

FORTUNE CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND INTER-MERCHANTS CORPORATION, RESPONDENTS.

G.R. No. 108119. January 19, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

This petition impugns and seeks the review on certiorari of the decision[1] of respondent Court of Appeals, dated September 23, 1992, which affirmed the order of the Regional Trial Court of San Pablo City disallowing the taking of the oral deposition of Juanito S. Teope, Chairman of the Board of Directors of herein private respondent Inter-Merchants Corporation.

An action for breach of contract was filed by petitioner Fortune Corporation against respondent Inter-Merchants Corporation, docketed as Civil Case No. SP-3469, before the Regional Trial Court of San Pablo City, Branch 30. After respondent corporation had filed its Answer, petitioner served the former with written interrogatories pursuant to Rule 25 of the Rules of Court. The interrogatories were answered by respondent corporation through its board chairman, Juanito A. Teope.

The pre-trial conference was thereafter scheduled for January 9, February 12 and April 22, 1992.

On March 26, 1992, however, petitioner served upon private respondent a Notice to Take Deposition Upon Oral Examination[2] dated March 26, 1992, notifying the latter that on April 7, 1992, at San Pablo City, herein petitioner would take the deposition of said Juanito A. Teope, in accordance with Section 15, Rule 24.

Private respondent filed an Urgent Motion Not to Take Deposition/Vehement Opposition to Plaintiff's Notice to Take Deposition Upon Oral Examination,[3] dated March 27, 1992, alleging inter alia that: (a) herein petitioner has previously availed of one mode of discovery, that is, the written interrogatories which practically covered all the claims, counterclaims and defenses in the case; (b) there is absolutely no sound reason or justification advanced for the taking of the oral deposition; (c) such taking would cause annoyance, embarrassment and oppression upon the prospective deponent, Juanito A. Teope; (d) Mr. Teope has no intention of leaving the country; and (e) the intended deponent is available to testify in open court if required during the trial on the merits.

The trial court thereafter issued on April 3, 1992 an order[4] that the requested deposition shall not be taken for the following reasons:

x x x, the Court opines that the deposition of Juanito A. Teope set on April 7, 1992, appears unwarranted since the proposed deponent had earlier responded to the written interrogatories of the plaintiff and has signified his availability to testify in court.

To allow the deposition will deprive the Court of the opportunity to ask clarificatory questions, if any, on the proposed deponent who appears to be a vital witness.

Its motion for reconsideration having been denied, petitioner filed an original action for certiorari before the

Supreme Court which was docketed as G.R. No. 101526. However, in a resolution dated May 20, 1992, this Court referred the case to the Court of Appeals for consideration and adjudication on the merits.

As earlier stated, respondent Court of Appeals promulgated a decision on September 23, 1992, dismissing the petition and holding that:

It cannot be gainsaid that the respondent court has jurisdiction to direct, in its discretion, that a deposition shall not be taken, if there are valid reasons for so ruling. This is provided for in Sections 16 and 18, Rule 24 of the Rules of Court. Said sections imply that the right of a party to take depositions as means of discovery is not absolute. Thus, as held in the case of *Caguia vs. Torres*, 30 SCRA 106, 110:

"x x x sections 16 and 18 of Rule 24, (which) are precisely designed to protect parties and their witnesses, whenever in the opinion of the trial court, the move to take their depositions under the guise of discovery is actually intended to only annoy, embarrass or oppress them. In such instances, these provisions expressly authorize the court to either prevent the taking of a deposition or stop one that is already being taken."

Moreover, the respondent court, in its assailed Order, has indicated at least three (3) valid reasons for it not to order the deposition taken: First, that the proposed deponent had earlier responded to the written Interrogatories; Second, that the proposed deponent had signified his availability to testify in court; and Third, that to allow the deposition would deprive the trial court of the opportunity to ask clarificatory questions, if any, on the proposed deponent who appears to be a vital witness.

Finally, anent private respondent's contention that certiorari does not lie in this case, it should be recalled that certiorari presupposes either lack or excess of jurisdiction or grave abuse of discretion. In the instant case, no question of jurisdiction is possible simply because the respondent court undoubtedly had jurisdiction over petitioner's case. On the question of abuse of discretion, appeal and not certiorari is the proper remedy for the correction of any error as to the admission or rejection of a deposition being offered as evidence since such a situation would involve an error of law constituting a violation of the rules of evidence. Hence, as held in the case of *Dearing vs. Fredwilson (sic) & Co., Inc.*, 98 SCRA 758, 764:

"x x x. Thus, the jurisprudential rule is that the admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law but not an abuse of discretion, much less a grave one. x x x."

