Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES VICENTE AFULUGENCIA and LETICIA AFULUGENCIA,
Petitioners,

- versus -

METROPOLITAN BANK & TRUST CO. and EMMANUEL L. ORTEGA, Clerk of Court, Regional Trial Court and *Ex-Officio* Sheriff, Province of Bulacan,
Respondents.

G.R. No. 185145

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
FEB 05 2014

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DECISION

DEL CASTILLO, *J.*:

Section 6,[1] Rule 25 of the Rules of Court (Rules) provides that "a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal." The provision seeks to prevent fishing expeditions and needless delays. Its goal is to maintain order and facilitate the conduct of trial.

Assailed in this Petition for Review on *Certiorari*[2] are the April 15, 2008 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99535 which dismissed petitioners' Petition for *Certiorari* for lack of merit and its October 2, 2008 Resolution[4] denying petitioners' Motion for Reconsideration.[5]

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1 Sec. 6. *Effect of failure to serve written interrogatories.* – Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

2 *Rollo*, pp. 11-24.

3 CA *rollo*, pp. 297-306; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Rodrigo V. Cosico and Mariflor P. Punzalan Castillo.

4 Id. at 333; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr.

5 Id. at 309-316.

Factual Antecedents

Petitioners, spouses Vicente and Leticia Afulugencia, filed a Complaint[6] for nullification of mortgage, foreclosure, auction sale, certificate of sale and other documents, with damages, against respondents Metropolitan Bank & Trust Co. (Metrobank) and Emmanuel L. Ortega (Ortega) before the Regional Trial Court (RTC) of Malolos City, where it was docketed as Civil Case No. 336-M-2004 and assigned to Branch 7.

Metrobank is a domestic banking corporation existing under Philippine laws, while Ortega is the Clerk of Court and *Ex-Officio* Sheriff of the Malolos RTC.

After the filing of the parties' pleadings and with the conclusion of pre-trial, petitioners filed a Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*[7] to require Metrobank's officers[8] to appear and testify as the petitioners' initial witnesses during the August 31, 2006 hearing for the presentation of their evidence-in-chief, and to bring the documents relative to their loan with Metrobank, as well as those covering the extrajudicial foreclosure and sale of petitioners' 200-square meter land in Meycauayan, Bulacan covered by Transfer Certificate of Title No. 20411 (M). The Motion contained a notice of hearing written as follows:

NOTICE

The Branch Clerk of Court
Regional Trial Court
Branch 7, Malolos, Bulacan

Greetings:

Please submit the foregoing motion for the consideration and approval of the Hon. Court immediately upon receipt hereof.

(signed)
Vicente C. Angeles[9]

Metrobank filed an Opposition[10] arguing that for lack of a proper notice of hearing, the Motion must be denied; that being a litigated motion, the failure of

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6 Id. at 17-23.
7 Id. at 74-75.
8 Specifically, Oscar L. Abendan, Senior Manager; O.L. Cajucom, Assistant Manager; and B.C. T. Reyes, Assistant Manager.
9 CA *rollo*, pp. 75-76.
10 Id. at 77-82.

petitioners to set a date and time for the hearing renders the Motion ineffective and *pro forma*; that pursuant to Sections 1 and 6[11] of Rule 25 of the Rules, Metrobank's officers – who are considered adverse parties – may not be compelled to appear and testify in court for the petitioners since they were not initially served with written interrogatories; that petitioners have not shown the materiality and relevance of the documents sought to be produced in court; and that petitioners were merely fishing for evidence.

Petitioners submitted a Reply[12] to Metrobank's Opposition, stating that the lack of a proper notice of hearing was cured by the filing of Metrobank's Opposition; that applying the principle of liberality, the defect may be ignored; that leave of court is not necessary for the taking of Metrobank's officers' depositions; that for their case, the issuance of a subpoena is not unreasonable and oppressive, but instead favorable to Metrobank, since it will present the testimony of these officers just the same during the presentation of its own evidence; that the documents sought to be produced are relevant and will prove whether petitioners have paid their obligations to Metrobank in full, and will settle the issue relative to the validity or invalidity of the foreclosure proceedings; and that the Rules do not prohibit a party from presenting the adverse party as its own witness.

Ruling of the Regional Trial Court

On October 19, 2006, the trial court issued an Order[13] denying petitioners' Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*, thus:

> The motion lacks merit.
>
> As pointed out by the defendant bank in its opposition, the motion under consideration is a mere scrap of paper by reason of its failure to comply with the requirements for a valid notice of hearing as specified in Sections 4 and 5 of Rule 15 of the Revised Rules of Court. Moreover, the defendant bank and its officers are adverse parties who cannot be summoned to testify unless written interrogatories are first served upon them, as provided in Sections 1 and 6, Rule 25 of the Revised Rules of Court.

