

AUTOGRAPHICS, INC., PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE AIRLINES, INC., RESPONDENTS.

G.R. No. 95863. July 01, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

AUTOGRAPHICS, INC., files this petition for review on certiorari seeking to set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 19725 declaring the Order of 20 December 1989, the Decision of 28 December 1989 and the Order of 12 January 1990 of the Regional Trial Court of Cebu in Civil Case No. CEB-7546 (Autographics, Inc. v. Philippine Airlines, Inc.) null and void and remanding the records to the trial court for further reception of evidence.

Petitioner Autographics, Inc. (AGI, for brevity), and private respondent Philippine Airlines, Inc. (PAL, for brevity), entered into several contracts which would provide support services to PAL's operations. Under these contracts, AGI would provide PAL with cars, motorcycles, crew-cab pick-ups, shuttle buses for twenty-four (24) hours a day, seven (7) days a week, inclusive of oil, maintenance staff and facilities, tools, spare parts, seat covers, insurance coverage and LTC registration. For its part, private respondent undertook to pay petitioner a semi-monthly contract price payable every 14th and 29th of each month.

AGI and PAL likewise entered into a Sale and Leaseback Contract over 20 units of NORDCO USA Foodloader and 1 unit Jet Refueller Truck. They also agreed to an Air Mail Van Leasing Contract to serve PAL'S Mactan station at Cebu.

Initially, the parties complied with their respective undertakings. Thereafter, while these contracts were still in force, PAL notified AGI of their termination inasmuch as said contracts were prejudicial to PAL's interest and violative of its franchise.

On 25 January 1989, AGI filed a complaint[2] to recover the sum of thirty million pesos (P30,000,000.00) with damages, preliminary attachment and injunction against PAL before the Regional Trial Court of Cebu, docketed as Civil Case No. CEB-7546.

On 27 January 1989, the trial court issued a writ of preliminary attachment[3] over PAL's personal and real properties upon AGI's filing of a bond.

On 30 January 1989, PAL filed a petition for certiorari and prohibition with application for a temporary restraining order and preliminary injunction with the Court of Appeals questioning the legality of the writ issued by the trial court. On the same day, the First Division of the Court of Appeals[4] issued a restraining order to enjoin further implementation of the order and writ of preliminary attachment.

On 1 February 1989, PAL filed with the trial court a motion to dismiss on the ground that it did not have jurisdiction over the case for failure of private respondent to pay the correct amount of docket fees.

On 22 February 1989, AGI filed before the trial court an Ex-parte Motion to Admit Amended Complaint and to Issue a Replevin Order.

On 23 February 1989, the trial court issued an order admitting the Amended Complaint.

On 3 March 1989, PAL filed a Supplemental Petition impugning the Order of 23 February 1989.

On 7 March 1989, the First Division of the Court of Appeals issued a restraining order enjoining the trial court from further proceeding with the case.

On 6 April 1989, the First Division of the Court of Appeals rendered a Decision^[5] dismissing PAL's petition for certiorari for lack of merit and lifting the temporary restraining orders of 30 January and 7 March 1989.

On 27 April 1989, AGI filed a Motion to Admit Second Amended Complaint.

On 2 May 1989, the trial court granted the aforesaid motion and admitted the Second Amended Complaint. Summons was then issued to PAL.

On 29 June 1989, PAL filed its Answer with Compulsory Counterclaim.

On 30 June 1989, upon AGI's ex-parte motion, the trial court issued an alias writ of preliminary attachment over the properties of PAL.

On 7 July 1989, PAL put up a counterbond issued by the Government Service Insurance System.

On 16 August 1989, trial started with AGI presenting its oral and documentary evidence.

On 8 November 1989, AGI rested its case with a 42-page Offer of Exhibits consisting of three hundred eighty two (382) annexes. On the same date, the trial court issued an order setting the continuation of the trial on 22 and 23 of November 1989 with PAL presenting its evidence. However, these scheduled trial dates were later cancelled because of typhoon "Saling" which caused the cancellation of PAL's flights from Manila to Cebu. The hearing then was reset for trial on 27 and 28 November 1989.

