



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-14-CRM-0239
Plaintiff,

For: Plunder

– versus –

Present:

JOSE “JINGGOY” P. ESTRADA, ET AL.,
Accused.

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

Promulgated:
August 14, 2017 Jcl

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RESOLUTION

LAGOS, J.:

Citing defects in the draft Pre-Trial Order prepared by the Court, accused Estrada moves for correction of certain portions and items in the same.¹ The prosecution filed its comment² to the motion. Subsequently, accused Estrada filed a Manifestation.³

Antecedents

After the accused were arraigned, numerous preliminary conferences were held, spanning over two years.⁴ Based on these

¹ Accused Estrada filed his motion dated 12 July 2017.

² Dated 25 July 2017.

³ Dated 2 August 2017.

⁴ Dates of the preliminary conferences:

2014					2016-2017	
July 8, 2014 – AM	Aug. 8, 2014 – PM	Oct. 23, 2014 – AM		APRIL 2015	July 8, 2015- AM	February 12, 2016- PM
July 8, 2014 – PM	Aug. 13, 2014 – AM	Oct. 24, 2014 – AM		April 8, 2015- AM	July 8, 2015- PM	February 19, 2016- PM
July 11, 2014 – PM	Aug. 13, 2014 – PM	Oct. 24, 2014 – PM		April 10, 2015- PM	July 14, 2015 - AM	March 11, 2016- PM
July 14, 2014 – AM	Aug. 15, 2014 – PM	Oct. 31, 2014 – AM		April 14, 2015-AM	July 15, 2015- AM	March 18, 2016- AM

preliminary conferences, the Court prepared a draft Pre-Trial Order, which was circulated for the consideration and signature of the parties and their counsels.

In a Manifestation dated 15 June 2017, the prosecution related its receipt of a letter from accused Estrada's counsel where the latter proposed that: (i) the listing of both prosecution and defense exhibits be appended as annexes to the Pre-Trial Order; and (ii) only include matters that were actually stipulated upon by the parties, excluding their respective proposed stipulations. The prosecution agreed to the first suggestion, which is to list the exhibits as annexes, but it did not agree to the exclusion of the proposed stipulations.

Accused Estrada responded to the prosecution's Manifestation by filing the instant motion. The initial presentation of evidence by the prosecution was postponed pending the resolution of these issues as regards and the issuance of the actual Pre-Trial Order.

Accused Estrada's Motion

In his motion, accused Estrada claims that he sought to resolve his issues regarding the draft Pre-Trial Order without the Court's intervention, but he filed this motion since the prosecution already sought the Court's intervention when it filed its Manifestation.

