

**KUE CUISON, DOING BUSINESS UNDER THE FIRM NAME AND STYLE
"KUE CUISON PAPER SUPPLY," PETITIONER, VS. THE
COURT OF APPEALS, VALIANT INVESTMENT ASSOCIATES,
RESPONDENTS.**

G.R. No. 88539. October 26, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This petition for review assails the decision of the respondent Court of Appeals ordering petitioner to pay private respondent, among others, the sum of P297,482.30 with interest. Said decision reversed the appealed decision of the trial court rendered in favor of petitioner.

The case involves an action for a sum of money filed by respondent against petitioner anchored on the following antecedent facts:

Petitioner Kue Cuison is a sole proprietorship engaged in the purchase and sale of newsprint, bond paper and scrap, with places of business at Baesa, Quezon City, and Sto. Cristo, Binondo, Manila. Private respondent Valiant Investment Associates, on the other hand, is a partnership duly organized and existing under the laws of the Philippines with business address at Kalookan City.

From December 4, 1979 to February 15, 1980, private respondent delivered various kinds of paper products amounting to P297,487.30 to a certain Lilian Tan of LT Trading. The deliveries were made by respondent pursuant to orders allegedly placed by Tiu Huy Tiac who was then employed in the Binondo Office of petitioner. It was likewise pursuant to Tiac's instructions that the merchandise was delivered to Lilian Tan. Upon delivery, Lilian Tan paid for the merchandise by issuing several checks payable to cash at the specific request of Tiu Huy Tiac. In turn, Tiac issued nine (9) postdated checks to private respondent as payment for the paper products. Unfortunately, said checks were later dishonored by the drawee bank.

Thereafter, private respondent made several demands upon petitioner to pay for the merchandise in question, claiming that Tiu Huy Tiac was duly authorized by petitioner as the manager of his Binondo office, to enter into the questioned transactions with private respondent and Lilian Tan. Petitioner denied any involvement in the transaction entered into by Tiu Huy Tiac and refused to pay private respondent the amount corresponding to the selling price of the subject merchandise.

Left with no recourse, private respondent filed an action against petitioner for the collection of P297,487.30 representing the price of the merchandise. After due hearing, the trial court dismissed the complaint against petitioner for lack of merit. On appeal, however, the decision of the trial court was modified, but was in effect reversed by the Court of Appeals, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is MODIFIED in that defendant-appellant Kue Cuison is hereby ordered to pay plaintiff-appellant Valiant Investment Associates the sum of P297,487.30 with 12% interest from

the filing of the complaint until the amount is fully paid, plus the sum of 7% of the total amount due as attorney's fees, and to pay the costs. In all other respects, the decision appealed from is affirmed." (Rollo, p. 55)

In this petition, petitioner contends that:

"THE HONORABLE COURT ERRED IN FINDING TIU HUY TIAC AGENT OF DEFENDANT-APPELLANT CONTRARY TO THE UNDISPUTED/ESTABLISHED FACTS AND CIRCUMSTANCES.

"THE HONORABLE COURT ERRED IN FINDING DEFENDANT-APPELLANT LIABLE FOR AN OBLIGATION UNDISPUTEDLY BELONGING TO TIU HUY TIAC.

"THE HONORABLE COURT ERRED IN REVERSING THE WELL-FOUNDED DECISION OF THE TRIAL COURT." (ROLLO, P. 19)

The issue here is really quite simple, and that is --- whether or not Tiu Huy Tiac possessed the required authority from petitioner sufficient to hold the latter liable for the disputed transaction.

This petition ought to have been denied outright, for in the final analysis, it raises a factual issue. It is elementary that in petitions for review under Rule 45, this Court only passes upon questions of law. An exception thereto occurs where the findings of fact of the Court of Appeals are at variance with the trial court, in which case the Court reviews the evidence in order to arrive at the correct findings based on the records.

As to the merits of the case, it is a well-established rule that one who clothes another with apparent authority as his agent and holds him out to the public as such cannot be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be (*Macke, et al. v. Camps*, 7 Phil. 553 [1907]; *Philippine National Bank v. Court of Appeals*, 94 SCRA 357 [1979]). From the facts and the evidence on record, there is no doubt that this rule obtains. The petition must therefore fail.

It is evident from the records that by his own acts and admission, petitioner held out Tiu Huy Tiac to the public as the manager of his store in Sto. Cristo, Binondo, Manila. More particularly, petitioner explicitly introduced Tiu Huy Tiac to Bernardino Villanueva, respondent's manager, as his (petitioner's) branch manager as testified to by Bernardino Villanueva. Secondly, Lilian Tan, who has been doing business with petitioner for quite a while, also testified that she knew Tiu Huy Tiac to be the manager of petitioner's Sto. Cristo, Binondo branch. This general perception of Tiu Huy Tiac as the manager of petitioner's Sto. Cristo store is even made manifest by the fact that Tiu Huy Tiac is known in the community to be the "kinakapatid" (godbrother) of petitioner. In fact, even petitioner admitted his close relationship with Tiu Huy Tiac when he said in open court that they are "like brothers" (Rollo, p. 54). There was thus no reason for anybody especially those transacting business with petitioner to even doubt the authority of Tiu Huy Tiac as his manager in the Sto Cristo, Binondo branch.

In a futile attempt to discredit Villanueva, petitioner alleges that the former's testimony is clearly self-serving inasmuch as Villanueva worked for private respondent as its manager.

We disagree. The argument that Villanueva's testimony is self-serving and therefore inadmissible on the lame excuse of his employment with private respondent utterly misconstrues the nature of "self-serving evidence" and the specific ground for its exclusion. As pointed out by this Court in *Co v. Court of Appeals et al.*, (99 SCRA 321 [1980]):

"Self-serving evidence is evidence made by a party out of court at one time; it does not include a party's testimony as a witness in court. It is excluded on the same ground as any hearsay evidence, that is the lack of opportunity for

cross-examination by the adverse party, and on the consideration that its admission would open the door to fraud and to fabrication of testimony. On the other hand, a party's testimony in court is sworn and affords the other party the opportunity for cross-examination" (underscoring supplied).

Petitioner cites Villanueva's failure, despite his commitment to do so on cross-examination, to produce the very first invoice of the transaction between petitioner and private respondent as another ground to discredit Villanueva's testimony. Such failure, petitioner argues, proves that Villanueva was not only bluffing when he pretended that he can produce the invoice, but that Villanueva was likewise prevaricating when he insisted that such prior transactions actually took place. Petitioner is mistaken. In fact, it was petitioner's counsel himself who withdrew the reservation to have Villanueva produce the document in court. As aptly observed by the Court of Appeals in its decision:

"xxx However, during the hearing on March 3, 1981, Villanueva failed to present the document adverted to because defendant-appellant's counsel withdrew his reservation to have the former (Villanueva) produce the document or invoice, thus prompting plaintiff-appellant to rest its case that same day (t.s.n., pp. 39-40, Sess. of March 3, 1981). Now, defendant-appellant assails the credibility of Villanueva for having allegedly failed to produce even one single document to show that plaintiff-appellant and defendant-appellant have had transactions before, when in fact said failure of Villanueva to produce said document is a direct off-shoot of the action of defendant-appellant's counsel who withdrew his reservation for the production of the document or invoice and which led plaintiff-appellant to rest its case that very day." (Rollo, p. 52)

In the same manner, petitioner assails the credibility of Lilian Tan by alleging that Tan was part of an intricate plot to defraud him. However, petitioner failed to substantiate or prove that the subject transaction was designed to defraud him. Ironically, it was even the testimony of petitioner's daughter and assistant manager Imelda Kue Cuison which confirmed the credibility of Tan as a witness. On the witness stand, Imelda testified that she knew for a fact that prior to the transaction in question, Tan regularly transacted business with her father (petitioner herein), thereby corroborating Tan's testimony to the same effect. As correctly found by the respondent court, there was no logical explanation for Tan to impute liability upon petitioner. Rather, the testimony of Imelda Kue Cuison only served to add credence to Tan's testimony as regards the transaction, the liability for which petitioner wishes to be absolved.

But of even greater weight than any of these testimonies, is petitioner's categorical admission on the witness stand that Tiu Huy Tiac was the manager of his store in Sto. Cristo, Binondo, to wit:

"Court:

x x x

"Q And who was managing the store in Sto Cristo?

