554 Phil. 666

THIRD DIVISION

[G.R. NO. 168776, July 17, 2007]

PHILIPPINE COMPUTER SOLUTIONS, INC., PETITIONER, VS. HON. JOSE R. HERNANDEZ, PRESIDING JUDGE, RTC OF PASIG CITY, BR. 158, AND WINEFRIDA MANZO, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court filed by petitioner Philippine Computer Solutions, Inc. assailing (1) the Decision[1] of the Court of Appeals in CA-G.R. SP No. 81351 dated 30 September 2004 affirming the Order[2] dated 8 December 2003 of the Regional Trial Court (RTC) of Pasig City, Branch 158, in Civil Case No. 68524, denying petitioner's Motion for the Issuance of a Commission to Depose its witnesses abroad, and (2) the Resolution[3] of the Court of Appeals dated 17 May 2007 denying petitioner's Motion for Reconsideration.

Petitioner was incorporated on 17 October 1994 for the purpose of providing general computer services in the Philippines. Its incorporators, who are also its stockholders, are Ralph Bergen (Bergen), Rizalito Condol (Condol), Josephine Fugoso (Fugoso), Norma Potot (Potot), and Adorina Lisama (Lisama). Alleging that its corporate name was being unlawfully used in unauthorized business transactions both here in the Philippines and overseas, petitioner filed on 7 June 1999 before the Securities and Exchange Commission (SEC) a Complaint[4] against Condol and Lisama, together with Winefrida Manzo (Manzo), private respondent in this petition, and Condol International Incorporated (Condol International), a corporation organized under Philippine Laws on 29 August 1996 and is engaged in similar business as that of the petitioner.

The Complaint alleged that Condol previously withdrew his participation in the business of petitioner but continued to remain as an incorporator and shareholder thereof. Petitioner subsequently discovered that Condol had been engaging or is continuously engaged in business in its behalf both in the Philippines and abroad. Condol was acting as the purported corporate president and Manzo as the alleged corporate secretary/treasurer of petitioner. In January of 1996, Manzo, in her capacity as the alleged corporate secretary, executed an Affidavit of Loss of Stock and Transfer Book of petitioner. An investigation of the records with the SEC showed that Condol, Lisama and Manzo executed a Trustees' Certificate where they made it appear that petitioner created a Board of Trustees where they were appointed as members, and that petitioner's Amended Articles of Incorporation was approved by 2/3 of the members and majority of the Board of Trustees at a meeting held on 22 January 1996 at petitioner's principal office. The stipulations in the Trustees' Certificate are false and fraudulent inasmuch as petitioner is a stock corporation governed by a Board of Directors. On the basis of the Trustees' Certificate, Condol, Lisama and Manzo were able to amend petitioner's Articles of Incorporation with

respect to the address of its principal office. Condol, Lisama and Manzo, representing themselves as officers of petitioner, conducted business with clients, collected money and hired employees. In the early part of 1995, Condol, Lisama and Manzo, in behalf of petitioner, entered into a partnership with PeopleSoft Australia and executed an Implementation Partners Agreement with the latter. Considering petitioner's demand to refrain from any business dealings in its name, Condol effected the transfer of petitioner's right arising from the Implementation Partners Agreement with PeopleSoft Australia to Condol International. Condol, Lisama and Manzo, likewise, contracted with PeopleSoft USA[5] later transferring the contractual rights they derived therefrom to Condol International.

Of the four defendants named in the SEC complaint, only Manzo filed an Answer as well as a Motion to Dismiss the Complaint. It appears that the SEC failed to serve summons on the rest of the defendants since they can no longer be found in their respective last known addresses.

The SEC heard Manzo's Motion to Dismiss on 26 August 1999 and directed the service of summons by publication upon the remaining defendants on 1 April 2000.

Before petitioner could serve summons by publication, Republic Act No. 8799, which transferred jurisdiction over intra-corporate controversies to the regular courts, took effect. Consequently, the pending dispute was transferred, initially to the RTC of Cebu City, Branch 11, and later to the RTC of Pasig City, Branch 158, where it was docketed as SEC Case No. 68524.

In compliance with the trial court's 3 April 2002 Order, petitioner caused the service of the summons and the complaint, along with the copy of the court order dated 3 April 2002, upon Condol, Lisama and Condol International by publication in the 3 May 2002 issue of the *Malaya*. Petitioner also sent a letter to said defendants informing them of the fact of publication and furnishing them copies of the summons and the order dated 3 April 2002, of the trial court. None of these defendants filed an Answer.

Meanwhile, petitioner served written interrogatories upon Manzo. After initially objecting thereto, the latter filed her answer and, likewise, moved for the resolution of her pending Motion to Dismiss.

For their failure to file an Answer notwithstanding valid service of summons by publication, petitioner filed a Motion to Declare the non-participating defendants in default. It also filed a Motion dated 16 September 2003[6] for the Issuance of a Commission to take the deposition in Australia of a corporate officer of PeopleSoft Australia regarding the details of the foreign corporation's transactions with defendants; as well as that of Bergen, one of petitioner's incorporators and stockholders, who was then in the United States.

Manzo filed an Opposition to the motion to which petitioner countered with a Rejoinder.

In an Order dated 8 December 2003, the trial court denied Manzo's Motion to Dismiss and granted petitioner's Motion to Declare in Default Condol, Lisama and Condol International. The trial court, however, denied petitioner's Motion for the

Issuance of a Commission.

The assailed RTC order reads:

> Lastly, [herein petitioner's] Motion for Issuance of Commission is DENIED. It is clearly a circumvention of Section 1, Rule 3 of the Interim Rules of Procedure for Intra-Corporate Controversies which provides that "a party can only avail of any of the modes of discovery not later than fifteen days from the joinder of issues." From the very beginning, [petitioner] has already alleged that defendant [Manzo] usurped its corporate powers and rights when they transacted business with PeopleSoft Australia (see pars. 2.17 and 4.4 of Complaint). The fact that defendant Manzo made admissions in her Answers to Written Interrogatories with respect to the allegation of usurpation of corporate powers did not change anything. Regardless of whether or not Manzo made such admissions, [petitioner] should have availed of the modes of discovery to ascertain the factual bases of its Complaint and gather evidence during such period when the same is allowed by the rules. Likewise, the personal circumstances of Bergen which would prevent him from personally testifying before this Court has been evident from the beginning.
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> [Petitioner] cannot properly find solace in the cases of *Fortune Corporation v. Court of Appeals* (G.R. No. 108119, January 19, 1994), *Republic v. Sandiganbayan* (G.R No. 112710, May 30, 2001) and *Dasmariñas Garments, Inc. v. Hon. Reyes* (G.R. No. 108229, August 24, 1993). While all three cases indeed allow oral testimony to be substituted by deposition under exceptional circumstances, both the *Fortune and Dasmariñas* cases presuppose that the deposition has been taken "only in accordance with (these) rules," or only during the period allowed under the Rules of Court. Moreover, in the *Republic* case, the main issue raised was whether or not a party may be allowed to take depositions before answer was served without leave of court.
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> However, none of these cases resolved the issue of whether or not deposition may be accepted by the Court in lieu of direct testimony of the witness, especially so when the party could have taken such deposition at the earliest possible opportunity and within the period prescribed by law, but failed to do so. This Court then finds no cogent reason to allow the [petitioner] to avail of any of the modes of discovery beyond the period prescribed by the Interim Rules.[7]

Further in its Order[8] dated 7 March 2003, the trial court clarified that "for purposes, therefore, of reckoning the limited period to avail of any of the modes of discovery under Section 1, Rule 3 of the Interim Rules of Procedure governing intra-corporate controversies, there is deemed to have been a joinder of issues as of 3 July 2002 or immediately after the period for the respondents to file their Answer has lapsed. Petitioner, therefore, had until 18 July 2002 or fifteen days from the joinder of issues to avail of any of the modes of discovery." Having filed the motion to take deposition on 16 September 2003, the same was clearly beyond the 15-day period allowed by Rule 3, Section 1 of the Interim Rules on Intra-Corporate Controversies.

From this Order of the RTC, petitioner sought recourse before the Court of Appeals by way of a *Petition for Certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction*. The Court of Appeals did not issue the restraining order or injunction prayed for; thus, the trial court continued with the proceedings in Civil Case No. 68524.[9]

As earlier adverted to, the Court of Appeals dismissed the Petition and affirmed the Order of the RTC. Rationalizing its decision, the Court of Appeals stressed that the issues in the case had been joined as early as 3 July 2002, immediately after the lapse of the reglementary period for the other defendants to file their respective answers. Though no responsive pleading was filed, petitioner had 15 days therefrom or until 18 July 2003 within which to serve written interrogatories on its witnesses abroad. Its failure to take full advantage of its right to secure the testimonies of its witnesses by deposition when it had the opportunity to do so negates the allegation of denial of due process.[10]

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its resolution dated 17 May 2005.

Aggrieved, petitioner comes to this Court by way of Petition for Review raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS GROSSLY ERRED IN RULING THAT THE REGLEMENTARY PERIOD SET BY SECTION 1 RULE 3 OF THE INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES APPLIES TO DEPOSITION THAT IS RESORTED TO AS A METHOD OF PRESENTING THE TESTIMONY OF A WITNESS.

II.

WHETHER OR NOT THE COURT OF APPEALS GROSSLY ERRED IN FAILING TO CONSIDER THAT A DEPOSITION AS A MODE OF DISCOVERY CAN ONLY BE ADDRESSED TO AN ADVERSE PARTY AND NOT TO A WITNESS; THE DEPOSITION SOUGHT BY PCSI IS A MODE OF PRESENTING THE TESTIMONIES OF ITS OWN WITNESES, NOT TO ELICIT FACTS FROM THE ADVERSE PARTIES.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GROSS ERROR IN RULING THAT THE REGLEMENTARY PERIOD MANDATED UNDER SECTION 1 RULE 3 OF THE INTERIM RULES INCLUDED A DEPOSITION AS A MODE OF PRESENTING THE TESTIMONY OF A PARTY'S WITNESS, BECAUSE IT HAS RENDERED NUGATORY THE DUAL FUNCTION OF A DEPOSITION.

IV.

WHETHER OR NOT THE ASSAILED DECISION OF THE COURT OF APPEALS

> IS TANTAMOUNT TO A DENIAL OF PCSI'S RIGHT TO PRESENT THE TESTIMONY OF ITS WITNESSES ON A MATTER WHICH IS VERY MATERIAL AND RELEVANT TO THE ISSUES BEING LITIGATED; THE SAME IS TANTAMOUNT TO A DENIAL OF PCSI'S RIGHT TO BE HEARD, RESULTING TO GRAVE INJUSTICE.[11]

It is petitioner's stand that the Court of Appeals committed a gross misapprehension of the 15-day reglementary period under Rule 3, Section 1 of the Interim Rules on Intra-Corporate Controversies, which reads:

> RULE 3
>
> MODES OF DISCOVERY
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> SECTION 1. *In general*. – A party can only avail of any of the modes of discovery not later than fifteen (15) day from the joinder of issues.

According to the petitioner, the 15-day reglementary period mandated under Rule 3 of the Interim Rules pertains to a deposition resorted to as a mode of discovery. It does not apply when the deposition is resorted to by a party as a means of presenting the testimony of its witnesses, as in the instant petition.[12] Petitioner submits that since the deposition sought by it is resorted to as a means of presenting the testimony of its witness, the 15-day period under Rule 3, Interim Rules, does not apply. Instead, the general rule under the Rules of Court should be applied.[13]

Petitioner also relies on *Fortune Corporation v. Court of Appeals*[14] to strengthen its claim that the Rules of Court and not the Interim Rules applies. According to petitioner, said case enumerates two uses of deposition. First, deposition as a mode of discovery where the Interim Rules on intra-corporate controversies applies. Second, deposition as a mode of presenting testimony where the Rules of Court applies. The significant portion of *Fortune* cited by the petitioner is hereby reproduced in part:

> [U]nder the concept adopted by the new Rules, **the deposition serves the double function of a method of discovery – with use on trial not necessarily contemplated – and a method of presenting testimony**. Accordingly, no limitations other than relevancy and privilege have been placed on the taking of depositions, while the use at the trial is subject to circumscriptions looking toward the use of oral testimony wherever practicable. (Emphasis supplied.)

Essentially, petitioner questions the correctness of the Decision of the Court of Appeals affirming the denial by the trial court of petitioner's motion to take the deposition of its witnesses for having been filed beyond the period allowed by the Interim Rules governing intra-corporate controversies.

Specifically, petitioner sought to take (1) the deposition testimony of Peoplesoft Australia, which does not have an office in the Philippines and maintains its office in Australia, through any of its responsible officers, and (2) the deposition testimony of Ralph A. Bergen.[15]