P10

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

INGRID SALA SANTAMARIA and ASTRID SALA BOZA,
Petitioners,

- versus –

THOMAS CLEARY,
Respondent.

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KATHRYN GO-PEREZ,
Petitioner,

- versus –

THOMAS CLEARY,
Respondent.

x----------x

G.R. No. 197122

x----------x

G.R. No. 197161

Present:

CARPIO, *J., Chairperson,*
BRION,*
DEL CASTILLO,**
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
15 JUN 2016

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DECISION

LEONEN, *J.*:

This case stems from a motion for court authorization to take deposition in Los Angeles by respondent Thomas Cleary, an American

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* On official leave.
** On official leave.

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

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1 Both Petitions were filed pursuant to Rule 45 of the Rules of Court.

2 *Rollo* (G.R. No. 197122), pp. 19–24. The Decision was penned by Associate Justice Edwin D. Sorongon and concurred in by Executive Justice Portia A. Hormachuelos and Associate Justice Socorro B. Inting of the Eighteenth Division, Court of Appeals, Cebu City.

3 Id. at 97–98 and 124–125.

4 Id. at 84–87.

5 Id. at 25–26. The Resolution was penned by Executive Justice Portia Aliño-Hormachuelos (Chair) and concurred in by Associate Justices Myra V. Garcia-Fernandez and Nina G. Antonio-Valenzuela of the Eighteenth Division, Court of Appeals, Cebu City.

6 Id. at 27–34; *rollo* (G.R. No. 197161), pp. 47–54. A copy of the Complaint is attached as Annex C of both Petitions. The civil case entitled *Thomas Cleary v. Miranila Land Development Corporation, et al.* was docketed as Civil Case No. CEB-27296.

7 *Rollo* (G.R. No. 197161), p. 51, Complaint.

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]

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8 Id. at 68, Stock Purchase and Put Agreement.
9 Santamaria filed an Answer with Compulsory Counterclaims on July 21, 2006 (*rollo* (G.R. No. 197122), p. 60), Boza on March 27, 2007 (Id. at 72), and Go-Perez on June 6, 2002 (*rollo* (G.R. No. 197161), p. 80).
10 *Rollo* (G.R. No. 197161), p. 84, Pre-trial Brief.
11 Id. at 100, Annex F of Petition.
12 Id.
13 *Rollo* (G.R. No. 197122), pp. 84–87, Annex F of Petition.
14 Id. at 6, Petition; *rollo* (G.R. No. 197161), p.17, Petition.
15 *Rollo* (G.R. No. 197122), pp. 88–90, Santamaria and Boza's Opposition.
16 Id. at 88.
17 Id. at 89.
18 Id. at 91–96, Go-Perez's Opposition.
19 Id. at 91.
20 Id. at 94.
21 Id. at 92–93.

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]

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22 *Rollo,* (G.R. No.197161), pp.125–126. The Order was penned by Presiding Judge Estela Alma A. Singco of Branch 12 of the Regional Trial Court, Cebu.

23 Id. at 126.

24 Id. at 146–147.

25 *Rollo* (G.R. No. 197122), pp. 19–24.

26 Id. at 21–22.

27 Id. at 25–26.

28 Id. at 252, Santamaria and Boza's Memorandum.

29 RULES OF COURT, Rule 23, sec. 16 provides:
SEC. 16. *Orders for the protection of parties and deponents*. — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. (16a, R24)

30 *Rollo* (G.R. No. 197122), p. 252.

31 376 Phil. 96 (1999) [Per J. Kapunan, First Division].

32 *Rollo* (G.R. No. 197122), p. 253.

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

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33 Id. at 254.
34 Id. at 255.
35 Id.
36 Id. at 256.
37 Id. at 257.
38 Id. at 256–257.
39 Id. at 270–275, Go-Perez's Memorandum.
40 527 Phil. 685 (2006) [Per J. Corona, Second Division].
41 667 Phil. 474 (2011) [Per J. Velasco, Jr., First Division].
42 *Rollo* (G.R. No. 197122), pp. 272–273.
43 Id.
44 371 Phil. 491 (1999) [Per J. Ynares-Santiago, First Division].
45 Id. at 273–274.
46 *Rollo* (G.R. No. 197122), pp. 273–274.

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

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47 Id. at 275.
48 Id. at 277.
49 Id. at 278.
50 Id. at 279.
51 Id. at 281.
52 Id. at 232–233, Cleary's Memorandum.
53 Id. at 233.
54 G.R. No. 108229, August 24, 1993, 225 SCRA 622, 629–632 [Per C.J. Narvasa, Second Division].
55 571 Phil. 51, 69–71 (2008) [Per J. Austria-Martinez, Third Division].
56 *Rollo* (G.R. No. 197122), p. 233, Go-Perez's Memorandum.
57 Id.
58 Id. at 236, *citing Dasmariñas Garments v. Reyes*, G.R. No. 108229, August 24, 1993, 225 SCRA 622, 632 [Per C.J. Narvasa, Second Division].
59 Id.
60 Id. at 237.
61 Id.

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:

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62 Id. at 238.
63 Id. at 237.
64 Id. at 239.
65 Id.
66 Id. at 240.
67 Id. at 241.
68 *See Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 376 [Per J. Regalado, Second Division].

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:
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> . . . .
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> (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 (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition;*** or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the

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69 *San Luis v.* Rojas, 571 Phil. 51, 65 (2008) [Per J. Austria-Martinez, Third Division].

70 Id.

71 *Dasmariñas Garments v. Reyes,* G.R. No. 108229, August 24, 1993, 225 SCRA 622, 630 [Per C.J. Narvasa, Second Division].

> party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used[.] (Emphasis supplied)

The difference between the *taking* of depositions and the *use* of depositions taken is apparent in Rule 23, which provides separate sections to govern them. Jurisprudence has also discussed the importance of this distinction and its implications:

> The availability of the proposed deponent to testify in court does not constitute "good cause" to justify the court's order that his deposition shall not be taken. That the witness is unable to attend or testify is one of the grounds when the deposition of a witness may be used in court during the trial. But the same reason cannot be successfully invoked to prohibit the taking of his deposition.
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> ***The right to take statements and the right to use them in court have been kept entirely distinct. The utmost freedom is allowed in taking depositions; restrictions are imposed upon their use. As a result, there is accorded the widest possible opportunity for knowledge by both parties of all the facts before the trial.*** Such of this testimony as may be appropriate for use as a substitute for *viva voce* examination may be introduced at the trial; the remainder of the testimony, having served its purpose in revealing the facts to the parties before trial, drops out of the judicial picture.
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> . . . [U]nder the concept adopted by the new Rules, the deposition serves the double function of a method of discovery —with use on trial not necessarily contemplated — and a method of presenting testimony. Accordingly, no limitations other than relevancy and privilege have been placed on the taking of depositions, while the use at the trial is subject to circumscriptions looking toward the use of oral testimony wherever practicable.[72] (Emphasis supplied)

The rules and jurisprudence support greater leeway in allowing the parties and their witnesses to be deposed in the interest of collecting information for the speedy and complete disposition of cases.

In opposing respondent's Motion for Court Authorization to Take Deposition, petitioners contest at the deposition-taking stage. They maintain that the right to take deposition is subject to the restrictions found in Rule 23, Section 16 of the Rules of Court on orders for the protection of parties and deponents.[73]

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[72] *Hyatt Industrial v. Ley Construction*, 519 Phil. 272, 288–289 (2006) [Per J. Austria-Martinez, First Division], *citing Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 376–377 [Per J. Regalado, Second Division].

[73] *Rollo* (G.R. No. 197122), p. 252, Santamaria and Boza's Memorandum.

II

Rule 23, Section 16 of the Rules of Court is on orders for the protection of parties and deponents from annoyance, embarrassment, or oppression. The provision reads:

> SEC. 16. *Orders for the protection of parties and deponents.* — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or the court may make any other order which justice requires ***to protect the party or witness from annoyance, embarrassment, or oppression***. (Emphasis supplied)

The provision includes a full range of protective orders, from designating the place of deposition, limiting those in attendance, to imposing that it be taken through written interrogatories. At the extreme end of this spectrum would be a court order that completely denies the right to take deposition. This is what the trial court issued in this case.

While Section 16 grants the courts power to issue protective orders, this grant involves discretion on the part of the court, which "must be exercised, not arbitrarily, capriciously or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained."[74]

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[74] *Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 368 [Per J. Regalado, Second Division]. *Fortune* cites *Lopez v. Maceren*, 95 Phil. 753, 756–757 (1954) [Per J. Concepcion, En Banc] on the objectives of Rule 24 (then Rule 18), sec. 16:
"Referring to the objective of Section 16 of then Rule 18 (now Rule 24) of the Rules of Court, former Chief Justice Manuel V. Moran had these comments:

> The advisory committee of the United States Supreme Court said that this provision is ***intended to be one of the safeguards for the protection of the parties and deponents on account of the unrestricted right to discovery given by sections 1 and 2 of this Rule***. A party may take the deposition of a witness who knows nothing about the case, with the only purpose of annoying him or wasting the time of the other parties. In such case, the court may, on motion, order that the deposition shall not be taken. ***Or, a party may designate a distinct place for the taking of a deposition, and the adverse party may not have sufficient means to reach that place, because of poverty or otherwise, in which case the court, on motion, may order that the deposition be taken at another place, or that it be taken by written interrogatories***. The party serving the notice may wish to inquire into matters the disclosure of which may be oppressive or embarrassing to the deponent, especially if the disclosure is to be made in the presence of third persons, or, the party serving the notice may attempt to inquire into matters which are absolutely private of the deponent, the disclosure of which may affect his interests and is not

A plain reading of this provision shows that there are two (2) requisites before a court may issue a protective order: (1) there must be notice; and (2) the order must be for good cause shown. In *Fortune Corporation v. Court of Appeals,*[75] this Court discussed the concept of good cause as used in the rules:

> The matter of good cause is to be determined by the court in the exercise of judicial discretion. ***Good cause means a substantial reason—one that affords a legal excuse***. Whether or not substantial reasons exist is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown."
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> The requirement, however, that good cause be shown for a protective order puts the ***burden on the party seeking relief to show some plainly adequate reasons for the order***. A particular and specific demonstration of facts, as distinguished from conclusory statements, is required to establish good cause for the issuance of a protective order. ***What constitutes good cause furthermore depends upon the kind of protective order that is sought.***
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> In light of the general philosophy of full discovery of relevant facts and the board statement of scope in Rule 24, and in view of the power of the court under Sections 16 and 18 of said Rule to control the details of time, place, scope, and financing for the protection of the deponents and parties***, it is fairly rare that it will be ordered that a deposition should not be taken at all***. All motions under these subparagraphs of the rule must be supported by "good cause" and a strong showing is required before a party will be denied entirely the right to take a deposition. A mere allegation, without proof, that the deposition is being taken in bad faith is not a sufficient ground for such an order. Neither is an allegation that it will subject the party to a penalty or forfeiture. The mere fact that the information sought by deposition has already been obtained through a bill of particulars, interrogatories, or other depositions will not suffice, although if it is entirely repetitious a deposition may be forbidden. The allegation that the deponent knows nothing about the matters involved does not justify prohibiting the taking of a deposition, nor that whatever the witness knows is protected by the "work product doctrine," nor that privileged information or trade secrets will be sought in the course of the

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absolutely essential to the determination of the issues involved in the case. Under such circumstances, the court, on motion, may order 'that certain matter shall not be inquired into or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specific documents or informations enclosed in sealed envelopes to be opened as directed by the court.' In other words, this provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: 'Any discovery involves a prying into another person's affairs, a prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid.' For this reason, ***courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both***" (Id. at 368–369; emphasis supplied).

[75] G.R. No. 108119, January 19, 1994, 229 SCRA 355 [Per J. Regalado, Second Division].

> examination, nor that all the transactions were either conducted or confirmed in writing.[76] (Emphasis supplied, citations omitted)

Thus, we consider the trial court's explanation for its denial of respondent's Motion for Court Authorization to Take Deposition. The trial court's Order was based on two (2) premises: first, that respondent should submit himself to our court processes since he elected to seek judicial relief with our courts; and second, that respondent is not suffering from any impairment and it is best that he appear before our courts considering he is the plaintiff himself.[77]

III

On the first premise, apparent is the concern of the trial court in giving undue advantage to non-resident foreigners who file suit before our courts but do not appear to testify. Petitioners support this ruling. They contend that the open-court examination of witnesses is part of our judicial system. Thus, there must be compelling reason to depart from this procedure in order to avoid suits that harass Filipino litigants before our courts.[78] Moreover, they argue that it would be costly, time-consuming, and disadvantageous for petitioners and their counsels to attend the deposition to be taken in Los Angeles for the convenience of respondent.[79]

In the Stock Purchase and Put Agreement, petitioners and respondent alike agreed that respondent had the sole discretion to elect the venue for filing any action with respect to it.

Paragraph 9.02 of the Agreement is clear that the parties "waive any other preferential jurisdiction by reason of domicile."[80] If respondent filed the suit in the United States—which he had the option to do under the Agreement—this would have been even more costly, time-consuming, and disadvantageous to petitioners who are all Filipinos residing in the Philippines.

There is no question that respondent can file the case before our courts. With respondent having elected to file suit in Cebu, the bone of contention now is on whether he can have his deposition taken in the United

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76 Id. at 371–372.

77 *Rollo* (G.R. No. 197122), p. 98, Regional Trial Court Order states:

> "As correctly pointed out by the defendants, as plaintiff elected to seek judicial relief in the Philippines, he should submit himself to the processes and procedures as provided by 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, and have a fair contest with the basic issues and facts disclosed to the fullest practicable extent."

78 Id. at 256, Santamaria and Boza's Memorandum.

79 Id. at 255.

80 *Rollo* (G.R. No. 197161), p. 68, Stock Purchase and Put Agreement.

States. The trial court ruled that respondent should consequently submit himself to the processes and procedures under the Rules of Court.

Respondent did avail himself of the processes and procedures under the Rules of Court when he filed his Motion. He invoked Rule 23, Section 4(c)(2) of the Rules of Court and requested to have his deposition taken in Los Angeles as he was "out of the Philippines."

Moreover, Rule 23, Section 1 of the Rules of Court no longer requires leave of court for the taking of deposition after an answer has been served. According to respondent, he only sought a court order when the Department of Foreign Affairs required one so that the deposition may be taken before the Philippine Embassy or Consulate.[81]

That neither the presiding judge nor the parties will be able to personally examine and observe the conduct of a deponent does not justify denial of the right to take deposition. This objection is common to all depositions.[82] Allowing this reason will render nugatory the provisions in the Rules of Court that allow the taking of depositions.

As suggested by the Court of Appeals, the parties may also well agree to take deposition by written interrogatories[83] to afford petitioners the opportunity to cross-examine without the need to fly to the United States.[84]

The second premise is also erroneous. That respondent is "not suffering from any impairment, physical or otherwise" does not address the ground raised by respondent in his Motion. Respondent referred to Rule 23, Section 4(c)(2) of the Rules of Court, in that he was "out of the Philippines."[85] This Section does not qualify as to the condition of the deponent who is outside the Philippines.

IV

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81 *Rollo* (G.R. No. 197122), pp. 84–87.

82 *Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 377 [Per J. Regalado, Second Division], *citing Lopez v. Maceren*, 95 Phil. 753 (1954) [Per J. Concepcion, En Banc].

83 RULES OF COURT, Rule 23, sec. 25 provides:
SEC. 25. *Deposition upon written interrogatories*; service of notice and of interrogatories. – A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter, the latter may serve re-direct interrogatories upon a party who has served cross-interrogatories. Within three (3) days after being served with re-direct interrogatories, a party may serve recross-interrogatories upon the party proposing to take the deposition.

84 *Rollo* (G.R. No. 197122), p. 22, Court of Appeals Decision.

85 Id. at 84.

Petitioners argue that the deposition sought by respondent is not for discovery purposes as he is the plaintiff himself.[86] To support their contention, they cite *Northwest*, where this Court held that Rule 132 of the Rules of Court—on the examination of witnesses in open court—should be observed since the deposition was only to accommodate the petitioner's employee who was in the United States, and not for discovery purposes.[87]

Jurisprudence has discussed how "[u]nder the concept adopted by the new Rules, the deposition serves the double function of a method of discovery—with use on trial not necessarily contemplated—and a method of presenting testimony."[88] The taking of depositions has been allowed as a departure from open-court testimony. *Jonathan Landoil International Co. Inc. v. Spouses Mangundadatu*[89] is instructive:

> The Rules of Court and jurisprudence, however, do not restrict a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand. In *Dasmariñas Garments v. Reyes,* we allowed the taking of the witnesses' testimonies through deposition, in lieu of their actual presence at the trial.
>
> Thus, ***"[d]epositions may be taken at any time after the institution of any action, whenever necessary or convenient***. There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition against the taking of depositions after pre-trial." There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated.
>
> In keeping with the principle of promoting the just, speedy and inexpensive disposition of every action and proceeding, ***depositions are allowed as a "departure from the accepted and usual judicial proceedings of examining witnesses in open court*** where their demeanor could be observed by the trial judge." Depositions are allowed, ***provided they are taken in accordance with the provisions of the Rules of Court*** (that is, with leave of court if the summons have been served, without leave of court if an answer has been submitted); and provided, further, that a circumstance for their admissibility exists.
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> . . . .
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> When a deposition does not conform to the essential requirements of law and may reasonably cause material injury to the adverse party, its taking should not be allowed. This was the primary concern in *Northwest Airlines v. Cruz*. In that case, the ends of justice would be better served if

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86 Id. at 255, Santamaria and Boza's Memorandum.

87 Id. at 278, Go-Perez's Memorandum, *citing Northwest Airlines, Inc. v. Cruz,* 376 Phil. 96, 112 (1999) [Per J. Kapunan, First Division].

88 *Fortune Corporation v. Court of Appeals,* G.R. No. 108119, January 19, 1994, 229 SCRA 355, 377 [Per J. Regalado, Second Division].

89 480 Phil. 236 (2004) [Per J. Panganiban, Third Division].

> the witness was to be brought to the trial court to testify. The locus of the oral deposition therein was not within the reach of ordinary citizens, as there were time constraints; and the trip required a travel visa, bookings, and a substantial travel fare. In *People v. Webb*, the taking of depositions was unnecessary, since the trial court had already admitted the Exhibits on which the witnesses would have testified. (Emphasis supplied)[90]

Petitioners rely on *Northwest* in that absent any compelling or valid reason, the witness must personally testify in open court.[91] They add that the more recent *Republic v. Sandiganbayan*[92] reiterated the rulings in *Northwest*;[93] specifically, that *Northwest* emphasized that the "court should always see to it that the safeguards for the protection of the parties and deponents are firmly maintained."[94] Moreover, "[w]here the deposition is taken not for discovery purposes, but to accommodate the deponent, then the deposition should be rejected in evidence."[95] *Northwest* and *Republic* are not on all fours with this case.

Northwest involved a deposition in New York found to have been irregularly taken. The deposition took place on July 24, 1995, two (2) days before the trial court issued the order allowing deposition.[96] The Consul that swore in the witness and the stenographer was different from the Consulate Officer who undertook the deposition proceedings.[97] In this case, on the other hand, deposition taking was not allowed by the trial court to begin with.

In *Northwest*, respondent Camille Cruz's opposition to the notice for oral deposition included a suggestion for written interrogatories as an alternative.[98] This would have allowed cross-interrogatories, which would afford her the opportunity to rebut matters raised in the deposition in case she had contentions. However, this suggestion was denied by the trial court for being time-consuming.[99] In this case, petitioners argued even against written interrogatories for being a mile of difference from open-court testimony.[100]

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90 Id. at 254–256, *citing Dasmariñas Garments v. Reyes,* G.R. No. 108229, August 24, 1993, 225 SCRA 622, 634–635 [Per C.J. Narvasa, Second Division]; *East Asiatic Co., Ltd., v. CIR*, 148-B Phil. 401, 425 (1971) [Per J. Barredo, En Banc]; *Northwest Airlines, Inc. v. Cruz,* 376 Phil. 96, 111 (1999) [Per J. Kapunan, First Division]; *Lopez v. Maceren*, 95 Phil. 753, 756 (1954) [Per J. Concepcion, En Banc]; *People v. Webb*, 371 Phil. 491 (1999) [Per J. Ynares-Santiago, First Division]; RULES OF COURT, Rule 1, sec. 6; Rule 23, sec. 4; Rule 134.

91 *Rollo* (G.R. No. 197122), p. 278.

92 678 Phil. 358 (2011) [Per J. Brion, En Banc].

93 *Rollo* (G.R. No. 197122), p. 280.

94 *Northwest Airlines, Inc. v. Cruz,* 376 Phil. 96, 111 (1999) [Per J. Kapunan, First Division].

95 *Republic v. Sandiganbayan,* 678 Phil. 358, 415 (2011) [Per J. Brion, En Banc].

96 *Northwest Airlines, Inc. v. Cruz,* 376 Phil. 96, 102 (1999) [Per J. Kapunan, First Division].

97 Id. at 113.

98 Id. at 102.

99 Id. at 113.

100 *Rollo* (G.R. No. 197122), p. 257.

In *Republic,* the issue involved Rule 23, Section 4(c)(3) of the Rules of Court in relation to Rule 130, Section 47 on testimonies and depositions at a former proceeding.[101] The deposition of Maurice Bane was taken in London for one case, and what the court disallowed was its *use* in another case.[102]

In sum, Rule 23, Section 1 of the Rules of Court gives utmost freedom in the taking of depositions. Section 16 on protection orders, which include an order that deposition not be taken, may only be issued after notice and for good cause shown. However, petitioners' arguments in support of the trial court's Order denying the taking of deposition fails to convince as good cause shown.

The civil suit was filed pursuant to an agreement that gave respondent the option of filing the case before our courts or the courts of California. It would have been even more costly, time-consuming, and disadvantageous to petitioners had respondent filed the case in the United States.

Further, it is of no moment that respondent was not suffering from any impairment. Rule 23, Section 4(c)(2) of the Rules of Court, which was invoked by respondent, governs the use of depositions taken. This allows the use of a deposition taken when a witness is "out of the Philippines."

In any case, Rule 23 of the Rules of Court still allows for objections to admissibility during trial. The difference between admissibility of evidence and weight of evidence has long been laid down in jurisprudence. These two are not to be equated. Admissibility considers factors such as competence and relevance of submitted evidence. On the other hand, weight is concerned with the persuasive tendency of admitted evidence.[103]

The pertinent sections of Rule 23 on admissibility are:

> SEC. 6. *Objections to admissibility.* – Subject to the provisions of section 29 of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
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> . . . .

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101 *Republic v. Sandiganbayan,* 678 Phil. 358, 408–414 (2011) [Per J. Brion, En Banc].

102 Id. at 414–416.

103 *Ayala Land Inc. v. Tagle,* 504 Phil. 94, 103–104 (2005) [Per J. Chico-Nazario, Second Division], *citing Permanent Savings and Loan Bank v. Velard*e, 482 Phil. 193, 202–203 (2004) [Per J. Austria-Martinez, Second Division]; *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 60 (1998) [Per J. Romero, Third Division]; *De la Torre v. Court of Appeals*, 355 Phil. 628, 641 (1998) [Per J. Mendoza, Second Division].

SEC. 29. *Effect of errors and irregularities in depositions.* . . .

. . . .

(c) *As to competency and relevancy of evidence.* – Objections to the competency of a witness or the competency, relevancy [sic], or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time[.]

As regards weight of evidence, "the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time."[104] In resorting to depositions, respondent takes the risk of not being able to fully prove his case.

Thus, we agree with the Court of Appeals in granting the Petition for Certiorari and reversing the trial court's denial of respondent's Motion for Court Authorization to Take Deposition.

WHEREFORE, the Petitions are **DENIED** for lack of merit.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

On official leave
ARTURO D. BRION
Associate Justice

On official leave
MARIANO C. DEL CASTILLO
Associate Justice

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[104] Id. at 103.

JOSE CATRAL MENDOZA
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, Second Division

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