

JONATHAN LANDOIL INTERNATIONAL CO., INC., petitioner, vs. Spouses SUHARTO MANGUDADATU and MIRIAM SANGKI MANGUDADATU, respondents.

G.R. No. 155010. August 16, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Lawyers must be careful in handling cases, because their negligence in the performance of their duties binds their clients. The issues in the instant case stem from the failure of the counsels and their client to attend the pretrial. Their non-appearance was compounded by their subsequent inaction, which resulted in the eventual finality and execution of the default judgment.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the June 6, 2002 Decision[2] and the September 2, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 69556. The assailed Decision disposed as follows:

“WHEREFORE, PREMISES CONSIDERED, this petition is DISMISSED for lack of merit.”[4]

The challenged Resolution denied reconsideration.

The Facts

Respondent-Spouses Suharto and Miriam Sangki Mangudadatu filed with the Regional Trial Court (RTC) of the 12th Judicial Region in Tacurong City, Sultan Kudarat, a Complaint for damages against Petitioner Jonathan Landoil International Co., Inc. (“JLI”). The Complaint was docketed as Civil Case No. 537 and raffled to Branch 20.[5] Initially, petitioner had countered with a Motion to Dismiss; but when this was denied, it filed its Answer dated November 23, 1999.[6]

Thereafter, the parties submitted their respective Pretrial Briefs.[7] Trial proceeded without the participation of petitioner, whose absence during the pretrial on August 8, 2000, had led the trial court to declare it in default.[8]

On July 3, 2001, petitioner received a copy of the RTC’s Decision dated June 19, 2001.[9] On July 18, 2001, it filed an Omnibus Motion for New Trial and Change of Venue.[10] This Motion was deemed submitted for resolution on August 7, 2001,[11] but was eventually denied by the trial court in an Order dated September 12, 2001.[12]

On December 12, 2001, petitioner received a copy of a Writ of Execution dated December 4, 2001. Alleging that it had yet to receive a copy of an Order resolving the Omnibus Motion for New Trial, petitioner filed a Motion to Quash/Recall Writ of Execution on December 14, 2001.[13]

On January 7, 2002, its counsels -- Attys. Jaime L. Mario Jr. and Dioscoro G. Peligro -- submitted separate withdrawals of appearance.[14] On the same date, the law firm Ong Abad Santos & Meneses filed an Entry of Appearance with Supplement to Motion to Quash/Recall Writ of Execution.[15] To its Supplement, petitioner attached the Affidavits of Attys. Mario and Peligro attesting that they had not yet received a copy of the Order resolving the Omnibus Motion for New Trial.[16]

On the same day, January 7, 2002, petitioner received a Sheriff's Notice dated December 26, 2001, regarding the public auction sale of its properties.[17] By reason of the immediate threat to implement the Writ of Execution, it filed with the CA on January 14, 2002, a Petition for Prohibition seeking to enjoin the enforcement of the Writ until the resolution of the Motion to Quash.[18] The Petition was docketed as CA-GR SP No. 68483.[19]

On January 9, 2002, the RTC issued an Order directing respondents to file their written comment on the Motion to Quash and scheduled the hearing thereon for February 1, 2002.[20]

On January 23, 2002, petitioner received a copy of respondents' Vigorous Opposition (Re: Motion to Quash/Recall Writ of Execution, and its Supplement) dated January 16, 2001. Attached to this pleading were two separate Certifications supposedly issued by the postmaster of Tacurong City, affirming that the Order denying the Motion for New Trial had been received by petitioner's two previous counsels of record.[21] The Certification pertaining to Atty. Peligro alleged that a certain Michelle Viquira had received on October 19, 2001, a copy of the Order intended for him.[22] The Certification as regards Atty. Mario stated that he had personally received his copy on December 21, 2001.[23]

On January 24, 2002, petitioner personally served counsel for respondents a Notice to Take Deposition Upon Oral Examination of Attys. Mario and Peligro.[24] The Deposition was intended to prove that petitioner had not received a copy of the Order denying the Omnibus Motion for New Trial. [25]

At 9:30 a.m. on January 28, 2002, the deposition-taking proceeded as scheduled -- at the Business Center Conference Room of the Mandarin Oriental Hotel in Makati City -- before Atty. Ana Peralta-Nazareno, a notary public acting as deposition officer.[26] At 12:00 noon of the same day, respondents sent petitioner a fax message via JRS Express, advising it that they had filed a Motion to Strike Off from the records the Notice to Take Deposition; and asking it not to proceed until the RTC would have resolved the Motion,[27] a copy of which it eventually received later in the day, at 3:10 p.m.

On January 29, 2002, separate Notices were sent by Atty. Nazareno to Attys. Mario and Peligro, as witnesses, for them to examine the transcript of their testimonies.[28] On the same date, Atty. Nazareno filed via registered mail a Submission to the RTC attaching (1) a Certification that the witnesses had been present and duly sworn to by her; (2) a transcript bearing their signatures, attesting that it was a true record of their testimonies; (3) a copy of the Notice to Take Deposition delivered to her; and (4) a copy of the Notice signed by respondents' counsel.[29]

During the February 1, 2002 hearing on the Motion to Quash, petitioner submitted its (1) Formal Offer of Exhibits, together with the documentary exhibits marked during the deposition-taking; (2) Reply to respondents' Vigorous Opposition to the Motion to Quash; and (3) Opposition ad Cautelam to respondents' Motion to Strike Off the Notice to Take Deposition.[30]

Meanwhile, on February 26, 2002, the CA issued a Resolution denying the Petition for Prohibition in CA-GR SP No. 68483.

On March 6, 2002, petitioner received a copy of the RTC's Resolution dated February 21, 2002, denying the Motion to Quash.[31] On March 8, 2002, it received a copy of respondents' Motion to Set Auction Sale of Defendant's Levied Properties.

On March 11, 2002, petitioner filed with the CA a Petition for Certiorari and Prohibition,[32] seeking to hold in abeyance the February 21, 2002 RTC Resolution and the December 4, 2001 Writ of Execution. Petitioner alleged that since it had not received the Order denying its Motion for New Trial, the period to appeal had not yet lapsed.[33] It thus concluded that the judgment, not being final, could not be the subject of a writ of execution.

Ruling of the Court of Appeals

On June 6, 2002, the CA issued the assailed Decision denying JLI's Petition. It ruled that petitioner could no longer avail itself of a deposition under Rule 23 of Rules of Court, since trial had already been terminated.[34] The appellate court also opined that the alleged error committed by the trial court -- when the latter disregarded two witnesses' oral depositions -- was an error of judgment not reviewable by certiorari or prohibition.[35] Finally, it ruled that between the denial of a lawyer and the certification of a postmaster, the latter would prevail.[36]

Hence, this Petition.[37]

The Issues

Petitioner raises the following issues for our consideration:

"I.

Whether or not the trial court judge has so far departed from the accepted and usual course of judicial proceedings, and the Court of Appeals has sanctioned such departure by the trial court judge, when he denied petitioner's Motion to Quash/Recall Writ of Execution despite clear and convincing evidence showing that petitioner and/or its counsel has yet to receive an order resolving petitioner's timely filed Motion for New Trial, which warrants the exercise by this Honorable Court of its power of supervision.

"II.

Whether or not the Court of Appeals gravely erred and decided a question of substance in a way not in accord with law and applicable decisions of this Honorable Court, when it ruled that petitioner can no longer avail of the taking of oral depositions under Rule 23 of the 1997 Rules of Civil Procedure.

"III.

Whether or not the Court of Appeals gravely erred and decided a question of substance in a way not in accord with law and applicable decisions of this Honorable Court, when it ruled that the trial court judge committed a mere error of judgment and not an error of jurisdiction.

"IV.

Whether or not the Court of Appeals gravely erred and decided a question of substance in a way not in accord with law and applicable decisions of this Honorable Court, when it considered the manner by which the trial court judge gave evidentiary weight to witnesses presented before him during trial on the merits when what is being questioned before the Court of Appeals is the propriety of presenting deposition evidence (wherein the trial court judge could not have been present) in support of the Motion to Quash.

"V.

Whether or not the Court of Appeals gravely erred and decided a question of substance in a way not in accord with law and applicable decisions of this Honorable Court, when it applied the ruling of this Honorable Court in *Aportader[a] v. Court of Appeals* (158 SCRA 695) and *Philippine National Bank v. CFI of Rizal* (209 SCRA 294) on the evidentiary value of a postmaster's certification vis-à-vis a denial of receipt by

counsel.”[38]

In the main, the issues boil down to two: (1) whether petitioner received the Order denying its timely filed Motion for New Trial; and (2) whether the taking of oral depositions was proper under the circumstances.

The Court’s Ruling

The Petition has no merit.

First Issue:

Appreciation of Facts

It is readily apparent that petitioner is raising factual issues that this Court does not review. While the rule admits of exceptions,[39] petitioner has not satisfactorily shown any. Given the circumstances surrounding the filing of its Motion for New Trial and the allegations therein, we find no compelling reason to disturb the CA’s factual findings. It may therefore not insist, contrary to the finding of the CA, that it did not receive the Order denying its timely filed Motion for New Trial.

Motion for New Trial Improper

A motion for new trial may be filed on the grounds of (1) fraud, accident, mistake or excusable negligence that could not have been guarded against by ordinary prudence, and by reason of which the aggrieved party’s rights have probably been impaired; or (2) newly discovered evidence that, with reasonable diligence, the aggrieved party could not have discovered and produced at the trial; and that, if presented, would probably alter the result.[40] In its Omnibus Motion for New Trial,[41] petitioner argued that its counsel Atty. Mario was sick, a fact that allegedly constituted excusable negligence for his failure to appear at the August 8, 2000 pretrial.[42] With regard to Atty. Rogelio Fernandez, the collaborating counsel, it alleged that the Board of Directors had terminated his legal services on August 4, 2000.[43]

These grounds relied upon by petitioner cannot properly secure a new trial. Counsels are not the only ones required to attend the pretrial. The appearance of the plaintiff and the defendant is also mandatory. The pertinent rule states:

Section 4. Appearance of parties. -- It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.[44]

The rationale for this requirement of compelling the parties to appear personally before the court is to exhaust the possibility of reaching a compromise.[45] While notice of the pretrial is served on counsels, it is their duty to notify the party they represent.[46]

The explanation offered by petitioner as regards the absence of its counsel from the pretrial is therefore unacceptable. It should have also justified its own absence therefrom. Having failed to do so, it had no valid ground to request a new trial.

Petitioner also failed to justify the absence of both its counsels. Until their formal withdrawal is granted, lawyers are deemed to be the representatives of their clients.[47]

Atty. Fernandez may have been notified of the termination of his services on August 7, 2004.[48] But as far as the trial court was concerned, he continued to be petitioner’s counsel of record, since no withdrawal of appearance

had yet been granted. Hence, his absence from the pretrial was still not excusable. While he could no longer represent petitioner, his presence would have afforded him an opportunity to make a formal withdrawal of appearance. An improvident termination of legal services is not an excuse to justify non-appearance at a pretrial. Otherwise, the rules of procedure would be rendered meaningless, as they would be subject to the counsel's will.

The Proper Remedy

Under the new Rules, the consequence of non-appearance without cause at the pretrial is not for the petitioner to be considered "as in default,"[49] but "to allow the plaintiff to present evidence ex parte and [for] the court to render judgment on the basis thereof." [50] This procedure was followed in the instant case.

To the trial court's order allowing the ex parte presentation of evidence by the plaintiff, the defendant's remedy is a motion for reconsideration.[51] An affidavit of merit is not required to be attached to such motion, because the defense has already been laid down in the answer.[52]

Liberality is the rule in considering a motion for reconsideration.[53] It is best for the trial court to give both the plaintiff and the defendant a chance to litigate their causes fairly and openly, without resort to technicality.[54] Unless the reopening of the case is clearly intended for delay, courts should be liberal in setting aside orders barring defendants from presenting evidence. Judgments based on an ex parte presentation of evidence are generally frowned upon.[55]

In the present case, petitioner did not file a motion for reconsideration after the trial court had allowed respondents' ex parte presentation of evidence. The Rules of Court does not prohibit the filing of a motion for a new trial despite the availability of a motion for reconsideration. But the failure to file the latter motion -- without due cause -- is a factor in determining whether to apply the liberality rule in lifting an order that allowed the ex parte presentation of evidence. In its motions and petitions filed with this Court and the lower courts, petitioner did not explain why it had failed to file a motion for reconsideration.

The lapse of time -- from the August 8, 2000 pretrial to the September 5, 2000 ex parte presentation of evidence, and until the June 19, 2001 promulgation of the Decision[56] -- shows the negligence of petitioner and its counsels. Prior to the trial court's resolution of the case, it had ample opportunity to challenge the Order allowing the ex parte presentation of evidence. Too late was the challenge that it made after the Decision had already been rendered.

Non-Receipt of the Order

In addition to the foregoing facts, petitioner fails to convince us that it has not received the trial court's Order denying its Motion for New Trial.

There is a disputable presumption that official duties have been regularly performed.[57] On this basis, we have ruled that the postmaster's certification prevails over the mere denial of a lawyer.[58] This rule is applicable here. Petitioner has failed to establish its non-receipt of the trial court's Order denying its Motion for New Trial.

This Court notes the trial court's finding that petitioner received a copy of respondents' September 24, 2001 Motion for Execution and November 21, 2001 Motion for Early Resolution, as well as the trial court's September 28, 2001 Order submitting the Motion for Execution for resolution.[59] Given these un rebutted facts, it is unbelievable that petitioner did not know that a ruling on the Motion for New Trial had already been issued. At the very least, the Motions filed by respondents should have alerted it of such issuance. Otherwise, it could have opposed their Motion for Execution by requesting the RTC to resolve the Motion for New Trial; or the trial court could have been informed by petitioner of the latter's non-receipt of the Order resolving respondents' Motion.

Second Issue:

The Taking of Depositions

The appellate court supposedly erred, too, in declaring that the taking of the depositions of petitioner's witnesses was improper. We agree with this contention.

Deposition Pending Action

A deposition may be taken with leave of court after jurisdiction has been obtained over any defendant or over property that is the subject of the action; or, without such leave, after an answer has been served.[60] Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial.[61] The liberty of a party to avail itself of this procedure, as an attribute of discovery, is "well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law." [62]

Limitations would arise, though, if the examination is conducted in bad faith; or in such a manner as to annoy, embarrass, or oppress the person who is the subject of the inquiry; or when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege.[63]

As a mode of discovery resorted to before trial, deposition has advantages, as follows:

- "1. It is of great assistance in ascertaining the truth and in checking and preventing perjury. x x x
- "2. It is an effective means of detecting and exposing false, fraudulent, and sham claims and defenses.
- "3. It makes available in a simple, convenient, and often inexpensive way facts which otherwise could not have been proved, except with great difficulty and sometimes not at all.
- "4. It educates the parties in advance of trial as to the real value of their claims and defenses, thereby encouraging settlements out of court.
- "5. It expedites the disposal of litigation, saves the time of the courts, and clears the docket of many cases by settlements and dismissals which otherwise would have to be tried.
- "6. It safeguards against surprise at the trial, prevents delays, and narrows and simplifies the issues to be tried, thereby expediting the trial.
- "7. It facilitates both the preparation and the trial of cases." [64]

The Rules of Court[65] and jurisprudence, however, do not restrict a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand. In *Dasmariñas Garments v. Reyes*, [66] we allowed the taking of the witnesses' testimonies through deposition, in lieu of their actual presence at the trial.

Thus, "[d]epositions 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." [67] There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated.[68]

In keeping with the principle of promoting the just, speedy and inexpensive disposition of every action and proceeding,[69] depositions are allowed as 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.”[70] Depositions are allowed, provided they are taken in accordance with the provisions of the Rules of Court (that is, with leave of court if the summons have been served, without leave of court if an answer has been submitted); and provided, further, that a circumstance for their admissibility exists (Section 4, Rule 23, Rules of Court).

The Rules of Court vests in the trial court the discretion to order whether a deposition may be taken or not under specified circumstances that may even differ from those the proponents have intended.[71] However, it is well-settled that this discretion is not unlimited. It must be exercised --not arbitrarily, capriciously or oppressively -- but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained.[72]

When a deposition does not conform to the essential requirements of law and may reasonably cause material injury to the adverse party, its taking should not be allowed. This was the primary concern in *Northwest Airlines v. Cruz*. [73] In that case, the ends of justice would be better served if the witness was to be brought to the trial court to testify. The locus of the oral deposition therein was not within the reach of ordinary citizens, as there were time constraints; and the trip required a travel visa, bookings, and a substantial travel fare.[74] In *People v. Webb*, [75] the taking of depositions was unnecessary, since the trial court had already admitted the Exhibits on which the witnesses would have testified.[76]

Safeguards Available

The Rules of Court provides adequate safeguards to ensure the reliability of depositions.[77] The right to object to their admissibility is retained by the parties, for the same reasons as those for excluding evidence if the witness were present and had testified in court; [78] and for errors and irregularities in the deposition.[79] As a rule, depositions should be allowed, absent any showing that taking them would prejudice any party.

Use of Depositions

Depositions may be used for the trial or for the hearing of a motion or an interlocutory proceeding, under the circumstances specified hereunder:

Section 4. Use of Depositions. -- At the trial or upon the hearing of a motion or 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 one 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 anyone 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 resides at a distance more than one hundred (100) 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 or 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; and

(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.[80]

The present case involved a circumstance that fell under the above-cited Section 4(c)(2) of Rule 23 -- the witnesses of petitioner in Metro Manila resided beyond 100 kilometers from Sultan Kudarat, the place of hearing. Petitioner offered the depositions in support of its Motion to Quash (the Writ of Execution) and for the purpose of proving that the trial court's Decision was not yet final. As previously explained, despite the fact that trial has already been terminated, a deposition can still be properly taken.

We note, however, that the RTC did not totally disregard petitioner's depositions. In its February 21, 2001 Resolution, the trial court considered and weighed -- against all other evidence -- that its Order denying the Motion for New Trial filed by petitioner had not been received by the latter's counsels. Despite their depositions, petitioner failed to prove convincingly its denial of receipt.

WHEREFORE, the Petition is DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

SO ORDERED.

Corona, and Carpio Morales, JJ., concur.

Sandoval-Gutierrez, J., on leave.

[1] Rollo, pp. 3-48.

[2] Id., pp. 50-67. Special Thirteenth Division. Penned by Justice Mercedes Gozo-Dadole, with the concurrence of Justices Salvador J. Valdez Jr. (Division chair) and Regalado E. Maambong (member).

[3] Id., pp. 69-70.

[4] Assailed CA Decision, p. 17; rollo, p. 66.

[5] Id., pp. 3 & 52.

[6] Id., pp. 4 & 53.

[7] Ibid.

[8] Ibid.; RTC Decision, p. 2; rollo, p. 121.

[9] Assailed CA Decision, p. 5; rollo, p. 54.

[10] Ibid.

[11] Ibid.

[12] RTC Resolution, p. 3; rollo, p. 290.

[13] Assailed CA Decision, p. 5; rollo, p. 54.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Id., pp. 6 & 55.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Id., pp. 7 & 56.

[26] Ibid.

[27] Id., pp. 9 & 58.

[28] Id., pp. 10 & 60.

[29] Id., pp. 10-11 & 59-60.

[30] Id., pp. 12 & 61.

[31] Ibid.

[32] Rollo, pp. 294-331.

[33] Assailed CA Decision, p. 13; rollo, p. 62.

[34] Id., pp. 15 & 64.

[35] Id., pp. 16 & 65.

[36] Ibid.

[37] This case was deemed submitted for resolution on March 18, 2003, upon this Court's receipt of the Memorandum of respondents, signed by Atty. Pedro M. Ferrer. The Memorandum of petitioner, signed by Atty. Walter S. Ong, was filed on February 24, 2003.

[38] Petitioner's Memorandum, pp. 19-21; rollo, pp. 510-512. (Original in upper case)

[39] Spouses Samson v. Lenjul Realty Corporation, GR No. 154355, May 20, 2004; CIR v. Embroidery and Garments Industries (Phil.), Inc., 364 Phil. 541, 546, March 22, 1999.

[40] §1, Rule 37 of the Rules of Court.

[41] Rollo, pp. 126-131.

[42] Petitioner's Omnibus Motion for New Trial, p. 2; rollo, p. 127.

[43] Ibid.

[44] Rule 18, Rules of Court. (Emphasis supplied)

[45] Regalado, Remedial Law Compendium (7[th] ed. 1999), Vol. I, p. 281; Francisco, Civil Procedure (1[st] ed.

2001), Vol. I, p. 592.

[46] §3, Rule 18 of the Rules of Court.

[47] See *Five Star Bus Co., Inc. v. CA*, 328 Phil. 426, 433-434, July 17, 1996, which involved the resignation of counsel on the day of the pretrial. This Court ruled that the trial court did not err in declaring the petitioners therein “as in default,” since they were bound by the negligence of their counsel. See also *Spouses Aquino v. CA*, 369 Phil. 14, 20-21, July 2, 1999, for the proper procedure in withdrawing as counsel.

[48] Petitioner’s Omnibus Motion for New Trial, *supra*.

[49] Under the old rules on pretrial, a party who fails to appear therein may be considered “as in default” (§2, Rule 20 of the Rules of Court). Under the present rules, this term is no longer used in pretrials, in order to distinguish the defendant’s failure to file an answer to plaintiff’s complaint (in default) from his failure to appear at the pretrial (as in default).

The term “default” now applies only to a declaration made by the trial court when a defending party fails to file an answer within the time allowed. Thereupon, the court shall proceed to render judgment granting the relief as the claimant’s pleading warrants, unless the court requires the submission of evidence. (§3, Rule 9 of the Rules of Court)

[50] §5, Rule 18 of the Rules of Court.

[51] *Jungco v. CA*, 179 SCRA 213, 218, November 8, 1989; *Lucero v. Dacayo*, 131 Phil. 98, 101-102, March 13, 1968; *Regalado*, *supra*, p. 283.

[52] *Regalado*, *supra*; As opposed to a Motion to Set Aside an Order of Default, which requires the showing that the defendant has a meritorious defense [§3(b), Rule 9 of the Rules of Court].

[53] *Del Rosario v. Hamoy*, 151 SCRA 719, 722, June 30, 1987; *Tejero v. Rosete*, 137 SCRA 69, 74-75, June 19, 1985; *Flores v. Buencamino*, 74 SCRA 332, 335-337, December 17, 1976.

[54] *Zenith Insurance Corp. v. Judge Purisima*, 199 Phil. 291, 294, May 31, 1982; *Pineda v. CA*, 67 Phil. 228, 234-235, September 30, 1975.

[55] *Zenith Insurance Corp. v. Judge Purisima*, *supra*; *Sarmiento v. Juan*, 205 Phil. 335, 341, January 28, 1983; *Pineda v. CA*, *supra*.

[56] RTC Decision, pp. 5-6; rollo, pp. 124-125.

[57] §3(m), Rule 131 of the Rules of Court.

[58] *Philippine National Bank v. CFI of Rizal*, 209 SCRA 294, 300, May 27, 1992; *Aportadera Sr. v. CA*, 158 SCRA 695, 699, March 16, 1988; *Grafil v. Feliciano*, 126 Phil. 985, 989, June 30, 1967.

[59] RTC Resolution, pp. 2-3; rollo, pp. 289-290.

[60] §1, Rule 23 of the Rules of Court.

[61] *Fortune Corporation v. CA*, 229 SCRA 355, 362, January 19, 1994.

[62] *Id.*, p. 371, per *Regalado*, J.

[63] *Ibid.*

[64] *Id.*, pp. 366-367 (citing 4 *Moore’s Federal Practice*, 2[nd] ed., Sec. 26.02[2]).

[65] See Rule 134.

[66] 225 SCRA 622, August 24, 1993.

[67] *Id.*, p. 634, per Narvasa, CJ.

[68] *East Asiatic Co., Ltd. v. CIR*, 148-B Phil. 401, 425, August 31, 1971.

[69] §6, Rule 1 of the Rules of Court.

[70] *Dasmariñas Garments, Inc. v. Reyes*, *supra*, p. 635.

[71] §16, Rule 23 of the Rules of Court.

[72] *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96, 111, November 3, 1999; *Lopez v. Maceren*, 95 Phil. 753, 756, August 31, 1954.

[73] *Supra*.

[74] *Id.*, pp. 112-113.

[75] 371 Phil. 491, August 17, 1999.

[76] *People v. Webb*, *supra*; see also Separate Opinions of Chief Justice Davide and Justice Puno.

[77] Such as the notice requirements (§§15, 21, 25 and 27, Rule 23), the orders for the protection of parties and deponents (§§16 and 28, *Id.*), the recording of the examination (§§17 and 26, *Id.*), the motion to terminate or limit the examination (§18, *Id.*), the certification by the deposition officer (§20, *Id.*).

[78] §6, Rule 23 of the Rules of Court.

[79] §29, Rule 23 of the Rules of Court.

[80] §4, Rule 23 of the Rules of Court.

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