ALFREDO P. ROSETE, OSCAR P. MAPALO AND CHITO P. ROSETE, PETITIONERS, VS. JULIANO LIM AND LILIA LIM, RESPONDENTS.

G.R. NO. 136051. June 08, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a petition for review on certiorari which seeks to set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 45400 dated 24 August 1998 which upheld the Orders of Branch 77 of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-95-25803 dated 22 July 1997[2] and 27 August 1997,[3] allowing the taking of deposition upon oral examination of petitioners Oscar P. Mapalo and Chito P. Rosete, and its Resolution[4] dated 19 October 1998 denying petitioners' Motion for Reconsideration.

Relevant to the petition are the following antecedents:

On 5 December 1995, respondents Juliano Lim and Lilia Lim filed before Branch 77 of the RTC of Quezon City a Complaint for Annulment, Specific Performance with Damages against AFP Retirement and Separation Benefits System (AFP-RSBS), Espreme Realty and Development Corporation (Espreme Realty), Alfredo P. Rosete, Maj. Oscar Mapalo, Chito P. Rosete, Bank of the Philippine Islands (BPI), and Register of Deeds of the Province of Mindoro Occidental, docketed as Civil Case No. Q-95-25803.[5] It asked, among other things, that the Deed of Sale executed by AFP-RSBS covering certain parcels of lands in favor of Espreme Realty and the titles thereof under the name of the latter be annulled; and that the AFP-RSBS and Espreme Realty be ordered to execute the necessary documents to restore ownership and title of said lands to respondents, and that the Register of Deeds be ordered to cancel the titles of said land under the name of Espreme Realty and to transfer the same in the names of respondents.

On 18 January 1996, petitioners filed a Motion to Dismiss on the grounds that the court has no jurisdiction over the subject matter of the action or suit and that venue has been improperly laid.[6] A Supplemental Motion to Dismiss was filed by petitioner Alfredo P. Rosete on 23 January 1996.[7] Respondents opposed the Motion to Dismiss filed by petitioners[8] to which petitioners filed their Reply.[9] Respondents filed a Comment on the Reply.[10] AFP-RSBS,[11] Espreme Realty,[12] and, BPI[13] filed their respective Motions to Dismiss which respondents opposed.

In an Order dated 12 March 1996, the Motions to Dismiss filed by all the defendants were denied.[14] The Motions for Reconsideration filed by petitioners[15] and BPI,[16] which respondents opposed,[17] were also denied in an Order dated 24 May 1996.[18]

On 6 June 1996, BPI filed its Answer with Compulsory Counterclaim and Cross-claim[19] to which respondents filed their Reply and Answer to Counterclaim.[20] Respondents also filed a Motion[21] to Serve Supplemental Allegation against BPI and petitioner Chito Rosete which the trial court granted in an order dated 28 July 1996.[22]

On 7 June 1996, petitioners manifested that on 5 June 1996, they filed a Petition[23] for Certiorari and Prohibition in the Court of Appeals, docketed as CA-G.R. SP No. 40837, challenging the trial court's Orders dated 12 March 1996 and 24 May 1996 that denied their Motions to Dismiss and Reconsideration, respectively.[24] They likewise informed the trial court that on 6 June 1996, they filed an Ex-Parte Motion[25] to Admit Answers Ex Abudanti Cautela.[26]

On 7 August 1996, petitioner Chito Rosete filed a motion asking that the order granting the Motion to Serve Supplemental Allegation against BPI and him be reconsidered and set aside, and that respondents be ordered to reduce their supplemental allegations in the form and manner required by the Rules of Court.[27] Same was denied in an order dated 12 August 1996.[28] This denial was appealed to the Court of Appeals on 26 August 1996, which was docketed as CA-G.R. SP No. 41821.[29]

Petitioner Chito Rosete filed his Supplemental Answer (Ex Abudanti Cautela) on 9 September 1996.[30]

On 28 May 1997, respondents filed a Notice to Take Deposition Upon Oral Examination giving notice that on June 18 and 20, 1997 at 9:00 a.m., they will cause the deposition of petitioners Oscar Mapalo and Chito Rosete.[31]

On 13 June 1997, petitioners filed an Urgent Ex-Parte Motion and Objection to Take Deposition Upon Oral Examination.[32] They argued that the deposition may not be taken without leave of court as no answer has yet been served and the issues have not yet been joined since their Answer was filed ex abudanti cautela, pending resolution of the Petition for Certiorari challenging the orders dated 12 March 1996 and 24 May 1996 that denied their Motions to Dismiss and for Reconsideration, respectively. This is in addition to the fact that they challenged via a Petition for Certiorari before the Court of Appeals the lower court's Orders dated 23 July 1996 and 12 August 1996 which, respectively, granted respondents' Motion to Serve Supplemental Allegation Against Defendants BPI and Chito Rosete, and for the latter to plead thereto, and denied Chito Rosete's Motion for Reconsideration of the order dated 23 July 1996. Moreover, they contend that since there are two criminal cases pending before the City Prosecutors of Mandaluyong City and Pasig City involving the same set of facts as in the present case wherein respondent Juliano Lim is the private complainant and petitioners are the respondents, to permit the taking of the deposition would be violative of their right against self-incrimination because by means of the oral deposition, respondents would seek to establish the allegations of fact in the complaint which are also the allegations of fact in the complaint-affidavits in the said criminal cases.

Respondents filed their Comment on the Objection to Deposition Taking[33] to which petitioners filed their Reply.[34]

In an Order dated 22 July 1997, the lower court denied petitioners' motion and objection to take deposition upon oral examination, and scheduled the taking thereof.[35] On 7 August 1997, petitioners filed a Motion for Reconsideration.[36] They filed a Supplemental Motion for Reconsideration on 11 August 1997.[37]

On 13 August 1997, petitioners filed an Urgent Ex-parte Motion to Cancel or Suspend the Taking of the Deposition Upon Oral Examination.[38]

In an Order dated 27 August 1997, the lower court denied petitioners' Motion for Reconsideration and Supplemental Motion for Reconsideration, and scheduled the taking of the Deposition Upon Oral Examination.[39]

On 22 September1997, respondents filed an Omnibus Motion: (1) To Strike Out Answer of Defendants Mapalo and Chito Rosete; (2) to Declare Defendants Mapalo and Chito Rosete In Default; and (3) For Reception of Plaintiffs' Evidence Ex-parte,[40] which petitioners opposed.[41]

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On 29 September 1997, petitioners filed with the Court of Appeals a Petition for Certiorari and Prohibition (CA-G.R. SP No. 45400) assailing the Orders of the lower court dated 22 July 1997 and 27 August 1997.[42]

In an Order dated 29 October 1997, the lower court: (1) ordered the striking out from the record of the Answer ex abudanti cautela filed by petitioners Mapalo and Chito Rosete for their continued unjustified refusal to be sworn pursuant to Rule 29 of the 1997 Rules of Civil Procedure; (2) declared defendants Mapalo and Chito Rosete in default; and I allowed plaintiffs to present their evidence ex-parte as regards the latter.[43] On 25 November 1997, petitioners filed an Urgent Ex-parte Omnibus Motion (1) For Reconsideration; (2) To Lift Order of Default; and (3) To Hold In Abeyance Presentation of Plaintiffs' Evidence Ex-parte.[44] The day after, petitioners filed an Amended Omnibus Motion.[45]

On 28 November 1997, respondents filed a Motion to Set Case for Ex-parte Presentation of Evidence[46] which the lower court set for 11 December 1997.[47]

In an Order dated 11 December 1997, the lower court denied petitioners' urgent ex-parte omnibus motion.[48] On even date, the ex-parte presentation of evidence against petitioners Mapalo and Chito Rosete was terminated.[49]

On 10 February 1998, petitioners filed a Petition[50] for Certiorari and Prohibition before the Court of Appeals (CA-G.R. SP No. 46774) questioning the lower court's Orders dated 29 October 1997 and 11 December 1997.[51]

On 24 August 1998, the Court of Appeals dismissed the Petition for Certiorari and Prohibition, and upheld the Orders of the lower court dated 22 July 1997 and 27 August 1997 (CA-G.R. SP No. 45400).[52] The Motion for Reconsideration[53] which was opposed[54] by respondents was denied on 19 October 1998.[55]

Petitioners assail the ruling of the Court of Appeals via a Petition for Review on Certiorari. They anchor their petition on the following grounds:

I.

> THE TRIAL COURT ERRED AND ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DECLARING IN ITS ORDER DATED AUGUST 27, 1997 THAT THE CONSTITUTIONAL RIGHT AGAINST SELF INCRIMINATION OF OSCAR MAPALO AND CHITO ROSETE WOULD NOT BE VIOLATED BY THE TAKING OF THEIR DEPOSITION IN THE CIVIL CASE FILED IN THE LOWER COURT ALTHOUGH THEY ARE ALSO RESPONDENTS OR DEFENDANTS IN THE AFOREMENTIONED CRIMINAL CASES FILED BY HEREIN PRIVATE RESPONDENT JULIANO LIM INVOLVING THE SAME OR IDENTICAL SET OF FACTS; AND

II.

> THE TRIAL COURT ERRED AND ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DECLARING IN ITS ORDER DATED JULY 22, 1997 THAT (A) THE NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION NEED NOT BE WITH LEAVE OF COURT BECAUSE AN ANSWER EX ABUDANTE CAUTELA HAS BEEN FILED; AND (B) JOINDER OF ISSUES IS NOT REQUIRED IN ORDER THAT THE SECTION 1, RULE 23[56] OF THE RULES OF CIVIL PROCEDURE MAY BE AVAILED OF.

Petitioners argue that the Court of Appeals gravely erred when it found that the trial court did not abuse its discretion when it refused to recognize petitioners Oscar Mapalo and Chito Rosete's constitutional right against self-incrimination when, through its Orders dated 22 July 1997 and 27 August 1997, it allowed and scheduled the taking of their depositions by way of oral examination. They explain they refuse to give their depositions due to the pendency of two criminal cases against them, namely, Batasan Pambansa Blg. 22 and Estafa, because their

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answers would expose them to criminal action or liability since they would be furnishing evidence against themselves in said criminal cases. They allege there can be no doubt that the questions to be asked during the taking of the deposition would revolve around the allegations in the complaint in the civil case which are identical to the allegations in the complaint-affidavits in the two criminal cases, thus, there is a tendency to incriminate both Oscar Mapalo and Chito Rosete. Moreover, they explain that while an ordinary witness may be compelled to take the witness stand and claim the privilege against self-incrimination as each question requiring an incriminating answer is shot at him, an accused may altogether refuse to answer any and all questions because the right against self-incrimination includes the right to refuse to testify.

In short, petitioners Mapalo and Chito Rosete refuse to have their depositions taken in the civil case because they allegedly would be incriminating themselves in the criminal cases because the testimony that would be elicited from them may be used in the criminal cases. As defendants in the civil case, it is their claim that to allow their depositions to be taken would violate their constitutional right against self-incrimination because said right includes the right to refuse to take the witness stand.

In order to resolve this issue, we must determine the extent of a person's right against self-incrimination. A person's right against self-incrimination is enshrined in Section 17, Article III of the 1987 Constitution which reads: "No person shall be compelled to be a witness against himself."

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, i.e., one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.[57]

As to an accused in a criminal case, it is settled that he can refuse outright to take the stand as a witness. In People v. Ayson,[58] this Court clarified the rights of an accused in the matter of giving testimony or refusing to do so. We said:

> An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others -
>
> 1) to be exempt from being a witness against himself, and
>
> 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.
>
> The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words - unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him - the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. X x x (Underscoring supplied.)

It is clear, therefore, that only an accused in a criminal case can refuse to take the witness stand. The right to refuse to take the stand does not generally apply to parties in administrative cases or proceedings. The parties thereto can only refuse to answer if incriminating questions are propounded. This Court applied the exception - a party who is not an accused in a criminal case is allowed not to take the witness stand - in administrative cases/proceedings that partook of the nature of a criminal proceeding or analogous to a criminal proceeding.[59] It is likewise the opinion of the Court that said exception applies to parties in civil actions which are criminal in nature. As long as the suit is criminal in nature, the party thereto can altogether decline to take the witness stand. It is not the character of the suit involved but the nature of the proceedings that controls.[60]

In the Ayson case, it is evident that the Court treats a party in a civil case as an ordinary witness, who can invoke the right against self-incrimination only when the incriminating question is propounded. Thus, for a party in a civil case to possess the right to refuse to take the witness stand, the civil case must also partake of the nature of a criminal proceeding.

In the present controversy, the case is civil it being a suit for Annulment, Specific Performance with Damages. In order for petitioners to exercise the right to refuse to take the witness stand and to give their depositions, the case must partake of the nature of a criminal proceeding. The case on hand certainly cannot be categorized as such. The fact that there are two criminal cases pending which are allegedly based on the same set of facts as that of the civil case will not give them the right to refuse to take the witness stand and to give their depositions. They are not facing criminal charges in the civil case. Like an ordinary witness, they can invoke the right against self-incrimination only when the incriminating question is actually asked of them. Only if and when incriminating questions are thrown their way can they refuse to answer on the ground of their right against self-incrimination.

On the second assigned error, petitioners contend that the taking of their oral depositions should not be allowed without leave of court as no answer has yet been served and the issues have not yet been joined because their answers were filed ex abudanti cautela pending final resolution of the petition for certiorari challenging the trial court's Orders dated 12 March 1996 and 24 May 1996 that denied their motions to dismiss and for reconsideration, respectively.

Section 1 of Rule 24[61] of the Revised Rules of Court reads:

> 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 only by leave of court on such terms as the court prescribes.

From the quoted section, it is evident that once an answer has been served, the testimony of a person, whether a party or not, may be taken by deposition upon oral examination or written interrogatories. In the case before us, petitioners contend they have not yet served an answer to respondents because the answers that they have filed with the trial court were made ex abudanti cautela. In other words, they do not consider the answers they filed in court and served on respondents as answers contemplated by the Rules of Court on the ground that same were filed ex abudanti cautela.

We find petitioners' contention to be untenable. Ex abudanti cautela means "out of abundant caution" or "to be on the safe side."[62] An answer ex abudanti cautela does not make their answer less of an answer. A cursory look at the answers filed by petitioners shows that they contain their respective defenses. An answer is a pleading in

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which a defending party sets forth his defenses[63] and the failure to file one within the time allowed herefore may cause a defending party to be declared in default.[64] Thus, petitioners, knowing fully well the effect of the non-filing of an answer, filed their answers despite the pendency of their appeal with the Court of Appeals on the denial of their motion to dismiss.

Petitioners' argument that the issues of the case have not yet been joined must necessarily fail in light of our ruling that petitioners have filed their answers although the same were made ex abudanti cautela. Issues are joined when all the parties have pleaded their respective theories and the terms of the dispute are plain before the court.[65] In the present case, the issues have, indeed, been joined when petitioners, as well as the other defendants, filed their answers. The respective claims and defenses of the parties have been defined and the issues to be decided by the trial court have been laid down.

We cannot also sustain petitioners' contention that the lower court erred when it said that the joinder of issues is not required in order that Section 1, Rule 23 of the 1997 Rules of Civil Procedure may be availed of. Under said section, a deposition pending action may be availed of: (1) with leave of court when an answer has not yet been filed but after jurisdiction has been obtained over any defendant or property subject of the action, or (2) without leave of court after an answer to the complaint has been served. In the instant case, the taking of the deposition may be availed of even without leave of court because petitioners have already served their answers to the complaint.

WHEREFORE, all the foregoing considered, the instant petition is dismissed for lack of merit.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, (Acting Chairman), and Callejo, Sr., JJ., concur.
Ynares-Santiago, J., on leave.

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[1] CA rollo, pp. 140-158; Penned by Associate Justice Artemon D. Luna with Associate Justices Eugenio S. Labitoria and Marina L. Buzon, concurring.[2] Records, Vol. 2, pp. 883-884.

[3] Id., Vol. 3, pp. 1053-1055.[4] CA rollo, p. 221.[5] Records, Vol. 1, pp.1-45.[6] Id., pp. 107-110.[7] Id., pp. 125-127.[8] Id., pp. 141-149.[9] Id., pp. 156-160.[10] Id., pp. 176-178.[11] Id., pp. 136-139.

[12] Id., pp. 151-155.

[13] Id., pp. 171-174.[14] Id., pp. 186-189.[15] Id., pp. 209-212.

[16] Id., pp. 190-195.[17] Id., pp. 220-224.

[18] Id., p. 248.

[19] Id., pp. 254-260.

[20] Records, Vol. 2, pp. 586-587.[21] Id., pp. 597-598.

[22] Id., p. 602.

[23] The Court of Appeals dismissed the petition on 30 October 1996 (Records, Vol. 2, pp. 715-725) and denied petitioners' motion for reconsideration on 9 May 1997 (Records, Vol. 2, pp. 748-752). On appeal to the Supreme Court, the appeal (G.R. No. 129864) was dismissed on 29 August 2000.

[24] Records, Vol. 1, pp. 276-277.

[25] Records, Vol. 2, pp. 539-570.[26] The latin phrase Ex Abudanti Cautela means "out of abundant caution."[27] Records, Vol. 2, pp. 608-611.

[28] Id., p. 614.

[29] Id., pp. 623-639. The petition for certiorari was denied on 27 April 1998 and the motion for reconsideration was denied on 13 July 1998. On appeal to the Supreme Court (G.R. No. 134646), the Court considered the case closed and terminated. [30] Id., pp. 673-674.[31] Id., pp. 820-822.[32] Id., pp. 832-852.

[33] Id., pp. 858-864.

[34] Id., pp. 865-874.

[35] Id., pp. 883-884.

[36] Id., pp. 912-925.

[37] Records, Vol. 3, pp. 926-932.[38] Id., pp. 933-935.[39] Id., pp. 1053-1055.

[40] Id., pp. 1072-1077.

[41] Id., pp. 1078-1087.

[42] CA rollo, pp. 2-111.

[43] Records, Vol. 3, pp. 1205-1207.

[44] Id., pp. 1213-1222.[45] Id., pp. 1223-1233.[46] Id., pp. 1235-1237.

[47] Id., p. 1257.

[48] Id., pp. 1264-1265.

[49] Id., p. 1267.

[50] The Court of Appeals dismissed the petition for certiorari on 30 April 1999 and the motion for reconsideration was denied on 25 January 2000. On appeal to the Supreme Court, the appeal was denied on 29 May 2000. [51] Records, Vol. 4, pp. 1323-1361.
[52] CA rollo, pp. 140-158.

[53] Id., pp. 159-166.

[54] Id., pp. 204-208.

[55] Id., p. 221.

[56] Now Section 1, Rule 23 of the 1997 Rules of Civil Procedure.[57] People v. Ayson, G.R. No. 85215, 7 July 1989, 175 SCRA 216, 226-227.[58] Id., pp. 232-233.

[59] Cabal v. Hon. Kapunan, Jr., 116 Phil. 1361, 1367-1368 (1962); Pascual, Jr., v. Board of Medical Examiners, 138 Phil. 361, 363 (1969). [60] Galman v. Pamaran, G.R. Nos. L-71208-09 and L-71212-13, 30 August 1985, 138 SCRA 294, 323.[61] Substantially reproduced in 1997 RULES OF CIVIL PROCEDURE, Rule 23, Section 1.[62] Black's Law Dictionary, 8[th] Ed., p. 600. [63] 1997 RULES OF CIVIL PROCEDURE, Rule 6, Section 4.

[64] 1997 RULES OF CIVIL PROCEDURE, Rule 9, Section 3.

[65] The 2002 Revised Manual For Clerks of Court, Vol. 1, p. 250.

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