

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),
PETITIONER, V. SANDIGANBAYAN 2ND DIVISION, TRADERS ROYAL
BANK, ROYAL TRADERS H...**

G.R. No. 212436. October 02, 2019

Ponente: J. REYES, JR., J.

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J. REYES, JR., J.:

Through this Petition for Certiorari[1] under Rule 65 of the Rules of Court, petitioner Republic of the Philippines represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG), seeks to nullify the Resolutions dated September 25, 2013[2] and March 25, 2014[3] of the Sandiganbayan 2nd Division in Civil Case No. 0181 which granted respondent Bank of Commerce's motion to strike out the testimonies of plaintiff's witnesses for violating the bank's right to cross-examination.

The Facts

In 1997, the Republic, represented by the PCGG, commenced a complaint[4] for sum of money, reconveyance and enforcement of foreign judgment relative to the recovery of ill-gotten wealth of former President Ferdinand E. Marcos (President Marcos), his family, relatives and close associates.

The complaint was filed against Traders Royal Bank (TRB) wherein it was alleged that TRB issued several banking instruments showing receipt of funds from President Marcos. These banking instruments were turned over to the PCGG and pursuant to the latter's mandate to recover President Marcos' ill-gotten wealth, presented said instruments to TRB for payment. TRB, however, refused payment allegedly without just and valid cause.

The PCGG also alleged that the Royal Bank of Canada (RBC) invested in TRB by buying equity consisting of 278,488 shares of the common stock. RBC thereafter sold all its 278,488 shares of stock to Banque de Paris et des Pays Bays (Suisse) SA (Banque de Paris). In reality, however, the PCGG alleged that the purchaser was President Marcos and his close friend then Ambassador Roberto S. Benedicto. According to the PCGG, these shares are ill-gotten wealth and should, thus, be reconveyed to the government.

After the issues were joined, the PCGG presented its witnesses. Among those presented were witnesses Reynaldo Guiao (Guiao), Eleuterio Camarote (Camarote), and Julieta Bertuben (Bertuben) at the hearing dates on March 10, 1999 and August 31, 1999.[5]

Meantime, in 2000, TRB's Articles of Incorporation was amended and its name was changed to Royal Traders Holding Co., Inc., (RTHCI).[6] In 2001, the Bank of Commerce allegedly purchased RTHCI. Consequently, the PCGG amended its complaint to implead as additional defendants RTHCI and the Bank of Commerce.[7] The PCGG alleged that the amendment in TRB's Articles of Incorporation was a precursor to the sale of RTHCI to the Bank of Commerce for the purpose of mingling TRB's assets with the latter to escape its obligations with the government upon which PCGG's complaint was based.[8]

In the course of the proceedings, the PCGG prayed that it be allowed to enter against Bank of Commerce the previously presented testimonial and documentary evidence, but the Sandiganbayan denied the same on the ground that it would violate the Bank of Commerce's right to due process. Thus, as early as in its Resolution dated May 18, 2007, the Sandiganbayan already ruled:

x x x. However, its prayer that the testimonial and documentary evidence so far presented by it be considered/entered as evidence against the additional defendants Royal Traders Holding Co., Inc. and Bank of Commerce, cannot be favorably acted upon, especially insofar as defendant Bank of Commerce is concerned because it would violate its right to cross-examination. x x x

x x x x

There is, thus, a need for the plaintiff to recall the witnesses it had already presented in order to afford defendant Bank of Commerce the right to cross-examine the said witnesses.[9] (Emphasis supplied)

This notwithstanding, the PCGG, at the hearing held on November 29, 2011, manifested that it will adopt as evidence against Bank of Commerce the testimonies of Guiao, Camarote, and Bertuben that were presented in evidence against TRB during the hearings on March 10, 1999 and August 31, 1999.[10] The Sandiganbayan required the Bank of Commerce to submit its manifestation as regards the need to conduct cross-examination. Accordingly, the Bank of Commerce manifested that it finds it necessary to conduct cross-examination on said witnesses and that it be allowed to do so on the hearings scheduled on March 5 and 6, 2012.[11]

However, during the hearing on March 5, 2012, the PCGG manifested that said witnesses were unavailable for cross-examination by the Bank of Commerce. The hearings were then reset to May 14 and 15, 2012.[12] These hearings, however, did not proceed because the case records were transferred from the Sandiganbayan's Third Division to its Second Division. The hearings were then moved to August 29 and 30, 2012.[13]

At the hearing on August 29, 2012, the PCGG again manifested that the witnesses were unavailable for cross-examination. Thus, the hearing was again moved to November 14 and 15, 2012.[14]

The cross-examination, however, did not push through as rescheduled because the PCGG again manifested that the witnesses were unavailable as they can no longer be located.

