



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

REPUBLIC OF THE
PHILIPPINES,

Plaintiff,

– versus –

RAMON J. QUISUMBING, ET
AL.,

Accused.

CIVIL CASE NO. 0172

For: Reconveyance, Recovery of
Possession, Accounting, and
Damages

Present:

LAGOS, J., *Chairperson,*
CRUZ*, and
MENDOZA-ARCEGA, JJ.

Promulgated:

June 02, 2017 *per*

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RESOLUTION

LAGOS, J.:

This resolves the plaintiff's *Urgent Motion To Disallow Taking Of Deposition.*¹ Defendant Ramon J. Quisumbing filed his *Opposition,*² and the plaintiff filed its *Reply.*³

In its motion, the plaintiff states that it received two notices to take depositions, both dated 11 March 2017, from defendant Quisumbing's counsel. To be deposed are officer/s or employee/s of the Privatization and Management Office (PMO) and the Development Bank of the Philippines (DBP).

*Designated as Special Member, per Administrative Order No. 025-2017 dated 1 February 2017.

¹ Dated 17 March 2017; Records, Vol. 9, pp. 75-81.

² Dated 29 March 2017; Records, Vol. 9, p. 10.

³ Dated 24 April 2017; Records, Vol. 9, pp. 174-181.

It claims that the Court has already ruled on the issue of defendant's taking of depositions, citing the Court's earlier resolution dated 6 February 2017 which disallowed defendant Quisumbing's taking of deposition. It argues that the deposition of PMO and DBP officials and employees should likewise be disallowed.

In his opposition, defendant Quisumbing points out that the subject depositions are directed towards non-party witnesses. He thus argues that Rule 23, section 16 does not apply. The plaintiff cannot also claim annoyance, embarrassment, or oppression since it can choose to send or not send a lawyer or to send written interrogatories to the deposition officer.

He claims that he only needs to discover and obtain evidence from DBP and PMO, specifically the 1977 assignment of 67% shares in PJI in favor of DBP. He also needs to discover and obtain evidence as to the private stockholders' redemption of the 67% shares in 2004.

He also claims that the 6 February 2017 resolution, referenced by the plaintiff in its motion, is not yet final and is still the subject of a motion for reconsideration. He claims that this resolution does not state that he cannot depose regardless of who the deponent is. He ends by saying that the plaintiff's efforts in blocking his discovery efforts is contrary to the rules of discovery.

In its reply, the plaintiff claims that the deposition will cause undue delay in the case. It questions why the defendant is only availing of discovery measures now and not much earlier before trial. It also says the deposition will not stop there because the defendant may opt not to use his findings in the deposition. The plaintiff also points out that the defendant has already listed his intended evidence a long time ago in the pre-trial brief, yet he only initiated discovery proceedings now. This delay should not be tolerated by the Court. It ends by reiterating that the Court had already passed upon and disallowed defendant Quisumbing's earlier planned deposition.

DISCUSSION and RULING

The motion is meritorious.

It should be noted that defendant Quisumbing's motion for reconsideration of the 6 February 2017 resolution has been denied in a resolution dated 20 April 2017.

In the referenced resolution 6 February 2017, the Court granted the plaintiff's motion, which is similar to the present one, and consequently disallowed defendant Quisumbing's taking of deposition.

This was based on Rule 23, section 16 of the Rules of Court, with reference to section 18 of the same rule.

The issue to be resolved now is whether such ruling will also apply in this present instance where the intended deponent is not one of the parties to this case. Sections 16 and 18 of Rule 23 read:

Section 16. Orders for the protection of parties and deponents. — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

Section 18. Motion to terminate or limit examination. — At any time during the taking of the deposition, on motion or petition of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the Regional Trial Court of the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition, as provided in section 16 of this Rule. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a notice for an order. In granting or refusing such order, the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

The rule does not limit a party's application for protection orders to situations where the intended deponent is a party. Stated otherwise, a party may avail of the protections under sections 16 and 18 or Rule 23 regardless of the intended deponent. Thus, there is no merit in defendant Quisumbing's claim that Rule 23, section 16 does not apply.

Again, the Court notes that the plaintiff has already ended its presentation of its evidence in chief and that this case has been pending for over two decades. The Court adopts the reasons for the

granting of plaintiff's earlier motion to disallow defendant Quisumbing's deposition-taking.

In the earlier resolution granting the motion to disallow the taking of deposition, the Court explained:

"Although depositions may be taken at any time, it should always be considered in light of over-all circumstances attending the case and the conduct of the deposition. The factual circumstances of this case convince the Court that the timing of the deposition is questionable.