With the denial of petitioner's motion for reconsideration, the instant petition was filed, submitting the following issues for resolution:

- Whether or not the conclusion of the Honorable Court of Appeals, based on a gross misapprehension of facts, constitutes reversible error;
- Whether or not the said order, based on the three reasons stated therein, is arbitrary or whimsical because it is contrary to reason, logic or equity;
- Whether or not mere allegation, without proof, that the examination sought by petitioner was intended merely to annoy, embarrass or oppress the proposed deponent is, as a matter of law, "good cause" within the purview of Rule 24, Section 16, Rules of Court; and
- Whether or not, absent the requisite element of "good cause" as mandated by Section 16 of Rule 24, Rules of Court, a trial court has unbridled discretion to forbid the taking of deposition upon oral examination as authorized under Rule 24, Section 15, Rules of Court.

Rule 24 of the Rules of Court provides:

Section 1. Depositions pending action, when may be taken. - By leave of court after jurisdiction has been obtained over any defendant or property which is the subject of the action, or without such leave after an

answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 23. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

The seeming unreceptive and negative attitude of lawyers and the courts towards discovery procedures has heretofore been observed and discommended by the Court in this wise:

x x x Now, it appears to the Court that among far too many lawyers (and not a few judges), there is, if not a regrettable unfamiliarity and even outright ignorance about the nature, purposes and operations of the modes of discovery, at least a strong yet unreasoned and unreasonable disinclination to resort to them -- which is a great pity for the intelligent and adequate use of the deposition-discovery mechanism, coupled with pre-trial procedure, could, as the experience of other jurisdictions convincingly demonstrates, effectively shorten the period of litigation and speed up adjudication. x x x.[5]

It would do well, therefore, to point out the finer attributes of these rules of discovery, the availment of which, we are convinced, would contribute immensely to the attainment of the judiciary's primordial goal of expediting the disposition of cases.

The rules providing for pre-trial discovery of testimony, pre-trial inspection of documentary evidence and other tangible things, and the examination of property and person, were an important innovation in the rules of procedure. The promulgation of this group of rules satisfied the long-felt need for a legal machinery in the courts to supplement the pleadings, for the purpose of disclosing the real points of dispute between the parties and of affording an adequate factual basis in preparation for trial. The rules are not grounded on the supposition that the pleadings are the only or chief basis of preparation for trial. On the contrary, the limitations of the pleadings in this respect are recognized. In most cases under the rules the function of the pleadings extends hardly beyond notification to the opposing parties of the general nature of a party's claim or defense. It is recognized that pleadings have not been successful as fact-sifting mechanisms and that attempts to force them to serve that purpose have resulted only in making the pleadings increasingly complicated and technical, without any corresponding disclosure of the issues which it will be necessary to prove at the trial. Thus the rules provide for simplicity and brevity in pleadings, which in most cases will terminate with the answer; and at the same time adapt the old and familiar deposition procedure to serve as a device for ascertaining before trial what facts are really in dispute and need to be tried. Experience had shown that the most effective legal machinery for reducing and clarifying the issues was a preliminary examination, as broad in scope as the trial itself, of the evidence of both parties.[6]

Stated otherwise, the rules seek to make a trial less a game of blind man's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.[7]

The elemental purpose of the discovery procedure was pithily explained by the Court, speaking through now Chief Justice Andres R. Narvasa, in the recent case of *Republic vs. Sandiganbayan*,[8] which opinion, we feel, should be reiterated through an extended reproduction, to wit:

The resolution of controversies is, as everyone knows, the *raison d'être* of courts. This essential function is accomplished by first, the ascertainment of all the material and relevant facts from the pleadings and from the evidence adduced by the parties, and second, after that determination of the facts has been completed, by the application of the law thereto to the end that the controversy may be settled authoritatively, definitely and finally.

It is for this reason that a substantial part of the adjective law in this jurisdiction is occupied with assuring that

all the facts are indeed presented to the Court; for obviously, to the extent that adjudication is made on the basis of incomplete facts, to that extent there is faultiness in the approximation of objective justice. It is thus the obligation of lawyers no less than of judges to see that this objective is attained; that is to say, that there be no suppression, obscuration, misrepresentation or distortion of the facts; and that no party be unaware of any fact material and relevant to the action, or surprised by any factual detail suddenly brought to his attention during the trial.

Seventy-one years ago, in *Alonzo v. Villamor*, this Court described the nature and object of litigation and in the process laid down the standards by which judicial contests are to be conducted in this jurisdiction. It said: "A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather a contest in which each contending party fully and fairly lays before the court the facts in issue and then brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done on the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested right in technicalities. x x x."

The message is plain. It is the duty of each contending party to lay before the court the facts in issue -- fully and fairly; i.e., to present to the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge.

Initially, that undertaking of laying the facts before the court is accomplished by the pleadings filed by the parties; but that, only in a very general way. Only "ultimate facts" are set forth in the pleadings; hence, only the barest outline of the factual basis of a party's claims or defenses is limned in his pleadings. The law says that every pleading "shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

Parenthetically, if this requirement is not observed, i.e., the ultimate facts are alleged too generally or "not averred with sufficient definiteness or particularity to enable x x x (an adverse party) properly to prepare his responsive pleading or to prepare for trial," a bill of particulars seeking a "more definite statement" may be ordered by the court on motion of a party. The office of a bill of particulars is, however, limited to making more particular or definite the ultimate facts in a pleading. It is not its office to supply evidentiary matters. And the common perception is that said evidentiary details are made known to the parties and the court only during the trial, when proof is adduced on the issues of fact arising from the pleadings.

The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties - before the trial if not indeed even before the pre-trial - should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplished one of the most necessary ends of modern procedure: it not only eliminates unessential issues from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased. x x x.

As just intimated, the deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation and fact revelation theretofore performed primarily by the pleadings.

The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.

To this end, the field of inquiry that may be covered by depositions or interrogatories is as broad as when the interrogated party is called as a witness to testify orally at trial. The inquiry extends to all facts which are relevant, whether they be ultimate or evidentiary, excepting only those matters which are privileged. The objective is as much to give every party the fullest possible information of all the relevant facts before the trial as to obtain evidence for use upon said trial. The principle is reflected in Section 2, Rule 24 (governing depositions) which generally allows the examination of a deponent -

1) "regarding any matter, not privileged, which is relevant to the subject of the pending action, whether relating to the claim or defense of any other party,"

2) as well as:

(a) "the existence, description, nature, custody, condition and location of any books, documents, or other tangible things" and

(b) "the identity and location of persons having knowledge of relevant facts."

What is chiefly contemplated is the discovery of every bit of information which may be useful in the preparation for trial, such as the identity and location of persons having knowledge of relevant facts: those relevant facts themselves; and the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things. Hence, the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of fishing expedition serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. x x x. (Emphases in the original text.)

The other principal benefits derivable from the availability and operation of a liberal discovery procedure are the following:

1. It is of great assistance in ascertaining the truth and in checking and preventing perjury. The reasons for this are:

(a) The witness (including a party) is examined while his memory is fresh:

(b) The witness (including a party) is generally not coached in preparation for a pre-trial oral examination with the result that his testimony is likely to be more spontaneous. Where the examination is upon written interrogatories, however, it appears that some lawyers furnish the witness with copies of the interrogatories and thereby enable him to prepare his answers in advance.

(c) A party or witness whose deposition has been taken at an early stage in the litigation cannot, at a later date, readily manufacture testimony in contradiction to his deposition;

(d) Testimony is preserved, so that if a witness unexpectedly dies or becomes unavailable at the trial, his deposition is available.

2. It is an effective means of detecting and exposing false, fraudulent, and sham claims and defenses.
3. It makes available in a simple, convenient, and often, inexpensive way facts which otherwise could not have been proved, except with great difficulty and sometimes not at all.
4. It educates the parties in advance of trial as to the real value of their claims and defenses, thereby encouraging settlements out of court.
5. It expedites the disposal of litigation saves the time of the courts, and clears the docket of many cases by settlements and dismissals which otherwise would have to be tried.
6. It safeguards against surprise at the trial, prevents delays, and narrows and simplifies the issues to be tried, thereby expediting the trial.
7. It facilitates both the preparation and the trial of cases.[9]

We shall now proceed to resolve the issues raised by herein petitioner.

