

THIRD DIVISION

[G.R. NO. 167812, December 19, 2006]

**JESUS M. GOZUN, PETITIONER, VS JOSE TEOFILO T. MERCADO
A.K.A. 'DON PEPITO MERCADO, RESPONDENT**

D E C I S I O N

CARPIO MORALES, J.:

On challenge via petition for review on certiorari is the Court of Appeals' Decision of December 8, 2004 and Resolution of April 14, 2005 in CA-G.R. CV No. 76309^[1] reversing the trial court's decision^[2] against Jose Teofilo T. Mercado a.k.a. Don Pepito Mercado (respondent) and accordingly dismissing the complaint of Jesus M. Gozun (petitioner).

In the local elections of 1995, respondent vied for the gubernatorial post in Pampanga. Upon respondent's request, petitioner, owner of JMG Publishing House, a printing shop located in San Fernando, Pampanga, submitted to respondent draft samples and price quotation of campaign materials.

By petitioner's claim, respondent's wife had told him that respondent already approved his price quotation and that he could start printing the campaign materials, hence, he did print campaign materials like posters bearing respondent's photograph,^[3] leaflets containing the slate of party candidates,^[4] sample ballots,^[5] poll watcher identification cards,^[6] and stickers.

Given the urgency and limited time to do the job order, petitioner availed of the services and facilities of Metro Angeles Printing and of St. Joseph Printing Press, owned by his daughter Jennifer Gozun and mother Epifania Macalino Gozun, respectively.^[7]

Petitioner delivered the campaign materials to respondent's headquarters along Gapan-Olongapo Road in San Fernando, Pampanga.^[8]

Meanwhile, on March 31, 1995, respondent's sister-in-law, Lilian Soriano (Lilian) obtained from petitioner "cash advance" of P253,000 allegedly for the allowances of poll watchers who were attending a seminar and for other related expenses. Lilian acknowledged on petitioner's 1995 diary^[9] receipt of the amount.^[10]

Petitioner later sent respondent a Statement of Account^[11] in the total amount of P2,177,906 itemized as follows: P640,310 for JMG Publishing House; P837,696 for Metro Angeles Printing; P446,900 for St. Joseph Printing Press; and P253,000, the "cash advance" obtained by Lilian.

On August 11, 1995, respondent's wife partially paid P1,000,000 to petitioner who

issued a receipt^[12] therefor.

Despite repeated demands and respondent's promise to pay, respondent failed to settle the balance of his account to petitioner.

Petitioner and respondent being *compadres*, they having been principal sponsors at the weddings of their respective daughters, waited for more than three (3) years for respondent to honor his promise but to no avail, compelling petitioner to endorse the matter to his counsel who sent respondent a demand letter.^[13] Respondent, however, failed to heed the demand.^[14]

Petitioner thus filed with the Regional Trial Court of Angeles City on November 25, 1998 a complaint^[15] against respondent to collect the remaining amount of P1,177,906 plus "inflationary adjustment" and attorney's fees.

In his Answer with Compulsory Counterclaim,^[16] respondent denied having transacted with petitioner or entering into any contract for the printing of campaign materials. He alleged that the various campaign materials delivered to him were represented as donations from his family, friends and political supporters. He added that all contracts involving his personal expenses were coured through and signed by him to ensure compliance with pertinent election laws.

On petitioner's claim that Lilian, on his (respondent's) behalf, had obtained from him a cash advance of P253,000, respondent denied having given her authority to do so and having received the same.

At the witness stand, respondent, reiterating his allegations in his Answer, claimed that petitioner was his over-all coordinator in charge of the conduct of seminars for volunteers and the monitoring of other matters bearing on his candidacy; and that while his campaign manager, Juanito "Johnny" Cabalu (Cabalu), who was authorized to approve details with regard to printing materials, presented him some campaign materials, those were partly donated.^[17]

When confronted with the official receipt issued to his wife acknowledging her payment to JMG Publishing House of the amount of P1,000,000, respondent claimed that it was his first time to see the receipt, albeit he belatedly came to know from his wife and Cabalu that the P1,000,000 represented "compensation [to petitioner] who helped a lot in the campaign as a gesture of goodwill."^[18]

