

**PER FYLLINGEN, PLAINTIFF-APPELLEE, VS. CARITAS HEALTH SHIELD, INC., REPRESENTED BY ITS PRESIDENT GEOFFREY M. MARTINEZ, BRANCH MANAGER VIRGILIO MOEL CALINGASAN, HEALTH COUNSELOR ...**

Ponente: INTING, J.

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**INTING, J.:**

This is an APPEAL[1] filed under Rule 41 of the Rules of Civil Procedure assailing the Decision[2] dated July 29, 2011 of the Regional Trial Court, Branch 41, Cagayan de Oro City in Civil Case No. 2007-215 for "Specific Performance and Damages".

The facts of the case are as follows:

Plaintiff-appellee Per Fyllingen is a Norwegian citizen, a resident alien, and a resident of Cagayan de Oro City for more than ten (10) years already. Defendant-appellant Caritas Health Shield, Inc. (Caritas for brevity) is a domestic corporation organized in accordance with the Philippine laws. It is a health maintenance organization (HMO) engaged in selling health and hospitalization plans.

Fyllingen is a member of Caritas enrolled in the latter's "Expanded Health Care Program Agreement" under the following contracts: a) Contract No. E101-1029984[3] issued and with effectivity on July 11, 2001 with a maturity of 6 years and a contract price of P189,480.00; b) Contract No. E102-1125305[4] issued and with effectivity on November 28, 2002 with a maturity of 6 years and a contract price of P196,680.00; and c) Contract No. E204-1223150[5] issued and with effectivity on March 19, 2004 with a maturity of 10 years and a contract price of P194,800.00.

Fyllingen alleged that he has been regularly remitting his quarterly payments for all the aforementioned contracts to Caritas through its designated agents and health counselors Analyn Lata Alboladora and Ruth G. Beja.

Sometime on March 27, 2007 up to April 19, 2007, Fyllingen was hospitalized at Cebu Doctor's University Hospital on account of a heart illness where he was operated. He incurred hospital expenses amounting to P579,896.55 as evidenced by the patient's statement of account[6]. When Fyllingen came to know at the hospital that Caritas was not attending to his expenses, he wrote a letter[7] dated April 10, 2007 assuring Caritas that he had paid all the installments which are due on his contract. Caritas, through its AVP-Internal Audit Department Vicente R. Ramo, replied in a letter[8] dated April 19, 2007 by merely acknowledging Fyllingen's letter; and assured him that they "will look into the matter immediately". Caritas also forwarded to Fyllingen a copy of the Record of Payments on Policy Nos. E204-1223150 and E102-1125305 wherein it appeared that the latter's payment was only up to June 21, 2006 and June 13, 2006, respectively.

On May 22, 2007, Fyllingen sent another letter[9] to Caritas, with all the annexed documents, categorically stating that he had been regularly paying; and that he never failed to pay his quarterly dues. On June 22, 2007, a reply letter[10] was received by Fyllingen from a certain Raf M. Diaz, SAVP, Members Acct. Mgt. with the

information that the former's letter shall be forwarded to the Audit Department for evaluation. Thereafter, no word was heard from Caritas. This compelled Fyllingen to engage the services of a counsel who sent a final demand letter[11] dated June 28, 2007 addressed to Caritas's branch manager Virgilio Calingasan.

On July 4, 2007, Caritas through its Vice President of Medical Services Department Lauro Magbiray sent a reply letter informing Fyllingen that they are still in the process of evaluating the case. On July 24, 2007, Magbiray sent another letter[12] informing Fyllingen that Caritas have covered the confinement expenses with the remaining maximum benefit limit of P36,422.86 under Contract No. E-101-102-9984 but denying the claim under Contract Nos. E-102-1125305 and E-204-1223150 on the ground that the agreements are on a lapsed status.

On September 3, 2005, Fyllingen filed a Complaint[13] for specific performance and damages with the RTC. He alleged, inter alia, that Caritas had allowed defendants-appellants Analyn Alboladora and Ruth Beja to act for and its behalf and had allowed them to receive payments, thereby creating in the mind of plaintiff-appellee the impression that defendants-appellants Analyn Alboladora and Ruth Beja are its true representatives and agents. Hence, payments made to them are considered payments made to Caritas.

On November 22, 2007, Caritas filed a Motion to Dismiss[14] on the ground of improper venue. It was however denied by the RTC in its Order[15] dated January 21, 2007. In its Answer[16], Caritas countered, inter alia, that payments made by plaintiff-appellee under temporary/provisional receipts are not binding as specifically annotated in such receipts. What makes the payment binding on Caritas is the issuance of an official receipt. Plaintiff-appellee's fault and negligence are further compounded by the fact that the checks he issued were all payable to cash and not to Caritas. Caritas further argued that the health counselors who received plaintiff-appellee's payments are not its employees as they are independent contractors who earn commissions by selling Caritas health plan products.

The case was referred to the Philippine Mediation Center for mediation but no settlement was reached by the parties.

Subsequently, on April 8, 2008, an Omnibus Motion[17] was filed by plaintiff-appellee to implead Lorimer Beja as an additional defendant, and to admit amended complaint[18]. The RTC granted[19] the motion.

On July 29, 2011, the RTC rendered a Decision in favor of plaintiff-appellee, the dispositive portion of which provides:

WHEREFORE, premises considered, for proving his claim by preponderance of evidence, judgment is hereby rendered ordering the defendant Caritas Health Shield, Inc. to reimburse plaintiff the amount of P579,896.55 or a portion thereof as may be allowed under his three expanded Health Care Program Agreements (Contract No. E101-1029984; Contract No. E102-1125305 and Contract No. E204-1223150). Caritas is further ordered to pay plaintiff the sum of P50,000.00 as attorney's fees and the costs of the suit.

SO ORDERED.

Hence, the instant appeal by defendants-appellants raising the following assignment of errors[20]:

I.

THE TRIAL COURT ERRED IN HOLDING THAT THE PAYMENTS ALLEGEDLY MADE BY THE APPELLEE TO LORIMER BEJA, RUTH BEJA AND ANALYN ALBOLADORA BIND THE DEFENDANTS-APPELLANTS.

II.

THE TRIAL COURT ERRED IN HOLDING THAT AN AGENCY RELATIONSHIP EXISTED BETWEEN THE ABOVE-NAMED PERSONS AND THE DEFENDANTS-APPELLANTS.

III.

THE TRIAL COURT ERRED THAT DEFENDANTS-APPELLANTS, NOT THE PLAINTIFF, WERE NEGLIGENT.

IV.

THE TRIAL COURT ERRED IN HOLDING THAT PLAINTIFF HAS A CAUSE OF ACTION AGAINST THE DEFENDANTS-APPELLANTS.

V.

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S-APPELLANT'S CLAIM THAT VENUE WAS IMPROPERLY LAID.

### Our Ruling

The appeal is devoid of merit.

Defendants-appellants contend that it is clear from the facts of the case that the payments were not remitted to either defendants-appellants Caritas, Martinez or Calingasan, hence, no payment was in effect made to Caritas. They also ascribe negligence to plaintiff-appellee in paying in the form of checks payable to cash and not payable to Caritas.

It is also defendants-appellants' contention that there is no employer-employee relationship between the health counselors and Caritas and that they are only independent contractors who earn commissions by selling Caritas health plan products. They argue that the court a quo committed grave and serious error in holding that there was an agency relationship between them.

We do not agree.

Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency or agency by estoppel, has its origin from the law of agency.[21] It imposes liability, not as the result of the reality of a contractual relationship, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists. The concept is essentially one of estoppel and has been explained in this manner[22]:

"The principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. The question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.

In the instant case, We rule that the health counselors Analyn Alboladora, Ruth Beja and Lorimer Beja held themselves out as possessing the authority to receive payments from plaintiff-appellee on behalf of Caritas; and that Caritas sanctioned these acts.

First, no less than Virgilio Calingasan, as branch manager of Caritas, testified to the fact that the health counselors are allowed not only to sell health plan products but to receive payment for it as well. His testimony reads[23]:

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Q:

Based from the complaint in this case, according to the plaintiff that he gave his payments to the couple by the name of Beja, what can you say about that?

A:

Yes, I heard all the payments made by Mr. Fyllingen was given to the couple Beja.

Q:

Now, who are this couple?

A:

They are health counselors of Caritas.

Q:

Now, what is the first name of the husband?

A:

Lorimer Beja.