Firstly, the case is already over twenty years old. The plaintiff is correct in pointing out that defendant Quisumbing had more than enough time in the past to conduct its deposition. The right to avail of modes of discovery, including depositions, is not affected by whatever incident may have occurred or was pending before the Court or elevated further to the Supreme Court.

If the object of the defendant Quisumbing was truly for discovery, they could have done so at any time over the past two decades. Just because the deposition could be done at any time does not mean that there are practically no bounds to the taking of such deposition.

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Secondly, the issues had already been framed and the respective evidence of the parties have been identified in the Pre-Trial Order dated 3 June 2014. The plaintiff had already presented its evidence in chief and had rested its case. The defendants are will be presenting their respective evidence in support of their defenses.

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Thirdly, the information sought to be elicited by the taking of the deposition has been covered by the presentation of the evidence of the plaintiff. The testimonies of its witnesses and the documentary evidence in support of its complaint are already available to defendant Quisumbing.

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Considering all of these, the Court is convinced that the planned deposition, to be conducted in behalf of defendant Quisumbing, should be disallowed to better serve the interests of justice."⁴

In the resolution denying defendant Quisumbing's motion for reconsideration, the Court further explained:

"Contrary to defendant Quisumbing's position, the Court did not add any condition for the exercise of the right to take depositions.

⁴ Resolution dated 6 February 2017, pp. 6-9.

But the Court found, after reviewing the circumstances of this case, that Quisumbing's exercise of such right to take depositions is so questionable as to warrant the granting of the plaintiff's motion to disallow the taking of such deposition.

This is based on section 16 of Rule 23, which empowers courts to determine if there is good cause to prevent the taking of deposition. Necessarily, the circumstances attending this case have to be considered to properly assess the existence of a good cause. As explained in the questioned resolution which is quoted above, this is an exercise of judicial discretion. The allegations of cause to stop the deposition-taking have to be substantiated, and these can be done precisely by considering the attending circumstances of the case. Stated otherwise, the examination of the circumstances in this case was done to determine if there is good cause to stop the taking of deposition, as raised and alleged by the plaintiff in its motion to disallow. It is not a precondition to the exercise of the right to take deposition. It is a determination of whether defendant Quisumbing's exercise of such right is in order.

Defendant Quisumbing misunderstands the Court's discussion of delay in this case. The Court did not attribute the delay to him. The Court noted that even though this case has been pending for such a long time, only now did Quisumbing try to conduct deposition. xxx xxx xxx

Without going into what caused or triggered the delays in this case, it remains undisputed that defendant Quisumbing only invoked his right to take depositions recently despite the length of time this case has been pending. As explained before, the incidents and events in this case did not restrain the taking of depositions.

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In this present case, defendant Quisumbing is seeking to delve into the merits of the case. He has known the issues involved in this case as far back as the filing of his answer and the filing of his pre-trial brief. He cannot simply argue that he is allowed to conduct deposition at any time or that he waited for the assessment of the plaintiff's evidence.

This line of reasoning altogether devalues key stages in civil procedure such as preliminary conferences, pre-trial and the issuance of the pre-trial order. These stages before the trial are meant to outline the issues and evidence to be presented in the case so that trial may proceed in an orderly fashion.

By simply saying that he may wait and assess the plaintiff's evidence before he elects to take deposition is tantamount to saying that all stages before the trial have no bearing. He has not shown good reason for disregarding all these stages. This is why the Court even pointed out that the pre-trial order has been issued a long time ago.

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All these have been considered by the Court to arrive at the conclusion that defendant Quisumbing's exercise of his right to take deposition has been done in bad faith. In his motion, defendant Quisumbing does not address this finding squarely. Instead, he ratiocinated that his action is allowed by the rules.

The Court simply followed existing rules and jurisprudence on the taking of depositions and proceeded to conclude that the case events and records justify the finding that defendant Quisumbing exercised his right to take depositions in bad faith. This is why the circumstances of the case were examined.

The rules allow some measure of protection from the possibility that the right to take deposition may be exercised in bad faith. The Court agrees that defendant Quisumbing has the right to take deposition. But he must understand that just because such right exists does not mean that it can be exercised without bounds."⁵

The Court does not share defendant Quisumbing's view that his intended deposition now will not inconvenience the plaintiff. Even if the intended deponent is not the plaintiff, the latter still has to make arrangements for attendance to the deposition, if it chooses to do so.

Bearing in mind the discussion of the circumstances quoted above, any participation in any deposition will result in unjustified inconvenience to the plaintiff, regardless of the intended deponent.