I. Petitioner avers that the decision of respondent court dismissing its petition on the ground that appeal and not certiorari is the proper remedy in this case, is erroneous for the reason that such ruling is based on facts which are not obtaining in the case at bar, viz.: (a) that petitioner had already obtained a deposition, which it had not; (b) that said deposition was offered as evidence, which was not done because there was nothing yet to offer, and (c) that said offer was rejected, which did not happen because there was nothing to reject as nothing was offered.

Petitioner claims that since the very purpose of Rule 24 of the Rules of Court is to authorize the taking of a deposition in a pending action, either to make discovery in preparation for or to be used as evidence upon the trial of such action, the taking of the deposition in the case at bar should be done and finished before trial. Hence, it would be a grave abuse of discretion to compel petitioner to proceed with the trial of the case without the proposed deposition being first undertaken. Appeal will be utterly inadequate to remedy the situation because, in that case, the court shall have rendered its decision without the petitioner having been afforded the opportunity to make use of the answers that the deponent would have otherwise given as a result of the deposition. Reversal on appeal of the said decision by the public respondent may only entail retrial in the lower court and added expense, as well as unnecessary delay in the case. By its very nature, the taking of the deposition in the case at bar should be made and completed before trial, and the remedy of appeal to determine whether or not the trial court committed a grave abuse of discretion in denying the petitioner thereof is neither proper, much less adequate.

We agree with petitioner.

Under Section 1, Rule 65 of the Rules of Court, the writ of certiorari lies if the following requisites concur: (a) that it is directed against a tribunal, board or officer exercising judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

Section 16 of Rule 24 provides that after notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may among others, make an order that the deposition shall not be taken.

This provision explicitly vests in the court the power to order that the deposition shall not be taken and this grant connotes the authority to exercise discretion in connection therewith. It is well settled, however, that the discretion conferred by law is not unlimited; that it must be exercised, not arbitrarily, capriciously, or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained. Referring to the objective of Section 16 of then Rule 18 (now Rule 24) of the Rules of Court, former Chief Justice

Manuel V. Moran had these comments:

The advisory committee of the United States Supreme Court said that this provision is intended to be one of the safeguards for the protection of the parties and deponents on account of the unrestricted right to discovery given by sections 1 and 2 of this Rule. A party may take the deposition of a witness who knows nothing about the case, with the only purpose of annoying him or wasting the time of the other parties. In such case, the court may, on motion, order that the deposition shall not be taken. Or, a party may designate a distinct place for the taking of a deposition, and the adverse party may not have sufficient means to reach that place, because of poverty or otherwise, in which case the court, on motion, may order that the deposition be taken at another place, or that it be taken by written interrogatories. The party serving the notice may wish to inquire into matters the disclosure of which may be oppressive or embarrassing to the deponent, especially if the disclosure is to be made in the presence of third persons, or, the party serving the notice may attempt to inquire into matters which are absolutely private of the deponent, the disclosure of which may affect his interests and is not absolutely essential to the determination of the issues involved in the case. Under such circumstances, the court, on motion, may order "that certain matter shall not be inquired into or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specific documents or informations enclosed in sealed envelopes to be opened as directed by the court." In other words, this provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: "Any discovery involves a prying into another person's affairs, a prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid." For this reason, courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both.[10]

The rule is that certiorari will generally not lie to review a discretionary action of any tribunal. Also, as a general proposition, a writ of certiorari is available only to review final judgments or decrees, and will be refused where there has been no final judgment or order and the proceeding for which the writ is sought is still pending and undetermined in the lower tribunal. Pursuant to this rule, it has been held that certiorari will not lie to review or correct discovery orders made prior to trial.[11] This is because, like other discovery orders, orders made under Section 16, Rule 24 are interlocutory and not appealable,[12] considering that they do not finally dispose of the proceeding or of any independent offshoot of it.[13]

However, such rules are subject to the exception that discretionary acts will be reviewed where the lower court or tribunal has acted without or in excess of its jurisdiction, where an interlocutory order does not conform to essential requirements of law and may reasonably cause material injury throughout subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion.[14]

It is our considered opinion that on the bases of circumstances obtaining in the case at bar, and which will hereinafter be discussed, certiorari may be availed of to review the questioned order of the trial court.

