

**MARIAN C. OCAMPO & ARIEL CABUEÑOS,
PLAINTIFFS-APPELLEES, VS. ANTONIA D. TAN & CRESANALYN
TAN, DEFENDANTS-APPELLANTS.**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

The present appeal seeks to nullify the July 11, 2008 Decision[1] issued by Regional Trial Court, Branch 41, Gandara, Samar (RTC) in Civil Case No. 01-013 for Restitution and Recovery of Indemnity and Damages.

THE ANTECEDENTS

The relevant facts of this case are as follows:

On April 2, 2001, appellees, who are siblings, filed the Complaint against their aunt and cousin, appellants Antonia and Cresanalyn, respectively.[2] The complaint states that appellee Ocampo entrusted and deposited the total amount of \$165,200.00, or P6,211,565.10,[3] jointly owned by appellees, to the account of appellants. However, appellants misappropriated the said amount. They made refunds but the amount of P1,609,395.73 remained unpaid despite appellees' demand.

The complaint also stated that appellee Cabueños is the attorney-in-fact of Ocampo, who resides in the United States of America. Attached to the complaint is a plain copy of the Special Power of Attorney (SPA) executed by Ocampo in Cabueños' favor.

In their Answer and Compulsory Counterclaim[4], appellants alleged that the bank remittances were payments by appellees for obligations they incurred from them. The documents evidencing such obligation were, however, taken by Cabueños when he (Cabueños) ransacked and forcibly opened appellant Cresanalyn's office. Appellants also denied the genuineness and due execution of the SPA.

Trial ensued.

On July 20, 2003, appellees formally offered[5] only the following documentary evidence:

- International Money Transfer Request amounting to US\$100,000.00[6] and US\$65,200.00[7] (Exhibits "A" and "B"), remitted by appellee Ocampo to appellant Antonia through the latter's bank account, as part of Cabueños' testimony that Ocampo deposited in Antonia's account the said amount.
- Certificate of Time Deposit,[8] as part of the Cabueños' testimony that Ocampo remitted US\$100,000.00 on February 24, 1998 and US\$65,200.00 on April 1, 1998 to appellee Antonia.[9]
- Computation[10] made by Alexander Perez, CPA, as part of his testimony that despite the various payments by appellants, they still had unsettled obligation to appellees amounting to P1,609,395.72.
- Letters[11] from appellees' counsel demanding appellant to pay P1,609,395.72, plus 10% interest.

Thereafter, appellees rested their case.[12]

On January 15, 2004, appellants filed their Demurrer to Evidence.[13]

On July 6, 2004, the RTC issued the order denying appellants' demurrer.[14] A hearing was set on November 8, 2004, for the reception of appellants' evidence,[15] but appellants failed to attend. They also failed to attend in a subsequent hearing,[16] thus, the RTC declared the case as submitted for decision[17] on July 1, 2008, without appellants being able to present evidence.

On July 11, 2008, the RTC issued the assailed Decision the dispositive portion of which reads:

WHEREFORE, for all the foregoing, the Court hereby renders judgment in favor of (appellees), ordering and directing as follows:

- That (appellants) jointly and severally restitute and/or pay unto (appellees), the following amounts:

a)

Php1,609,395.72, representing the uncollected balance of peso equivalent of the US\$100,000.00 which (appellants) converted into Philippines money at the rate of Php40.00 to a US dollar with legal interest of 13% annually starting August, 1998 until the amount is fully paid;

b)

Php1,000,000.00 and Php100,000.00 for moral and exemplary damages, respectively;

c)

Php94,476.20, actual expenses;

d)

Php200,000.00 for attorney's fees;

e)

Php26,814.44 for filing and docketing fees; and

f)

The costs of the suit;

SO ORDERED.

Hence, this appeal.[18]

ISSUES

- WHETHER APPELLANTS SHOULD BE DEEMED TO HAVE WAIVED THEIR RIGHT TO PRESENT EVIDENCE JUST BECAUSE THEY FAILED TO ATTEND THE JULY 1, 2008 HEARING;

- WHETHER APPELLEES WERE ABLE TO DISCHARGE THEIR BURDEN OF PROVING THEIR CAUSE OF ACTION;

- WHETHER APPELLANTS ARE LIABLE TO PAY INTEREST DESPITE THE ABSENCE OF ANY WRITTEN AGREEMENT WITH RESPECT THERETO;

- WHETHER THERE IS FACTUAL AND LEGAL BASIS TO HOLD APPELLANTS ENTITLED TO PAYMENT OF MORAL AND EXEMPLARY DAMAGES;

- WHETHER THE IMPOSABLE INTEREST, IF ANY, IS 13% PER ANNUM AND RECKONED FROM AUGUST 1998.

THE ARGUMENTS

Among the issues raised by appellants, We deem it logical to first resolve the second.

Appellants argue that appellees have no cause of action against them. Although appellees claim that they both own the money sent to appellees, Exhibits “A” and “B” show otherwise. The said documents indicate that it was only Ocampo who made the remittances to Antonia. Cabueños, therefore, has no interest in the case. He has no cause of action against appellees. On the other hand, here is no proof that Ocampo is a plaintiff in the case. Although there was an allegation that Ocampo appointed Cabueños as her attorney-in-fact, what was attached to the complaint was merely a plain copy of the SPA. Its truthfulness and veracity was denied by appellants in their answer. Appellees should have presented, identified, and formally offered the original of the said SPA during trial.

Appellees oppose. They contend that appellants cannot raise the issue of the defect in Cabueños' SPA for the first time on appeal as this was not raised during the proceedings a quo. They further assert that the following militate against appellants' assertions: (1) the caption of the complaint mentions the plaintiff as “Marian C. Ocampo and Ariel Cabueños (in his own behalf and as Attorney-in-Fact of Marian C. Ocampo,” and; (2) the complaint states:

- Plaintiffs Marian C. Ocampo (hereinafter called Ocampo for brevity) and Ariel T. Cabueños (hereinfter called Cabueños for brevity) are both of legal age and natural-born Filipinos, Ocampo being a resident of Philadelphia, Pennsylvania, while Cabueños has established his residence at San Miguel Street, Poblacion, Municipality of Gandara, Samar.
- Plaintiff Cabueños is the attorney-in-fact of plaintiff Ocampo duly authorized to act in behalf of the latter for purposes of the instant case and the incidents related thereto, as shown by its copy, marked Annex “A” and hereto attached as integral part thereof.

THE COURT'S RULING

The appeal is IMPRESSED WITH MERIT.

There is no question that the caption and the body of the complaint alleged that the plaintiffs in this case are Ocampo and Cabueños, the latter for his own behalf and as attorney-in-fact of Ocampo. However, these are only allegations. These have little evidentiary weight and value, unless they are buttressed and proven by competent evidence. As plaintiffs, appellants must prove that they have material interest in the case, or a real or present substantial interest as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[19] One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party-in-interest, the case is dismissible on the ground of lack of cause of action.[20]

From the evidence adduced, We find that Cabueños has, personally, no material interest in the case. Although the complaint stated that he also owns the money sent to appellants, it is not supported by evidence. First, the two International Money Transfer Requests and the Time Deposit (Exhibits “A,” “B,” and “C,”) reflect that it was only Ocampo who made the dollar deposits to the account of Antonia. Second, the two demand letters (Exhibits “E” and “F”) sent by appellees' counsel to appellants also indicate that the dollar remittances were made only by Ocampo. Third, the computation made by Perez (Exhibit “D”) does not say anything that would suggest that Cabueños owned the funds sent to appellants. As We see it, Cabueños was not privy to the transaction between

Ocampo and appellants. Therefore, he cannot, by himself, maintain an action against the latter.[21]

Neither can he do so as Ocampo's attorney-in-fact. He failed to show competent proof that he was duly authorized to represent the latter in this suit. The SPA supposedly executed in his favor was not formally offered in evidence but only attached to the complaint.

A document or an article is valueless unless it is formally offered in evidence and the opposing counsel is given an opportunity to object to it and to cross-examine any witness called to present or identify it.[22] The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight.[23] Verily, the failure of appellees to formally offer the SPA is detrimental to their cause.

We could have granted appellees some leniency and considered the SPA attached to complaint even if it was not formally offered in evidence. We are, however, constrained not to do so for two reasons: (1) the said SPA was not identified, and; (2) it is merely a photocopy.

In *Mato v. Court of Appeals*, [24] the Supreme Court held that evidence, although not formally offered, may be admitted and considered provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded, and; (2) the same must have been incorporated in the records of the case. Records show that the SPA was not identified by appellees. It was not a part of the testimony of appellees' witnesses. Thus, it cannot be considered by this Court.

We likewise note that the SPA attached to the complaint was merely a photocopy. The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.[25] In this case, there was no showing that the original SPA was lost or destroyed, thus, the photocopy of the SPA is inadmissible in evidence.

Not being duly established in evidence, the SPA cannot be used by Cabueños to represent Ocampo in the legal action against appellants.[26]

We cannot gloss over the issue of the defect in the SPA, as this was questioned by appellants early on. Appellees' contention that appellants raised this for the first time in this appeal is belied by the records. In their answer, appellants denied the SPA's truthfulness and veracity. Appellees could have put the matter to rest by simply presenting the original SPA during trial but they did not. This raises a lot of question, foremost of which is whether Cabueños was indeed authorized by Ocampo to institute this suit. We can never know for sure because the original SPA was not adduced in evidence, but one thing is certain, their failure to do so is fatal to their cause. In *Heirs of Medina v. Natividad*, [27] the Supreme Court citing *Lopez v. Court of Appeals*, [28] ruled that a defect in an SPA is not merely a technical defect that can be brushed aside in the interest of substantial justice. It is a question of jurisdiction. In the absence of valid SPA, jurisdiction over the person of the real party-in-interest (i.e., Ocampo) was never acquired by the RTC. As a result, the proceedings in the RTC is null and void ab initio.[29]

In sum, We find that personally, Cabueños, is not a real party-in-interest. The evidence adduced shows that only Ocampo owns the funds sent to appellants. Withal, Cabueños does not have the authority to pursue the case in behalf of Ocampo. The original SPA evidencing such authority was not presented, identified and formally offered during trial. The RTC, therefore, did not acquire jurisdiction over Ocampo's person. All of these means that this case was not filed by the real party-in-interest (Ocampo) or by one duly authorized by said party, hence,

dismissible for lack of cause of action.[30]

With the foregoing disquisition, We find it unnecessary to discuss the other issues raised by appellants.

WHEREFORE, the appeal is GRANTED. The assailed July 11, 2008 Decision is SET ASIDE. The complaint filed by plaintiff-appellee against defendants-appellants is DISMISSED.

SO ORDERED.

Ingles[*], and Lopez, JJ., concur.

[*] Caption based on the assailed Decision, records, p. 733. The Caption in the complaint states: “Marian C. Ocampo and Ariel T. Cabueños (in his own behalf and as attorney-in-fact of Marian C. Ocampo,” see records, p. 1.

[*] Acting Chairperson, in lieu of Justice Edgardo delos Santos (who is on wellness leave), per Office Order No. 13-14-GTI dated June 14, 2014.

[1] Records, p. 733.

[2] Socorro Tan Cabueños, appellees’ mother is the sister of Cresencio Tan, the husband of appellant Antonia and father of appellant Cresanalyn.

[3] Based on the exchange rate then prevailing.

[4] Records, p. 56.

[5] Records, p. 473.

[6] Exhibit “A,” Records, p. 475.

[7] Exhibit “B,” Records, p. 476.

[8] Exhibit “C,” Records, p. 477.

[9] See Formal Offer of Evidence, records, p. 473.

[10] Exhibit “D,” Records, p. 479.

[11] Exhibits “E” and “F,” Records, p. 480, p. 481.

[12] See Rollo, p. 79.

[13] Records, p. 533.

[14] Records, p. 578. Note: The order denying appellants’ demurrer to evidence was affirmed with finality by the Supreme Court on June 13, 2007, see records, p. 707.

[15] Records, p. 615.

[16] i.e., November 8, 2004 (see Records, p. 615, 637, 625, 638 and 663) and July 1, 2008 (see Records, p. 712, 713 and 715 and 727).

[17] Records, p. 724.

[18] Records, p. 771.

- [19] Quisumbing v. Sandiganbayan (Fifth Division), et al., G.R. No. 138437, November 14, 2008.
- [20] Carlos v. Sandoval, et al., G.R. No. 179922, December 16, 2008.
- [21] See BPI Family Bank v. Buenaventura, et al., G.R. No. 148196, September 30, 2005.
- [22] Spouses Ong v. Court Of Appeals, et al., G.R. No. 117103, January 21, 1999.
- [23] Westmont Investment Corporation v. Francia, et al., G.R. No. 194128, December 07, 2011.
- [24] 320 Phil. 344 (1995).
- [25] Philippine Banking Corporation v. Court Of Appeals, et al., G.R. No. 127469, January 15, 2004.
- [26] Heirs of Medina v. Natividad, G.R. No. 177505, November 27, 2008.
- [27] See Heirs of Medina, supra.
- [28] G.R. No. 77008, December 29, 1987.
- [29] See Heirs of Medina, supra.
- [30] See Heirs of Medina, supra; See also Goco, et al. v. Honorable Court Of Appeals, et al., G.R. No. 157449, April 06, 2010.

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