# THIRD DIVISION

# [ G.R. No. 210789, December 03, 2018 ]

## ROBERTO C. MARTIRES, PETITIONER, V. HEIRS OF AVELINA SOMERA, RESPONDENTS.

## D E C I S I O N

**J. REYES, JR., J.:**

Assailed in this petition for review on *certiorari* are the July 17, 2013 Decision[1] and the January 7, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 127022 which affirmed the October 19, 2011 and July 24, 2012 Orders[3] of the Regional Trial Court, Quezon City, Branch 76 (RTC) in Civil Case No. Q-06-57612.

### The Antecedents

In a Complaint[4] dated March 16, 2006, Avelina S. Somera (Avelina) alleged that she was the rightful owner of a parcel of land located at 71 Narra Street, Project 3, Quezon City, which was unlawfully transferred in the name of petitioner Roberto C. Martires (petitioner). Thus, she instituted a complaint for *accion reivindicatoria* and *accion publiciana* against petitioner, Cecilia Gauna, and the Register of Deeds of Quezon City before the RTC.

On June 15, 2007, Avelina filed a Motion to Conduct Deposition Upon Oral Examination[5] praying that the RTC issue an order directing the Department of Foreign Affairs (DFA) to assist her in the taking of her deposition and those of her two witnesses, Fracel Solar and Bertha Coliflores, sometime in July 2007 at the Philippine Consular Office in New York City, United States of America.

In an Order[6] dated July 5, 2007, the trial court granted Avelina's Motion. Thereafter, on September 24, 2007, Avelina filed a Manifestation[7] before the RTC informing the said court that the deposition-taking would take place on September 27 and 28, 2007. Then, on September 27, 2007, Avelina and her two witnesses were deposed before the Vice-Consul of the Philippine Consulate in New York City. Petitioner, however, received the Manifestation on October 3, 2007. Thereafter, trial ensued.

On February 3, 2011, Avelina filed a Motion for Marking Additional Documentary Evidence[8] as the transcripts of her depositions, as well as those of her witnesses, had finally arrived. Petitioner opposed the Motion on the ground that he was notified of the deposition-taking after the same had already taken place on September 27, 2007.

On June 6, 2011, the RTC granted Avelina's Motion.[9] Then, on August 15, 2011, the heirs of Avelina (respondents)[10] filed their Formal Offer of Documentary Evidence,[11] which included Avelina's depositions and those of her witnesses

(marked as Exhibits "Q," "R," and "S"). Petitioner opposed the introduction in evidence of Exhibits "Q," "R," and "S" on the ground that he was never given reasonable notice of the deposition-taking.

*The RTC Ruling*

In an Order[12] dated October 19, 2011, the RTC admitted Exhibits "Q," "R," and "S" over petitioner's objections thereto. It ruled that petitioner was sufficiently informed that the deposition would take place on September 27, 2007 considering that Avelina's counsel made mention of the said date during the September 3, 2007 hearing. The trial court declared that there was substantial compliance with the rule on giving notice as petitioner was not completely unaware of the proceedings.

Petitioner moved for reconsideration, but the same was denied by the RTC in an Order[13] dated July 24, 2012. Aggrieved, petitioner filed a petition for *certiorari* before the CA.

*The CA Ruling*

In a Decision dated July 17, 2013, the CA held that petitioner was duly notified in writing of Avelina's intention to take her depositions and those of her witnesses when he received the September 24, 2007 Manifestation. It noted that petitioner received the Manifestation on October 3, 2007, after the deposition had already been taken, but he filed his opposition to the notice only on March 3, 2011, which is more than three years after he became aware of the defect. The appellate court emphasized Section 29, Rule 23 of the Rules of Court which states that "all errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice." It concluded that an unreasonable delay of more than three years on petitioner's part precludes him from questioning the notice. The *fallo* reads:

> WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit. ACCORDINGLY, the challenged Orders dated 19 October 2011 and 24 July 2012 of RTC Branch 76, Quezon City are AFFIRMED.
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> SO ORDERED.[14]

