

## TWENTY-SECOND DIVISION

[ CA-G.R. CV NO. 02433-MIN, February 04, 2014 ]

**ROLANDO M. ABRASADO (DOING BUSINESS UNDER THE NAME AND STYLE " TELEPOINT ENTERPRISES" REPRESENTED BY HIS ATTORNEY IN FACT, CRISANTO E. MALASA, PLAINTIFF-APPELLEE, VS. SPS. JOWELL AND SARAH RODRIGUEZ, DEFENDANTS-APPELLANTS.**

### DECISION

**INTING, J.:**

This is an appeal from the August 5, 2010 Decision<sup>[1]</sup> of the Regional Trial Court Branch 16, Davao City in Civil Case No. 32,115-07 for sum of money, damages and attorney's fees, the *fallo* of which states:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, to wit:

1. Ordering defendants to pay jointly and severally plaintiff the amount of:
  - a. P1,356,774.00, plus legal interest of 12% per annum from date of Judgment;
  - b. 15% attorney's fees on the amount due and collectible; and
  - c. Cost of the Suit.

The Counter-claim is hereby **DISMISSED**.

**SO ORDERED."**

The facts of the case are as follows: Plaintiff Rolando Abrasado is in the wholesale and retail of cellphones under the business name Telepoint Enterprise with its main office in Laguna. Abrasado is represented herein by his attorney in fact Crisanto Malasa (Malasa for brevity) through a Special Power of Attorney.<sup>[2]</sup> Malasa is also the manager of Telepoint Enterprise Davao branch.

Malasa avers that since December 2006, defendant Jowell Rodriguez (Rodriguez for brevity) has been their customer. Rodriguez orders several units from them, and in turn sells them in installment basis to his customers in Davao City (hereinafter referred as retail customers). Rodriguez undertook to pay in installment his obligations due to Telepoint by executing a promissory note<sup>[3]</sup>, which pertinently states in part:

"For value received, I/We, the undersigned, promise to pay jointly and severally to the order of TELEPOINT ENTERPRISES the sum of PESOS xxx Philippine currency with interest at xxx, 200xx payable in the following manner..

Until fully paid, and We also agree to pay jointly and severally Three percent (3%) per week of the due amount as penalty charge when this note becomes overdue and unpaid.

Without need for notice or demand and as time is of the essence, failure to pay this note or any installment thereon when due shall constitute default and in such cases or in case of garnishment, receivership or bankruptcy or suit in any kind filed against me/us by TELEPOINT ENTERPRISES the entire principal of this note, at the option of TELEPOINT ENTERPRISES, and without prior notice or demand, shall immediately become due and payable. xxx”

For each unit sold to Rodriguez, a promissory note was executed and signed by him as a co-maker or co-applicant but with the space for the maker or applicant left blank. Rodriguez’s obligation allegedly amounted to a total of P1,665,443.00 and only P308,669.00<sup>[4]</sup> was paid by him leaving an unpaid balance of P1,356,774.00 exclusive of interest and penalties per summary of account.<sup>[5]</sup> Despite repeated verbal demands for Rodriguez to pay, he failed to heed. Thus, on October 2, 2007, a demand letter<sup>[6]</sup> was sent to him but to no avail. Consequently, on November 8, 2007, Telepoint filed a complaint<sup>[7]</sup> for sum of money, damages, and attorney’s fees against Rodriguez.

In his answer,<sup>[8]</sup> Rodriguez admits that he and Malasa met in 2006. However, he alleges that the latter actually offered him a job as Telepoint’s sales agent in Davao City hence, as a mere agent, he should not be made liable for the unpaid units. He maintains that his collections from the units sold were all remitted either to Malasa or directly to the company. Rodriguez denies buying the units but nonetheless acknowledges that he signed the promissory notes.

During trial, Malasa was presented as the sole witness for the plaintiff. He deposed that he knew Rodriguez was engaged in buying and selling cellphones in installments but maintains that he is not aware who Rodriguez’s customers were. He also testified that upon Rodriguez’s receipt of the cellphones, the latter would then sign the promissory note acknowledging his obligations.<sup>[9]</sup> The space on the promissory note intended for the maker or applicant was supposed to be signed by Rodriguez’s retail customers but Rodriguez failed to secure their signatures, hence, it was left in blank. However, Malasa further alleges that the promissory note was substantially complete with the details when Rodriguez affixed his signature. Malasa avows that Rodriguez was their customer and not their agent.<sup>[10]</sup>

On his cross-examination, Malasa alleged that it was him who bought the units from Telepoint but later retracted it, saying that he actually did not buy the units as he had no money to pay for them. Malasa added that Rodriguez could not pay his orders immediately as he sold the units to his retail customers in installments.

On the other hand, defendant Rodriguez testified that he was employed by Telepoint as their sales agent in Davao albeit without a formal appointment as the enterprise wanted to do business in Davao even without a branch. He received the units from Manila and sold them in installment basis. He remitted his collections to Malasa or to Abrasado and Telepoint gave its invoices after the retail customers make the full

payment. However, the invoices were issued only upon the retail customer's request. He was paid commissions for units sold. However, when the retail customers defaulted in their payments sometime in 2007,<sup>[11]</sup> they demanded from him to pay the unpaid balance which he refused believing that as an agent, he cannot be held liable. Further, he denied buying the units and alleges that he signed a blank promissory note despite his hesitations because Malasa told him to do so. He admits, however, that he understood the contents of the note.<sup>[12]</sup> He maintains that Telepoint's documents show that he was not the customer but rather only the agent who sold the units to retail customers whose names appear in the invoices.<sup>[13]</sup> On cross-examination, it was established that Rodriguez graduated with a degree in Engineering from the University of the Philippines.

Also presented for the defendants were John Merquita and Alver Reganit who corroborated Rodriguez's testimony that they knew Rodriguez to be Telepoint's agent as this was how he introduced himself to them. They were hired by Rodriguez as his sub-agents selling units to several retail customers for a commission of P500.00 per unit taken directly from the retail customer's payments as directed by Rodriguez. Malasa allegedly knew of their hiring.<sup>[14]</sup> Both their collections were remitted to Rodriguez until the latter left Telepoint. From then on, the remittances were made to Malasa.<sup>[15]</sup>

The court *a quo* rendered the assailed Decision finding for the plaintiff Telepoint holding that no control existed between the parties because upon receipt of the units, Rodriguez can dispose of them at his own will to whomever customer he chooses; that the sales were not subject to the approval of Telepoint and no specific stipulations or instructions on how to dispose the units or a report on the sale and inventory was required from Rodriguez; and that Rodriguez merely borrowed Telepoint's receipts and invoices but the promissory notes clearly show that the contract was one of sale with Rodriguez promising to pay a sum certain in money.

Defendant Rodriguez filed a motion for reconsideration of the Decision<sup>[16]</sup> but the court *a quo* denied it in its Order dated November 8, 2010.<sup>[17]</sup>

The defendants now come before Us contending that:

I.

THE COURT A QUO SERIOUSLY ERRED IN DISREGARDING SIGNIFICANT FACTUAL EVIDENCE (SUCH AS USE OF CUSTOMER FORMS, RECEIPTS, ABSENCE OF SIGNATURE OF DEFENDANT RODRIGUEZ ON THE FIRST PAGE OF THE BLANK PROMISSORY NOTES, CONSENT IN THE HIRING OF THE SUB-AGENTS, RECEIVING REMITTANCE FROM SUB-AGENT, ETC.) THAT WILL INDICATE THAT THE TRANSACTION BETWEEN TELEPOINT OR CRISANTO MALSA AND JOEL RODRIGUEZ WAS ONE OF AGENCY;

II.

THE COURT A QUO SERIOUSLY ERRED IN DISREGARDING SIGNIFICANT TESTIMONIAL ADMISSION OF WITNESS CRISANTO MALASA WHEN CROSS-EXAMINED, THAT WILL INDICATE THAT THE TRANSACTION BETWEEN CRISANTO MALASA AND JOEL RODRIGUEZ WAS ONE OF AGENCY. THE DISREGARDED FACTS ARE: [1] THE ADMISSION BY CRISANTO MALASA THAT HE GAVE THE CELLPHONES TO RODRIGUEZ BY

WAY OF TRUST; [2] THE ABSENCE OF REQUIRING A BUSINESS PERMIT FROM RODRIGUEZ AND A COLLATERAL OR BOND IS CONTRARY TO BUSINESS CUSTOMS EVEN AS HUGE VALUE OF ITEMS INVOLVED;

### III.

THE COURT A QUO SERIOUSLY MISAPPLIED AND ERRED (SIC) THE CITED JURISPRUDENCE IN ITS DECISION, THE CASE OF QUIROGA VS. PARSONS HARDWARE CO. 38 PHIL 501 AND AMON TRADING CORPORATION VS. COURT OF APPEALS, G.R. NO. 158585, DECEMBER 13, 2005. UPON THOROUGH READING OF THESE TWO CASES, THE SAME SIGNIFICANTLY DIFFER FROM THE TOTALITY OF FACTS APPEARING IN THIS INSTANT CASE. THE PRINCIPLE OF CONTROL IN AGENCY IS EVEN APPARENT BETWEEN IN (SIC) THE RELATIONSHIP OF TELEPOINT AND/OR CRISANTO MALASA WITH RESPECT TO THE DEFENDANT-APPELLANT RODRIGUEZ. INCIDENTALLY, THE OTHER PRINCIPLES APPLIED BY THE SUPREME COURT IN THE CITED CASE OF AMON TRADING CORPORATION VS. COURT OF APPEALS EVEN SUPPORTS THE DISMISSAL OF TELEPOINT'S COMPLAINT AGAINST APPELLANT RODRIGUEZ;

### IV.

AS ALTERNATIVE GROUND, THE COURT A QUO SERIOUSLY ERRED IN NOT DISMISSING THE COMPLAINT AS HAVING BEEN IMPROPERLY FILED BY TELEPOINT WHEN ITS LONE WITNESS, CRISANTO MALASA, TESTIFIED THAT HE BOUGHT THE CELLPHONES FROM TELEPOINT. HENCE, CRISANTO MALASA IS THE REAL PARTY IN INTEREST AND TECHNICALLY SHOULD NOT HAVE APPEARED IN A REPRESENTATIVE CAPACITY.

Stripped of the non-essentials, the pivotal issues are (1) whether or not the defendant-appellant Jowell Rodriguez is an agent of plaintiff-appellee Telepoint Enterprise; and (2) whether or not he should be made liable for the unpaid cellphones sold.

The defendant-appellant Rodriguez maintains that he was only acting as Telepoint's agent when he sold the cellphone units to the retail customers as proved not only by Telepoint's documents, which were signed by the buyers and subject to the company's approval but also through Malasa's admissions that he gave the units to Rodriguez by way of trust without required him to furnish a business permit or even to put up a bond. Further, although he admits signing the promissory notes, Rodriguez claims that he only did so as a co-maker. Rodriguez avers that the element of control in an agency was apparent not only through the documents but also through the fact that the payments were submitted to Telepoint or Malasa.

### Our Ruling

The appeal is partly imbued with merit.

Articles 1868 and 1869 of the New Civil Code, respectively, provide:

Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form.

The essential elements of agency are: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.<sup>[18]</sup>

In the case at bench, We find that the contract of agency between plaintiff-appellee Telepoint and defendant-appellant Rodriguez was sufficiently established.

A scrutiny of the documents proffered reveals that Telepoint offers cellphone loans to its customers. They set the requirements for the cellphone loan application.<sup>[19]</sup> A potential customer or applicant is required to fill up a personal data sheet<sup>[20]</sup> provided by Telepoint Enterprises. The applicant is also required to sign a letter which certifies receipt of the unit, a promise to pay installments with interest or penalty in case of delinquency, and a notice of dishonor from Telepoint. The notice also states that Telepoint's responsibility ceases with the delivery of the unit. The applicant is likewise required to have a co-maker. All these documents were issued by Telepoint. Upon payment, the customer was issued a sales invoice registered under Telepoint Enterprises.

Based on the evidence, the retail customers loaned the cellphones from Telepoint and not from Rodriguez. The documents belied Malasa's contention that they were unaware of who the retail customers were. This is very evident from Telepoint's personal data sheet filled-up by the retail customers, the letter acknowledging receipt of the units, and the waiver of dishonor all made under Telepoint's official forms. The invoices issued in the retail customer's name likewise support the contention that the payment did go to Telepoint and not to Rodriguez. Telepoint was a party to the sales made to the retail customers.

It was, however, not refuted that Rodriguez caused the afore-mentioned sales. It was through him that the orders were made and it was admitted that Telepoint allowed Rodriguez to use their invoices and documents to facilitate the cellphone loans to the retail customers. It can, therefore, be inferred that Rodriguez was allowed to use Telepoint's name in marketing the cellphones. Through such act, We find that Telepoint is now estopped from assailing lack of Rodriguez's authority to sell in their name. Granting that there was indeed no authority, an implied agency, nevertheless, was created between them.

In the case of *Yun Kwan Byung v. PAGCOR*,<sup>[21]</sup> the Supreme Court explains that an implied agency is derived from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. On the other hand, apparent authority is based on estoppel and can arise from two instances. First, the principal may knowingly permit the agent to hold himself out as having such authority, and the principal becomes estopped to claim that the agent does not have such authority. Second, the principal may clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. In an agency by