# R TRANSPORT CORPORATION, PETITIONER, VS. PHILHINO SALES CORPORATION, RESPONDENT.

*G.R. NO. 148150. July 12, 2006*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

This Petition for Review under Rule 45 of the Rules of Court, filed by petitioner R Transport Corporation, seeks to nullify and set aside the 14 February 2001 Decision[1] and 9 May 2001 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 60026 which affirmed the Orders dated 20 March 2000,[3] 6 April 2000[4] and 26 June 2000,[5] of the Honorable Judge Jose R. Hernandez of the Regional Trial Court (RTC), Branch 158, Pasig City. The Order dated 20 March 2000, denied petitioner's Urgent Motion to Transfer Dates of Hearing/Trial. The Order dated 6 April 2000 directed the striking off the records the direct testimony of petitioner's witness Rizalina Lamzon. The Order dated 26 June 2000 denied petitioner's Motion for Reconsideration of the Order dated 6 April 2000.

In September 1994, petitioner, a domestic corporation, through its President, Rizalina Lamzon, allegedly purchased from respondent Pilhino Sales Corporation ten brand new units of Hino RF821 buses for P2,235,000.00 per unit. This transaction was covered by a Sales Proposal Advice wherein respondent approved a payment scheme where the 30% downpayment shall be payable in eight monthly installments covered by a promissory note and post dated checks or in tax credit financing as petitioner's Board of Investments incentives, while the remaining 70% would be paid through financing.

Pursuant to the sale, the buses were delivered to petitioner. Notwithstanding delivery of the units, petitioner allegedly failed to pay the monthly installments of the 30% downpayment. It also did not remit to respondent the supposed proceeds of the bank financing for the remaining 70%.

Respondent made several demands on petitioner to make good its obligation. The latter made an initial payment of P8,900,000.00 on 30 May 1995, out of its outstanding obligation of P22,958,515.77. Despite repeated demands by respondent, no payments were made thereafter by petitioner on its outstanding obligation.

With petitioner's alleged failure to fulfill its obligation, respondent, on 27 March 1996, filed a Complaint for Sum of Money and Damages with Urgent Prayer for a Writ of Preliminary Attachment against petitioner before the RTC, docketed as Civil Case No. 65610.

Petitioner submitted its Answer with counterclaim.

During the preliminary proceedings, respondent's Prayer for a Writ of Preliminary Attachment was granted. Subsequently, upon Motion of the petitioner and filing of a counterbond, the Writ was dissolved.

After numerous delays spanning more than two years, the case was finally set for trial on 1 April 1998.[6] Respondent presented its evidence. After the termination of the presentation of respondent's evidence, petitioner presented two witnesses, Divina Amurao and Rizalina Lamzon. After the testimony of Divina Amurao was

completed, petitioner placed on the witness stand its last witness, Rizalina Lamzon. Said witness completed her direct testimony and was extensively cross-examined by the respondent's counsel. Respondent's counsel thereafter moved for the suspension of the cross-examination. The parties agreed for the continuation of the cross-examination on the following dates: 6 April 2000, 12 April 2000 and 3 May 2000.

On 3 March 2000, petitioner received a letter from Weisenfels & Vaughan Law Office, Rizalina Lamzon's counsel in a case before the United States of America, informing Rizalina Lamzon that she had to represent an off-shore company where she is the managing director in a deposition proceedings on 10-17 April, 2000.[7]

On 17 March 2000, petitioner filed before the trial court an Urgent Motion to Transfer Dates of Hearing on the ground that the witness had to leave unexpectedly on 5 April 2000, for the United States of America to represent an off-shore company in a deposition proceedings, to wit:

> 2. That defendant's witness, MS. RIZALINA LAMZON unexpectedly, has to leave on April 5, 2000 to represent an off-shore company, 2000 International Ltd., on deposition proceedings in Kansas City, USA and will be back on May 15, 2000.[8]

It prayed that the scheduled cross-examinations be cancelled and be transferred to the following dates: 30 May 2000, 7 June 2000 and 15 June 2000.[9]

In a Resolution dated 20 March 2000, the trial court denied said motion stating that the setting of the hearing was upon the agreement of the parties, thus[10]:

> DENIED settings made by agreement of parties.

On 28 March 2000, petitioner filed a Motion for Reconsideration of the Resolution dated 20 March 2000.[11]

While the foregoing Motion was pending, the trial court issued an Order[12] dated 6 April 2000, to strike out from the records witness Rizalina Lamzon's testimony due to the failure of the latter and the petitioner's counsel to appear during the hearing. The court directed petitioner to file its formal offer of evidence within ten days from receipt of said Order, to wit:

> For failure of witness Ms. Rizalina Lam[z]on and defendant's counsel to appear in today's hearing despite notice, as prayed for, the direct testimony of this witness is stricken off the record. Consequently, defendant is directed to file its formal offer of evidence within ten (10) days from receipt of this order copy furnished the plaintiff which is given a similar period of time from receipt of the offer within which to file its comment/objection to it, after which, the incident is submitted for resolution.
>
> After defendant shall have rested its case, parties are given a period of thirty (30) days from receipt of that order to file their simultaneous memorandum, after which, this case shall be submitted for decision.

On 25 April 2000, petitioner filed a Motion for Reconsideration[13] which was denied on 26 June 2000. The Order reads[14]:

> This resolves defendant's Motion for Reconsideration. Even when plaintiff was given an opportunity to file its opposition to the motion, none was filed.
>
> The motion is denied, there being no cogent reason that it should be reconsidered. The hearings of this case were made by agreement of the parties and whenever there are postponements, it's with the consent of all concerned. Everyone then was given his day in Court.
>
> Consequently, the Order of April 6, 2000 stays.

Aggrieved, petitioner filed before the Court of Appeals a Petition for Certiorari and Prohibition under Rule 65 of


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the Rules of Court with Preliminary Injunction and Prayer for Temporary Restraining Order.

Convinced that irreparable injury may be suffered by petitioner if trial continues and to forestall the mooting of its judgment on the case, the Court of Appeals issued a Resolution[15] dated 29 September 2006 granting petitioner's application for a temporary restraining order (TRO) enjoining the trial court from enforcing its Order dated 6 April 2000. Taking cognizance of the TRO issued by the Court of Appeals, the trial court in an Order[16] dated 20 November 2000, suspended the proceedings of the case until such time that the Court of Appeals shall have resolved the Order dated 6 April 2000.

In its Memorandum before the Court of Appeals, petitioner raised the following issues[17]: whether or not the trial court gravely abused its discretion amounting to lack of jurisdiction in issuing the Orders dated 6 April 2000 and 26 June 2000; whether or not the trial court denied petitioner substantial justice; whether or not the trial court skewed petitioner's right to due process; and whether or not the trial court violated the principle of impartiality in handling the case.

Petitioner contended that the trial court acted arbitrarily and despotically when it issued the order dated 6 April 2000 as the same denied it due process. According to petitioner the trial court should have looked into the merit of its Urgent Motion to Transfer Dates of Hearing/Trial and its Motion for Reconsideration filed on 28 March 2000, where it set forth a valid and excusable ground for its intention not to appear at the scheduled hearing on 6 April 2000. The petitioner was in a quandary, pondering how the trial court could have issued the 6 April 2000 Order removing from the records Rizalina Lamzon's testimony based on her failure to appear at the said hearing when petitioner had earlier informed the court that its last witness cannot appear on the said date. It was petitioner's postulation that the trial court should have considered the validity of the ground it proffered in its Motion for Reconsideration and resolved the same before the court issued the contested Order.

Petitioner added that the striking off the record of the testimony of Rizalina Lamzon, which testimony is substantially material to its defense and after she had been extensively cross-examined by respondent's counsel, constitutes a grave and irreparable injury to its defense, thereby denying it substantial justice. In the same vein, petitioner bewailed the trial court's directive in the Order dated 6 April 2000, terminating the proceedings of the case and ordering the parties to submit their respective Memoranda, after which the case shall be submitted for decision. This posture of the court, petitioner accentuated, violated its right to due process since it was deprived of the opportunity to adduce evidence for its defense.

Lastly, petitioner ascribed partiality on the part of the trial court as it purportedly tilted in respondent's favor by granting the latter several postponements, whereas it was too quick to deny petitioner's supplication for the transfer of the scheduled dates for its witness' cross-examination.

In the assailed Decision dated 14 February 2001, the Court of Appeals dismissed the Petition.

In sustaining the trial court's denial of petitioner's Urgent Motion to Transfer Dates of Hearing/Trial, the Court of Appeals ratiocinated that the scheduled hearing on 6 April 2000 was with the conformity of petitioner's counsel as well as witness Rizalina Lamzon, hence, they were bound to attend such hearing. Also, it stressed that the trial court was correct when it denied the Motion since no order from any United States court requiring Rizalina Lamzon to appear before it was submitted to the lower court and that Rizalina Lamzon could have testified before the trial court on 6 April 2000 as her alleged deposition in the United States would be taken a little later on the 10th and 17th of April 2000, as stated in the letter from the law office of Weisenfels & Vaughan.

As to petitioner's assertion that the trial court did not resolve the Motion for Reconsideration of the Order dated 20 March 2000, the Court of Appeals belied the same pointing out that a Resolution[18] was issued by the trial court

resolving the said Motion.

The Courts of Appeals acceded further to the propriety of the trial court's order striking out from the records Rizalina Lamzon's testimony. It held that since the failure of petitioner to present its witness is due to its fault, such incomplete testimony cannot be taken into account by the trial court.

On the alleged partiality of the trial court, the Court of Appeals dismissed said allegation there being no evidence on record to establish the same.

Undeterred, petitioner filed a Motion for Reconsideration of the above Decision. The Court of Appeals did not budge from its stand denying the motion in a Resolution dated 9 May 2001.

Hence, the instant Petition.

Petitioner claims that the arbitrary acts of the trial court resulted in the denial of its right to due process, and that the Courts of Appeals erred in holding that the trial court did not commit grave abuse of discretion in issuing the assailed Orders.

As earlier mentioned, petitioner attributes grave abuse of discretion on the part of the trial court in denying its motion to reset the cross-examination of its witness Rizalina Lamzon, in not resolving the Motion for Reconsideration thereof, and in decreeing the striking out of the testimony of Rizalina Lamzon.

In a zealous effort to justify the non-appearance of witness Rizalina Lamzon during the 6 April 2000 hearing, petitioner insisted that although said witness left for the United States only on 9 April 2000, she could not be physically present during the hearing as she was always on the ball at the airport. And even if she were able to attend the hearing, she could not be mentally and emotionally prepared.

Petitioner's contention that it was denied due process is not well-taken.

The most basic tenet of due process is the right to be heard.[19] Where a party had been afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.[20] Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed forfeited without violating the Bill of Rights.[21]

As borne by the records, the subject Urgent Motion to Transfer Dates of Hearing/Trial was not the first motion for resetting ever filed or made by the counsel for petitioner. On 13 August 1999, upon motion of petitioner, the scheduled hearing at 2:00 p.m. of 18 August 1999 was reset.[22] Once more, on 6 December 1999, the date witness Rizalina Lamzon was scheduled to be presented for her testimony, petitioner filed another motion for resetting thereof.[23] Another motion to transfer date of hearing was made in open court by petitioner's counsel on 24 February 2000 which was granted by the trial court.[24] In fact, on even date, for failure of petitioner's witness Rizalina Lamzon to appear during the scheduled cross-examination, the trial court issued a warning that her direct testimony will be expunged from the records in the event she will not appear in the next hearing.

The case has been pending for more than four years and had endured during that period more than the usually acceptable number of continuances. The presentation of Rizalina Lamzon in the witness stand alone has been dragging on for quite some time since her scheduled appearance on 9 December 1999, quite often to suit the convenience of petitioner's counsel.

As early as 12 January 2000, the petitioner was informed by the trial court that its witness Rizalina Lamzon will be subjected to cross-examination on 26 January 2000.[25] Since then, it must be assumed that due preparations were made by the witness for the cross-examination. She was in fact already cross-examined, albeit incomplete. It cannot, therefore, be claimed that she was not prepared to continue her cross examination on 6 April 2000.


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As to petitioner's justification that its witness was engrossed in the preparation for her case in the United States, suffice it to say that such excuse is unpersuasive. On 3 March 2000, petitioner's witness received the letter requiring her to attend the deposition. She had more than one month to prepare for her deposition, i.e., from 3 March to 10 April 2000. Actually, when the scheduled hearing came, she was still in the country. There was no reason for her not to attend the said hearing. Since petitioner itself eviscerated its right to present evidence, its invocation of due process appears nothing but a desperate attempt to conceal its design to delay the proceedings.

Moreover, the grant of a motion for continuance or postponement is not a matter of right.[26] It is addressed to the sound discretion of the courts. Parties asking for postponement have no right to assume that their motions would be granted nor to expect that their motion for reconsideration of their denied motion for postponement would be reconsidered.[27] Thus, they must be prepared on the day of the hearing.[28] Action thereon will not be disturbed by appellate courts, in the absence of clear and manifest abuse of discretion resulting in a denial of substantial justice.[29] In other words, this Court cannot make a finding of grave abuse of discretion simply because a court decides to proceed with the trial of a case rather than postpone the hearing to another day because of the absence of a party or a party's witness.[30] To constitute grave abuse of discretion amounting to lack or excess of jurisdiction, the refusal of the court to postpone the hearing must be characterized by arbitrariness or capriciousness which is totally absent in the case under consideration.

As to the contested order of striking out the unfinished testimony of Rizalina Lamzon, the trial court's action cannot be labelled as arbitrary or oppressive. This order was but a plausible outcome of the previous order denying petitioner's motion for postponement. With such denial, the proper procedure was to declare the presentation of evidence of the petitioner terminated.[31]

In Ortigas, Jr. v. Lufthansa German Airlines,[32] the trial court's denial of respondent's motion for postponement and its order striking out the testimony of respondent's witness were assailed as having been issued in grave abuse of discretion. Respondent therein advanced an excuse that its witnesses who had to come from Rome cannot leave their posts to come for the hearing as this would cause grave disruption to its business. Convinced that the trial court's actions were not tainted with grave abuse of discretion and finding respondent's justification feeble, this Court made the following analysis:

> Under the circumstances, the excuse given by defendant that the witnesses could not leave their respective stations and places of work to attend the trial is plainly unacceptable. There was enough time and opportunity for defendant to have made the corresponding adjustments in the assignments of its personnel so as to enable its witnesses to be in court. The trouble is that defendant relied on the assumption that the court could be made to wait until the volume and other conditions of its business would permit it to comply with the schedule of the court x x x.[33]

The Court therein emphasized:

> Coming now to the second assigned error regarding the striking out of the unfinished testimony of Lazarri, the Court is also of the opinion and so holds that the trial court's action cannot be categorized as arbitrary or oppressive or as amounting to a grave abuse of discretion. To be sure, this second order was but a logical consequence of the previous order denying defendant's motion for postponement. With such denial, the next thing in order was to declare the presentation of evidence of the defendant terminated x x x.[34]

Also, in Union Motor Corporation v. Court of Appeals,[35] petitioner therein alleged that the trial court committed a violation of due process when it ordered the striking off the testimony of petitioner's lone witness. The Court did not succumb to the plaint of petitioner and ruled that the trial court did not commit grave abuse of discretion in ordering the striking from the records the incomplete testimony of the witness. Assenting to the trial court's finding, the Court articulated:


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> To place the blame on the respondent spouses is to put a premium on the negligence of the petitioner to require its own witness to testify on cross-examination. By presenting witness Balones on direct-examination, the petitioner had the corresponding duty to make him available for cross-examination in accordance with fair play and due process. The respondents should not be prejudiced by the repeated failure of the petitioner to present its said witness for cross-examination. Hence, the trial court ordered that the unfinished testimony of said witness be stricken off the record.[36]

Likewise, in Cuñada v. Drilon,[37] the trial court's order striking off the records a witness' testimony was assailed to have violated due process. Brushing aside such allegation, the Court said:

> Petitioner Victor Cuñada had the duty to complete his testimony and make himself available for cross examination in accordance with fair play and due process. As his oral testimony remained incomplete, the same could not be the subject of cross-examination. It was therefore rendered incompetent and inadmissible in evidence and as such properly stricken off.
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> x x x x
>
> x x x Far from being denied the right to be heard, petitioners were given the opportunity to present their evidence but they squandered the opportunity as they failed to complete their evidence x x x.

Given the facts obtaining in the instant case and taking into consideration the applicable jurisprudence just discussed, this Court is of the considered view that the Court of Appeals did not err in finding that no grave abuse of discretion was committed by the trial court in denying petitioner's motion for postponement and in striking off the records Rizalina Lamzon's testimony.

One final point. It is contended that the trial court was partial in favor of the respondent. The Court laboriously mulled over the records of the case and found nothing to substantiate such allegation.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals dated 14 February 2001 and its Resolution dated 9 May 2001 in CA-G.R. SP No. 60026 sustaining the Orders of the Regional Trial Court, Branch 158, Pasig City, dated 20 March 2000, 6 April 2000 and 26 June 2000, are AFFIRMED. Costs against petitioner.

**SO ORDERED.**

Panganiban, (Chairman), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Mercedes Gozo-Dadole and Jose L. Sabio, Jr., concurring; Rollo, pp. 60-69.

[2] Rollo, p. 71.

[3] Annex "E"; Rollo, p. 109.

[4] Annex "F"; Id. at 110.

[5] Annex "H"; Id. at 112.

[6] Records, Vol. II, p. 661.

[7] Records, Vol. III, pp. 125-126.

[8] Id. at 118.

[9] Id. at 118.

[10] Id. at 120.

[11] Id. at 121-122.

[12] Id. at 131.

[13] Id. at 132-135.

[14] Id. at 146.

[15] Id. at 440.

[16] Id. at 444.

[17] CA rollo, p. 304.

[18] Rollo, p. 67.

[19] Tiomico v. Court of Appeals, 363 Phil. 558, 570 (1999).

[20] Id. at 570.

[21] Id. at 570-571.

[22] Records, Vol. III, p. 90.

[23] Id. at 101.

[24] Id. at 113.

[25] Id. at 108.

[26] Bautista v. Court of Appeals, G.R. No. 157219, 28 May 2004, 430 SCRA 353, 357.

[27] Id.

[28] Gochan v. Gochan, 446 Phil. 433, 454 (2003).

[29] Id.

[30] Supra note 26.

[31] Ortigas, Jr. v. Lufthansa German Airlines, G.R. No. L-28773, 30 June 1975, 64 SCRA 610, 636.

[32] Id.

[33] Id. at 634.

[34] Id. at 636.

[35] 414 Phil. 33 (2001).

[36] Id. at 46.

[37] G.R. No. 159118, 28 June 2004, 432 SCRA 618, 624.

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