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appellant Diony Opiniano y Verano is found **GUILTY** beyond reasonable doubt of the special complex crime of robbery with homicide and sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellants Diony Opiniano and Romaldo Lumayag are jointly and severally ordered to pay the heirs of the victims, the following amounts:

1. ₱130,000.00 as their share in the civil indemnity for the death of the two (2) victims;
2. ₱130,000.00 as their share in the moral damages for the death of the two (2) victims;
3. ₱101,550.00 as their share in the actual damages for the expenses incurred as a result of their death;
4. ₱81,500.00 representing their share in the reimbursement of the value of the pieces of jewelry taken during the robbery.

Furthermore, all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Mendoza,* and *Martires, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185647. July 26, 2017]

DY TEBAN TRADING, INC., *petitioner, vs.* **PETER C. DY, JOHNNY C. DY and RAMON C. DY,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; TWO TESTS TO DETERMINE INTRA-CORPORATE CONTROVERSY.—** Under the *relationship test*, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. The *nature of the controversy test*, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association. In *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, we explained that the controversy "must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation."

2. **ID.; ID.; INTRA-CORPORATE DISPUTE, NOT A CASE OF.—** [W]e agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and **not** an intra-corporate dispute. First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. x x x Second, the nature of the controversy does not involve an intra-corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. x x x Third, DTTI, in its complaint, asked the RTC to: (1) prevent respondents from physically possessing its branch store; and (2) allow DTTI to have access and control of the building. Nowhere in its complaint did DTTI ask for a determination of the parties' rights under the Corporation Code, its articles of incorporation or its by-laws.

3. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; THE REGIONAL TRIAL COURT SITTING AS A COMMERCIAL COURT HAS JURISDICTION OVER**

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PETITIONER'S CIVIL ACTION FOR INJUNCTION.— Our jurisdiction recognizes a civil action for injunction. It is a suit brought for the purpose of enjoining the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his or her compulsion to continue performance of a particular act. As a civil action, it falls within the general jurisdiction of the RTCs. Nevertheless, we disagree with respondents' contention that the RTC, sitting as a commercial court, had no jurisdiction over the civil action for injunction filed by DTTI. This matter has already been clarified by this Court in *Gonzales v. GJH Land, Inc. (formerly S.J. Land, Inc.)*. x x x Thus, that DTTI's civil action for injunction was raffled to, and heard by, an RTC sitting as a commercial court, is more an issue of procedure than one of jurisdiction. *Gonzales*, in fact, directs that when an ordinary civil case is mistakenly raffled to a branch designated as a Special Commercial Court, the remedy is to refer said case to the Executive Judge for re-docketing and re-raffling among "all courts of the same RTC **(including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches)**, as provided for under existing rules."

4. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE RIGHT TO CROSS-EXAMINE THE WITNESS IS ESSENTIAL TO THE PRINCIPLE OF DUE PROCESS; BUT THE RIGHT TO CROSS-EXAMINATION IS A PERSONAL RIGHT THAT MAY BE WAIVED.—** No person shall be deprived of life, liberty or property without due process of law. Due process is fundamental in our judicial system. In court litigation, it is upheld through the establishment of, and strict adherence to, procedural rules that govern the behavior of party litigants. In our adversarial system, the right of a litigant to cross-examine a witness is essential to the principle of due process. The right to cross-examine a witness does not imply, however, an absolute command that an actual cross-examination be had. The right is sufficiently protected when there is a real opportunity to conduct a cross-examination. What our laws proscribe is the absence of a chance to cross-examine. Further, the right to cross-examination is a personal right that may be waived. x x x The waiver of the right to cross-examine a witness may be express or implied. In these instances, no violation of the constitutional right to due process is committed as the party himself or herself

has opted not to exercise the right. The validity of a waiver of the right to cross-examine is recognized in our jurisdiction. The difficulty, however, is in cases where the waiver of the right is only implied. An implied waiver may take various forms. In ascertaining whether a party has waived his or her right to cross-examine a witness, this Court has identified a general standard that depends, for its application, on the surrounding facts of each particular case.

5. **ID.; ID.; ID.; ID.; WHERE THE REASONS FOR FAILURE TO EXERCISE THE RIGHT TO CROSS-EXAMINE THE WITNESS WERE PURELY ATTRIBUTABLE TO RESPONDENTS AND THEIR COUNSEL, THEY ARE CONSIDERED TO HAVE WAIVED THEIR RIGHT TO CROSS-EXAMINATION.—** We find that the RTC had consistently given respondents several opportunities to cross-examine Lorencio. In fact, the trial court had been lenient in granting their motions for postponement even if, as this Court finds, the reasons for such postponements were unmeritorious. This notwithstanding, respondents still failed to attend the hearing set on June 18, 2007 without any explanation as to why no counsel appeared. To the mind of this Court, there was never any insurmountable obstacle to respondents' conduct of Lorencio's cross-examination. On the contrary, their failure to actually cross-examine Lorencio arose out of reasons attributable to their counsel. Unfortunately for respondents, counsel's negligence binds the client. x x x [T]here was never any insurmountable obstacle to the conduct of the cross-examination. If respondents failed to exercise their right, this failure arose out of reasons purely attributable to them and their counsel. Hence, in accordance with this Court's consistent rulings, the trial court correctly declared them to have waived their right to cross-examination.

