

**LIM SIOK HUEY, ET AL., PLAINTIFFS AND APPELLANTS, VS.
ALFREDO LAPIZ, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 12289. May 28, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is an action to recover damages amounting to P83,701.30 filed in the Court of First Instance of Laguna. The plaintiffs are Lim Siok Huey, Pua Yek Ben, Pua Chok Ben, Pua Sam Ben and Pua Go Kuan, the first being the surviving spouse and the last four the surviving children of Chua Pua Lun, represented by their counsel, and the defendants are Alfredo Lapid, Victorino Sapin, Vicente Reyes and Lazaro Limjuco. The damages are claimed by reason of the death of Chua Pua Lun as a result of a collision suffered by the jeepney in which he was a passenger.

Defendant Alfredo Lapid, the driver of the Jaguar jeepney, in answer to the complaint, alleged that the vehicle driven by him was hit by the Kapalaran bus which was driven by defendant Vicente Reyes due to the negligence of the latter, thereby causing the death of Chua Pua Lun who was a passenger of the jeepney. Defendant Victorino Sapin in turn alleged that he was not the owner of the jeepney driven by Lapid, while defendants Vicente Reyes and Lazaro Limjuco, the first as driver and the second as owner of the bus, alleged that the collision between the two vehicles was due to the negligence of Alfredo Lapid.

Plaintiffs Pua Sam Ben and Pua Go Kuan, being minors, the court, upon motion of their counsel, appointed Chua Pua Tarn, a brother of the deceased, as guardian ad litem to represent them in this case.

After trial, the court rendered decision "dismissing the complaint, defendant Lapid's cross-claim against defendants Reyes and Limjuco as well as the counterclaim of these last two named defendants against the plaintiffs and their cross-claim against defendants Lapid and Sapin," Plaintiffs appealed directly to this Court in view of the amount involved.

In dismissing the complaint, the trial court made the following pronouncement:

"Notwithstanding the above conclusion, the Court is however, of the opinion that the present action cannot be maintained not on the ground invoked by the defendants but on the theory that the plaintiffs have not authorized anyone to file the complaint against the defendants. While an attorney representing a client in a case pending in Court is presumed to be authorized for the purpose, nevertheless in the case under consideration, such presumption had been destroyed and overcome by the very evidence presented by counsel himself. The plaintiffs are all citizens and residents of Communist China and they have not communicated with anyone in the Philippines in connection with the filing of an action for damages in their behalf arising from the death of Chua Pau Lun. Chua Pua Tarn, who is the brother-in-law of the first plaintiff and uncle of the others, testified that the plaintiffs had not written to him nor had he communicated with them. The letters supposedly sent to Lim Ping Kok by his sister Lim Siok Huey (Exh. J) and his mother (Exh. K) did not contain any intimation much less of an authorization for the filing of a claim for damages in behalf of the widow and children of the deceased, Chua Pua Lun, against the parties responsible for his death. Under this situation, the Court has no other alternative but to dismiss the complaint on the ground that the evidence on record does not

show that the plaintiffs have authorized much less directed the commencement of the present action."

Appellants now contend that the trial court erred (1) in finding that plaintiffs, being residents of Communist China, have not authorized anyone to file the present case against the defendants; (2) in dismissing the complaint when the authority to prosecute the case stems from the appointment of Chua Pua Tarn as guardian ad litem of minors Pua Sam Ben and Pua Go Kuan; (3) in dismissing the case when the same could be considered as prosecuted by a negotiorum gestor and (4) in finding that there was no authority to file the case when such question was not raised in issue nor was evidence adduced on the point.

With regard to the first question, we find no error in the findings made by the trial court. Indeed, the same is supported by the record and the evidence. Thus, it appears that the plaintiffs who are the widow and children of the deceased Chua Pua Lun are all citizens and residents of Communist China and notwithstanding the fact that they have been informed of the death of the deceased, they have not sent any communication to anyone in the Philippines giving authority to take whatever action may be proper to obtain an indemnity for his death other than two letters supposedly sent to Lim Ping Kok by his sister Lim Siok Huey and his mother, which do not contain any intimation nor authorization for the filing of the present action. The most that they contain was an inquiry with regard to the progress of the case and the administration of the duck-raising business which the deceased left in the Philippines. Such certainly cannot be considered as an authority to the present counsel to file and prosecute the present case in behalf of the widow and children now residing in Communist China.

It should be noted that the present action was initiated by plaintiffs represented merely by their counsel and the question arose as to whether the latter had the proper authority to represent the former in view of the fact that they are all residents of a foreign country. And the question was properly raised in view of the rule that, while a lawyer is presumed to be properly authorized to represent any cause in which he appears, he may however be required by the court on motion of either party to produce his authority under which he appears (Section 20, Rule 127). Undoubtedly, the question was properly raised by counsel for the defendants as otherwise the trial court would not have given proper attention to the matter. Indeed, on this point, the trial court made this important comment: "While an attorney representing a client in a case pending in Court is presumed to be authorized for the purpose, nevertheless in the case under consideration, such presumption had been destroyed and come by the very evidence presented by counsel himself." (*Italics supplied*)

It is true that one Chua Pua Tain was appointed as guardian ad litem of two of plaintiffs who allegedly are minors to represent them in the prosecution of the present case, but while this representation may only benefit the minors, and not the other plaintiffs, yet the same would not suffice to meet the requirement of the rule which provides that every action must be prosecuted in the name of the real party in interest (Section 2, Rule 3). Again, we need hereto show that Chua Pua Tarn was authorized by the heirs abroad to act as such in behalf of the minors for it was in this belief that he was so appointed by the trial court. But when in the course of the trial it developed that he never had any communication with any of the heirs and much less received any authority from them either to prosecute this case or to act as such guardian in behalf of the minors, the trial court lost no time in disauthorizing him and considering his representation ineffective. Thus, on this point, the trial court said: "Chua Pua Tarn, who is the brother-in law of the first plaintiff and uncle of the others, testified that the plaintiffs had not written to him nor had he communicated with them. The letters supposedly sent to Lim Ping Kok by his sister Lim Siok Huey (Exh. J) and his mother (Exh. K) did not contain any intimation much less an authorization for the filing of the claim for damages in behalf of the widow and children of the deceased."

Nor can the claim that Chua Pua Tam can be considered as negotiorum gestor be entertained because in the present case there is need of express authority on his part to represent the minors by virtue of an express provision

of our Rules of Court. In negotiorum gestio no such authority is required.

The contention that the trial court considered the issue regarding the lack of authority on the part of counsel to represent plaintiffs in this case or of Chua Pua Tarn to act as guardian ad litem of the minors even if the same was not raised by any of the opposing parties or their counsel, cannot be entertained, it appearing that the same was expressly raised by defendants Reyes and Limjuco not only in the course of the trial but in their answer. Moreover, this flaw in the case of the plaintiffs was discovered by the court in the course of the trial in view of the evidence presented by the very counsel of plaintiffs. In view of such development, the trial court could not but take notice of the matter considering the prayer in defendants' answer that they be given "such reliefs as this Court may deem just and equitable in the premises."

Wherefore, the decision appealed from in so far as it dismisses the complaint is hereby affirmed, with costs against appellants.

Paras, C.J., Montemayor, Reyes, A., Labrador, Concepcion, Endencia, and Felix, JJ., concur.

CONCURRING

REYES, J. B. L., J.,

I concur, but with respect to the issue of negotiorum gestio my position is that the same can not exist where the authority of the alleged gestor is disputed. This quasi-contract presupposes that the gestor's authority is taken for granted by the persons with whom he deals, although in fact he has not been legally empowered by the one in whose behalf he presumes to act.

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