

SECOND DIVISION

[G.R. No. 141857, June 09, 2004]

RODSON PHILIPPINES, INC., EURASIA HEAVY INDUSTRIES, INC., AUTOGRAPHICS, INC., AND PETER Y. RODRIGUEZ, PETITIONERS, VS. COURT OF APPEALS AND THE EASTAR RESOURCES (ASIA) CORPORATION, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 46035 dismissing the petition for certiorari and prohibition filed by the petitioners, which assailed the July 17, 1997, August 27, 1997 and October 29, 1997 Orders of the Regional Trial Court of Cebu City, Branch 11 in Civil Case No. CEB-9224.

The Antecedents

On July 19, 1990, petitioners Rodson Philippines, Inc., Eurasia Heavy Industries, Inc., Autographics, Inc. and Peter Y. Rodriguez, filed a Complaint^[2] for damages against respondent Eastar Resources (Asia) Corporation with the Regional Trial Court of Cebu City, Branch 7, then presided by Judge Generoso A. Juaban. The case was docketed as Civil Case No. CEB-9224.

The respondent, in its Answer,^[3] denied all the material averments of the complaint and interposed a compulsory counterclaim amounting to P29,000,000.

After the requisite pre-trial and without the parties having settled the case amicably, a full-blown trial on the merits ensued.

After the presentation of Peter Y. Rodriguez and Yolanda Lua as witnesses, the petitioners filed their formal offer of evidence on September 3, 1993. The petitioners rested their case after their documentary evidence was admitted by the court. The respondent then presented one witness, Mary C. Maquilan. On March 29, 1994, the respondent prayed for time to make their formal offer of evidence. The court granted the respondent's motion and gave it a period of fifteen (15) days to do so. The court then granted the petitioners a period of ten (10) days from service of the said formal offer within which to file their comment thereon.

The petitioners declared in open court that they would be presenting rebuttal evidence, and prayed that the hearing for the said purpose be set at 9:00 a.m. of May 4, 1994.^[4] The case was reset to June 1, 1994.

The petitioners changed their original counsel and retained a new one, Atty. Purita

Hontanosas-Cortes, the sister of their original counsel.^[5]

In the meantime, the respondent filed its formal offer of evidence and sent a copy thereof to the petitioners on June 1, 1994. When the case was called for the presentation of the petitioners' rebuttal evidence on the said date, the new counsel for the petitioners manifested her desire to recall the respondent's witness, Mary Maquilan, for further cross-examination. She reasoned that she was not satisfied with the cross-examination of the previous counsel, and asked for time to file the necessary motion. The court granted the same, and gave her fifteen (15) days to do so. The court also gave the respondent a period of ten (10) days from receipt thereof within which to file its comment or opposition. The court held in abeyance the resolution of the respondent's formal offer of evidence until such time that the petitioners' motion to recall Maquilan for further cross-examination was resolved. On June 24, 1994, the petitioners filed their motion to recall Maquilan as a witness for further cross-examination.^[6]

In the meantime, Judge Juaban retired from the government service. Acting Presiding Judge Andres C. Garalza, Jr. issued an order giving the respondent a final period of seven (7) days from notice within which to file its written comment on the petitioners' motion to recall Maquilan.^[7]

Thereafter, Judge Martin A. Ocampo was appointed presiding judge of the RTC of Cebu City, Branch 7. The hearing of the petitioners' motion to recall the witness was set for hearing on March 26, 1996. During the hearing, the counsel for the petitioners called the attention of the court to the fact that they had not yet filed their comment on the respondent's formal offer of evidence because of the pending incident. The court, for its part, declared that a formal offer of evidence was premature, precisely because of such pending incident. Thus:

ATTY. CORTEZ:

Just for a while, Your Honor ...You see one of the questions which would be propounded to her in the event that the request for cross-examination will be granted to recall the witness is whether before charges were made to the plaintiffs a compliance with Republic Act 376665 (sic) made. Under this Act, your Honor ...

COURT:

You can cross-examine her on that when you subpoena her.

ATTY. CORTEZ:

Yes, Your Honor. Your Honor please, if she will be summoned back as rebuttal witness I cannot go straight. I still have to –

COURT;

You can cross-examine her because she is a hostile witness.

ATTY. CORTEZ

Yes, Your Honor. But before we do that since there is a formal offer of evidence submitted by the defendant -

COURT:

The Court has not yet ruled on that.

ATTY. CORTEZ:

We don't have a Comment yet as to their formal---

COURT:

Because the Court has not yet ordered you to comment precisely because of this pending Motion. If there is still presentation of evidence then this will be premature. The offer of evidence is premature. That is why the Court has not yet considered it. On the other hand, if there will be additional evidence, they can amend this. You have to amend this because there is additional evidence.

ATTY. SISON:

So far, Your Honor, as I have said, it is not us who will be offering additional evidence. We will rely (sic) on what we have formally offered and we will rise and fall on the basis of our evidence. Now, the point here, Your Honor please, is to show to the Honorable Court that counsel is coming up with an issue which has not been raised in this case is to cross-examine Mary Maquilan on the basis of Republic Act 37665 (sic) which is not an issue in this case. The point here is this ----

COURT:

Are we not putting the cards here? We are objecting to the proposed testimony of this witness when she has not been in the witness stand. You object when the questions are propounded.

ATTY. SISON:

Your Honor please, the point here is counsel would like to recall my client to the witness stand after the termination.

COURT:

But we cannot tie their hands to what they should ask and what they should not ask.

COURT (continuation)

You may object when time comes.

ATTY. SISON:

With due respect, Your Honor, if my memory is right, it is

very clear that the recall of witness is always govern (sic) by the Rules of materiality of evidence and competency, Your Honor.

COURT:

That is why the Court is denying the Motion to Recall for cross-examination. But the Court will allow her to subpoena her as their hostile witness, in the course of rebuttal.

ATTY. SISON:

I submit, Your Honor, that's the best remedy.

COURT:

Provided, of course, they will have to pay the expenses.

ATTY. SISON:

Your Honor please, with all candidness I adhere to the ruling of the Court.

ATTY. CORTEZ:

Are you going to bind with the Court the production of the witness? Because you manifested in your latest pleading that you may not know about the whereabouts of your client. You are trying to -----

ATTY. SISON:

Madam counsel, I don't have control over Mary Maquilan. That was ten (10) years ago.

COURT:

The Court will issue subpoena.

ATTY. CORTEZ:

Your Honor please, that my contention while (sic) if there will be delay in the submission of its Comment and the former Presiding Judge of this Court would not resolve my pending Motion for Recall. It took him eight (8) months under the original period and then in the second period of forty (40) days all in excess of the periods given by the Court.^[8]

After the hearing, the court issued an order denying the petitioners' motion to recall Maquilan as witness for additional cross-examination, without prejudice to the petitioners' recalling the latter as a hostile witness on the presentation of its rebuttal evidence.

In the meantime, the petitioners failed to file their comment on the respondent's formal offer of evidence. The court, likewise, failed to resolve the said incident

despite the denial of the petitioners' motion to recall Maquilan for additional cross-examination.

On April 1, 1996, the trial court sent a *subpoena ad testificandum* to Maquilan, requiring her to appear before the court and to testify as a hostile rebuttal witness for the petitioners at 9:00 a.m. on June 17 and 18, 1996. The respondent filed its urgent motion to quash the *subpoena* on the ground that the witness was a resident of Quezon City, which was more than fifty (50) kilometers away and, as such, could not be compelled to testify under Section 9 of Rule 23 of the Revised Rules of Court.^[9]

During the hearing on June 17, 1996, the trial court expressed doubts as to whether it could compel Maquilan to appear before the court, considering that she was a resident of Quezon City which is more than fifty (50) kilometers from the venue of trial.^[10]

Because of the adverse rulings they had been receiving from the trial court, the petitioners manifested that they would file a motion to inhibit the judge from further hearing the case, and to have the case re-raffled to another branch. The court welcomed such motion, if only to put the petitioners' mind at rest.^[11]

In its Order^[12] dated August 19, 1996, Judge Martin A. Ocampo inhibited himself from further hearing the case and ordered the transmittal of the records of the case to the Office of the Executive Judge for re-affle.

The case was re-raffled to the RTC of Cebu City, Branch 11, presided by Judge Isaias P. Diccican. After a review of the records, the trial court discovered that the petitioners' motion to recall Mary Maquilan had already been denied; that the petitioners had not yet filed their comment on the respondent's formal offer of documentary evidence; and, that the said formal offer of evidence had not yet been resolved by the court. On July 17, 1997, the trial court issued an Order^[13] admitting the respondent's documentary evidence for the purposes they were offered. The court also set the continuation of the trial for the presentation of the petitioners' rebuttal evidence to 8:30 a.m. of August 27, 1997.^[14]

On August 25, 1997, the petitioners filed a Motion to Defer the Hearing Set on August 27, 1997,^[15] and prayed that they be given a chance to file their written objection to the formal offer of evidence filed by the respondent. The trial court denied the motion, per its Order dated August 27, 1997. The trial court ruled that the ten-day period given to the petitioners per its Order of March 29, 1994 had long since elapsed. It emphasized that the order holding in abeyance its ruling on the respondent's formal offer of evidence did not toll the ten-day period for the filing of the petitioners' comment thereon.

The petitioners filed a motion for the reconsideration of the order. The trial court denied the said motion in an Order dated October 29, 1997.

The petitioners, thereafter, filed a petition for certiorari^[16] and prohibition with the Court of Appeals, assailing the orders of the RTC, with a prayer for the issuance of a restraining order directing the public respondent RTC to refrain from proceeding with