II. Petitioner asseverates that the trial court gravely abused its discretion in ordering that the deposition be not taken in the absence of good cause therefor. It asserts that the reasons advanced by the trial court cannot be considered "good cause" within the contemplation of the law, which reasons, to repeat, are: (a) that the proposed deponent had earlier responded to written interrogatories; (b) that the proposed deponent had signified his availability to testify in court; and (c) that to allow the deposition would deprive the trial court of the opportunity to ask clarificatory questions to the vital witness. It further claims that a mere allegation, without any proof in support thereof, that petitioner intended to annoy, harass or oppress the proposed deponent, and therefore acted in bad faith, is not sufficient justification to order that the deposition shall not be taken.

It is true that to ensure that availment of the modes of discovery would be untrammelled and efficacious, Rule 29 imposes serious sanctions on the party who refuses to comply with or respond to the modes of discovery, such as dismissing his action or proceeding or part thereof, or rendering judgment by default against the disobedient party; contempt of court, or arrest of the party or agent of the party; payment of the amount of reasonable expenses incurred in obtaining a court order to compel discovery; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party to support or oppose designated claims or defenses; striking out his pleadings or parts thereof; or staying further proceedings.

But then, there are concomitant limitations to discovery, even when permitted to be undertaken without leave of court and without judicial intervention. As indicated by the Rules, limitations inevitably arise when it can be shown that the examination is being conducted in bad faith or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry. Also, further limitations come into existence when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege.

In fine, as we have earlier clarified, the liberty of a party to make discovery is well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law.

Section 16 of Rule 24 clearly states that it is only upon notice and for good cause shown that the court may order that the deposition shall not be taken. The matter of good cause is to be determined by the court in the exercise of judicial discretion. Good cause means a substantial reason -- one that affords a legal excuse. Whether or not substantial reasons exist is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown." [15]

The requirement, however, that good cause be shown for a protective order puts the burden on the party seeking relief to show some plainly adequate reasons for the order. A particular and specific demonstration of facts, as distinguished from conclusory statements, is required to establish good cause for the issuance of a protective order. [16] What constitutes good cause furthermore depends upon the kind of protective order that is sought. [17]

In light of the general philosophy of full discovery of relevant facts and the broad statement of scope in Rule 24, and in view of the power of the court under Sections 16 and 18 of said Rule to control the details of time, place, scope, and financing for the protection of the deponents and parties, it is fairly rare that it will be ordered that a deposition should not be taken at all. All motions under these subparagraphs of the rule must be supported by "good cause" and a strong showing is required before a party will be denied entirely the right to take a deposition. A mere allegation, without proof, that the deposition is being taken in bad faith is not a sufficient ground for such an order. Neither is an allegation that it will subject the party to a penalty or forfeiture. The mere fact that the information sought by deposition has already been obtained through a bill of particulars, interrogatories, or other depositions will not suffice, although if it is entirely repetitious a deposition may be forbidden. The allegation that the deponent knows nothing about the matters involved does not justify prohibiting the taking of the deposition, nor that whatever the witness knows is protected by the "work product doctrine," nor that privileged information or trade secrets will be sought in the course of the examination, nor that all the transactions were either conducted or confirmed in writing. [18]

In the present case, private respondent failed to sufficiently establish that there is good cause to support the order of the trial court that the deposition shall not be taken, for several reasons.

1. We agree with petitioner's submission that the fact that petitioner had previously availed of the mode of discovery, which is by written interrogatories supposedly covering all claims, counterclaims and defenses in the case, cannot be considered "good cause," because: (a) the fact that information similar to that sought had been

obtained by answers to interrogatories does not bar an examination before trial, and is not a valid objection to the taking of a deposition where there is no duplication and the examining party is not acting in bad faith; and (b) knowledge of the facts by the petitioner concerning which the proposed deponent is to be examined does not justify a refusal of such examination.

As a general rule, the scope of discovery is to be liberally construed so as to provide the litigants with information essential to the expeditious and proper litigation of each of the facts in dispute. Moreover, it cannot be disputed that the various methods of discovery as provided for in the Rules are clearly intended to be cumulative, as opposed to alternative or mutually exclusive.[19]

The issue of whether a party who has resorted to a particular method of discovery will be barred in subsequently using other discovery devices has been definitively discussed and resolved as follows:

On the question of whether an oral deposition might be taken after service of interrogatories, the courts took a relatively liberal view. In *Howard v. States Marine Corp.*, the first case in which this question was raised, Judge Hilbert said that:

"Where it develops that examination by interrogatories has been inadequate, the court unquestionably has, and in a proper case should exercise, discretion to permit an oral examination. But it should be made to clearly appear that the relevant subject matter will not involve the interrogation of the witness with respect to those particulars upon which he was examined by interrogatories."

In *Canuso v. City of Niagara Falls*, the fact that a bill of particulars had previously been served and interrogatories answered was held no objection to an oral examination since no duplication was involved and bad faith had not been shown. And in *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, oral examination was allowed, even though the individual had previously answered interrogatories, except as to matters with respect to which he had "given responsive and categorical testimony." [20]

It is quite clear, therefore, and we so hold that under the present Rules the fact that a party has resorted to a particular method of discovery will not bar subsequent use of other discovery devices, as long as the party is not attempting to circumvent a ruling of the court, or to harass or oppress the other party. As a matter of practice, it will often be desirable to resort to both interrogatories and depositions in one or the other sequence. Additional lines of inquiry may come to light after the deposition has been taken, as to which written interrogatories probably would be adequate, and there is no reason why the examining party should not be entitled to obtain all the relevant information he desires if no substantial prejudice is done to the party from whom discovery is sought. On the other hand, interrogatories may well be used as a preliminary to the taking of depositions, in order to ascertain what individuals have the information sought. And, of course, if the answers to interrogatories are evasive or unsatisfactory, the interrogating party should be able to utilize the more effective method of oral examination rather than have to reframe interrogatories. Ordinarily, however, there will be no occasion for a party to use both methods at the same time, at least to obtain the same information.[21]

It has long been recognized that there are far greater advantages in obtaining the facts and circumstances involved in a confronting examination than in a written one. Hence:

1. Examination by interrogatories is both more cumbersome and less efficient than oral examination before trial. Where it develops that examination by interrogatories has been inadequate, the court unquestionably has, and in a proper case should exercise, discretion to permit an oral examination. But it should be made to clearly appear that the relevant subject matter will not involve the interrogation of the witness with respect to those particulars upon which he was examined by interrogatories.[22]

2. In actual effectiveness, interrogatories are far inferior to the oral examination. Their defects are quite obvious. In the first place, they give the party to whom they are addressed more time to study their effect,

which furnishes a better opportunity to frame protective answers which conceal or evade. In the next place, as a means of forcing a specific, detailed and thorough disclosure from a reluctant party, there is a tendency for the interrogatories to grow in number, complexity and variety of form so as to call for as many aspects of the proof as possible, with the result that they often become difficult to administer. x x x.

In view of these limitations upon the effectiveness of written interrogatories, it is evident that they are not well adapted for the purpose of a general examination. It is only when the facts sought are few, formal and isolated, that this method can be satisfactorily employed. So long as the discovery is restricted to the case of the examiner, and he is not permitted to inquire into the case of his adversary, the facts sought by discovery will usually be few, formal and isolated, and written interrogatories will perhaps serve reasonably well. For a small task, a feeble instrument may suffice. But if discovery is to involve a thorough inquiry into the vital and highly controversial phases of the case, resort must be had to an oral examination. x x x.

x x x Where the facts to be elicited are relatively few and important, whether ultimate facts or evidentiary facts, the legal machinery of interrogatories is a very useful, expeditious and inexpensive method; but where they are very numerous, x x x they tend to become unduly burdensome, oppressive and vexatious to the adverse party and difficult for the court to administer. x x x. Furthermore the procedure tends to be unnecessarily wasteful of judicial time. The judicial ruling upon the interrogatories themselves is not necessarily conclusive or even important in most cases as determinative of the issues in the case. The purpose of the interrogating party is to develop information or force admission; but if the answers are not satisfactory or useful, the time spent in considering them and the objections thereto is generally wasted, because the answers do not become evidence in the case unless voluntarily introduced by the interrogator as admissions against interest on the part of the party interrogated.

x x x Where a more comprehensive examination of the adverse party is desired it should ordinarily be done by taking his deposition.[23]

3. The obvious advantage of interrogatories over a deposition is that they are much less expensive. There is no significant expense for the party sending the interrogatories except for the time spent in preparing the questions. In addition, interrogatories are a much simpler device. There are none of the details that must be taken care of in arranging for a deposition, such as obtaining a court reporter and fixing the time and place for the examination.