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11 Which provide, thus:

RULE 25
INTERROGATORIES TO PARTIES

Section 1. Interrogatories to parties; service thereof.

Under the same conditions specified in Section 1 of Rule 23, any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf.

Sec. 6. Effect of failure to serve written interrogatories.

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

12 CA *rollo*, pp. 83-88.

13 *Rollo*, pp. 17, 28, 54, 171-172.

> In view of the foregoing, and for lack of merit, the motion under consideration is hereby DENIED.
>
> SO ORDERED.[14]

Petitioners filed a Motion for Reconsideration[15] pleading for leniency in the application of the Rules and claiming that the defective notice was cured by the filing of Metrobank's Opposition, which they claim is tantamount to notice. They further argued that Metrobank's officers – who are the subject of the subpoena – are not party-defendants, and thus do not comprise the adverse party; they are individuals separate and distinct from Metrobank, the defendant corporation being sued in the case.

In an Opposition[16] to the Motion for Reconsideration, Metrobank insisted on the procedural defect of improper notice of hearing, arguing that the rule relative to motions and the requirement of a valid notice of hearing are mandatory and must be strictly observed. It added that the same rigid treatment must be accorded to Rule 25, in that none of its officers may be summoned to testify for petitioners unless written interrogatories are first served upon them. Finally, it said that since a corporation may act only through its officers and employees, they are to be considered as adverse parties in a case against the corporation itself.

In another Order[17] dated April 17, 2007, the trial court denied petitioners' Motion for Reconsideration. The trial court held, thus:

> Even if the motion is given consideration by relaxing Sections 4 and 5, Rule 15 of the Rules of Court, no such laxity could be accorded to Sections 1 and 6 of Rule 25 of the Revised Rules of Court which require prior service of written interrogatories to adverse parties before any material and relevant facts may be elicited from them more so if the party is a private corporation who could be represented by its officers as in this case. In other words, as the persons sought to be subpoenaed by the plaintiffs-movants are officers of the defendant bank, they are in effect the very persons who represent the interest of the latter and necessarily fall within the coverage of Sections 1 and 6, Rule 25 of the Revised Rules of Court.
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> In view of the foregoing, the motion for reconsideration is hereby denied.
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> SO ORDERED.[18]

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14 Id. at 54.
15 CA *rollo*, pp. 217-222.
16 Id. at 222-227.
17 *Rollo*, pp. 184-185.
18 Id. at 185.

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari*[19] with the CA asserting this time that their Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum* is not a litigated motion; it does not seek relief, but aims for the issuance of a mere process. For these reasons, the Motion need not be heard. They likewise insisted on liberality, and the disposition of the case on its merits and not on mere technicalities.[20] They added that Rule 21[21] of the Rules requires prior notice and hearing only with respect to the taking of depositions; since their Motion sought to require Metrobank's officers to appear and testify in court and not to obtain their depositions, the requirement of notice and hearing may be dispensed with. Finally, petitioners claimed that the Rules – particularly Section 10,[22] Rule 132 – do not prohibit a party from presenting the adverse party as its own witness.

On April 15, 2008, the CA issued the questioned Decision, which contained the following decretal portion:

> WHEREFORE, the petition is DISMISSED for lack of merit. The assailed orders dated October 19, 2006 and April 17, 2007 in Civil Case No. 336-M-2004 issued by the RTC, Branch 7, Malolos City, Bulacan, are AFFIRMED. Costs against petitioners.

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19 CA *rollo*, pp. 2-15.

20 Citing the cases of *Vlason Enterprises Corporation v. Court of Appeals*, 369 Phil. 269 (1999); *People v. Hon. Leviste*, 325 Phil. 525 (1996); *Adorio v. Hon. Bersamin*, 339 Phil. 411 (1997); and *E&L Mercantile, Inc. v. Intermediate Appellate Court*, 226 Phil. 299 (1986).

21 Which provides as follows:

RULE 21
SUBPOENA

Section 1. Subpoena and subpoena *duces tecum*.

Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a subpoena *duces tecum*.

x x x x

Sec. 5. Subpoena for depositions.

Proof of service of a notice to take a deposition, as provided in sections 15 and 25 of Rule 23, shall constitute sufficient authorization for the issuance of subpoenas for the persons named in said notice by the clerk of the court of the place in which the deposition is to be taken. The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court.

22 Which states:

RULE 132
PRESENTATION OF EVIDENCE

A. EXAMINATION OF WITNESSES

x x x x

Sec. 10. Leading and misleading questions. — A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

x x x x

(e) Of a witness who is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.

A misleading question is one which assumes as true a fact not yet testified to by the witness, or contrary to that which he has previously stated. It is not allowed.

SO ORDERED.[23]

The CA held that the trial court did not commit grave abuse of discretion in issuing the assailed Orders; petitioners' Motion is a litigated motion, especially as it seeks to require the adverse party, Metrobank's officers, to appear and testify in court as petitioners' witnesses. It held that a proper notice of hearing, addressed to the parties and specifying the date and time of the hearing, was required, consistent with Sections 4 and 5,[24] Rule 15 of the Rules.

The CA held further that the trial court did not err in denying petitioners' Motion to secure a subpoena *duces tecum/ad testificandum*, ratiocinating that Rule 25 is quite clear in providing that the consequence of a party's failure to serve written interrogatories upon the opposing party is that the latter may not be compelled by the former to testify in court or to render a deposition pending appeal. By failing to serve written interrogatories upon Metrobank, petitioners foreclosed their right to present the bank's officers as their witnesses.

The CA declared that the justification for the rule laid down in Section 6 is that by failing to seize the opportunity to inquire upon the facts through means available under the Rules, petitioners should not be allowed to later on burden Metrobank with court hearings or other processes. Thus, it held:

> x x x Where a party unjustifiedly refuses to elicit facts material and relevant to his case by addressing written interrogatories to the adverse party to elicit those facts, the latter may not thereafter be compelled to testify thereon in court or give a deposition pending appeal. The justification for this is that the party in need of said facts having foregone the opportunity to inquire into the same from the other party through means available to him, he should not thereafter be permitted to unduly burden the latter with courtroom appearances or other cumbersome processes. The sanction adopted by the Rules is not one of compulsion in the sense that the party is being directly compelled to avail of the discovery mechanics, but one of negation by depriving him of evidentiary sources which would otherwise have been accessible to him.[25]

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23 CA *rollo*, p. 305.

24 Which state, as follows:

RULE 15
MOTIONS

x x x x

Sec. 4. Hearing of motion.

Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. Notice of hearing.

The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

25 CA *rollo*, p. 305, citing Regalado, Remedial Law Compendium, Volume I, Eighth Revised Ed., 2002, pp. 333-334.

Petitioners filed their Motion for Reconsideration,[26] which the CA denied in its assailed October 2, 2008 Resolution. Hence, the present Petition.

Issues

Petitioners now raise the following issues for resolution:

> I
> THE COURT OF APPEALS COMMITTED REVERSIBLE ERRORS IN REQUIRING NOTICE AND HEARING (SECS. 4 AND 5, RULE 15, RULES OF COURT) FOR A MERE MOTION FOR SUBPOENA OF RESPONDENT BANK'S OFFICERS WHEN SUCH REQUIREMENTS APPLY ONLY TO DEPOSITION UNDER SEC. 6, RULE 25, RULES OF COURT.
>
> II
> THE COURT OF APPEALS COMMITTED (REVERSIBLE) ERROR IN HOLDING THAT THE PETITIONERS MUST FIRST SERVE WRITTEN INTERROGATORIES TO RESPONDENT BANK'S OFFICERS BEFORE THEY CAN BE SUBPOENAED.[27]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that the Court allow the issuance of the subpoena *duces tecum/ad testificandum*, petitioners assert that the questioned Motion is not a litigated motion, since it seeks not a relief, but the issuance of process. They insist that a motion which is subject to notice and hearing under Sections 4 and 5 of Rule 15 is an application for relief other than a pleading; since no relief is sought but just the process of subpoena, the hearing and notice requirements may be done away with. They cite the case of *Adorio v. Hon. Bersamin*,[28] which held that –

> Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.[29]

Petitioners add that the Rules should have been liberally construed in their favor, and that Metrobank's filing of its Opposition be considered to have cured whatever defect the Motion suffered from.

Petitioners likewise persist in the view that Metrobank's officers – the

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26 Id. at 309-316.
27 *Rollo*, pp. 16, 20.
28 Supra note 20.
29 Id. at 419.

subject of the Motion – do not comprise the adverse party covered by the rule; they insist that these bank officers are mere employees of the bank who may be called to testify for them.

Respondents' Arguments

Metrobank essentially argues in its Comment[30] that the subject Motion for the issuance of a subpoena *duces tecum/ad testificandum* is a litigated motion, especially as it is directed toward its officers, whose testimony and documentary evidence would affect it as the adverse party in the civil case. Thus, the lack of a proper notice of hearing renders it useless and a mere scrap of paper. It adds that being its officers, the persons sought to be called to the stand are themselves adverse parties who may not be compelled to testify in the absence of prior written interrogatories; they are not ordinary witnesses whose presence in court may be required by petitioners at any time and for any reason.

Finally, Metrobank insists on the correctness of the CA Decision, adding that since petitioners failed up to this time to pay the witnesses' fees and kilometrage as required by the Rules,[31] the issuance of a subpoena should be denied.

Our Ruling

The Court denies the Petition.

On the procedural issue, it is quite clear that Metrobank was notified of the Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*; in fact, it filed a timely Opposition thereto. The technical defect of lack of notice of hearing was thus cured by the filing of the Opposition.[32]

Nonetheless, contrary to petitioners' submission, the case of *Adorio* cannot

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30 *Rollo*, pp. 48-82.

31 Citing the following Rule:

RULE 21
SUBPOENA

x x x x

Sec. 4. Quashing a subpoena.

The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

The court may quash a subpoena *ad testificandum* on the ground that the witness is not bound thereby. In either case, the subpoena may be quashed on the ground that the witness fees and kilometrage allowed by these Rules were not tendered when the subpoena was served.

32 See *United Features Syndicate, Inc. v. Munsingwear Creation Manufacturing Company*, 258-A Phil. 841, 847 (1989).

apply squarely to this case. In *Adorio*, the request for subpoena *duces tecum* was sought against bank officials who were not parties to the criminal case for violation of *Batas Pambansa Blg.* 22. The situation is different here, as officers of the adverse party Metrobank are being compelled to testify as the calling party's main witnesses; likewise, they are tasked to bring with them documents which shall comprise the petitioners' principal evidence. This is not without significant consequences that affect the interests of the adverse party, as will be shown below.

As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25 of the Rules, which provides –

> Sec. 6. *Effect of failure to serve written interrogatories.*
>
> Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful to its case if it later opts to call the adverse party to the witness stand as its witness. Instead, the process could be treated as a fishing expedition or an attempt at delaying the proceedings; it produces no significant result that a prior written interrogatories might bring.

Besides, since the calling party is deemed bound by the adverse party's testimony,[33] compelling the adverse party to take the witness stand may result in the calling party damaging its own case. Otherwise stated, if a party cannot elicit facts or information useful to its case through the facility of written interrogatories or other mode of discovery, then the calling of the adverse party to the witness stand could only serve to weaken its own case as a result of the calling party's being bound by the adverse party's testimony, which may only be worthless and instead detrimental to the calling party's cause.

Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand.

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[33] *Gaw v. Chua*, G.R. No. 160855, April 16, 2008, 551 SCRA 505, 517.

Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. Using its own judgment and discretion, the court can hold its own in resolving a dispute, and need not bear witness to the parties perpetrating unfair court practices such as fishing for evidence, badgering, or altogether ruining their own cases. Ultimately, such unnecessary processes can only constitute a waste of the court's precious time, if not pointless entertainment.

In the present case, petitioners seek to call Metrobank's officers to the witness stand as their initial and main witnesses, and to present documents in Metrobank's possession as part of their principal documentary evidence. This is improper. Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents[34] – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own. This is tantamount to building their whole case from the evidence of their opponent. The burden of proof and evidence falls on petitioners, not on Metrobank; if petitioners cannot prove their claim using their own evidence, then the adverse party Metrobank may not be pressured to hang itself from its own defense.

It is true that under the Rules, a party may, for good cause shown and to prevent a failure of justice, be compelled to give testimony in court by the adverse party who has not served written interrogatories. But what petitioners seek goes against the very principles of justice and fair play; they would want that Metrobank provide the very evidence with which to prosecute and build their case from the start. This they may not be allowed to do.

Finally, the Court may not turn a blind eye to the possible consequences of such a move by petitioners. As one of their causes of action in their Complaint, petitioners claim that they were not furnished with specific documents relative to their loan agreement with Metrobank at the time they obtained the loan and while it was outstanding. If Metrobank were to willingly provide petitioners with these documents even before petitioners can present evidence to show that indeed they were never furnished the same, any inferences generated from this would certainly not be useful for Metrobank. One may be that by providing petitioners with these documents, Metrobank would be admitting that indeed, it did not furnish petitioners with these documents prior to the signing of the loan agreement, and while the loan was outstanding, in violation of the law.

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[34] *BA Savings Bank v. Sia*, 391 Phil. 370, 377 (2000); *Restaurante Las Conchas v. Llego*, 372 Phil. 697, 708 (1999).

With the view taken of the case, the Court finds it unnecessary to further address the other issues raised by the parties, which are irrelevant and would not materially alter the conclusions arrived at.

WHEREFORE, the Petition is **DENIED**. The assailed April 15, 2008 Decision and October 2, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 99535 are **AFFIRMED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice