



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

**REPUBLIC OF THE
PHILIPPINES,**

Petitioner,

SB-14-CVL-0002

For: Forfeiture of Unlawfully
Acquired Properties
under R.A. No. 1379

- versus -

Present:

CABOTAJE-TANG, P.J.,
Chairperson,

**FERNANDEZ, B., J. and
MORENO, J.**

**HERNANDO B. PEREZ,
ROSARIO S. PEREZ, ERNEST
D. ESCALER, and RAMON
ANTONIO C. ARCEO JR.,**

Respondents.

Promulgated:

MAY 25, 2022

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is respondent Ernest De Leon Escaler's (Escaler) "*Motion to Dismiss [For Failure to Comply with the Hon. Court's Order And The Rules] and Motion to Bar [Introduction of Documentary Evidence Not Attached To The Pre-Trial Brief and [Introduction Of Testimonial Evidence of ALL Its Witnesses For Failure To Submit Judicial Affidavits]*" dated April 21, 2022.¹

¹ Record, Vol. VI, pp. 843-850

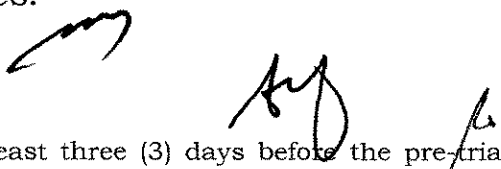
Resolution

Civil Case No. SB-14-CVL-0002
Republic v. Perez, et al.

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In his aforesaid *motion*, respondent Escaler prays that the petition be dismissed for the petitioner’s unjustified failure to comply with the Rules of Court and the Order of the Court dated March 11, 2022.² In support thereof, Escaler avers that Clause I (A)[2] of A.M. No. 03-1-09-SC³ requires the identification and pre-marking of documentary evidence during pre-trial, otherwise, these documents will not be allowed to be presented and offered during trial. Meanwhile, the Judicial Affidavit Rule (JAR)⁴ requires the parties to file and serve not later than five (5) days before the pre-trial the judicial affidavits of their witnesses and their documentary or object evidence, which shall be attached to the judicial affidavits.⁵ In this case, Escaler claims that the petitioner failed to present Exhibits “K”, and “CCC” to “OOO” during the pre-marking. Thus, it should be barred from presenting Exhibits “K” and “CCC to OOO.” Moreover, petitioner also failed to file and submit the judicial affidavits of its witnesses. Consequently, it should be considered to have waived their submission as provided under Section 10 of the JAR.⁶

Escaler further contends that during the March 11, 2022 Pre-Trial proceedings, the respondents pointed out to the Court the legal infirmities in petitioner’s Pre-Trial Brief and moved for the dismissal of the case. However, the Court denied the motion and instead granted petitioner a period of five (5) days to amend its Pre-Trial Brief in compliance with the Rules. While petitioner filed its Amended Pre-Trial Brief, Escaler argues that said Pre-Trial Brief did not contain any attachments of the judicial affidavits of its witnesses.



² Record, Vol. VI, pp. 697-698

³ The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

... ..

d. The documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented and offered during the trial in support of a party’s evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown);

⁴ A.M. No. 12-8-8-SC

⁵ Section 2, *Id*

⁶ Section 10. *Effect of non-compliance with the Judicial Affidavit Rule.* - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱ 1,000.00 nor more than ₱ 5,000.00 at the discretion of the court.

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Lastly, Escaler also prays that petitioner be barred from introducing any documentary evidence not attached to its Pre-Trial Brief as well as any witness whatsoever for its failure to submit the witnesses' judicial affidavits.

In their "*Manifestation*" dated April 22, 2022,⁷ respondents Hernando B. Perez and Ramon Antonio C. Arceo manifested that they are adopting as their own the Motion to Dismiss and Motion to Bar, filed by respondent Escaler.

In its "*Opposition*" dated April 27, 2022,⁸ the petitioner admits that its Pre-Trial Brief did not have any attached judicial affidavit or documentary exhibits, but contends that its failure was due to the constraints in the number of witnesses, their location, and the very limited time it had to comply with the Rules given the sudden opening of offices. It further stresses that its failure to attach the judicial affidavits of its witnesses was not intended to cause undue delay, and it would likewise not prejudice the rights of the respondents to be apprised in advance of the testimonies of the witnesses and to prepare for the conduct of their cross-examination.

