

MIRIAM L. MAGLANA, PLAINTIFF-APPELLEE, VS. MANUEL S. SANTAMARIA, DEFENDANT-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

This is an appeal under Rule 41 of the Rules of Court filed by defendant-appellant to assail the February 13, 2009 Decision[1] of the Regional Trial Court of Davao City, Branch 14,[2] which granted plaintiff-appellee's complaint in Civil Case No. 26,852-08 for Recovery of Possession of Real Property, of Owner's Transfer Certificate(s) of Title, Damages and Attorney's Fees. The assailed decision decreed thus:

WHEREFORE, Judgment is rendered in favor of the plaintiff ordering the defendant to:

Surrender to the plaintiff the Owner's Duplicate copy of titles as well as turn over the physical possession of the following lots/lands:

- 1) OCT No. P-1050
- 2) TCT No. T-4405
- 3) TCT No. T-61854
- 4) TCT No. T-23854
- 5) TCT No. T-7370
- 6) TCT No. T-68479
- 7) TCT No. P-979
- 8) TCT No. T-68480
- 9) OCT No. T-4030
- 10) TCT No. T-41637

No pronouncement as to attorney's fees. Cost de Officio.

SO ORDERED.

The Antecedents

On April 3, 1966, plaintiff-appellee Miriam L. Maglana and defendant-appellant Manuel S. Santamaria were married at Ellinwood-Malate Church, Malate, Manila.[3] They were then blessed with four children, namely, Matthew Constancio, Michael Luke, Mark Apollo, and Manuel John, Jr., all surnamed Maglana Santamaria.

Sometime in 1980, appellee and appellant were separated de facto. A legal separation case was subsequently filed by appellee but it was denied by the trial court.[4] Consequently, an annulment case was filed by appellee and this time, it was granted by the trial court on August 8, 2001 declaring their marriage as null and void.[5]

In the meantime, or on October 24, 1989, appellee executed a duly notarized document denominated as "Irrevocable General Power of Attorney"[6] (hereafter, IGPA) constituting appellant as her true and lawful attorney-in-fact, to do and perform the following acts and things:

- To sell, transfer and convey and to take control, management and full administration of the following properties:

(a) Two (2) parcels of Agricultural land and one (1) residential lot, situated at Barrio Lagao, Municipality of Buayan, Province of Cotabato, covered by Transfer Certificate of Title No. T-4405 and containing an area of Four Hundred Ninety Five (495) square meters, more or less, Agricultural land situated at Barrio Batotitic, Municipality of General Santos, Cotabato covered by Original Certificate of Title No. OCT-(V-20698) (P-8613) P-1050, containing an area of Eighty Three Thousand Three Hundred Thirty (83,330) square meters, more or less;

(b) One (1) residential lot, containing an area of 1,000 square meters, more or less, covered by Transfer Certificate of Title No. T-61854 situated at Bucana, Davao City;

(c) One (1) Commercial lot located at Panabo, Davao del Norte (Lot of Bulalio Amanio) per Transfer Certificate of Title No. TCT-23854, containing an area of 450 square meters, more or less;

(d) One (1) Commercial lot containing an area of 2,000 square meters located at Mati, Davao Oriental and covered by Transfer Certificate of Title No. 7370;

(e) Lot of Bartolome Amoguis at Bayabas, Guinga, covered by Original Certificate of Title No. OCT-979;

(f) Lot covered by Transfer Certificate of Title No. TCT No. TCT-T-68479 situated at Davao City and containing an area of 132,180 square meters, more or less;

(g) Lot covered by Transfer Certificate of Title No. TCT-68480 situated at Guianga, Davao City, containing an area of 180,298 square meters, more or less;

(h) Lot covered by Original Certificate of Title No. OCT-P-4030 situated at Barrio Bato, Davao City, containing an area of 16,664 square meters, more or less;

(i) Lot covered by Transfer Certificate of Title No. TCT-T-41637 situated at Guianga, Davao City, containing an area of ____ square meters, more or less.