Indeed, defendant Quisumbing had a number of years to avail of discovery measures. Yet he is doing so only now, when this case has been pending for so many years and despite the fact that throughout these years, there was no restriction on him to avail of discovery measures.

The information he seeks from DBP & PMO, which are events or transactions in 1977 and 2004, could have been discovered much earlier. But he waited until now, when he is about to present his own evidence, to do so.

After considering all of these, defendant Quisumbing's intended deposition should be disallowed. The Court further clarifies that defendant Quisumbing is disallowed from taking any deposition, whether upon oral examination or upon written interrogatories, regardless of his intended deponent.

⁵ Resolution dated 22 April 2017, pp. 3-6.

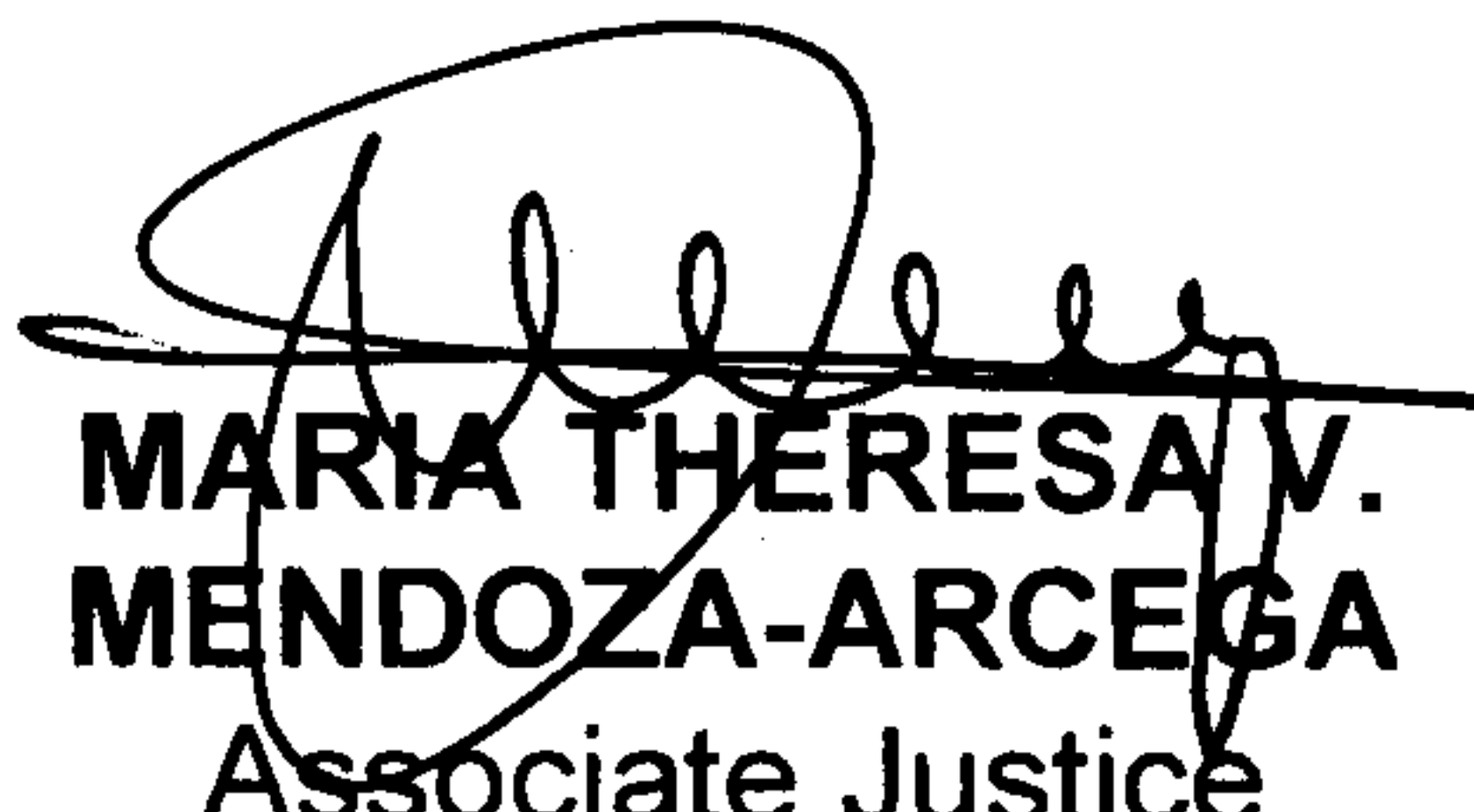
WHEREFORE, the plaintiff's motion is hereby **GRANTED**.
Defendant Ramon J. Quisumbing is ordered to desist from proceeding
with his planned deposition.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice