

**RAMON GERARDO B. SAN LUIS, Petitioner, vs. HON. PABLITO M. ROJAS
in his capacity as Presiding Judge, RTC. Br. 70, Pasig City and BERDEX
INTERNATIONAL INC., Respondents.**

G.R. No. 159127. March 03, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for certiorari under Rule 65 of the Rules of Court filed by Ramon Gerardo B. San Luis (petitioner) seeking to set aside the Resolutions dated September 11, 2002[1] and May 20, 2003[2] of the Court of Appeals (CA) in CA -G.R. SP No. 72596.

The factual background of herein petition is as follows:

On July 12, 2001, Berdex International, Inc. (private respondent) filed with the Regional Trial Court of Pasig City (RTC) a complaint[3] for a sum of money against petitioner, docketed as Civil Case No. 68530 alleging that: it is a foreign corporation organized and existing under the laws of the United States of America with principal office in San Francisco, California, U.S.A.; it is maintaining the present action only to enforce its rights by virtue of an isolated transaction with petitioner; in June 1997, petitioner received from it certain amounts of money which were meant partly as advances or loan and partly for the purchase of 40% shares in both Seanet and Seabest Corporations, however, not a single share in those corporations was transferred to private respondent by petitioner and the shares were retained by the latter; the parties then agreed to treat all the payments/advances made by private respondent to petitioner as the latter's loan; petitioner proposed the payment of the loan within a period of three years, which proposal was accepted by private respondent with the agreement that in case of non-payment of any installment on their due dates, the entire amount shall become due and demandable; petitioner later refused to sign a formal contract of loan; petitioner confirmed such loan to private respondent's auditors on August 8, 2000; and he had only paid US\$20,000.00 and no further payment was made despite repeated demands. Private respondent prayed that petitioner be ordered to pay the amount of US\$150,335.75 plus interest until fully paid and attorney's fees.

Petitioner filed his Answer[4] contending that: he is a businessman engaged in the trading of seafoods; he received from private respondent the total amount of US\$141,944.71 with instructions that petitioner first deduct therefrom the amount of US\$23,748.00 representing the latter's commission from private respondent in their other transaction; the money was intended to be used to buy 70% of the outstanding shares of Seanet Corporation on behalf of private respondent and the balance as private respondent's advances as Seanet's stockholder, which he complied with; in view, however, of subsequent substantial losses incurred by Seanet and petitioner's desire to maintain good business with private respondent, petitioner offered that the amounts he received from private respondent be paid by Fuegoimar Traders, Inc. (Fuegoimar), a company which he subsequently put up and which he substantially owned and engaged in the same line of business as Seanet; Fuegoimar will purchase at cost the stock investment of private respondent in Seanet; while the documentation of such agreement was being finalized,

petitioner then gave US\$20,000.00 to private respondent on behalf of Fuegomar; however, private respondent then claimed that its investment in Seanet was petitioner's personal loan and the amount of US\$20,000.00 paid on behalf of Fuegomar was maliciously interpreted as petitioner's admission of personal liability.

The pre-trial conference was terminated on January 11, 2002 and the case was subsequently set for trial.

On April 4, 2002, private respondent filed a MOTION (To Authorize Deposition-Taking Through Written Interrogatories) [5] alleging that initial presentation of its evidence is set on May 3, 2002; that however, all of its witnesses are Americans who reside or hold office in the USA; that one of the witnesses is already of advanced age and travel to the Philippines may be extremely difficult if not dangerous; and there is a perceived danger to them in the aftermath of the terrorist attacks on September 11, 2002;[6] that written interrogatories are ideal in this case since the factual issues are already very few; that such mode of deposition-taking will save precious judicial and government time and will prevent needless delays in the case.

In his Opposition and Comment,[7] petitioner contends: If indeed there was an oral contract and petitioner was liable to private respondent for the amount he received from the latter, the documents attached to private respondent's complaint did not support its claim, but rather supported his position. There is a very strict standard in proving an oral contract. Taking the deposition through written interrogatories would deprive the court of the opportunity to observe the general bearing and demeanor of witnesses. Petitioner's right to cross-examine the witnesses will be prejudiced, since he will be limited to cross-interrogatories which will severely limit not only the scope but the spontaneity of his cross-examination. It is doubtful whether the witnesses will give their deposition under sanction of the penalties prescribed by Philippine law for perjury. It will not necessarily save precious judicial and government time but may in fact lengthen the trial, as both parties will have the right to review and to object to interrogatories submitted by the other party. The claim that travel to the Philippines would be dangerous for the witnesses who are all Americans is frivolous, since respondent has not presented evidence that the US government has prohibited its citizens from traveling to the Philippines; and if ever there was such prohibition, it was not binding on our own legal system. Old age was not a valid reason.

In an Order[8] dated May 9, 2002, the RTC granted private respondent's Motion, as it found the same appropriate and sanctioned by the rules on deposition-taking.

Petitioner's Motion for Reconsideration was denied in an Order[9] dated July 3, 2002.

Petitioner filed with the CA a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

In a Resolution dated September 11, 2002, the CA dismissed the petition, thus:

A perusal of the petition and its annexes indicates that:

- no affidavit of service is attached;
- the following Annexes are blurred:
 - Annex H
 - Annex J
- the pleadings filed before the respondent court are not attached.

According to the last paragraph of Section 3, Rule 46 in relation to Section 1, Rule 65 of the 1994 Rules of Civil Procedure, non-compliance with the requirements is a sufficient ground for the dismissal of the petition.

WHEREFORE, let this case be, as it is hereby DISMISSED.[10]

In a Resolution dated May 20, 2003, the CA denied petitioner's Motion for Reconsideration. In denying the motion, the CA found that non-compliance with the requirements as a result of misapprehension and unfamiliarity with the rules is not excusable; that in any case, SC Administrative Circular No. 3-96 dated June 1, 1996 states that subsequent compliance with the requirement shall not warrant a reconsideration.

Petitioner filed the instant petition for certiorari.

Petitioner raises the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED ON MERE TECHNICALITY THE PETITION FOR CERTIORARI OF THE PETITIONER EVEN IF THERE WAS SUBSTANTIAL COMPLIANCE WITH PROCEDURAL REQUIREMENTS.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE PETITION FOR CERTIORARI OF THE PETITIONER DESPITE THE UNIQUENESS OF THE LEGAL ISSUE RAISED BY THE PETITIONER AND THE GRAVE INJUSTICE THAT WILL BE VISITED UPON THE PETITIONER IF THE PRIVATE RESPONDENT, A NON-RESIDENT FOREIGN CORPORATION, WILL BE ALLOWED TO PROVE THE EXISTENCE OF AN ORAL CONTRACT THROUGH DEPOSITION BY WRITTEN INTERROGATORIES OF ALL ITS WITNESSES TAKEN OUTSIDE THE PHILIPPINES.[11]

Petitioner argues that the CA focused on technicality rather than substantial justice, notwithstanding that he subsequently complied with all the requirements and attached them to his Motion for Reconsideration; that his failure to attach an affidavit of service was due to his belief that the affidavit can be dispensed with in case of personal service of the petition to the parties who received the same; that Annex "H," a letter dated July 12, 2000 sent by private respondent to Fuegoimar and R.G. San Luis (herein petitioner) asking for confirmation of the note held by the former regarding the latter's outstanding obligation to it,[12] which was attached to the complaint filed with the RTC, was also blurred; that the blurred copy of Annex "J," the Seanet Corporation Loan Amortization Schedule,[13] was due to inadvertence during the reproduction of the numerous annexes; and that he only attached pleadings to the petition filed in the CA which he believed to be important and relevant to the issue submitted in his petition.

Petitioner further alleges that the CA failed to appreciate that grave injustice would be done to him if private respondent, a non-resident foreign corporation, would have all its witnesses who are foreigners give their testimonies through deposition upon written interrogatories which would be taken outside of the Philippines and would seek to establish an oral contract not supported by any documentary evidence; that to allow such deposition will prevent the RTC from testing the credibility of the witnesses, and petitioner's right to cross-examine the witnesses would be curtailed if not denied, as he would be limited to cross-interrogatories and re-cross interrogatories based on written interrogatories.

Private respondent counters that petitioner resorted to a wrong remedy by filing a petition for certiorari under Rule 65 instead of a petition for review under Rule 45; that petitioner can no longer question the CA Resolutions, as certiorari under Rule 65 is not a substitute for an appeal where the latter remedy is available; that the CA's dismissal of the petition was proper; that Circular 19-91 is quite clear that any petition under Rule 65 may be denied outright if there is no proof of service on the lower court; that no grave abuse of discretion was committed by the RTC in allowing deposition-taking as the same was consistent with the rules.

The Court's Ruling

Preliminarily, we find petitioner's resort to a petition for certiorari under Rule 65 proper considering that petitioner is assailing the Resolutions of the CA dismissing their petition outright.[14]

In *Donato v. Court of Appeals*[15], we held:

The proper recourse of an aggrieved party from a decision of the CA is a petition for review on certiorari under Rule 45 of the Rules of Court. However, if the error, subject of the recourse, is one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for certiorari under Rule 65 of the said Rules. As enunciated by the Court in *Fortich vs. Corona*:

Anent the first issue, in order to determine whether the recourse of petitioners is proper or not, it is necessary to draw a line between an error of judgment and an error of jurisdiction. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal. On the other hand, an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. This error is correctible only by the extraordinary writ of certiorari.

Inasmuch as the present petition principally assails the dismissal of the petition on ground of procedural flaws involving the jurisdiction of the court a quo to entertain the petition, it falls within the ambit of a special civil action for certiorari under Rule 65 of the Rules of Court.[16]

Anent petitioner's failure to attach the affidavit of service, we find the same not fatal to the petition since it showed that copies of the petition were personally served on the RTC and private respondent's counsel on September 3, 2002 as evidenced by the parties' official receiving stamps appearing opposite their names. By analogy, we have held[17] that the non-attachment of the affidavit of service is not fatal to the petition when the registry receipts attached to the petition clearly show that respondents were served copies of the petition; that the demands of substantial justice were satisfied by the actual receipt of the petition.[18]

We likewise find satisfactory the explanation advanced by petitioner with respect to the blurred copies of the annexes attached to the petition. Moreover, we find that Annexes "H" and "J" are not necessary for the resolution of the issue brought before the CA, i.e., whether the RTC acted with grave abuse of discretion in granting private respondent's MOTION (To Authorize Deposition-Taking Through Written Interrogatories).

As to the non-attachment to the petition of the pleadings filed in the RTC, we find that the documents attached to the petition -- to wit: private respondent's MOTION (To Authorize Deposition-Taking Through Written Interrogatories), petitioner's opposition, petitioner's Motion for Reconsideration and private respondent's opposition -- show that they contained the relevant facts of the case and the respective arguments of the parties on which the CA could have based its resolution on the merits of the issue brought before it. Thus, there was no need to attach all other pleadings filed in the RTC. Nonetheless, petitioner had submitted all the pleadings when he filed his motion for reconsideration.

The CA's reliance on Administrative Circular No. 3-96 dated June 1, 1996 in denying petitioner's motion for reconsideration is misplaced. Although the Circular provides that subsequent compliance with the requirement shall not warrant a reconsideration, it does not apply to the petition filed by petitioner before the CA. The subject of the said Circular deals with copies of the judgment or resolution sought to be reviewed and not to other pleadings filed in the RTC. The Circular clarified the meaning of "duplicate original copy" and "certified true copy" of decisions, judgments, resolutions or orders and not other documents to be attached.

As to the non-submission of the affidavit of service and other pleadings jurisprudence dictates that the subsequent and substantial compliance of a petitioner may call for the relaxation of the rules of procedure.[19]

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, they nevertheless must not be met at the expense of substantial justice.[20] Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[21] Thus, the CA committed grave abuse of discretion in hastily dismissing the petition on procedural flaws.

While herein petitioner prays that the CA be ordered to give due course to the petition for certiorari filed before it and to remand the case to the CA for proper disposition, the Court opts to resolve the sole issue raised in the present petition which is a pure question of law, i.e., whether Section 1, Rule 23 of the Rules of Court allows a non-resident foreign corporation the privilege of having all its witnesses, all of whom are foreigners, to testify through deposition upon written interrogatories taken outside the Philippines to prove an oral contract, in order to avoid further delay.

Section 1, Rule 23 of the Rules of Court, which substantially reproduced Section 1, Rule 24 of the old Rules, provides as follows:

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 depositions upon oral examination or written interrogatories.

Unequivocally, the rule does not make any distinction or restriction as to who can avail of deposition. The fact that private respondent is a non-resident foreign corporation is immaterial. The rule clearly provides that the testimony of any person may be taken by deposition upon oral examination or written interrogatories, at the instance of any party. Depositions serve as a device for ascertaining the facts relative to the issues of the case. The evident purpose is to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent the said trials from being carried out in the dark.[22]

In *Dasmariñas Garments, Inc. v. Reyes*[23], where we upheld the right of plaintiff during the trial stage of the case to present its evidence by deposition of its witnesses in a foreign jurisdiction in lieu of their oral examination in court, we said:

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

Depositions are principally made available by law to the parties as a means of informing themselves of all the relevant facts; they are not therefore generally meant to be a substitute for the actual testimony in open court of

a party or witness. The deponent must as a rule be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules of evidence. Section 1, Rule 132 of the Rules of Court provides:

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

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

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

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

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

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness is out of the province and at a greater distance than fifty[25] (50) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

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

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

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

It is apparent then that the deposition of any person may be taken wherever he may be, in the Philippines or abroad. If the party or witness is in the Philippines, his deposition "shall be taken before any judge, municipal or notary public" (Sec. 10, Rule 24, Rules of Court). If in a foreign state or country, the deposition "shall be

taken: (a) on notice before a secretary or embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines, or (b) before such person or officer as may be appointed by commission or under letters rogatory" (Sec. 11, Rule 24).

Leave of court is not necessary where the deposition is to be taken before "a secretary or embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines," and the defendant's answer has already been served (Sec. 1, Rule 24). After answer, whether the deposition-taking is to be accomplished within the Philippines or outside, the law does not authorize or contemplate any intervention by the court in the process, all that is required being that "reasonable notice" be given "in writing to every other party to the action . . . (stating) the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs . . . "(Sec. 15, Rule 24). The court intervenes in the process only if a party moves (1) to "enlarge or shorten the time" stated in the notice (id.), or (2) "upon notice and for good cause shown," to prevent the deposition-taking, or impose conditions therefor, e.g., that "certain matters shall not be inquired into" or that the taking be "held with no one present except the parties to the action and their officers or counsel," etc. (Sec. 16, Rule 24), or (3) to terminate the process on motion and upon a showing that "it is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party" (Sec 18, Rule 24).[26] (Emphasis supplied)

Thus, we find no grave abuse of discretion committed by the RTC in granting private respondent's MOTION (To Allow Deposition-Taking Through Written Interrogatories) considering private respondent's allegation in its MOTION that its witnesses are all Americans residing in the U.S. This situation is one of the exceptions for its admissibility under Section 4(c)(2), Rule 23 of the Rules of Court, i.e., that the witness resides at a distance of 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.

Petitioner insists that Dasmariñas does not constitute a precedent in the instant case as the facts are substantially different; to wit: (1) in Dasmariñas, plaintiff filed a motion to take deposition through written interrogatories of two witnesses abroad after it had already presented its first witness, while in the present case, private respondent will not present a single witness to testify in court but only the witnesses' depositions; (2) in Dasmariñas, the existence of the contract involved was not in issue at all, while in the present case, petitioner denied the existence of the alleged contract of loan and private respondent has not presented any documentary evidence to support its claim.

We do not agree.

The situation in Dasmariñas is the same as in the instant case since in both cases, it was already during the trial stage that the deposition through written interrogatories was sought to be taken. It does not matter whether one witness for the plaintiff had already testified since the Dasmariñas ruling did not make such testimony in court a condition to grant the deposition of the two other witnesses. Also, in Dasmariñas, the plaintiff sued defendant to recover a certain sum of money which was the same as in the instant case as private respondent was suing petitioner for collection of sum of money.

Petitioner claims that the right to take depositions upon written interrogatories in lieu of oral testimony in open court would result in grave injustice to him, as private respondent is seeking to establish the existence of an oral contract which requires stricter standard in proving the same.

We find such argument untenable.

While there are limitations to the rules of discovery, even when permitted to be undertaken without leave and without judicial intervention,[27] such limitations inevitably arise when it can be shown that the examination is

being conducted in bad faith;[28] or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry;[29] or when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege.[30]

It has been repeatedly held that deposition discovery rules are to be accorded a broad and liberal treatment[31] and should not be unduly restricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law. Otherwise, the advantage of a liberal discovery procedure in ascertaining the truth and expediting the disposal of litigation would be defeated.[32] In fact, we find nothing in the rules on deposition that limits their use in case of oral contract as alleged by petitioner.

In any event, the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time. The admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[33]

Petitioner argues that to allow such deposition-taking will prevent the RTC from observing the witnesses' demeanor and credibility; and that petitioner's right to cross-examine the witnesses would be curtailed if not denied as he is limited to cross-interrogatories and re-cross interrogatories based on written interrogatories.

We are not persuaded.

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; and the procedure is not on that account rendered illegal nor is the deposition, thereby taken, inadmissible.[34] It precisely falls within one of the exceptions where the law permits such a situation, i.e., the use of a deposition in lieu of the actual appearance and testimony of the deponent in open court and without being subject to the prying eyes and probing questions of the Judge.[35] Depositions are consistent with the principle of promoting just, speedy and inexpensive disposition of every action or proceeding.[36] Depositions are allowed provided the deposition is taken in accordance with the applicable 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.[37]

We also find no merit in petitioner's claim that his right to cross-examine private respondent's witnesses will be curtailed since petitioner is fully accorded the opportunity for cross-examination under Section 25, Rule 23 of the Rules of Court, to wit:

SEC. 25. Depositions upon written interrogatories; service of notice and of interrogatories. - A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter, the latter may serve re-direct interrogatories upon a party who has served cross interrogatories. Within three (3) days after being served with re-direct interrogatories, a party may serve re-cross interrogatories upon the party proposing to take the deposition.

Thus, petitioner may submit cross-interrogatories upon private respondent with sufficient fullness and freedom.

Finally, petitioner contends that since private respondent will have the testimonies of its witnesses in another jurisdiction, the sanction of penalty for perjury under our laws would not apply to them; and petitioner may not be able to enforce its own claim against private respondent, since it is domiciled in a foreign country and does not appear to have any assets in the Philippines. We will not venture to make any determination on this matter, as it

would be premature, conjectural or anticipatory. We must only deal with an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. [38]

WHEREFORE, the petition is GRANTED. The Resolutions dated September 11, 2002 and May 20, 2003 of the Court of Appeals in CA-G.R. SP No. 72596 are REVERSED and SET ASIDE. However, the Orders dated May 9, 2002 and July 3, 2002 issued by the Regional Trial Court of Pasig City in Civil Case No. 68530 stand.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

* The Court of Appeals is named as respondent. Pursuant to Section 4, Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

[1] Penned by Justice Delilah Vidallon-Magtolis, and concurred in by Justices Renato C. Dacudao and Mario L. Guariña III; rollo, p. 20.

[2] Id. at 22.

[3] Rollo, pp. 23-26.

[4] Id. at pp. 66-70.

[5] Rollo, pp. 32-33.

[6] Should be 2001.

[7] Rollo, pp. 34-38.

[8] Id. at 39; penned by Judge Pablito M. Rojas.

[9] Id. at 47.

[10] Rollo, p. 20.

[11] Rollo, p. 206.

[12] Id. at 104-105.

[13] Id. at 103.

[14] See *Lim v. Court of Appeals*, G.R. No. 149748, November 16, 2006, 507 SCRA 38, 49-50.

[15] G.R. No. 129638, December 8, 2003, 417 SCRA 216.

[16] *Donato v. Court of Appeals*, supra note 15, at 223.

[17] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 52 citing *Gutierrez v. Secretary of Department of Labor and Employment*, G.R. No. 142248, December 16, 2004, 447 SCRA 107; *Añonuevo v. Court of Appeals*, G.R. No. 152998, September 23, 2003, 411 SCRA 621.

[18] *Philippine Amusement and Gaming Corporation v. Angara*, id.

[19] *Valdecantos v. People*, G.R. No. 148852, September 27, 2006, 503 SCRA 474, 483; *Cusi-Hernandez v. Diaz*, 390 Phil. 1245 (2000); *Piglas-Kamao v. National Labor Relations Commission*, G.R. No. 138556, May 9, 2001, 357 SCRA 640; *Mendoza v. David*, G.R. No. 147575, October 22, 2004, 441 SCRA 172.

[20] Philippine Amusement and Gaming Corporation v. Angara, supra note 17 citing Wack Wack Golf and Country Club v. National Labor Relations Commission, G.R. No. 149793, April 15, 2005, 456 SCRA 280; General Milling Corporation v. National Labor Relations Commission, 442 Phil. 425 (2002).

[21] Philippine Amusement and Gaming Corporation v. Angara, supra note 17.

[22] Republic v. Sandiganbayan, G.R. No. 90478, November 21, 1991, 204 SCRA 212, 222-223.

[23] G.R. No. 108229, August 24, 1993, 225 SCRA 622.

[24] Now Rule 23 under the 1997 Revised Rules on Civil Procedure.

[25] Now under Sec. 4 (c)(2), Rule 23, which reads:

(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.

[26] Dasmariñas Garments, Inc. v. Reyes, supra note 23, at 629-632.

[27] Republic v. Sandiganbayan, supra note 22, at 225.

[28] Section 18, Rule 23, Rules of Court.

SECTION 18. Motion to terminate or limit examination. - At any time during the taking of the deposition, on motion or petition of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy embarrass, or oppress the deponent or party, the court in which the action is pending or the Regional Trial Court of the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition, as provided in section 16 of this Rule.

[29] Id.

[30] Sec. 2, Rule 23, Rules of Court

SECTION 2. Scope of examination. - Unless otherwise ordered by the court as provided by section 16 or 18 of this Rule, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject of the pending action, whether relating to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts.

[31] Ayala Land Inc. v. Tagle, G.R. No. 153667, August 11, 2005, 466 SCRA 521, 532.

[32] Hyatt Industrial Manufacturing Corporation v. Ley Construction and Development Corporation, G.R. No. 147143, March 10, 2006, 484 SCRA 286, 301.

[33] Ayala Land, Inc. v. Tagle, supra note 31 citing Permanent Savings and Loan Bank v. Velarde, G.R. No. 140608, September 23, 2004, 439 SCRA 1; PNOC Shipping and Transport Corporation v. Court of Appeals, 358 Phil. 38 (1998); De la Torre v. Court of Appeals, 355 Phil. 628 (1998).

[34] Dasmariñas Garments Inc. v. Reyes, supra note 23, at 635.

[35] Id.

[36] Hyatt Industrial Manufacturing Corporation v. Ley Construction and Development Corporation, supra note 32 at 301, citing Jonathan Landoil International Co., Inc. v. Mangudadatu, G.R. No. 155010, August 16, 2004,

436 SCRA 559.

[37] Jonathan Landoil International Co., Inc. v. Mangudadatu, id.

[38] See Velarde v. Social Justice Society, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 291.

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