

## FIRST DIVISION

[ G.R. NO. 136051, June 08, 2006 ]

**ALFREDO P. ROSETE, OSCAR P. MAPALO AND CHITO P. ROSETE,  
PETITIONERS, VS. JULIANO LIM AND LILIA LIM, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

Before Us is a petition for review on *certiorari* which seeks to set aside the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 45400 dated 24 August 1998 which upheld the Orders of Branch 77 of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-95-25803 dated 22 July 1997<sup>[2]</sup> and 27 August 1997,<sup>[3]</sup> allowing the taking of deposition upon oral examination of petitioners Oscar P. Mapalo and Chito P. Rosete, and its Resolution<sup>[4]</sup> dated 19 October 1998 denying petitioners' Motion for Reconsideration.

Relevant to the petition are the following antecedents:

On 5 December 1995, respondents Juliano Lim and Lilia Lim filed before Branch 77 of the RTC of Quezon City a Complaint for Annulment, Specific Performance with Damages against AFP Retirement and Separation Benefits System (AFP-RSBS), Espreme Realty and Development Corporation (Espreme Realty), Alfredo P. Rosete, Maj. Oscar Mapalo, Chito P. Rosete, Bank of the Philippine Islands (BPI), and Register of Deeds of the Province of Mindoro Occidental, docketed as Civil Case No. Q-95-25803.<sup>[5]</sup> It asked, among other things, that the Deed of Sale executed by AFP-RSBS covering certain parcels of lands in favor of Espreme Realty and the titles thereof under the name of the latter be annulled; and that the AFP-RSBS and Espreme Realty be ordered to execute the necessary documents to restore ownership and title of said lands to respondents, and that the Register of Deeds be ordered to cancel the titles of said land under the name of Espreme Realty and to transfer the same in the names of respondents.

On 18 January 1996, petitioners filed a Motion to Dismiss on the grounds that the court has no jurisdiction over the subject matter of the action or suit and that venue has been improperly laid.<sup>[6]</sup> A Supplemental Motion to Dismiss was filed by petitioner Alfredo P. Rosete on 23 January 1996.<sup>[7]</sup> Respondents opposed the Motion to Dismiss filed by petitioners<sup>[8]</sup> to which petitioners filed their Reply.<sup>[9]</sup> Respondents filed a Comment on the Reply.<sup>[10]</sup> AFP-RSBS,<sup>[11]</sup> Espreme Realty,<sup>[12]</sup> and, BPI<sup>[13]</sup> filed their respective Motions to Dismiss which respondents opposed.

In an Order dated 12 March 1996, the Motions to Dismiss filed by all the defendants were denied.<sup>[14]</sup> The Motions for Reconsideration filed by petitioners<sup>[15]</sup> and BPI,<sup>[16]</sup> which respondents opposed,<sup>[17]</sup> were also denied in an Order dated 24 May 1996.

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On 6 June 1996, BPI filed its Answer with Compulsory Counterclaim and Cross-claim<sup>[19]</sup> to which respondents filed their Reply and Answer to Counterclaim.<sup>[20]</sup> Respondents also filed a Motion<sup>[21]</sup> to Serve Supplemental Allegation against BPI and petitioner Chito Rosete which the trial court granted in an order dated 28 July 1996.<sup>[22]</sup>

On 7 June 1996, petitioners manifested that on 5 June 1996, they filed a Petition<sup>[23]</sup> for *Certiorari* and Prohibition in the Court of Appeals, docketed as CA-G.R. SP No. 40837, challenging the trial court's Orders dated 12 March 1996 and 24 May 1996 that denied their Motions to Dismiss and Reconsideration, respectively.<sup>[24]</sup> They likewise informed the trial court that on 6 June 1996, they filed an Ex-Parte Motion<sup>[25]</sup> to Admit Answers *Ex Abudanti Cautela*.<sup>[26]</sup>

On 7 August 1996, petitioner Chito Rosete filed a motion asking that the order granting the Motion to Serve Supplemental Allegation against BPI and him be reconsidered and set aside, and that respondents be ordered to reduce their supplemental allegations in the form and manner required by the Rules of Court.<sup>[27]</sup> Same was denied in an order dated 12 August 1996.<sup>[28]</sup> This denial was appealed to the Court of Appeals on 26 August 1996, which was docketed as CA-G.R. SP No. 41821.<sup>[29]</sup>

Petitioner Chito Rosete filed his Supplemental Answer (*Ex Abudanti Cautela*) on 9 September 1996.<sup>[30]</sup>

On 28 May 1997, respondents filed a Notice to Take Deposition Upon Oral Examination giving notice that on June 18 and 20, 1997 at 9:00 a.m., they will cause the deposition of petitioners Oscar Mapalo and Chito Rosete.<sup>[31]</sup>

On 13 June 1997, petitioners filed an Urgent Ex-Parte Motion and Objection to Take Deposition Upon Oral Examination.<sup>[32]</sup> They argued that the deposition may not be taken without leave of court as no answer has yet been served and the issues have not yet been joined since their Answer was filed *ex abudanti cautela*, pending resolution of the Petition for *Certiorari* challenging the orders dated 12 March 1996 and 24 May 1996 that denied their Motions to Dismiss and for Reconsideration, respectively. This is in addition to the fact that they challenged *via* a Petition for *Certiorari* before the Court of Appeals the lower court's Orders dated 23 July 1996 and 12 August 1996 which, respectively, granted respondents' Motion to Serve Supplemental Allegation Against Defendants BPI and Chito Rosete, and for the latter to plead thereto, and denied Chito Rosete's Motion for Reconsideration of the order dated 23 July 1996. Moreover, they contend that since there are two criminal cases pending before the City Prosecutors of Mandaluyong City and Pasig City involving the same set of facts as in the present case wherein respondent Juliano Lim is the private complainant and petitioners are the respondents, to permit the taking of the deposition would be violative of their right against self-incrimination because by means of the oral deposition, respondents would seek to establish the allegations of fact in the complaint which are also the allegations of fact in the complaint-affidavits in the said criminal cases.

Respondents filed their Comment on the Objection to Deposition Taking<sup>[33]</sup> to which petitioners filed their Reply.<sup>[34]</sup>

In an Order dated 22 July 1997, the lower court denied petitioners' motion and objection to take deposition upon oral examination, and scheduled the taking thereof.<sup>[35]</sup> On 7 August 1997, petitioners filed a Motion for Reconsideration.<sup>[36]</sup> They filed a Supplemental Motion for Reconsideration on 11 August 1997.<sup>[37]</sup>

On 13 August 1997, petitioners filed an Urgent Ex-parte Motion to Cancel or Suspend the Taking of the Deposition Upon Oral Examination.<sup>[38]</sup>

In an Order dated 27 August 1997, the lower court denied petitioners' Motion for Reconsideration and Supplemental Motion for Reconsideration, and scheduled the taking of the Deposition Upon Oral Examination.<sup>[39]</sup>

On 22 September 1997, respondents filed an Omnibus Motion: (1) To Strike Out Answer of Defendants Mapalo and Chito Rosete; (2) to Declare Defendants Mapalo and Chito Rosete In Default; and (3) For Reception of Plaintiffs' Evidence Ex-parte,<sup>[40]</sup> which petitioners opposed.<sup>[41]</sup>

On 29 September 1997, petitioners filed with the Court of Appeals a Petition for *Certiorari* and Prohibition (CA-G.R. SP No. 45400) assailing the Orders of the lower court dated 22 July 1997 and 27 August 1997.<sup>[42]</sup>

In an Order dated 29 October 1997, the lower court: (1) ordered the striking out from the record of the Answer *ex abundanti cautela* filed by petitioners Mapalo and Chito Rosete for their continued unjustified refusal to be sworn pursuant to Rule 29 of the 1997 Rules of Civil Procedure; (2) declared defendants Mapalo and Chito Rosete in default; and I allowed plaintiffs to present their evidence ex-parte as regards the latter.<sup>[43]</sup> On 25 November 1997, petitioners filed an Urgent Ex-parte Omnibus Motion (1) For Reconsideration; (2) To Lift Order of Default; and (3) To Hold In Abeyance Presentation of Plaintiffs' Evidence Ex-parte.<sup>[44]</sup> The day after, petitioners filed an Amended Omnibus Motion.<sup>[45]</sup>

On 28 November 1997, respondents filed a Motion to Set Case for Ex-parte Presentation of Evidence<sup>[46]</sup> which the lower court set for 11 December 1997.<sup>[47]</sup>

In an Order dated 11 December 1997, the lower court denied petitioners' urgent ex-parte omnibus motion.<sup>[48]</sup> On even date, the ex-parte presentation of evidence against petitioners Mapalo and Chito Rosete was terminated.<sup>[49]</sup>

On 10 February 1998, petitioners filed a Petition<sup>[50]</sup> for *Certiorari* and Prohibition before the Court of Appeals (CA-G.R. SP No. 46774) questioning the lower court's Orders dated 29 October 1997 and 11 December 1997.<sup>[51]</sup>

On 24 August 1998, the Court of Appeals dismissed the Petition for *Certiorari* and Prohibition, and upheld the Orders of the lower court dated 22 July 1997 and 27

August 1997 (CA-G.R. SP No. 45400).<sup>[52]</sup> The Motion for Reconsideration<sup>[53]</sup> which was opposed<sup>[54]</sup> by respondents was denied on 19 October 1998.<sup>[55]</sup>

Petitioners assail the ruling of the Court of Appeals *via* a Petition for Review on *Certiorari*. They anchor their petition on the following grounds:

I.

THE TRIAL COURT ERRED AND ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DECLARING IN ITS ORDER DATED AUGUST 27, 1997 THAT THE CONSTITUTIONAL RIGHT AGAINST SELF INCRIMINATION OF OSCAR MAPALO AND CHITO ROSETE WOULD NOT BE VIOLATED BY THE TAKING OF THEIR DEPOSITION IN THE CIVIL CASE FILED IN THE LOWER COURT ALTHOUGH THEY ARE ALSO RESPONDENTS OR DEFENDANTS IN THE AFOREMENTIONED CRIMINAL CASES FILED BY HEREIN PRIVATE RESPONDENT JULIANO LIM INVOLVING THE SAME OR IDENTICAL SET OF FACTS; AND

II.

THE TRIAL COURT ERRED AND ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DECLARING IN ITS ORDER DATED JULY 22, 1997 THAT (A) THE NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION NEED NOT BE WITH LEAVE OF COURT BECAUSE AN ANSWER EX ABUDANTE CAUTELA HAS BEEN FILED; AND (B) JOINDER OF ISSUES IS NOT REQUIRED IN ORDER THAT THE SECTION 1, RULE 23<sup>[56]</sup> OF THE RULES OF CIVIL PROCEDURE MAY BE AVAILED OF.

Petitioners argue that the Court of Appeals gravely erred when it found that the trial court did not abuse its discretion when it refused to recognize petitioners Oscar Mapalo and Chito Rosete's constitutional right against self-incrimination when, through its Orders dated 22 July 1997 and 27 August 1997, it allowed and scheduled the taking of their depositions by way of oral examination. They explain they refuse to give their depositions due to the pendency of two criminal cases against them, namely, Batasan Pambansa Blg. 22 and Estafa, because their answers would expose them to criminal action or liability since they would be furnishing evidence against themselves in said criminal cases. They allege there can be no doubt that the questions to be asked during the taking of the deposition would revolve around the allegations in the complaint in the civil case which are identical to the allegations in the complaint-affidavits in the two criminal cases, thus, there is a tendency to incriminate both Oscar Mapalo and Chito Rosete. Moreover, they explain that while an ordinary witness may be compelled to take the witness stand and claim the privilege against self-incrimination as each question requiring an incriminating answer is shot at him, an accused may altogether refuse to answer any and all questions because the right against self-incrimination includes the right to refuse to testify.

In short, petitioners Mapalo and Chito Rosete refuse to have their depositions taken in the civil case because they allegedly would be incriminating themselves in the criminal cases because the testimony that would be elicited from them may be used

in the criminal cases. As defendants in the civil case, it is their claim that to allow their depositions to be taken would violate their constitutional right against self-incrimination because said right includes the right to refuse to take the witness stand.

In order to resolve this issue, we must determine the extent of a person's right against self-incrimination. A person's right against self-incrimination is enshrined in Section 17, Article III of the 1987 Constitution which reads: "No person shall be compelled to be a witness against himself."

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, *i.e.*, one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.<sup>[57]</sup>

As to an accused in a criminal case, it is settled that he can refuse outright to take the stand as a witness. In *People v. Ayson*,<sup>[58]</sup> this Court clarified the rights of an accused in the matter of giving testimony or refusing to do so. We said:

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others -

- 1) to be exempt from being a witness against himself, and
- 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by *subpoena* or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words - unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by *subpoena*, having only the right to refuse to answer a particular incriminatory question at the time it is put to him - the defendant in a criminal action can refuse to testify