538 Phil. 319

# FIRST DIVISION

# [ G.R. NO. 160347, November 29, 2006 ]

## ARCADIO AND MARIA LUISA CARANDANG, PETITIONERS, VS. HEIRS OF QUIRINO A. DE GUZMAN, NAMELY: MILAGROS DE GUZMAN, VICTOR DE GUZMAN, REYNALDO DE GUZMAN, CYNTHIA G. RAGASA AND QUIRINO DE GUZMAN, JR., RESPONDENTS.

## D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* assailing the Court of Appeals Decision[1] and Resolution affirming the Regional Trial Court (RTC) Decision rendering herein petitioners Arcadio and Luisa Carandang [hereinafter referred to as spouses Carandang] jointly and severally liable for their loan to Quirino A. de Guzman.

The Court of Appeals summarized the facts as follows:

> [Quirino de Guzman] and [the Spouses Carandang] are stockholders as well as corporate officers of Mabuhay Broadcasting System (MBS for brevity), with equities at fifty four percent (54%) and forty six percent (46%) respectively.
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> On November 26, 1983, the capital stock of MBS was increased, from P500,000 to P1.5 million and P345,000 of this increase was subscribed by [the spouses Carandang]. Thereafter, on March 3, 1989, MBS again increased its capital stock, from P1.5 million to P3 million, [the spouses Carandang] yet again subscribed to the increase. They subscribed to P93,750 worth of newly issued capital stock.
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> [De Guzman] claims that, part of the payment for these subscriptions were paid by him, P293,250 for the November 26, 1983 capital stock increase and P43,125 for the March 3, 1989 Capital Stock increase or a total of P336,375. Thus, on March 31, 1992, [de Guzman] sent a demand letter to [the spouses Carandang] for the payment of said total amount.
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> [The spouses Carandang] refused to pay the amount, contending that a pre-incorporation agreement was executed between [Arcadio Carandang] and [de Guzman], whereby the latter promised to pay for the stock subscriptions of the former without cost, in consideration for [Arcadio Carandang's] technical expertise, his newly purchased equipment, and his skill in repairing and upgrading radio/communication equipment therefore, there is no indebtedness on their part [sic].
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> On June 5, 1992, [de Guzman] filed his complaint, seeking to recover the

P336,375 together with damages. After trial on the merits, the trial court disposed of the case in this wise:

> "WHEREFORE, premises considered, judgment is hereby rendered in favor of [de Guzman]. Accordingly, [the spouses Carandang] are ordered to jointly and severally pay [de Guzman], to wit:
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> (1) P336,375.00 representing [the spouses Carandang's] loan to de Guzman;
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> (2) interest on the preceding amount at the rate of twelve percent (12%) per annum from June 5, 1992 when this complaint was filed until the principal amount shall have been fully paid;
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> (3) P20,000.00 as attorney's fees;
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> (4) Costs of suit.

The spouses Carandang appealed the RTC Decision to the Court of Appeals, which affirmed the same in the 22 April 2003 assailed Decision:

> WHEREFORE, in view of all the foregoing the assailed Decision is hereby AFFIRMED. No costs.[2]

The Motion for Reconsideration filed by the spouses Carandang was similarly denied by the Court of Appeals in the 6 October 2003 assailed Resolution:

> WHEREFORE, in view thereof, the motion for reconsideration is hereby DENIED and our Decision of April 22, 2003, which is based on applicable law and jurisprudence on the matter is hereby AFFIRMED and REITERATED.[3]

The spouses Carandang then filed before this Court the instant Petition for Review on *Certiorari*, bringing forth the following issues:

I.

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST ERROR IN FAILING TO STRICTLY COMPLY WITH SECTION 16, RULE 3 OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING THAT THERE IS AN ALLEGED LOAN FOR WHICH PETITIONERS ARE LIABLE, CONTRARY TO EXPRESS PROVISIONS OF BOOK IV, TITLE XI, OF THE NEW CIVIL CODE PERTAINING TO LOANS.

III.

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY

ERRED IN FINDING THAT THE RESPONDENTS WERE ABLE TO DISCHARGE THEIR BURDEN OF PROOF, IN COMPLETE DISREGARD OF THE REVISED RULES ON EVIDENCE.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO APPLY SECTIONS 2 AND 7, RULE 3 OF THE 1997 RULES OF CIVIL PROCEDURE.

