

## SECOND DIVISION

[ G.R. No. 130148, December 15, 1997 ]

**JOSE BORDADOR AND LYDIA BORDADOR, PETITIONERS, VS.  
BRIGIDA D. LUZ, ERNESTO M. LUZ AND NARCISO DEGANOS,  
RESPONDENTS.  
D E C I S I O N**

**REGALADO, J.:**

In this appeal by *certiorari*, petitioners assail the judgment of the Court of Appeals in CA-G.R. CV No. 49175 affirming the adjudication of the Regional Trial Court of Malolos, Bulacan which found private respondent Narciso Deganos liable to petitioners for actual damages, but absolved respondent spouses Brigida D. Luz and Ernesto M. Luz of liability. Petitioners likewise belabor the subsequent resolution of the Court of Appeals which denied their motion for reconsideration of its challenged decision.

Petitioners were engaged in the business of purchase and sale of jewelry and respondent Brigida D. Luz, also known as Aida D. Luz, was their regular customer. On several occasions during the period from April 27, 1987 to September 4, 1987, respondent Narciso Deganos, the brother of Brigida D. Luz, received several pieces of gold and jewelry from petitioners amounting to P382,816.00. [1] These items and their prices were indicated in seventeen receipts covering the same. Eleven of the receipts stated that they were received for a certain Evelyn Aquino, a niece of Deganos, and the remaining six indicated that they were received for Brigida D. Luz. [2]

Deganos was supposed to sell the items at a profit and thereafter remit the proceeds and return the unsold items to petitioners. Deganos remitted only the sum of P53,207.00. He neither paid the balance of the sales proceeds, nor did he return any unsold item to petitioners. By January 1990, the total of his unpaid account to petitioners, including interest, reached the sum of P725,463.98. [3] Petitioners eventually filed a complaint in the barangay court against Deganos to recover said amount.

In the barangay proceedings, Brigida D. Luz, who was not impleaded in the case, appeared as a witness for Deganos and ultimately, she and her husband, together with Deganos, signed a compromise agreement with petitioners. In that compromise agreement, Deganos obligated himself to pay petitioners, on installment basis, the balance of his account plus interest thereon. However, he failed to comply with his aforesaid undertakings.

On June 25, 1990, petitioners instituted Civil Case No. 412-M-90 in the Regional Trial Court of Malolos, Bulacan against Deganos and Brigida D. Luz for recovery of a sum of money and damages, with an application for preliminary attachment. [4] Ernesto Luz was impleaded therein as the spouse of Brigida.

Four years later, or on March 29, 1994, Deganos and Brigida D. Luz were charged with estafa<sup>[5]</sup> in the Regional Trial Court of Malolos, Bulacan, which was docketed as Criminal Case No. 785-M-94. That criminal case appears to be still pending in said trial court.

During the trial of the civil case, petitioners claimed that Deganos acted as the agent of Brigida D. Luz when he received the subject items of jewelry and, because he failed to pay for the same, Brigida, as principal, and her spouse are solidarily liable with him therefor.

On the other hand, while Deganos admitted that he had an unpaid obligation to petitioners, he claimed that the same was only in the sum of P382,816.00 and not P725,463.98. He further asserted that it was he alone who was involved in the transaction with the petitioners; that he neither acted as agent for nor was he authorized to act as an agent by Brigida D. Luz, notwithstanding the fact that six of the receipts indicated that the items were received by him for the latter. He further claimed that he never delivered any of the items he received from petitioners to Brigida.

Brigida, on her part, denied that she had anything to do with the transactions between petitioners and Deganos. She claimed that she never authorized Deganos to receive any item of jewelry in her behalf and, for that matter, neither did she actually receive any of the articles in question.

After trial, the court below found that only Deganos was liable to petitioners for the amount and damages claimed. It held that while Brigida D. Luz did have transactions with petitioners in the past, the items involved were already paid for and all that Brigida owed petitioners was the sum of P21,483.00 representing interest on the principal account which she had previously paid for.<sup>[6]</sup>

The trial court also found that it was petitioner Lydia Bordador who indicated in the receipts that the items were received by Deganos for Evelyn Aquino and Brigida D. Luz. <sup>[7]</sup> Said court was "persuaded that Brigida D. Luz was behind Deganos," but because there was no memorandum to this effect, the agreement between the parties was unenforceable under the Statute of Frauds. <sup>[8]</sup> Absent the required memorandum or any written document connecting the respondent Luz spouses with the subject receipts, or authorizing Deganos to act on their behalf, the alleged agreement between petitioners and Brigida D. Luz was unenforceable.

Deganos was ordered to pay petitioners the amount of P725,463.98, plus legal interest thereon from June 25, 1990, and attorney's fees. Brigida D. Luz was ordered to pay P21,483.00 representing the interest on her own personal loan. She and her co-defendant spouse were absolved from any other or further liability. <sup>[9]</sup>

As stated at the outset, petitioners appealed the judgment of the court a quo to the Court of Appeals which affirmed said judgment. <sup>[10]</sup> The motion for reconsideration filed by petitioners was subsequently dismissed, <sup>[11]</sup> hence the present recourse to this Court.