Petitioner moved for reconsideration, but the same was denied by the CA on January 7, 2014. Hence, this petition for review on *certiorari*, wherein petitioner raises the following issue:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ADMISSION OF COMPLAINANT'S DEPOSITIONS DESPITE THE FACT THAT THERE WAS NO REASONABLE PRIOR NOTICE IN WRITING OF THE ACTUAL DATE AND TIME OF THE TAKING OF SAID DEPOSITIONS AS REQUIRED UNDER SECTION 15, RULE 23 OF THE RULES OF COURT, WHICH IS [A] CONDITION *SINE QUA NON* FOR THEIR ADMISSIBILITY IN EVIDENCE UNDER THE RULES OF COURT.[15]

Petitioner argues that reasonable notice in writing of the date and time of the taking of deposition to every other party to any pending action is a condition *sine qua non* for its admissibility as stated in Section 15, Rule 23 of the Rules of Court; that it was only on October 3, 2007 that petitioner received the September 24, 2007

Manifestation stating that the depositions of Avelina and those of her witnesses would be conducted on September 27 to 28, 2007; that due process requires a definite written notice of the date and time of the deposition; that the deposition conducted in New York was not used for discovery purposes but to accommodate the convenience of the complainant and her witnesses; that the appropriate time to object to the transcripts of the depositions was in 2011 since it was only then that the transcripts were sought to be introduced in evidence; and that considering the absence of any proof then that depositions were in fact conducted and the lack of reasonable notice in writing, petitioner could not be expected to object to depositions which may or may not have been conducted in the first place.[16]

In their Comment,[17] respondents counter that petitioner's right to question the alleged improper notice has long prescribed considering that more than three years have elapsed since petitioner received the alleged irregular written notice of the taking of the depositions on October 3, 2007; that in their Manifestation with *Ex Parte* Motion to Set Case for Initial Presentation of Plaintiff's Evidence dated December 4, 2007, it was expressly manifested that the deposition had already taken place on September 27, 2007 as scheduled and petitioner never made any comment, opposition or objection to such manifestation; that during a number of hearings before the trial court, specifically the hearings after the presentation of their witness, their counsel has repeatedly manifested in open court and in the presence of petitioner's counsel, that the submission of their formal offer of documentary evidence was being deferred while awaiting the transmittal of the transcripts by the DFA; that on September 3, 2007, during the hearing of petitioner's Motion (Re: Deposition of Plaintiff Avelina S. Somera and witnesses Fracel Solar and Bertha Coliflores), their counsel already manifested that the taking of depositions would take place on September 27, 2007; that a reading of the transcripts of the September 3, 2007 hearing would show that petitioner's only concern was that the deponents be photographed and fingerprinted; that the date, time and place of the taking of the depositions were never put in issue; and that the deposition-taking in New York was not utilized to accommodate the convenience of Avelina and her witnesses as petitioner himself was residing in New York.

In his Reply,[18] petitioner contends that the verbal manifestation made by respondents during the September 3, 2007 hearing was insufficient compliance with Section 15, Rule 23 of the Rules of Court requiring the giving of a written notice of the deposition; that reasonable notice means the parties are given sufficient time to prepare and have the means to attend the deposition, thus, even assuming that the verbal notice given by respondents is valid, the same is still unreasonable under the circumstances; that during the pre-trial conference, respondents made no mention of any deposition; that they made no reservations at all to submit into evidence any deposition; and that it is unfair to conclude that petitioner incurred unreasonable delay and slept on his rights to question the depositions because it was respondents who did not comply with the mandatory provisions of the Rules of Court on reasonable notice in writing before any deposition-taking is conducted.

## **The Court's Ruling**

The petition lacks merit.

I.

Section 1, Rule 23 of the Rules of Court 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 narrowing and clarifying the basic issues between the parties, as well as for ascertaining the facts relative to those issues. The purpose is to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before trial.[19] Thus, in *Dasmariñas Garments, Inc. v. Judge Reyes*,[20] the Court ruled:

> 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.
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> 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:
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> > 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.
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> 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.
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> 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 [now Rule 23] of the Rules of Court. x x x[21]