(2) To ask, demand, sue for, recover, collect any and all sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, and other things of value of whatever nature or kind as may now be or may hereafter become due, owing, payable or belonging to me, and to have, sue, and to take any and all lawful ways and means for the recovery thereof by suit, attachment, compromise or otherwise;

(3) To make, sign, execute, and deliver contracts, documents, agreements, and other writings of whatever nature or kind, with any and all third persons, concerns, or entities, upon terms and conditions acceptable to my said attorney;

(4) To delegate in whole or in part any or all of the powers herein granted or conferred, by means of an instrument in writing in favour of any third person or persons whom my said attorney may select;

(5) To do all other acts as may effectuate the powers herein granted.

HEREBY GIVING AND GRANTING unto my said attorney full power and authority whatsoever requisite or necessary or proper to be done in and about the premises as fully to all intents and purposes as I might or could lawfully do if personally present, with power of substitution and revocation, and hereby, ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done under and virtue of these presents.

x x x x.

Appellee nonetheless alleged that the IGPA was executed with the verbal agreement between them that appellant will give a monthly support to their children in the amount of not less than Ten Thousand Pesos (P10,000.00)

from the proceeds of the properties. Consequently, the titles of the properties subject of the IGPA were turned over by appellee to appellant and the same were duly acknowledged by appellant's counsel.[7] However, she likewise alleged that in the meantime, appellant failed to comply with their verbal agreement and refused to give support to their children despite demands and reminders. She further alleged that appellant even conveyed a portion of one of the properties subject therein without giving a single centavo to their children. She likewise discovered that appellant has a live-in partner with whom appellant has three (3) children and with whom appellant supported out from the proceeds and fruits of the properties subject of the IGPA.

Thus, when appellant refused to heed her demands for the return of the possession of the properties, the proceeds thereof and the certificates of titles, she was forced to revoke the IGPA by executing a duly notarized document denominated as the "Revocation of General Power of Attorney"[8] dated February 27, 1998.

Consequently, on October 14, 1998, appellee filed a complaint[9] against appellant for Recovery of Possession of Real Property, of Owner's Transfer Certificate(s) of Title, Damages and Attorney's Fees with prayer for the issuance of a preliminary injunction before the Regional Trial Court (RTC) of Davao City docketed as Civil Case No. 26,852-08. Appellee prayed that before the trial on merits, an injunctive writ be issued prohibiting and enjoining appellant from selling, mortgaging or alienating any of the properties covered by the general power of attorney. Likewise, after trial on the merits, a permanent injunction be issued and that appellant be ordered to return to her the owner's copy of OCT No. P-1050, TCT No. T-4405, TCT No. T-61854, TCT No. T-23854, TCT No. T-7370, TCT No. T-68479, OCT No. P-979, TCT No. 68480, OCT No. P-4030, and TCT No. T-41637 within five (5) days from receipt of such order, otherwise the Register of Deeds where the properties are located be ordered to cancel the outstanding owner's copy and issue a new one to be delivered to appellee or her representative. Appellee further prayed for moral damages in the amount of P200,000.00, exemplary damages of P10,000.00, attorney's fees of P50,000.00 plus appearance fee of P1,000.00, and that appellant be ordered to pay the cost.

On December 14, 1998, appellant filed his answer with special and affirmative defenses.[10] Appellant, in gist, denied the allegations of appellee and argued, among others, that appellee has no cause of action against him and appellee has no more right to claim the properties subject of the IGPA. He alleged that the IGPA was executed by appellee in his favor in order to assuage his wounded feelings because he actually filed a bigamy case against appellee and while the case was pending, appellee offered him the complete management, administration and even the right to sell, transfer and convey to third party the remaining properties subject of the IGPA and in exchange he will execute an affidavit of desistance for the dismissal of the bigamy case. This notwithstanding, some of the properties subject of the IGPA were already surreptitiously mortgaged by appellee and used to secure a loan contracted by appellee alone and to which the latter failed to pay. Had it not through the intercession of his father, the properties had been long foreclosed by the bank. Likewise, some of the properties were already sold by appellee without his consent and the proceeds thereof which amounted to more than P100,000,000.00 were just wasted by appellee without reserving some amounts necessary for the future of their children.