Consequently, the Bank of Commerce moved to strike out the testimonies of Guiao, Camarote and Bertuben on the ground that it was denied the opportunity to cross-examine said witnesses.[15] The PCGG opposed the motion, arguing that the Bank of Commerce is the successor-in-interest of TRB, and that since TRB had cross-examined the witnesses, the Bank of Commerce should be bound by such cross-examination.[16] It also argued that the burden of recalling the witnesses for cross-examination falls upon the party wishing to exercise said right. In reply, the Bank of Commerce denied being the successor-in-interest of TRB and that, in fact, it has defenses different from that of its co-defendants.[17]

The Sandiganbayan 's Resolutions

In its first assailed Resolution dated September 25, 2013, the Sandiganbayan granted the Bank of Commerce's motion and accordingly ordered that the testimonies of witnesses Guiao, Camarote and Bertuben be stricken off the record with respect to the Bank of Commerce. It held that the Bank of Commerce was never afforded the opportunity to cross-examine the witnesses. The Sandiganbayan also held that neither was the bank negligent nor that it incurred delay in conducting the cross-examination.[18]

The PCGG's motion for reconsideration met similar denial from the Sandiganbayan in its Resolution dated March 25, 2014.

The Issue

The present Petition is before the Court on the sole ground that the Sandiganbayan committed grave abuse of discretion when it ordered the testimonies of witnesses Guiao, Camarote and Bertuben be stricken off the record as to the Bank of Commerce.

The Ruling of the Court

The Petition is dismissed for lack of merit.

In an adversary judicial system such as ours, the right to cross-examine a witness is essential to the principle of due process.[19] Indeed, no person may be deprived of life, liberty or property without due process of law.[20] The right of a party to confront and cross-examine opposing witnesses is available in either criminal or civil judicial litigation, or in administrative tribunals with quasi-judicial powers.[21]

Section 6, Rule 132 of the Rules of Court reads:

Cross-examination; its purpose and extent. — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

The PCGG anchors its objection to the striking out of the testimonies of the witnesses on its allegation that the Bank of Commerce and TRB are one corporate entity as a result of entering into a fraudulent purchase agreement.[22] Being one corporate entity, the PCGG posits that the cross-examination conducted by TRB should be considered as cross-examination conducted by Bank of Commerce. In other words, the PCGG claims identity of interests between TRB and the Bank of Commerce as an exception to the right to cross-examination.

The Court's pronouncement in *Republic v. Sandiganbayan*,[23] while principally adjudicating on the right to cross-examination in relation to a former testimony or deposition, is nevertheless instructive on when substantial identity or identity of interest between parties satisfies the requirement for the opportunity to cross-examine:

The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity for cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called. This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial. The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard against falsehoods and frauds.

In resolving the question of whether the requirement of opportunity to cross-examine has been satisfied, we have to consider first the required identity of parties as the present opponent to the admission of the Bane deposition to whom the opportunity to cross-examine the deponent is imputed may not after all be the same "adverse party" who actually had such opportunity.

To render the testimony of a witness admissible at a later trial or action, the parties to the first proceeding must be the same as the parties to the later proceeding. Physical identity, however, is not required; substantial identity or identity of interests suffices, as where the subsequent proceeding is between persons who represent the parties to the prior proceeding by privity in law, in blood, or in estate. The term "privity" denotes mutual or successive relationships to the same rights of property.

In the present case, the petitioner failed to impute, much less establish, the identity of interest or privity between the then opponent, Africa, and the present opponents, the respondents. While Africa is the son of the late respondent Jose Africa, at most, the deposition should be admissible only against him as an ETPI stockholder who filed the certiorari petition docketed as Civil Case No. 0130 (and, unavoidably, as successor-in-interest of the late respondent Jose Africa). While Africa and the respondents are all ETPI stockholders, this commonality does not establish at all any privity between them for purposes of binding the latter to the acts or omissions of the former respecting the cross-examination of the deponent. The sequestration of their shares does not result in the integration of their rights and obligations as stockholders which remain distinct and personal to them, vis-à-vis other stockholders.[24] (Internal citations omitted)

In the case at bar, identity of interests between TRB and the Bank of Commerce, although alleged, has yet to be established. That the Bank of Commerce bought RTHCI for purposes of mingling its assets to subvert the government's effort to recover ill-gotten wealth and that the Bank of Commerce is the successor-in-interest of TRB are mere conclusions of law,[25] or at best, allegations which the PCGG bears the burden to prove by the required quantum of evidence.

In any case, the Bank of Commerce denied being the successor-in-interest of TRB and raised the following as a defense:

15.1 Traders Royal Bank or its assets was not mingled with [Bank of Commerce]. As explained, [Bank of Commerce] purchased identified recorded assets and assumed identified recorded liabilities of [TRB], now known as [RTHCI].

x x x x

15.3 Moreover, the following, among others, show that there was no mingling of assets between [Bank of Commerce] and [TRB] now known as [RTHCI]:

a. [Bank of Commerce] and TRB maintained their separate corporate personalities, distinct and independent of each other. The separate existence of [Bank of Commerce] on one hand and [TRB] now known as [RTHCI] negates any mingling of assets between the two corporations.

b. [Bank of Commerce] did not absorb the employees of [TRB] now known as [RTHCI]. The employees [of TRB] were all retired by [TRB] and their retirement benefits were paid by [TRB]. [TRB], (now known as [RTHCI]), not [Bank of Commerce] settled the retirement benefits of its employees. x x x

c. Certain liabilities remain as obligations of [TRB] (now known as [RTHCI]) and were excluded in the [Purchase Sale Agreement] x x x.[26]

Thus, to hold that TRB's actions, including the conduct of cross-examination, bind the Bank of Commerce on account of privity is to precipitately judge a determinative issue upon which the PCGG's cause of action against the Bank of Commerce is based.

There is likewise no reason to disturb the Sandiganbayan's findings that the Bank of Commerce did not waive its right to cross-examination. Basic are the rules that the essence of the right to cross-examination is mere opportunity[27] and not actual cross-examination; and that the right is a personal one which may be waived expressly or impliedly.[28]

Here, the Bank of Commerce expressly manifested its intention to subject the witnesses Guiao, Camarote and Bertuben to cross-examination and the repeated postponements of the trial schedules were not due to its fault or negligence. By presenting said witnesses on direct examination, the PCGG had the duty to make them available for cross-examination in accordance with the dictates of due process. The Bank of Commerce should not stand to suffer by the repeated failure of the PCGG to present its witnesses for cross-examination.[29]

Consequently, the absence of the opportunity to cross-examine these witnesses renders their testimony incomplete and therefore inadmissible for being incompetent as to the Bank of Commerce. As held in *Ortigas, Jr. v. Lufthansa German Airlines*:^[30]

Oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party. But when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.

The right of a party to cross-examine the witnesses of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law. Subject to appropriate supervision by the judge in order to avoid unnecessary delays on account of its being unduly protracted and to needed injunctions protective of the right of the witness against self-incrimination and oppressive and unwarranted harassment and embarrassment, a party is absolutely entitled to a full cross-examination as prescribed in Section 8 of Rule 132 thus: "Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case. (Emphases supplied)

WHEREFORE, the petition is DISMISSED. The Resolutions dated September 25, 2013 and March 25, 2014 of the Sandiganbayan 2nd Division in Civil Case No. 0181 are AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Rollo, pp. 3-25.

[2] Penned by Associate Justice Napoleon E. Inoturan, with Associate Justices Teresita V. Diaz-Baldos and Oscar C. Herrera, Jr., concurring; *id.* at 32-37.

[3] *Id.* at 39-42.

[4] *Id.* at 49-60.

[5] *Id.* at 11.

[6] *Id.* at 137-151.

[7] *Id.* at 152-175.

[8] *Id.* at 12.

[9] *Id.* at 35.

[10] *Id.* at 179.

[11] *Id.* at 176-178.

[12] *Id.* at 180.

[13] Id.

[14] Id.

[15] Id. at 179-186.

[16] Id. at 34.

[17] Id.

[18] Id. at 36.

[19] Dy Teban Trading, Inc. v. Dy, 814 Phil. 564, 579 (2017).

[20] CONSTITUTION, Article III, Sec. 1.

[21] Savory Luncheonette v. Lakas ng Manggagawang Pilipino, 159 Phil. 310, 315 (1975).

[22] Id. at 18.

[23] 678 Phil. 358 (2011).

[24] Id. at 417-418.

[25] See Remitere v. Montinola Vda. De Yulo, 123 Phil. 57 (1966).

[26] Rollo, pp. 231-233.

[27] Equitable PCI Banking Corporation v. RCBC Capital Corporation, 595 Phil. 536, 569 (2008).

[28] Luncheonette v. Lakas ng Manggagawang Pilipino, 159 Phil. 310, 315-316 (1975).

[29] See Union Motor Corp. v. Court of Appeals, 414 Phil. 33 (2001).

[30] 159-A Phil. 863, 892-893 (1975).

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