

## THIRD DIVISION

[ G.R. No. 214054, August 05, 2015 ]

**NG MENG TAM, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.**

### DECISION

**VILLARAMA, JR., J.:**

Before this Court is a direct recourse from the Regional Trial Court (RTC) via petition<sup>[1]</sup> for review on the question of whether Section 5<sup>[2]</sup> of the Judicial Affidavit Rule (JAR) applies to hostile or adverse witnesses. The petition seeks to annul and set aside the May 28, 2014<sup>[3]</sup> and August 27, 2014<sup>[4]</sup> Orders of the RTC, Branch 139, Makati City in Civil Case No. 08-1028.

This case stemmed from a collection suit filed by China Banking Corporation (China Bank) against Ever Electrical Manufacturing Company Inc. (Ever), the heirs of Go Tong, Vicente Go, George Go and petitioner Ng Meng Tam sometime in December 2008. China Bank alleged that it granted Ever a loan amounting to P5,532,331.63. The loan was allegedly backed by two surety agreements executed by Vicente, George and petitioner in its favor, each for P5,000,000.00, and dated December 9, 1993 and May 3, 1995, respectively. When Ever defaulted in its payment, China Bank sent demand letters collectively addressed to George, Vicente and petitioner. The demands were unanswered. China Bank filed the complaint for collection docketed as Civil Case No. 08-1028, which was raffled off to RTC Branch 62, Makati City.

In his Answer, petitioner alleged that the surety agreements were null and void since these were executed before the loan was granted in 2004. Petitioner posited that the surety agreements were contracts of adhesion to be construed against the entity which drafted the same. Petitioner also alleged that he did not receive any demand letter.

In the course of the proceedings, petitioner moved that his affirmative defenses be heard by the RTC on the ground that the suit is barred by the statute of limitations and laches.<sup>[5]</sup> The motion was denied by the court.<sup>[6]</sup> On appeal, the Court of Appeals (CA) in its December 22, 2010 Decision<sup>[7]</sup> ruled that a preliminary hearing was proper pursuant to Section 6,<sup>[8]</sup> Rule 16 of the Rules of Court due to the grounds cited by petitioner. There being no appeal, the decision became final and executory on August 28, 2011.<sup>[9]</sup>

On March 15, 2011, petitioner served interrogatories to parties<sup>[10]</sup> pursuant to Sections 1<sup>[11]</sup> and 6,<sup>[12]</sup> Rule 25 of the Rules of Court to China Bank and required Mr. George C. Yap, Account Officer of the Account Management Group, to answer.

On June 22, 2011, George Yap executed his answers to interrogatories to parties.  
[13]

In the meantime, having failed mediation and judicial dispute resolution, Civil Case No. 08-1028 was re-raffled off to RTC Branch 139, Makati City.

Petitioner again moved for the hearing of his affirmative defenses. Because he found Yap's answers to the interrogatories to parties evasive and not responsive, petitioner applied for the issuance of a subpoena *duces tecum* and *ad testificandum* against George Yap pursuant to Section 6,<sup>[14]</sup> Rule 25 of the Revised Rules of Court.

On April 29, 2014, when the case was called for the presentation of George Yap as a witness, China Bank objected citing Section 5 of the JAR. China Bank said that Yap cannot be compelled to testify in court because petitioner did not obtain and present George Yap's judicial affidavit. The RTC required the parties to submit their motions on the issue of whether the preparation of a judicial affidavit by George Yap as an adverse or hostile witness is an exception to the judicial affidavit rule.<sup>[15]</sup>

Petitioner contended that Section 5 does not apply to Yap because it specifically excludes adverse party witnesses and hostile witnesses from its application. Petitioner insists that Yap needed to be called to the stand so that he may be qualified as a hostile witness pursuant to the Rules of Court.

China Bank, on the other hand, stated that petitioner's characterization of Yap's answers to the interrogatories to parties as ambiguous and evasive is a declaration of what type of witness Yap is. It theorizes that the interrogatories to parties answered by Yap serve as the judicial affidavit and there is no need for Yap to be qualified as a hostile witness.

In its May 28, 2014 Order, the RTC denied for lack of merit petitioner's motion to examine Yap without executing a judicial affidavit. The RTC in interpreting Section 5 of the JAR stated:

x x x The aforementioned provision, which allows the requesting party to avail himself of the provisions of Rule 21 of the Rules of Court finds applicability to: (a) a government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness and (b) who unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court.

In the case at bar, witness George Yap is being utilized as an adverse witness for the [petitioner]. Moreover, there was no showing that he unjustifiably declines to execute a judicial affidavit. In fact, it was [China Bank]'s counsel who insisted that said witness' judicial affidavit be taken. Thus, Section 5 of the [JAR] which [petitioner] invoked to exempt him from the Rule finds no application. Unless there is contrary ruling on the matter by the Supreme Court, this court has no choice but to implement the rule as written.

