

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN
(SECOND DIVISION) AND LUCIO TAN, ESTATE OF FERDINAND E.
MARCOS (REPRESENTED BY IMELDA R. MARCOS, IMEE M.
MANOTOC, IREN...**

G.R. No. 112710. May 30, 2001

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-112710/>

PUNO, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court to set aside the Resolutions dated August 23, 1993 and October 22, 1993 of the Sandiganbayan in SB Civil Case No. 0005 denying petitioner's "Motion for Leave To Take the Deposition of Rolando C. Gapud Upon Oral Examination In the Crown Colony of Hongkong."

On July 17, 1987, petitioner Republic of the Philippines, represented by the Philippine Commission for Good Government, filed before the Sandiganbayan a complaint for "Reversion, Reconveyance, Restitution, Accounting and Damages." The complaint, docketed as Civil Case No. 0005, was filed against 26 individuals and was entitled "Republic of the Philippines, Plaintiff v. Lucio C. Tan, Ferdinand E. Marcos, Imelda R. Marcos, Carmen Khao Tan, Florencio T. Santos, Natividad P. Santos, Domingo Chua, Tan Hui Nee, Mariano Tan Eng Lian, Estate of Benito Tan Kee Hiong (represented by Tarciana C. Tan), Florencio N. Santos, Jr., Harry C. Tan, Tan Eng Chuan, Chung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jaime Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Don Ferry, Willy Co, Federico Moreno, Defendants." [1] The complaint alleged that defendant Ferdinand E. Marcos, former President of the Philippines, and his wife Imelda, in violation of the Constitution and in fraud of the Filipino people, embarked on a systematic plan accumulating wealth during their term as President and First Lady of the Republic; that part of this plan was an agreement with herein private respondent Lucio C. Tan whereby Mr. Marcos would own sixty per cent (60%) of Shareholdings, Inc., a holding company which beneficially held and controlled substantial shares in corporations owned by Mr. Tan such as Fortune Tobacco, Asia Brewery, Allied Banking Corporation and Foremost Farms; that in addition to this agreement, Mr. Tan, from 1980 to 1986, paid Mr. Marcos sums of money as bribes and commissions in consideration of the government's continued support for Mr. Tan's diversified business ventures; that to prevent disclosure of these transactions, Mr. Marcos and Mr. Tan used the other defendants named in the complaint as their incorporators, directors, board members and/or stockholders of corporations held and/or controlled by the two; that Mr. Tan, without sufficient collateral and consideration but through the assistance of then Central Bank Governor Gregorio Licaros, acquired control of the General Bank and Trust Company which eventually became Allied Banking Corporation; that the Marcos spouses and Mr. Tan caused losses in millions of pesos to the Development Bank of the Philippines (DBP) by unlawfully selling DBP's controlling interest in Century Park Sheraton Hotel Manila to a company grossly undercapitalized but beneficially held and controlled by Mr. Tan, and that this transaction was facilitated by defendant Don Ferry, then Vice-Chairman of DBP, and defendant Harry Tan. Petitioner prayed for reconveyance of all funds and property or payment of the value of such funds and property, for accounting and damages. [2]

In December 1987, petitioner filed a "Manifestation and Motion" praying for leave "to expand or otherwise make more specific certain allegations in the Complaint." This was granted by the Sandiganbayan in an order dated December 11, 1987. Petitioner filed an Expanded Complaint on January 25, 1988.

In June 1988, herein respondent Don M. Ferry, one of the defendants therein, filed his answer. In March 1990, herein respondent Lucio Tan filed his answer. A separate answer was filed by the twenty-one (21) "defendants other than Ferdinand E. Marcos, Imelda Marcos, Don M. Ferry, Federico Moreno and Lucio Tan."

On August 19, 1991, petitioner filed a "Motion for Leave to Amend and for Admission of Second Amended Complaint" and attached thereto a "Second Amended Complaint." Petitioner sought to substitute defendant Ferdinand Marcos with his estate, President Marcos having died *pendente lite*, and include as additional defendants three (3) individuals who allegedly participated in the Marcoses' accumulation of ill-gotten wealth, namely, Panfilo O. Domingo, then President of the Philippine National Bank which, together with the Central Bank, assisted Mr. Tan's acquisition of the General Bank and Trust Company; the Estate of Central Bank Governor Licaros, Governor Licaros having likewise died *pendente lite*; and Cesar Zalamea, then Chairman of the Board of the Development Bank of the Philippines, who recommended the approval of and facilitated the acquisition by Mr. Tan of the DBP shares in Century Park Sheraton Hotel.[3] Also named as additional defendants were forty-two (42) corporations believed to be beneficially owned or controlled by the Lucio Tan group of business associates of the former President.

The Motion was duly opposed by herein respondent Tan and "defendants other than Ferdinand E. Marcos, Imelda Marcos, Don Ferry and Federico Moreno."

On April 2, 1992, a Resolution was issued by the Sandiganbayan granting the "Motion for Leave to Amend and for Admission of the Second Amended Complaint" and admitted the "Second Amended Complaint." The court ordered the issuance of summonses to the newly-impleaded defendants except the Estate of Ferdinand E. Marcos which merely substituted the deceased Ferdinand E. Marcos, an original defendant.[4]

On May 25, 1992, the 42 corporate defendants filed a "Motion for a More Definite Statement or Bill of Particulars." This motion was adopted by the rest of the additional defendants in a motion dated June 18, 1992.

Meanwhile, on May 8, 1992, respondent Panfilo Domingo received summons from respondent court together with a copy of the Second Amended Complaint. On June 2, 1992, respondent Domingo filed an "Omnibus Motion" praying for a copy of Annex "A" of the complaint, i.e., a list of corporations allegedly held by Mr. Tan; the production of actionable documents, and submission of a Bill of Particulars.

In June 1993, petitioner filed a "Motion for Leave To Take the Deposition of Rolando C. Gapud Upon Oral Examination in the Crown Colony of Hongkong." Petitioner alleged that Mr. Rolando C. Gapud, former financial adviser of President Marcos and his wife, was willing to testify on matters relevant to the subject of the case; that Mr. Gapud executed three (3) sworn statements in Hongkong in 1987 setting forth the various business activities of the former President, the manner in which these businesses were conducted and managed, and identifying respondent Lucio Tan and thirty (30) other principal business associates of the former President; that these affidavits were used by petitioner in filing civil and criminal cases against the defendants; that Mr. Gapud's testimony is indispensable to establish the intricate unlawful business activities of the Marcoses and their principal business associates or cronies, including Mr. Tan; that in view of the nature of his testimony and the personal risks Mr. Gapud was facing in assisting the government in the recovery of ill-gotten wealth, his testimony would be given only by deposition upon oral examination. Petitioner prayed that the court allow the taking of the testimony by deposition upon oral examination of Mr. Gapud before the Philippine Consulate in Hongkong, or in any other Philippine Foreign Office, and on such dates and time as may be agreed upon by the

parties.[5]

The individual defendants (except for the Estate of Ferdinand E. Marcos, Imelda R. Marcos, Don Ferry, Federico Moreno, Panfilo O. Domingo, Estate/Heirs of Gregorio Licaros, and Cesar Zalamea) filed their Opposition, to which petitioner replied.

In a Resolution dated August 23, 1993, respondent Sandiganbayan denied petitioner's "Motion for Leave to Take Deposition of Rolando C. Gapud Upon Oral Examination in the Crown Colony of Hongkong." Respondent court held that the taking of deposition is premature because not all defendants have been summoned or have filed their answers to the complaint, and no special circumstances existed that warranted the taking of the deposition before service of answers. Reconsideration of the resolution was likewise denied on October 22, 1993. Hence this petition.

Petitioner claims that:

"A. Respondent Sandiganbayan seriously erred in denying the petitioner's Motion for Leave to Take the Deposition of Rolando C. Gapud on the ground that summons have not yet been served upon all the respondents and all the respondents have not yet filed their answer to the complaint.

