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SECOND DIVISION

[G.R. No. 185145, February 05, 2014]

SPOUSES VICENTE AFULUGENCIA AND LETICIA AFULUGENCIA, PETITIONERS, VS. METROPOLITAN BANK & TRUST CO. AND EMMANUEL L. ORTEGA, CLERK OF COURT, REGIONAL TRIAL COURT AND EX-OFFICIO SHERIFF, PROVINCE OF BULACAN, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

Section 6,[1] Rule 25 of the Rules of Court (Rules) provides that "a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal." The provision seeks to prevent fishing expeditions and needless delays. Its goal is to maintain order and facilitate the conduct of trial.

Assailed in this Petition for Review on *Certiorari*[2] are the April 15, 2008 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99535 which dismissed petitioners' Petition for *Certiorari* for lack of merit and its October 2, 2008 Resolution[4] denying petitioners' Motion for Reconsideration.[5]

Factual Antecedents

Petitioners, spouses Vicente and Leticia Afulugencia, filed a Complaint[6] for nullification of mortgage, foreclosure, auction sale, certificate of sale and other documents, with damages, against respondents Metropolitan Bank & Trust Co. (Metrobank) and Emmanuel L. Ortega (Ortega) before the Regional Trial Court (RTC) of Malolos City, where it was docketed as Civil Case No. 336-M-2004 and assigned to Branch 7.

Metrobank is a domestic banking corporation existing under Philippine laws, while Ortega is the Clerk of Court and *Ex-Officio* Sheriff of the Malolos RTC.

After the filing of the parties' pleadings and with the conclusion of pre-trial, petitioners filed a Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*[7] to require Metrobank's officers[8] to appear and testify as the petitioners' initial witnesses during the August 31, 2006 hearing for the presentation of their evidence-in-chief, and to bring the documents relative to their loan with Metrobank, as well as those covering the extrajudicial foreclosure and sale of petitioners' 200-square meter land in Meycauayan, Bulacan covered by Transfer Certificate of Title No. 20411 (M). The Motion contained a notice of hearing written as follows:

NOTICE

The Branch Clerk of Court
Regional Trial Court
Branch 7, Malolos, Bulacan

Greetings:

Please submit the foregoing motion for the consideration and approval of the Hon. Court immediately upon receipt hereof.

(signed)
Vicente C. Angeles[9]

Metrobank filed an Opposition[10] arguing that for lack of a proper notice of hearing, the Motion must be denied; that being a litigated motion, the failure of petitioners to set a date and time for the hearing renders the Motion ineffective and *pro forma*; that pursuant to Sections 1 and 6[11] of Rule 25 of the Rules, Metrobank's officers – who are considered adverse parties – may not be compelled to appear and testify in court for the petitioners since they were not initially served with written interrogatories; that petitioners have not shown the materiality and relevance of the documents sought to be produced in court; and that petitioners were merely fishing for evidence.

Petitioners submitted a Reply[12] to Metrobank's Opposition, stating that the lack of a proper notice of hearing was cured by the filing of Metrobank's Opposition; that applying the principle of liberality, the defect may be ignored; that leave of court is not necessary for the taking of Metrobank's officers' depositions; that for their case, the issuance of a subpoena is not unreasonable and oppressive, but instead favorable to Metrobank, since it will present the testimony of these officers just the same during the presentation of its own evidence; that the documents sought to be produced are relevant and will prove whether petitioners have paid their obligations to Metrobank in full, and will settle the issue relative to the validity or invalidity of the foreclosure proceedings; and that the Rules do not prohibit a party from presenting the adverse party as its own witness.

Ruling of the Regional Trial Court

On October 19, 2006, the trial court issued an Order[13] denying petitioners' Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*, thus:

The motion lacks merit.

As pointed out by the defendant bank in its opposition, the motion under consideration is a mere scrap of paper by reason of its failure to comply with the requirements for a valid notice of hearing as specified in Sections 4 and 5 of Rule 15 of the Revised Rules of Court. Moreover, the defendant bank and its officers are adverse parties who cannot be summoned to testify unless written interrogatories are first served upon them, as provided in Sections 1 and 6, Rule 25 of the Revised Rules of Court.

> In view of the foregoing, and for lack of merit, the motion under consideration is hereby DENIED.
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> SO ORDERED.[14]

Petitioners filed a Motion for Reconsideration[15] pleading for leniency in the application of the Rules and claiming that the defective notice was cured by the filing of Metrobank's Opposition, which they claim is tantamount to notice. They further argued that Metrobank's officers – who are the subject of the subpoena – are not party-defendants, and thus do not comprise the adverse party; they are individuals separate and distinct from Metrobank, the defendant corporation being sued in the case.

In an Opposition[16] to the Motion for Reconsideration, Metrobank insisted on the procedural defect of improper notice of hearing, arguing that the rule relative to motions and the requirement of a valid notice of hearing are mandatory and must be strictly observed. It added that the same rigid treatment must be accorded to Rule 25, in that none of its officers may be summoned to testify for petitioners unless written interrogatories are first served upon them. Finally, it said that since a corporation may act only through its officers and employees, they are to be considered as adverse parties in a case against the corporation itself.

In another Order[17] dated April 17, 2007, the trial court denied petitioners' Motion for Reconsideration. The trial court held, thus:

> Even if the motion is given consideration by relaxing Sections 4 and 5, Rule 15 of the Rules of Court, no such laxity could be accorded to Sections 1 and 6 of Rule 25 of the Revised Rules of Court which require prior service of written interrogatories to adverse parties before any material and relevant facts may be elicited from them more so if the party is a private corporation who could be represented by its officers as in this case. In other words, as the persons sought to be subpoenaed by the plaintiffs-movants are officers of the defendant bank, they are in effect the very persons who represent the interest of the latter and necessarily fall within the coverage of Sections 1 and 6, Rule 25 of the Revised Rules of Court.
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> In view of the foregoing, the motion for reconsideration is hereby denied.
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> SO ORDERED.[18]

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari*[19] with the CA asserting this time that their Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum* is not a litigated motion; it does not seek relief, but aims for the issuance of a mere process. For these reasons, the Motion need not be heard. They likewise insisted on liberality, and the disposition of the case on its merits and not on mere technicalities.[20] They added that Rule 21[21] of the Rules requires prior notice and hearing only with respect to the taking of depositions; since their Motion sought to require

Metrobank's officers to appear and testify in court and not to obtain their depositions, the requirement of notice and hearing may be dispensed with. Finally, petitioners claimed that the Rules – particularly Section 10,[22] Rule 132 – do not prohibit a party from presenting the adverse party as its own witness.

On April 15, 2008, the CA issued the questioned Decision, which contained the following decretal portion:

> WHEREFORE, the petition is DISMISSED for lack of merit. The assailed orders dated October 19, 2006 and April 17, 2007 in Civil Case No. 336-M-2004 issued by the RTC, Branch 7, Malolos City, Bulacan, are AFFIRMED. Costs against petitioners.
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> SO ORDERED.[23]

The CA held that the trial court did not commit grave abuse of discretion in issuing the assailed Orders; petitioners' Motion is a litigated motion, especially as it seeks to require the adverse party, Metrobank's officers, to appear and testify in court as petitioners' witnesses. It held that a proper notice of hearing, addressed to the parties and specifying the date and time of the hearing, was required, consistent with Sections 4 and 5,[24] Rule 15 of the Rules.

The CA held further that the trial court did not err in denying petitioners' Motion to secure a subpoena *duces tecum/ad testificandum*, ratiocinating that Rule 25 is quite clear in providing that the consequence of a party's failure to serve written interrogatories upon the opposing party is that the latter may not be compelled by the former to testify in court or to render a deposition pending appeal. By failing to serve written interrogatories upon Metrobank, petitioners foreclosed their right to present the bank's officers as their witnesses.

The CA declared that the justification for the rule laid down in Section 6 is that by failing to seize the opportunity to inquire upon the facts through means available under the Rules, petitioners should not be allowed to later on burden Metrobank with court hearings or other processes. Thus, it held:

> x x x Where a party unjustifiedly refuses to elicit facts material and relevant to his case by addressing written interrogatories to the adverse party to elicit those facts, the latter may not thereafter be compelled to testify thereon in court or give a deposition pending appeal. The justification for this is that the party in need of said facts having foregone the opportunity to inquire into the same from the other party through means available to him, he should not thereafter be permitted to unduly burden the latter with courtroom appearances or other cumbersome processes. The sanction adopted by the Rules is not one of compulsion in the sense that the party is being directly compelled to avail of the discovery mechanics, but one of negation by depriving him of evidentiary sources which would otherwise have been accessible to him.[25]

Petitioners filed their Motion for Reconsideration,[26] which the CA denied in its assailed October 2, 2008 Resolution. Hence, the present Petition.

Issues

Petitioners now raise the following issues for resolution:

I

> THE COURT OF APPEALS COMMITTED REVERSIBLE ERRORS IN REQUIRING NOTICE AND HEARING (SECS. 4 AND 5, RULE 15, RULES OF COURT) FOR A MERE MOTION FOR SUBPOENA OF RESPONDENT BANK'S OFFICERS WHEN SUCH REQUIREMENTS APPLY ONLY TO DEPOSITION UNDER SEC. 6, RULE 25, RULES OF COURT.

II

> THE COURT OF APPEALS COMMITTED (REVERSIBLE) ERROR IN HOLDING THAT THE PETITIONERS MUST FIRST SERVE WRITTEN INTERROGATORIES TO RESPONDENT BANK'S OFFICERS BEFORE THEY CAN BE SUBPOENAED.[27]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that the Court allow the issuance of the subpoena *duces tecum/ad testificandum*, petitioners assert that the questioned Motion is not a litigated motion, since it seeks not a relief, but the issuance of process. They insist that a motion which is subject to notice and hearing under Sections 4 and 5 of Rule 15 is an application for relief other than a pleading; since no relief is sought but just the process of subpoena, the hearing and notice requirements may be done away with. They cite the case of *Adorio v. Hon. Bersamin*,[28] which held that –

> Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.[29]

Petitioners add that the Rules should have been liberally construed in their favor, and that Metrobank's filing of its Opposition be considered to have cured whatever defect the Motion suffered from.

Petitioners likewise persist in the view that Metrobank's officers – the subject of the Motion – do not comprise the adverse party covered by the rule; they insist that these bank officers are mere employees of the bank who may be called to testify for them.

Respondents' Arguments

Metrobank essentially argues in its Comment[30] that the subject Motion for the issuance of a subpoena *duces tecum/ad testificandum* is a litigated motion, especially as it is directed toward its officers, whose testimony and documentary evidence would affect it as the adverse party in the civil case. Thus, the lack of a proper notice of hearing renders it useless and a mere scrap of paper. It adds that being its officers, the persons sought to be called to the stand are themselves