

DIEGO LINAN, PLAINTIFF AND APPELLEE, VS. MARCOS P. PUNO ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 9608. August 06, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The facts upon which the decision in this case depends are as follows:

- (1) That the plaintiff, in the month of May, 1908, and for a long time prior thereto, was the owner of a certain parcel of land particularly described in paragraph 2 of the complaint.
- (2) That on the 16th day of May, 1908, the plaintiff executed the following document, which conferred upon the defendant Marcos P. Puno the power, duties and obligations therein contained:

"I, Diego Linan, of age, married, a resident of Daet, Province of Ambos Camarines, Philippine Islands, and at the present time temporarily residing in this city of Tarlac, capital of the Province of Tarlac, P. I., set forth that I hereby confer sufficient power, such as the law requires, upon Mr. Marcos P. Puno, likewise a resident of this city of Tarlac, capital of the Province of Tarlac, in order that in my name and representation he may administer the interest I possess within this municipality of Tarlac, purchase, sell, collect and pay, as well as sue and be sued before any authority, appear before the courts of justice and administrative officers in any proceeding or business concerning the good administration and advancement of my said interests, and may, in necessary cases, appoint attorneys at law or attorneys in fact to represent him."

The meaning, purport, and power conferred by this document constitute the very gist of the present action.

- (3) That in June, 1911, the defendant Puno, for the sum of P800, sold and delivered said parcel of land to the other defendants.

The plaintiff alleges that the said document (Exhibit A) did not confer upon the defendant Puno the power to sell the land and prayed that the sale be set aside; that the land be returned to him, together with damages.

The defendants at first presented a demurrer to the complaint, which was overruled. To the order overruling the demurrer the defendants duly excepted. They later answered. In their answer they first denied generally and specifically all of the important facts stated in the complaint. In their special answer or defense they admitted the sale of the land by Puno to the other defendants and alleged that the same was a valid sale and prayed to be relieved from the liability under the complaint, with their costs.

Upon the issue thus presented the lower court decided: (1) That the document Exhibit A did not give Puno authority to sell the land; (2) That the sale was illegal and void; (3) That defendants should return the land to the plaintiff; and (4) That the defendants should pay to the plaintiff the sum of P1,000 as damages, P400 of which the defendant Puno should alone be responsible for, and to pay the costs.

From that decision the defendants appealed to this court and made the following assignments of error:

"I. The lower court erred in overruling the demurrer filed by the appellants to the complaint.

"II. The lower court erred in holding that the appellant Marcos P. Puno was not authorized to sell the land in question and that the sale executed by the said Marcos P. Puno to the other appellants, Enrique, Vicente, Aquilina and Remedios, surnamed Maglanok, is null and void.

"III. The lower court erred in not ordering the appellee, Diego Linan, to return to the appellants, Enrique, Vicente, Aquilina and Remedios Maglanok the sum of P800, as the selling price of the land in question.

"IV. And, finally, the lower court erred in sentencing the appellants to pay to the appellee the sum of P1,000, the value of the products collected, and to pay the costs,"

With reference to the first, assignment of error, we are of the opinion that the facts stated in the opinion are sufficient to constitute a cause of action.

With reference to the second assignment of error, the plaintiff alleges that the power of attorney, as contained in Exhibit A, did not authorize the defendant Puno to sell the land. The defendants insist that Puno had full and complete power and authority to do what he did. The lower court held that Exhibit A only gave Puno power and authority to administer the land; that he was not authorized to sell it. Omitting the purely explanatory parts of Exhibit A, it reads as follows: "I, Diego Linan, * * * set forth that I * * * confer sufficient power, such as the law requires, upon Mr. Marcos P. Puno * * * in order that in my name and representation he may administer ? * * purchase, sell, collect and pay * * * in any proceeding or business concerning the good administration and advancement of my said interests, and may, in necessary cases, appoint attorneys at law or attorneys in fact to represent him."

Contracts of agency as well as general powers of attorney must be interpreted in accordance with the language used by the parties. The real intention of the parties is primarily to be determined from the language used. The intention is to be gathered from the whole instrument. In case of doubt resort must be had to the situation, surroundings and relations of the parties. Whenever it is possible, effect is to be given to every word and clause used by the parties. It is to be presumed that the parties said what they intended to say and that they used each word or clause with some purpose and that purpose is, if possible, to be ascertained and enforced. The intention of the parties must be sustained rather than defeated. If the contract be open to two constructions, one of which would uphold while the other would overthrow it the former is to be chosen. So, if by one construction the* contract would be illegal, and by another equally permissible construction it would be lawful, the latter must be adopted. The acts of the parties in carrying-out the contract will be presumed to be done in good faith. The acts of the parties will be presumed to have been done in conformity with and not contrary to the intent of the contract. The meaning: of generals words must be construed with reference to the specific object to be accomplished and limited by the recitals made in reference to such object.