B. Respondent Sandiganbayan erred in declaring that there is no showing of any special or unusual circumstances to warrant the necessity of taking the deposition of Rolando C. Gapud.

C. Respondent Sandiganbayan erred in stating that the petitioner (plaintiff-movant) did not allege that Rolando C. Gapud will be unavailable as witness to testify during the trial."[6]

Respondent Lucio Tan alleges that (1) the subject motion is premature because not all defendants in SB Civil Case No. 0005 have been served with summons, the issues in the case have not been joined, the allegations of the Second Amended Complaint are insufficient; (2) the taking of the proposed deposition at this time would be highly prejudicial to the defendants; and (3) petitioner has not shown "special circumstances" or "unusual circumstances" demonstrating a necessity to take the deposition in question.[7]

Respondent Panfilo Domingo, joined by respondent Cesar Zalamea,[8] alleges that: (1) the taking of the deposition at this time is premature; (2) respondent Domingo was not given an opportunity to oppose petitioner's Motion for Leave to Take Deposition; (3) petitioner failed to show the existence of special circumstances warranting the taking of deposition at this time; (4) respondent Sandiganbayan did not commit grave abuse of discretion when it denied the Motion for Leave to Take Deposition.[9]

First of all, a "deposition," in its technical and appropriate sense, is the written testimony of a witness given in the course of a judicial proceeding, in advance of the trial or hearing upon oral examination or in response to written interrogatories and where an opportunity is given for cross-examination.[10] A deposition may be taken at any time after the institution of any action, whenever necessary or convenient.[11] Pending action, it is governed by Rule 24, Section 1 of the Rules of Court which provides:

"Section 1. Depositions pending action, when may be taken.--By leave of court after jurisdiction has been obtained over any defendant or over 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 by leave of court on such terms as the court prescribes."[12]

Depositions pending action may be conducted by oral examination or written interrogatories, and may be taken at

the instance of any party, with or without leave of court. Leave of court is not necessary to take a deposition after an answer to the complaint has been served. It is only when an answer has not yet been filed (but jurisdiction has been obtained over any defendant or over property subject of the action) that prior leave of court is required. The reason for this is that before filing of the answer, the issues are not yet joined and the disputed facts are not clear.[13]

Petitioner does not dispute the fact that not all defendants have filed their respective answers to the complaint. Petitioner claims, however, that the taking of Mr. Gapud's deposition does not require prior leave of court because Section 1, Rule 24 states that a deposition may be taken after jurisdiction has been obtained over ANY defendant. The provision does not state that jurisdiction should first be acquired over ALL the defendants. And since summons has been served on most of the defendants and some, particularly principal respondent Lucio Tan, have already filed their answers to the complaint, jurisdiction has already been acquired by respondent Sandiganbayan, and there is no need for leave to take Mr. Gapud's deposition.

The case at bar involves two (2) sets of defendants--the first set named in the original complaint and the second set in the Second Amended Complaint. The first names individual defendants while the second set includes both individual and corporate defendants. Defendants Lucio Tan, Don Ferry and the 21 other individual defendants (except Ferdinand E. Marcos, Imelda Marcos and Federico Moreno) filed answers to the original complaint. To the Second Amended Complaint, no answer has been filed by the additional defendants, namely, the Estate of Gregorio Licaros, Panfilo Domingo, Cesar Zalamea and the 42 corporations. Respondent court ordered the issuance of summonses in the Resolution of April 2, 1992 admitting the Second Amended Complaint.[14] Respondent Panfilo Domingo received summons and a copy of the Second Amended Complaint on May 8, 1992.[15] Respondent Lucio Tan has stated, without dispute from petitioner, that only two (2) of the 29 individual defendants have filed their answers to the Second Amended Complaint. And not all of the 42 corporate defendants have been served with summons, this petitioner admits.[16] Those corporate defendants who received summons merely filed a "Motion for a More Definite Statement or Bill of Particulars," not an answer.

Petitioner argues that the 42 corporations are owned and controlled by Mr. Tan. Following the ruling in *Republic v. Sandiganbayan (First Division)*,[17] the corporations are the res, the objects in the action for the recovery of Mr. Tan's illegally acquired wealth, hence, there is no cause of action against them and no ground to implead them as defendants. Their inclusion in the Second Amended Complaint was unnecessary and superfluous.[18]

Assuming that these corporations are merely the res in SB Civil Case No. 0005, they were not the only defendants added in the Second Amended Complaint. Three (3) individual defendants, herein respondents Panfilo Domingo, Estate of Gregorio Licaros and Cesar Zalamea, were added as well. A careful reading of the Second Amended Complaint shows that the allegations against these three individual defendants, although involving principal respondent Lucio Tan and his companies, rest mainly on entirely different facts, were made on entirely different occasions and are separate and distinct from the other. They are also different from the acts committed by the 22 other individual defendants in the original complaint. The allegations against the additional defendants do not arise from their having acted as dummies or alter-egos of the principal respondents, but as government officials who facilitated Mr. Tan's acquisition of private corporations despite non-compliance with legal requirements. It appears that the allegations in the Second Amended Complaint against these three defendants are not clear for they have adopted the corporate defendants' "Motion for a More Definite Statement or Bill of Particulars," and respondent Domingo prayed for a bill of particulars in his Omnibus Motion. The additional defendants should, at the very least, be given the opportunity to respond to the allegations against them and clarify the disputed facts before discovery procedures may be resorted to.

Petitioner claims, however, that despite nonjoinder of issues, there exist special circumstances that warrant the

taking of Mr. Gapud's deposition.

Rule 24 entitled "Depositions and Discovery" was taken almost verbatim from Section V, Rule 26 (a) of the Rules of Civil Procedure for the District Courts of the United States which has the same heading.[19] Rule 26 (a) is likewise contained in the Federal Rules of Civil Procedure of the United States. Rule 26 (a) was however amended in 1948,[20] but prior to this amendment, the provision read:

"(a) When Depositions May be Taken. By leave of court after jurisdiction has been obtained over any defendant or over 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 for the purpose of discovery or for use as evidence in the action or for both purposes. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. 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." [21]

In Moore's Federal Practice, it is stated that:

"As originally promulgated, Rule 26 (a) provided (1) that depositions might be taken after jurisdiction had been obtained over any defendant or over property which was the subject of the action and before an answer was served, only upon leave of court; and (2) that after an answer had been served depositions might be taken without leave of court.

x x x.

The expression "an answer" in original Rule 26 (a) was used in its generic sense as signifying a responsive pleading to a pleading asserting a claim for relief. This follows of necessity from the principle upon which the rule was drafted, namely, that the parties should be required to wait until the issues raised by a claim of relief had been settled by the service of a responsive pleading to the claim of relief. Thus if the defendant served an answer which contained a counterclaim against the plaintiff, both parties had to wait until a reply containing an answer to the counterclaim had been served before they could proceed to take depositions as of right with respect to the counterclaim. x x x" [22]

Under the original Rule 26 (a) of the Federal Rules of Civil Procedure, any party desiring to take depositions before answer was served was required to obtain leave of court. While the Rule did not indicate in what situations the court should grant such leave, the applicable principles are found in jurisprudence.[23]

The general rule is that a plaintiff may not be permitted to take depositions before answer is served. Plaintiff must await joinder of issues because if the discovery is to deal with matters relevant to the case, it is difficult to know exactly what is relevant until some progress has been made toward developing the issues.[24] Ordinarily, the issues are made up before the need for discovery arises, hence, prior to the time of delineation of the issues, the matter is in the control of the court.[25]

There are instances, however, when a deposition is allowed to be taken before service of answer once jurisdiction has been acquired over the person or thing. Leave of court may be granted only in "exceptional" or "unusual" cases,[26] and the decision is entirely within the discretion of the court.[27] It should be granted only under "special circumstances" where conditions point to the necessity of presenting a strong case for allowance of the motion.[28] There must be some "necessity" or "good reason" for taking the testimony immediately[29] or that it would be prejudicial to the party seeking the order to be compelled to await joinder of issue.[30] If the witness is aged or infirm, or about to leave the court's jurisdiction, or is only temporarily in the jurisdiction, leave may be granted.[31] A general examination by deposition before answer however is premature and ordinarily not allowed,[32] neither is mere avoidance of delay a sufficient reason.[33]

