.

It was, therefore, grave abuse of discretion for public respondent to deny Fairbank's motion for reconsideration. The policy of our judicial system is to encourage full adjudication of cases on their merits. It is also well-entrenched that rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of noncompliance with the process required.[15] These judicial tenets acquire greater significance where there has been subsequent compliance with the requirements of the rules, as in this case where Fairbank's witness was made available again to continue with her cross-examination in order that her testimony may be re-ordered to remain on the record.

Public respondent should not have lost sight that Calisura was Fairbank's lone witness, such that the bank's defense or opposition on the pending incident hinged solely on her testimony. Thus, when Fairbank timely filed its motion for reconsideration, better judgment should have moved public respondent to relax procedural considerations in the interest of justice which would be better served if Calisura would be allowed to continue with her cross-examination.

WHEREFORE, the petition is PARTLY GRANTED. The Order dated September 30, 2013 of the Regional Trial Court (RTC), Branch 28, Mandaue City in Civil Case No. MAN-6910 denying Fairbank's motion for reconsideration is hereby NULLIFIED AND SET ASIDE.

Public respondent is DIRECTED to issue a subpoena duces tecum ad testificandum to Mary Ann Calisura for her to appear before the trial court for further cross-examination and to bring with her the documents requested by herein respondents' counsel during the April 29, 2013 hearing.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*]Acting Chairperson in lieu of J. Ramon Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Rollo, pp. 19-20.

[2] Rollo, p. 21.

[3] See Disclosure Statement, rollo, p. 188.

[4] See Complaint, rollo, pp. 149-183.

[5] See TSN, rollo, pp. 25-35.

[6] Rollo, p. 13.

[7] Rollo, pp. 36-39.

[8] Rollo, pp. 40-41.

[9] Rollo, p. 20.

[10] Rollo, pp. 54-60.

[11] Rollo, pp. 19-20.

[12] See *People of the Philippines v. Rosario*, G.R. No. 146689. September 27, 2002.

[13] See *People of the Philippines v. Digno, Jr.*, G.R. No. 108958. November 23, 1995.

[14] Rollo, pp. 54-55.

[15] See *Novelty of the Philippines Inc., v. Court of Appeals*, G.R. No. 146125. September 17, 2003.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.