



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:

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

CABOTAJE-TANG, P.J.,
Chairperson,
**FERNANDEZ, B., J. and
MORENO, J.**

Promulgated:

DECEMBER 19, 2022 

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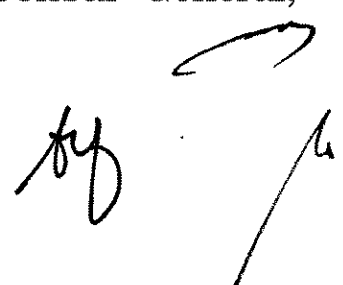
RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is respondent Ernest De Leon Escaler's "Motion for Reconsideration [Of this Honorable Court's 08 November 2022 Resolution]" dated November 14, 2022.¹

In his *motion*, respondent Escaler insists that Mr. Gerardo Abiog is disqualified to administer the deposition of Hon. Lilibeth V. Pono because Mr. Abiog is an employee of the petitioner. Escaler claims that the persons authorized to administer depositions in a foreign country are not exclusively limited to the Secretary of the Embassy, Consul General,

¹ Record, Vol. 10, pp. 674-695



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Consul, Vice-Consul, or Consular Agent of the Republic of the Philippines. Thus, Mr. Abiog's disqualification will not create any vacuum as the other authorized persons can be appointed by the Court to take the deposition. Escaler likewise maintains that the Republic is the employer of Mr. Abiog, not the DFA. According to him, the DFA is only a part of the Government, an element of the State.

In its "*Comment/Opposition*" dated November 21, 2022,² the petitioner argues that respondent Escaler did not raise new issues that will merit a reconsideration of the assailed Resolution. It argues that the evil sought to be prevented by Section 13, Rule 23 of the Rules of Court is the appointment of a person as a deposition officer when such person has an interest in the outcome of the case by reason or his or her relation to any of the parties therein. It maintains that Mr. Abiog is an employee of the DFA, which is a separate entity from the Ombudsman, and therefore has no vested interest in this case. Moreover, it claims that Escaler is estopped from challenging the authority of Mr. Abiog as it has already sent his "Cross-Interrogatories" addressed to Hon. Pono, which was already forwarded to the DFA.

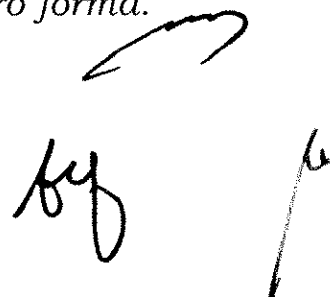
Finally, the petitioner claims that this motion should be treated as respondent Escaler's second motion for reconsideration and should therefore be proscribed. According to the petitioner, respondent's *Omnibus Motion* was in fact a reconsideration of the Court's *Resolution* promulgated on August 30, 2022 where the Court granted the taking of deposition of Hon. Pono before Mr. Abiog.

THE RULING OF THE COURT

We deny the motion.

After a careful review of the arguments raised by respondent Escaler, the Court finds that the issues raised therein have already been passed upon by this Court and no substantial arguments were presented to warrant a reversal of the assailed Resolution; hence, it is *pro forma*.

² Record, Vol. X, pp. 776-783

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Moreover, the Court agrees with the petitioner that this motion is already a second motion for reconsideration of the Court's Resolution dated August 30, 2022. To recall, respondent Escaler's *Omnibus Motion* dated October 5, 2022 sought (i) a reconsideration of the Court's Resolution dated August 30, 2022, and (ii) to disqualify Consul Abiog from taking Hon. Pono's deposition,³ which was denied by the Court in its *Resolution* promulgated on November 8, 2022, upon the following ratiocination:

Respondent Escaler argues that Mr. Abiog is disqualified to take the deposition of Ms. Pono since he is, as Minister and Consul at the Philippine Embassy in Berlin, Germany, an employee of the herein petitioner, *i.e.*, the Republic of the Philippines.

The said argument of Escaler is devoid of merit.

First. As stated above, Section 11, Rule 23 of the Rules of Court, as amended, unequivocally authorizes consuls and consular agents of the Republic of the Philippines to conduct deposition taking in foreign countries. Since Mr. Abiog is the Minister and Consul at the Philippine Embassy in Berlin, Germany, he is fully-clothed with the authority to conduct the deposition taking of Ms. Pono.

Second. Section 13, Rule 23 of the Rules of Court, as amended, is entitled "*Disqualification by interest.*" This simply means that the persons enumerated therein are automatically disqualified as deposition officers because the Rules conclusively presume that they have some *interest*, pecuniary or otherwise, in the outcome of the action due to their **relations** to any of the parties therein. Thus, for the disqualification under the said Rule to attach, it must be firmly established that the deposition officer is a relative

³ Record, Vol. X, pp. 468-471



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within the sixth degree of consanguinity or affinity, or employee or counsel of any of the parties, or who is a relative within the same degree, or employee of the counsel, or who is financially interested in the action.

... ..

Plainly, Respondent Escaler is mistaken in concluding that Mr. Abiog is an employee of the Republic of the Philippines within the contemplation of Section 13, Rule 23 of the Rules of the Court, as amended. Mr. Abiog is an employee of the consular office of the Philippines which is a unit under the DFA. The DFA, being under the Executive Branch of Government, is definitely separate and distinct from the OMB, which is an independent constitutional body. Considering that the OMB which instituted the present action on behalf of the Republic of the Philippines, Mr. Abiog may be validly designated as the deposition officer since there is no employer-employee relationship existing between Mr. Abiog and the OMB.⁴

The Court likewise agrees that respondent Escaler is now estopped from challenging the propriety of the deposition as well as the authority of Mr. Abiog as deposition officer as he had already sent his Cross-Interrogatories addressed to Hon. Pono.⁵

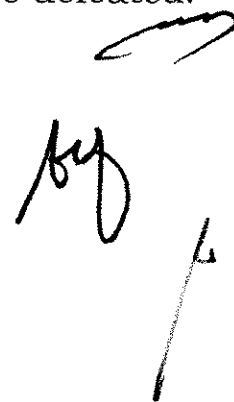
Finally, jurisprudence holds that the rules on discovery are to be accorded broad and liberal treatment and should not be unduly restricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law.⁶ Otherwise, the advantage of a liberal discovery procedure in ascertaining the truth and expediting the disposal of litigation would be defeated.⁷

⁴ Sandiganbayan Resolution promulgated on November 8, 2022, pp. 6-9

⁵ Record, Vol. X, pp. 742-751

⁶ *San Juan v. Rojas*, 571 Phil. 51-73 (2008)

⁷ *Id.*

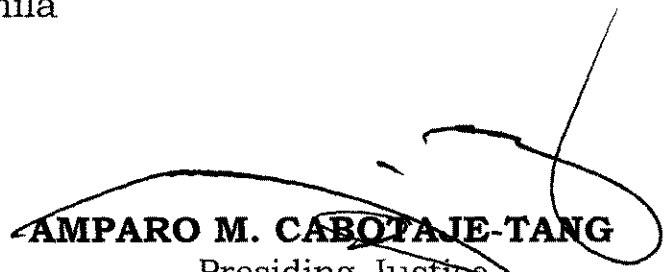
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WHEREFORE, the “*Motion for Reconsideration*” dated November 14, 2022 filed by respondent Ernest De Leon Escaler is **DENIED** for being *pro forma* and for lack of merit.

SO ORDERED.

Quezon City, Metro Manila



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:



BERNELITO R. FERNANDEZ
Associate Justice



RONALD B. MORENO
Associate Justice