

SECOND DIVISION

[G.R. NO. 153667, August 11, 2005]

**AYALA LAND, INC., PETITIONER, VS. HON. LUCENITO N. TAGLE,
IN HIS CAPACITY AS PRESIDING JUDGE, RTC-IMUS, BRANCH 20,
ASB REALTY CORP., AND E. M. RAMOS & SONS, INC.,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Civil Case No. 931-94 for nullification of Contract to Sell Real Properties, Cancellation of Annotations on Transfer Certificates of Title and Damages was filed before the Regional Trial Court of Imus, Cavite City, by ASB Realty Corporation (ASB) and E. M. Ramos and Sons, Inc. (EMRASON) against Ayala Land, Inc. (ALI), Emerito B. Ramos, Jr., et al.^[1]

In its complaint, ASB alleged that on 21 May 1994, EMRASON, a real estate company which owns real estate properties in Dasmariñas, Cavite City, with a total area of 372 hectares, whose chairman and president is Emerito M. Ramos, Sr., with his wife, Susana B. Ramos, and children as stockholders, entered into a Letter-Agreement with ASB for the conditional sale of sixty-five percent (65%) of the said land for a consideration of P400,000,000.00 payable in five installments. However, ASB, through its president, Mr. Luke C. Roxas, received a letter from the children of Emerito Ramos, Sr., informing him that on 18 May 1994, they entered into a Contract to Sell said real estate properties with ALI.^[2] ASB confirmed the contract of the Ramos children with ALI when it found out that the same was annotated on the Transfer Certificates of Title of the real estate properties in dispute. This prompted ASB to file the Complaint dated 13 June 1994 before the trial court.^[3] ALI, thereafter, filed its Answer with Compulsory Counterclaim and Cross-claim.^[4]

Plaintiff ASB subsequently filed a Motion^[5] for Leave to take testimony by deposition upon oral examination of Emerito Ramos, Sr., citing Section 4(c), Rule 24 of the Revised Rules of Court stating that Emerito Ramos, Sr. was already 87 years old and although he was of sound mind there is always the possibility that he may not be able to testify on plaintiff's behalf in the course of the trial on the merits. In the Omnibus Order^[6] of the trial court dated 17 October 1994, plaintiff's motion was granted. ASB then obtained the deposition upon oral examination of Emerito Ramos, Sr. on six different occasions, to wit: 22 and 24 November 1994, 5, 8 and 16 December 1994, and 26 January 1995. Upon termination of Emerito Ramos, Sr.'s direct testimony by deposition, both plaintiffs and defendants agreed that the cross-examination be scheduled on 02, 10 and 15 February 1995.^[7] These dates were reset to 15 February 1995. However, on 30 January 1995, ALI filed a "Motion^[8] to Resolve Objections (In deposition proceedings with Omnibus Motion)" on the propriety, admissibility and conformity of the deposition proceedings to the Rules.

Specifically, ALI sought rulings on its objections to leading questions, violations of the best-evidence rule, rule on presentation of secondary evidence, incompetence of the deponent, opinion rule, manner of presentation of evidence, and testimonies not forming part of the offer.^[9] As a consequence, the trial court, in an Order dated 14 February 1995, cancelled the cross-examination of Emerito Ramos, Sr.'s deposition scheduled on 15 February 1995.

On 05 May 1995,^[10] the trial court ruled on the objections of ALI sustaining some of its objections, overruling the others and upholding the propriety of the presentation of evidence made by plaintiff through deposition. In the same Order, the trial court directed the setting of the cross-examination of the deponent. ALI filed a Motion for Reconsideration of the Order setting the hearing of the case for cross-examination, which the trial court denied on 07 September 1995.^[11] The trial court again directed that the cross-examination of Emerito Ramos, Sr., be scheduled. The same was thus set on 06 October 1995. Before this date, however, ALI filed a Manifestation and Motion dated 02 October 1995 praying that the date set be cancelled and re-scheduled to another date.^[12] The trial court reset the hearing on 27 October 1995.

Thereafter, ALI filed before the Court of Appeals a Petition for *Certiorari* and Prohibition with urgent application for Temporary Restraining Order and Writ of Preliminary Injunction^[13] to restrain the public respondent, Judge Lucenito Tagle, from implementing the Order dated 07 September 1995 and to declare null and void and expunging the entire deposition proceedings taken in connection with Civil Case No. 931-94.^[14]

The Court of Appeals issued a Temporary Restraining Order dated 04 October 1995^[15] and later on, a Writ of Preliminary Injunction dated 14 November 1995^[16] pending resolution of the petition.

On 29 October 1996, the Court of Appeals rendered its decision^[17] denying due course and dismissing the petition of ALI. The Court of Appeals held:

In the instant case, Atty. Emerito Ramos, Sr. testified on matters of his personal knowledge, even if in the course of his testimony, he referred to certain documents in court, being the President and Chairman of EMRASON. In that capacity, he carried on negotiations relative to the sale of the Dasmariñas property. Indeed, "all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses" (Sec. 20, Rule 130, Rules of Court).

Sec. 16, Rule 132, as contended by petitioner, is not applicable to the case at bench as Atty. Ramos was not refreshing his memory on a fact or transaction with the aid of memoranda. Rather, he was freely recollecting and testifying on matters within the ambit of his own personal competence, and merely referring to the letter that he received from Mr. Fernando Ayala, and another letter written by a Victor Manarang to his son, Emerito Ramos, Jr., both letters being now in his possession by reason of his duties as President and Chairman of EMRASON. (TSN, 05 December 1994, pp. 70-85)^[18]

ALI's Motion for Reconsideration was likewise denied by the Court of Appeals.

On 10 June 1999, Emerito Ramos, Sr. died at the age of 92 years old. Plaintiff then filed before the trial court a motion to introduce in evidence the deposition of Emerito Ramos, Sr.^[19] The motion was opposed by ALI.^[20] ASB filed its Reply.^[21] ALI thereafter filed its Rejoinder^[22] and ASB its Sur-rejoinder.^[23]

On 28 September 1999, the trial court issued its Order setting aside the opposition of ALI and admitting in evidence the deposition of Emerito Ramos, Sr.^[24] Motion for Reconsideration filed by ALI was denied in an Order dated 24 December 1999. ^[25] ALI again elevated the case to the Court of Appeals by way of Petition for Review on *Certiorari*^[26] under Rule 65 of the Rules of Court.

In a decision^[27] dated 31 January 2002, the Court of Appeals dismissed the petition for lack of merit. ALI filed a Motion for Reconsideration^[28] which was opposed^[29] by private respondents ASB and EMRASON. The motion was denied in a resolution dated 23 May 2002.^[30]

Hence this Petition.

The issues raised in the instant petition are the following:

- I. WHETHER OR NOT THE ALLEGED DEPOSITION OF THE WITNESS EMERITO M. RAMOS, SR. IS ADMISSIBLE UNDER THE RULES.
- II. WHETHER OR NOT PETITIONER HAD WAIVED ITS RIGHT TO CROSS-EXAMINE THE DEPONENT, EMERITO M. RAMOS, SR.
- III. WHETHER OR NOT RESPONDENT APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUSTAINED THE RULING OF THE LOWER COURT IN FINDING THE DEPOSITION OF WITNESS EMERITO M. RAMOS, SR. AS ADMISSIBLE IN EVIDENCE.^[31]

The first issue is not novel. The same has been in fact passed upon twice by the Court of Appeals.

As defined, the term "deposition" is sometimes used in a broad sense to describe any written statement verified by oath. In its more technical and appropriate sense, the meaning of the word is limited to written testimony of a witness given in the course of a judicial proceeding in advance of the trial or hearing upon oral examination. A deposition is the testimony of a witness, put or taken in writing, under oath or affirmation, before a commissioner, examiner or other judicial officer, in answer to interlocutory and cross-interlocutory, and usually subscribed by the witnesses.^[32]

[A]nd the purposes of taking depositions are to: 1) Give greater assistance to the parties in ascertaining the truth and in checking and preventing perjury; 2) Provide an effective means of detecting and exposing false, fraudulent claims and defenses; 3) Make available in a simple, convenient and inexpensive way, facts which otherwise could not

be proved except with great difficulty; 4) Educate the parties *in advance* of trial as to the real value of their claims and defenses thereby encouraging settlements; 5) Expedite litigation; 6) Safeguard against surprise; 7) *Prevent* delay; 8) Simplify and narrow the issues; and 9) Expedite and facilitate both preparation and trial.^[33]

In the case of *Jonathan Landoil International Co., Inc. v. Mangudadatu*, this Court instructs:^[34]

. . . Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial. The liberty of a party to avail itself of this procedure, as an attribute of discovery, is "well-nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law."

Depositions may be taken at anytime after the institution of any action, whenever necessary or convenient.^[35]

In this case, the trial court permitted the taking of Emerito Ramos, Sr.'s deposition chiefly because of his advanced age which ground is considered valid and justified under the Rules of Court.^[36]

ALI contends that the prerequisites of a valid deposition were disregarded. It repeatedly insists that what transpired from 22 November 1994 to 26 January 1995 was simply a recitation of testimony of Emerito Ramos, Sr. intended to form part of a deposition for submission to the trial court but not a deposition itself considering that it never underwent the process of a valid deposition taken under Rules 23 and 132 of the Rules of Court, as the deposition was not completed, signed, certified, filed or offered before the court *a quo*, hence, under the Rules, considered incompetent evidence.^[37]

It must be noted that the depositions of Emerito Ramos, Sr., taken on the dates earlier mentioned, were substantially made in accordance with the requirements of the Rules. In fact, in its Petition before the Court of Appeals, ALI confirmed the taking of deposition on said dates and that it was duly represented by its counsel during the proceedings. As to whether the manner by which the deposition was taken faithfully complied with the requirements under the Rules of Court, it is not disputed that the deposition was taken inside the courtroom of the trial court, before the clerk of court. A stenographer was present, tape recorders and a video camera were even utilized to record the proceedings, in the presence of all the opposing counsels of record including ALI's.^[38] The following factual findings remain uncontroverted:

To reiterate, the deposition of the late Emerito Ramos, Sr. was taken inside the courtroom by the Clerk of Court in the presence of the parties and their lawyers, and the entire proceedings was transcribed by the stenographers of the Court. Thus, the requirements that the deposition has to be sealed, examined and signed by the deponent, and also certified, sealed and signed by the deposition officer would be, to the