V.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE PURPORTED LIABILITY OF PETITIONERS ARE JOINT AND SOLIDARY, IN VIOLATION OF ARTICLE 1207 OF THE NEW CIVIL CODE.[4]

**Whether or not the RTC Decision is void for failing to comply with Section 16, Rule 3 of the Rules of Court**

The spouses Carandang claims that the Decision of the RTC, having been rendered after the death of Quirino de Guzman, is void for failing to comply with Section 16, Rule 3 of the Rules of Court, which provides:

> SEC. 16. *Death of party; duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
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> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
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> The court shall forthwith order the legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
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> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The spouses Carandang posits that such failure to comply with the above rule renders void the decision of the RTC, in adherence to the following pronouncements in *Vda. de Haberer v. Court of Appeals*[5] and *Ferreria v. Vda. de Gonzales*[6]:

> Thus, it has been held that when a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and judgment would be binding.[7]
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> In the present case, there had been no court order for the legal representative of the deceased to appear, nor had any such legal representative appeared in court to be substituted for the deceased; neither had the complainant ever procured the appointment of such legal representative of the deceased, including appellant, ever asked to be substituted for the deceased. As a result, no valid substitution was effected, consequently, the court never acquired jurisdiction over appellant for the purpose of making her a party to the case and making the decision binding upon her, either personally or as a representative of the estate of her deceased mother.[8]

However, unlike jurisdiction over the subject matter which is conferred by law and is not subject to the discretion of the parties,[9] jurisdiction over the person of the parties to the case may be waived either expressly or impliedly.[10] Implied waiver comes in the form of either voluntary appearance or a failure to object.[11]

In the cases cited by the spouses Carandang, we held that there had been no valid substitution by the heirs of the deceased party, and therefore the judgment cannot be made binding upon them. In the case at bar, not only do the heirs of de Guzman interpose no objection to the jurisdiction of the court over their persons; they are actually claiming and embracing such jurisdiction. In doing so, their waiver is not even merely implied (by their participation in the appeal of said Decision), but express (by their explicit espousal of such view in both the Court of Appeals and in this Court). The heirs of de Guzman had no objection to being bound by the Decision of the RTC.

Thus, lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence.

It also pays to look into the spirit behind the general rule requiring a formal substitution of heirs. The underlying principle therefor is not really because substitution of heirs is a jurisdictional requirement, but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein.[12] Such violation of due process can only be asserted by the persons whose rights are claimed to have been violated, namely the heirs to whom the adverse judgment is sought to be enforced.

Care should, however, be taken in applying the foregoing conclusions. In *People v. Florendo,*[13] where we likewise held that the proceedings that took place after the

death of the party are void, we gave another reason for such nullity: "the attorneys for the offended party ceased to be the attorneys for the deceased upon the death of the latter, the principal x x x." Nevertheless, the case at bar had already been submitted for decision before the RTC on 4 June 1998, several months before the passing away of de Guzman on 19 February 1999. Hence, no further proceedings requiring the appearance of de Guzman's counsel were conducted before the promulgation of the RTC Decision. Consequently, de Guzman's counsel cannot be said to have no authority to appear in trial, as trial had already ceased upon the death of de Guzman.

In sum, the RTC Decision is valid despite the failure to comply with Section 16, Rule 3 of the Rules of Court, because of the express waiver of the heirs to the jurisdiction over their persons, and because there had been, before the promulgation of the RTC Decision, no further proceedings requiring the appearance of de Guzman's counsel.

Before proceeding with the substantive aspects of the case, however, there is still one more procedural issue to tackle, the fourth issue presented by the spouses Carandang on the non-inclusion in the complaint of an indispensable party.

**Whether or not the RTC should have dismissed the case for failure to state a cause of action, considering that Milagros de Guzman, allegedly an indispensable party, was not included as a party-plaintiff**

The spouses Carandang claim that, since three of the four checks used to pay their stock subscriptions were issued in the name of Milagros de Guzman, the latter should be considered an indispensable party. Being such, the spouses Carandang claim, the failure to join Mrs. de Guzman as a party-plaintiff should cause the dismissal of the action because "(i)f a suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action."[14]

The Court of Appeals held:

> We disagree. The joint account of spouses Quirino A de Guzman and Milagros de Guzman from which the four (4) checks were drawn is part of their conjugal property and under both the Civil Code and the Family Code the husband alone may institute an action for the recovery or protection of the spouses' conjugal property.
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> Thus, in *Docena v. Lapesura* [355 SCRA 658], the Supreme Court held that "x x x Under the New Civil Code, the husband is the administrator of the conjugal partnership. In fact, he is the sole administrator, and the wife is not entitled as a matter of right to join him in this endeavor. The husband may defend the conjugal partnership in a suit or action without being joined by the wife. x x x Under the Family Code, the administration of the conjugal property belongs to the husband and the wife jointly. However, unlike an act of alienation or encumbrance where the consent of both spouses is required, joint management or administration does not require that the husband and wife always act together. Each spouse may validly exercise full power of management alone, subject to the