On 27 November 1989, the trial court had to reset the hearing to 20 and 21 December 1989 because of the non-availability of PAL's witnesses.

On 14, December 1989, the trial court admitted the exhibits formally offered by AGI. On the same date, PAL filed before the trial court a Manifestation/Motion^[6] stating that it had conferred with the persons whom it intended to present as witnesses on 20 and 21 December 1989; that said witnesses by reason of distance and personal matters (previously scheduled appointments/meetings) had expressed willingness to testify by deposition; that PAL was thus constrained to avail of Rule 24 (Depositions and Discovery) of the Rules of Court; that, consequently, PAL sent to AGI and the trial court copies of a Notice to Take Deposition on 20 and 21 December 1989 before Regional Trial Court Judge Santiago Ranada, Jr., or his Branch Clerk of Court, Atty. Bernabe Solis, at Makati; and, that such remedy allowed by the rules was not a show of PAL's disrespect to the trial court but rather a sincere effort towards the early disposition of the case. PAL prayed that its manifestation be noted and that the hearings before the trial court on 20 and 21 December 1989 be cancelled.

No action was taken thereon by the trial court on the request of PAL for the cancellation of the hearings scheduled on 20 and 21 December 1989. On 20 December 1989, only PAL's Cebu counsel, Atty. Joseph Tanco, appeared. Its principal counsel, Atty. Leighton R. Siazon, was absent. Atty. Tanco sought the resetting of the hearing because Atty. Siazon was attending to the taking of the deposition of PAL's witnesses before the Regional Trial Court of Makati.

Upon the other hand, counsel for AGI objected to the manifestation of Atty. Tanco and moved that PAL's right to present evidence be considered waived and the case be deemed submitted for decision.

In open court, the trial court granted[7] the oral motion of counsels for AGI and declared the case submitted for decision, PAL having been considered to have waived its right to present evidence.

On 28 December 1989, the trial court rendered its decision[8] adverse to PAL. On the same date, PAL, despite not having received a written Order of 20 December 1989, filed a motion for reconsideration[9] of the same.

On 12 January 1990, the trial court denied[10] the motion for reconsideration thus -

"The Court fails to find any justification for defendant's (PAL's) actuations on 20 December 1989 for not only did it conveniently coincide at the exact time and date for it to present its witness the taking of the deposition in Makati of the very same witness it undertook in open court to so present on said date, but it also failed to present a medical certificate to excuse his coming to Cebu, nor did it present some other witness in his stead, nor did it even present in evidence a deposition taken prior to December 20, 1989 which it could have taken even as early as January 25, 1989 when this case commenced, if it was serious in producing evidence in court to meet plaintiff's action. Resort to improper dilatory tactics by litigants has always been frowned upon by the courts."

On 19 January 1990, PAL filed a Notice of Appeal Ex Abundantia Ad Cautelam with respondent Court of Appeals. However, instead of filing the appeal, PAL chose to file a petition[11] for certiorari and prohibition with the appellate court claiming that respondent Judge gravely abused its discretion.

On 24 January 1990, the Fifth Division of the Court of Appeals found the petition sufficient in form and substance and required AGI to (a) answer the petition and (b) show cause why a writ of preliminary injunction should not issue in the case.[12] It likewise issued a temporary restraining order[13] to enjoin the implementation of the decision of 28 December 1989.

On 15 February 1990, respondent Court of Appeals issued a writ of preliminary injunction.[14] AGI moved to reconsider the aforesaid resolution, while PAL opposed the motion.

On 16 April 1990, the appellate court denied AGI's motion for reconsideration for lack of merit.[15]

On 15 May 1990, AGI filed a petition for certiorari and prohibition before this Court assailing the jurisdiction of the Court of Appeals in granting PAL's application for a writ of preliminary injunction beyond the 20-day period from the issuance of a temporary restraining order and in giving due course to PAL's petition for certiorari and prohibition.

On 23 July 1990, we dismissed AGI's petition for its failure to show that the appellate court committed a grave abuse of discretion.[16]

On 4 August 1990, AGI filed a motion for reconsideration of our Resolution of 23 July 1990.

