



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

REPUBLIC OF THE
PHILIPPINES,

Plaintiff,

CIVIL CASE NO. 0172

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

– versus –

RAMON J. QUISUMBING, et
al.,

Defendants.

Present:

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

Promulgated:

September 18, 2017 *lal*

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RESOLUTION

LAGOS, J.:

For resolution is the Motion for Reconsideration¹ of the Resolution² of this Court dated June 2, 2017 filed by defendant Ramon J. Quisumbing on August 3, 2017 which granted plaintiff

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

¹ Records, Vol. 9. p. 460.

² Ibid., p.175.

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Republic's Urgent Motion to Disallow the Taking of Deposition of officer(s) and employee(s) of the Privatization and Management Office (PMO) and Development Bank of the Philippines (DBP), the dispositive portion of which reads as follows:

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

The issue raised and resolved in the Resolution of this Court dated June 2, 2017, now the subject of the instant Motion for Reconsideration, is the very same issue raised and resolved in the Resolution dated February 6, 2017 which earlier ordered defendant Quisumbing to desist from proceeding with his planned deposition upon oral examination of the official(s) and employee(s) of the Presidential Commission on Good Government (PCGG) who are in charge of: (1) Philippine Journalists, Inc.,(PJI); (2) PCGG's files on PJI, and (3) Civil Case No. 0035 and 0172.

To recall, defendant Quisumbing filed a Motion for Reconsideration³ (MR) on March 2, 2017 of the February 6, 2017 Resolution⁴. While the said MR was pending before this Court, he filed 11 days later, or on March 13, 2017, another request for issuance of subpoena *ad testificandum* and *duces tecum* which, this time, was addressed to the officer(s) and employee(s) of Privatization Management Office⁵ (PMO) and Development Bank of the Philippines⁶ (DBP) whom he described as the two(2) non-party witnesses of the case. On the same day, the Notice(s) to Take Deposition⁷ were served upon PMO and DBP, along with the Office of the Solicitor General (OSG), PCGG and counsel of other defendants.

On April 20, 2017, the Court, after considering the plaintiff's Comment on the Motion for Reconsideration and the Reply thereon by defendant pertaining to the disallowance to the taking of deposition of the PCGG official(s) and employee(s) promulgated its

³ Records, Vol. 9, p. 10.

⁴ Ibid., Vol. 8, 442.

⁵ Ibid., Vol. 9, pp. 29-33.

⁶ Ibid., pp. 34-37.

⁷ Ibid., pp. 40-45.

Resolution⁸ denying defendant Quisumbing's Motion for Reconsideration of the February 6, 2017 Resolution.

On the other hand, anent defendant's more recent request on March 13, 2017 to take the deposition of PMO and DBP officer(s) and employee(s), the same proceedings, as in the case of PCGG personnel, ensued thereafter where plaintiff filed an Urgent Motion to Disallow Taking of Deposition⁹ and the defendant's filing of Opposition¹⁰ thereto and plaintiff's Reply¹¹ on the defendant's Opposition.

On June 2, 2017, the Court, acting on the pleadings filed by the parties, promulgated its Resolution which, as stated earlier, granted plaintiff Republic's Urgent Motion to Disallow Taking of Deposition and ordered defendant to desist from proceeding with his planned deposition.

Hence, this Motion for Reconsideration filed on August 3, 2017 by defendant Quisumbing.

Plaintiff Republic, through the PCGG, by its counsel, the Office of the Solicitor General (OSG) filed on August 25, 2017 its Comment on the Motion for Reconsideration.

In his Motion for Reconsideration, defendant Quisumbing questions the pronouncements of this Court when it allegedly anchored its Resolution on the issue whether or not the disallowance of the deposition of the official(s) and employees of PCGG as held in the February 6, 2017 Resolution applies in the instant case where the intended deponent is not one of the parties, referring to either the PMO or DBP.

Contending that the Resolution of June 2, 2017 is erroneous, defendant asserts that the Court should have focused instead on his arguments earlier invoked in seeking to reconsider the Resolution dated February 6, 2017 that the protection order accorded to witness or party of the case under Sections 16 and 18 of

⁸ Records, Vol. 9, p. 75.

⁹ Ibid., p.75.

¹⁰ Ibid., p. 118.

¹¹ Ibid., p. 152.

Rule 23 of the Revised Rules of Court does not apply in the instant case as no motive or intention to annoy, embarrass or oppress witnesses from DBP or PMO and the plaintiff Republic can be attributed to him by conducting the third-party depositions. He further contends that there is no basis for the Court to conclude that the deposition-taking is being conducted in bad faith, or in such a manner as unreasonably to annoy, embarrass or oppress the deponent or party, nor it will inconvenience plaintiff Republic.

Viewed in its entirety, all of defendant Quisumbing's arguments point out, as he would want to impress upon Us, that the Court has not found, and the plaintiff has not shown, the requisite *good cause* to disallow the taking of the deposition of the officer(s) and employee(s) of DBP and PMO within the contemplation of Section 16 and 18 of Rule 23 of the Revised Rules of Court.

We find the Motion for Reconsideration unmeritorious. Consequently, the same should be denied for lack of merit.

The arguments adduced in the instant Motion for Reconsideration on the same issue earlier raised in the taking of deposition of the official(s) and employee(s) of PCGG are mere reiterations and have been deliberated and passed upon by this Court in the Resolution of June 2, 2017.

It bears to stress that the Court has exhaustively discussed in the Resolution of June 2, 2017, as well as in the earlier Resolution of February 6, 2017 involving the same issue, the nature and objective of taking deposition as a mode of discovery to enable a party to learn all the material and relevant facts, not only known to him and his witnesses but also those known to the adverse party and the latter's own witnesses, as explained in *Dasmarinas Garments, Inc. v. Reyes*¹², including the proper time to take depositions which, as held in the case of *Jonathan Landoil International Co., Inc. v. Sps. Mangudadatu*¹³, may be before or during the trial of the case, and the limitation of taking such deposition of a witness and party under Section 16 and 18 of Rule 23 of the Revised Rules of Court.

¹² G.R. No. 108229, 24 August 1993.

¹³ G.R. No. 155010, 16 August 2004.

We need not belabour any further on the issue which was raised and resolved twice by this Court, *first*, in the Resolution of February 6, 2017 which granted plaintiff's Urgent Motion to Disallow the Taking of Deposition of the officer(s) and employee(s) of PCGG, and the Resolution of April 20, 2017 which denied plaintiff's Motion for Reconsideration of the said February 6, 2017 Resolution, and, *second*, in the June 2, 2017 Resolution, now the subject of the instant Motion for Reconsideration.

It must be emphasized that the determination of "*good cause*" that would compel the Court to issue an order that the deposition shall not be taken within the contemplation of Sections 16 of Rule 23 of the Revised Rules of Court is a matter best addressed by the Court in the exercise of its discretion. Good cause is not a precondition to allow the taking of deposition. Rather, it is the determination of whether the right of defendant Quisumbing to take deposition is in order and would serve the greater interests of justice. As aptly put by the Supreme Court in the case of *Republic vs. Sandiganbayan*,¹⁴ the decision is entirely within the discretion of the court.

The concept of "*good cause*", as used in Section 16 of Rule 23 of the Revised Rules of Court, denotes adequate or substantial grounds or reason to take a certain action, or to fail to take action prescribed by law. What constitutes good cause is determined on a case to case basis, thus, it depends upon the circumstances of each case. Adequate or substantial grounds must be shown before a party will be denied entirely the right to take a deposition.

The pronouncements of the Supreme Court in the case of *Fortune Corporation vs. Court of Appeals*¹⁵, is instructive in this regard, thus:

"Section 16 of Rule 24 clearly states that it is only upon notice and for good cause that the court may order that the deposition shall not be taken. The matter of good cause is to be determined by the court in the exercise of judicial discretion. Good cause means a substantial reason — one that affords a legal excuse. Whether or

¹⁴ G.R. No. 112710, 30 May 2001.

¹⁵ G.R. No. 108119, 19 January 1994.

not substantial reasons exist is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown."

Records show that the complaint in the instant case (Civil Case No. 0172) was filed in October 17, 1996 and issues have been joined after the defendant filed his answer on April 20, 1999. The parties had already filed their respective Pre-trial Briefs identifying their respective witnesses and documentary evidence. On the part of defendant Quisumbing, he filed his Pre-trial Brief on February 20, 2001 which he amended thrice, on October 29, 2002, November 19, 2004 and March 2, 2005. The Pre-trial Order was finally issued on June 3, 2014, after which, presentation of evidence in chief ensued until plaintiff Republic rested its case. Twenty (20) years have passed, and yet, as clearly shown by plaintiff, it took 16 years, more or less, for defendant Quisumbing to request the taking of deposition on oral examination when in fact reservations were made to avail of the modes of discovery as early as 2001 in his first Pre-trial Brief submitted to the Court and the consequent amended Pre-trial Briefs.

As this Court stated in the questioned Resolution of June 2, 2017, defendant Quisumbing had more than enough time in the past to conduct its depositions. The right to avail of modes of discovery, including depositions, is not affected by whatever incident that may have occurred or was pending before this Court or elevated further to the Supreme Court. Defendant Quisumbing cannot just invoke the jurisprudence that deposition may be taken anytime, before or during trial, unmindful of the limitations prescribed by Section 16 and 18, Rule 23 of the Revised Rules of Court which authorize the court to exercise its discretion in determining good cause to disallow the taking of deposition.

The attendant circumstances, as substantially shown by plaintiff Republic, has sufficiently convinced the Court that plaintiff Quisumbing belated resort to the mode of discovery under Rule 23 of the Rules of Court after 16 years appeared to be tainted with bad faith intended to annoy and oppress plaintiff Republic in pursuing the case to its final resolution. If at all, requesting plaintiff Republic and its witnesses upon orders of this Court to a designated venue or the Court anytime for the purpose of taking deposition is annoying and oppressive when the information sought have been covered by the presentation of evidence of the plaintiff and the testimonies of

witnesses and documentary evidence are already available and disclosed to defendant Quisumbing.

What is more, any participation of plaintiff Republic in the taking of deposition, even if its witness is not the intended deponent, will result to unjustified inconvenience. Allowing defendant Quisumbing to proceed to deposition-taking when the mode of discovery could have been done much earlier would not only be oppressive to the plaintiff Republic but would not serve at all the greater interests of justice.

The pronouncements of the Supreme Court in *People v. Webb*¹⁶, find relevance in this case where the Supreme Court emphasized that the use of discovery procedures is directed to the sound discretion of the trial court and the taking of deposition cannot be based or denied on flimsy reasons. Discretion has to be exercised in a reasonable manner and in consonance with the spirit of the law. In the instant case, there is good reason to support the limitation on the right of defendant Quisumbing to take depositions.

We find no cogent and compelling reason to reconsider our earlier Resolution of not allowing the taking of deposition of the officer(s) and employee(s) of DBP and PMO which, as substantially shown by plaintiff Republic, and determined by this Court in the exercise of its discretion, stand on *good cause* within the contemplation of Sections 16 and 18 of Rule 23 of the Revised Rules of Court.

WHEREFORE, in view of the foregoing, defendant Quisumbing's Motion for Reconsideration is denied for lack of merit. Defendant Quisumbing is ordered to desist from proceeding with his planned deposition of the officer(s) and employee(s) of DBP and PMO.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

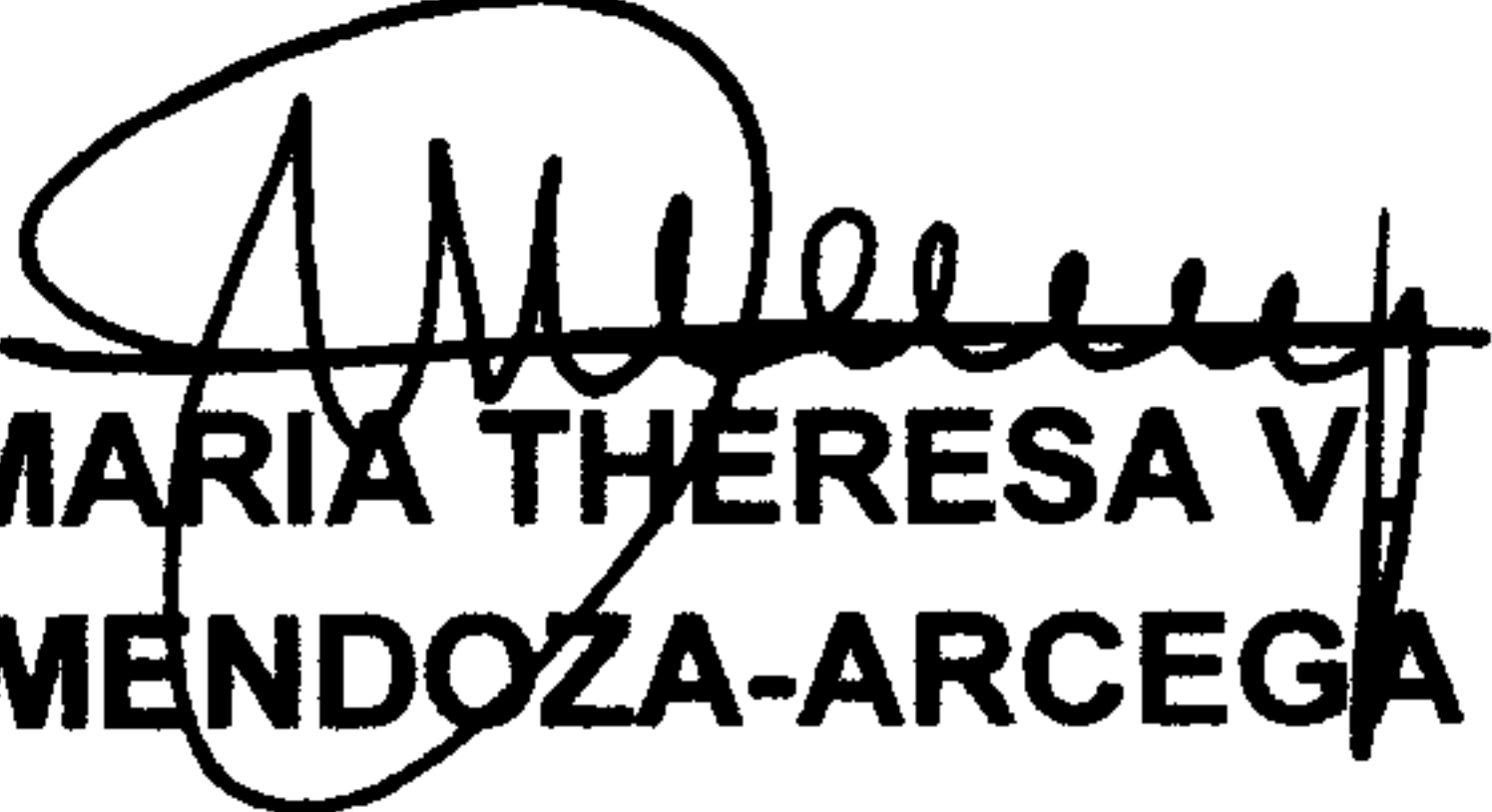
¹⁶ G.R. No. 132577, 17 August 1999.



WE CONCUR:



REYNALDO P. CRUZ
Associate Justice



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

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