

DASMARIÑAS GARMENTS, INC., PETITIONER, VS. HON. RUBEN T. REYES, JUDGE, REGIONAL TRIAL COURT, MANILA, BRANCH 50, AND AMERICAN PRESIDENT LINES, LTD., RESPONDENTS.

G.R. No. 108229. August 24, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Sometime in September, 1987, in the Regional Trial Court of Manila, the American President Lines, Ltd. sued Dasmariñas Garments, Inc. to recover the sum of US \$53,228.45 as well as an amount equivalent to twenty-five percent (25%) thereof as attorney's fees and litigation expenses.

In its answer dated December 1, 1987, Dasmariñas Garments, Inc. (hereafter, simply Dasmariñas) specifically denied any liability to the plaintiff (hereafter simply APL), and set up compulsory counterclaims against it.

The case was in due course scheduled for trial on April 27, 1988. On that date APL presented its first witness whose testimony was completed on November 12, 1988. The case was reset to May 3, 1989 for reception of the testimony of two (2) more witnesses in APL's behalf.

At the hearing of May 3, 1989, instead of presenting its witnesses, APL filed a motion praying that it intended to take the depositions of H. Lee and Yeong Fang Yeh in Taipei, Taiwan, and prayed that for this purpose, a "commission or letters rogatory be issued addressed to the consul, vice-consul or consular agent of the Republic of the Philippines in Taipei **." Five (5) days later APL filed an amended motion stating that since the Philippine Government has no consulate office in Taiwan in view of its "one-China policy," there being in lieu thereof an office set up by the President "presently occupied by Director Joaquin Races which is the Asian Exchange Center, Inc.," it was necessary -- and it therefore prayed -- "that commission or letters rogatory be issued addressed to Director Joaquin Rocas, Executive Director, Asian Executive Exchange Center, Inc., Room 901, 112 Chunghsiao, E. Road, Section 1, Taipei, Republic of China, to hear and take the oral deposition of the aforementioned persons **."

The motion was opposed by Dasmariñas. It contended that (a) the motion was "fatally defective in that it does not seek ** that a foreign court examine a person within its jurisdiction;" (b) issuance of letters rogatory was unnecessary because the witnesses "can be examined before the Philippine Court;" and (c) the Rules of Court "expressly require that the testimony of a witness must be taken orally in open court and not by deposition."

Extensive argument on the matter thereafter followed, through various pleadings filed by the parties, in the course of which APL submitted to the Trial Court (a) the letter received by its counsel from Director Joaquin R. Rocas of the Asian Exchange Center, Inc., dated November 20, 1989, advising that "this Office can only take deposition upon previous authority from the Department of Foreign Affairs," this being "in consonance with the Supreme Court Administrative Order requiring courts or judicial bodies to course their requests through the Department of Foreign Affairs;" and (b) a letter sent by "fax" to the same counsel by a law firm in Taipei, Lin & Associates Maritime Law Office, transmitting information inter alia of the mode by which, under the "ROC Civil Procedure Code," "a copy or an abridged copy" of documents on file with a Taiwan Court may be obtained.

By Order dated March 15, 1991, the Trial Court resolved the incident in favor of APL, disposing as follows:

"ACCORDINGLY, the motion to take the testimonies of plaintiffs Taiwanese witnesses, Kenneth H. Lee and Yeong Fah Yeh, by deposition (upon written interrogatories) is hereby GRANTED. The Asian Exchange Center, Inc. thru Director Joaquin R. Roces is hereby COMMISSIONED to take down the deposition. Compliance with the Rules on the taking of testimony by deposition upon written interrogatories under Sections 25-29 of Rule 24, Rules of Court, is enjoined.

Let this Order be coursed through the Department of Foreign Affairs, Manila, pursuant to Supreme Court Administrative Circular No. 4 dated April 6, 1987."

The Court opined that "the Asian Exchange Center, Inc, being the authorized Philippine representative in Taiwan, may take the testimonies of plaintiffs witnesses residing there by deposition, but only upon written interrogatories so as to give defendant the opportunity to cross-examine the witnesses by serving cross-examination."

Dasmariñas sought reconsideration by motion filed June 25, 1991 on the following grounds: (1) authority of the Asian Exchange Center, Inc. (AECI) to take depositions has not been established it not being one of those so authorized by the Rules of Court to take depositions in a foreign state; (2) AECI's articles of incorporation show that it is not vested with any such authority; (3) to permit deposition-taking by commission without the authority of the foreign state in which deposition is taken constitutes infringement of judicial sovereignty; and (4) depositions by written interrogatories have inherent limitations and are not suitable to matters dependent on the credibility of witnesses; oral testimony in open court remains the "most satisfactory method of investigation of facts" and "affords the greatest protection to the rights and liberties of citizens."