July 14, 2014 - PM	Aug. 18, 2014 - AM	Nov. 5, 2014 - AM	April 15, 2015- AM	July 15, 2015- PM	April 1, 2016- PM
July 15, 2014 - PM	Aug. 20, 2014 - PM	Nov. 5, 2014 - PM	April 15, 2015- PM	July 16, 2015- PM	April 22, 2016- PM
July 17, 2014 - AM	Aug. 22, 2014 - PM	Nov. 7, 2014 - AM	April 21, 2015- PM	July 22, 2015- AM	May 6, 2016- PM
July 17, 2014 - PM	Aug. 26, 2014 - PM	Nov. 12, 2014 - PM	April 22, 2015- PM	July 22, 2015- PM	May 20, 2016- PM
July 18, 2014 - AM	Aug. 28, 2014 - PM	Nov. 14, 2014 - AM	April 24, 2015- PM	July 24, 2015- PM	June 17, 2016- PM
July 18, 2014 - PM	Aug. 29, 2014 - PM	Nov. 14, 2014 - PM	April 29, 2015- AM	July 29, 2015 - AM	June 24, 2016-PM
July 21, 2014 - AM	Sept. 3, 2014 - PM	Nov. 17, 2014 - PM	April 29, 2015- PM	July 31, 2015- AM	July 1, 2016-PM
July 21, 2014 - PM	Sept. 12, 2014 - AM	Nov. 19, 2014 - AM	MAY 2015	AUG. 2015	July 15, 2016-PM
July 23, 2014 - PM	Sept. 12, 2014 - PM	Nov. 19, 2014 - PM	May 13, 2015- AM	Aug. 5, 2015- PM	August 5, 2016 - PM
July 24, 2014 - PM	Sept. 25, 2014 - PM	Nov. 20, 2014 - PM	May 13, 2015- PM	Aug. 7, 2015- PM	August 11, 2016 - PM
July 25, 2014 - AM	Sept. 26, 2014 - AM	Nov. 21, 2014 - AM	May 15-2015- PM	Aug. 12, 2015- PM	August 12, 2016- PM
July 25, 2014 - PM	Sept. 29, 2014 - PM	Nov. 21, 2014 - PM	May 19, 2015- AM	Aug. 14, 2015- PM	August 25, 2016- PM
July 30, 2014 - PM	Oct. 2, 2014 - AM	Nov. 26, 2014 - AM	May 20, 2015- AM	Aug. 26, 2015- PM	August 26, 2016- PM
July 31, 2014 - AM	Oct. 9, 2014 - PM	Nov. 26, 2014 - PM	May 20, 2015- PM	Aug. 28, 2015- PM	August 30, 2016 - PM
Aug. 1, 2014 - AM	Oct. 10, 2014 - AM	Nov. 28, 2014 - PM	May 22, 2015 - AM and PM	SEPT. 2015	September 1, 2016- PM
Aug. 1, 2014 - PM	Oct. 15, 2014 - AM	Dec. 3, 2014 - AM	May 26, 2015- PM	Sept. 2, 2015- AM	September 9, 2016- PM
Aug. 4, 2014 - AM	Oct. 15, 2014 - PM	Dec. 5, 2014 - AM	May 27, 2015- AM	Sept. 2, 2015- PM	September 16, 2016- PM
Aug. 4, 2014 - PM	Oct. 22, 2014 - AM	Dec. 5, 2014 - PM	May 29, 2015- AM	Sept. 4, 2015- PM	September 23, 2016
Aug. 7, 2014 - AM	Oct. 22, 2014 - PM	Dec. 12, 2014 - AM	May 29, 2015 - PM	Sept. 9, 2015- PM	October 7, 2016
Aug. 8, 2014 - AM		Dec. 12, 2014 - PM	JUNE 2015	Sept. 11, 2015- PM	October 14, 2016- PM
			June 3, 2015- AM	Sept. 16, 2015- AM	October 21, 2016
			June 3, 2015- PM	Sept. 16, 2015- PM	December 2, 2016
JAN. 2015	FEB. 2015	MARCH 2015	June 5, 2015- PM	Sept. 30, 2015- AM	January 20, 2017
Jan. 9, 2015-AM	Feb. 4, 2015- AM	March 3, 2015- AM	June 9, 2015- AM	OCT. 2015	April 24, 2017
Jan. 9, 2015-PM	Feb. 5, 2015- AM	March 4, 2015- AM	June 10, 2015- AM	Oct. 23, 2015- PM	
Jan. 14, 2015- AM	Feb. 6, 2015- AM	March 6, 2015- AM	June 10, 2015- PM	NOV. 2015	
Jan. 14, 2015-PM	Feb. 6, 2015- PM	March 6, 2015- PM	June 17, 2015- AM	Nov. 6, 2015- PM	
Jan. 21, 2015- AM	Feb. 9, 2015-PM	March 10, 2015-AM	June 17, 2015- PM		
Jan. 21, 2015- PM	Feb. 10, 2015- AM	March 13, 2015- AM	June 19, 2015- PM		
Jan. 23, 2015- AM	Feb. 11, 2015- AM	March 13, 2015- PM	June 26, 2015- PM		
Jan. 23, 2015- PM	Feb. 11, 2015- PM	March 17, 2015- PM	JULY 2015		
Jan. 28, 2015- AM	Feb. 18, 2015- AM	March 18, 2015- AM	July 1, 2015- AM		
Jan. 30, 2015- AM	Feb. 18, 2015- PM	March 27, 2015- AM	July 1, 2015- PM		
Jan. 30, 2015- PM	Feb. 20, 2015- AM	March 27, 2015- PM	July 3, 2015-PM		
	Feb. 20, 2015- PM		July 7, 2015- AM		
	Feb. 25, 2015- AM				
	Feb. 27, 2015- PM				

Accused Estrada raises three points regarding the draft Pre-Trial Order. First, he claims that the listing of the proposed stipulations is not required to be made in the Pre-Trial Order. Second, he takes issue with the prosecution's listing of exhibits and their insistence for him to sign the Pre-Trial Order. Third, he disagrees with some of the notes as to the exhibits, saying that some of these are inaccurately described.

The prosecution opposes the instant motion. It opines that the listing of the proposed stipulations is required. It serves as a record that stipulations were made and denied by the other party.

It argues that the stipulations made during the preliminary conferences must be included in the Pre-Trial Order and signed by the accused and his counsel. This is to bind the accused and not waste the time spent for this purpose during the preliminary conferences. It cites the case of *People v. Villanueva*⁵ as basis for saying that the Pre-Trial Order must be signed by the accused and his counsel.

It claims that the notes and descriptions in the draft Pre-Trial Order are based on the preliminary conferences held. It points out that the accused-movant has not specifically identified the incorrect notes and descriptions and he has not shown how these are inaccurate. Nevertheless, it agreed to ask its witnesses to bring the originals of the documents.

Accused Estrada's Manifestation

On 4 August 2017, accused Estrada filed a Manifestation dated 2 August 2017. He manifests his willingness to sign the Pre-Trial Order subject to conditions on the effects of his signing. Accused Estrada and his counsels are signing merely to acknowledge the proceedings. Their signatures and initials are not acceptance of any proposed stipulation or any agreement. Their signing is also not an agreement as to the comparison of the prosecution's exhibits.

He says that he makes no admission as to the genuineness, authenticity and due execution of all of the prosecution's documentary exhibits. He only admits their existence, subject to comments and observations made during the preliminary conferences.

⁵ G.R. No. 181829, 1 September 2010.

DISCUSSION and RULING

Pre-trial in criminal cases is governed by Rule 118, which provides:

Section 1. Pre-trial; mandatory in criminal cases. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

Section 2. Pre-trial agreement. — All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court.

Section 3. Non-appearance at pre-trial conference. — If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties.

Section 4. Pre-trial order. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

A.M. NO. 03-1-09-SC clarifies certain provisions of this rule and provides guidelines as to how the preliminary conferences and pre-trial are conducted, and as to how the Pre-Trial Order is drafted.

Based on these rules, the Court partly denies accused Estrada's motion, insofar as it requests for the exclusion of the proposed stipulation and the correction of the description of the prosecution's documentary exhibits. The Court shall also clarify the matter of accused's signing the Pre-Trial Order.

Listing of proposed stipulations

Section 4 of the rule enumerates the contents of the Pre-Trial Order. It is true that the proposed stipulations made by the parties is not required to be listed in the Pre-Trial Order. But it is likewise true that there is no limitation on the Court to do so. The listing of the parties' proposed stipulations, therefore, is a matter of discretion of the Court.

The listing of the proposed stipulation is clearly shown to be only proposed stipulations. There is nothing to impress upon anyone that the accused has agreed to any of these. It is listed to clearly show that such proposed stipulations were made and that these were denied.

There is no merit in accused Estrada's fears that the list of proposed stipulations might be taken as him having admitted these, whether in whole or in part. It is clear that such proposed stipulations are just proposals.

It is true that the stipulations and actions thereon are contained in the pre-trial brief and in the minutes of the preliminary conferences and/or hearings. But, to have a clear record of the proposed stipulations, it is better to have these reproduced in the pre-trial brief rather than simply having them referenced, especially considering the voluminous records of this case.

*Comparison of exhibits;
inaccurate description*

As regards the accused's complaints about the description of the documentary exhibits, suffice it to say that even in the accused's cited sample Pre-Trial Order in A.M. NO. 03-1-09-SC, there is an item for "Brief Description". These descriptions are plainly just descriptions of the documents. Considering the volume of documents involved in this case, a description of the documents will definitely aid in the trial of this case.