On 15 August 1990, a decision[17] was rendered by respondent Court of Appeals the dispositive portion of which states -

"WHEREFORE, herein petition is hereby GRANTED.

"The Order dated 20 December 1989, the Decision dated 28 December 1989 and the Order denying the Motion for Reconsideration dated 12 January 1990 are declared null and void and are hereby SET ASIDE.

"Let the records of this case be remanded to the court a quo for continuation of hearing for the reception of evidence of petitioner."

On 5 October 1990, AGI filed its motion for reconsideration.[18]

On 10 October 1990, we denied with finality AGI's motion for reconsideration.[19]

On 19 October 1990, the Court of Appeals denied AGI's motion for reconsideration for being "flimsy and whimsical and does not raise any question of substance." [20]

AGI then elevated the case to us by way of a petition for review on certiorari [21] raising the following issues: [22] (a) whether the Court of Appeals committed a reversible error in ruling that the decision of the trial court of 28 December 1989 as well as its order of 20 December 1989 and 12 January 1990 were issued with grave abuse of discretion, hence null and void; (b) whether the decision of the trial court of 28 December 1989 had already become final and executory in view of the abandonment by private respondent of its right to appeal therein by availing of the special civil action for certiorari; and (c) whether res judicata applies in view of G.R. No. 93211.

There is no need to delve into the propriety of the petition for certiorari filed by PAL in lieu of appeal from the decision of 28 December 1989. This issue has already been passed upon in G.R. No. 93211 thus -

"Since the Court of Appeals in the exercise of its sound discretion has already granted the petition of the Philippine Airlines, Inc. in the case before it, and remanded the records to the court a quo, the issue of whether or not appeal is the only appropriate remedy has become moot and academic.

"CONSIDERING THE FOREGOING, the COURT RESOLVED TO DENY the motion for reconsideration. This DENIAL is FINAL."

The only decisive issue to be resolved is whether the trial court was correctly adjudged to have committed a grave abuse of discretion in issuing the oral Order of 20 December 1989 and in rendering the judgment of 28 December 1989 without giving PAL the chance to present evidence.

We answer categorically in the affirmative. The proceedings in the court a quo were indeed manifestly inequitable and irregular, involving as it does a claim of THIRTY MILLION PESOS (P30,000,000.00) in damages against PAL. In its haste to comply with Administrative Circular No. 4 [23] promulgated 22 September 1988, the trial court prodded PAL to present its evidence within a period of one (1) month. Perhaps, this arrangement could have been proper had both litigants been given equal opportunity to ventilate their respective claims. Unfortunately, this was not the case.

The records show that AGI presented its oral and documentary evidence on 16 August 1989. It rested its case on 8 November 1989 with a 42-page formal offer of exhibits consisting of three hundred eighty-two (382) annexes.

The first scheduled hearing on 22 November 1989 did not take place because of typhoon "Saling." Still, the trial court pressed for the early resolution of the case by resetting intransferably the trial date to 27 November 1989 notwithstanding the manifestation of PAL's Cebu-based counsel that he had a prior scheduled court appearance in an out-of-town case on the same date and that he would inform PAL's principal counsel of the new date. [24] In the second hearing of 27 November 1989, [25] trial court granted PAL's first motion for postponement but insisted on the one (1) month period for PAL's proffer of evidence:

"COURT: (to interpreter)

Call the case. (interpreter calls the witness)

Appearances.

ATTY. BORROMEO:

For the plaintiff Your Honor in collaboration with Atty. Cortes and Atty. Hontanosas, ready Your Honor.

Atty. CORTES:

Also for the plaintiff Your Honor, ready.