In the case at bar, petitioner alleges that the taking of Mr. Gapud's deposition in lieu of his testimony is necessary because the allegations in the complaint are based mainly on his disclosures regarding the business activities of President Marcos and Lucio Tan; that although Mr. Gapud was granted immunity by President Aquino from criminal, civil and administrative suits, he has been out of the country since 1987 and has no intention of returning, fearing for his safety; that this fear arose from his damaging disclosures on the illicit activities of the cronies and business associates of former President Marcos which therefore renders him unable to testify at the trial.

Petitioner has not cited any fact other than Mr. Gapud's cooperation with the Philippine government in the recovery of ill-gotten wealth that would support the deponent's claim of fear for his safety. No proof, much less any allegation, has been presented to show that there exists a real threat to Mr. Gapud's life once he returns to the Philippines and that adequate security cannot be provided by petitioner for such a vital witness.

There is no question that the trial court has the power to direct, in its discretion, that a deposition shall not be taken, if there are valid reasons for so ruling.[34] Petitioner's reasons do not amount to an "exceptional" or "unusual" case for us to grant leave and reverse respondent court. Petitioner has not sufficiently shown the necessity for taking Mr. Gapud's deposition at this point in time before the other defendants, particularly the individual defendants, have served their answers. Petitioner has not alleged that Mr. Gapud is old, sick or infirm as to necessitate the taking of his deposition. Indeed, no urgency has been cited and no ground given that would make it prejudicial for petitioner to await joinder of issues.

Finally, the Court notes that petitioner waited all these years for a ruling on this case instead of working for the rest of the defendants to be summoned and their answers be filed. Petitioner can, as a matter of course, take Mr. Gapud's deposition after the individual defendants have at least filed their answers.

IN VIEW WHEREOF, the petition is DISMISSED, the Resolutions dated August 23, 1993 and October 22, 1993 of respondent court in SB Civil Case No. 0005 are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Kapunan, J., on leave.

[1] Complaint, Annex "C" to Petition, Rollo, p. 26.

[2] Complaint, Annex "C" to Petition, Rollo, pp. 26-49; see also Tan v. Sandiganbayan, 180 SCRA 34 [1989] — where the same complaint is quoted verbatim.

[3] Second Amended Complaint, Annex "H" to Petition, Rollo, pp. 104-144.

[4] Resolution of April 2, 1992, Annex "G" to Petition, Rollo, pp. 90-103.

[5] Motion for Leave to Take Deposition..., Annex "I" to Petition, Rollo, pp. 145-149.

[6] Petition, pp. 7-8, Rollo, pp. 7-8.

[7] Comment of Lucio Tan, pp. 3-4, Rollo, pp. 195-196.

[8] Rollo, pp. 225-226.

[9] Memorandum of Panfilo O. Domingo, p. 4, Rollo, p. 289.

- [10] V. Francisco, *The Revised Rules of Court in the Philippines*, vol. II, pp. 87-88 [1968] citing 16 Am Jur 699.
- [11] *Dasmariñas Garments, Inc. v. Reyes*, 225 SCRA 622, 634 [1993]; *East Asiatic Co. Ltd. v. Court of Industrial Relations*, 40 SCRA 521, 544 [1971].
- [12] This is now Section 1, Rule 23 of the 1997 Rules of Civil Procedure.
- [13] *Republic v. Sandiganbayan*, 204 SCRA 212, 225 [1991].
- [14] Annex "G" to the Petition, Rollo, pp. 102-103.
- [15] Memorandum of Panfilo Domingo, p. 2, Rollo, p. 287.
- [16] Consolidated Reply, p. 1, Rollo, p. 235; Memorandum of Lucio Tan, p. 8, Rollo, p. 309.

[17] 240 SCRA 376 [1995].

- [18] Memorandum of Petitioner, pp. 6-7, Rollo, pp. 337-338.
- [19] Francisco, *The Revised Rules of Court in the Philippines*, vol. II, p. 88 [1968].
- [20] *Moore's Federal Practice*, vol. 4A, p. 261 [1978]. After the 1948 amendment, Rule 26 (a) reads:
- "(a) When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. 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."
- Amended Rule 26 is intended to broaden the former rule so that either party may start taking depositions after complaint is served but with a 20 day delay period against plaintiff except by order of court and this as a protection for defendant who has not had an opportunity to retain counsel and inform himself of the nature of the suit--*Keller-Dorian Colorfilm Corp. v. Eastman Kodak Co.*, D.C.N.Y. 1049, 9 FRD 432; see also Barron and Holtzoff, *Federal Practice and Procedure With Forms, Civil and Criminal*, vol. 2, p. 277, note 50 [1950].
- [21] Barron and Holtzoff, *op. cit. supra*, at 261.
- [22] 4A *Moore's Federal Practice*, pp. 30-44 to 30-45.
- [23] *Id.*, pp. 30-47 to 30-48; Barron and Holtzoff, *op. cit. supra*, at 278.
- [24] *Seman v. Leibovitz*, (ED Pa 1040)1 FRD 280, 3 FR Serv 26a.16, Case 1, at p. 281, citing Professor Sunderland, p. 283, *Proceedings of Institute on Federal Rules*, Cleveland, Ohio.
- [25] *Seman v. Leibovitz*, *supra*, at p. 281, citing Professor Dawson, p. 95, *Proceedings of Institute on Federal Rules*, Washington, D.C.
- [26] *Seman v. Leibovitz*, *supra*, at p. 278; *Application of Wisconsin Alumni Research Foundation*, (D.C.N.J. 1945) 4 FRD 263; *Larabee Milling Co. v. Manufacturers & Traders Trust Co.* (D.C.N.Y. 1945) 7 FRD 168.
- [27] *Sund v. Club Beachcomber, Inc.* (SD NY 1941) 2 FRD 246, 5 FR Serv 26a.16, Case 1; *Price v. Cleveland Pneumatic Tool Co.* (D.C.N.Y. 1943) 3 FRD 350.

[28] *Commander-Larabee Milling Co. v. Manufacturers and Traders Trust Co.* (WD NY 1945) 7 FRD 168, 9 FR Serv 26a.5, Case 1, citing *Moore's Federal Practice*, vol. 2, Rule 26, p. 2345 et seq.

[29] *Sund v. Club Beachcomber, Inc.*, *supra*; *Munson Line, Inc. v. Green* (SD NY 1946) 6 FRD 14, 10 FR Serv 26a.16, Case 1 (deponent might leave the jurisdiction); *Samuel Goldwyn, Inc. v. United Artists Corp.* (SD NY 1940) 35 F Supp 633, 4 FR Serv 26b.23 Case 1 (deposition of resident of foreign country, temporarily in the district); see also 26 C.J.S. *Depositions* Sec. 10 (1941 ed.).

[30] *Sund v. Club Beachcomber, Inc.*, *supra*.

[31] See *Walker v. Walker* (SD NY 1941) 1 FRD 779, *Samuel Goldwyn, Inc. v. United Artists*, *supra*.

[32] *International Tag & Salesbook Co. v. American Salesbook Co.* (SD NY 1943) 6 FRD 45, 7 FR Serv 8a.27, Case 1 (a general examination should not be indulged in before issue is joined as it cannot at this time be determined what particular matters will be at issue); See *Sweeney v. United Features Syndicate, Inc.* (SD NY 1939) 29 F Supp 420, 1 FR Serv 26a.12, Case 1 (plaintiff's motion to examine defendant by deposition pending action was premature, motion denied without prejudice to refiling after service of answer).

[33] *Hillside Amusement Co. v. Warner Bros. Pictures, Inc.* (SD NY 1941) 5 FR Serv 26a.12, Case 1, 7 FRD 260.

[34] *Caguiat v. Torres*, 30 SCRA 106, 110 [1969].

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.