The primary issue in the instant petition is whether or not herein respondent spouses are liable to petitioners for the latter's claim for money and damages in the sum of P725,463.98, plus interests and attorney's fees, despite the fact that the evidence does not show that they signed any of the subject receipts or authorized Deganos to receive the items of jewelry on their behalf.

Petitioners argue that the Court of Appeals erred in adopting the findings of the court a quo that respondent spouses are not liable to them, as said conclusion of the trial court is contradicted by the finding of fact of the appellate court that "(Deganos) acted as agent of his sister (Brigida Luz)." [12] In support of this contention, petitioners quoted several letters sent to them by Brigida D. Luz wherein the latter acknowledged her obligation to petitioners and requested for more time to fulfill the same. They likewise aver that Brigida testified in the trial court that Deganos took some gold articles from petitioners and delivered the same to her.

Both the Court of Appeals and the trial court, however, found as a fact that the aforementioned letters concerned the previous obligations of Brigida to petitioners, and had nothing to do with the money sought to be recovered in the instant case. Such concurrent factual findings are entitled to great weight, hence, petitioners cannot plausibly claim in this appellate review that the letters were in the nature of acknowledgments by Brigida that she was the principal of Deganos in the subject transactions.

On the other hand, with regard to the testimony of Brigida admitting delivery of the gold to her, there is no showing whatsoever that her statement referred to the items which are the subject matter of this case. It cannot, therefore, be validly said that she admitted her liability regarding the same.

Petitioners insist that Deganos was the agent of Brigida D. Luz as the latter clothed him with apparent authority as her agent and held him out to the public as such, hence Brigida can not be permitted to deny said authority to innocent third parties who dealt with Deganos under such belief. [13] Petitioners further represent that the Court of Appeals recognized in its decision that Deganos was an agent of Brigida. [14]

The evidence does not support the theory of petitioners that Deganos was an agent of Brigida D. Luz and that the latter should consequently be held solidarily liable with Deganos in his obligation to petitioners. While the quoted statement in the findings of fact of the assailed appellate decision mentioned that Deganos ostensibly acted as an agent of Brigida, the actual conclusion and ruling of the Court of Appeals categorically stated that, "(Brigida Luz) never authorized her brother (Deganos) to act for and in her behalf in any transaction with Petitioners x x x." [15] It is clear, therefore, that even assuming *arguendo* that Deganos acted as an agent of Brigida, the latter never authorized him to act on her behalf with regard to the transactions subject of this case.

The Civil Code provides:

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.

The basis for agency is representation. Here, there is no showing that Brigida consented to the acts of Deganos or authorized him to act on her behalf, much less with respect to the particular transactions involved. Petitioners' attempt to foist liability on respondent spouses through the supposed agency relation with Deganos is groundless and ill-advised.

Besides, it was grossly and inexcusably negligent of petitioners to entrust to Deganos, not once or twice but on at least six occasions as evidenced by six receipts, several pieces of jewelry of substantial value without requiring a written authorization from his alleged principal. A person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. [16]

The records show that neither an express nor an implied agency was proven to have existed between Deganos and Brigida D. Luz. Evidently, petitioners, who were negligent in their transactions with Deganos, cannot seek relief from the effects of their negligence by conjuring a supposed agency relation between the two respondents where no evidence supports such claim.

Petitioners next allege that the Court of Appeals erred in ignoring the fact that the decision of the court below, which it affirmed, is "null and void" as it contradicted its ruling in CA-G.R. SP No. 39445 holding that there is "sufficient evidence/proof" against Brigida D. Luz and Deganos for estafa in the pending criminal case. They further aver that said appellate court erred in ruling against them in this civil action since the same would result in an inevitable conflict of decisions should the trial court convict the accused in the criminal case.

By way of backdrop for this argument of petitioners, herein respondents Brigida D. Luz and Deganos had filed a demurrer to evidence and a motion for reconsideration in the aforesaid criminal case, both of which were denied by the trial court. They then filed a petition for certiorari in the Court of Appeals to set aside the denial of their demurrer and motion for reconsideration but, as just stated, their petition therefor was dismissed. [17]

Petitioners now claim that the aforesaid dismissal by the Court of Appeals of the petition in CA-G.R. SP No. 39445 with respect to the criminal case is equivalent to a finding that there is sufficient evidence in the estafa case against Brigida D. Luz and Deganos. Hence, as already stated, petitioners theorize that the decision and resolution of the Court of Appeals now being impugned in the case at bar would result in a possible conflict with the prospective decision in the criminal case. Instead of promulgating the present decision and resolution under review, so they suggest, the Court of Appeals should have awaited the decision in the criminal case, so as not to render academic or preempt the same or, worse, create two conflicting rulings. [18]

Petitioners have apparently lost sight of Article 33 of the Civil Code which provides that in cases involving alleged fraudulent acts, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence.

It is worth noting that this civil case was instituted four years before the criminal