It is clear that these descriptions are simply guides to properly mark and separate the documents. Surely, the accused's counsels know that the details in the descriptions of the documents are not the basis for the Court's appreciation of such documents. The accused-movants' concerns pertain to the identification and probative value of the documents, which will be determined later in the trial of the case.

Anent the accused-movant's complaint on the supposed inaccurate notes of his stipulation to some documents, the Court notes that the accused-movant did not identify which of the documents have erroneous descriptions or notes. He does not make any reference to any particular document or date of preliminary conference. Without such specification, the accused-movant would have the Court review anew all the records of the preliminary conferences.

The Court appreciates the prosecution's accommodation of the accused-movants' unspecified reservations by volunteering to have their witnesses bring the original of the documents instead.

Signing the Pre-Trial Order

It appears that the prosecution insists on having the accused sign the Pre-Trial Order in order to bind him to the admissions and stipulations made during the preliminary conferences. Accused Estrada, on the other hand, refuses to sign the Pre-Trial Order as he views that there are matters therein that he has not agreed to.

Section 2 of the rule speaks of a pre-trial agreement. To bind the accused, it is required that all agreements or admission should be reduced in writing and signed by the accused and his counsel. This writing incorporates the agreements and/or admissions made by the parties during the preliminary conference. If this agreement covers matters under section 1 of the rule, then it must be approved by the Court. There is no specific requirement as to how this pre-trial agreement is drawn.

Thus, any agreement or stipulation regarding any matter under section 1 of Rule 118 requires three things: (i) that such agreement or stipulation be in writing; (ii) that is signed by both the accused and his counsel; and (iii) that it bears the approval of the Court.

As a matter of expediency, however, the Court has in the past resorted to the practice of incorporating all agreements, stipulations, and admissions in the Pre-Trial Order. The contents of the Pre-Trial Order are still based on the actual proceedings in the preliminary conferences, as reflected in the minutes of such proceedings. This satisfies the three requirements for agreements, stipulations, and admission on matters under section 1 of Rule 118. The actual Pre-Trial Order would serve as the writing, signed by both accused and his counsel, which is duly approved by the Court.

Since there is no specific requirement as to the execution of a pre-trial agreement, it may be incorporated into the Pre-Trial Order

itself. Its efficacy as a binding pre-trial agreement is due to the fact that the accused and his counsel signed the actual Pre-Trial Order, which signifies their concurrence to the contents of the same.

This practice of incorporating admissions, agreements, and stipulations into the Pre-Trial Order is even suggested in the Benchbook for Trial Court Judges, which is a Supreme Court-issued guideline for judicial action and conduct.⁶

In the case at bar, the prosecution insists on having the accused sign the Pre-Trial Order with the goal of binding the accused. Accused Estrada, earlier did not want to sign the Pre-Trial Order. Now, however, accused Estrada has manifested that he is signing the Pre-Trial Order but he is signing without admitting anything. Accused Estrada is signing with the reservation that such signing should not produce legal effects such as admission or stipulation.

The draft Pre-Trial Order is based on the preliminary conferences conducted, but without a written agreement signed by the accused and his counsel, any agreement or admission, even if they were actually made during the preliminary conferences, cannot bind the accused. There is no valid agreement to be approved by the Court. Even if accused Estrada or his counsel made any agreement or admission during the preliminary conferences, such agreement or admission is not enough.

The Court cannot compel the accused to sign so that there may be a written agreement signed by the accused and his counsel. In the Resolution dated 20 June 2017 where the Court asked the parties to sign the Pre-Trial Order, the Court did so with the understanding that the draft Pre-Trial Order actually reflected the proceedings during the preliminary conferences. The Court is not compelling anyone to sign against their wishes. It was merely a continuation of the process of finally drafting and issuing a Pre-Trial Order. Even if the parties do not sign the Pre-Trial Order, the same will still be valid since the rules do not require the parties to sign the same.

The prosecution's reliance on *People v. Villanueva*⁷ is misplaced. Its reading of that case is incorrect. In that case, the

⁶ See Benchbook for Trial Court Judges, p. 4-44. See also Rule 135, section 6 of the Rules of Court, which provides:

“Section 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.”

⁷ Supra.

Supreme Court looked at the records of the case and found that the Pre-Trial Order was not signed by the accused. It examined Rule 118, specifically the section covering pre-trial agreements. This impliedly validates the above-described practice of incorporating agreements into the actual Pre-Trial Order. The Supreme Court ruled that since the Pre-Trial Order was not signed by the accused, an admission during the pre-trial cannot be used against the accused.

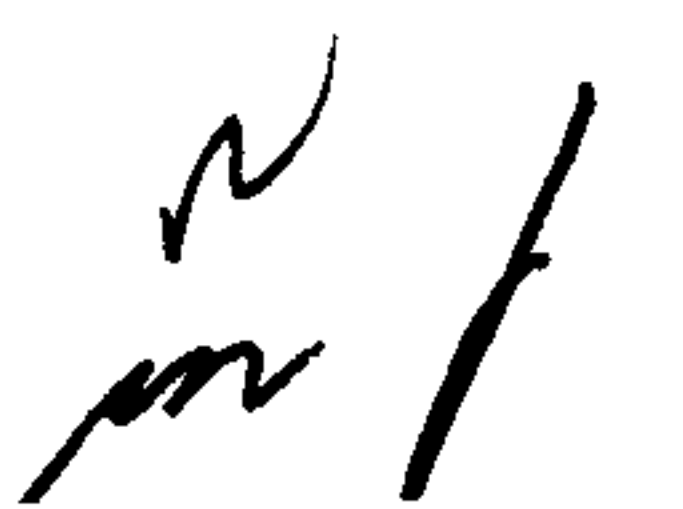
Thus, that case is authority for saying that without any admission in writing signed by the accused and his counsel, whether in a pre-trial agreement or the pre-trial order, no admission may be used against the accused. It is not authority for saying that the accused may be compelled to put in writing whatever he has previously agreed to or admitted. The Supreme Court even noted this as a protection for the accused should he disagree with any of his counsel's improvident or unauthorized agreements or admissions.

Accused's Estrada's refusal to sign the Pre-Trial Order or his intention to sign without admitting anything may be viewed as his refusal to confirm any supposed agreement or admission made earlier during the preliminary conferences. Obviously, he cannot be compelled to enter into any agreement or admissions. Surely, to require the accused to sign a written agreement to make any admission effective against him would violate his constitutional rights. Unfortunately for the prosecution, the absence of a written agreement operates in favor of the accused.

The Court notes that the accused is signing with reservations and conditions, as declared in his manifestation. This clarifies his signing of the Pre-Trial Order, such that his signing will not constitute any written admission, stipulation, or agreement.

As discussed above, the Pre-Trial Order is valid even if the parties do not sign it. Its issuance is not reliant on any concurrence from the parties. The parties' signing is just a modality to reduce any previous agreement or admission in writing, with the end in view of making such agreement or admission effective as against the accused.

But even if the accused cannot be compelled to agree to matters which were verbally agreed to during the preliminary conferences, sanctions may be taken against him or his counsels if it can be shown that they entered into agreements, admissions, or stipulations on any matter during the preliminary conferences without any intention to make good on them by executing them in writing later.



It should be noted that the draft Pre-Trial Order is based on all of the preliminary conferences conducted. As far as the Court is concerned, the agreements, stipulations, and admissions contained in said draft were made during the preliminary conferences. These were taken from the minutes of all such preliminary conferences.


With the resolution of the accused-movant's motion, there should be no more issue as regards the contents of the Pre-Trial Order, which will be issued by the Court forthwith. Such order will be issued whether or not any of the accused or the prosecution refuses to sign the same.


WHEREFORE, accused Estrada's motion is hereby **PARTIALLY DENIED** insofar as it requests for the exclusion of proposed stipulations and correction of descriptions. Let a Pre-Trial Order be issued forthwith.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


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