By Order dated July 5, 1991, the motion for reconsideration was denied because "filed out of time" and being a mere rehash of arguments already passed upon. In the same Order, APL was directed "to take the necessary steps to implement the order authorizing the ** (deposition-taking) of its witnesses not later than the end of this month, otherwise the Court will consider inaction or lack of interest as waiver to adduce additional evidence by deposition."

Dasmariñas instituted a special civil action of certiorari in the Court of Appeals to nullify the orders of the Trial Court just described. Said Appellate Court restrained enforcement of the orders of March 15, 1991 and July 5, 1991 "in order to maintain the status quo and to prevent the infliction of irreparable damage and injury upon the petitioner."

After due proceedings, the Court of Appeals (Third Division) rendered judgment on September 23, 1992 denying Dasmariñas' petition for certiorari and upholding the challenged orders of the Trial Court. Once again, Dasmariñas sought reconsideration of an adverse disposition, and once again, was rebuffed. Its motion for reconsideration was denied in a Resolution of the Court of Appeals dated December 11, 1992.

Once again Dasmariñas has availed of the remedy of appeal. It has come to this Court and prays for the reversal of the Appellate Court's Decision of September 23, 1992 and Resolution dated December 11, 1992. Once again, it will fail.

Dasmariñas ascribes to the Court of Appeals the following errors, to wit:

1) "in holding that a party could, during the trial of the case, present its evidence by taking the deposition of its witnesses in a foreign jurisdiction before a private entity not authorized by law to take depositions in lieu of their oral examination in open Court considering that:

(a) the taking of deposition is a mode of pretrial discovery to be availed of before the action comes to trial;

(b) no urgent or compelling reason has been shown to justify the departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge;"

2) "in disregarding the inherently unfair situation in allowing private respondent, a foreign entity suing in the Philippines, to present its evidence by mere deposition of its witnesses away from the 'penetrating scrutiny' of the trial Judge while petitioner is obligated to bring and present its witnesses in open court subject to the prying eyes and probing questions of the Judge;" and

3) "in sanctioning the deposition taking of ** (APL's) witnesses in Taipei, Taiwan, a foreign jurisdiction not recognized by the Philippines in view of its 'one-China policy,' before the AECL, a private entity not authorized by law to take depositions."

Depositions are chiefly a mode of discovery. They are intended as a means to compel disclosure of facts resting in the knowledge of a party or other person which are relevant in some suit or proceeding in court. Depositions, and the other modes of discovery (interrogatories to parties; requests for admission by adverse party; production or inspection of documents or things; physical and mental examination of persons) are meant to enable a party to learn all the material and relevant facts, not only known to him and his witnesses but also those known to the adverse party and the latter's own witnesses. In fine, the object of discovery is to make it possible for all the parties to a case to learn all the material and relevant facts, from whoever may have knowledge thereof, to the end that their pleadings or motions may not suffer from inadequacy of factual foundation, and all the relevant facts may be clearly and completely laid before the Court, without omission or suppression.

Depositions are principally made available by law to the parties as a means of informing themselves of all the relevant facts; they are not therefore generally meant to be a substitute for the actual testimony in open court of a party or witness. The deponent must as a rule be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules of evidence. Section 1, Rule 132 of the Rules of Court provides:

"SECTION 1. Examination to be done in open court. -- The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally."

Indeed, any deposition offered to prove the facts therein set out during a trial or hearing, in lieu of the actual oral testimony of the deponent in open court, may be opposed and excluded on the ground that it is hearsay: the party against whom it is offered has no opportunity to cross-examine the deponent at the time that his testimony is offered. It matters not that that opportunity for cross-examination was afforded during the taking of the deposition; for normally, the opportunity for cross-examination must be accorded a party at the time that the testimonial evidence is actually presented against him during the trial or hearing.

However, depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes. These exceptional situations are governed by Section 4, Rule 24 of the Rules of Court.

"SEC 4. Use of depositions. -- At the trial or upon the hearing of a motion of an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness:

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or

managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness is out of the province and at a greater distance than fifty (50) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

(d) If only part of a deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts."

The principle conceding admissibility to a deposition when the deponent is dead, out of the Philippines, or otherwise unable to come to court to testify, is consistent with another rule of evidence, found in Section 47, Rule 132 of the Rules of Court.

"SEC. 47. Testimony or deposition at a former proceeding. -- The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him."

It is apparent then that the deposition of any person may be taken wherever he may be, in the Philippines or abroad. If the party or witness is in the Philippines, his deposition "shall be taken before any judge, municipal or notary public" (Sec. 10, Rule 24, Rules of Court). If in a foreign state or country, the deposition "shall be taken: (a) on notice before a secretary or embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines, or (b) before such person or officer as may be appointed by commission or under letters rogatory" (Sec. 11, Rule 24).

Leave of court is not necessary where the deposition is to be taken before "a secretary or embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines," and the defendant's answer has already been served (Sec. 1, Rule 24). After answer, whether the deposition-taking is to be accomplished within the Philippines or outside, the law does not authorize or contemplate any intervention by the court in the process, all that is required being that "reasonable notice" be given "in writing to every other party to the action ** (stating) the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. ** " (Sec. 15, Rule 24). The court intervenes in the process only if a party moves (1) to "enlarge or shorten the time" stated in the notice (id.), or (2) "upon notice and for good cause shown," to prevent the deposition-taking, or impose conditions therefor, e.g., that "certain matters shall not be inquired into" or that the taking be "held with no one present except the parties to the action and their officers or counsel," etc. (Sec. 16, Rule 24), or (3) to terminate the process on motion and upon a showing that "it is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party" (Sec 18, Rule 24).

Where the deposition is to be taken in a foreign country where the Philippines has no "secretary or embassy or legation, consul general, consul, vice-consul, or consular agent," then obviously it may be taken only "before such person or officer as may be appointed by commission or under letters rogatory. Section 12, Rule 24 provides as follows:

"SEC. 12. Commission or letters rogatory. -- A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed 'To the Appropriate Judicial Authority in (here name the country).'"

A commission may be defined as "(a)n instrument issued by a court of justice, or other competent tribunal, to authorize a person to take depositions, or do any other act by authority of such court or tribunal" (Feria, J., Civil Procedure, 1969 ed., p. 415, citing Cyclopedic Law Dictionary, p. 200). Letters rogatory, on the other hand, may be defined as "(a)n instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause pending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed" (Feria, J., op. cit., citing Cyclopedic Law Dictionary, p. 653). Section 12, Rule 24 just quoted states that a commission is addressed to "officers ** designated ** either by name or descriptive title," while letters rogatory are addressed to some "appropriate judicial authority in the foreign state." Noteworthy in this connection is the indication in the Rules that letters rogatory may be applied for and issued only after a commission has been "returned unexecuted," as is apparent from Form 21 of the "Judicial Standard Forms" appended to the Rules of Court, which requires the inclusion in a "petition for letters rogatory" of the following paragraph, viz.:

"*****

"3. A commission issued by this Court on the _____ day of _____, 19____, to take the testimony of (here name the witness or witnesses) in (here name the foreign country in which the testimony is to be taken), before _____ (name of officer), was returned unexecuted by _____ on the ground that _____ all of which more fully appears from the certificate of said _____ to said commission and made a part hereof by attaching it hereto (or state other facts to show commission is inadequate or cannot be execute)" (italics supplied).

In the case at bar, the Regional Trial Court has issued a commission to the "Asian Exchange Center, Inc. thru Director Joaquin R. Roces" "to take the testimonies of ** Kenneth H. Lee and Yeong Fah Yeh, by deposition (upon written interrogatories) **." It appears that said Center may, "upon request and authority of the Ministry (now Department) of Foreign Affairs, Republic of the Philippines" issue a "Certificate of Authentication" attesting to the identity and authority of Notaries Public and other public officers of the Republic of China, Taiwan (eg., the Section Chief, Department of Consular Affairs of the latter's Ministry of Foreign Affairs) (Annex B of Annex N of the petition for review on certiorari) -- a prima facie showing not rebutted by petitioner.

It further appears that the commission is to be coursed through the Department of Foreign Affairs conformably with Circular No. 4 issued by Chief Justice Claudio Teehankee on April 6, 1987, pursuant to the suggestion of the Department of Foreign Affairs -- directing "ALL JUDGES OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS" "to course all requests for the taking of deposition of witnesses residing abroad through the Department of Foreign Affairs" to enable it and "the Philippine Foreign Service establishments to act on the matter in a judicious and expeditious manner;" this, "in the interest of justice," and to avoid delay in the deposition-taking.

