NOVEMBER 28, 2002

AMON TRADING CORPORATION AND JULIANA MARKETING, PETITIONERS, VS. HON. COURT OF APPEALS AND TRI-REALTY DEVELOPMENT AND CONSTRUCTION CORPORATION, RESPONDENTS,

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CHICO-NAZARIO, J.:

This is an appeal by certiorari from the Decision[1] dated 28 November 2002 of the Court of Appeals in CA-G.R. CV No. 60031, reversing the Decision of the Regional Trial Court of Quezon City, Branch 104, and holding petitioners Amon Trading Corporation and Juliana Marketing to be solidarily liable with Lines & Spaces Interiors Center (Lines & Spaces) in refunding private respondent Tri-Realty Development and Construction Corporation (Tri-Realty) the amount corresponding to the value of undelivered bags of cement.

The undisputed facts:

Private respondent Tri-Realty is a developer and contractor with projects in Bulacan and Quezon City. Sometime in February 1992, private respondent had difficulty in purchasing cement needed for its projects. Lines & Spaces, represented by Eleanor Bahia Sanchez, informed private respondent that it could obtain cement to its satisfaction from petitioners, Amon Trading Corporation and its sister company, Juliana Marketing. On the strength of such representation, private respondent proceeded to order from Sanchez Six Thousand Fifty (6,050) bags of cement from petitioner Amon Trading Corporation, and from Juliana Marketing, Six Thousand (6,000) bags at P98.00/bag.

Private respondent, through Mrs. Sanchez of Lines & Spaces, paid in advance the amount of P592,900.00 through Solidbank Manager's Check No. 0011565 payable to Amon Trading Corporation, and the amount of P588,000.00 payable to Juliana Marketing, through Solidbank Manager's Check No. 0011566. A certain "Weng Chua" signed the check vouchers for Lines & Spaces while Mrs. Sanchez issued receipts for the two manager's checks. Private respondent likewise paid to Lines & Spaces an advance fee for the 12,050 cement bags at the rate of P7.00/bag, or a total of P84,350.00, in consideration of the facilitation of the orders and certainty of delivery of the same to the private respondent. Solidbank Manager's Check Nos. 0011565 and 0011566 were paid by Sanchez to petitioners.

There were deliveries to private respondent from Amon Trading Corporation and Juliana Marketing of 3,850 bags and 3,000 bags, respectively, during the period from April to June 1992. However, the balance of 2,200 bags from Amon Trading Corporation and 3,000 bags from Juliana Marketing, or a total of 5,200 bags, was not delivered. Private respondent, thus, sent petitioners written demands but in reply, petitioners stated that they have already refunded the amount of undelivered bags of cement to Lines and Spaces per written instructions of Eleanor Sanchez.

Left high and dry, with news reaching it that Eleanor Sanchez had already fled abroad, private respondent filed this case for sum of money against petitioners and Lines & Spaces.

Petitioners plead in defense lack of right or cause of action, alleging that private respondent had no privity of

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contract with them as it was Lines & Spaces/Tri-Realty, through Mrs. Sanchez, that ordered or purchased several bags of cement and paid the price thereof without informing them of any special arrangement nor disclosing to them that Lines & Spaces and respondent corporation are distinct and separate entities. They added that there were purchases or orders made by Lines & Spaces/Tri-Realty which they were about to deliver, but were cancelled by Mrs. Sanchez and the consideration of the cancelled purchases or orders was later reimbursed to Lines & Spaces. The refund was in the form of a check payable to Lines & Spaces.

Lines & Spaces denied in its Answer that it is represented by Eleanor B. Sanchez and pleads in defense lack of cause of action and in the alternative, it raised the defense that it was only an intermediary between the private respondent and petitioners.[2] Soon after, though, counsel for Lines & Spaces moved to withdraw from the case for the reason that its client was beyond contact.

On 29 January 1998, the Regional Trial Court of Quezon City, Branch 104, found Lines & Spaces solely liable to private respondent and absolved petitioners of any liability. The dispositive portion of the trial court's Decision reads:

> Wherefore, judgment is hereby rendered ordering defendant Lines and Spaces Interiors Center as follows: to pay plaintiff on the complaint the amount of P47,950.00 as refund of the fee for the undelivered 5,200 bags of cement at the rate of P7.00 per bag; the amount of P509,600.00 for the refund of the price of the 5,200 undelivered bags of cement at P98.00 per bag; the amount of P2,000,000.00 for compensatory damages; as well as the amount of P639,387.50 as attorney's fees; and to pay Amon Trading and Juliana Marketing, Inc. on the crossclaim the sum of P200,000.00 as attorney's fees.[3]

Private Respondent Tri-Realty partially appealed from the trial court's decision absolving Amon Trading Corporation and Juliana Marketing of any liability to Tri-Realty. In the presently assailed Decision, the Court of Appeals reversed the decision of the trial court and held petitioners Amon Trading Corporation and Juliana Marketing to be jointly and severally liable with Lines & Spaces for the undelivered bags of cement. The Court of Appeals disposed-

> WHEREFORE, premises considered, the decision of the court a quo is hereby REVERSED AND SET ASIDE, and another one is entered ordering the following:
>
> Defendant-appellee Amon Trading Corporation is held liable jointly and severally with defendant-appellee Lines and Spaces Interiors Center in the amount of P215,600.00 for the refund of the price of 2,200 undelivered bags of cement.
>
> Defendant-appellee Juliana Marketing is held liable jointly and severally with defendant-appellee Lines and Spaces Interiors Center in the amount of P294,000.00 for the refund of the price of 3,000 undelivered bags of cement.
>
> The defendant-appellee Lines and Spaces Interiors Center is held solely in the amount of P47,950.00 as refund of the fee for the 5,200 undelivered bags of cement to the plaintiff-appellant Tri-Realty Development and Construction Corporation.
>
> The awards of compensatory damages and attorney's fees are DELETED.
>
> The cross claim of defendants-appellees Amon Trading Corporation and Juliana Marketing is DISMISSED for lack of merit.
>
> No pronouncement as to costs.[4]

Pained by the ruling, petitioners elevated the case to this Court via the present petition for review to challenge the Decision and Resolution of the Court of Appeals on the following issues:

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> - WHETHER OR NOT THERE WAS A CONTRACT OF AGENCY BETWEEN LINES AND SPACES INTERIOR CENTER AND RESPONDENT;
>
> - WHETHER OR NOT PETITIONERS AND RESPONDENT HAS PRIVITY OF CONTRACT.[5]

At the focus of scrutiny is the issue of whether or not the Court of Appeals committed reversible error in ruling that petitioners are solidarily liable with Lines & Spaces. The key to unlocking this issue is to determine whether or not Lines & Spaces is the private respondent's agent and whether or not there is privity of contract between petitioners and private respondent.

We shall consider these issues concurrently as they are interrelated.

Petitioners, in their brief, zealously make a case that there was no contract of agency between Lines & Spaces and private respondent.[6] Petitioners strongly assert that they did not have a hint that Lines & Spaces and Tri-Realty are two different and distinct entities inasmuch as Eleanor Sanchez whom they have dealt with just represented herself to be from Lines & Spaces/Tri-Realty when she placed her order for the delivery of the bags of cement. Hence, no privity of contract can be said to exist between petitioners and private respondent.[7]

Private respondent, on the other hand, goes over the top in arguing that contrary to their claim of innocence, petitioners had knowledge that Lines & Spaces, as represented by Eleanor Sanchez, was a separate and distinct entity from tri-realty.[8] Then, too, private respondent stirs up support for its contention that contrary to petitioners' claim, there was privity of contract between private respondent and petitioners.[9]

Primarily, there was no written contract entered into between petitioners and private respondent for the delivery of the bags of cement. As gleaned from the records, and as private respondent itself admitted in its Complaint, private respondent agreed with Eleanor Sanchez of Lines & Spaces for the latter to source the cement needs of the former in consideration of P7.00 per bag of cement. It is worthy to note that the payment in manager's checks was made to Eleanor Sanchez of Lines & Spaces and was not directly paid to petitioners. While the manager's check issued by respondent company was eventually paid to petitioners for the delivery of the bags of cement, there is obviously nothing from the face of said manager's check to hint that private respondent was the one making the payments. There was likewise no intimation from Sanchez that the purchase order placed by her was for private respondent's benefit. The meeting of minds, therefore, was between private respondent and Eleanor Sanchez of Lines & Spaces. This contract is distinct and separate from the contract of sale between petitioners and Eleanor Sanchez who represented herself to be from Lines & Spaces/Tri-Realty, which, per her representation, was a single account or entity.

The records bear out, too, Annex "A" showing a check voucher payable to Amon Trading Corporation for the 6,050 bags of cement received by a certain "Weng Chua" for Mrs. Eleanor Sanchez of Lines & Spaces, and Annex "B" which is a check voucher bearing the name of Juliana Marketing as payee, but was received again by said "Weng Chua." Nowhere from the face of the check vouchers is it shown that petitioners or any of their authorized representatives received the payments from respondent company.

Also on record are the receipts issued by Lines & Spaces, signed by Eleanor Bahia Sanchez, covering the said manager's checks. As Engr. Guido Ganhinhin of respondent Tri-Realty testified, it was Lines & Spaces, not petitioners, which issued to them a receipt for the two (2) manager's checks. Thus-

> Q: And what is your proof that Amon and Juliana were paid of the purchases through manager's checks?
>
> A: Lines & Spaces who represented Amon Trading and Juliana Marketing issued us receipts for the two (2) manager's checks we paid to Amon Trading and Juliana Marketing Corporation.

> ...
>
> Q: I am showing to you check no. 074 issued by Lines & Spaces Interiors Center, what relation has this check to that check you mentioned earlier?
>
> A: Official Receipt No. 074 issued by Lines & Spaces Interiors Center was for the P592,900.00 we paid to Amon Trading Corporation for 6,050 bags of cement.
>
> Q: Now there appears a signature in that receipt above the printed words authorized signature, whose signature is that?A: The signature of Mrs. Eleanor Bahia Sanchez, the representative of Lines and Spaces.
>
> Q: Why do you know that that is her signature?
>
> A: She is quite familiar with me and I saw her affix her signature upon issuance of the receipt.[10] (Emphasis supplied.)

Without doubt, no vinculum could be said to exist between petitioners and private respondent.

There is likewise nothing meaty about the assertion of private respondent that inasmuch as the delivery receipts as well as the purchase order were for the account of Lines & Spaces/Tri-Realty, then petitioners should have been placed on guard that it was private respondent which is the principal of Sanchez. In China Banking Corp. v. Members of the Board of Trustees, Home Development Mutual Fund[11] and the later case of Romulo, Mabanta, Buenaventura, Sayoc and De los Angeles v. Home Development Mutual Fund,[12] the term "and/or" was held to mean that effect shall be given to both the conjunctive "and" and the disjunctive "or"; or that one word or the other may be taken accordingly as one or the other will best effectuate the intended purpose. It was accordingly ordinarily held that in using the term "and/or" the word "and" and the word "or" are to be used interchangeably.

By analogy, the words "Lines & Spaces/Tri-Realty" mean that effect shall be given to both Lines & Spaces and Tri-Realty or that Lines & Spaces and Tri-Realty may be used interchangeably. Hence, petitioners were not remiss when they believed Eleanor Sanchez's representation that "Lines & Spaces/Tri-Realty" refers to just one entity. There was, therefore, no error attributable to petitioners when they refunded the value of the undelivered bags of cement to Lines & Spaces only.

There is likewise a dearth of evidence to show that the case at bar is an open-and-shut case of agency between private respondent and Lines & Spaces. Neither Eleanor Sanchez nor Lines & Spaces was an agent for private respondent, but rather a supplier for the latter's cement needs. The Civil Code defines a contract of agency as follows:

> 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.

In a bevy of cases such as the avuncular case of Victorias Milling Co., Inc. v. Court of Appeals,[13] the Court decreed from Article 1868 that the basis of agency is representation.

> . . . On the part of the principal, there must be an actual intention to appoint or an intention naturally inferable from his words or actions and on the part of the agent, there must be an intention to accept the appointment and act on it, and in the absence of such intent, there is generally no agency. One factor which most clearly distinguishes agency from other legal concepts is control; one person - the agent - agrees to act under the control or direction of another - the principal. Indeed, the very word "agency" has come to connote control by the principal. The control factor, more than any other, has caused the courts to put contracts between principal and agent in a separate category.

Here, the intention of private respondent, as the Executive Officer of respondent corporation testified on, was

merely for Lines & Spaces, through Eleanor Sanchez, to supply them with the needed bags of cement.

> Q: Do you know the defendant Lines & Spaces in this case?
>
> A: Yes, sir.
>
> Q: How come you know this defendant?
>
> A: Lines & Spaces represented by Eleanor Bahia Sanchez offered to supply us cement when there was scarcity of cement experienced in our projects.[14] (Emphasis supplied)

We cannot go along the Court of Appeals' disquisition that Amon Trading Corporation and Juliana Marketing should have required a special power of attorney form when they refunded Eleanor B. Sanchez the cost of the undelivered bags of cement. All the quibbling about whether Lines & Spaces acted as agent of private respondent is inane because as illustrated earlier, petitioners took orders from Eleanor Sanchez who, after all, was the one who paid them the manager's checks for the purchase of cement. Sanchez represented herself to be from Lines & Spaces/Tri-Realty, purportedly a single entity. Inasmuch as they have never directly dealt with private respondent and there is no paper trail on record to guide them that the private respondent, in fact, is the beneficiary, petitioners had no reason to doubt the request of Eleanor Sanchez later on to refund the value of the undelivered bags of cement to Lines & Spaces. Moreover, the check refund was payable to Lines & Spaces, not to Sanchez, so there was indeed no cause to suspect the scheme.

The fact that the deliveries were made at the construction sites of private respondent does not by itself raise suspicion that petitioners were delivering for private respondent. There was no sufficient showing that petitioners knew that the delivery sites were that of private respondent and for another thing, the deliveries were made by petitioners' men who have no business nosing around their client's affairs.

Parenthetically, Eleanor Sanchez has absconded to the United States of America and the story of what happened to the check refund may be forever locked with her. Lines & Spaces, in its Answer to the Complaint, washed its hands of the apparent ruse perpetuated by Sanchez, but argues that if at all, it was merely an intermediary between petitioners and private respondent. With no other way out, Lines & Spaces was a no-show at the trial proceedings so that eventually, its counsel had to withdraw his appearance because of his client's vanishing act. Left with an empty bag, so to speak, private respondent now puts the blame on petitioners. But this Court finds plausible the stance of petitioners that they had no inkling of the deception that was forthcoming. Indeed, without any contract or any hard evidence to show any privity of contract between it and petitioners, private respondent's claim against petitioners lacks legal foothold.

Considering the vagaries of the case, private respondent brought the wrong upon itself. As adeptly surmised by the trial court, between petitioners and private respondent, it is the latter who had made possible the wrong that was perpetuated by Eleanor Sanchez against it so it must bear its own loss. It is in this sense that we must apply the equitable maxim that "as between two innocent parties, the one who made it possible for the wrong to be done should be the one to bear the resulting loss."[15] First, private respondent was the one who had reposed too much trust on Eleanor Sanchez for the latter to source its cement needs. Second, it failed to employ safety nets to steer clear of the rip-off. For such huge sums of money involved in this case, it is surprising that a corporation such as private respondent would pay its construction materials in advance instead of in credit thus opening a window of opportunity for Eleanor Sanchez or Lines & Spaces to pocket the remaining balance of the amount paid corresponding to the undelivered materials. Private respondent likewise paid in advance the commission of Eleanor Sanchez for the materials that have yet to be delivered so it really had no means of control over her. Finally, there is no paper trail linking private respondent to petitioners thereby leaving the latter clueless that private respondent was their true client. Private respondent should have, at the very least, required petitioners to

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sign the check vouchers or to issue receipts for the advance payments so that it could have a hold on petitioners. In this case, it was the representative of Lines & Spaces who signed the check vouchers. For its failure to establish any of these deterrent measures, private respondent incurred the risk of not being able to recoup the value of the materials it had paid good money for.

WHEREFORE, the present petition is hereby GRANTED. Accordingly, the Decision and the Resolution dated 28 November 2002 and 10 June 2003, of the Court of Appeals in CA-G.R CV No. 60031, are hereby REVERSED and SET ASIDE. The Decision dated 29 January 1998 of the Regional Trial Court of Quezon City, Branch 104, in Civil Case Q-92-14235 is hereby REINSTATED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Eubulo G. Verzola and Candido V. Rivera, concurring. Rollo, pp. 24-30.

[2] CA Rollo, p. 41.

[3] CA Rollo, p. 45.

[4] Rollo, pp. 29-30.

[5] Rollo, p. 13.

[6] Rollo, p. 15.

[7] Rollo, p. 13.

[8] Rollo, p. 125.

[9] Rollo, p. 125.

[10] TSN, 08 February 1995, pp. 9-10.

[11] G.R. No. 131787, 19 May 1999, 307 SCRA 443.

[12] G.R. No. 131082, 19 June 2000, 333 SCRA 777.

[13] G.R. No. 117356, 19 June 2000, 333 SCRA 663, 675-676.

[14] TSN, 08 February 1995, pp. 9-11.

[15] Legarda v. Court of Appeals, G.R. No. 94457, 16 October 1997, 280 SCRA 642.

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