As to the Exhibits claimed by Escaler to be unmarked, petitioner avers that Exhibit "K" was in fact marked in the presence of respondents' counsels on March 04, 2022, while Exhibits "CCC to OOO" were indeed inadvertently not marked. Nonetheless, they should not be excluded as these were listed in its Pre-Trial Brief and Amended Pre-trial Brief and their purposes for which they are to be presented have been stated.

THE RULING OF THE COURT

After a careful review of the arguments raised by the parties, the Court *denies* the motion of respondent Escaler.

⁷ Record, Vol. VI, pp. 853-854

⁸ Record, Vol. VI, pp. 856-859

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Resolution

Civil Case No. SB-14-CVL-0002
Republic v. Perez, *et al.*

-4-

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Indeed, Rule 17, Section 3 of the Rules of Court allows the dismissal of an action due to plaintiff's failure to comply with the Rules of Court or any order of the court, viz:

Section 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his or her evidence in chief on the complaint, or to prosecute his or her action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his or her counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

However, the application of the rule is not automatic. By using the word "may", the Rules grant the court the discretion to dismiss the case or not, and it must be shown that plaintiff failed to comply with the Rules or any order of the court without any justifiable cause.

In this case, respondent Escaler hinges his prayer for dismissal on the petitioner's failure to comply with the Rules, particularly the Judicial Affidavit Rule, and with the order of the Court promulgated on March 11, 2022. The relevant portion of this Court's *Order* dated March 11, 2022 reads:

Acting on the said motion to strike out and motion to dismiss, the Court hereby DENIES the same. In the interest of substantial justice, the Court GRANTS the petitioner a **NON-EXTENDIBLE PERIOD OF FIVE (5) DAYS** from today within which to amend its Pre-trial Brief and to strictly comply with the Rules of Court respecting the filing of Pre-trial Briefs. Failure on the part of the petitioner to file the said Amended

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Resolution

Civil Case No. SB-14-CVL-0002
Republic v. Perez, *et al.*

-5-

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Pre-trial Brief within the said period shall constrain the Court to dismiss this case outright.⁹

To recall, during the pre-trial proceedings on March 11, 2022, respondents prayed for the dismissal of the case due to the petitioner's failure to comply with the Rules regarding its pre-trial brief. However, this Court denied the same and gave the petitioner an opportunity to amend its Pre-trial Brief to comply with the Rules. On March 16, 2022, the petitioner filed its Amended Pre-trial Brief, and was admitted by the Court in its Resolution issued on the same date.¹⁰ Thereafter, or on April 22, 2022, the pre-trial was terminated.

Undeniably, the petitioner was able to comply with the order of the Court to file its Amended Pre-trial Brief within five (5) days from March 11, 2022. Similarly, we find that the Amended Pre-Trial Brief, filed by the petitioner, complies with the requirements laid down in the Rules. To be sure, the Rules of Court require the pre-trial brief to contain the following:

- a. A concise statement of the case and the reliefs prayed for;
- b. A summary of admitted facts and proposed stipulation of facts;
- c. The main factual and legal issues to be tried or resolved;
- d. The propriety of referral of factual issues to commissioners;
- e. The documents or other object evidence to be marked, stating the purpose thereof;
- f. The names of the witnesses, and the summary of their respective testimonies; and
- g. Brief statement of points of law and citation of authorities.¹¹

Nevertheless, there is no question that petitioner did not submit the Judicial Affidavits of its witnesses. However, we find

⁹ Emphasis supplied

¹⁰ Record, Vol. VI, p. 726

¹¹ Rule 18, Section 6, Rules of Court



Resolution

Civil Case No. SB-14-CVL-0002
Republic v. Perez, *et al.*

-6-

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that immediate dismissal of the action is not a necessary consequence thereof. Firstly, strictly speaking, Rule 17, Section 3 of the Rules of Court contemplates the non-compliance with the provisions of the Rules of Court. More importantly, the JAR itself provides the effect of non-compliance therewith, viz:

Section 10. Effect of non-compliance with the Judicial Affidavit Rule. - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P 1,000.00 nor more than P 5,000.00 at the discretion of the court.

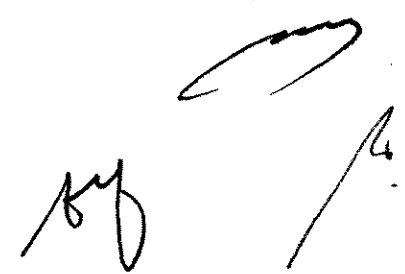
Thus, the Court may allow the submission of judicial affidavits if the delay is for a valid reason, the opposing party would not be unduly prejudiced, and the defaulting party pays a fine.

In its *Opposition* dated April 27, 2022¹² to Escaler's motion, petitioner explained that its failure to attach the judicial affidavits was due to the constraints in the number of its witnesses, their location, and the very limited time it had to comply with the Rules given the sudden opening of offices.¹³ Considering that the respondents would not be prejudiced by the non-attachment of the judicial affidavits of petitioner's witnesses to its Pre-trial Brief, and the fact that the witnesses of the petitioner are indeed numerous, the late submission of the judicial affidavits of petitioner's witnesses may be allowed.

We are mindful that procedural rules cannot simply be disregarded as they are designed to facilitate the speedy adjudication of cases. However, if a stringent application of the rules would hinder rather than serve the demands of

¹² Supra note 8

¹³ p. 2; Records, Vol. VI, p. 857



Resolution

Civil Case No. SB-14-CVL-0002
Republic v. Perez, *et al.*

-7-

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substantial justice, the former must yield to the latter.¹⁴ Courts are therefore tasked to balance the application of the rules with the goal of ensuring the attainment of justice.

As to Escaler's prayer to bar the introduction of Exhibits "K" and "CCC" to "OOO" during trial, the record shows that Exhibit "K" was actually marked by the petitioner during the scheduled marking on March 04, 2022 but Exhibits "CCC" to "OOO" were not so marked. The Court finds it premature for the respondents to bar the presentation of the unmarked documentary evidence of the petitioner at this time considering that the petitioner has yet to present its evidence in this case.

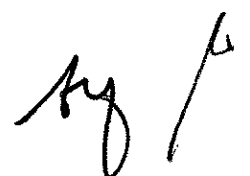
WHEREFORE, the "*Motion to Dismiss [For Failure to Comply with the Hon. Court's Order And The Rules] and Motion to Bar [Introduction of Documentary Evidence Not Attached To The Pre-Trial Brief and [Introduction Of Testimonial Evidence of ALL Its Witnesses For Failure To Submit Judicial Affidavits]*" dated April 21, 2022, filed by respondent Ernest De Leon Escaler is **DENIED** for lack of merit and for being premature. However, the petitioner is **ORDERED** to submit the judicial affidavits of its witnesses within FIFTEEN (15) days from notice hereof. It is likewise **ORDERED** to pay a fine of P1,000.00 for its failure to submit the Judicial Affidavits of its witnesses within the time prescribed.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

¹⁴ Latogan v. People, G.R. No. 238298, January 22, 2020.

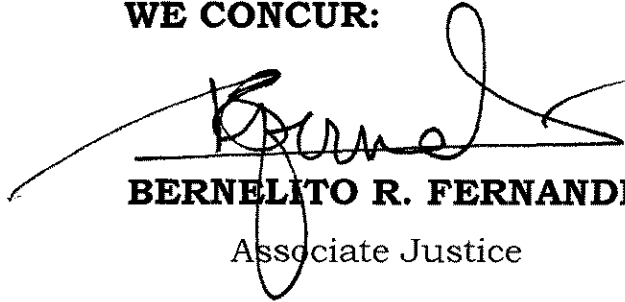


Resolution

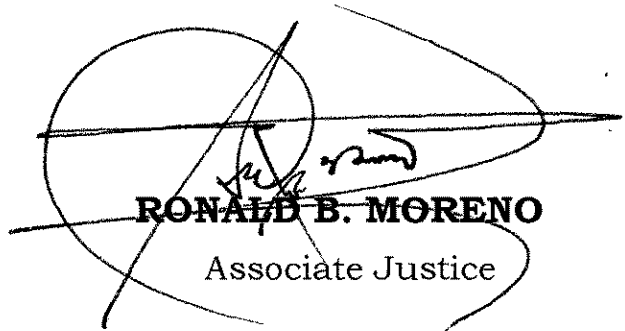
Civil Case No. SB-14-CVL-0002
Republic v. Perez, *et al.*

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WE CONCUR:



BERNELITO R. FERNANDEZ
Associate Justice



RONALD B. MORENO
Associate Justice