Petitioner would however prevent the carrying out of the commission on various grounds.

The first is that the deposition-taking will take place in "a foreign jurisdiction not recognized by the Philippines in view of its 'one-China policy.'" This is inconsequential. What matters is that the deposition is taken before a Philippine official acting by authority of the Philippine Department of Foreign Affairs and in virtue of a commission duly issued by the Philippine Court in which the action is pending, and in accordance, moreover, with

the provisions of the Philippine Rules of Court pursuant to which opportunity for cross-examination of the deponent will be fully accorded to the adverse party.

Dasmariñas also contends that the "taking of deposition is a mode of pretrial discovery to be availed of before the action comes to trial." Not so. Depositions may be taken at any time after the institution of any action, whenever necessary or convenient. There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition against the taking of depositions after pre-trial. Indeed, the law authorizes the taking of depositions of witnesses before or after an appeal is taken from the judgment of a Regional Trial Court "to perpetuate their testimony for use in the event of further proceedings in the said court" (Rule 134, Rules of Court), and even during the process of execution of a final and executory judgment (*East Asiatic Co. v. C.I.R.*, 40 SCRA 521, 544).

Dasmariñas further claims that the taking of deposition under the circumstances is a "departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge;" that it is "inherently unfair" to allow APL, "a foreign entity suing in the Philippines, to present its evidence by mere deposition of its witnesses away from the 'penetrating scrutiny' of the trial Judge while petitioner is obligated to bring and present its witnesses in open court subject to the prying eyes and probing questions of the Judge."

Of course the deposition-taking in the case at bar is a "departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge;" but the procedure is not on that account rendered illegal nor is the deposition thereby taken, inadmissible. It precisely falls within one of the exceptions where the law permits such a situation, i.e., the use of a deposition in lieu of the actual appearance and testimony of the deponent in open court and without being "subject to the prying eyes and probing questions of the Judge." This is allowed provided the deposition is taken in accordance with the applicable provisions of the Rules of Court and the existence of any of the exceptions for its admissibility -- e.g., "that the witness is out of the province and at a greater distance than fifty (50) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or ** that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment, etc." (Sec. 4, Rule 24, *supra*, italics supplied) -- is first satisfactorily established (See *Lopez v. Maceren*, 95 Phil. 754).

The Regional Trial Court saw fit to permit the taking of the depositions of the witnesses in question only by written interrogatories, removing the proponent's option to take them by oral examination, i.e., by going to Taipei and actually questioning the witnesses verbally with the questions and answers and observations of the parties being recorded stenographically. The imposition of such a limitation, and the determination of the cause thereof, are to be sure within the Court's discretion. The ostensible reason given by the Trial Court for the condition -- that the depositions be taken "only upon written interrogatories" -- is "so as to give defendant (Dasmariñas) the opportunity to cross-examine the witnesses by serving cross-interrogatories." The statement implies that opportunity to cross-examine will not be accorded the defendant if the depositions were to be taken upon oral examination, which, of course, is not true. For even if the depositions were to be taken on oral examination in Taipei, the adverse party is still accorded full right to cross-examine the deponents by the law, either by proceeding to Taipei and there conducting the cross-examination orally, or opting to conduct said cross-examination merely by serving cross-interrogatories.

One other word. In its Order of July 5, 1991 -- denying Dasmariñas' motion for reconsideration of the earlier order dated March 15, 1991 (allowing the taking of deposition by commission) -- one of the reasons adduced by the Regional Trial Court for the denial was that the motion had been "filed out of time." Evidently, the Trial Court reached this conclusion because, as the record discloses, the motion for reconsideration was filed by Dasmariñas

on June 25, 1991, twenty-five (25) days after notice (on May 20, 1991) of the Order of March 15, 1991 sought to be reconsidered. Denial of the motion on such a ground is incorrect. In the first place, it appears that there was a motion for extension of time to file a motion for reconsideration, ending on June 25, 1991 which was however not acted on or granted by the Court. More importantly, the order sought to be reconsidered is an interlocutory order, in respect of which there is no provision of law fixing the time within which reconsideration thereof should be sought.

PREMISES CONSIDERED, the Court Resolved to DISMISS the petition for review on certiorari. Costs against petitioner.

SO ORDERED.

Padilla, Regalado, Nocon, and Puno, JJ., concur.

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