On the other hand, depositions are preferable if a searching interrogation of the other party is desired. At a deposition, the examining party has great flexibility and can frame his questions on the basis of answers to previous questions. Moreover, the party being examined does not have the opportunity to study the questions in advance and to consult with his attorney before answering, as he does if interrogatories are used. Attempts at evasion, which might be met by a persistent oral examination, cannot be easily dealt with by interrogatories. The flexibility and the potency of oral depositions is in large part lacking in written interrogatories. It is for these reasons that depositions are x x x by far the most widely used of the discovery devices.

x x x

Furthermore, x x x written interrogatories are most valuable as a device to compel admissions and the disclosure of major factual matters not concerned with details; the deposition is the best device suited to compel disclosure of detailed information."[24]

2. The availability of the proposed deponent to testify in court does not constitute "good cause" to justify the court's order that his deposition shall not be taken. That the witness is unable to attend or testify is one of the grounds when the deposition of a witness may be used in court during the trial.[25] But the same reason cannot be successfully invoked to prohibit the taking of his deposition.

The right to take statements and the right to use them in court have been kept entirely distinct. The utmost

freedom is allowed in taking depositions; restrictions are imposed upon their use. As a result, there is accorded the widest possible opportunity for knowledge by both parties of all the facts before the trial. Such of this testimony as may be appropriate for use as a substitute for viva voce examination may be introduced at the trial; the remainder of the testimony, having served its purpose in revealing the facts to the parties before trial drops out of the judicial picture.[26]

Regardless of the development of devices for pre-trial fact investigation, our legal system is now thoroughly committed to the notion that on the trial itself the adducing of facts by viva voce testimony of witnesses -- whose demeanor and manner are subject to the observation of the judge -- is superior to the use of written statements of the same witnesses. Preference for oral testimony has dictated most of the limitations on the use of depositions as evidence. And since their use as evidence was originally conceived as the sole function of depositions proper, the limitations on their taking dovetailed with the limitations on their use. But under the concept adopted by the new Rules, the deposition serves the double function of a method of discovery -- with use on trial not necessarily contemplated -- and a method of presenting testimony. Accordingly, no limitations other than relevancy and privilege have been placed on the taking of depositions, while the use at the trial is subject to circumscriptions looking toward the use of oral testimony wherever practicable.[27]

3. We are also in conformity with petitioner's submission that the mere fact that the court could not thereby observe the behavior of the deponent does not justify the denial of the right to take deposition. As we have already explained:

The main reason given in support of the contested order is that, if the deposition were taken, the court could not observe the behavior of the deponents. The insufficiency of this circumstance to justify the interdiction of the taking of a deposition becomes apparent when we consider that, otherwise, no deposition could ever be taken, said objection or handicap being common to all depositions alike. In other words, the order of respondent Judge cannot be sustained without nullifying the right to take depositions, and therefore, without, in effect repealing section 1 of Rule 18 (now Rule 24) of the Rules of Court, which, clearly, was not intended by the framers of section 16 of the same rule.[28]

4. Finally, in the absence of proof, the allegation that petitioner merely intended to annoy, harass or oppress the proposed deponent cannot ably support the setting aside of a notice to take deposition.

Orders to protect the party or witness from annoyance, embarrassment or oppression may be issued if the following requirements are complied with: (a) that there is a motion made by any party or by the person to be examined; (b) that the motion has been seasonably filed; (c) that there is good cause shown; and (d) that notice of such motion has been served to the other party.[29]

Once a party has requested discovery, the burden is on the party objecting to show that the discovery requested is not relevant to the issues,[30] and to establish the existence of any claimed privilege.[31] These, private respondent has failed to do. Consequently, its objection to the taking of the deposition cannot be sustained.

Furthermore, the fact that the deposition is to be taken in San Pablo City, whereas the proposed deponent lives in Manila, is not sufficient to establish private respondent's theory that the requested deposition was intended to annoy and harass the proposed deponent.

Inconvenience to the party whose deposition is to be taken is not a valid objection to the taking of his deposition.[32] No doubt, private respondent and its representative who is to be examined will be inconvenienced -- as are all parties when required to submit to examination -- but this is no ground for denial of the deposition-discovery process.[33] The mere fact that an officer of private respondent would be required to attend the examination and thereby absent himself from some of his usual business affairs during the taking of the

deposition is utterly insufficient to justify the court in ruling that he is being annoyed, embarrassed, or oppressed, within the meaning of this language. Something far beyond this is required in this connection to grant a party relief. At any rate, petitioner has signified its willingness to select a suitable office in Manila for the taking of the deposition in order to accommodate the proposed deponent.[34]

On the bases of the foregoing disquisitions, we find and so hold that the trial court committed a grave abuse of discretion in issuing an order that the deposition shall not be taken in this case, and that respondent court erred in affirming the same.

WHEREFORE, the petition is GRANTED. The questioned decision of respondent Court of Appeals is hereby REVERSED and SET ASIDE, and judgment is hereby rendered ORDERING the court a quo to allow herein petitioner to take the deposition upon oral examination of Juanito S. Teope in and for purposes of Civil Case No. SP-3469 pending before it.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Puno, JJ., concur.

Nocon, J., on leave.

[1] CA-G.R. SP No. 27952; penned by Regina G. Ordoñez-Benitez, J., with Gloria C. Paras and Eduardo G. Montenegro, JJ., concurring; Annex Y, Petition; Rollo, 34.

[2] Annex A, Petition; Rollo, 45.

[3] Annex B, id.; ibid., 46.

[4] Annex D, id.; ibid., 54.

[5] Republic vs. Sandiganbayan, et al., G.R. No. 90478, November 21, 1991, 204 SCRA 212.

[6] 4 Moore's Federal Practice, 2nd ed., Sec. 26. 02(1).

[7] Ex Parte Dorsey Trailers, Inc., 397 So. 2d 98.

[8] Supra, Fn 5.

[9] 4 Moore's Federal Practice, 2nd ed., Sec. 26. 02(2).

[10] Lopez, et al. vs. Maceren, et al., 95 Phil. 753 (1954).

[11] 14 Am Jur 2d, Certiorari, Sec. 13.

[12] 4 Moore's Federal Practice, 2nd ed., Sec. 26. 79(2).

[13] Op. cit., Sec. 26.83(3)

[14] 14 Am Jur 2d, Certiorari, Sec. 20.

[15] See Pines vs. District Court in and for Woodbury County, et al., 10 N.W. 2d 574.

[16] Kiblen vs. Retail Credit Co., 76 F.R.D. 402.

[17] 4 Moore's Federal Practice, 2nd ed., 1 Sec. 26. 68.

[18] Op. cit., Sec. 26.69.

- [19] Richlin, et al. vs. Sigma Design West, Ltd., et al., 88 F.R.D. 634.
- [20] 4 Moore's Federal Practice, 2nd ed., sec. 26.5.
- [21] Op. cit., id.
- [22] Howard vs. States Marine Corp., 4 Fed. Rules Serv. 526.
- [23] Coca-Cola Co. vs. Dixi-Cola Laboratories, Inc., 30 F. Supp. 275.
- [24] Richlin, et al. vs. Sigma Design West, Ltd. et al., supra, Fn. 19.
- [25] Sec. 4(e), Rule 24, Rules of Court.
- [26] Francisco, Rules of Court, Vol. II, 1966 ed., 120.
- [27] Op. cit., id.
- [28] Lopez, et al. vs. Maceren et al., supra, Fn 10.
- [29] Francisco, Rules of Court, Vol. II, 1966 ed., 167-168.
- [30] Zucker vs. Sable, et al., 72 F.R.D. 1.
- [31] Miller vs. Doctor's General Hospital, 76 F.R.D. 136.
- [32] Goldberg vs, Raleigh, 28 F. Supp. 975.
- [33] Morrison Export Co., Ltd. vs. Goldstone, et al., 12 F.R.D. 258.
- [34] Reply to Private Respondent's Comment, 5; Rollo, 97.

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