Acknowledging that petitioner is engaged in the printing business, respondent explained that he sometimes discussed with petitioner strategies relating to his candidacy, he (petitioner) having actively volunteered to help in his campaign; that his wife was not authorized to enter into a contract with petitioner regarding campaign materials as she knew her limitations; that he no longer questioned the P1,000,000 his wife gave petitioner as he thought that it was just proper to compensate him for a job well done; and that he came to know about petitioner's claim against him only after receiving a copy of the complaint, which surprised him because he knew fully well that the campaign materials were donations.^[19]

Upon questioning by the trial court, respondent could not, however, confirm if it was

his understanding that the campaign materials delivered by petitioner were donations from third parties.^[20]

Finally, respondent, disclaiming knowledge of the Comelec rule that if a campaign material is donated, it must be so stated on its face, acknowledged that nothing of that sort was written on all the materials made by petitioner.^[21]

As adverted to earlier, the trial court rendered judgment in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, the plaintiff having proven its (sic) cause of action by preponderance of evidence, the Court hereby renders a decision in favor of the plaintiff ordering the defendant as follows:

1. To pay the plaintiff the sum of P1,177,906.00 plus 12% interest per annum from the filing of this complaint until fully paid;
2. To pay the sum of P50,000.00 as attorney's fees and the costs of suit.

SO ORDERED.^[22]

Also as earlier adverted to, the Court of Appeals reversed the trial court's decision and dismissed the complaint for lack of cause of action.

In reversing the trial court's decision, the Court of Appeals held that other than petitioner's testimony, there was no evidence to support his claim that Lilian was authorized by respondent to borrow money on his behalf. It noted that the acknowledgment receipt^[23] signed by Lilian did not specify in what capacity she received the money. Thus, applying Article 1317^[24] of the Civil Code, it held that petitioner's claim for P253,000 is unenforceable.

On the accounts claimed to be due JMG Publishing House – P640,310, Metro Angeles Printing – P837,696, and St. Joseph Printing Press – P446,900, the appellate court, noting that since the owners of the last two printing presses were not impleaded as parties to the case and it was not shown that petitioner was authorized to prosecute the same in their behalf, held that petitioner could not collect the amounts due them.

Finally, the appellate court, noting that respondent's wife had paid P1,000,000 to petitioner, the latter's claim of P640,310 (after excluding the P253,000) had already been settled.

Hence, the present petition, faulting the appellate court to have erred:

1. . . . when it dismissed the complaint on the ground that there is no evidence, other than petitioner's own testimony, to prove that Lilian R. Soriano was authorized by the respondent to receive the cash advance from the petitioner in the amount of P253,000.00.

x x x x

2. . . . when it dismissed the complaint, with respect to the amounts due to the Metro Angeles Press and St. Joseph Printing Press on the ground that the complaint was not brought by the real party in interest.

x x x x^[25]

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.^[26] Contracts entered into in the name of another person by one who has been given no authority or legal representation or who has acted beyond his powers are classified as unauthorized contracts and are declared unenforceable, unless they are ratified.^[27]

Generally, the agency may be oral, unless the law requires a specific form.^[28] However, a special power of attorney is necessary for an agent to, as in this case, borrow money, unless it be urgent and indispensable for the preservation of the things which are under administration.^[29] Since nothing in this case involves the preservation of things under administration, a determination of whether Soriano had the special authority to borrow money on behalf of respondent is in order.

Lim Pin v. Liao Tian, et al.^[30] held that the requirement of a special power of attorney refers to the nature of the authorization and not to its form.

. . . The requirements are met if there is a clear mandate from the principal specifically authorizing the performance of the act. As early as 1906, this Court in *Strong v. Gutierrez-Repide* (6 Phil. 680) stated that such a mandate may be either oral or written. The one thing vital being that it shall be express. And more recently, We stated that, if the special authority is not written, then it must be **duly established by evidence**:

"...the Rules require, for attorneys to compromise the litigation of their clients, a special authority. And while the same does not state that the special authority be in writing the Court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him."^[31] (Emphasis and underscoring supplied)

Petitioner submits that his following testimony suffices to establish that respondent had authorized Lilian to obtain a loan from him, viz:

Q: Another caption appearing on Exhibit "A" is cash advance, it states given on 3-31-95 received by Mrs. Lilian Soriano **in behalf of Mrs. Annie Mercado**, amount P253,000.00, will you kindly tell the Court and explain what does that caption means?

A: It is the amount representing the money **borrowed from me by the defendant when one morning they came very early and talked to me** and told me that they were not able to go to the bank to get money for the allowances of Poll Watchers who were having a seminar at the headquarters plus other election related expenses during that day, sir.