ATTY. SIAZON:

For the defendant Your Honor. Your Honor please, last November 17 we filed a motion for resetting of the case for that day as well as for the 22nd and 23rd in view of the fact that a resolution has yet to be issued by this Honorable Court on its ruling of plaintiff's formal offer of exhibits. Also, on said date, all flights to Cebu were cancelled and then I understand that this case was set today, and tomorrow, morning and afternoon. Last Friday, upon advice of the counsel of Angara Law Office, I filed a motion for resetting in view of the proximity of time coupled with the fact that there is yet a resolution to be issued. For this reason, I am reiterating our motion for the cancellation of today and tomorrow's hearing. It is not our intention to delay Your Honor and in fact I have filed a motion for the deposition taking of the testimonies of the witnesses who cannot come to Cebu and testify. However, when I served notice to counsel for plaintiff, it was refused. I have conferred with counsel for plaintiffs today and I believe they have some comments to make of record.

COURT:

So, we will resort to deposition.

ATTY. SIAZON:

Yes, Your Honor considering that one of my witnesses is the Vice-President in Manila and the other is now presently based in Australia.

COURT:

In that case, therefore, the Court will have to ask for an extension.

ATTY. CORTES:

Yes, Your Honor.

ATTY. SIAZON:

I don't think that that particular ruling is applicable to this Honorable Court. There are certain orders that are not applicable to this Honorable Court because this Court is not a pilot court as yet. I don't think this is applicable to this Honorable Court. This will, in effect, expedite the presentation of defendant's evidence rather than have all the witnesses come Your Honor. I have 7 witnesses. And also Your Honor, it would be convenient for counsel for plaintiff to cross examine the witnesses before the Deposition Officer. The right of the plaintiff will not be prejudiced in any way as most of their evidence are in Manila.

COURT:

Is there no other way to expedite? We only have this month to comply with the 90-day period" (underlining supplied).

With AGI's voluminous exhibits/annexes and the limited period allotted to it by the trial court within which to present its evidence, PAL's recourse to Sec. 1, Rule 24, of the Rules of Court is well-taken, Section 1 provides:

"SECTION 1. Depositions pending action, when may be taken. - By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 23. Depositions shall be taken only in accordance with

these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.”

Under the aforequoted provision, a party, without court intervention, can take a deposition of any person after answer has been served. This right, however, is not absolute. The trial court may, in its discretion, order that a deposition shall not be taken. The trial court's discretion on this matter must nonetheless be exercised not arbitrarily, capriciously, or oppressively, but in a reasonable manner and in consonance with the spirit of the law.[26] In one case[27] we held:

"That the right of a party to take depositions as means of discovery is not exactly absolute is implicit in the provisions of the Rules of Court cited by appellants themselves, sections 16 and 18 of Rule 24, which are precisely designed to protect parties and their witnesses, whenever in the opinion of the trial court, the move to take their depositions under the guise of discovery is actually intended to annoy, embarrass or oppress them. In such instances, these provisions expressly authorize the court to either prevent the taking of a deposition or stop one that is already being taken" (italics supplied).

In its Manifestation/Motion[28] dated 14 December 1989 filed with the trial court, PAL stated:

"1. Undersigned counsel has already conferred with the persons whom defendant intends to present as witnesses on the December 20/21, 1989 hearing at 2:30 p.m.;

"2. Said witnesses however, by reason of distance and of personal matters, have expressed willingness to testify through the taking of their depositions;

"3. Defendant is now thus constrained to avail of Rule 24 of the Rules of Court which is the taking of deposition upon oral examination;

"4. Consequently therefore, defendant sent today, December 13, 1989, a Notice to Take Deposition to plaintiff's counsel, a copy of which is likewise furnished to this Honorable Court;

"5. This remedy allowed by the Rules is not a show of disrespect by defendant to this Honorable Court as claimed by plaintiff but rather sincere efforts for the early disposition of this case;

"6. It shall not unduly burden plaintiff and counsel considering that both plaintiff and counsel maintain their principal offices in Manila (FEMS Tower I, 1289 Zobel Roxas cor. Southsuperhighway, Manila);

"7. In view of the foregoing, it is now necessary to cancel the holding of hearings on December 20-21, 1989 at 2:30 p.m. before this Honorable Court which is for the presentation of defense evidence, at which same time the deposition of said witnesses shall instead be taken before Judge Santiago Ranada, Jr."