Q:

And what is the first name of the wife?

A:

Ruth Beja.

Q:

Now, they are health counselors of Caritas?

A:

Yes, Sir.

Q:

What are the functions to this health counselors?

A:

The function is to sell the products of Caritas and to collect payments.

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Calingasan also testified that he himself has not met plaintiff-appellee since he became a member of Caritas in 2002 because all of plaintiff-appellee's payments and transactions regarding his contracts are coursed through the Beja spouses as accredited health counselors on behalf of Caritas.[24] It appears then that the task of these health counselors was not limited to selling health plans of the company; they were also authorized to receive payments from the company's clients. Caritas, thus, entrusted them with funds belonging to the company. If indeed Caritas did not receive the payments made by plaintiff-appellee from June 19, 2006 and June 13, 2006 up to the time of plaintiff-appellee's hospitalization in March 2007, Caritas should have at least brought the fact of such non-payment to plaintiff-appellee's attention. After all, no less than Calingasan testified before the trial court that the commissions of these health counselors are paid in cash and the latter can get whatever commission they may have and remit only the net remittance[25]. This arrangement only means that most, if not all the time, payments were made through health counselors, who then turn over the net remittance to Caritas. The fact that no payment is reflected in plaintiff-appellee's account throughout the months mentioned should have forewarned Caritas on some irregularity.

Caritas also faults plaintiff-appellee in not informing them of the non-issuance of official receipts for the payments made from June 2006 to March 2007. It cited the "warning" contained in the provisional receipts which provides that the same "is not binding unless covered by official receipt" and that "if no O.R. Is received within 7 days, plaintiff-appellee should call Caritas".

We, however, do not find merit in such contention.

It is worth noting that from the time plaintiff-appellee became a member of Caritas, the former had been accustomed to the practice that the health counselors would only issue provisional receipts after collection and payment. These provisional receipts even bear the name and stamp of Caritas. The official receipts would only be delivered the next time these health counselors would again collect from plaintiff-appellee.[26] This has been the setup ever since and Caritas has not disputed nor corrected the process.

Furthermore, in several occasions wherein plaintiff-appellee had the chance to visit the office of Caritas, he noticed that defendant-appellant Lorimer had his own desk in the office.[27] This observation of plaintiff-appellee was never refuted by Caritas. This further bolstered plaintiff-appellee's belief that indeed Lorimer had the authority to act in behalf of Caritas.

All of the above circumstances lead to no other conclusion - the actions of Caritas mislead plaintiff-appellee into believing that the authority of herein health counselors to act in behalf of the company exists.

As regards the argument of Caritas that it is not liable to plaintiff-appellee because there is no employer-employee relationship between them and the health counselors, We find it baseless. For even if the health counselors are considered independent contractors, it is settled that a principal may still be liable for the acts of an independent contractor if the latter are "ostensible" agents of the former.[28] Furthermore, We agree with the ruling of the court a quo when it held that:

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In the first place, Caritas exercised significant control in the accreditation and acceptance of its health counselors. Health counselors who apply as such were required to submit their applications to the head office of Caritas before they were accepted. It is safe to assume that their applications were carefully scrutinized by Caritas who either accepted or rejected the applications. Thus, there is no doubt in the mind of the court that, if they were not employees of Caritas, Lorimer Beja, Ruth Beja and Alboladera were atleast its health counselors-agents.

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Our jurisdiction recognizes the concept of an agency by implication or estoppel. Article 1869 of the Civil Code reads:

ART. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Caritas is now estopped from saying that the acts of defendants-appellants do not bind them at all considering that the payments were allegedly never remitted to them. Indeed, all of Caritas' acts, taken as a whole, is tantamount to holding out to the public and creating an impression to the public that the health counselors act in their behalf. As expected, their clients, plaintiff-appellee being one of them, relied fully on these health counselors on the reasonable belief that such were being rendered by Caritas. Even with ordinary care and prudence, the act of Caritas in giving wide discretion to health counselors as regards the authority to sell and receive payment is more than enough for plaintiff-appellee to rely on such conduct.

It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.[29] In the case at bar, the circumstances yield a positive answer to the question.

Finally, defendants-appellants argue that the venue in the instant case was improperly laid since the parties in this case have previously agreed in writing that the venue for any legal action that may be filed in connection with the agreement shall be exclusively vested in the City of Manila.

We do not agree.

Defendants-appellants' reliance in the case of *PILTEL v. Tecson*[30] is misplaced. In that case, although the Mobile Service Agreement entered into by the parties was a standard contract made out by PILTEL, it was however declared valid by the Supreme Court since the contract was apparently accepted and signed by respondent. The Court added that respondent secured six (6) subscription contracts for cellular phones on various dates. It would be difficult to assume that, during each of those times, respondent had no sufficient opportunity to read and go over the terms and conditions embodied in the agreements.

In the instant case, the respective Expanded Health Care Agreements issued by Caritas to plaintiff-appellee clearly appeared to be prepared unilaterally by the company. It was an agreement issued by the latter after plaintiff-appellee's application was approved. On the face of the document, the only signatures appearing there belong to that of the authorized official and President of Caritas. Nowhere on the face nor on all pages of the agreement does the signature of plaintiff-appellee appear to signify his acquiescence especially to the stipulation regarding the venue of actions which were all written in very small fonts.

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify.[31] One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[32] While a contract of adhesion is not necessarily void and unenforceable, since it is construed strictly against the party who drafted it or gave rise to any ambiguity therein, it is stricken down as void and unenforceable or subversive of public policy when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing.[33]

Of the essence is the ascertainment of the parties' intention in their agreement governing the venue of actions between them. That ascertainment must be done keeping in mind that convenience is the foundation of venue regulations, and that that construction should be adopted which most conduces thereto.[34] Hence, the invariable construction placed on venue stipulations is that they do not negate but merely complement or add to the codal standards of Rule 4[35] of the Rules of Court.[36] In this case, it was the intention of Caritas, but not that of plaintiff-appellee, that any action arising from the agreement be exclusively filed in Manila. The philosophy on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the ends of justice[37], and considering the expense and trouble plaintiff-appellee, who is residing outside of Manila, would incur to prosecute a claim in Manila, he would most probably decide not to file the action at all.

WHEREFORE, the appeal is DENIED. The Decision dated July 29, 2011 of the Regional Trial Court, Branch 41, Cagayan de Oro City in Civil Case No. 2007-215 is AFFIRMED.

**SO ORDERED.**

[\*]Borja, (Chairperson), and Perez, JJ., concur.

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[\*] Designated Member vice J. Camello, per Raffle dated June 18, 2014

[1] Rollo, pp. 23-52

[2] Records, pp. 53-62, penned by Hon. Judge Jeoffre W. Acebido

[3] Records, p. 24

[4] Records, p. 25-26

[5] Records, pp. 27-28

[6] Records, pp. 29-41

[7] Records, p. 42

[8] Records, p. 43

[9] Records, pp. 44-50

[10] Records, p. 59

[11] Records, pp. 60-61

[12] Records, p. 64

[13] Records, pp. 1-9

[14] Records, pp. 82-85

[15] Records, p. 105

[16] Records, pp. 108-115

[17] Records, pp. 214-217

[18] Records, pp. 218-226

[19] Records, p. 273

[20] Rollo, pp. 27-28

[21] Professional Services, Inc. v. Agana, G.R. No. 126297, January 31, 2007

[22] Supra

[23] TSN, February 1, 2011, p. 6-7

[24] Supra, pp. 17-18

[25] TSN, February 1, 2011, p. 8

[26] TSN, February 5, 2009, pp. 4-5

[27] Supra, pp. 6-7

[28] Professional Services, Inc. v. Agana, G.R. No. 126297, January 31, 2007

[29] Professional Services, Inc. v. Court of Appeals, G.R. No. 126297, February 11, 2008

[30] G.R. No. 156966, May 7, 2004

[31] RCPI v. Verchez, G.R. No. 164349, January 31, 2006

[32] Supra

[33] Supra

[34] Unimasters Conglomeration, Inc. v. Court of Appeals, G.R. No. 119657, February 7, 1997

[35] SEC. 4. When Rule not applicable. — This Rule shall not apply.

(a) In those cases where a specific rule or law provides otherwise; or (b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

[36] Supra Note No. 34

[37] Supra, citing Sweet Lines, Inc. v. Teves, 83 SCRA 361, May 19, 1987

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