

SECOND DIVISION

[G.R. No. 197122, June 15, 2016]

**INGRID SALA SANTAMARIA AND ASTRID SALA BOZA,
PETITIONERS, VS. THOMAS CLEARY, RESPONDENT.**

[G.R. No. 197161]

**KATHRYN GO-PEREZ, PETITIONER, VS. THOMAS CLEARY,
RESPONDENT.**

DECISION

LEONEN, J.:

This case stems from a motion for court authorization to take deposition in Los Angeles by respondent Thomas Cleary, an American citizen and Los Angeles resident who filed a civil suit against petitioners Ingrid Sala Santamaria, Astrid Sala Boza, and Kathryn Go-Perez before the Regional Trial Court of Cebu.

We resolve whether a foreigner plaintiff residing abroad who chose to file a civil suit in the Philippines is allowed to take deposition abroad for his direct testimony on the ground that he is "out of the Philippines" pursuant to Rule 23, Section 4(c)(2) of the Rules of Court.

These two separate Petitions^[1] assail the Court of Appeals' (1) August 10, 2010 Decision^[2] that granted Thomas Cleary's (Cleary) Petition for Certiorari and reversed the trial court's Orders^[3] denying Cleary's Motion for Court Authorization to Take Deposition^[4] before the Consulate- General of the Philippines in Los Angeles; and (2) May 11, 2011 Resolution^[5] that denied reconsideration.

On January 10, 2002, Cleary, an American citizen with office address in California, filed a Complaint^[6] for specific performance and damages against Miranila Land Development Corporation, Manuel S. Go, Ingrid Sala Santamaria (Santamaria), Astrid Sala Boza (Boza), and Kathryn Go-Perez (Go-Perez) before the Regional Trial Court of Cebu.

The Complaint involved shares of stock of Miranila Land Development Corporation, for which Cleary paid US\$191,250.00.^[7] Cleary sued in accordance with the Stock Purchase and Put Agreement he entered into with Miranila Land Development Corporation, Manuel S. Go, Santamaria, Boza, and Go-Perez. Paragraph 9.02 of the Agreement provides:

Any suit, action or proceeding with respect to this Agreement may be brought in (a) the courts of the State of California, (b) the United States District Court for the Central District of California, or (c) the courts of the

country of Corporation's incorporation, as Cleary may elect in his sole discretion, and the Parties hereby submit to any such suit, action proceeding or judgment and waives any other preferential jurisdiction by reason of domicile.^[8]

Cleary elected to file the case in Cebu.

Santamaria, Boza, and Go-Perez filed their respective Answers with Compulsory Counterclaims.^[9] The trial court then issued a notice of pre-trial conference dated July 4, 2007.^[10]

In his pre-trial brief, Cleary stipulated that he would testify "in support of the allegations of his complaint, either on the witness stand or by oral deposition."^[11] Moreover, he expressed his intent in availing himself "of the modes of discovery under the rules."^[12]

On January 22, 2009, Cleary moved for court authorization to take deposition.^[13] He prayed that his deposition be taken before the Consulate-General of the Philippines in Los Angeles and be used as his direct testimony.^[14]

Santamaria and Boza opposed^[15] the Motion and argued that the right to take deposition is not absolute.^[16] They claimed that Cleary chose the Philippine system to file his suit, and yet he deprived the court and the parties the opportunity to observe his demeanor and directly propound questions on him.^[17]

Go-Perez filed a separate Opposition,^[18] arguing that the oral deposition was not intended for discovery purposes if Cleary deposed himself as plaintiff.^[19] Since he elected to file suit in the Philippines, he should submit himself to the procedures and testify before the Regional Trial Court of Cebu.^[20] Moreover, Go-Perez argued that oral deposition in the United States would prejudice, vex, and oppress her and her co-petitioners who would need to incur costs to attend.^[21]

The trial court denied Cleary's Motion for Court Authorization to Take Deposition in the Order^[22] dated June 5, 2009. It held that depositions are not meant to be a substitute for actual testimony in open court. As a rule, a deponent must be presented for oral examination at trial as required under Rule 132, Section 1 of the Rules of Court. "As the supposed deponent is the plaintiff himself who is not suffering from any impairment, physical or otherwise, it would be best for him to appear in court and testify under oath[.]"^[23] The trial court also denied reconsideration.^[24]

Cleary elevated the case to the Court of Appeals.

On August 10, 2010, the Court of Appeals granted Cleary's Petition for Certiorari and reversed the trial court's ruling.^[25] It held that Rule 23, Section 1 of the Rules of Court allows the taking of depositions, and that it is immaterial that Cleary is the plaintiff himself.^[26] It likewise denied reconsideration.^[27]

Hence, the present Petitions were filed.

Petitioners Ingrid Sala Santamaria and Astrid Sala Boza maintain in their appeal that the right of a party to take the deposition of a witness is not absolute.^[28] Rather, this right is subject to the restrictions provided by Rule 23, Section 16^[29] of the Rules of Court and jurisprudence.^[30] They cite *Northwest Airlines v. Cruz*,^[31] in that absent any compelling or valid reason, the witness must personally testify in open court according to the general rules on examination of witnesses under Rule 132 of the Rules of Court.^[32]

Likewise, petitioners Santamaria and Boza submit that Cleary cannot, for his sole convenience, substitute his open-court testimony by having his deposition taken in the United States.^[33] This will be very costly, time-consuming, disadvantageous, and extremely unfair to petitioners and their counsels who are based in the Philippines.^[34]

Petitioners Santamaria and Boza argue that the proposed deposition in this case is not for discovery purposes as Cleary is the plaintiff himself.^[35] The Court of Appeals Decision gives foreigners undue advantage over Filipino litigants in cases under similar circumstances, where the parties and the presiding judge do not have the opportunity to personally examine and observe the conduct of the testifying witness.^[36] Thus, the court's suggestion for written interrogatories is also not proper as open-court testimony is different from mere serving of written interrogatories.^[37]

Lastly, petitioners Santamaria and Boza claim that Cleary's sole allegation that he is a resident "out of the Philippines" does not warrant departure from open-court trial procedure under Rule 132, Section 1 of the Rules of Court.^[38]

In her Petition, petitioner Kathryn Go-Perez makes two (2) arguments. First, she contends that granting a petition under Rule 65 involves a finding of grave abuse of discretion, but the Court of Appeals only found "error" in the trial court orders.^[39] She cites *Triplex Enterprises v. PNB-Republic Bank*^[40] and *Yu v. Reyes-Carpio*,^[41] in that a writ of certiorari is restricted to extraordinary cases where the act of the lower court is void.^[42] It is designed to correct errors of jurisdiction and not errors of judgment.^[43] *People v. Hubert Webb*^[44] has held that the use of discovery procedures is directed to the sound discretion of the trial judge and certiorari will be issued only to correct errors of jurisdiction.^[45] It cannot correct errors of procedure or mistakes in the findings or conclusions by the lower court.^[46]

Second, petitioner Go-Perez submits that the Court of Appeals erred in disregarding Rule 23, Section 16 of the Rules of Court, which imposes limits on the right to take deposition.^[47] Cleary's self-deposition in the United States, which is not for discovery purposes, is oppressive, vexatious, and bordering on harassment.^[48] The Court of Appeals also erred in ignoring applicable jurisprudence such as *Northwest*, where this Court found that the deposition taken in the United States was to accommodate the petitioner's employee who was there, and not for discovery purposes. Thus, the general rules on examination of witnesses under Rule 132 of the Rules of Court should be observed.^[49]

Lastly, petitioner Go-Perez contends that the Court of Appeals ignored Rule 132, Section 1 of the Rules of Court, which provides that a witness must testify in open court.^[50] That Cleary is the plaintiff himself is material as there is nothing for him to discover when he deposes himself.^[51]

On the other hand, respondent Thomas Cleary maintains that Rule 23, Section 4 of the Rules of Court on the taking of deposition applies.^[52] He is "out of the Philippines" as an American citizen residing in the United States. This is true even when he entered the Stock Purchase and Put Agreement with petitioners in 1999 and filed the case in 2009.^[53] Cleary cites *Dasmariñas Garments v. Reyes*^[54] and *San Luis v. Rojas*.^[55] The trial court even "previously scheduled the hearing subject to the notice from the Department of Foreign Affairs for the taking of deposition."^[56] However, this was later disallowed upon petitioners' opposition.^[57]

Respondent submits that the rules on depositions do not authorize nor contemplate any intervention by the court in the process. All that is required under the rules is that "reasonable notice" be given "in writing to every other party to the action[.]"^[58] Thus, the trial court's discretion in ruling on whether a deposition may be taken is not unlimited.^[59]

Respondent adds that this Court has allowed the taking of testimonies through deposition in lieu of their actual presence at trial.^[60] He argues that with the new rules, depositions serve as both a method of discovery and a method of presenting testimony.^[61] That the court cannot observe a deponent's demeanor is insufficient justification to disallow deposition. Otherwise, no deposition can ever be taken as this objection is common to all depositions.^[62]

Respondent contends that *Northwest* does not apply as the deposition in that case was found to have been improperly and irregularly taken.^[63]

Lastly, respondent argues that the presiding judge of the trial court acted with grave abuse of discretion in denying his Motion for Court Authorization to Take Deposition.^[64] That he is an American residing in the United States is undisputed. The trial court even issued the Order dated January 13, 2009 directing him to inform the court of the "steps he . . . has taken and the progress of his request for a deposition taking filed, if any, with the Department of Justice."^[65] In later disallowing the deposition as he is "not suffering from any impairment, physical or otherwise," the presiding judge acted in an arbitrary manner amounting to lack of jurisdiction.^[66] The deposition sought is in accordance with the rules. The expenses in attending a deposition proceeding in the United States cannot be considered as a substantial reason to disallow deposition since petitioners may send cross-interrogatories.^[67]

These consolidated Petitions seek a review of the Court of Appeals Decision reversing the trial court's ruling and allowing Cleary to take his deposition in the United States. Thus, the issues for resolution are:

First, whether the limitations for the taking of deposition under Rule 23, Section 16 of the Rules of Court apply in this case; and

Second, whether the taking of deposition under Rule 23, Section 4(c)(2) of the Rules of Court applies to a non-resident foreigner plaintiff's direct testimony.

I

Utmost freedom governs the taking of depositions to allow the widest scope in the gathering of information by and for all parties in relation to their pending case.^[68] The relevant section in Rule 23 of the Rules of Court provides:

RULE 23 DEPOSITIONS PENDING ACTION

SECTION 1. *Depositions pending action, when may be taken.* - By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, ***the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories.*** The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. (Emphasis supplied)

As regards the taking of depositions, Rule 23, Section 1 is clear that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party.

San Luis explained that this provision "does not make any distinction or restriction as to who can avail of deposition."^[69] Thus, this Court found it immaterial that the plaintiff was a non-resident foreign corporation and that all its witnesses were Americans residing in the United States.^[70]

On the use of depositions taken, we refer to Rule 23, Section 4 of the Rules of Court. This Court has held that "depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes."^[71] These exceptional cases are enumerated in Rule 23, Section 4(c) as follows:

SEC 4. *Use of depositions.* - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

. . . .

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or **(2) that the witness resides at distance more than one hundred**