"A At first it was Mr. Ang, then later Mr. Tiu Huy Tiac but I cannot remember the exact year.

"Q So, Mr. Tiu Huy Tiac took over the management.

"A Not that was because every afternoon, I was there, sir.

"Q But in the morning, who takes charge?

"A Tiu Huy Tiac takes charge of management and if there (sic) orders for newsprint or bond papers they are always referred to the compound in Baesa, sir." (t.s.n., p. 16, Session of January 20, 1981, CA decision, Rollo, p. 50, underscoring supplied).

Such admission, spontaneous no doubt, and standing alone, is sufficient to negate all the denials made by petitioner regarding the capacity of Tiu Huy Tiac to enter into the transaction in question. Furthermore, consistent with and as an obvious indication of, the fact that Tiu Huy Tiac was the manager of the Sto. Cristo branch, three (3) months after Tiu Huy Tiac left petitioner's employ, petitioner even sent communications to its customers notifying them that Tiu Huy Tiac is no longer connected with petitioner's business. Such undertaking spoke unmistakably of Tiu Huy Tiac's valuable position as petitioner's manager than any uttered disclaimer. More than anything else, his act taken together with the declaration of petitioner in open court amount to admissions under Rule 130 Section 22 of the Rules of Court, to wit: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him." For well-settled is the rule that "a man's acts, conduct and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not. If a man's extrajudicial admissions are admissible against him, there seems to be no reason why his admissions made in open court, under oath, should not be accepted against him." (U.S. vs. Ching Po, 23 Phil. 578, 583 [1912];).

Moreover, petitioner's unexplained delay in disowning the transactions entered into by Tiu-Huy Tiac despite several attempts made by respondent to collect the amount from him, proved all the more that petitioner was aware of the questioned transactions. Such omission was tantamount to an admission by silence under Rule 130 Section 23 of the Rules of Court, thus: "Any act or declaration made in the presence of and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him."

All of these point to the fact that at the time of the transaction, Tiu Huy Tiac was admittedly the manager of petitioner's store in Sto. Cristo, Binondo. Consequently, the transaction in question as well as the concomitant obligation is valid and binding upon petitioner.

By his representations, petitioner is now estopped from disclaiming liability for the transaction entered into by Tiu Huy Tiac on his behalf. It matters not whether the representations are intentional or merely negligent so long as innocent third persons relied upon such representations in good faith and for value. As held in the case of Manila Remnant Co., Inc. v. Court of Appeals, (191 SCRA 622 [1990]):

"More in point, we find that by the principle of estoppel, Manila Remnant is deemed to have allowed its agent to act as though it had plenary powers. Article 1911 of the Civil Code provides:

'Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.' (Italics supplied).

The above-quoted article is new. It is intended to protect the rights of innocent persons. In such a situation, both the principal and the agent may be considered as joint tortfeasors whose liability is joint and solidary.

Authority by estoppel has arisen in the instant case because by its negligence, the principal, Manila Remnant, has permitted its agent, A.U. Valencia and Co., to exercise powers not granted to it. That the principal might not have had actual knowledge of the agent's misdeed is of no moment."

Tiu Huy Tiac, therefore, by petitioner's own representations and manifestations, became an agent of petitioner by estoppel. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon (Article 1431, Civil Code of the Philippines). A party cannot be allowed to go back on his own acts and representations to the prejudice of the other party who, in good faith, relied upon them (Philippine National Bank v. Intermediate Appellate Court, et al., 189 SCRA 680 [1990]).

Taken in this light, petitioner is liable for the transaction entered into by Tiu Huy Tiac on his behalf. Thus, even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers (Article 1911 Civil Code), as in the case at bar.

Finally, although it may appear that Tiu Huy Tiac defrauded his principal (petitioner) in not turning over the proceeds of the transaction to the latter, such fact cannot in any way relieve nor exonerate petitioner of his liability to private respondent. For it is an 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 (*Francisco vs. Government Service Insurance System*, 7 SCRA 577 [1963]).

Inasmuch as the fundamental issue of the capacity or incapacity of the purported agent Tiu Huy Tiac, has already been resolved, the Court deems it unnecessary to resolve the other peripheral issues raised by petitioner.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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