



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

ARMANDO LAGON,

Petitioner,

G.R. No. 208424

Present:

CARPIO, J.,

Chairperson,

PERALTA,

PERLAS-BERNABE,

CAGUIOA,* and

REYES, JR., JJ.

- versus -

**HON. DENNIS A. VELASCO, in his
 capacity as Presiding Judge of
 Municipal Trial Court in Cities of
 Koronadal, South Cotabato, and
 GABRIEL DIZON,**

Respondents.

Promulgated:

14 FEB 2018

D. Reyes, Jr.

X-----X

DECISION

REYES, JR., J.:

This treats of the Petition for *Certiorari*¹ under Rule 65 of the Revised Rules of Court seeking the annulment of the Order² dated June 6, 2013, issued by public respondent Hon. Dennis A. Velasco (Judge Velasco), directing petitioner Armando Lagon (Lagon) to file the judicial affidavits of his witnesses within five (5) days prior to the commencement of the trial dates.

* On official business.

¹ *Rollo*, pp. 3-19.

² *Id.* at 20-21.

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The Antecedent Facts

Sometime in December 2000, Lagon obtained a cash loan from private respondent Gabriel Dizon (Dizon), in the amount of Three Hundred Thousand Pesos (Php 300,000.00). In payment thereof, Lagon issued PCIBank Check No. 0064914, postdated January 12, 2001, in an equal amount. However, when Dizon presented the check for payment, it was dishonored for being Drawn Against Insufficient Funds.³

Consequently, Dizon sent a Letter dated May 6, 2011 to Lagon, demanding the payment Php 300,000.00. However, Lagon refused to pay.⁴

On June 6, 2011, Dizon filed a Complaint for Sum of Money, Damages and Attorney's Fees against Lagon.⁵

On October 8, 2011, Lagon filed a Motion to Dismiss on the ground of prescription.

In response, Dizon filed an Opposition with Motion to Amend Complaint.⁶ In his Amended Complaint, Dizon averred that he sent two demand letters, one dated March 23, 2010 and another dated May 6, 2011. Both letters were sent through JRS Express.⁷

On February 29, 2012, Lagon filed his Answer asserting that he has paid the loan.⁸

Meanwhile, during the preliminary conference, the parties were directed to file their respective pre-trial briefs within five (5) days from receipt of the trial court's order.

Thereafter, on August 9, 2012, Judge Velasco issued a Pre-Trial Conference Order.⁹

At the initial trial on June 6, 2013, neither of the parties submitted their judicial affidavits or those of their witnesses. Hence, Judge Velasco issued the assailed Order¹⁰ requiring the parties to submit their respective

³ Id. at 6.
⁴ Id.
⁵ Id.
⁶ Id.
⁷ Id.
⁸ Id. at 7.
⁹ Id.
¹⁰ Id. at 20-21.



judicial affidavits five (5) days before the trial.¹¹ The essential portion of the Order dated June 6, 2013, reads:

In the interest of justice and equity, the plaintiff is hereby allowed to submit his Judicial Affidavits. But for failure of the plaintiff to submit Judicial Affidavits in due time, the Court imposed a fine of Three Thousand pesos (Php 3,000.00) and to be reimbursed an amount of Five Thousand pesos (Php 5,000.00) to the defendant's expenses in coming to Court within five (5) days from today.

The parties are hereby directed to submit Judicial Affidavits of their witnesses within five (5) days prior to the trial dates. Otherwise, the Court will no longer admit the same.¹²

Lagon received a copy of the same Order on June 26, 2013.¹³

On June 27, 2013, Lagon filed a Motion for Partial Reconsideration.¹⁴ In his Motion, Lagon requested that he be allowed to submit the judicial affidavit of his witnesses after the plaintiff shall have adduced his evidence. Lagon claimed that Section 2 of the Judicial Affidavit Rule, which mandates the submission by both parties of their judicial affidavits before the pre-trial conference is violative of his right to due process, hence unconstitutional.¹⁵

On July 10, 2013, Judge Velasco issued the assailed Order¹⁶ denying Lagon's Motion for Partial Reconsideration.¹⁷ Judge Velasco opined that "the requirement of the submission of judicial affidavits of witnesses, not later than 5 days before the pre-trial or preliminary conference or the scheduled hearing, under Section 2 of the Judicial Affidavit Rule is not violative of Lagon's right to due process."¹⁸

Dissatisfied with the ruling, Lagon sought direct recourse to this Court by filing the instant Petition for *Certiorari*¹⁹ under Rule 65 of the Revised Rules of Court.

The Issue

The lone issue for this Court's resolution is whether or not Section 2 of the Judicial Affidavit Rule, which requires a defendant to adduce his testimony and that of his witnesses by judicial affidavits, and submit his

¹¹ Id. at 7.
¹² Id. at 20.
¹³ Id. at 7.
¹⁴ Id. at 66-69.
¹⁵ Id. at 22.
¹⁶ Id. at 22-24.
¹⁷ Id. at 7.
¹⁸ Id. at 22.
¹⁹ Id. at 3-19.



documentary evidence before the pre-trial or preliminary conference, offends his right to due process of law.

In this regard, Lagon asserts that Judge Velasco committed grave abuse of discretion, amounting to lack or excess of jurisdiction, by compelling him (Lagon) to submit his evidence by judicial affidavits, even before the plaintiff could have adduced his own evidence and rested his case. According to Lagon, under the Judicial Affidavit Rule, the defendant is forced to adduce evidence simultaneously with the plaintiff. This conflicts with the rule on Demurrer to Evidence, which grants a defendant the right to opt out of presenting evidence, and instead move for the dismissal of the complaint upon the failure of the plaintiff to show a right to relief. The defendant is thus stripped of his “due process right not to be compelled to adduce evidence.”²⁰ Moreover, Lagon contends that the Judicial Affidavit Rule violates the order of trial provided under the Rules of Civil Procedure.²¹ Additionally, it denies litigants of their right to present adverse, hostile or unwilling witnesses, or to secure the testimonies of witnesses by deposition upon oral examination or written interrogatories, because the party cannot secure their judicial affidavits.²²

On the other hand, Dizon counters that no grave abuse of discretion may be ascribed against Judge Velasco for merely enforcing the rules promulgated by this Court. Dizon maintains that the Judicial Affidavit Rule was promoted precisely to address the problem of case congestion and delays created by the voluminous cases filed every year and the slow and cumbersome court proceedings. Likewise, Dizon avers that contrary to Lagon’s claim, the Judicial Affidavit Rule actually preserves and respects litigants’ procedural rights. Due process of law contemplates notice to the party, and an opportunity to be heard before judgment is rendered.²³ Lagon was accorded notice and an opportunity to be heard when Judge Velasco ordered the submission of judicial affidavits prior to the pre-trial conference. It was Lagon, who blatantly refused to comply with the order.²⁴ Dizon points out that the Judicial Affidavit Rule does not in any way prevent Lagon from filing a demurrer to evidence if he feels that the same is truly warranted.²⁵

Ruling of the Court

The instant petition is bereft of merit.

²⁰ Id. at 12.

²¹ Id. at 13.

²² Id.

²³ Id. at 83.

²⁴ Id.

²⁵ Id. at 84.



It must be noted at the outset that a petition for *certiorari* under Rule 65 of the Revised Rules of Court is a pleading limited to the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.²⁶ “Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.”²⁷

It is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion pertains to a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.²⁸

In the case at bar, Lagon accuses Judge Velasco of having committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed order,²⁹ requiring him (Lagon) to submit his Judicial Affidavits before the commencement of the trial of the case.

The Court is not convinced.

In issuing the assailed order, Judge Velasco was actually enforcing the Judicial Affidavit Rule, promulgated by the Court. Therefore, by no stretch of the imagination may Judge Velasco’s faithful observance of the rules of procedure, be regarded as a capricious, whimsical or arbitrary act.

Essentially, Article VIII, Section 5(5) of the 1987 Constitution bestows upon the Court the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts x x x.”

²⁶ *Tan v. Spouses Antazo*, 659 Phil. 400, 403 (2011).

²⁷ *Id.*

²⁸ *Id.* at 404, citing *Office of the Ombudsman v. Magno, et al.*, 592 Phil. 636, 652-653 (2008), further citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Cuison v. CA*, 351 Phil. 1089, 1101-1102 (1998).

²⁹ *Rollo*, pp. 20-21.

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Seeking to eradicate the scourge of long-drawn protracted litigations, and address case congestion and delays in court,³⁰ on September 4, 2012, the Court *en banc* promulgated A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule.

The Judicial Affidavit Rule was particularly created to solve the following ills brought about by protracted litigations, such as, the dismissal of criminal cases due to the frustration of complainants in shuttling back and forth to court after repeated postponements; and the dearth of foreign businessmen making long-term investments in the Philippines because the courts are unable to provide ample and speedy protection to their investments, thereby keeping the people poor.³¹ At first, the Court approved the piloting by trial courts in Quezon City of the compulsory use of judicial affidavits in place of the direct testimonies of witnesses.³² Eventually, the success of the judicial affidavit rule was unprecedented, and its implementation led to a reduction of about two-thirds of the time used for presenting the testimonies of witnesses. Indeed, the use of judicial affidavits greatly hastened the hearing and adjudication of cases.³³

Accordingly, the Court *en banc* directed the application of the Judicial Affidavit Rule to all actions, proceedings, and incidents requiring the reception of evidence³⁴ before the following tribunals, such as,

(i) the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari'a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC; (ii) The Regional Trial Courts and the Shari'a District Courts; (iii) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts; (iv) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and (v) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.³⁵

Thus, in all proceedings before the aforementioned tribunals, the parties are required to file the Judicial Affidavits of their witnesses, in lieu of their direct testimonies. Specifically, Section 2 of the Judicial Affidavit Rule ordains that:

Section 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies. - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than**

³⁰ *Ng Meng Tam v. China Banking Corporation*, 765 Phil. 979, 998 (2015).

³¹ Judicial Affidavit Rule, A.M. No. 12-8-8-SC.

³² *Id.*

³³ *Id.*

³⁴ Except for cases before the Supreme Court and Small Claims cases.

³⁵ Judicial Affidavit Rule, Section 1.

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five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Incidentally, the failure to comply with Section 2 of the Judicial Affidavit Rule shall result to a waiver of the submission of the required judicial affidavits and exhibits. However, the court may, upon valid cause shown, allow the late submission of the judicial affidavit, subject to specific penalties, constituting a fine of not less than One Thousand Pesos (Php 1,000.00), nor more than Five Thousand Pesos (Php 5,000.00), at the discretion of the court.³⁶

Despite the noble purpose of the Judicial Affidavit Rule, Lagon comes to this Court bewailing the same procedural regulation as violative of his right to due process of law, in that it "forces" him to present evidence even before the plaintiff has rested his case, apparently in violation of the rule on demurrer to evidence.

Juxtaposing the Judicial Affidavit Rule with that of the rule on demurrer to evidence, it becomes all too apparent that there exists no conflict between them. Similar to the judicial affidavit, a demurrer to evidence likewise abbreviates judicial proceedings, and serves as an instrument for the expeditious termination of an action.³⁷ It is as "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue."³⁸ All that it grants is an option to a

³⁶ Judicial Affidavit Rule, Section 10.

³⁷ Willard B. Riano, *Civil Procedure: A Restatement for the Bar* (2009), p. 401, citing *The Consolidated Bank and Trust Corp. (SOLIDBANK) v. Del Monte Motor Works, Inc.*, 503 Phil. 103, 120 (2005).

³⁸ *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 582-583 (2007), citing H. Black, *Black's Law Dictionary*, 6th ed., (1990), p. 433.



defendant, to seek the dismissal of the case, should he believe that the plaintiff failed to establish his right to relief. The demurrer challenges the sufficiency of the plaintiff's evidence to sustain a verdict.³⁹ Thus, in passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the plaintiff's complaint.

Clearly, both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously as tools for a more efficient and speedy administration of trial procedures. On the one hand, the Judicial Affidavit Rule simply dispenses with the direct testimony, thereby reducing the time at which a case stands for trial, in the same way that the Demurrer to Evidence abbreviates proceedings by allowing the defendant to seek for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint. These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial.

Moreover, by no stretch of the imagination may it be concluded that Lagon was deprived of due process of law. There is nothing in the provisions of the Judicial Affidavit Rule, which prohibits a defendant from filing a demurrer to evidence, if he truly believes that the evidence adduced by the plaintiff is insufficient. Besides, in the resolution of the demurrer to evidence, only the evidence presented by the plaintiff shall be considered and weighed by the Court.

Furthermore, the fact that the defendant is mandated to submit his judicial affidavit prior to the trial and before the plaintiff has rested his case is not a cumbersome requirement or a circumvention of due process. On the contrary, this is necessary for the orderly administration of the proceeding before the courts. It must be remembered that in as early as the pre-trial conference, the defendant is already required to submit a pre-trial brief, where he is then tasked to state the number and names of his witnesses, as well as the substance of their testimonies; the issues to be tried and resolved; and the documents or exhibits to be presented and the purpose thereof.⁴⁰ Thus, the defendant is already required in this early stage of the proceedings to formulate his defense and plan his strategy to counter the plaintiff's complaint. There is nothing too tedious or burdensome in requiring the submission of the judicial affidavit. In fact, this would even help the defendant in preparing his opposing arguments against the plaintiff.

All told, the Court has always emphasized that "procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration

³⁹ *Heirs of Pedro Pasag v. Spouses Parocha, et al.*, id. at 583; *Ong v. People of the Philippines*, 396 Phil. 546, 555 (2000); *Gutib v. CA*, 371 Phil. 293, 300 (1999).


⁴⁰ RULES OF COURT, Rule 18, Section 6.

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of justice.”⁴¹ It cannot be overemphasized that when the rules are clear, magistrates are mandated to apply them. Judge Velasco honored this principle by issuing the assailed order requiring the submission of judicial affidavits before the commencement of the trial of the case. Accordingly, he cannot be deemed to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction by strictly enforcing the Court’s rules. Perforce, the Petition for *Certiorari* must be dismissed.


WHEREFORE, premises considered, the instant Petition for *Certiorari* is **DENIED for lack of merit**. The Order dated June 6, 2013 in Civil Case No. 2293, issued by Hon. Dennis A. Velasco, Presiding Judge, Municipal Trial Court in Cities, Koronadal City, is **AFFIRMED**.

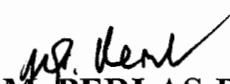
SO ORDERED.


ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice

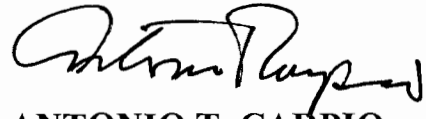

ESTELA M. PERLAS-BERNABE
Associate Justice

(On official business)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁴¹ *CMTC International Marketing Corporation v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

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