



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **September 28, 2022** which reads as follows:*

**“G.R. No. 235995 (TECHEM KOREA CO. LTD., represented by Kyung Mook Won, petitioner v. LAWRENCE CHAN, respondent).** – Stipulations in a pre-trial brief bind the parties. The trial court may disallow the presentation of witnesses not stated in the pre-trial brief, especially when no reservation had been made as to the substitution of witnesses.

This Court resolves a Petition for Review on Certiorari<sup>1</sup> assailing the Resolutions<sup>2</sup> of the Court of Appeals, which sustained the Order<sup>3</sup> of the Regional Trial Court to strike Kyung Mook Won’s testimony from the record for violation of Rule 118, Section 4<sup>4</sup> of the Rules of Court.

Techem Korea Co. Ltd. (Techem Korea), represented by Kyung Mook Won, is the private complainant in a criminal case, docketed as Criminal Case No. 12-085, for estafa through falsification of a public document, filed against Lawrence Chan (Chan).<sup>5</sup>

In the course of trial, the prosecution presented Kyung Mook Won, a Korean national, as a substitute witness in lieu of Dong Kyu Choi, as the latter was diagnosed with cancer and could not speak. Due to the urgency of

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<sup>1</sup> *Rollo*, pp. 16-24.

<sup>2</sup> *Id.* at 53–57 and 59–60. The June 23, 2017 Resolution in CA-G.R. SP No. 150806 was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a retired Member of this Court) and Associate Justice Priscilla J. Baltazar-Padilla (now a retired Member of this Court) of the First Division, Court of Appeals Manila. Meanwhile, the December 11, 2017 Resolution in CA-G.R. SP No. 150806 was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla (now a retired Member of this Court) of the Special Former First Division., Court of Appeals, Manila.

<sup>3</sup> *Id.* at 61–64. The January 23, 2017 Order in Criminal case No. 12-085 was penned by Presiding Judge Josefino A. Subia of the Regional Trial Court of Makati City, Branch 138.

<sup>4</sup> RULES OF COURT, Rule 118, sec. 4. provides:

SECTION 4. *Pre-trial order.* — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

<sup>5</sup> *Id.* at 54.

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the case and the limited period that Kyung Mook Won could travel to the Philippines, the prosecution alleged that it could not file a motion to substitute a witness before the hearing.<sup>6</sup>

Chan objected to Kyung Mook Won's presentation on the ground that he was not listed as a witness in the prosecution's pre-trial brief, in violation of Rule 118, Section 4 of the Rules of Court.<sup>7</sup>

Upon motion of the prosecution, the trial court allowed Kyung Mook Won to testify and identify his judicial affidavit. However, the judicial affidavit and testimony were subject to the subsequent ruling of the trial court on their admissibility.<sup>8</sup>

On January 23, 2017, the Regional Trial Court issued an Order<sup>9</sup> sustaining Chan's objection to the presentation of Kyung Mook Won as a witness. The trial court held that Kyung Mook Won was not one of the three witnesses mentioned in the Pre-trial Brief and that the prosecution failed to attach Dong Kyu Choi's medical certificate and file the proper motion for substitution.<sup>10</sup> Thus, Kyung Mook Won's testimony and judicial affidavit were stricken off the records of the case.<sup>11</sup>

Techem Korea, as a private complainant and in conformity with the public prosecutor, moved for reconsideration, but this was denied in an Order<sup>12</sup> dated March 24, 2017. Aggrieved, it filed a Petition for Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with the Court of Appeals.<sup>13</sup>

In its June 23, 2017 Resolution,<sup>14</sup> the Court of Appeals dismissed the Petition, holding that the inadmissibility of Kyung Mook Won's testimony was grounded on the clear mandate of Rule 118, Section 4 of the Rules of Court. It held that the trial court judge acted within the bounds of his discretion when the prosecution failed to make a reservation during the pre-trial conference that it would present other witnesses. It also noted the prosecution's admission that it was unable to file the proper motion for substitution before the hearing commenced.<sup>15</sup>

The Court of Appeals likewise denied the application for injunctive

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 61-64.

<sup>10</sup> Id. at 63-64.

<sup>11</sup> Id. at 64.

<sup>12</sup> Id. at 65-66. The March 24, 2017 Order in Criminal Case No. 12-085 was penned by Presiding Judge Josefino A. Subia of the Regional Trial Court of Makati City, Branch 138.

<sup>13</sup> Id. at 53.

<sup>14</sup> Id. at 53-57.

<sup>15</sup> Id. at 56-57.

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writ as it found that Techem Korea would not suffer grave and irreparable injury if the proceedings continued. According to its pre-trial brief, the prosecution still had two witnesses and could continue to present evidence during the trial.<sup>16</sup>

Techem Korea moved for reconsideration but was denied in a Resolution<sup>17</sup> dated December 11, 2017.