Hence, appellant prayed that the petition be dismissed and appellee be ordered to pay him instead the sum of P500,000.00 as attorney's fees plus, P1,000.00 per court appearance, P2,500,000.00 as moral damages, P1,000,000.00 as exemplary damages, P10,000.00 as actual damages, and the cost of suit.

After due proceedings, the court a quo rendered the assailed decision in favor of appellee ordering appellant to return the possession and copies of the certificates of title of the properties subject of the IGPA.

Aggrieved, appellant filed the present appeal.

However, pending resolution of the instant appeal, appellee Miriam L. Maglana passed away on October 19, 2009

and she was substituted by her children, namely, Matthew Constancio, Michael Luke, Mark Apollo, and Manuel John, Jr., all surnamed Maglana Santamaria and Ivy Lois Maglana Lardizabal. In the present appeal, appellee's children are hereby represented by Matthew Constancio.[11]

Assignment of Errors

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE IRREVOCABLE POWER OF ATTORNEY (EXHS. 1 AND B) ARE VALID AND SUBSISTING AND EFFECTIVE UNTIL THE PRESENT.

II

THE TRIAL COURT ERRED IN FINDING THAT THE PROPERTIES DESCRIBED AND MENTIONED IN THE IRREVOCABLE POWER OF ATTORNEY ARE PARAPHERNAL PROPERTY (sic) OF PLAINTIFF-APPELLEE, AND NOT CONJUGAL PROPERTY (sic) OF SPOUSES PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT.

III

THE TRIAL COURT ERRED IN ORDERING PLAINTIFF-APPELLANT (SIC) TO SURRENDER THE OWNER'S DUPLICATE COPY OF THE TITLES AS WELL AS THE PHYSICAL POSSESSION OF THE LOTS MENTIONED IN THE IRREVOCABLE POWER OF ATTORNEY.

This Court's Ruling.

The appeal is partly meritorious.

Appellant discussed the three assigned errors jointly. He contends that the agency created under the IGPA is an agency coupled with interest because a bilateral contract depends upon it or that it is a means of fulfilling the obligations already contracted. As such, it cannot be revoked by appellee unilaterally. He argues that the IGPA was executed by appellee in his favor in order that he will execute in exchange an affidavit of desistance so that the bigamy case he filed against appellee will be dismissed. Likewise, the IGPA was executed in lieu of a deed of transfer of the ownership of the subject lands because he is an American citizen and he is not allowed to own in his name a vast tract of land. Appellee in executing the agreement intends that he and their children will enjoy the properties in perpetual usufruct, or even encumber and sell said properties. Thus, the unilateral revocation of the IGPA by appellee, which copy of the revocation he did not receive, was null and void, invalid and of no legal effect. Appellant further contends that the court a quo erred in ordering the return of the properties subject of the IGPA without revoking the agreement. In fact, there was no allegation in appellee's complaint or a cause of action of appellee on the matter of revocation of said IGPA and there was no prayer in the complaint asking the court for the revocation of the said agreement.

Moreover, appellant posits that there is no merit to appellee's assertion that the reason why appellee wanted to revoke the agreement was because he failed to comply with their verbal agreement to give monthly support to their children. He argues that this verbal agreement cannot be admitted in evidence because appellee herself testified that while this verbal agreement was one of the conditions in the execution of the IGPA, yet, this condition was not integrated or incorporated therein. He further argues that appellee did not even complain to her lawyer before signing the document that this condition was not stated in the document. At most, the allegation on the verbal agreement was only fabricated by appellee in order that she could execute the revocation of the IGPA.

Furthermore, some of the properties which the court a quo directed him to return the possession to appellee were

actually declared as conjugal properties by the trial court in the prior legal separation case docketed as Civil Case No. 15,312 and which decision had already attained finality. One of the properties declared as conjugal and which is also subject of the IGPA is the land located at Bato, Toril, Davao City covered by TCT No. 4030 containing an area of 16,006 hectares and which under the law should be administered by him as the husband of appellee. As such, it was erroneous for the court a quo to order the return thereof in the assailed decision because appellee has no more cause of action against the said property, it being barred by prior judgment or *res judicata*. Besides, appellee was not able to prove by preponderance of evidence that these properties are her paraphernal properties considering that under the law, all properties acquired by the spouses during their marriage are presumed conjugal properties. Considering that the properties mentioned under the IGPA were acquired during the existence of their marriage, the same were presumed conjugal properties. Hence, it was erroneous on the part of the court a quo to order him to surrender the possession of the said properties and deliver the corresponding certificates of titles to appellee.

Appellant's contentions are partly tenable.

At the outset, it should be emphasized that after a thorough and judicious review of the records of the case, we find that the crux of the present controversy hinges only on the propriety of the court a quo's findings that the subject document denominated as the "Irrevocable General Power of Attorney" (IGPA) was already validly revoked on February 27, 1998 upon the execution by the late appellee Miriam L. Maglana of the duly notarized document denominated as "Revocation of General Power of Attorney"[12] and accordingly, the properties subject therein should be returned by appellant to appellee. Thus, we deemed it appropriate to limit our discussion on this issue and we will no longer delve on the other issue raised by appellant particularly on the nature of the properties involved – on whether the said properties are paraphernal properties of appellee or these are conjugal properties of appellant and appellee and appellant is therefore entitled to the possession thereof.

It should be noted that the issue on the nature of the properties was not squarely raised by appellee before the court a quo although the court a quo made a determination on the nature of the properties subject of the present controversy. Notwithstanding the findings of the court a quo, we deemed it inappropriate to rule on the same for lack of sufficient evidence which will clearly establish the nature of the properties. Settled is the rule that the nature of a property – whether conjugal or paraphernal – is determined by law and not by the will of one of the spouses. Thus, no unilateral declaration by one spouse can change the character of a conjugal property.[13]

It is worth noting also that appellant and appellee were married in 1966 before the Family Code took effect on August 3, 1988. Accordingly, all transactions and conveyances made during the existence of their marriage and before the effectivity of the Family Code are governed by the New Civil Code. Article 160 of the New Civil Code provides that "all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." [14] In *Spouses Go v. Yamane*, [15] it was elucidated that as a *conditio sine qua non* for the operation of this article in favor of the conjugal partnership, the party who invokes the presumption must first prove that the property was acquired during the marriage. In other words, the presumption in favor of conjugality does not operate if there is no showing of when the property alleged to be conjugal was acquired. Moreover, the presumption may be rebutted only with strong, clear, categorical and convincing evidence. There must be strict proof of the exclusive ownership of one of the spouses, and the burden of proof rests upon the party asserting it.

In this case, there is nothing in the records to prove that the properties under the IGPA are indeed conjugal properties of appellant and appellee, or that these are paraphernal properties of appellee. Neither appellant nor appellee presented evidence to show that these properties are conjugal or paraphernal. Thus, for lack of evidence, we will refrain from making any determination on the nature of the properties. Besides, the nature of appellee's

complaint before the court a quo is basically for recovery of possession and of the certificates of titles of the properties subject of the IGPA and not for the separation and settlement of the conjugal properties of appellant and appellee. Accordingly, the determination of the nature of the properties involved will be immaterial in this case which only hinges on the propriety of the revocation of the IGPA.

Now on the main. In the case at bar, it should be noted that while the subject notarized document is denominated as "Irrevocable General Power of Attorney," yet, a perusal thereof reveals that there are specific authorities and powers stated therein and bestowed by appellee to appellant such as the authority to sell, transfer and convey certain properties to third persons. Apparently, these acts and transactions vested by appellee in favor of appellant under the IGPA are couched not only in general terms and are not just mere acts of administration but it actually includes act of strict dominion. Thus, the subject IGPA is actually a Special Power of Attorney albeit it was worded as "General Power of Attorney."

Article 1868 of 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.

From the foregoing provision, it is clear that in a contract of agency, a person, the agent, binds himself to represent another, the principal, with the latter's consent or authority. Thus, an agency is based on representation, where the agent acts for and in behalf of the principal on matters within the scope of the authority conferred upon him.[16] Such "acts have the same legal effect as if they were personally done by the principal. By this legal fiction of representation, the actual or legal absence of the principal is converted into his legal or juridical presence." [17]

In *Rallos v. Felix Go Chan & Sons Realty Corporation*, [18] the Supreme Court explained the nature of an agency and spelled out the essential elements thereof, viz:

Out of the above given principles, sprung the creation and acceptance of the relationship of agency whereby one party, called the principal (mandante), authorizes another, called the agent (mandatario), to act for and in his behalf in transactions with third persons. 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.

Agency is basically personal, representative, and derivative in nature. The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit se.* "He who acts through another acts himself."

Corollarily, a contract of agency is generally revocable as it is a personal contract of representation based on trust and confidence reposed by the principal on his agent. As the power of the agent to act depends on the will and license of the principal he represents, the power of the agent ceases when the will or permission is withdrawn by the principal. Thus, generally, the agency may be revoked by the principal at will. However, an exception to the revocability of a contract of agency is when it is coupled with interest, i.e., if a bilateral contract depends upon the agency. The reason for its irrevocability is because the agency becomes part of another obligation or agreement. It is not solely the rights of the principal but also that of the agent and third persons which are affected. Hence, the law provides that in such cases, the agency cannot be revoked at the sole will of the principal.[19]

Moreover, in an agency coupled with interest, it is the agency that cannot be revoked or withdrawn by the principal due to an interest of a third party that depends upon it, or the mutual interest of both principal and agent. Art. 1927 of the Civil Code provides:

Art. 1927. An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

The Supreme Court is most instructive on this matter in *Lim v. Saban*[20] to wit:

Under Article 1927 of the Civil Code, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. Stated differently, an agency is deemed as one coupled with an interest where it is established for the mutual benefit of the principal and of the agent, or for the interest of the principal and of third persons, and it cannot be revoked by the principal so long as the interest of the agent or of a third person subsists. In an agency coupled with an interest, the agent's interest must be in the subject matter of the power conferred and not merely an interest in the exercise of the power because it entitles him to compensation. When an agent's interest is confined to earning his agreed compensation, the agency is not one coupled with an interest, since an agent's interest in obtaining his compensation as such agent is an ordinary incident of the agency relationship. (Italics added.)

In the present case, a thorough reading of the IGPA reveals that it is not a contract of agency coupled with interest; hence, it could be revoked by will of the principal or appellee in this case. Mere allegation and claim that the agency is coupled with interest is not enough. In what does such interest consist must be stated in the power of attorney.[21] Here, nothing is stated and could be inferred from the wordings and terms of the subject agency that it is coupled with interest. For one, it was not established for the mutual benefit of appellee as the principal and appellant as the agent or for the interest of appellee and of a third person. Likewise, it was not clearly shown that a bilateral contract depends upon it. A bilateral contract contemplates reciprocity of obligations or that it consists of mutual promises made in exchange for each other by each of the two contracting parties, such that, in bilateral contract, there are mutual rights and there are mutual duties.[22] Such however, is not the case at bar.

While appellee testified that the underlying reason or consideration for the execution of the IGPA is for the appellant to give a monthly allowance in the sum of Ten Thousand Pesos (P10,000.00) to their children,[23] yet, she herself admitted that this main consideration was not incorporated in the IGPA. While appellee's reason of non-incorporation of the condition was given credence by the court a quo, yet, we nonetheless find this reason implausible. If indeed this is the main consideration for the execution of the IGPA, it should have been incorporated therein, if not, at least it could have been inferred from its terms. Moreso, other than the bare allegation of appellee that she made verbal demands upon appellant to pay the P10,000.00 monthly support, no other evidence is presented by appellee to prove such agreement and demand. On the same vein, appellant asserted that the main reason for the execution of the IGPA by appellee in his favor was for him to execute an affidavit of desistance so that the bigamy case he filed against appellee be dismissed. However, this was not sufficiently proved and substantiated by appellant. In fact, this was even denied by appellee. This also could not be inferred from the wordings and terms of the IGPA.

Section 9 of Rule 130 of the Rules of Court provides:

Section 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

Likewise, in the case of *Mercado v. Allied Banking Corporation*,^[24] it was explained thus:

In cases where the terms of the contract are clear as to leave no room for interpretation, resort to circumstantial evidence to ascertain the true intent of the parties, is not countenanced. As aptly stated in the case of *JMA House, Incorporated v. Sta. Monica Industrial and Development Corporation*,^[25] thus:

[T]he law is that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. When the language of the contract is explicit, leaving no doubt as to the intention of the drafters, the courts may not read into it [in] any other intention that would contradict its main import. The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule on liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships. The true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.

Equally relevant is the rule that a power of attorney must be strictly construed and pursued. The instrument will be held to grant only those powers which are specified therein, and the agent may neither go beyond nor deviate from the power of attorney. Where powers and duties are specified and defined in an instrument, all such powers and duties are limited and are confined to those which are specified and defined, and all other powers and duties are excluded. This is but in accord with the disinclination of courts to enlarge the authority granted beyond the powers expressly given and those which incidentally flow or derive therefrom as being usual and reasonably necessary and proper for the performance of such express powers.

Even the commentaries of renowned Civilist Manresa^[26] support a strict and limited construction of the terms of a power of attorney:

The law, which must look after the interests of all, cannot permit a man to express himself in a vague and general way with reference to the right he confers upon another for the purpose of alienation or hypothecation, whereby he might be despoiled of all he possessed and be brought to ruin, such excessive authority must be set down in the most formal and explicit terms, and when this is not done, the law reasonably presumes that the principal did not mean to confer it.

Thus, in the present case, it was neither established nor it could be inferred from the wordings and terms of the IGPA that the underlying consideration for the execution thereof was the monthly allowance imposed by appellee to appellant or the execution of the affidavit of desistance. There was likewise no evidence to support those allegations that such were the underlying consideration for the execution thereof. As such, it was not clearly shown by clear and substantial evidence that a bilateral contract depends on the contract of agency created between appellee and appellant or the agency was created for the fulfilment of an obligation already contracted or the agency was for the benefit of a third person. Thus, it could not be said that the agency under consideration is one coupled with interest. As such, the IGPA could be unilaterally revoked and in this case, it was validly revoked upon the execution of appellee of the duly notarized document denominated as "Revocation of General Power of Attorney" on February 27, 1998.

Even conceding that the IGPA was not validly revoked on February 27, 1998 with the execution of the “Revocation of the General Power of Attorney” by appellee, yet, upon the death of appellee, the principal, on October 19, 2009, the contract of agency under litigation is nevertheless extinguished.

Settled is the rule that an agency is extinguished by the death of the principal.[27] The only exception where the agency shall remain in full force and effect even after the death of the principal is when it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor.[28]

With our foregoing disquisition, the contract of agency created between appellee and appellant is not coupled with interest. Nowhere can we infer from the stipulations therein that it was created for the common interest of appellee and appellant. Neither was there any mention that it was for the benefit of a third person who has accepted the stipulation in his favor.[29] Hence, not therefore falling under the exception, the IGPA was extinguished upon the death of appellee.

However, notwithstanding the foregoing, since the IGPA was already validly revoked or extinguished, the court a quo was correct in ordering appellant to return the possession and the copies of the certificates of title of the properties subject of the IGPA. However, it should be stressed that if there were properties that were already disposed or transferred by appellant to third person during the existence and effectivity of the IGPA, those properties should not be ordered returned to appellee. Appellant is deemed in good faith in disposing any of the subject properties during the effectivity of the IGPA because such act is within his powers under the IGPA and appellant is deemed to have consented to the sale of the properties, if any.

As a final note however, it should be emphasized that the resolution of this appeal does not preclude appellant from pursuing, if so minded, in an appropriate action the determination and recovery of his share in the conjugal partnership, if any, considering that the resolution of the present controversy is limited only to determination of the propriety of the revocation of the IGPA. This is also in line with the fact that as manifested by appellee’s children, there is a pending case for the settlement of the estate of the late appellee Miriam L. Maglana among them as children and heirs of appellee and the said settlement case is in the meantime held in abeyance pending resolution of the present case.

WHEREFORE, premises considered, the instant appeal is **PARTIALLY GRANTED**. The assailed February 13, 2009 Decision of the Regional Trial Court of Davao City, Branch 14, in Civil Case No. 26,852-08, is hereby **AFFIRMED** with the **MODIFICATION** that only those properties covered by the Irrevocable General Power of Attorney that are still in the possession of appellant should be returned to appellee.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Original Records, pp. 225-227.

[2] Penned by Hon. George E. Omelio, Presiding Judge.

- [3] Exhibit “A” of Plaintiff-Appellee, Marriage Contract, Original Records, p. 99.
- [4] Exhibit “5” of Defendant-Appellant, Id., pp. 187-203.
- [5] TSN dated October 3, 2003, Id., pp. 223-224 & TSN dated May 11, 2006, Id., p. 540.
- [6] Exhibit “B” of Plaintiff-Appellee, Id., pp. 100-102.
- [7] Exhibit “D” of Plaintiff-Appellee, Id., pp. 104-105.
- [8] Exhibit “C” of Plaintiff-Appellee, Id., p. 103.
- [9] Id., pp. 1-3.
- [10] Id., pp. 17-21.
- [11] Motion for Substitution of Party, Rollo, pp. 41-44.
- [12] Exhibit “C” of Plaintiff-Appellee, Original Records, p. 103.
- [13] Spouses Go v. Yamane, G.R. No. 160762, May 3, 2006.
- [14] The provision is reproduced in Article 116 of the Family Code, which states: “All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.”
- [15] G.R. No. 160762, May 3, 2006.
- [16] Id., Art. 1881.
- [17] Siredy Enterprises, Inc. v. Court of Appeals, 437 Phil. 580, 591 (2002).
- [18] 171 Phil 222 (1978); cited in Spouses Vilorio v. Continental Airlines, Inc., G.R. No. 188288, January 16, 2012.
- [19] Republic v. Evangelista, G.R. No. 156015, August 11, 2005.
- [20] G.R. No. 163720, December 16, 2004.
- [21] Del Rosario v. Abad, 104 Phil. 648, cited in De Leon & De Leon, Jr., Comments And Cases On Partnership, Agency And Trusts 636 (5TH ED., 2002).
- [22] Corbin On Contracts, One Volume Edition, West Publishing Co., 1952:156-7. CH. 1 § 21, P. 31; cited in the concurring opinion of Associate Justice Bersamin in G.R. Nos. 201112, 201121, 201127, & 201413.
- [23] TSN dated February 8, 2001, Original Records, p. 360.
- [24] G.R. No. 171460, July 24, 2007.
- [25] G.R. No. 154156, 31 August 2006, 500 SCRA 526.
- [26] Vol. II, p. 60.
- [27] New Civil Code, Article 1919 (3).
- [28] New Civil Code, Article 1930.
- [29] Sarsaba v. de Te, G.R. No. 175910, July 30, 2009.

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