Under the same date, PAL also filed with the trial court, a Notice to Take Deposition[29] of five (5) witnesses before the Regional Trial Court of Makati, Br. 137. We note that sufficient notice was furnished AGI's counsel it appearing that the latter failed to rebut the contention of PAL that it sent a copy of its Notice To Take Deposition via registered mail on 17 December 1989 to AGI's counsel, and that said mail was claimed only on 10 January 1990 using the third notice sent by the Central Post Office per certification of the Postmaster of 20 February 1990.[30] As provided in Sec. 8, Rule 13, of the Rules of Court, "(s)ervice by registered mail is completed upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time." [31]

The trial court surprisingly did not act on these pleadings. If indeed it felt then that PAL was engaged in dilatory tactics, the trial court could have prevented the deposition of its witnesses.

Moreover, we fail to see how the trial court could have considered PAL to have waived the presentation of its

evidence. In availing of the provision of Sec. 1, Rule 24, of the Rules of Court, PAL clearly indicated its keen interest in the early resolution of the case. As aptly observed by the appellate court:

"When the petitioner manifested to the court that it will take the deposition of the witness who they intended to present at the hearing in Cebu on 20 December 1989 the petitioner did not actually postpone the taking of the testimony of the witness but merely changed the venue where said testimony shall be taken.

"It is very evident from the manifestation filed by the petitioner on 13 December 1989 that far from losing interest to prosecute the case, it has taken steps to insure the taking of the testimony of the witness who can not appear at the hearing in Cebu. The means used by it is permitted by Rule 24 of the Rules of Court." [32]

In its Order of 12 January 1990, the trial court cited the case of *Pimentel v. Gutierrez* [33] as basis for denying PAL's motion for reconsideration of the oral Order of 20 December 1989.

To emphasize, the ruling in the *Pimentel* case does not persuade us inasmuch as the circumstances in that case are totally different from the case at bar. In the *Pimentel* case, we sustained the trial court's refusal to grant the motion of defendant that he be allowed to take the deposition of his witness on the same date as the scheduled time for the trial upon finding that the cause had been at issue for more than a year before the time set for the trial. Likewise, the defendant had not shown that he used due diligence in securing the presence of his witness and that he could not safely proceed with the trial without the presence of his witness or his deposition.

In the present case, trial of the cause already started with the trial court giving AGI a period of more than two (2) months to fully ventilate its claim. On the other hand, PAL was afforded only a period of one month to present evidence. The grounds adduced by PAL to avail itself of Rule 24 do not appear to be unreasonable. Factors such as the Christmas season, its witnesses being key personnel of PAL with prior commitments and personal reasons (the witness who was scheduled to appear, Mr. Benigno Datoc, being unavailable due to pressure of official duties, particularly the ongoing investigation of certain irregularities in Australia where PAL was defrauded in millions of pesos), [34] the distance of the place of trial and the sentiment of the trial court to finish the presentation of its evidence within the month, indicate that PAL's action was a sincere effort to abide with the directive of the trial court. Such effort should be favorably considered, rather than condemned, in the interest of justice.

Further to its Order of 12 January 1990, the trial court took PAL's counsel to task for his failure "to present a medical certificate to excuse his coming to Cebu, nor did it present some other witness in his stead, nor did it even present a deposition taken prior to 20 December 1989 which it could have taken even as early as 25 January 1989 when this case commenced." [35]

The trial court may not have given PAL's Manifestation/Motion a thorough reading. A medical certificate cannot be required because PAL's counsel did not feign illness in requesting for the cancellation of the hearing of 20 December 1989. The reasons for the unavailability of PAL's witnesses were palpably stated in the said pleading [36] and in the Notice to Take Deposition. Also, nowhere in the records do we find that PAL made use of Rule 24 prior to 13 December 1989 when it filed its Manifestation/Motion and Notice To Take Deposition. At any rate, the trial court need not be overly concerned if ever PAL omitted to present a deposition allegedly taken prior to 20 December 1989. It will have an occasion to exercise its discretion with regard to the use of such deposition when the same is formally offered in evidence. [37]

We significantly note too that the oral Order of 20 December 1989 was not reduced to writing. Worse, the trial court did not give PAL a chance to defend its action because it subsequently rendered a decision on the merits of the case on 28 December 1989. We also had occasion [38] to declare that -

"In the first place, Courts of First Instance, being courts of record, are bound to keep a record of their proceedings, which must appear in writing. According to the definition given in 2 Cyc., 657-658, courts of record are those which are bound to keep a record of their proceedings for a perpetual memorial and testimony thereof. This being so, and applying it to the question under consideration, it cannot be said that the appellants were notified of the order denying their motion for a new trial, until said order had been reduced to writing and filed in the clerk's office."