Hence, this Petition was filed.<sup>18</sup>

In the interim, or on February 12, 2018, the trial court issued an Order<sup>19</sup> granting the Demurrer to Evidence filed by respondent Chan and dismissing the case against him. According to the trial court:

After due deliberation, the court finds the demurrer to be with merit. The prosecution, indeed, failed to prove the guilt of accused Chan absent any iota of evidence to support its accusation of the crime charged. Evidently, not any of the elements of the crime of falsification of public documents was proven by the prosecution in Court. In the same manner was there any positive identification that accused Chan was the author of the crime charged. In sum, save for the professional and legal expenses incurred by the private complainant as testified by the herein private counsel, no other incriminating evidence whatsoever against the accused was ever presented in Court. Consequently, the demurrer to evidence must be given due course and accordingly, the criminal complaint against the accused must be dismissed. As regards the civil aspect of the instant case, the Court declares that the act or omission from which the civil liability might arise did not exist absent any evidence presented by the prosecution.<sup>20</sup>

Petitioner argues that Kyung Mook Won's testimony was indispensable to properly identify the documents showing respondent's fraudulent acts.<sup>21</sup> It submits that its case justifies the relaxation of the procedural rules considering that its primary witness Dong Kyu Choi was diagnosed with tongue cancer and underwent surgery, causing his inability to speak.<sup>22</sup>

Petitioner likewise requests the grant of injunctive reliefs since petitioner will suffer grave and irreparable injury if the criminal case against respondent is dismissed due to the absence of evidence from the prosecution's primary witness.<sup>23</sup>

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<sup>16</sup> Id. at 55-56.

<sup>17</sup> Id. at 59-60.

<sup>18</sup> Id. at 16-24.

<sup>19</sup> Id. at 128-129.

<sup>20</sup> Id. at 95-96.

<sup>21</sup> Id. at 18-20.

<sup>22</sup> Id. at 20-22.

<sup>23</sup> Id. at 22.

Respondent counters that petitioner never made a reservation regarding the presentation of additional witnesses nor presented any proof of the unavailability of the two other witnesses for the prosecution.<sup>24</sup> He submits that petitioner had not manifested that their witness was sick, and it was only until respondent opposed the presentation that they submitted Dong Kyu Choi's medical records.<sup>25</sup> He likewise points out that the grant of his Demurrer to Evidence on February 12, 2018,<sup>26</sup> has already rendered the dismissal of Criminal Case No. 12-085 final and executory. Thus, this Petition should already be mooted.<sup>27</sup>

In rebuttal, petitioner asserts that a relaxation of procedural rules was warranted, considering that the non-presentation of their witness Dong Kyu Choi was "precipitated by his total inability to talk during the period in question as caused by a malignant tumor on his tongue."<sup>28</sup> It insists that this was an event the parties could not have foreseen at the time.<sup>29</sup> Petitioner likewise contends that the case has not yet been rendered moot by the grant of the Demurrer to Evidence, since it had filed a Petition for Certiorari with the Court of Appeals questioning the dismissal of the case.<sup>30</sup>

This Court is confronted with the issue of whether the Court of Appeals erred in sustaining the trial court's order to strike Kyung Mook Won's testimony off the record for violation of Rule 118, Section 4 of the Rules of Court. Procedurally, this Court must likewise pass upon the issue of whether the grant of the Demurrer to Evidence and subsequent dismissal of Criminal Case No. 12-085 rendered this Petition moot.

The Petition is denied.

As the trial court and Court of Appeals found, Kyung Mook Won was not among the witnesses stated by the prosecution in its pre-trial brief. Petitioner's pre-trial brief likewise failed to include a reservation that other witnesses may be presented during the trial. Rule 118, Section 4 of the Rules of Court provides:

SECTION 4. *Pre-trial order.* — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. *Such order shall bind the parties,* limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

<sup>24</sup> Id. at 79.

<sup>25</sup> Id. at 80.

<sup>26</sup> Id. at 92–96. The February 12, 2018 Order in Criminal Case No. 12-085 was penned by Presiding Judge Josefino A. Subia of the Regional Trial Court of Makati City, Branch 138.

<sup>27</sup> Id. at 81–83.

<sup>28</sup> Id. at 136.

<sup>29</sup> Id. at 136–137.

<sup>30</sup> Id. at 138–139.

(Emphasis supplied)

In *People v. Guzman*,<sup>31</sup> this Court stated that the purpose of the provision is “[to prevent] undue delay in the disposition of criminal cases and [to ensure a] fair trial.”<sup>32</sup> Allowing parties to deviate from their pre-trial briefs “will amount to an unreasonable disregard of solemn agreements submitted to and approved by the court of justice and would make a mockery of the judicial process.”<sup>33</sup>

In its September 27, 2012 Order,<sup>34</sup> the trial court stated:

The parties are reminded that no evidence shall be allowed and offered during the trial other than those identified and pre-marked during the pre-trial except when allowed by the Court for good cause shown[.]<sup>35</sup>

This is in compliance with A.M. No. 03-1-09-SC, or the Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (Pre-Trial Guidelines), which states:

I. PRE-TRIAL

A. Civil Cases

....

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

....

d. The documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown)[.]

However, as held in *Chua v. Spouses Cheng*,<sup>36</sup> this provision only applies to documentary and object evidence, not testimonial evidence. Assuming that it could apply to testimonial evidence, “its application remains contingent upon a showing of [a] good cause sufficient to justify the

<sup>31</sup> 542 Phil. 152 (2007) [Per J. Chico-Nazario, Third Division].

<sup>32</sup> Id. at 169.

<sup>33</sup> Id.

<sup>34</sup> *Rollo*, p. 111. The September 27, 2012 Order in Criminal Case No. 12-085 was penned by Acting Presiding Judge Joselito O. Villarosa of the Regional Trial Court of Makati City, Branch 138.

<sup>35</sup> Id.

<sup>36</sup> 821 Phil. 594 (2017) [Per J. Caguioa, Second Division].

same.”<sup>37</sup>

Petitioner admitted that the prosecution failed to file a motion for substitution of witness, citing “the urgency of the proceedings and the limited time within which Mr. [Kyung Mook] Won was available to travel to the Philippines.”<sup>38</sup> Petitioner, however, stated that its primary witness, Dong Kyu Choi, underwent surgery on June 14, 2016.<sup>39</sup> Kyung Mook Won was presented as a witness only on December 5, 2016,<sup>40</sup> showing there was more than enough time for the prosecution to file its motion before the scheduled hearing. Petitioner was aware that its primary witness would not be able to testify, yet it failed to inform the trial court before the scheduled hearing.

If there was indeed any merit to the contention that Kyung Mook Won, being Dong Kyu Choi’s direct supervisor, would be able to identify the same documents as Dong Kyu Choi,<sup>41</sup> the same would still be unavailing. The prosecution should have made a reservation in their pre-trial brief that private complainant Kyung Mook Won may be presented as a witness. Absent this, petitioner cannot just be permitted to invoke liberality in the application of rules. Even if this Court were to relax the procedural rules, we could not outright ignore petitioner’s negligence. The trial court was, thus, justified in refusing to allow its substitute witness’s testimony.

It should likewise be pointed out that in the interim, respondent had filed a Demurrer to Evidence, which the trial court granted in its February 12, 2018 Order.<sup>42</sup> Criminal Case No. 12-085 has, thus, been dismissed. Respondent has already been acquitted. There is also no more reason for this Court to entertain petitioner’s prayer for injunctive relief.

Petitioner is correct in stating that it can still file a special civil action questioning the grant of the demurrer as to the civil aspect of the case,<sup>43</sup> which it did when it filed a Petition for Certiorari docketed as CA-G.R. SP No. 156288 before the Court of Appeals.<sup>44</sup> While its pending special civil action may not have effectively mooted the controversy in the Petition in this case, it must still be denied. As this Court has stated:

The importance of pre-trial in civil cases cannot be overemphasized. Time and again, this Court has recognized “the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and . . . to do whatever may reasonably be necessary to

<sup>37</sup> *Chua v. Spouses Cheng*, 821 Phil. 594, 603 (2017) [Per J. Caguioa, Second Division].

<sup>38</sup> *Rollo*, p. 21.

<sup>39</sup> *Id.* at 20.

<sup>40</sup> *Id.* at 21.

<sup>41</sup> *Id.* at 38.

<sup>42</sup> *Id.* at 128–129.

<sup>43</sup> *BDO Unibank v. Choa*, G.R. No. 237553, July 10, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65422>> [Per J. Leonen, Third Division].

<sup>44</sup> *Rollo*, p. 138.

facilitate and shorten the formal trial.” The need for strict adherence to the rules on pre-trial thus proceeds from its significant role in the litigation process.

This is not to say, however, that the rules governing pre-trial should be, at all times, applied in absolute terms. While faithful compliance with these rules is undoubtedly desirable, they may be relaxed in cases where their application would frustrate, rather than facilitate, the ends of justice. The relaxation of these rules, however, is contingent upon a showing of compelling and persuasive reasons to justify the same.<sup>45</sup> (Citations omitted)

FOR THESE REASONS, the Petition is DENIED. The Resolutions dated June 23, 2017 and December 11, 2017 of the Court of Appeals in CA-G.R. SP No. 150806 are AFFIRMED.

SO ORDERED.” (Lopez, M., J., *on official business*)

By authority of the Court:

TERESITA AQUINO TUAZON  
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court <sup>mm</sup>

26 JAN 2020

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<sup>45</sup> *Chua v. Spouses Cheng*, 821 Phil. 594, 605–606 (2017) [Per J. Caguioa, Second Division].

ORTEGA BACORRO ODULIO CALMA & CARBONELL (reg)  
Counsel for Petitioners  
5<sup>th</sup> & 6<sup>th</sup> Floors, ALPAP I Building  
140 L.P. Leviste Street, Salcedo Village  
1227 Makati City

ATTY. MELAMARISA M. PANOTES (reg)  
Counsel for Respondent  
Unit 415 A, Wack-Wack Twin Towers  
Wack Wack Road, 1555 Mandaluyong City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 138  
1200 Makati City  
(Crim. Case No. 12-085)

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COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. SP No. 150806

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