With these general observations in mind, let us examine the terms of the power conferred upon the defendant Puno (Exhibit A) and ascertain, if possible, what was the real intent of the plaintiff. The lower court held that the "only power conferred was the power to administer." Reading the contract we find it says that the plaintiff "I confer * * * power * * * that * * * he may administer * * * purchase, sell, collect and pay * * * in any proceeding or business concerning the good administration and advancement of my said interests." The words "administer, purchase, sell," etc., seem to be used coordinately. Each has equal force with the other. There seems to be no good reason for saying that Puno had authority to administer and not to sell when "to sell" was as advantageous to the plaintiff in the administration of his affairs as "to administer." To hold that the power was "to administer" only when the power "to sell" was equally conferred would be to give effect to a portion of the contract only. That would give to special words of the contract a special and limited meaning to the exclusion of other general words

of equal import.

The record contains no allegation or proof that Puno acted in bad faith or fraudulently in selling the land. It will be presumed that he acted in good faith and in accordance with his power as he understood it. That his interpretation of his power, as gathered from the contract (Exhibit A), is tenable cannot, we believe, be successfully denied. In view of that fact and in view of the fact that, so far as the record shows, the other defendants acted in good faith, we are of the opinion that the contract, liberally construed, as we think it should be, justifies the interpretation given it by Puno. In reaching this conclusion, we have taken into account the fact that the plaintiff delayed his action to annul said sale from the month of June, 1911, until the 15th of February, 1913. Neither have we overlooked the fact charged in the brief of the appellants that the plaintiff has not returned, nor offered to return, nor indicated a willingness to return, the purchase price. (Art. 1308 of the Civil Code; *Manikis vs. Bias*, No. 7585.[1]) In view of all of the foregoing, we are of the opinion that the lower court committed the error complained of in the second assignment, and, without discussing the other assignments of error, we are of the opinion, and so hold, that the judgment of the lower court should be and is hereby revoked and that the appellants should be relieved from all liability under the complaint. Without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

[1] Not reported.

DISSENTING

TRENT, J.,

The power of attorney, the identity of the land sold, the fact of sale, and the identity of the parties are admitted.

I agree with the majority that "the meaning, purport, and power conferred by this document (Exhibit A, the power of attorney) constitute the very gist of the present action," and that the parties acted in good faith. But I cannot see how "the fact that the plaintiff delayed his action to annul said sale from the month of June, 1911, to February 15, 1913," and the fact that the appellants have charged in their brief that the "plaintiff has not returned, nor offered to return, nor indicated a willingness to return the purchase price," can affect in any way the issues involved in this case. The record shows that the land is situated in the Province of Tarlac and the plaintiff lives in the Province of Ambos Camarines. The record fails to show whether or not the plaintiff has returned, or offered to return, or is willing to return to the vendees the purchase price of the land. The charge in appellants' brief that the plaintiff has not done these things is not proof and should not be taken as establishing a fact or facts.

The controlling question is, Was Puno authorized under the power of attorney, which is set out in full in the majority opinion, to sell the real estate of his principal? The solution of this question must depend solely and exclusively upon the language used in that power of attorney, Exhibit A. There is no claim that the plaintiff enlarged the powers of his agent Puno after the execution of Exhibit A or that he ratified the sale in question after it had been made.

Article 1713 of the Civil Code reads:

"An agency stated in general terms only includes acts of administration.

"In order to compromise, alienate, mortgage, or to execute any other act of a strict ownership an express commission is required.

"The power to compromise does not give authority to place the matter in the hands of arbitrators or amicable compromisers."

The Director General de los Registros, in its resolution of November 20, 1900 (90 Juris. Civ., 677), construed a power of attorney given by a father to his son, authorizing the latter to administer the property of his principal, "to lease and to rent his principal's realty to the persons and for the time, price and conditions he deems best, and also to make ejectments, to sign documents, to make collections, to make changes in anything belonging to his principal, and to compromise any questions that may arise." Under color of this authority, the son leased for a period of twelve years several parcels of land and charged several other parcels with pensiones de censos in favor of a third person. I quote from the syllabus: "In the present case, the lessor was authorized by his principal to lease and to rent the latter's realty to the persons and for the price, time and conditions that seemed best to him, and such authorization must be understood to have been granted for the simple contract of lease, which produces only personal obligations, and consequently cannot be regarded as extended, without express command, to the stipulation of such conditions as might alter the nature of the contract by transforming it into a partial conveyance of ownership in the things leased, as happens in said case, wherein the agent has thereby exceeded the limits of his agency."

A quite similar power of attorney was disposed of in the same manner in the resolution of October 26, 1904 (99 Juris. Civ., 245) where an agent leased property for thirty years under color of authority to lease the property "for the time, price, and conditions¹ which he might think desirable. In the Resolution of April 5, 1907 {Juris. Civ., 68), the facts were as follows: A power of attorney executed by a wife authorized her husband to administer a vineyard belonging to her as might be necessary for its preservation, improvement, and increase. Under this power the husband entered into an agreement with several other adjoining owners with reference to the irrigation of their respective properties by means of an aqueduct. To insure the accomplishment of various stipulations inserted in this contract, the various parties thereto hypothecated their respective properties and sought to have the same inscribed in the property registry. Registration was denied on the ground, among others, that the power of attorney in question did not authorize the husband to perform any act of strict ownership, but only those of administration.

In commenting upon article 1713, Manresa quotes approvingly from Goyena as follows: "As Garcia Goyena says, '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 purposes of alienation or hypothecation, whereby he might easily 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.' " (Vol. 11, p. 460.)

Bonel, in commenting upon the same article, says: "Our code, in looking after the interests of all and thereby furnishing a proof of common sense, does not permit a vague expression in a general and indefinite manner of the right one confers upon another to make alienations and hypothecations, for in this way a man could with good faith on his part be despoiled of all he possessed and be brought to ruin; hence it provides that such excessive authority must be set down in the most favorable and explicit terms; and when this is not done, reason and common sense induce the presumption that the principal did not mean to confer it." (Vol. 4, p. 728.)

The supreme court of Louisiana, which also interprets the civil law, was considering the following power of attorney in *Lafourche Transportation Co. vs. Pugh* (52 La. Ann., 1517): "We . * * * have appointed, * * * (defendant) our true and lawful agent and attorney in fact, for us, and in our name, place and stead, to manage, control, take charge of, compromise and do any and all things, necessary and requisite, touching and concerning our interests in the succession of the late Robert Lawrence Pugh, and to make any and all settlements for us, and

in our behalf, with the legatees under the last will and testament of the said R. L. Pugh, vesting our said attorney and agent with full power and authority, to do any and all acts that we might do if personally present * * *."

The remarks of the court are brief and instructive: "It further appears that, neither at the date of the execution of the note and act of mortgage sued on, nor at any other time, has W. W. Pugh held any other procuration, the attempt to prove the contrary having failed. There is no doubt that, at the time that the note and act or mortgage were executed, he supposed that the power of attorney held by him conferred the authority which he undertook to exercise, but the bare reading of it shows that it did not."

In *Lord vs. Sherman* (2 Cal., 498), a power of attorney authorized an agent to "attend to all business affairs appertaining to real or personal estate, bank business, or business at the customhouse, or insurance or law business, or the commencement, settlement, or defending any suit or suits in law or equity. Also for me and in my name, place, and stead, to sign, seal, execute, and deliver all and any instrument under seal that he may think proper in and about my said business, either individually or as a member of the firm of Shermans & Stork. Also to settle, compromise, and adjust, pay and discharge all claims and demands, accounts due or owing to me, or from me, or in which I am interested, and give all proper receipts or discharges therefor, whether under seal or not; and to attend to all my business for me of any name or nature, whether real or personal, that may arise during my absence, and whether relating to instruments under seal or not under seal, and to use my name in and about the same, the same as I could do if personally present. Also to make, indorse, or accept any drafts, bills of exchange, or promissory notes. Also to settle and adjust all claims, etc." The court said: "The power of attorney contains no authority to convey real estate, *eo nomine*. The power given 'to attend to all business affairs appertaining to real or personal estate' is too indefinite to sustain a transfer of real estate, more particularly that acquired long subsequent to its execution."

In *Billings vs. Morrow* (7 Cal., 171), a power of attorney was in question which authorized the agent "for me and in my name to superintend my real and personal estate, to make contracts, to settle outstanding debts, and generally to do all things that concern my interest in any way, real or personal whatsoever, giving my said attorney full power to use my name to release others or bind myself, as he may deem proper and expedient; * * * -" The court said: "It requires but a glance at this instrument to perceive that no authority is contained in it to convey real estate. The power is limited and special, and cannot be extended by implication to other acts more important in their character than those expressly provided in the body of the instrument. The rule may be thus stated; that where the authority to perform specific acts is given in the power, and general words are also employed, such words are limited to the particular acts authorized."

In *Clark & Skyles on Agency*, section 213, it is said: "All powers conferred upon an agent by a formal instrument are to receive a strict interpretation, and the authority is never extended by intendment or construction beyond that which is given in terms or is necessary for carrying the authority into effect, and that authority must be strictly pursued."

Upon the same point Story says in his work on *Agency*, section 68: "Indeed formal instruments of this sort are ordinarily subjected to a strict interpretation, and the authority is never extended beyond that which is given in terms, or which is necessary and proper for carrying the authority so given into full effect."

In *Reynolds vs. Rowley* (4 La. Ann., 396), it was said: "We take it for granted that, under the common law as with us, powers of attorneys are subjected to a strict interpretation, and that the authority is never extended beyond that which is given in terms, or which is necessary and proper for carrying the authority so given into full effect; that language, however general in its form, when used in connection with a particular subject matter, will be presumed to be used in subordination to that matter, and therefore is to be construed and limited accordingly; that a general

power to buy property for the constituent, or to make any contracts, and do any other acts whatever, which he could if personally present, must be construed to apply only to buying or contracting connected with his ordinary business, and would not authorize any contracts of an extra-ordinary character to be made."

In Clark & Skyles on Agency, section 227, it is said: "In order that an agent may have authority to sell real estate it is necessary that such authority should be clearly and distinctly given to him, in such a manner that a reasonably prudent person would have no hesitancy in seeing that such a power was given. We have heretofore seen that all written powers will be strictly construed and will not be extended beyond their obvious purpose; and unless power to sell real estate is clearly given to him, the agent cannot sell it"

In sections 261 to 265 of the same work, the general scope of powers delegated by the authority to manage the business of the principal is discussed. It is there stated that aside from the particular facts and circumstances surrounding the parties, it is a general rule that an agency to manage implies authority to do with the property or in the business what has previously been done by the principals, or by others with their express or implied consent; or further to do what is necessary or usual and customary to do with the property, or in business of the same kind in the same locality. But the power to dispose of the business or embark on some unusual enterprise with the principal's capital is not included in such an agency.

The rule that formal powers of attorney must be strictly construed and limited in their scope to what is expressly stated and to such incidental powers as may be necessary in the fulfillment of the powers expressly given is well settled, both in Anglo-American and in the civil law. The authorities supporting this doctrine are legion. So, general expressions conferring power upon an agent, such as "to do any and every act," "do and transact all manner of business," to lease real property "for the time, price and with the conditions which he deems desirable," "attend to all business affairs appertaining to real or personal estate," "to my real and personal estate," "to superintend my real and personal estate" are to be construed in subordination to the express powers granted, and not to refer to other unusual or extraordinary powers of which no mention is made in the instrument. In addition to the cases given above which illustrate the rule, many others may be found in the books of the same character. Likewise, it is a rule uniformly stated that the power to sell real estate must necessarily be express, and cannot be implied from any general language used.

Let us now examine the power of attorney executed by the plaintiff and see if, according to the rules stated, it can be held to include the power to sell real estate. There is no description of the plaintiff's property in Tarlac. The document simply designates his property as "interests." This, of course, would ordinarily be taken to include every species of property, real or personal, owned by him in that municipality. That the power to administer these "interests" is expressly delegated admits of no denial, as well as the power to appear in court, the power to engage counsel, and to appoint sub-agents. But we are interested in determining if the power is expressly delegated (for that is the only manner in which it could have been given) to sell real estate. The grammatical construction of the instrument admits of its division into two portions, as follows: " (a) He may administer such interests as I possess within this municipality of Tarlac; (b) And may buy, sell,, collect, and pay, * * * in any way whatsoever for the good administration and furtherance of my said interests."

Certainly, the power to sell real estate is not expressly delegated in the first division. True, in the second section are the words "buy," "sell," "in any way whatsoever," and which, standing alone, might easily refer to either real or personal property or both. But these powers are restricted by the stated purpose for which the grant is given; that is, "for the good administration and furtherance of my said interests." This qualifying phrase brings these general words "buy" and "sell" "in any way whatsoever" down to the level of administrative acts. The agent may buy or sell for the good administration and furtherance of the principal's interests, but he may not sell those interests themselves. As a matter of fact, the second division is but little more than a repetition of the first, with

the added feature that it enumerates a number of those powers customarily incident to the management of a principal's business by his agent.

It develops that the plaintiff owned a parcel of agricultural land in the municipality of Tarlac. This was one of the "interests" which the defendant Puno was to "administer." Manifestly, the power to "buy" seed, farming implements, and material necessary for the repair and preservation of that land, and the power to "sell" its products were incidental powers of a general power of management of such an "interest." The full extent of the plaintiff's business "interests" in the municipality of Tarlac is not disclosed by the record. But it is clear that he was not engaged in the business of buying and selling real estate. Assuming that his "interests" in the said municipality were of almost any other description, it is evident that the sale of real estate by the defendant agent was an extraordinary act, not capable of being classified as an act of administration. I am unable to discover any express delegation of power to sell "real estate" in the document in question. Not only is "real estate" not expressly mentioned, but the words "buy" and "sell," which, it is argued, delegate that power, are, by the grammatical construction of the document, subordinated to the "good administration and furtherance" of the plaintiff's "interests."

For the foregoing reasons I do not agree to the disposition of this case.

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