More importantly, the law mandates that "every order required by its terms to be served" shall be served upon the parties affected thereby either personally or by mail.[39] Obviously, court orders affecting the rights of the parties such as the oral Order of 20 December 1989 should be in writing and furnished the parties concerned. The due process clause of the Constitution requires notice and opportunity to be heard before any litigant can be lawfully deprived of his rights.[40]

In fine, the trial court's overly strict adherence to Administrative Circular No. 4 runs roughshod over PAL's substantial and procedural rights. It is repulsive to its fundamental right to due process. The appellate court was therefore correct in nullifying the orders and decision of the trial court. It bears repeating that the whole purpose and object of procedure is to make the powers of the court fully and completely available for justice; its proper aim is to facilitate the application of justice to the rival claims of contending parties.[41]

WHEREFORE, the petition is DENIED. The assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Penned by Justice Fernando A. Santiago, concurred in by Justices Jose C. Campos, Jr., and Oscar M. Herrera.

[2] Records, p. 32.

[3] Ibid, p. 33.

[4] Composed of then Presiding Justice Rodolfo A. Nocon (now Associate Justice of the Supreme Court) and Justices Bonifacio A. Cacdac, Jr. (now deceased), and Gloria C. Paras, members.

[5] Annex "8", Records.

[6] Records, p. 39.

[7] Annex "9", Records.

[8] Decision penned by Judge Leonardo B. Cañares, Regional Trial Court, Branch 7, Cebu City; Rollo, p. 44.

[9] Annex "14", Records.

[10] Rollo, pp. 103, 120.

[11] Records, p. 2.

[12] Ibid, p. 48.

[13] Ibid, p. 49

[14] Ibid, pp. 288-289.

[15] Ibid, p. 291.

[16] Rollo, p. 170.

[17] Ibid, p. 33.

[18] Records, p. 318.

[19] Rollo, p. 182.

[20] Ibid, p. 42.

[21] Ibid, p. 6.

[22] Ibid, p. 235.

[23] Administrative Circular No. 4 provides guidelines for the expeditious disposition of cases. Among other matters, it limits the evidence presentation of the parties within a period of three (3) months from the first day of trial. The Circular allows the judge to grant on serious reasons additional trial dates provided the said extension will not go beyond the three-month limit computed from the first trial date.

[24] Records, p. 216.

[25] Annex "8," Records.

[26] Lopez v. Maceren, 95 Phil. 753, 756 (1954).

[27] Caguiat v. Torres, G.R. No. L-25481, 31 October 1969, 30 SCRA 106, 110.

[28] Records, p. 39.

[29] Records, p. 40.

[30] Records, p. 224.

[31] See Dela Cruz v. Dela Cruz, L-48697, 15 April 1988, 160 SCRA 361, 364.

[32] Rollo, pp. 38-39.

[33] 14 Phil. 49, 54-55 (1909).

[34] Records, p.192.

[35] Supra, p. 6.

[36] Supra, p. 15.

[37] See Veran v. Court of Appeals, G.R. No. L-41154, 29 January 1988, 157 SCRA 438, 443.

[38] MeIgar v. Delgado; 53 Phil. 223, 225 (1929).

[39] Secs. 2, 4 and 5, Rule 13, of the Rules of Court.

[40] Paterok v. Bureau of Customs, G.R. Nos. 90660-61, 21 January 1991; 193 SCRA 132, 136.

[41] Manila Railroad Co. v. Attorney General, 20 Phil 523, 530 (1911).

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