On this note, this Court also finds no merit on the contention of [China Bank] that the answer to the written interrogatories by witness George Yap already constitutes his judicial affidavit. Inasmuch as the Court strictly implemented the [JAR] on the part of [petitioner], so shall it rule in the same manner on the part of [China Bank]. As correctly pointed out by [petitioner], the said answer to interrogatories does not comply with Section 3 of the [JAR] which provides for the contents of the judicial affidavit.<sup>[16]</sup>

In essence, the RTC ruled that Section 5 did not apply to Yap since he was an adverse witness and he did not unjustifiably decline to execute a judicial affidavit. It stated:

In view of the foregoing, the motion of the [petitioner] that witness George Yap be examined without executing a Judicial Affidavit is hereby **DENIED FOR LACK OF MERIT.**<sup>[17]</sup>

Petitioner moved for reconsideration but it was denied by the RTC in its August 27, 2014 Order.<sup>[18]</sup> The RTC reiterated its position and stated:

It must be pointed out that the [petitioner] [was] the [one] who invoked the provisions of Section 5 of the [JAR] to compel the attendance of witness George Yap and as such, it is their duty to show the applicability of the said provisions to the case at bar. As stated in the challenged Order, Section 5 of the [JAR] finds applicability to: (a) a government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness and (b) who unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court. In the case at bar, [petitioner] [does] not deny that witness George Yap is to be utilized as [his] adverse witness. On this score alone, it is clear that the provisions invoked do not apply.<sup>[19]</sup>

The RTC stressed that Section 5 of the JAR required the requested witness' refusal to be unjustifiable. It stated:

x x x the [JAR] requires that the refusal must be unjustifiable and without just cause. It must be pointed out that [China Bank]'s previous motions to quash the subpoena was grounded on the claim that having already submitted to this court his sworn written interrogatories, his being compelled to testify would be unreasonable, oppressive and pure harassment. Thus, witness' refusal to testify cannot be considered unjustifiable since he raised valid grounds.<sup>[20]</sup>

Hence, this petition.

Petitioner contends that the RTC committed a grave error when it interpreted Section 5 to include adverse party and hostile witnesses. Based on the wording of Section 5, adverse party and hostile witnesses are clearly excluded.

China Bank asserts that Yap neither refused unjustifiably nor without just cause refused to a judicial affidavit. It cited the RTC's August 27, 2014 Order where the court said that Yap had answered the interrogatories and to compel him to testify in open court would be "unreasonable, oppressive and pure harassment." Moreover, it stated that based on the language used by Section 2 of the JAR the filing of judicial affidavits is mandatory.

The petition is anchored on the following arguments:

#### I

RTC BR. 139-MAKATI COMMITTED AN ERROR OF LAW WHEN IT INTERPRETED SEC. 5 OF THE [JAR] CONTRARY TO ITS WORDINGS.

#### II

RTC BR. 139-MAKATI COMMITTED AN ERROR OF LAW WHEN IT INTERPRETED SEC. 5 [OF THE JAR] CONTRARY TO ITS PRACTICAL INTENTION AND COMMON SENSE.

#### III

RTC BR. 139-MAKATI COMMITTED AN ERROR OF LAW WHEN IT EFFECTIVELY DISREGARDED THE RELEVANT RULES ON MODE OF DISCOVERY WHICH GOVERN THE PRESENTATION OF ADVERSE WITNESSES.

#### IV

ON A POLICY LEVEL AND IN THE EVENT RTC BR. 139-MAKATI'S INTERPRETATION AND APPLICATION OF SEC. 5 OF THE [JAR] IS CORRECT (I.E., THAT OPPOSING PARTY WHO INTENDS TO PRESENT ADVERSE OR HOSTILE WITNESS MUST GET AND SUBMIT THAT WITNESS' JUDICIAL AFFIDAVIT NO MATTER WHAT) IT IS HUMBLY SUBMITTED, WITH THE UTMOST INDULGENCE OF THE HONORABLE SUPREME COURT, THAT THE SAME RULE BE IMPROVED OR AMENDED BY PROVIDING SANCTIONS IN THE EVENT THE ADVERSE OR HOSTILE WITNESS REFUSES TO ANSWER OR EXECUTE JUDICIAL AFFIDAVIT AS REQUIRED BY THE OPPOSING PARTY.<sup>[21]</sup>

We grant the petition.

**THE JUDICIAL AFFIDAVIT RULE  
APPLIES TO PENDING CASES**

On September 4, 2012, the JAR was promulgated to address case congestion and delays in courts. To this end, it seeks to reduce the time needed to take witnesses' testimonies.<sup>[22]</sup> The JAR took effect on January 1, 2013 and would also apply to pending cases pursuant to Section 12 to wit:

Sec. 12. *Effectivity.* – This rule shall take effect on **January 1, 2013** following its publication in two newspapers of general circulation not later than September 15, 2012. **It shall also apply to existing cases.** (Emphasis supplied)

The Court En Banc gave public prosecutors in first and second level courts one year of modified compliance.<sup>[23]</sup> The JAR thus took full effect on January 1, 2014.

Here, parties were presenting their evidence for the RTC's consideration when the JAR took effect. Therefore, pursuant to Section 12 the JAR applies to the present collection suit.

## **SECTION 5 OF THE JAR DOES NOT APPLY TO ADVERSE PARTY WITNESSES**

The JAR primarily affects the manner by which evidence is presented in court. Section 2(a) of the JAR provides that judicial affidavits are mandatorily filed by parties to a case except in small claims cases. These judicial affidavits take the place of direct testimony in court. It provides:

*Sec. 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.* – (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

x x x x

Section 3<sup>[24]</sup> of the JAR enumerates the content of a judicial affidavit.

Under Section 10,<sup>[25]</sup> parties are to be penalized if they do not conform to the provisions of the JAR. Parties are however allowed to resort to the application of a subpoena pursuant to Rule 21 of the Rules of Court in Section 5 of the JAR in certain situations. Section 5 provides: