



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**DESIGN SOURCES INTERNATIONAL
INC. and KENNETH SY,**

Petitioners,

G.R. No. 193966

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE
CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

LOURDES L. ERISTINGCOL,

Respondent.

Promulgated:

FEB 19 2014

X ----- X

RESOLUTION

SERENO, *CJ*:

This is a Petition for Review on *Certiorari*¹ filed by Design Sources International, Inc. and Kenneth Sy (petitioners) under Rule 45 of the 1997 Rules of Civil Procedure. The Petition assails the Court of Appeals (CA) Decision² dated 1 June 2010 and Resolution³ dated 30 September 2010 in CA G.R. SP No. 98763. The assailed Decision and Resolution sustained the Orders dated 8 February 2006, 1 June 2006 and 26 February 2007 issued by the Regional Trial Court (RTC) of Makati City in Civil Case No. 00-850.

Considering that there are no factual issues in this case, we adopt the findings of fact of the CA, as follows:

Design Sources International, Inc. ("Petitioner Corporation") is a distributor of Pergo flooring. Sometime in 1998, the Private Respondent bought the said brand of flooring of the "Cherry Blocked" type from the Petitioner Corporation. The flooring was installed in her house.

¹ *Rollo*, pp. 2-22.

² *Id.* at 27-34; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr.

³ *Id.* at 35.

On February 24, 2000, the Private Respondent discovered that the Pergo flooring installed had unsightly bulges at the joints and seams. The Private Respondent informed the Petitioners of these defects and the former insisted on the repair or replacement of the flooring at the expense of the latter.

After several inspections of the alleged defective flooring, meetings between the parties and exchanges of correspondence, the Petitioner Corporation was given until May 31, 2000 to replace the installed flooring. Nevertheless, on the deadline, the Petitioner Corporation did not comply with the demand of the Private Respondent. A complaint for damages, docketed as Civil Case No.00-850, was thus filed by the Private Respondent before the RTC on July 13, 2000.

On February 8, 2006, Kenneth Sy, one of the Petitioners' witnesses, testified in open court. Immediately after his testimony, the following occurred as evidenced by the transcript of stenographic notes ("TSN"):

COURT : (To Atty. Posadas) Who will be your next witness?

ATTY. POSADAS : Your honor, my next witness will be Stephen Sy, also of Design Source.

ATTY FORTUN : Your honor, may I know if Mr. Stephen Sy around [sic] the courtroom?

ATTY. POSADAS : (Pointing to the said witness) He is here.

ATTY. FORTUN : So the witness is actually inside the Courtroom.

ATTY. POSADAS : But, your honor, please, I was asking about it, nahiya lang ako kay Atty. Fortun.

ATTY. FORTUN : But I was [sic] asked of the exclusion of the witness.

COURT : (To Atty. Posadas) You shall [sic] have to tell the Court of your ready witness.

ATTY. FORTUN : He already heard the whole testimony of his colleague.

ATTY. POSADAS : I'm sorry, your honor.

COURT : All right. When were [sic] you present him, today or next time.

ATTY. POSADAS : Next time, your honor.

COURT : All right. Next time, Atty. Posadas, if you have other witnesses present in Court inform us.

ATTY. FORTUN : No, your honor, in fact I will object to the presentation of Mr. Stephen Sy, because his [sic] here all the time when the witness was in [sic] cross-examined.

ATTY. POSADAS : Your honor, I will just preserve [sic] my right to present another witness on the technical aspect of this case.

COURT : Okay. All right. Order. After the completion of the testimony of defendant's second witness in the person of Mr. Kenneth Sy, [A]tty. Benjamin Posadas, counsel for the defendants, moved for continuance considering that he is not feeling well and that he needs time to secure another witness to testify on the technical aspect, because of the objection on the part of plaintiff's counsel Atty. Philip Sigfrid Fortun on his plan of presenting of Mr. Stephen Sy as their next witness due to his failure to inform the Court and the said counsel of the presence of the said intended witness while Mr. Kenneth Sy was testifying. There being no objection thereto on the part of Atty. Fortun, reset the continuation of the presentation of defendant's evidence to April 5, 2006 at 8:30 o'clock in the morning.

X X X X

SO ORDERED.⁴

On 22 March 2006, petitioners moved for a reconsideration of the Order, but their motion was denied by the RTC on 1 June 2006 on the ground that “the Court deems it no longer necessary to allow Stephen Sy from testifying [sic] when a different witness could testify on matters similar to the intended testimony of the former.”⁵ The Order also stated that “to allow Stephen Sy from testifying [sic] would work to the disadvantage of the plaintiff as he already heard the testimony of witness Kenneth Sy.”⁶

Petitioners filed a Second Motion for Reconsideration (with Leave of Court) dated 19 June 2006, which was likewise denied by the RTC in the assailed Order dated 26 February 2007.⁷

Petitioners sought recourse before the CA by way of a Petition for Certiorari under Rule 65 of the Rules of Court. They raised the sole issue of

⁴ *Rollo*, pp. 27-29; CA Decision.

⁵ *Id.* at 78; RTC Order dated 1 June 2006.

⁶ *Id.*

⁷ *Id.* at 86; RTC Order dated 26 February 2007.

whether the RTC committed grave abuse of discretion when it refused to allow architect Stephen Sy (Stephen) to testify as to material matters.⁸

At the outset, the CA found no sufficient basis that herein respondent previously asked for the exclusion of other witnesses. It was the duty of respondent's counsel to ask for the exclusion of other witnesses, without which, there was nothing to prevent Stephen from hearing the testimony of petitioners' other witnesses. Nevertheless, following the doctrine laid down in *People v. Sandal (Sandal)*,⁹ the appellate court ruled that the RTC did not commit grave abuse of discretion in issuing the assailed Orders considering that petitioners failed to show that Stephen's testimony would bolster their position. Moreover, from the Manifestation of petitioners' counsel, it appears that petitioners had another witness who could give a testimony similar to Stephen's.

Petitioners elevated the case before us assailing the Decision of the CA. In the meantime, trial proceeded in the lower court. On 11 February 2014, they filed a Motion for Issuance of a Writ of Preliminary Mandatory Injunction or Temporary Restraining Order either to allow the presentation of Stephen as a witness or to suspend the trial proceedings pending the ruling in the instant Petition.

ASSIGNMENT OF ERRORS

Petitioners raise the following errors allegedly committed by the CA:

Finding that the preclusion of Stephen Sy from testifying as a witness in the trial of the case did not amount to grave abuse of discretion on the part of Judge Pozon.

Applying the case of *People vs. Sandal* in justifying the order of exclusion issued by Judge Pozon, precluding Stephen Sy from testifying as witness.

Concluding that the petitioners had another witness that could have given a similar testimony as that of Stephen Sy.¹⁰

THE COURT'S RULING

We find the Petition to be impressed with merit.

The principal issue is whether the RTC committed grave abuse of discretion in issuing the assailed Orders disallowing petitioners from presenting Stephen as their witness.

⁸ Id. at 87-102.

⁹ 54 Phil. 883 (1930).

¹⁰ *Rollo*, p. 9.

The controversy arose from the objection of respondent's counsel to the presentation of Stephen as petitioners' witness considering that Stephen was already inside the courtroom during the presentation of witness Kenneth Sy (Kenneth). However, as aptly found by the CA, respondent failed to substantiate her claim that there was a prior request for the exclusion of other witnesses during the presentation of Kenneth. Respondent did not even allege in her Comment¹¹ that there was any such request.

Section 15, Rule 132 of the Revised Rules of Court provides:

SEC. 15. Exclusion and separation of witnesses. — On any trial or hearing, the judge may exclude from the court any witness not at the time under examination, so that he may not hear the testimony of other witnesses. The judge may also cause witnesses to be kept separate and to be prevented from conversing with one another until all shall have been examined.

Excluding future witnesses from the courtroom at the time another witness is testifying, or ordering that these witnesses be kept separate from one another, is primarily to prevent them from conversing with one another. The purpose is to ensure that the witnesses testify to the truth by preventing them from being influenced by the testimonies of the others. In other words, this measure is meant to prevent connivance or collusion among witnesses. The efficacy of excluding or separating witnesses has long been recognized as a means of discouraging fabrication, inaccuracy, and collusion. However, without any motion from the opposing party or order from the court, there is nothing in the rules that prohibits a witness from hearing the testimonies of other witnesses.

There is nothing in the records of this case that would show that there was an order of exclusion from the RTC, or that there was any motion from respondent's counsel to exclude other witnesses from the courtroom prior to or even during the presentation of the testimony of Kenneth. We are one with the CA in finding that under such circumstances, there was nothing to prevent Stephen from hearing the testimony of Kenneth. Therefore, the RTC should have allowed Stephen to testify for petitioners.

The RTC and the CA, however, moved on to determine the materiality of the testimony of Stephen, which became their basis for not allowing the latter to testify. Applying *Sandal*, the CA ruled that the absence of a showing of how his testimony would bolster the position of petitioners saved the judgment of the RTC in issuing the order of exclusion.

We agree with petitioners that the application of *Sandal* is misplaced. Contrary to the present case, in *Sandal* there was a court order for exclusion which was disregarded by the witness. The defiance of the order led to the exercise by the court of its discretion to admit or reject the testimony of the

¹¹ Id. at 140-152.

witness who had defied its order. Again, in this case, there was no order or motion for exclusion that was defied by petitioners and their witnesses. Thus, the determination of the materiality of Stephen's testimony in relation to the strengthening of petitioners' defense was uncalled for.

Without any prior order or at least a motion for exclusion from any of the parties, a court cannot simply allow or disallow the presentation of a witness solely on the ground that the latter heard the testimony of another witness. It is the responsibility of respondent's counsel to protect the interest of his client during the presentation of other witnesses. If respondent actually believed that the testimony of Kenneth would greatly affect that of Stephen's, then respondent's counsel was clearly remiss in his duty to protect the interest of his client when he did not raise the issue of the exclusion of the witness in a timely manner.

Respondent is bound by the acts of her counsel, including mistakes in the realm of procedural techniques.¹² The exception to the said rule does not apply herein, considering that there is no showing that she was thereby deprived of due process. At any rate, respondent is not without recourse even if the court allows the presentation of the testimony of Stephen, considering the availability of remedies during or after the presentation of witnesses, including but not limited to the impeachment of testimonies.

Therefore, this Court finds that the RTC committed grave abuse of discretion in not allowing Stephen to testify notwithstanding the absence of any order for exclusion of other witnesses during the presentation of Kenneth's testimony.

In view thereof, the RTC is hereby ordered to allow the presentation of Stephen Sy as witness for petitioners. Accordingly, petitioners' Motion for Issuance of a Writ of Preliminary Mandatory Injunction or Temporary Restraining Order is now rendered moot.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**.

SO ORDERED.



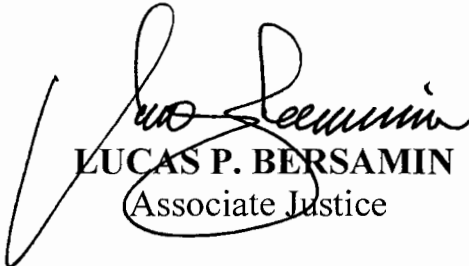
MARIA LOURDES P. A. SERENO

Chief Justice, Chairperson


¹² *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002).

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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