6. **ID.; ID.; ID.; WAIVER OF THE RIGHT TO PRESENT EVIDENCE; FAILURE OF THE RESPONDENTS AND THEIR COUNSEL TO APPEAR IN THE HEARING SET FOR PRESENTATION OF THEIR EVIDENCE CONSTITUTES A WAIVER.—** [W]e rule that the CA erred in reversing the RTC's Order declaring respondents to have waived their right to present evidence. x x x We emphasize that the CA **never** issued a TRO or an injunction to halt the proceedings before the RTC. Despite this, respondents and their

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lawyers still chose not to appear in the hearing set for presentation of their evidence. Instead, they merely filed an urgent motion for continuance, arguing that their presentation of evidence should be postponed due to the pendency of the *certiorari* case before the CA. There is, however, no law or rule requiring the RTC not to proceed with the case because of the pendency of a special civil action for *certiorari* involving an interlocutory order issued by the trial court during the course of the proceedings. x x x Thus, as the motion for continuance put forward no valid ground, and taking into consideration the clear procedural requirement that the RTC must proceed with the case as well as the fact that the proceedings have already been unduly delayed, the RTC was warranted in holding that respondents waived their right to present evidence. We find that respondents were given sufficient opportunity to participate in the proceedings. The order setting the case for hearing for the presentation of their evidence was issued with enough time for respondents to prepare. While they had the option to file a motion for continuance as a matter of strategy, respondents had no right to expect that it will be granted. Prudence should have impelled respondents (and their lawyers) to appear before the RTC prepared to present their evidence in the event of a denial of their motion. This they failed to do. The RTC thus cannot be faulted for refusing to allow the case to be delayed any further. As in *Gohu v. Gohu*, the RTC's Order actually "upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party."

APPEARANCES OF COUNSEL

Wilfred D. Asis for petitioner.
Noriega Bazar Noriega Law Offices for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court. Petitioner Dy Teban Trading, Inc. (DTTI)

[1] *Rollo*, pp. 4-225.

seeks the reversal of the Decision[2] dated December 17, 2008 (Decision) of the Court of Appeals (CA) which nullified the Orders dated June 18, 2007[3] and May 26, 2008[4] of the Regional Trial Court (RTC), Butuan City.

DTTI is a domestic closed corporation owned by the Dy siblings. It has its principal office at Concepcion St., Butuan City and a branch in Montilla Boulevard.[5] Due to certain disagreements relating to its management, DTTI instituted an action for injunction against Peter C. Dy, Johnny C. Dy and Ramon C. Dy (respondents) before the RTC on September 7, 2004. This was docketed as an intra-corporate case. Respondents, on the other hand, filed an action for dissolution of the corporation.[6]

In its petition before the RTC, DTTI alleged that Johnny C. Dy (Johnny), an employee in its Montilla branch, had "squandered cash sales and stocks" from the branch either for his personal benefit or that of Peter C. Dy (Peter) and Ramon C. Dy (Ramon).[7] To prevent further losses, DTTI decided to close its Montilla branch and had the doors of the branch store welded shut. This notwithstanding, DTTI claimed that respondents forcibly opened the branch store and have continuously deprived it of the use of the same.[8]

Both actions were raffled to Branch 33 of the RTC which, incidentally, was also the designated commercial court. The RTC heard the cases jointly.[9] The action for the dissolution of

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[2] *Id*. at 227-244, penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

[3] *Id*. at 250-252.

[4] *Id*. at 349-353.

[5] *Id*. at 228.

[6] *Id*. at 1062.

[7] *Id*. at 578.

[8] *Id*. at 578-580.

[9] *Id*. at 16.

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the corporation was, however, eventually dismissed due to the respondents' failure to pay the proper docket fees.[10]

During the trial, DTTI presented Lorencio C. Dy (Lorencio) as a witness on June 28, 2005. Lorencio's cross-examination by respondents did not push through on the same date but was scheduled to continue on August 30, 2005.[11] During this hearing, however, the scheduled cross-examination did not proceed as Atty. Dollfuss R. Go (Atty. Go), one of respondents' counsels, could not make it due to certain health problems. Atty. Clementino C. Rabor (Atty. Rabor), respondents' other counsel, moved in open court for the postponement of Lorencio's cross-examination. The RTC granted this motion and issued an Order[12] setting the next hearing to September 22, 2005. Since respondents were being represented by two lawyers, the RTC warned that the scheduled cross-examination must proceed regardless of Atty. Go's absence, otherwise respondents' right to cross-examine Lorencio will be deemed waived.[13]

The trial was further delayed when then Presiding Judge Victor A. Tomaneng died and his cases ordered transferred to the *sala* of Judge Eduardo S. Casals who set the case for hearing on January 17, 2006.[14] As the parties needed to clarify with this Court whether the transfer of cases included intra-corporate disputes, the hearing scheduled on January 17, 2006 did not push through and Lorencio's cross-examination by respondents twice rescheduled to May 9, 2006[15] and October 16, 2006. When Atty. Wilfredo Asis (Atty. Asis), counsel for DTTI, could not make it to the October 16 hearing due to health problems, the RTC granted DTTI's motion for postponement without objection

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[10] *Id*. at 1068.

[11] *Id*. at 542.

[12] *Id*.

[13] *Id.*

[14] *Rollo*, p. 1065.

[15] *Id*. at 543.

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from respondents' counsel and the hearing was again reset to March 5, 2007.[16]

On March 5, 2007, Atty. Asis marked three additional documents in connection with Lorencio's testimony. Atty. Go thereafter moved in open court that he be given time to study the documents and adequately prepare for the cross-examination. The RTC thus issued an Order[17] setting the cross-examination on June 18, 2007.

On June 18, 2007, however, neither Atty. Go nor Atty. Rabor attended the hearing for respondents. No motion for postponement was also filed. Atty. Asis thus moved that respondents be declared to have waived their right to cross-examine Lorencio, who was DTTI's last witness. He also asked for 15 days within which to file his written formal offer of evidence. The RTC granted this motion and issued an Order[18] which states:

> WHEREFORE, in view of the foregoing, the Court hereby considers Atty. Dollfuss R. Go to have waived his right to cross-examine witness Lorencio C. Dy. Accordingly, Atty. Wilfred D. Asis is hereby given a period of fifteen (15) days from today within which to file his written formal offer of exhibits. The defendants are given the same number of days reckoned from their receipt of a copy of plaintiff's formal offer of exhibits within which to file their comment or opposition thereto, after which the said formal offer of exhibits shall be deemed submitted for resolution.
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> SO ORDERED.[19]

Respondents, through Atty. Go, filed a motion[20] seeking reconsideration of the Order. They argued that the RTC, in declaring them to have waived their right to cross-examine

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[16] *Id*. at 544.

[17] *Id*. at 546.

[18] *Id*. at 250-252.

[19] *Id*. at 252.

[20] *Id*. at 685-699.

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Lorencio, deprived them of their right to due process. Respondents also alleged that Atty. Go had, on June 16, 2007 or two days prior to the June 18, 2007 hearing, called Atty. Asis to inform him that he could not make it to the hearing because he had to fly to Cebu for another case. While Atty. Go recognized that he should have filed a motion for continuance before the court, he explained that he was only informed of the necessity of attending the hearing in Cebu on June 16, 2007, a Saturday.[21] Since there was no more time to draft a motion, he called Atty. Asis to ask him to accommodate another resetting of the cross-examination. Atty. Go claims that Atty. Asis agreed to his request over the phone. To his surprise, however, Atty. Asis, during the June 18, 2007 hearing, instead moved that respondents be declared to have waived their right to cross-examine Lorencio.[22]

In an Order[23] dated October 10, 2007, the RTC denied respondents' motion for reconsideration. It explained that, as early as August 30, 2005, it had already warned respondents that failure to conduct the cross-examination on the scheduled dates will lead to a declaration that they have waived their right to cross-examine DTTI's witness. The RTC also found Atty. Go's explanation insufficient, stating that he should have filed a formal motion for postponement before the court. Any alleged agreement with DTTI's counsel is irrelevant insofar as the court is concerned. The RTC also noted that Atty. Go could have requested his co-counsel, Atty. Rabor, to appear before the court and request for postponement. It then highlighted that granting continuance belongs to the sole discretion of the court. Lawyers must not assume that any motion for postponement will be granted.

Aggrieved, respondents, on November 16, 2007, went to the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court (*certiorari* case). Their petition, docketed

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[21] *Id*. at 695.

[22] *Id*. at 694-698.

[23] *Id*. at 647-652.

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as CA-G.R. SP No. 02051-MIN, challenged the June 18, 2007 and October 10, 2007 Orders of the RTC but did not include a prayer for the issuance of a temporary restraining order (TRO).[24]

On July 11, 2007, DTTI filed a motion for admission of its exhibits.[25] This was granted in an Order[26] dated March 3, 2008. In the same Order, the RTC set respondents' initial presentation of evidence on May 26, 2008.

Respondents filed a supplemental petition[27] dated April 2, 2008 in the *certiorari* case challenging the RTC's March 3, 2008 Order. This included an application for the issuance of a TRO or a writ of preliminary injunction.

On May 26, 2008, the scheduled hearing proceeded but neither respondents nor their counsel appeared. Instead, they filed an urgent motion for continuance,[28] arguing that the presentation of evidence should be postponed because of the pendency of the *certiorari* case before the CA. They also highlighted that they have an existing application for the issuance of a TRO or a writ of preliminary injunction which the CA has yet to resolve.

During this hearing, DTTI moved for the denial of the urgent motion for continuance. It argued that Section 7, Rule 65 of the Rules of Court requires that the case must proceed within 10 days from the filing of a petition for *certiorari* where no TRO or preliminary injunction has been issued. DTTI also stressed that the case is an action for injunction which, by its very nature, requires speedy disposition. As the case has already been pending for four years, it asked the RTC to declare respondents to have waived their right to present evidence. In an Order[29] dated May 26, 2008, the RTC held:

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[24] *Id*. at 51, 227.

[25] *Id*. at 550-553.

[26] *Id*. at 279-283.

[27] *Id*. at 259-278.

[28] *Id*. at 925-928.

[29] *Id*. at 349-353.

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WHEREFORE, in the light of the foregoing, the motion for continuance of the defendants is hereby DENIED for lack of merit. The defendants are hereby declared to have waived their right to present their evidence and that this case is now deemed submitted for decision.

SO ORDERED.[30]

On August 5, 2008, the CA denied the application for a TRO or writ of preliminary injunction.[31]

On August 22, 2008, the RTC rendered its Decision,[32] ruling in DTTI's favor. Basing its findings solely on Lorencio's unchallenged testimony and the documentary evidence presented by DTTI, the RTC granted the injunction and ordered respondents to pay compensatory damages in the amount of ₱2,000,000 for loss of stocks, ₱160,000/month for unrealized income from September 2004 until respondents vacate the building, ₱150,000 as damages under Article 2205(2) of the Civil Code, ₱150,000 as nominal damages, ₱100,000 as exemplary damages, ₱500,000 as attorney's fees, and ₱500,000 as litigation expenses.[33]

On October 8, 2008, DTTI filed a motion for execution of the RTC Decision.[34] Respondents, on the other hand, filed a second supplemental petition[35] before the CA in the *certiorari* case to challenge the RTC Decision. This, however, was ordered by the CA to be stricken off the records.[36]

In a Decision[37] dated December 17, 2008, the CA held that the RTC acted with grave abuse of discretion when it issued the June 18, 2007 and May 26, 2008 Orders. It held:

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[30] *Id*. at 353.

[31] *Id.* at 445.

[32] *Id*. at 430-454.

[33] *Id*. at 454.

[34] *Id*. at 949-960.

[35] *Id*. at 321-348.

[36] *Id*. at 942-944.

[37] *Supra* note 2.

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WHEREFORE, in view of the foregoing, the twin Orders of 18 June 2007 and of 26 May 2008 and the Decision of 22 August 2008 rendered in Civil Case No. 1235 by public respondent are hereby ordered **ANNULLED** and **SET ASIDE** and the case **REMANDED** to the trial court for further and appropriate proceedings conformably with the above discussions.

SO ORDERED.[38]

DTTI thus filed this petition for review on *certiorari*[39] under Rule 45 of the Rules of Court assailing the CA's Decision. It insists that the RTC correctly declared as waived respondents' right to cross-examination and presentation of evidence. DTTI argues that respondents not only failed to file a written motion for postponement of the scheduled cross-examination, the reason invoked to justify the postponement was also not valid. Moreover, DTTI adds that respondents were not entitled, *as a matter of right*, to the grant of their motion for continuance. Similarly, DTTI argues that the RTC correctly found that respondents waived their right to present evidence when they failed to appear on the scheduled date.

In their comment,[40] respondents challenge the jurisdiction of the RTC in taking cognizance of the action for injunction as an intra-corporate case. According to respondents, since the action for injunction does not involve an intra-corporate dispute, the RTC, sitting as a commercial court, lacked jurisdiction. Its decision on the case is therefore void. Finally, respondents argue that the CA properly reversed the RTC. They claim that they were deprived of their right to due process when the RTC haphazardly declared them to have waived the right to cross-examine DTTI's witness and to present their evidence.

The issues thus presented are:

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[38] *Rollo*, pp. 243-244.

[39] *Supra* note 1.

[40] *Rollo*, pp. 1060-1102.

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(1) Whether the action filed before the RTC was an intra-corporate case properly heard by the RTC acting as a special commercial court; and

(2) Whether the CA was correct in reversing the orders of the RTC and holding that respondents were deprived of their right to present evidence and to cross-examine DTTI's witness.

I

Section 5 of the Securities Regulation Code[41] transferred the jurisdiction of the Securities and Exchange Commission (SEC) over intra-corporate disputes to RTCs designated by the Supreme Court as commercial courts.

The existence of an intra-corporate dispute must be properly alleged in a complaint filed before a commercial court because the allegations in the complaint determine a tribunal's jurisdiction over the subject matter.[42] This means that the complaint must make out a case that meets both the relationship and the nature of the controversy tests.

Under the *relationship test*, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[43]

The *nature of the controversy test*, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association.[44] In

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[41] Republic Act No. 8799 (2000).

[42] See *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461.

[43] *Abejo v. De la Cruz*, G.R. No. 63558, May 19, 1987, 149 SCRA 654, 671-672.

[44] *Lozano v. De los Santos*, G.R. No. 125221, June 19, 1997, 274 SCRA 452, 457-458.

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Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation,[45] we explained that the controversy "must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation."[46]

Applying the foregoing tests, we agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and **not** an intra-corporate dispute.

First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. Notably, the complaint even identified Johnny as a DTTI employee. The complaint also does not allege that the other defendants therein have acted in their capacity as stockholders in depriving DTTI of access to its Montilla branch.

Second, the nature of the controversy does not involve an intra-corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. In claiming that respondents illegally possessed the branch store, the complaint does not allege that it arose out of a disagreement between the stockholders. Rather, the complaint states that Johnny, DTTI's employee, colluded with co-respondents Peter and Ramon in forcibly opening the Montilla branch store and preventing DTTI from using the property.

Third, DTTI, in its complaint, asked the RTC to: (1) prevent respondents from physically possessing its branch store; and (2) allow DTTI to have access and control of the building.[47] Nowhere in its complaint did DTTI ask for a determination of

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[45] G.R. No. 187872, November 17, 2010, 635 SCRA 380.

[46] *Id.* at 391. Citation omitted.

[47] *Rollo*, pp. 582-583.

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the parties' rights under the Corporation Code, its articles of incorporation or its by-laws.

Our jurisdiction recognizes a civil action for injunction. It is a suit brought for the purpose of enjoining the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his or her compulsion to continue performance of a particular act.[48] As a civil action, it falls within the general jurisdiction of the RTCs.[49]

Nevertheless, we disagree with respondents' contention that the RTC, sitting as a commercial court, had no jurisdiction over the civil action for injunction filed by DTTI. This matter has already been clarified by this Court in *Gonzales v. GJH Land, Inc. (formerly S.J. Land, Inc.)*.[50] There we held:

> [T]he fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the *imprimatur* of statutory law, *i.e.*, *Batas Pambansa Bilang* (BP) 129. To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's **exercise of jurisdiction**. x x x The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.[51] (Emphasis and italics in the original, citations omitted.)

Thus, that DTTI's civil action for injunction was raffled to, and heard by, an RTC sitting as a commercial court, is more an issue of procedure than one of jurisdiction. *Gonzales*, in fact, directs that when an ordinary civil case is mistakenly raffled to a branch designated as a Special Commercial Court, the remedy is to refer said case to the Executive Judge for re-docketing

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[48] *Manila Banking Corporation v. Court of Appeals*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 144-145.

[49] *B.P. Blg.* 129, Sec. 19; *Bank of the Philippine Islands v. Hong*, G.R. No. 161771, February 15, 2012, 666 SCRA 71, 78-79.

[50] G.R. No. 202664, November 10, 2015, 774 SCRA 242.

[51] *Id.* at 269-271.

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and re-raffling among "all courts of the same RTC **(including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches)**, as provided for under existing rules."[52] In any case, we find that respondents have waived any objection on this issue when they submitted to the authority of the RTC, asked for remedies therein, and participated in the proceedings. They are not allowed to raise this question of procedural propriety *only on appeal*.

II

No person shall be deprived of life, liberty or property without due process of law.[53] Due process is fundamental in our judicial system. In court litigation, it is upheld through the establishment of, and strict adherence to, procedural rules that govern the behavior of party litigants.[54] In our adversarial system, the right of a litigant to cross-examine a witness is essential to the principle of due process. The right to cross-examine a witness does not imply, however, an absolute command that an actual cross-examination be had. The right is sufficiently protected when there is a real opportunity to conduct a cross-examination. What our laws proscribe is the absence of a chance to cross-examine.[55] Further, the right to cross-examination is a personal right that may be waived. In *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*,[56] this Court explained:

> The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However,

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[52] *Id.* at 273. Emphasis supplied.

[53] CONSTITUTION, Art. III, Sec. 1.

[54] *Paredes v. Verano*, G.R. No. 164375, October 12, 2006, 504 SCRA 264, 273.

[55] *Equitable PCI Banking Corporation v. RCBC Capital Corporation*, G.R. No. 182248, December 18, 2008, 574 SCRA 858, 892.

[56] G.R. No. L-38964, January 31, 1975, 62 SCRA 258.

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the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.[57] (Citations omitted.)

The waiver of the right to cross-examine a witness may be express or implied. In these instances, no violation of the constitutional right to due process is committed as the party himself or herself has opted not to exercise the right. The validity of a waiver of the right to cross-examine is recognized in our jurisdiction. The difficulty, however, is in cases where the waiver of the right is only implied. An implied waiver may take various forms. In ascertaining whether a party has waived his or her right to cross-examine a witness, this Court has identified a general standard that depends, for its application, on the surrounding facts of each particular case. In *Savory Luncheonette*, this Court said that a party may be deemed to have waived his or her right to cross-examine a witness when he or she was given an opportunity to confront and cross-examine an opposing witness but failed to do so for reasons attributable to himself or herself alone.[58]

The petitioners in *Savory Luncheonette* questioned the trial court's order to strike out the testimony of its witness due to the impossibility of conducting cross-examination (as the witness has since died). Petitioners contended that private respondents should be deemed to have waived their right to cross-examine due to their repeated failure and refusal to cross-examine despite all the time and opportunities granted them.[59] We set aside the

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[57] *Id*. at 263-265.

[58] *Id.* at 265.

[59] *Id*. at 267. Respondents in *Savory Luncheonette* were given five opportunities to cross-examine the witness but they failed to do so due to counsel's absence or unpreparedness, notwithstanding the court's persistent admonition that further failure to cross-examine will be deemed a waiver of this right.

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trial court's order and held that "[b]y such repeated absence and lack of preparation on the part of the counsel of private respondents, the latter lost their right to examine the witness x x x and they alone must suffer the consequences."[60]

This is also the tenor of our ruling in *SCC Chemicals Corporation v. Court of Appeals*[61] where this Court held that petitioner's repeated failure to conduct the cross-examination despite the numerous opportunities granted to it amounts to a waiver of the right to cross-examine the opposing witness.[62]

This Court finds that the facts here are similar to the facts in the foregoing cases. The RTC initially set Lorencio's cross-examination on August 30, 2005. It was reset at respondents' instance to September 22, 2005. Although they had at that time two lawyers, one of whom was present during the hearing, respondents still moved for postponement because of their second counsel's illness. In fact, as early as August 30, 2005, the RTC had warned respondents that further failure to conduct the cross-examination by reason of Atty. Go's absence will warrant a ruling that they have waived their right to cross-examine. On March 5, 2007, (the sixth time the hearing was reset and third time at respondents' instance), respondents' counsel Atty. Go again asked for a resetting as he claimed that he needed to study three additional documents marked by DTTI during the hearing. The RTC granted this motion. However, on June 18, 2007, the date set for the cross-examination, no counsel for respondents appeared. Neither was a motion for postponement filed.

We find that the RTC had consistently given respondents several opportunities to cross-examine Lorencio. In fact, the trial court had been lenient in granting their motions for postponement even if, as this Court finds, the reasons for such postponements were unmeritorious. This notwithstanding,

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[60] *Id.*

[61] G.R. No. 128538, February 28, 2001, 353 SCRA 70.

[62] *Id*. at 76.

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respondents still failed to attend the hearing set on June 18, 2007 without any explanation as to why no counsel appeared. To the mind of this Court, there was never any insurmountable obstacle to respondents' conduct of Lorencio's cross-examination. On the contrary, their failure to actually cross-examine Lorencio arose out of reasons attributable to their counsel. Unfortunately for respondents, counsel's negligence binds the client.[63]

This Court further finds Atty. Go's explanation unmeritorious. He claims that he missed the June 18, 2007 hearing because he had to attend another hearing in Cebu. He further claims that he called DTTI's counsel, Atty. Asis, to request that the hearing be moved to a later date, which, according to him, Atty. Asis agreed to. He did not file a motion for postponement. Instead, he merely hoped that the opposing lawyer will make the motion for him on the day of the hearing. In other words, Atty. Go simply relied on the generosity of the RTC and Atty. Asis that his request for postponement will be granted.

Jurisprudence is replete with standards as to the proper course of action a lawyer must take in instances similar to this case.

Courts possess the duty and authority to control the proceedings before it. This includes the setting of trial dates and allowing postponement of hearings. Lawyers, in turn, as officers of the court, are duty bound to obey and respect court orders. Hence, when courts set trial dates and a lawyer finds that he or she may not be able to attend the hearing, the proper course of action is to move for the court to set the hearing at another date. However, even when a motion for postponement is filed before the court, there is never an obligation for the court to grant it. Far from being a right, the grant of a motion for postponement is a privilege addressed to the court's sound discretion. Hence, a party filing such motion must not assume that it will be granted. In *Spouses Santos v. Alcazar*,[64] we

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[63] *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 648.

[64] G.R. No. 183034, March 12, 2014, 718 SCRA 636.

reminded that: "[A] party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court or on the generosity of the adverse party."[65] As for a lawyer who finds himself or herself in a predicament when he or she has two hearings set on the same day, this Court has also stated that he or she has no right to assume that the court will grant him or her a continuance:

> The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retain[s] the attorney, he assumes the risk himself and cannot complain of the consequences if the postponement is denied and finds himself without attorney to represent him at the trial.[66] (Citation omitted.)

The facts of this case and the relevant jurisprudence warrant an affirmation of the trial court's order that respondents have waived their right to cross-examine DTTI's witness Lorencio. Atty. Go's explanation for his failure to attend the hearing, after years of persistent resetting of the cross-examination, merits no consideration. He cannot rely on his claim that he had allegedly called Atty. Asis to agree to the resetting. As counsel for respondents, he had, at the very least, the duty to file a motion for postponement before the court instead of shifting the burden to the opposing lawyer. Further, he had no right to expect that the trial court will grant postponement given that as early as August 30, 2005, it had already warned respondents that further resetting of the hearing on account of Atty. Go's absence will lead to a waiver of their right to cross-examine.

To repeat, there was never any insurmountable obstacle to the conduct of the cross-examination. If respondents failed to exercise their right, this failure arose out of reasons purely attributable to them and their counsel. Hence, in accordance

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[65] *Id*. at 655. Citation omitted.

[66] *Id*. at 656.

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with this Court's consistent rulings, the trial court correctly declared them to have waived their right to cross-examination.

III

We also find that respondents have waived their right to present evidence.

Court litigation is a search for the truth.[67] An adversarial system of litigating cases is in place as it allows for opposing parties to present their claims and adduce evidence. There is a recognized utility to this system as an adversarial system sharpens the presentation of issues before the courts. This, in turn, allows courts to ferret out the truth. Thus, while our procedural rules allow instances when a case may be decided after one party presents evidence *ex parte*, this Court has nevertheless consistently reminded lower courts that orders denying one party the right to present evidence must be rendered with great caution.

As in the case of the right to cross-examine an opposing witness, the right to present evidence may also be waived expressly or impliedly. Further, similar to the right to cross-examine a witness, an implied waiver of the right to present evidence may take various forms. In *Reyes v. Court of Appeals*,[68] this Court explained:

> [T]he postponement of the trial of a case to allow the presentation of evidence of a party is a matter which lies in the discretion of the trial court, but it is a discretion which must be exercised wisely, considering the **peculiar circumstances obtaining in each case and with a view to doing substantial justice**.[69] (Emphasis and underscoring supplied, citation omitted.)

In ascertaining the presence of this implied waiver, this Court's consistent rulings call for a balancing of interests relating to the administration of justice and an examination of the unique facts of each particular case.

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[67] *People v. Almendras*, G.R. No. 145915, April 24, 2003, 401 SCRA 555, 574.

[68] G.R. No. 111682, February 6, 1997, 267 SCRA 543.

[69] *Id.* at 550.

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The interplay among the right to due process, the value of speedy disposition of cases, and an adversarial system as a mechanism to ferret out the truth goes into the interests that courts must consider in holding a party to have waived his or her right to present evidence. On one hand, waiver orders aid in hastening litigation when it is apparent that one party is attempting to delay a case or is unable to present evidence for the trial. On the other hand, speed is not the overarching goal in a trial. Paramount interests of justice should not be sacrificed for the sake of speed and efficiency.[70] Further, courts must also keep in mind that it must hold a party to have impliedly waived his or her right to present evidence when he or she has been consistently given the right to participate in the proceedings but failed to do so without any justifiable reason. Courts must be wary of attempts to delay trial. Moreover, courts have the duty to regulate the proceedings before it and must not allow the trial of a case to depend on the negligence or dilatory tactics of parties and their lawyers. It is in instances where the courts have neutrally afforded the parties sufficient opportunity to exercise their right to participate in the trial but persistently failed to do so that courts are justified in holding them to have waived their right to present evidence without violating the essence of due process. Trials cannot be held hostage by the whims of one party. All other parties involved have the right to a speedy disposition of the case.[71]

These interests serve as guideposts in ascertaining whether the facts of each particular case require a finding that a party has waived his or her right to present evidence.

Thus, in *Bautista v. Court of Appeals*,[72] a civil case for quieting of title, we affirmed the holding of the CA that petitioners waived their right to present evidence. In this case, the petitioners had

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[70] *Id.* at 554.

[71] See *Dela Cruz v. People*, G.R. No. 163494, August 3, 2016, 799 SCRA 216; *Palanca v. Guides*, G.R. No. 146365, February 28, 2005, 452 SCRA 461; and *Bautista v. Court of Appeals*, G.R. No. 157219, May 28, 2004, 430 SCRA 353.

[72] *Supra*.

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filed three prior motions for postponement on three separate occasions which the trial court granted. This notwithstanding, petitioners still chose to file a fourth motion for postponement on the day of the hearing itself. We agreed with the RTC that the petitioners waived their right to present evidence. We explained:

> Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Due process is satisfied as long as the party is accorded an opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.[73] (Citation omitted.)

Trial courts successfully perform their duty to afford a party his or her right to due process when he or she is granted meaningful and sufficient opportunity to participate in the proceedings. Trial courts, however, do not have the duty to submit to unreasonable, dilatory, or negligent acts of the parties in handling their own cases. While parties to a case possess the right to due process, they have the correlative duty to exercise it properly and not use it as an excuse for their negligence or deliberate tactics to delay a case.

In *Bautista*, we also explained that the grant of a motion for postponement is not a matter of right. As we have said earlier, neither a party nor his lawyer has the right to expect that the filing of a motion for postponement will suffice to prevent a hearing from pushing through. The grant of a motion for postponement depends upon the discretion of the court. The court has the power and duty to control the proceedings before it, including the power to deny a motion for postponement. Parties and their lawyers must not assume that their motion for postponement will be granted. Even when such a motion is filed, parties must make sure that their lawyers appear and ready to proceed with the hearing in the event that their motion for postponement is denied.

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[73] *Id.* at 357.

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Applying these principles, we rule that the CA erred in reversing the RTC's Order declaring respondents to have waived their right to present evidence.

As earlier shown, the proceedings before the RTC have already been delayed several times due to repeated postponements. In fact, the RTC was compelled to declare that respondents had already waived their right to cross-examination. Respondents challenged this Order through a special civil action for *certiorari* before the CA. However, since no injunction or TRO was issued by the CA, the RTC proceeded with the trial and, during the course thereof, admitted DTTI's offer of exhibits on March 3, 2008. Respondents again challenged this order by filing a supplemental petition for *certiorari* dated April 2, 2008 before the CA. The RTC, which remained bound to proceed with the case in the absence of a TRO or a writ of injunction, set respondents' presentation of evidence on May 26, 2008.

We emphasize that the CA **never** issued a TRO or an injunction to halt the proceedings before the RTC. Despite this, respondents and their lawyers still chose not to appear in the hearing set for presentation of their evidence. Instead, they merely filed an urgent motion for continuance, arguing that their presentation of evidence should be postponed due to the pendency of the *certiorari* case before the CA. There is, however, no law or rule requiring the RTC not to proceed with the case because of the pendency of a special civil action for *certiorari* involving an interlocutory order issued by the trial court during the course of the proceedings. On the contrary, Section 7, Rule 65 of the Rules of Court is unequivocal. This provision states:

> Sec. 7. Expediting proceedings; injunctive relief. —
>
> x x x x x x x x x
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

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Thus, as the motion for continuance put forward no valid ground, and taking into consideration the clear procedural requirement that the RTC must proceed with the case as well as the fact that the proceedings have already been unduly delayed, the RTC was warranted in holding that respondents waived their right to present evidence.

We find that respondents were given sufficient opportunity to participate in the proceedings. The order setting the case for hearing for the presentation of their evidence was issued with enough time for respondents to prepare. While they had the option to file a motion for continuance as a matter of strategy, respondents had no right to expect that it will be granted. Prudence should have impelled respondents (and their lawyers) to appear before the RTC prepared to present their evidence in the event of a denial of their motion. This they failed to do. The RTC thus cannot be faulted for refusing to allow the case to be delayed any further. As in *Gohu v. Gohu*,[74] the RTC's Order actually "upholds the court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party."[75]

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Decision dated December 17, 2008 of the Court of Appeals is **REVERSED**. The Decision of the Regional Trial Court, Butuan City dated August 22, 2008 and its Orders dated June 18, 2007 and May 26, 2008 are **REINSTATED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Tijam,* and *Reyes, Jr., JJ.,* concur.

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[74] G.R. No. 128230, October 13, 2000, 343 SCRA 114.

[75] *Id*. at 122.