Civil Law – Partnership, Agency, and Trusts

Case Digests

UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

LIST OF CASES
Partnership, Agency, and Trusts

PARTNERSHIP

Agad vs. Mabato	23 SCRA 1223
Obillos vs. CIR	139 SCRA 436
Pascual vs. CIR	166 SCRA 560
Litonjua v. Litonjua	Dec. 13, 2005
Ortega vs. CA	245 SCRA 529
Delos Reyes vs. Lukban	35 Phil 757
Munasque vs. CA	139 SCRA 533

AGENCY

Patrimonio v. Marasigan G.R. No. 187769	June 4, 2014
Doles v. Angeles	June 26, 2006
Rallos vs. Yangco	20 Phil. 269
Gozun v. Mercado	Dec. 19, 2006
Angeles v. PNR	Aug. 31, 2006
V-GENT, Inc.*v.* Morning Star TravelGR No. 186305	July 22, 2015 (1878)
Siasat vs. IAC	139 SCRA 238
Veloso vs. CA	260 SCRA 593
Cuison vs. CA	227 SCRA 391
Rural Bank of Bonbon vs. CA	212 SCRA 25
DBP vs. CA	231 SCRA 370
Villaluz v. Land Bank G.R. No. 192602	January 18, 2017 (1892)
Salvador v. Rabaja G.R. No. 199990	4 February, 2015 (1900-02)
Green Valley vs. IAC	133 SCRA 697
Sevilla vs. CA	160 SCRA 171
Int'l. Exchange Bank v. BrionesG.R. No. 205657	March 29, 2017 (1924)
Valenzuela vs. CA	191 SCRA 1

PARTNERSHIP

MAURICIO AGAD, plaintiff-appellant, vs. SEVERINO MABATO and MABATO and AGAD COMPANY, defendants-appellees.
G.R. No. L-24193, EN BANC, June 28, 1968, CONCEPCION, C.J.,

Articles 1771 and 1773 of said Code provide:

> *Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.*
> *Art. 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if inventory of said property is not made, signed by the parties; and attached to the public instrument*

FACTS

Alleging that he and defendant Severino Mabato are — pursuant to a public instrument dated August 29, 1952, copy of which is attached to the complaint as Annex "A" — partners in a fishpond business, to the capital of which Agad contributed P1,000, with the right to receive 50% of the profits; that from 1952 up to and including 1956, Mabato who handled the partnership funds, had yearly rendered accounts of the operations of the partnership; and that, despite repeated demands, Mabato had failed and refused to render accounts for the years 1957 to 1963, Agad prayed in his complaint against Mabato and Mabato & Agad Company, filed on June 9, 1964, that judgment be rendered sentencing Mabato to pay him (Agad) the sum of P14,000, as his share in the profits of the partnership for the period from 1957 to 1963, in addition to P1,000 as attorney's fees, and ordering the dissolution of the partnership, as well as the winding up of its affairs by a receiver to be appointed therefor.

In his answer, Mabato admitted the formal allegations of the complaint and denied the existence of said partnership, upon the ground that the contract therefor had not been perfected.

ISSUE

Whether or not "immovable property or real rights" have been *contributed* to the partnership under consideration

RULING

Mabato alleged and the lower court held that the answer should be in the affirmative, because "it is really inconceivable how a partnership engaged in the *fishpond business* could exist without said fishpond property (being) contributed to the partnership." It should be noted, however, that, as stated in Annex "A" the partnership was established "to *operate* a fishpond", not to "engage in a fishpond business". Moreover, none of the partners contributed either a fishpond or a real right to any fishpond. Their contributions were limited to the sum of P1,000 each.

Articles 1771 and 1773 of said Code provide:

> Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.
> Art. 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if inventory of said property is not made, signed by the parties; and attached to the public instrument

The operation of the fishpond mentioned in Annex "A" was the purpose of the partnership. Neither said fishpond nor a real right thereto was contributed to the partnership or became part of the capital thereof, even if a fishpond or a real right thereto could become part of its assets.

WHEREFORE, we find that said Article 1773 of the Civil Code is not in point and that, the order appealed from should be, as it is hereby set aside and the case remanded to the lower court for further proceedings, with the costs of this instance against defendant-appellee, Severino Mabato. It is so ordered.

JOSE P. OBILLOS, JR., SARAH P. OBILLOS, ROMEO P. OBILLOS and REMEDIOS P. OBILLOS, brothers and sisters, petitioners vs. **COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS,** respondents.
G.R. No. L-68118, SECOND DIVISION, October 29, 1985, AQUINO, J.,

Article 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived". There must be an unmistakable intention to form a partnership or joint venture.

FACTS

This case is about the income tax liability of four brothers and sisters who sold two parcels of land which they had acquired from their father.

Jose Obillos, Sr. completed payment to Ortigas & Co., Ltd. on two lots located at Greenhills, San Juan, Rizal. The next day he transferred his rights to his four children, the petitioners, to enable them to build their residences. The company sold the two lots to petitioners. Presumably, the Torrens titles issued to them would show that they were co-owners of the two lots.

In 1974, or after having held the two lots for more than a year, the petitioners resold them to the Walled City Securities Corporation and Olga Cruz Canda. They treated the profit as a capital gain and paid an income tax on one-half thereof.

In April, 1980, or one day before the expiration of the five-year prescriptive period, the Commissioner of Internal Revenue required the four petitioners to pay *corporate income tax* in addition to individual income tax on their shares thereof. He required them to pay deficiency income taxes including fraud surcharge and the accumulated interest.

The Commissioner acted on the theory that the four petitioners had formed an unregistered partnership or joint venture within the meaning of sections 24(a) and 84(b) of the Tax Code (Collector of Internal Revenue vs. Batangas Trans. Co., 102 Phil. 822).

The petitioners contested the assessments. Two Judges of the Tax Court sustained the same. Judge Roaquin dissented. Hence, the instant appeal.

ISSUE

Whether an unregistered partnership was formed

RULING

No. To regard the petitioners as having formed a taxable unregistered partnership would result in oppressive taxation and confirm the dictum that the power to tax involves the power to destroy. That eventuality should be obviated.

As testified by Jose Obillos, Jr., they had no such intention. They were co-owners pure and simple. To consider them as partners would obliterate the distinction between a co-ownership and a partnership. The petitioners were not engaged in any joint venture by reason of that isolated transaction.

Their original purpose was to divide the lots for residential purposes. If later on they found it not feasible to build their residences on the lots because of the high cost of construction, then they had no choice but to resell the same to dissolve the co-ownership. The division of the profit was merely incidental to the dissolution of the co-ownership which was in the nature of things a temporary state. It had to be terminated sooner or later.

Article 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived". There must be an unmistakable intention to form a partnership or joint venture.

In the instant case, what the Commissioner should have investigated was whether the father donated the two lots to the petitioners and whether he paid the donor's tax (See Art. 1448, Civil Code). We are not prejudging this matter. It might have already prescribed.

MARIANO P. PASCUAL and RENATO P. DRAGON, petitioners, vs. THE COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondents.
G.R. No. 78133, FIRST DIVISION, October 18, 1988, GANCAYCO, J.

The essential elements of a partnership are two, namely: (a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties.

In the present case, there is no evidence that petitioners entered into an agreement to contribute money, property or industry to a common fund, and that they intended to divide the profits among themselves. Respondent commissioner and/ or his representative just assumed these conditions to be present on the basis of the fact that petitioners purchased certain parcels of land and became co-owners thereof.

FACTS:

On June 22, 1965, petitioners bought two (2) parcels of land from Santiago Bernardino, et al. and on May 28, 1966, they bought another three (3) parcels of land from Juan Roque. The first two parcels of land were sold by petitioners in 1968 toMarenir Development Corporation, while the three parcels of land were sold by petitioners to Erlinda Reyes and Maria Samson on March 19,1970. Petitioners realized a net profit in the sale made in 1968 in the amount of P165,224.70, while they realized a net profit of P60,000.00 in the sale made in 1970. The corresponding capital gains taxes were paid by petitioners in 1973 and 1974 by availing of the tax amnesties granted in the said years.

However, in a letter dated March 31, 1979 of then Acting BIR Commissioner Efren I. Plana, petitioners were assessed and required to pay a total amount of P107,101.70 as alleged deficiency corporate income taxes for the years 1968 and 1970.

Petitioners protested the said assessment in a letter of June 26, 1979 asserting that they had availed of tax amnesties way back in 1974.

In a reply of August 22, 1979, respondent Commissioner informed petitioners that in the years 1968 and 1970, petitioners as co-owners in the real estate transactions formed an unregistered partnership or joint venture taxable as a corporation under Section 20(b) and its income was subject to the taxes prescribed under Section 24, both of the National Internal Revenue Code [1] that the unregistered partnership was subject to corporate income tax as distinguished from profits derived from the partnership by them which is subject to individual income tax; and that the availment of tax amnesty under P.D. No. 23, as amended, by petitioners relieved petitioners of their individual income tax liabilities but did not relieve them from the tax liability of the unregistered partnership. Hence, the petitioners were required to pay the deficiency income tax assessed.

Petitioners filed a petition for review with the respondent Court of Tax Appeals docketed as CTA Case No. 3045. In due course, the respondent court by a majority decision of March 30, 1987, [2] affirmed the decision and action taken by respondent commissioner with costs against petitioners.

It ruled that on the basis of the principle enunciated in *Evangelista* [3] an unregistered partnership was in fact formed by petitioners which like a corporation was subject to corporate income tax distinct from that imposed on the partners.

In a separate dissenting opinion, Associate Judge Constante Roaquin stated that considering the circumstances of this case, although there might in fact be a co-ownership between the petitioners, there was no adequate basis for the conclusion that they thereby formed an unregistered partnership which made "hem liable for corporate income tax under the Tax Code.

ISSUE:

Whether petitioners are subject to the tax on corporations provided for in section 24 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, as well as to the residence tax for corporations and the real estate dealers' fixed tax.

RULING:

No.

Article 1767 of the Civil Code of the Philippines provides:

By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

Pursuant to this article, *the essential elements of a partnership are two, namely: (a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties*.

In the present case, there is no evidence that petitioners entered into an agreement to contribute money, property or industry to a common fund, and that they intended to divide the profits among themselves. Respondent commissioner and/ or his representative just assumed these conditions to be present on the basis of the fact that petitioners purchased certain parcels of land and became co-owners thereof.

In Evangelists, *there was a series of transactions where petitioners purchased twenty-four (24) lots* showing that the purpose was not limited to the conservation or preservation of the common fund or even the properties acquired by them. *The character of habituality peculiar to business transactions engaged in for the purpose of gain was present*.

In the instant case, petitioners bought two (2) parcels of land in 1965. They did not sell the same nor make any improvements thereon. In 1966, they bought another three (3) parcels of land from one seller. It was only 1968 when they sold the two (2) parcels of land after which they did not make any additional or new purchase. The remaining three (3) parcels were sold by them in 1970. The transactions were isolated. The character of habituality peculiar to business transactions for the purpose of gain was not present.

In *Evangelista*, the properties were leased out to tenants for several years. The business was under the management of one of the partners. Such condition existed for over fifteen (15) years. None of the circumstances are present in the case at bar. The co-ownership started only in 1965 and ended in 1970.

Article 1769 of the new Civil Code lays down the rule for determining when a transaction should be deemed a partnership or a co-ownership. Said article paragraphs 2 and 3, provides;

(2) Co-ownership or co-possession does not itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

From the above it appears that the fact that those who agree to form a co- ownership share or do not share any profits made by the use of the property held in common does not convert their venture into a

partnership. Or the sharing of the gross returns does not of itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. This only means that, aside from the circumstance of profit, the presence of other elements constituting partnership is necessary, such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the freedom to transfer or assign any interest in the property by one with the consent of the others (Padilla, Civil Code of the Philippines Annotated, Vol. I, 1953 ed., pp. 635-636)

It is evident that an isolated transaction whereby two or more persons contribute funds to buy certain real estate for profit in the absence of other circumstances showing a contrary intention cannot be considered a partnership.

In order to constitute a partnership inter sese there must be: (a) An intent to form the same; (b) generally participating in both profits and losses; (c) and such a community of interest, as far as third persons are concerned as enables each party to make contract, manage the business, and dispose of the whole property

The sharing of returns does not in itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. There must be a clear intent to form a partnership, the existence of a juridical personality different from the individual partners, and the freedom of each party to transfer or assign the whole property.

In the present case, there is clear evidence of co-ownership between the petitioners. There is no adequate basis to support the proposition that they thereby formed an unregistered partnership. The two isolated transactions whereby they purchased properties and sold the same a few years thereafter did not thereby make them partners. They shared in the gross profits as co- owners and paid their capital gains taxes on their net profits and availed of the tax amnesty thereby. Under the circumstances, they cannot be considered to have formed an unregistered partnership which is thereby liable for corporate income tax, as the respondent commissioner proposes.

And even assuming for the sake of argument that such unregistered partnership appears to have been formed, since there is no such existing unregistered partnership with a distinct personality nor with assets that can be held liable for said deficiency corporate income tax, then petitioners can be held individually liable as partners for this unpaid obligation of the partnership p. [7] However, as petitioners have availed of the benefits of tax amnesty as individual taxpayers in these transactions, they are thereby relieved of any further tax liability arising therefrom.

AURELIO K. LITONJUA, JR., *Petitioner*, - versus ' EDUARDO K. LITONJUA, SR., ROBERT T. YANG, ANGLO PHILS. MARITIME, INC., CINEPLEX, INC., DDM GARMENTS, INC., EDDIE K. LITONJUA SHIPPING AGENCY, INC., EDDIE K. LITONJUA SHIPPING CO., INC., LITONJUA SECURITIES, INC. (formerly E. K. Litonjua Sec), LUNETA THEATER, INC., E & L REALTY, (formerly E & L INTL SHIPPING CORP.), FNP CO., INC., HOME ENTERPRISES, INC., BEAUMONT DEV. REALTY CO., INC., GLOED LAND CORP., EQUITY TRADING CO., INC., 3D CORP., 'L DEV. CORP, LCM THEATRICAL ENTERPRISES, INC., LITONJUA SHIPPING CO. INC., MACOIL INC., ODEON REALTY CORP., SARATOGA REALTY, INC., ACT THEATER INC. (formerly General Theatrical & Film Exchange, INC.), AVENUE REALTY, INC., AVENUE THEATER, INC. and LVF PHILIPPINES, INC., (Formerly VF PHILIPPINES), *Respondents*.
G.R. NOS. 166299-300, THIRD DIVISION, December 13, 2005, GARCIA< J.

Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.

FACTS

Petitioner Aurelio K. Litonjua, Jr. (Aurelio) and herein respondent Eduardo K. Litonjua, Sr. (Eduardo) are brothers. The legal dispute between them started when, Aurelio filed a suit against his brother Eduardo and herein respondent Robert T. Yang (Yang) and several corporations for specific performance and accounting. In his complaint, Aurelio alleged that, since June 1973, he and Eduardo are into a joint venture/partnership arrangement in the Odeon Theater business which had expanded thru investment in Cineplex, Inc., LCM Theatrical Enterprises, Odeon Realty Corporation (operator of Odeon I and II theatres), Avenue Realty, Inc., owner of lands and buildings, among other corporations. Yang is described in the complaint as petitioner's and Eduardo's partner in their Odeon Theater investment.

ISSUE

Whether petitioner and respondent Eduardo are partners in the theatre, shipping and realty business, as one claims but which the other denies

RULING

A partnership exists when two or more persons agree to place their money, effects, labor, and skill in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses between them. A contract of partnership is defined by the Civil Code as one where two or more persons bound themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves. A joint venture, on the other hand, is hardly distinguishable from, and may be likened to, a partnership since their elements are similar, *i.e.*, community of interests in the business and sharing of profits and losses. Being a form of partnership, a joint venture is generally governed by the law on partnership.
Foremost of these are the following provisions of the Civil Code:

Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.

Art. 1772. Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.

Failure to comply with the requirement of the preceding paragraph shall not affect the liability of the partnership and the members thereof to third persons.

Art. 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties, and attached to the public instrument.

Annex '***A-1***', on its face, contains typewritten entries, personal in tone, but is unsigned and undated. As an unsigned document, there can be no quibbling that Annex '***A-1*** does not meet the public instrumentation requirements exacted under Article 1771 of the Civil Code. Moreover, being unsigned and doubtless referring to a partnership involving more than P3,000.00 in money or property, Annex '***A-1*** cannot be presented for notarization, let alone registered with the Securities and Exchange Commission (SEC), as called for under the Article 1772 of the Code. And inasmuch as the inventory requirement under the succeeding Article 1773 goes into the matter of validity when immovable property is contributed to the partnership, the next logical point of inquiry turns on the nature of petitioner's contribution, if any, to the supposed partnership.

Considering thus the value and nature of petitioner's alleged contribution to the purported partnership, the Court, even if so disposed, cannot plausibly extend Annex '***A-1*** the legal effects that petitioner so desires and pleads to be given. Annex '***A-1*** , in fine, cannot support the existence of the partnership sued upon and sought to be enforced. The legal and factual milieu of the case calls for this disposition. A partnership may be constituted in any form, save when immovable property or real rights are contributed thereto or when the partnership has a capital of at least P3,000.00, in which case a public instrument shall be necessary. And if only to stress what has repeatedly been articulated, an inventory to be signed by the parties and attached to the public instrument is also indispensable to the validity of the partnership whenever immovable property is contributed to it.

Considering that the allegations in the complaint showed that [petitioner] contributed immovable properties to the alleged partnership, the 'Memorandum (Annex 'A of the complaint) which purports to establish the said 'partnership/joint venture is NOT a public instrument and there was NO inventory of the immovable property duly signed by the parties. As such, the said 'Memorandum ' is null and void for purposes of establishing the existence of a valid contract of partnership. Indeed, because of the failure to comply with the essential formalities of a valid contract, the purported 'partnership/joint venture is legally inexistent and it produces no effect whatsoever. Necessarily, a void or legally inexistent contract cannot be the source of any contractual or legal right. Accordingly, the allegations in the complaint, including the actionable document attached thereto, clearly demonstrates that [petitioner] has NO valid contractual or legal right which could be violated by the [individual respondents] herein. As a consequence, [petitioner's] complaint does NOT state a valid cause of action because NOT all the essential elements of a cause of action are present.

GREGORIO F. ORTEGA, TOMAS O. DEL CASTILLO, JR., and BENJAMIN T. BACORRO, petitioners, vs. HON. COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION and JOAQUIN L. MISA, respondents.
G.R. No. 109248, THIRD DIVISION, July 3, 1995, VITUG, J.

A partnership that does not fix its term is a partnership at will. That the law firm "Bito, Misa & Lozada," and now "Bito, Lozada, Ortega and Castillo," is indeed such a partnership need not be unduly belabored.

FACTS:

The law firm of ROSS, LAWRENCE, SELPH and CARRASCOSO was duly registered in the Mercantile Registry and reconstituted with the Securities and Exchange Commission. The SEC records show

that there were several subsequent amendments to the articles of partnership to change the firm name.

Thereafter, petitioner-appellant wrote the respondents-appellees a letter stating his withdrawal and retirement from the firm.

Petitioner filed with this Commission's Securities Investigation and Clearing Department (SICD) a petition for dissolution and liquidation of partnership.

The hearing officer rendered a decision ruling that:

"[P]etitioner's withdrawal from the law firm Bito, Misa & Lozada did not dissolve the said law partnership. Accordingly, the petitioner and respondents are hereby enjoined to abide by the provisions of the Agreement relative to the matter governing the liquidation of the shares of any retiring or withdrawing partner in the partnership interest."

On appeal, the SEC *en banc* reversed the decision of the Hearing Officer and held that the withdrawal of Attorney Joaquin L. Misa had dissolved the partnership of "Bito, Misa & Lozada." The Commission ruled that, being a partnership at will, the law firm could be dissolved by any partner at any time, such as by his withdrawal therefrom, regardless of good faith or bad faith, since no partner can be forced to continue in the partnership against his will. The petitioners sought for reconsideration of said decision but the same was denied hence, they appealed to CA.

The Court of Appeals, finding no reversible error on the part of respondent Commission, AFFIRMED *in toto* the SEC decision and order appealed from.

ISSUE:

1. Whether or not the Court of Appeals has erred in holding that the partnership of Bito, Misa & Lozada (now Bito, Lozada, Ortega & Castillo) is a partnership at will;

2. Whether or not the Court of Appeals has erred in holding that the withdrawal of private respondent dissolved the partnership regardless of his good or bad faith; and

3. Whether or not the Court of Appeals has erred in holding that private respondent's demand for the dissolution of the partnership so that he can get a physical partition of partnership was not made in bad faith;

RULING:

1. NO.

A partnership that does not fix its term is a partnership at will. That the law firm "Bito, Misa & Lozada," and now "Bito, Lozada, Ortega and Castillo," is indeed such a partnership need not be unduly belabored.

The partnership agreement (amended articles of 19 August 1948) does not provide for a specified period or undertaking.

The hearing officer however opined that the partnership is one for a specific undertaking and hence not a partnership at will, citing paragraph 2 of the Amended Articles of Partnership

The "purpose" of the partnership is not the specific undertaking referred to in the law. Otherwise, all partnerships, which necessarily must have a purpose, would all be considered as partnerships for a definite undertaking. There would therefore be no need to provide for articles on partnership at will as none would so exist. Apparently what the law contemplates, is a specific undertaking or "project" which has a definite or definable period of completion.

The birth and life of a partnership at will is predicated on the mutual desire and consent of the partners. The right to choose with whom a person wishes to associate himself is the very foundation and essence of that partnership. Its continued existence is, in turn, dependent on the constancy of that mutual resolve, along with each partner's capability to give it, and the absence of a cause for dissolution provided by the law itself. Verily, any one of the partners may, at his sole pleasure, dictate a dissolution of the partnership at will. He must, however, act in good faith, not that the attendance of bad faith can prevent the dissolution of the partnership[4] but that it can result in a liability for damages.

2. NO.

The dissolution of a partnership is the change in the relation of the parties caused by any partner ceasing to be associated in the carrying on, as might be distinguished from the winding up of, the business. Upon its dissolution, the partnership continues and its legal personality is retained until the complete winding up of its business culminating in its termination.

The liquidation of the assets of the partnership following its dissolution is governed by various provisions of the Civil Code; however, an agreement of the partners, like any other contract, is binding among them and normally takes precedence to the extent applicable over the Code's general provisions. We here take note of paragraph 8 of the "Amendment to Articles of Partnership" reading thusly:

. . . In the event of the death or retirement of any partner, his interest in the partnership shall be liquidated and paid in accordance with the existing agreements and his partnership participation shall revert to the Senior Partners for allocation as the Senior Partners may determine…

The term "retirement" must have been used in the articles, as we so hold, in a generic sense to mean the dissociation by a partner, inclusive of resignation or withdrawal, from the partnership that thereby dissolves it.

3. NO.

On the third and final issue, we accord due respect to the appellate court and respondent Commission on their common factual finding, *i.e.*, that Attorney Misa did not act in bad faith. Public respondents viewed his withdrawal to have been spurred by "interpersonal conflict" among the partners. It would not be right, we agree, to let any of the partners remain in the partnership under such an atmosphere of animosity; certainly, not against their will. Indeed, for as long as the reason for withdrawal of a partner is not contrary to the dictates of justice and fairness, nor for the

purpose of unduly visiting harm and damage upon the partnership, *bad faith* cannot be said to characterize the act. Bad faith, in the context here used, is no different from its normal concept of a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.

TEODORO DE LOS REYES, plaintiff-appellee, vs. **VICENTE LUKBAN and ESPERIDION BORJA, defendants. VICENTE LUKBAN,** appellant.
G.R. No. 10695, EN BANC, December 15, 1916, TORRES, J.

The attachment, or recourse to the property, the lack of which proceeding was complained of, is a proceeding that was resorted to when attempt was made to execute the final judgment rendered against the partnership of Lukban & Borja, which proceeding gave negative results; therefore, if the requirement of article 237 of the Code of Commerce must be complied with by the creditor it is evident that it has already been done for the defendant Lukban was unable to show that the partnership to which he belonged actually possessed any more assets.

FACTS

1. That on July 15, 1905, the herein plaintiff Teodoro de los Reyes brought suit against the firm of Lukban & Borja to recover the sum of P1,086.65 owing for merchandise bought on credit in the months of October and November, 1904, from the ship supply store known by the name of *La Industria*. The said suit was heard before the Honorable John C. Sweeney, on October 19, 1905, on which date the said judge sentenced the defendant firm to pay the sum of P1,086.65, Philippine currency, with legal interest thereon from July 14, 1905, to the date of the judgment, amounting to P16.30, Philippine currency, and costs amounting to P46.24. It does not appear that this obligation was set forth in writing. All the preceding has been taken from the record of that court in case No. 3759, De los Reyes vs, Lukban & Borja.

2. On August 19, 1913, the same plaintiff Teodoro de los Reyes brought suit against Lukban & Borja to recover the sum of P853, alleging for this purpose that the defendant Espiridion Borja paid P522.69 on account of the sum of P1,086.65 allowed in the judgment referred to in the preceding paragraph, there remaining unpaid P610.21 of the principal debt, to which is added the legal interest thereon from January 1, 1906, to the date of the commencement of the said suit, thus forming the total sum above stated of P853. After hearing the case, the Honorable Judge Del Rosario, on November 20, 1913, rendered judgment absolving the firm of Lukban & Borja from the complaint without special finding as to costs. All the facts related in this paragraph appear in case No. 10908 of this court.

3. That several years ago and seven months after its organization, or, more specifically, on April 13, 1909, the firm of Lukban & Borja was lawfully dissolved, as stated by Borja; and that the five years from the 13th of the same month of the year 1904, stipulated for its duration had elapsed. (Judgment in case No. 10908.) The articles of incorporation of the firm of Lukban & Borja are found in the attached document, which, for its identification, is marked as Exhibit A of this agreement.

4. That the assets of the firm of Lukban & Borja had not been exhausted (by attachment) for the reason that the plaintiff did not know what property belonged to it.

5. Vicente Lukban and Espiridion Borja, notwithstanding that they alleged themselves to be copartners of the firm of Lukban & Borja, were not sued by the herein plaintiff in cases Nos. 3759 and 10908, but that plaintiff sued the firm of Lukban & Borja, represented by Borja.

ISSUE

Whether the action brought against the defendant is improper

RULING

With respect to the first assignment of error, the contents of the writ and the return of the execution of the final judgment rendered in the said case No. 3759 show that the dissolved partnership of Lukban & Borja had absolutely no property whatever of its own. Had any property whatever of the said partnership still remained, the defendant Lukban would have pointed it out inorder to avoid being obliged to pay in solidum all the balance of the sum which the firm was sentenced to pay by the said final judgment of October 19, 1905. He did not do so because the firm of Lukban & Borja no longer had any kind of property or credits, as shown by the document setting forth the agreement made by and between several creditors of the said firm, a third party named Ramon Tinsay and the former partner of the firm, Espiridion Borja, in which document it appears that the firm Lukban & Borja owed four creditors, among them the plaintiff De los Reyes, the total sum of P10,165.01 and these creditors with some difficulty succeeded in collecting the sum of P5,000 through a transaction with the said Ramon Tinsay who paid this last amount for the account of the partner Espiridion Borja. It appears that the latter paid to the creditor De los Reyes the aforementioned sum of P522.69, on account of the firm's debt to Teodoro de los Reyes, a debt which was recognized in the said judgment of October 19, 1905. The attachment, or recourse to the property, the lack of which proceeding was complained of, is a proceeding that was resorted to when attempt was made to execute the final judgment rendered against the partnership of Lukban & Borja, which proceeding gave negative results; therefore, if the requirement of article 237 of the Code of Commerce must be complied with by the creditor it is evident that it has already been done for the defendant Lukban was unable to show that the partnership to which he belonged actually possessed any more assets.

ELMO MUÑASQUE, petitioner, vs. **COURT OF APPEALS,CELESTINO GALAN TROPICAL COMMERCIAL COMPANY and RAMON PONS,** respondents.
G.R. No. L-39780, FIRST DIVISION, November 11, 1985, GUTTIERREZ, JR., *J.*

Under Art. 1816, partners are liable pro-rate. Furthermore, under Art. 1822 and 1823, it is clear that the obligation of the partners are solidary.

FACTS

Munasque, in behalf of the partnership of "Galan and Munasque" as contractor, entered into a contract with the respondent Tropical for remodeling the latter's Cebu Branch building.

A total amount of 25,000 would be paid to petitioner which shall be made by installment and through giving of a check.

The first payment, in the form of check was in the name of petitioner. The latter indorsed the same to Galan which enabled the latter to encash the same. It was allegedly used by Galan for his personal matters.

Because of this, the second check amounting to 6,000, which was indorsed to the petitioner, was not indorsed by the latter to Galan. Thereafter, a check was issued again by Tropical but this time, the payee is "Galan and Associate" because Galan said that there is a misunderstanding between him and Munasque. This enabled Galan to encash the second check.

Because of this, the petitioner continued the construction. He borrowed from his friend certain sum of money for the said construction.

Then, the 2 remaining checks were given to the petitioner. The latter filed a complaint for payment of sum of money and damages against respondents (Tropical, Cebu Manager, and Galan)

RTC and Ca absolved the respondents and held petitioner jointly liable with Galan to pay the intervenors (Cebu Southern Hardware Company and Blued Diamond Glass Palace) for the credits extended by the latter.

Petitioner contends that he should not be liable as he is not a partner of Galan and that the payment made by Tropical to Galan was erroneous.

ISSUES:

1. Whether there was a partnership between Galan and Munasque
2. Whether the CA erred in not holding Galan guilty of malversing the amount covered by the check
3. Whether payment made by Tropical to Galan is proper

RULING:

1. Yes. The contract that petitioner entered into with Tropical clearly shows that he is undertaking the renovation of the building on behalf of the partnership Galan and Munasque. Further, the act of petitioner of indorsing the check (first payment) to Galan clearly shows that the latter was his partner.

Further, CA was correct in holding that the payment made to Galan was a valid payment since the parties presented themselves as partners. The misunderstanding between the two does not make the partnership a sham or defective partnership.

2. The failure of the petitioner to raise this issue in the amendment of his complaint bars him from seeking the relief he prayed for.

3. Yes. Under Art. 1816, partners are liable pro-rate. Furthermore, under Art. 1822 and 1823, it is clear that the obligation of the partners are solidary.

In this case, Tropical had every reason to believe that a partnership existed between the petitioner and Galan and the payment it made to Galan is proper. The same is true with regard to the intervenors where the petitioner and Galan shall pay solidarily.

However, Munasque must be reimbursed by Galan for the payments made by the former. Galan is in bad faith.

AGENCY

ALVIN PATRIMONIO, Petitioner, vs. **NAPOLEON GUTIERREZ and OCTAVIO MARASIGAN III,** Respondents.
G.R. No. 187769, SECOND DIVISION, June 4, 2014, BRION, J.

Article 1878 paragraph 7 of the Civil Code expressly requires a special power of authority before an agent can loan or borrow money in behalf of the principal, to wit:

Article 1878 does not state that the authority be in writing. As long as the mandate is express, such authority may be either oral or written. We unequivocably declared in one case that the requirement under Article 1878 of the Civil Code refers to the nature of the authorization and not to its form. Be that as it may, the authority must be duly established by competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given. And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence.

Here, the contract of loan entered into by Gutierrez in behalf of the Petitioner should be nullified for being void; petitioner is not bound by the Contract of Loan.

FACTS

The petitioner and the respondent Napoleon Gutierrez entered into a business venture under the name of Slam Dunk Corporation, a production outfit that produced mini-concerts and shows related to basketball. Petitioner was already then a decorated professional basketball player while Gutierrez was a well-known sports columnist.

In the course of their business, the petitioner presigned several checks to answer for the expenses of Slam Dunk. Although signed, these checks had no payee's name, date, or amount. The blank checks were entrusted to Gutierrez with the specific instruction not to fill them out without previous notification to and approval by the petitioner. According to petitioner, the arrangement was made so that he could verify the validity of the payment and make the proper arrangements to fund the account.

Without the petitioner's knowledge and consent, Gutierrez went to Marasigan to secure a loan in the amount of 200,000 on the excuse that the petitioner needed the money for the construction of his house. In addition to the payment of the principal, Gutierrez assured Marasigan that he would be paid an interest of 5% per month.

Marasigan acceded and gave him the money. Gutierrez simultaneously delivered to Marasigan one of the blank checks the petitioner pre-signed with Pilipinas Bank. Marasigan deposited the check but it was dishonored for the reasons "account closed." Marasigan sough recovery from Gutierrez, to no avail. He thereafter sent several demand letters to the petitioner asking for the payment of

200,000, but his demands likewise went unheeded. Consequently, he filed a criminal case for violation of BP 22 against the petitioner.

Petitioner then filed before the RTC a complaint for declaration of nullity of loan and recovery of damages against Gutierrez and Marasigan. He completely denied authorizing the loan or the check's negotiation, and asserted that he was not privy to the parties' loan agreement.

The RTC and the CA ruled in favor of Marasigan. The petitioner argues that under Art. 1878 of the CC, a special power of attorney is necessary for an individual to make a loan of borrow money in behalf of another.

ISSUE

Whether the contract of loan in the amount of 200,000 granted by respondent Marasigan to the petitioner through respondent Gutierrez may be nullified for being void

RULING

Yes. The petitioner seeks to nullify the contract of loan on the ground that he never authorized the borrowing of money. He points to Article 1878, paragraph 7 of the Civil Code, which explicitly requires a written authority when the loan is contracted through an agent. The petitioner contends that absent such authority in writing, he should not be held liable for the face value of the check because he was not a party or privy to the agreement.

Article 1878 paragraph 7 of the Civil Code expressly requires a special power of authority before an agent can loan or borrow money in behalf of the principal, to wit:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x

(7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration. (emphasis supplied)

Article 1878 does not state that the authority be in writing. As long as the mandate is express, such authority may be either oral or written. We unequivocably declared in one case that the requirement under Article 1878 of the Civil Code refers to the nature of the authorization and not to its form. Be that as it may, the authority must be duly established by competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given. And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence.

Here, the contract of loan entered into by Gutierrez in behalf of the Petitioner should be nullified for being void; petitioner is not bound by the Contract of Loan.

A review of the records reveals that Gutierrez did not have any authority to borrow money in behalf of the petitioner. Records do not show that the petitioner executed any special power of attorney (SPA) in favor of Gutierrez. In fact, the petitioner's testimony confirmed that he never authorized

Gutierrez (or anyone for that matter), whether verbally or in writing, to borrow money in his behalf, nor was he aware of any such transaction:

Marasigan however submits that the petitioner's acts of pre-signing the blank checks and releasing them to Gutierrez suffice to establish that the petitioner had authorized Gutierrez to fill them out and contract the loan in his behalf.

Marasigan's submission fails to persuade us. In the absence of any authorization, Gutierrez could not enter into a contract of loan in behalf of the petitioner.

In the absence of any showing of any agency relations or special authority to act for and in behalf of the petitioner, the loan agreement Gutierrez entered into with Marasigan is null and void. Thus, the petitioner is not bound by the parties' loan agreement.

Furthermore, that the petitioner entrusted the blank pre-signed checks to Gutierrez is not legally sufficient because the authority to enter into a loan can never be presumed. The contract of agency and the special fiduciary relationship inherent in this contract must exist as a matter of fact. The person alleging it has the burden of proof to show, not only the fact of agency, but also its nature and extent.

The records show that Marasigan merely relied on the words of Gutierrez without securing a copy of the SPA in favor of the latter and without verifying from the petitioner whether he had authorized the borrowing of money or release of the check. He was thus bound by the risk accompanying his trust on the mere assurances of Gutierrez.

JOCELYN B. DOLES, Petitioner, *vs.* **MA. AURA TINA ANGELES,** Respondent.
G.R. No. 14935, FIRST DIVISION, June 26, 2006, **AUSTRIA-MARTINEZ, J.**

If an act done by one person in behalf of another is in its essential nature one of agency, the former is the agent of the latter notwithstanding he or she is not so called. The question is to be determined by the fact that one represents and is acting for another, and if relations exist which will constitute an agency, it will be an agency whether the parties understood the exact nature of the relation or not.

FACTS

Ma. Aura Tina Angeles (respondent) filed with the RTC a complaint for Specific Performance with Damages against Jocelyn B. Doles (petitioner). Respondent alleged that petitioner was indebted to the former in the concept of a personal loan amounting to P405,430.00 representing the principal amount and interest; that by virtue of a "Deed of Absolute Sale",[3] petitioner, as seller, ceded to respondent, as buyer, a parcel of land, as well as the improvements thereon, located at a subdivision project known as Camella Townhomes Sorrente in Bacoor, Cavite, in order to satisfy her personal loan with respondent; that this property was mortgaged to National Home Mortgage Finance Corporation (NHMFC) to secure petitioner's loan in the sum of P337,050.00 with that entity; that as a condition for the foregoing sale, respondent shall assume the undue balance of the mortgage and pay the monthly amortization of P4,748.11 for the remainder of the 25 years which began on September 3, 1994; that the property was at that time being occupied by a tenant paying a monthly rent of P3,000.00; that upon verification with the NHMFC, respondent learned that petitioner had incurred arrearages amounting to P26,744.09, inclusive of penalties and interest; that upon

informing the petitioner of her arrears, petitioner denied that she incurred them and refused to pay the same; that despite repeated demand, petitioner refused to cooperate with respondent to execute the necessary documents and other formalities required by the NHMFC to effect the transfer of the title over the property; that petitioner collected rent over the property for the month of January 1997 and refused to remit the proceeds to respondent; and that respondent suffered damages as a result and was forced to litigate.

Petitioner, then defendant, while admitting some allegations in the Complaint, denied that she borrowed money from respondent, and averred that from June to September 1995, she referred her friends to respondent whom she knew to be engaged in the business of lending money in exchange for personal checks through her capitalist Arsenio Pua. She alleged that her friends, namely, Zenaida Romulo, Theresa Moratin, Julia Inocencio, Virginia Jacob, and Elizabeth Tomelden, borrowed money from respondent and issued personal checks in payment of the loan; that the checks bounced for insufficiency of funds; that despite her efforts to assist respondent to collect from the borrowers, she could no longer locate them; that, because of this, respondent became furious and threatened petitioner that if the accounts were not settled, a criminal case will be filed against her; that she was forced to issue eight checks amounting to P350,000 to answer for the bounced checks of the borrowers she referred; that prior to the issuance of the checks she informed respondent that they were not sufficiently funded but the latter nonetheless deposited the checks and for which reason they were subsequently dishonored; that respondent then threatened to initiate a criminal case against her for violation of *Batas Pambansa Blg.* 22; that she was forced by respondent to execute an "Absolute Deed of Sale" over her property in Bacoor, Cavite, to avoid criminal prosecution; that the said deed had no valid consideration; that she did not appear before a notary public; that the Community Tax Certificate number on the deed was not hers and for which respondent may be prosecuted for falsification and perjury; and that she suffered damages and lost rental as a result.

Petitioner argued that respondent categorically admitted in open court that she acted only as agent or representative of Arsenio Pua, the principal financier and, hence, she had no legal capacity to sue petitioner; and that the CA failed to consider the fact that petitioner's father, who co-owned the subject property, was not impleaded as a defendant nor was he indebted to the respondent and, hence, she cannot be made to sign the documents to effect the transfer of ownership over the entire property.

ISSUE

Whether the respondent is an agent of Arsenio Pua

RULING

Yes. Respondent is estopped to deny that she herself acted as agent of a certain Arsenio Pua, her disclosed principal. She is also estopped to deny that petitioner acted as agent for the alleged debtors, the friends whom she (petitioner) referred.

This Court has affirmed that, under Article 1868 of the Civil Code, the basis of agency is representation. The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention. Agency may even be implied from the words and

conduct of the parties and the circumstances of the particular case. Though the fact or extent of authority of the agents may not, as a general rule, be established from the declarations of the agents alone, if one professes to act as agent for another, she may be estopped to deny her agency both as against the asserted principal and the third persons interested in the transaction in which he or she is engaged.[28]

In this case, petitioner knew that the financier of respondent is Pua; and respondent knew that the borrowers are friends of petitioner.

The CA is incorrect when it considered the fact that the "supposed friends of [petitioner], the actual borrowers, did not present themselves to [respondent]" as evidence that negates the agency relationship—it is sufficient that petitioner disclosed to respondent that the former was acting in behalf of her principals, her friends whom she referred to respondent. For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts. The law in fact contemplates, and to a great degree, impersonal dealings where the principal need not personally know or meet the third person with whom her agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.[29]

In the case at bar, both petitioner and respondent have undeniably disclosed to each other that they are representing someone else, and so both of them are estopped to deny the same. It is evident from the record that petitioner merely refers actual borrowers and then collects and disburses the amounts of the loan upon which she received a commission; and that respondent transacts on behalf of her "principal financier", a certain Arsenio Pua. If their respective principals do not actually and personally know each other, such ignorance does not affect their juridical standing as agents, especially since the very purpose of agency is to extend the personality of the principal through the facility of the agent.

With respect to the admission of petitioner that she is "re-lending" the money loaned from respondent to other individuals for profit, *it must be stressed that the manner in which the parties designate the relationship is not controlling*. If an act done by one person in behalf of another is in its essential nature one of agency, the former is the agent of the latter notwithstanding he or she is not so called. The question is to be determined by the fact that one represents and is acting for another, and if relations exist which will constitute an agency, *it will be an agency whether the parties understood the exact nature of the relation or not.*

That both parties acted as mere agents is shown by the undisputed fact that the friends of petitioner issued checks in payment of the loan in the name of Pua. If it is true that petitioner was "re-lending", then the checks should have been drawn in her name and not directly paid to Pua.

FLORENTINO RALLOS, ET AL., plaintiff-appellee, vs. **TEODORO R. YANGCO,** defendant-appellant.
G.R. No. 6906, EN BANC, September 27, 1911, MORELAND, J.

Having advertised the fact that Collantes was his agent and having given them a special invitation to deal with such agent, it was the duty of the defendant on the termination of the relationship of principal and agent to give due and timely notice thereof to the plaintiffs. Failing to do so, he is responsible to them for whatever goods may have been in good faith and without negligence sent to the agent without knowledge, actual or constructive, of the termination of such relationship.

FACTS

The plaintiffs proceeded to do a considerable business with the defendant through the said Collantes, as his factor, sending to him as agent for the defendant a good deal of produce to be sold on commission. Later, and in the month of February, 1909, the plaintiffs sent to the said Collantes, as agent for the defendant, 218 bundles of tobacco in the leaf to be sold on commission, as had been other produce previously. The said Collantes received said tobacco and sold it for the sum of P1,744. The charges for such sale were P206.96. leaving in the hands of said Collantes the sum of P1,537.08 belonging to the plaintiffs. This sum was, apparently, converted to his own use by said agent.

It appears, however, that prior to the sending of said tobacco the defendant had severed his relations with Collantes and that the latter was no longer acting as his factor. This fact was not known to the plaintiffs; and it is conceded in the case that no notice of any kind was given by the defendant to the plaintiffs of the termination of the relations between the defendant and his agent. The defendant refused to pay the said sum upon demand of the plaintiffs, placing such refusal upon the ground that at the time the said tobacco was received and sold by Collantes he was acting personally and not as agent of the defendant. This action was brought to recover said sum.

ISSUE

Whether the plaintiffs, acting in good faith and without knowledge, having sent produce to sell on commission to the former agent of the defendant, can recover of the defendant under the circumstances above set forth

RULING

Yes. We are of the opinion that the defendant is liable. Having advertised the fact that Collantes was his agent and having given them a special invitation to deal with such agent, it was the duty of the defendant on the termination of the relationship of principal and agent to give due and timely notice thereof to the plaintiffs. Failing to do so, he is responsible to them for whatever goods may have been in good faith and without negligence sent to the agent without knowledge, actual or constructive, of the termination of such relationship.

JESUS M. GOZUN, *Petitioner*, *v.* **JOSE TEOFILO T. MERCADO A.K.A. 'DON PEPITO MERCADO,***Respondent*.
G.R. NO. 167812, THIRD DIVISION, December 19, 2006, CARPIO MORALES, J.

It bears noting that Lilian signed in the receipt in her name alone, without indicating therein that she was acting for and in behalf of respondent. She thus bound herself in her personal capacity and not as an agent of respondent or anyone for that matter.

It is a general rule in the law of agency that, in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only.

FACTS

In the local elections of 1995, respondent vied for the gubernatorial post in Pampanga. Upon respondent's request, petitioner, owner of JMG Publishing House, a printing shop located in San Fernando, Pampanga, submitted to respondent draft samples and price quotation of campaign materials.

By petitioner's claim, respondent's wife had told him that respondent already approved his price quotation and that he could start printing the campaign materials, hence, he did print campaign materials like posters bearing respondent's photograph,[3] leaflets containing the slate of party candidates,[4] sample ballots,[5] poll watcher identification cards,[6] and stickers.

Given the urgency and limited time to do the job order, petitioner availed of the services and facilities of Metro Angeles Printing and of St. Joseph Printing Press, owned by his daughter Jennifer Gozun and mother Epifania Macalino Gozun, respectively.[7] Petitioner delivered the campaign materials to respondent's headquarters along Gapan-Olongapo Road in San Fernando, Pampanga.[8]

Meanwhile, on March 31, 1995, respondent's sister-in-law, Lilian Soriano (Lilian) obtained from petitioner "cash advance" of P253,000 allegedly for the allowances of poll watchers who were attending a seminar and for other related expenses. Lilian acknowledged on petitioner's 1995 diary[9] receipt of the amount.[10]

Petitioner later sent respondent a Statement of Account[11] in the total amount of P2,177,906 itemized as follows: P640,310 for JMG Publishing House; P837,696 for Metro Angeles Printing; P446,900 for St. Joseph Printing Press; and P253,000, the "cash advance" obtained by Lilian.

On August 11, 1995, respondent's wife partially paid P1,000,000 to petitioner who issued a receipt[12]therefor. Despite repeated demands and respondent's promise to pay, respondent failed to settle the balance of his account to petitioner.

Petitioner thus filed with the Regional Trial Court of Angeles City on November 25, 1998 a complaint[15]against respondent to collect the remaining amount of P1,177,906 plus "inflationary adjustment" and attorney's fees.

In his Answer with Compulsory Counterclaim,[16] respondent denied having transacted with petitioner or entering into any contract for the printing of campaign materials. He alleged that the various campaign materials delivered to him were represented as donations from his family, friends and political supporters. He added that all contracts involving his personal expenses were coursed through and signed by him to ensure compliance with pertinent election laws. On petitioner's claim that Lilian, on his (respondent's) behalf, had obtained from him a cash advance of P253,000, respondent denied having given her authority to do so and having received the same.

ISSUE

Whether respondent is bound by the loan contracted by Lilian

RULING

No. 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. Contracts entered into in the name of another person by one who has been given no authority or legal representation or who has acted beyond his powers are classified as unauthorized contracts and are declared unenforceable, unless they are ratified.

Generally, the agency may be oral, unless the law requires a specific form. However, a special power of attorney is necessary for an agent to, as in this case, borrow money, unless it be urgent and indispensable for the preservation of the things which are under administration. Since nothing in this case involves the preservation of things under administration, a determination of whether Soriano had the special authority to borrow money on behalf of respondent is in order.

It bears noting that Lilian signed in the receipt in her name alone, without indicating therein that she was acting for and in behalf of respondent. She thus bound herself in her personal capacity and not as an agent of respondent or anyone for that matter.

It is a general rule in the law of agency that, in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only.

In sum, respondent has the obligation to pay the total cost of printing his campaign materials delivered by petitioner in the total of P1,924,906, less the partial payment of P1,000,000, or P924,906.

LAUREANO T. ANGELES, Petitioner, vs. **PHILIPPINE NATIONAL RAILWAYS (PNR) AND RODOLFO FLORES,** Respondents.
G.R. No. 150128, SECOND DIVISION, August 31, 2006, GARCIA, J.

A power of attorney is only but an instrument in writing by which a person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts on behalf of the principal. The written authorization itself is the power of attorney, and this is clearly indicated by the fact that it has also been called a letter of attorney. Its primary purpose is not to define the authority of the agent as between himself and his principal but to evidence the authority of the agent to third parties with whom the agent deals. The letter under consideration is sufficient to constitute a power of attorney. Except as may be required by statute, a power of attorney is valid although no notary public intervened in its execution.

FACTS

The respondent PNR informed a certain Gaudencio Romualdez (Romualdez, hereinafter) that it has accepted the latters offer to buy, on an AS IS, WHERE IS basis, the PNRs scrap/unserviceable rails for the total amount of P96,600.00. After paying the stated purchase price, Romualdez addressed a letter to Atty. Cipriano Dizon, PNRs Acting Purchasing Agent that Romualdez is authorizing Lizette Wijangco to be his lawful representative in the withdrawal of the scrap/unserviceable rails awarded to him.

The Lizette R. Wijanco mentioned in the letter was Lizette Wijanco- Angeles, petitioner's now deceased wife. Lizette requested the PNR to transfer the location of withdrawal for the reason that the scrap/unserviceable rails were not ready for hauling. The PNR granted said request and allowed Lizette to withdraw scrap/unserviceable rails in Tarlac instead. However, the PNR subsequently suspended the withdrawal in view of what it considered as documentary discrepancies coupled by reported pilferages of over P500,000.00 worth of PNR scrap properties in Tarlac.

Consequently, the spouses Angeles demanded the refund of the amount of P96,000.00. The PNR, however, refused to pay, alleging that as per delivery receipt duly signed by Lizette, 54.658 metric tons of unserviceable rails had already been withdrawn which, at P2,100.00 per metric ton, were worth P114,781.80, an amount that exceeds the claim for refund.

The spouses Angeles filed suit against the PNR and its corporate secretary, Rodolfo Flores, among others, forspecificperformance and damages. In it, they prayed that PNR be directed to deliver 46 metric tons of scrap/unserviceable rails and to pay them damages and attorney's fees. Meanwhile, Lizette W. Angeles passed away and was substituted by her heirs, among whom is her husband, herein petitioner Laureno T. Angeles.

The trial court postulated that the spouses Angeles are not the real parties-in-interest, rendered judgment dismissing their complaint for lack of cause of action. As held by the court, Lizette was merely a representative of Romualdez in the withdrawal of scrap or unserviceable rails awarded to him and not an assignee to the latter's rights with respect to the award. CA affirmed the decision of RTC.

ISSUE

Whether Lizette W. Angeles is agent or an assignee of his (Romualdez's) interest in the scrap rails awarded to San Juanico Enterprises

RULING

Yes. The CAs conclusion, affirmatory of that of the trial court, is that Lizette was not an assignee, but merely an agent whose authority was limited to the withdrawal of the scrap rails, hence, without personality to sue.

Where agency exists, the third party's (in this case, PNR's) liability on a contract is to the principal and not to the agent and the relationship of the third party to the principal is the same as that in a contract in which there is no agent. Normally, the agent has neither rights nor liabilities as against the third party. He cannot thus sue or be sued on the contract. Since a contract may be violated only by the parties thereto as against each other, the real party-in-interest, either as plaintiff or defendant in an action upon that contract must, generally, be a contracting party.

The legal situation is, however, different where an agent is constituted as an assignee. In such a case, the agent may, in his own behalf, sue on a contract made for his principal, as an assignee of such contract. The rule requiring every action to be prosecuted in the name of the real party-in-interest recognizes the assignment of rights of action and also recognizes that when one has a right

assigned to him, he is then the real party-in-interest and may maintain an action upon such claim or right.[4]

Upon scrutiny of the subject Romualdez's letter to Atty. Cipriano Dizon dated May 26, 1980, it is at once apparent that Lizette was to act just as a representative of Romualdez in the withdrawal of rails, and not an assignee.

Petitioner makes much of the fact that the terms agent or attorney-in-fact were not used in the Romualdez letter aforestated. It bears to stress, however, that **the words principal and agent, are not the only terms used to designate the parties in an agency relation. The agent may also be called an attorney, proxy, delegate or, as here, *representative*.**

It cannot be over emphasized that Romualdez's use of the active verb authorized, instead of assigned, indicated an intent on his part to keep and retain his interest in the subject matter. Stated a bit differently, he intended to limit Lizettes role in the scrap transaction to being the representative of his interest therein.

Petitioner submits that the second paragraph of the Romualdez letter, stating - I have given [Lizette] the original copy of the award x x x which will indicate my waiver of rights, interests and participation in favor of Lizette R. Wijanco - clarifies that Lizette was intended to be an assignee, and not a mere agent.

We are not persuaded. As it were, the petitioner conveniently omitted an important phrase preceding the paragraph which would have put the whole matter in context. The phraseis **For this reason**, and the antecedent thereof is his (Romualdez) having appointed Lizette as his representative in the matter of the withdrawal of the scrap items. In fine, the key phrase clearly conveys the idea that Lizette was given the original copy of the contract award to enable her to withdraw the rails as Romualdezs authorized representative

When put into the context of the letter as a whole, it is abundantly clear that the rights which Romualdez waived or ceded in favor of Lizette were those in furtherance of the agency relation that he had established for the withdrawal of the rails.

At any rate, any doubt as to the intent of Romualdez generated by the way his letter was couched could be clarified by the acts of the main players themselves. Article 1371 of the Civil Code provides that to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. In other words, in case of doubt, resort may be made to the situation, surroundings, and relations of the parties.

The fact of agency was, as the trial court aptly observed,[5] confirmed in subsequent letters from the Angeles spouses in which they themselves refer to Lizette as authorized representative of San Juanico Enterprises. Mention may also be made that the withdrawal receipt which Lizette had signed indicated that she was doing so in a representative capacity. One professing to act as agent for another is estopped to deny his agency both as against his asserted principal and third persons interested in the transaction which he engaged in.

Whether or not an agency has been created is a question to be determined by the fact that one represents and is acting for another. The appellate court, and before it, the trial court, had

peremptorily determined that Lizette, with respect to the withdrawal of the scrap in question, was acting for Romualdez. And with the view we take of this case, there were substantial pieces of evidence adduced to support this determination. The desired reversal urged by the petitioner cannot, accordingly, be granted. For, factual findings of the trial court, adopted and confirmed by the CA, are, as a rule, final and conclusive and may not be disturbed on appeal.[6] So it must be here.
Petitioner maintains that the Romualdez letter in question was not in the form of a special power of attorney, implying that the latter had not intended to merely authorize his wife, Lizette, to perform an act for him (Romualdez). The contention is specious. In the absence of statute, no form or method of execution is required for a valid power of attorney; it may be in any form clearly showing on its face the agents authority.[7]

A power of attorney is only but an instrument in writing by which a person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts on behalf of the principal. The written authorization itself is the power of attorney, and this is clearly indicated by the fact that it has also been called a letter of attorney. Its primary purpose is not to define the authority of the agent as between himself and his principal but to evidence the authority of the agent to third parties with whom the agent deals. The letter under consideration is sufficient to constitute a power of attorney. Except as may be required by statute, a power of attorney is valid although no notary public intervened in its execution.

A power of attorney must be strictly construed and pursued. The instrument will be held to grant only those powers which are specified therein, and the agent may neither go beyond nor deviate from the power of attorney.[10] Contextually, all that Lizette was authorized to do was to *withdraw* the unserviceable/scrap railings. Allowing her authority to sue therefor, especially in her own name, would be to read something not intended, let alone written in the Romualdez letter.

Finally, the petitioner's claim that Lizette paid the amount of P96,000.00 to the PNR appears to be a mere afterthought; it ought to be dismissed outright under the estoppel principle. In earlier proceedings, petitioner himself admitted in his complaint that it was Romualdez who paid this amount.
SC affirmed CA.

V-GENT, INC., Petitioner, vs. **MORNING STAR TRAVEL and TOURS, INC.,** Respondent.
G.R. No. 186305, SECOND DIVISION, July 22, 2015, BRION, J.

An agent may sue or be sued solely in its own name and without joining the principal when the following elements concur: (1) the agent acted in his own name during the transaction; (2) the agent acted for the benefit of an undisclosed principal; and (3) the transaction did not involve the property of the principal.

When these elements are present, the agent becomes bound as if the transaction were its own.

FACTS

The petitioner V-Gent, Inc. (V-Gent) bought twenty-six (26)[2] two-way plane tickets (Manila-Europe-Manila) from the respondent Morning Star Travel and Tours, Inc. (Morning Star).

On June 24, 1998 and September 28, 1998, V-Gent returned a total of fifteen (15) unused tickets worth $8,747.50 to the defendant. Of the 15, Morning Star refunded only six (6) tickets worth $3,445.62. Morning Star refused to refund the remaining nine (9) unused tickets despite repeated demands.

On December 15, 2000, petitioner V-Gent filed a money claim against Morning Star for payment of the unrefunded $5,301.88 plus attorney's fees.

Morning Star countered that V-Gent was not entitled to a refund because the tickets were bought on the airline company's "buy one, take one" promo. It alleged that there were only fourteen (14) unused tickets and only seven (7) of these were refundable; considering that it had already refunded six (6) tickets (which is more or less 50o/o of 14), then there was nothing else to refund.

Morning Star also questioned V-Gent's personality to file the suit. It asserted that the passengers, in whose names the tickets were issued, are the real parties-in-interest.

ISSUE

Whether VGENT, the agent, has legal standing to file the complaint

RULING

No. Every action must be prosecuted or defended in the name of the real party-in-interest - the party who stands to be benefited or injured by the judgment in the suit.[8] In suits where an agent represents a party, the principal is the real party-in-interest; an agent cannot file a suit in his own name on behalf of the principal.

Rule 3, Section 3 of the Rules of Court provides the exception when an agent may sue or be sued without joining the principal.

Section 3. Representatives as parties. - Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party-in-interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (Emphasis supplied.)

Thus an agent may sue or be sued solely in its own name and without joining the principal when the following elements concur: (1) the agent acted in his own name during the transaction; (2) the agent acted for the benefit of an undisclosed principal; and (3) the transaction did not involve the property of the principal.

When these elements are present, the agent becomes bound as if the transaction were its own. This rule is consistent with Article 1883 of the Civil Code which says:

Art. 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal. In such case,

the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent.

In the present case, only the · first element is present; the purchase order and the receipt were in the name of V-Gent. However, the remaining elements are absent because: (1) V-Gent disclosed the names of the passengers to Morning Star - in fact the tickets were in their names; and (2) the transaction was paid using the passengers' money. Therefore, Rule 3, Section 3 of the Rules of Court cannot apply.

To define the actual factual situation, V-Gent, the agent, is suing to recover the money of its principals - the passengers - who are the real parties-in-interest because they stand to be injured or benefited in case Morning Star refuses or agrees to grant the refund because the money belongs to them. From this perspective, V-Gent evidently does not have a legal standing to file the complaint.

Finally, V-Gent argues that by making a partial refund, Morning Star was already estopped from refusing to make a full refund on the ground that V-Gent is not the real party-in-interest to demand reimbursement. We find no merit in this argument. The power to collect and receive payments on behalf of the principal is an ordinary act of administration covered by the general powers of an agent. On the other hand, the filing of suits is an act of strict dominion.

PRIMITIVO SIASAT and MARCELINO SIASAT, petitioners, vs. **INTERMEDIATE APPELLATE COURT and TERESITA NACIANCENO,** respondents.
G.R. No. L-67889, FIRST DIVISION, October 10, 1985, GUTIERREZ, JR., J

A general agent is one authorized to do all acts pertaining to a business of a certain kind or at a particular place, or all acts pertaining to a business of a particular class or series. He has usually authority either expressly conferred in general terms or in effect made general by the usages, customs or nature of the business which he is authorized to transact.

FACTS

Sometime in 1974, respondent Teresita Nacianceno succeeded in convincing officials of the then Department of Education and Culture, hereinafter called Department, to purchase without public bidding, one million pesos worth of national flags for the use of public schools throughout the country. The respondent was able to expedite the approval of the purchase by hand-carrying the different indorsements from one office to another, so that by the first week of September, 1974, all the legal requirements had been complied with, except the release of the purchase orders. When Nacianceno was informed by the Chief of the Budget Division of the Department that the purchase orders could not be released unless a formal offer to deliver the flags in accordance with the required specifications was first submitted for approval, she contacted the owners of the United Flag Industry on September 17, 1974.

On October 16, 1974, the first delivery of 7,933 flags was made by the United Flag Industry. The next day, on October 17, 1974, the respondent's authority to represent the United Flag Industry was revoked by petitioner Primitivo Siasat.

According to the findings of the courts below, Siasat, after receiving the payment of P469,980.00 on October 23, 1974 for the first delivery, tendered the amount of P23,900.00 or five percent (5%) of the amount received, to the respondent as payment of her commission. The latter allegedly protested. She refused to accept the said amount insisting on the 30% commission agreed upon. The respondent was prevailed upon to accept the same, however, because of the assurance of the petitioners that they would pay the commission in full after they delivered the other half of the order. The respondent states that she later on learned that petitioner Siasat had already received payment for the second delivery of 7,833 flags. When she confronted the petitioners, they vehemently denied receipt of the payment, at the same time claiming that the respondent had no participation whatsoever with regard to the second delivery of flags and that the agency had already been revoked.

The respondent originally filed a complaint with the Complaints and Investigation Office in Malacañang but when nothing came of the complaint, she filed an action in the Court of First Instance of Manila to recover the following commissions: 25%, as balance on the first delivery and 30%, on the second delivery.

ISSUE

Whether respondent is an agent

RULING

Yes.

There are several kinds of agents.

An agent may be (1) universal: (2) general, or (3) special. A universal; agent is one authorized to do all acts for his principal which can lawfully be delegated to an agent. So far as such a condition is possible, such an agent may be said to have universal authority. (Mec. Sec. 58).

A general agent is one authorized to do all acts pertaining to a business of a certain kind or at a particular place, or all acts pertaining to a business of a particular class or series. He has usually authority either expressly conferred in general terms or in effect made general by the usages, customs or nature of the business which he is authorized to transact.

An agent, therefore, who is empowered to transact all the business of his principal of a particular kind or in a particular place, would, for this reason, be ordinarily deemed a general agent. (Mec Sec. ,30).

A special agent is one authorized to do some particular act or to act upon some particular occasion. lie acts usually in accordance with specific instructions or under limitations necessarily implied from the nature of the act to be done.

One does not have to undertake a close scrutiny of the document embodying the agreement between the petitioners and the respondent to deduce that the 'latter was instituted as a general agent. Indeed, it can easily be seen by the way general words were employed in the agreement that

no restrictions were intended as to the manner the agency was to be carried out or in the place where it was to be executed. The power granted to the respondent was so broad that it practically covers the negotiations leading to, and the execution of, a contract of sale of petitioners' merchandise with any entity or organization.

Moreover, we deny the petitioners' contention that respondent Nacianceno is not entitled to the stipulated commission on the second delivery because of the revocation of the agency effected after the first delivery. The revocation of agency could not prevent the respondent from earning her commission because as the trial court opined, it came too late, the contract of sale having been already perfected and partly executed.

The principal cannot deprive his agent of the commission agreed upon by cancelling the agency and, thereafter, dealing directly with the buyer.

FRANCISCO A. VELOSO, *Petitioner*, v. COURT OF APPEALS, AGLALOMA B. ESCARIO, assisted by her husband GREGORIO L. ESCARIO, the REGISTER OF DEEDS FOR THE CITY OF MANILA, *Respondents*.
G.R. No. 102737, SECOND DIVISION, August 21, 1996., TORRES, JR., J.

There was no need to execute a separate and special power of attorney since the general power of attorney had expressly authorized the agent or attorney in fact the power to sell the subject property. The special power of attorney can be included in the general power when it is specified therein the act or transaction for which the special power is required.

FACTS

Petitioner owns a parcel of land and such was registered in his name when he was still single. Later on, a new title was issued, in favor of the respondent, Escario.

Petitioner alleged that his wife, through a forged general power of attorney sold the said parcel of land. Petitioner Veloso filed an action for annulment of documents, reconveyance of property with damages and preliminary injunction and/or restraining order. He contended that the sale of the property, and the subsequent transfer thereof, were null and void. Petitioner then prayed that a TRO be issued to prevent the transfer of the property; that the General Power of Attorney, the Deed of Absolute Sale and the TCT in favor of respondent be annulled; and the subject property be reconveyed to him.

Defendant Aglaloma Escario in her answer alleged that she was a buyer in good faith and denied any knowledge of the alleged irregularity. She allegedly relied on the general power of attorney of Irma Veloso which was sufficient in form and substance and was duly notarized. She contended that plaintiff had no cause of action against her.

In the decision of the trial court, defendant Aglaloma Escaro was adjudged the lawful owner of the property as she was deemed an innocent purchaser for value. The assailed general power of attorney was held to be valid and sufficient for the purpose. The trial court ruled that there was no need for a special power of attorney when the special power was already mentioned in the general one. It also declared that plaintiff failed to substantiate allegation of fraud. This is affirmed by the CA.

ISSUE

Whether the petitioner's contention is meritorious

RULING

No.

An examination of the records showed that the assailed power of attorney was valid and regular on its face. It was notarized and as such, it carries the evidentiary weight conferred upon it with respect to its due execution. While it is true that it was denominated as a general power of attorney, a perusal thereof revealed that it stated an authority to sell, to wit:

"2. To buy or sell, hire or lease, mortgage or otherwise hypothecate lands, tenements and hereditaments or other forms of real property, more specifically TCT No. 49138, upon such terms and conditions and under such covenants as my said attorney shall deem fit and proper."

Thus, there was no need to execute a separate and special power of attorney since the general power of attorney had expressly authorized the agent or attorney in fact the power to sell the subject property. The special power of attorney can be included in the general power when it is specified therein the act or transaction for which the special power is required.

The general power of attorney was accepted by the Register of Deeds when the title to the subject property was cancelled and transferred in the name of private *Respondent*. In LRC Consulta No. 123, Register of Deeds of Albay, Nov. 10, 1956, it stated that:

"Whether the instrument be denominated as "general power of attorney" or "special power of attorney," what matters is the extent of the power or powers contemplated upon the agent or attorney in fact. If the power is couched in general terms, then such power cannot go beyond acts of administration. However, where the power to sell is specific, it not being merely implied, much less couched in general terms, there can not be any doubt that the attorney in fact may execute a valid sale. An instrument may be captioned as "special power of attorney" but if the powers granted are couched in general terms without mentioning any specific power to sell or mortgage or to do other specific acts of strict dominion, then in that case only acts of administration may be deemed conferred."

Petitioner contends that his signature on the power of attorney was falsified. He also alleges that the same was not duly notarized for as testified by Atty. Tubig himself, he did not sign thereon nor was it ever recorded in his notarial register. To bolster his argument, petitioner had presented checks, marriage certificate and his residence certificate to prove his alleged genuine signature which when compared to the signature in the power of attorney, showed some difference.

We found, however, that the basis presented by the petitioner was inadequate to sustain his allegation of forgery. Mere variance of the signatures cannot be considered as conclusive proof that the same were forged. Forgery cannot be presumed. 17 Petitioner, however, failed to prove his allegation and simply relied on the apparent difference of the signatures. His denial had not established that the signature on the power of attorney was not his.

Thus, the respondent, relying on the GPA, is an innocent purchaser for value

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, THIRD DIVISION, October 26, 1993, BIDIN, J.

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.

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, sad 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.

ISSUE

Whether Tiu Huy Tiac possessed the required authority from petitioner sufficient to hold the latter liable for the disputed transaction.

RULING

Yes. 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. 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 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.

By his representations, petitioner is now estopped from disclaiming liability for the transaction entered 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.

Tiu Huy Tiac, therefore, by petitioner's own representations and manifestations, became an agent of petitioner by 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 fact as though he had full powers (Article 1911 Civil Code), as in the case at bar.

RURAL BANK OF BOMBON (CAMARINES SUR), INC., petitioner, vs. **HON. COURT OF APPEALS, EDERLINDA M. GALLARDO, DANIEL MANZO and RUFINO S. AQUINO,** respondents.
G.R. No. 95703, FIRST DIVISION, August 3, 1992, GRIÑO-AQUINO, *J.*

FACTS

On January 12, 1981, Ederlinda M. Gallardo, married to Daniel Manzo, executed a special power of attorney in favor of Rufina S. Aquino authorizing him:

1. To secure a loan from any bank or lending institution for any amount or otherwise mortgage the property covered by Transfer Certificate of Title No. S-79238 situated at Las Piñas, Rizal, the same being my paraphernal property, and in that connection, to sign, or execute any deed of mortgage and sign other document requisite and necessary in securing said loan and to receive the proceeds thereof in cash or in check and to sign the receipt therefor and thereafter endorse the check representing the proceeds of loan. (p. 10, *Rollo*.)

Thereupon, Gallardo delivered to Aquino both the special power of attorney and her owner's copy of Transfer Certificate of Title No. S-79238 (19963-A).

On August 26, 1981, a Deed of Real Estate Mortgage was executed by Rufino S. Aquino in favor of the Rural Bank of Bombon (Camarines Sur), Inc. (hereafter, defendant Rural Bank) over the three parcels of land covered by TCT No. S-79238. The deed stated that the property was being given as security for the payment of "certain loans, advances, or other accommodations obtained by the mortgagor from the mortgagee in the total sum of Three Hundred Fifty Thousand Pesos only (P350,000.00), plus interest at the rate of fourteen (14%) *per annum* . . ." (p. 11, *Rollo*).

On January 6, 1984, the spouses Ederlinda Gallardo and Daniel Manzo filed an action against Rufino Aquino and the Bank because Aquino allegedly left his residence at San Pascual, Hagonoy, Bulacan, and transferred to an unknown place in Bicol. She discovered that Aquino first resided at Sta. Isabel, Calabanga, Camarines Sur, and then later, at San Vicente, Calabanga, Camarines Sur, and that they (plaintiffs) were allegedly surprised to discover that the property was mortgaged to pay personal loans obtained by Aquino from the Bank solely for personal use and benefit of Aquino; that the mortgagor in the deed was defendant Aquino instead of plaintiff Gallardo whose address up to now is Manuyo, Las Piñas, M.M., per the title (TCT No. S-79238) and in the deed vesting power of attorney to Aquino; that correspondence relative to the mortgage was sent to Aquino's address at "Sta. Isabel, Calabanga, Camarines Sur" instead of Gallardo's postal address at Las Piñas, Metro Manila; and that defendant Aquino, in the real estate mortgage, appointed defendant Rural Bank as attorney in fact, and in case of judicial foreclosure as receiver with corresponding power to sell and that although without any express authority from Gallardo, defendant Aquino waived Gallardo's rights under Section 12, Rule 39, of the Rules of Court and the proper venue of the foreclosure suit.

On January 23, 1984, the trial court, thru the Honorable Fernando P. Agdamag, temporarily restrained the Rural Bank "from enforcing the real estate mortgage and from foreclosing it either judicially or extrajudicially until further orders from the court"

Rufino S. Aquino in his answer said that the plaintiff authorized him to mortgage her property to a bank so that he could use the proceeds to liquidate her obligation of P350,000 to him. The obligation to pay the Rural Bank devolved on Gallardo.

ISSUE

Whether the Deed of Real Estate Mortgage dated August 26, 1981, executed by Rufino S. Aquino, as attorney-in-fact of Ederlinda Gallardo, in favor of the Rural Bank of Bombon is valid

RULING

No.

It is a general rule in the law of agency that, in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only. It is not enough merely that the agent was in fact authorized to make the mortgage, if he has not acted in the name of the principal. Neither is it ordinarily sufficient that in the mortgage the agent describes himself as acting by virtue

of a power of attorney, if in fact the agent has acted in his own name and has set his own hand and seal to the mortgage. This is especially true where the agent himself is a party to the instrument. However clearly the body of the mortgage may show and intend that it shall be the act of the principal, yet, unless in fact it is executed by the agent for and on behalf of his principal and as the act and deed of the principal, it is not valid as to the principal.

In view of this rule, Aquino's act of signing the Deed of Real Estate Mortgage in his name alone as mortgagor, without any indication that he was signing for and in behalf of the property owner, Ederlinda Gallardo, bound himself alone in his personal capacity as a debtor of the petitioner Bank and not as the agent or attorney-in-fact of Gallardo

Petitioner claims that the Deed of Real Estate Mortgage is enforceable against Gallardo since it was executed in accordance with Article 1883 which provides:

Art. 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The above provision of the Civil Code relied upon by the petitioner Bank, is not applicable to the case at bar. Herein respondent Aquino acted purportedly as an agent of Gallardo, but actually acted in his personal capacity. Involved herein are properties titled in the name of respondent Gallardo against which the Bank proposes to foreclose the mortgage constituted by an agent (Aquino) acting in his personal capacity. Under these circumstances, we hold, as we did in *Philippine Sugar Estates Development Co. vs. Poizat, supra*, that Gallardo's property is not liable on the real estate mortgage that there is no principle of law by which a person can become liable on a real mortgage which she never executed either in person or by attorney in fact.

DEVELOPMENT BANK OF THE PHILIPPINES, petitioner, vs. **COURT OF APPEALS and the ESTATE OF THE LATE JUAN B. DANS, represented by CANDIDA G. DANS, and the DBP MORTGAGE REDEMPTION INSURANCE POOL,** respondents.
G.R. No. L-109937, FIRST DIVISION, March 21, 1994, QUIASON, *J*

Under Article 1987 of the Civil Code of the Philippines, "the agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers."

The DBP is not authorized to accept applications for MRI when its clients are more than 60 years of age. Knowing all the while that Dans was ineligible for MRI coverage because of his advanced age, DBP exceeded the scope of its authority when it accepted Dan's application for MRI by collecting the insurance premium, and deducting its agent's commission and service fee.

The liability of an agent who exceeds the scope of his authority depends upon whether the third person is aware of the limits of the agent's powers. There is no showing that Dans knew of the limitation on DBP's authority to solicit applications for MRI.

FACTS

In May 1987, Juan B. Dans, together with his wife Candida, his son and daughter-in-law, applied for a loan of P500,000.00 with the Development Bank of the Philippines (DBP), Basilan Branch. As the principal mortgagor, Dans, then 76 years of age, was advised by DBP to obtain a mortgage redemption insurance (MRI) with the DBP Mortgage Redemption Insurance Pool (DBP MRI Pool).

A loan, in the reduced amount of P300,000.00, was approved by DBP on August 4, 1987 and released on August 11, 1987. From the proceeds of the loan, DBP deducted the amount of P1,476.00 as payment for the MRI premium. On August 15, 1987, Dans accomplished and submitted the "MRI Application for Insurance" and the "Health Statement for DBP MRI Pool."

On August 20, 1987, the MRI premium of Dans, less the DBP service fee of 10 percent, was credited by DBP to the savings account of the DBP MRI Pool. Accordingly, the DBP MRI Pool was advised of the credit.

On September 3, 1987, Dans died of cardiac arrest. The DBP, upon notice, relayed this information to the DBP MRI Pool. On September 23, 1987, the DBP MRI Pool notified DBP that Dans was not eligible for MRI coverage, being over the acceptance age limit of 60 years at the time of application. On October 21, 1987, DBP apprised Candida Dans of the disapproval of her late husband's MRI application. The DBP offered to refund the premium of P1,476.00 which the deceased had paid, but Candida Dans refused to accept the same, demanding payment of the face value of the MRI or an amount equivalent to the loan. She, likewise, refused to accept an *ex gratia* settlement of P30,000.00, which the DBP later offered.

On February 10, 1989, respondent Estate, through Candida Dans as administratrix, filed a complaint with the Regional Trial Court, Branch I, Basilan, against DBP and the insurance pool for "Collection of Sum of Money with Damages."

ISSUE

Whether DBP exceeded the scope of its authority

RULING

Yes.

It was DBP, as a matter of policy and practice, that required Dans, the borrower, to secure MRI coverage. Instead of allowing Dans to look for his own insurance carrier or some other form of insurance policy, DBP compelled him to apply with the DBP MRI Pool for MRI coverage. When Dan's loan was released on August 11, 1987, DBP already deducted from the proceeds thereof the MRI premium. Four days latter, DBP made Dans fill up and sign his application for MRI, as well as his health statement. The DBP later submitted both the application form and health statement to the DBP MRI Pool at the DBP Main Building, Makati Metro Manila. As service fee, DBP deducted 10 percent of the premium collected by it from Dans.

In dealing with Dans, DBP was wearing two legal hats: the first as a lender, and the second as an insurance agent.

As an insurance agent, DBP made Dans go through the motion of applying for said insurance, thereby leading him and his family to believe that they had already fulfilled all the requirements for the MRI and that the issuance of their policy was forthcoming. Apparently, DBP had full knowledge that Dan's application was never going to be approved. The maximum age for MRI acceptance is 60 years as clearly and specifically provided in Article 1 of the Group Mortgage Redemption Insurance Policy signed in 1984 by all the insurance companies concerned (Exh. "1-Pool").

Under Article 1987 of the Civil Code of the Philippines, "the agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers."

The DBP is not authorized to accept applications for MRI when its clients are more than 60 years of age. Knowing all the while that Dans was ineligible for MRI coverage because of his advanced age, DBP exceeded the scope of its authority when it accepted Dan's application for MRI by collecting the insurance premium, and deducting its agent's commission and service fee.

The liability of an agent who exceeds the scope of his authority depends upon whether the third person is aware of the limits of the agent's powers. There is no showing that Dans knew of the limitation on DBP's authority to solicit applications for MRI.

If the third person dealing with an agent is unaware of the limits of the authority conferred by the principal on the agent and he (third person) has been deceived by the non-disclosure thereof by the agent, then the latter is liable for damages to him.

SPOUSES MAY S. VILLALUZ and JOHNNY VILLALUZ, JR.,*v.*LAND BANK OF THE PHILIPPINES and the REGISTER OF DEEDS FOR DAVAO CITY
G.R. No. 192602, January 18, 2017, Third Division, JARDELEZA, J.

An agent appointed in a Power of Attorney with authority to sign documents relating to a mortgage, may appoint a substitute if the principal has not prohibited him from doing so. A bank can thus validly transact with a substitute agent as long as the Power of Attorney does not prohibit the appointment of a substitute.

A real estate mortgage can be validly executed before the loan is released, provided that the loan is actually released thereafter.

An assignment of inventory (given in addition to a real estate mortgage) is not a substitute for payment of sums of money. As such, it does not serve to extinguish the loan and the accessory real estate mortgage.

FACTS:

In 1996, the Spouses May and Johnny Villauz ("Spouses") executed an SPA in favor of May Villauz's mother. Paula Agbisit, which authorized the latter to "sign in our behalf all documents relating the sale, mortgage, or other disposition' of a property owned by the Spouses located in Davao City. The property was to be used as collateral for a loan to expand Paula Agbisit's backyard cut flower business.

On June 19, 1996, Paula Agbisit executed her own SPA appointing (as her substitute agent) Milflores Cooperative (of which she was the Chairperson) as attorney-in-fact in obtaining a loan from and executing a real estate mortgage in favor of the Land Bank of the Philippines. Milflores Cooperative also executed a Deed of Assignment of Produce/ Inventory as additional collateral for the loan.

Land Bank of the Philippines approved a P3 million loan in favor of Milflores Cooperative and on June 25, 1996 made a partial release of P995, 500. On the same day, Paula Agbisit borrowed the amount of P604, 750 from Milflores Cooperative.

The trial court dismissed the complaint and which dismissal was affirmed by the Court of Appeals. Hence, this petition to the Supreme Court.

ISSUES:

1. Whether Paula Agbisit could further delegate her authority as attorney-in-fact for the Spouses Villaluz? If not, was the mortgage in favor of Land Bank executed by Milflores Cooperative void.

2. Whether the real estate mortgage can be deemed void since there was no loan yet when the mortgage was executed.

3. Whether the SPA issued by the Spouses in favor of Paula Agbisit was extinguished when Milflores Cooperative assigned its produce and inventory to Land Bank as additional collateral.

RULING:

1. YES. The delegation of authority made by Paula Agbisit to Milflores Cooperative is valid. Articles 1892 and 1893 of the Civil Code provide the rules regarding the appointment of a substitute by an agent. The law created a presumption that an agent has the power to appoint a substitute. The consequence of the presumption is that, upon valid appointment of a substitute by the agent, there ipso facto arises an agency relationship between the principal and the substitute, i.e. the substitute becomes the agent of the principal. As a result, the principal is bound by the acts of the substitute as if these acts had been done by the principal's appointed agent.

In this case, the SPA executed by the Spouses in favor of Paula Agbisit contains no restrictive language indicative of an intention to prohibit Paula Agbisit from appointing a substitute agent. Thus, Paula Agbisit's appointment of Milflores as substitute agent was valid and consequently, the real estate mortgage is considered validly executed.

2. The Spouses floated a new theory that the mortgage was void because the loan was not yet in existence when the mortgage was executed on June 21, 1996 as the loan was released only on June 25, 1996.

The Supreme Court ruled that although the validity of the real estate mortgage is dependent upon the validity of the loan, what is essential is that the loan contract intended to be secured is actually

perfected (although the proceeds are not yet released) prior to the execution of the mortgage contract.

In loan transactions, it is customary for the lender to require the borrower to execute the security contracts prior to the initial loan drawdown. This is understandable since a prudent bank would not want to release its funds without the security arrangements in place. On the other hand, the borrower would not be prejudiced by mere execution of the security contract because unless the proceeds are delivered, the obligations under the security contracts will not arise.

In other words, the security contract, in this case, the real estate mortgage, is conditioned upon the release of the loan amount. This suspensive condition was satisfied when Land Bank released the first tranche of the ₱3,000,000 loan to Milflores Cooperative, which consequently gave rise to the Spouses' obligations under the real estate mortgage.

The Spouses' theory that the additional security by Milflores Cooperative of its produce/ inventory extinguished the loan and consequently the agency contract, was likewise found to be unacceptable.

The assignment was for the express purpose of "securing the payment of the line/ loan, interest, and charges thereon." Nowhere in the deed can it be reasonably deduced that the collaterals assigned by Milflores Cooperative were intended to substitute the payment of the sum of money under the loan. It was merely an accessory contract to secure the principal loan obligation.

The Spouses understandably feel shorthanded because their property was foreclosed by reason of another person's inability to pay. However, they were not coerced to grant an SPA in favor of Paula Agbisit. Nor were they prohibited from prescribing conditions on how such power may be exercised. Absent such express limitations, the law recognized Land Bank's right to rely on the terms of the power of attorney as written.

SPOUSES ROLANDO AND HERMINIA SALVADOR, *Petitioners*, *v.* **SPOUSES ROGELIO AND ELIZABETH RABAJA AND ROSARIO GONZALES**, *Respondents*.
G.R. No. 199990, SECOND DIVISION, February 04, 2015, MENDOZA, J.

Persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent. In this case, Spouses Rabaja did not recklessly enter into a contract to sell with Gonzales. They required her presentation of the power of attorney before they transacted with her principal. And when Gonzales presented the SPA to Spouses Rabaja, the latter had no reason not to rely on it.

FACTS

Sometime in July 1998, Spouses Rabaja learned that Spouses Salvador were looking for a buyer of the subject property. Petitioner Herminia Salvador (*Herminia*) personally introduced Gonzales to them as the administrator of the said property. Spouses Salvador even handed to Gonzales the owner's duplicate certificate of title over the subject property. On July, 3, 1998, Spouses Rabaja made an initial payment of P48,000.00 to Gonzales in the presence of Herminia. Gonzales then

presented the Special Power of Attorney[3] (*SPA*), executed by Rolando Salvador (*Rolando*) and dated July 24, 1998. On the same day, the parties executed the Contract to Sell[4] which stipulated that for a consideration of P5,000,000.00, Spouses Salvador sold, transferred and conveyed in favor of Spouses Rabaja the subject property. Spouses Rabaja made several payments totalling P950,000.00, which were received by Gonzales pursuant to the SPA provided earlier as evidenced by the check vouchers signed by Gonzales and the improvised receipts signed by Herminia.

Sometime in June 1999, however, Spouses Salvador complained to Spouses Rabaja that they did not receive any payment from Gonzales. This prompted Spouses Rabaja to suspend further payment of the purchase price; and as a consequence, they received a notice to vacate the subject property from Spouses Salvador for non-payment of rentals.

Thereafter, Spouses Salvador instituted an action for ejectment against Spouses Rabaja. In turn, Spouses Rabaja filed an action for rescission of contract against Spouses Salvador and Gonzales, the subject matter of the present petition.

ISSUE

Whether Gonzales, as agent of Spouses Salvador, could validly receive the payments of Spouses Rabaja

RULING

Yes.

The Court agrees with the courts below in finding that the contract entered into by the parties was essentially a contract of sale which could be validly rescinded. Spouses Salvador insist that they did not receive the payments made by Spouses Rabaja from Gonzales which totalled P950,000.00 and that Gonzales was not their duly authorized agent. These contentions, however, must fail in light of the applicable provisions of the New Civil Code which state:

Art. 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

x x x x

Art. 1902. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. Private or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown them.

x x x x

Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

Persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent. In this case, Spouses Rabaja did not recklessly enter into a contract to sell with Gonzales. They required her presentation of the power of attorney before they transacted with her principal. And when Gonzales presented the SPA to Spouses Rabaja, the latter had no reason not to rely on it.

Perhaps the most significant point which defeats the petition would be the fact that it was Herminia herself who personally introduced Gonzalez to Spouses Rabaja as the administrator of the subject property. By their own ostensible acts, Spouses Salvador made third persons believe that Gonzales was duly authorized to administer, negotiate and sell the subject property. This fact was even affirmed by Spouses Salvador themselves in their petition where they stated that they had authorized Gonzales to look for a buyer of their property.[40] It is already too late in the day for Spouses Salvador to retract the representation to unjustifiably escape their principal obligation.

As correctly held by the CA and the RTC, considering that there was a valid SPA, then Spouses Rabaja properly made payments to Gonzales, as agent of Spouses Salvador; and it was as if they paid to Spouses Salvador. It is of no moment, insofar as Spouses Rabaja are concerned, whether or not the payments were actually remitted to Spouses Salvador. Any internal matter, arrangement, grievance or strife between the principal and the agent is theirs alone and should not affect third persons. If Spouses Salvador did not receive the payments or they wish to specifically revoke the SPA, then their recourse is to institute a separate action against Gonzales. Such action, however, is not any more covered by the present proceeding.

GREEN VALLEY POULTRY & ALLIED PRODUCTS, INC., petitioner vs. **THE INTERMEDIATE APPELLATE COURT and E.R. SQUIBB & SONS PHILIPPINE CORPORATION,** respondents.
G.R. No. L-49395, SECOND DIVISION, December 26, 1984, ABAD SANTOS, J.

Art. 1905. The commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale.

FACTS

Squibb and Green Valley entered into a letter agreement the text of which reads as follows:

E.R. Squibb & Sons Philippine Corporation is pleased to appoint Green Valley Poultry & Allied Products, Inc. as a non-exclusive distributor for Squibb Veterinary Products, as recommended by Dr. Leoncio D. Rebong, Jr. and Dr. J.G. Cruz, Animal Health Division Sales Supervisor.

As a distributor, Green Valley Poultry & Allied Products, Inc. wig be entitled to a discount as follows:

Feed Store Price (Catalogue)
Less 10%
Wholesale Price
Less 10%

Distributor Price

There are exceptions to the above price structure. At present, these are:

1. *Afsillin Improved — 40 lbs. bag*
The distributor commission for this product size is 8% off P120.00

2. *Narrow — Spectrum Injectible Antibiotics*
These products are subject to price fluctuations. Therefore, they are invoiced at net price per vial.

3. Deals and Special Offers are not subject to the above distributor price structure. A 5% distributor commission is allowed when the distributor furnishes copies for each sale of a complete deal or special offer to a feedstore, drugstore or other type of account.

Deals and Special Offers purchased for resale at regular price invoiced at net deal or special offer price.

Prices are subject to change without notice. Squibb will endeavor to advise you promptly of any price changes. However, prices in effect at the tune orders are received by Squibb Order Department will apply in all instances.

Green Valley Poultry & Allied Products, Inc. win distribute only for the Central Luzon and Northern Luzon including Cagayan Valley areas. We will not allow any transfer or stocks from Central Luzon and Northern Luzon including Cagayan Valley to other parts of Luzon, Visayas or Mindanao which are covered by our other appointed Distributors. In line with this, you will follow strictly our stipulations that the maximum discount you can give to your direct and turnover accounts will not go beyond 10%.

It is understood that Green Valley Poultry and Allied Products, Inc. will accept turn-over orders from Squibb representatives for delivery to customers in your area. If for credit or other valid reasons a turn-over order is not served, the Squibb representative will be notified within 48 hours and hold why the order will not be served.

It is understood that Green Valley Poultry & Allied Products, Inc. will put up a bond of P20,000.00 from a mutually acceptable bonding company.

Payment for Purchases of Squibb Products will be due 60 days from date of invoice or the nearest business day thereto. No payment win be accepted in the form of post-dated checks. Payment by check must be on current dating.

It is mutually agreed that this non-exclusive distribution agreement can be terminated by either Green Valley Poultry & Allied Products, Inc. or Squibb Philippines on 30 days notice.

ISSUE

Whether the case involves a contract of sale

RULING

Yes. We do not have to categorize the contract. Whether viewed as an agency to sell or as a contract of sale, the liability of Green Valley is indubitable. Adopting Green Valley's theory that the contract is an agency to sell, it is liable because it sold on credit without authority from its principal. The Civil Code has a provision exactly in point. It reads:

Art. 1905. The commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale.

DR. CARLOS L. SEVILLA and LINA O. SEVILLA, petitioners-appellants,
vs. **THE COURT OF APPEALS, TOURIST WORLD SERVICE, INC., ELISEO S.CANILAO, and SEGUNDINA NOGUERA,** respondents-appellees.
G.R. No. L-41182-3, SECOND DIVISION, April 16, 1988, SARMIENTO, J.

FACTS

Mrs. Noguera leased her property to Tourist World Service (TWS) represented by Eliseo Canilao in Mabina St., Manila with Lina Sevilla holding herself solidarily liable for the payment of the monthly rentals agreed on. When the branch office was opened, the same was run by the herein appellant payable to Tourist World Service Inc. by any airline for any fare brought in on the efforts of Mrs. Lina Sevilla, 4% was to go to Lina Sevilla and 3% was to be withheld by the Tourist World Service, Inc.

On or about November 24, 1961 the Tourist World Service, Inc. appears to have been informed that Lina Sevilla was connected with a rival firm, the Philippine Travel Bureau, and, since the branch office was anyhow losing, the Tourist World Service considered closing down its office. This was firmed up by two resolutions of the board of directors of Tourist World Service, Inc. dated Dec. 2, 1961, the first abolishing the office of the manager and vice-president of the Tourist World Service, Inc., Ermita Branch, and the second,authorizing the corporate secretary to receive the properties of the Tourist World Service then located at the said branch office. It further appears that on Jan. 3, 1962, the contract with the appellees for the use of the Branch Office premises was terminated and while the effectivity thereof was Jan. 31, 1962, the appellees no longer used it. As a matter of fact appellants used it since Nov. 1961. Because of this, and to comply with the mandate of the Tourist World Service, the corporate secretary Gabino Canilao went over to the branch office, and, finding the premises locked, and, being unable to contact Lina Sevilla, he padlocked the premises on June 4, 1962 to protect the interests of the Tourist World Service. When neither the appellant Lina Sevilla nor any of her employees could enter the locked premises, a complaint wall filed by the herein appellants against the appellees with a prayer for the issuance of mandatory preliminary injunction. Both appellees answered with counterclaims. For apparent lack of interest of the parties therein, the trial court ordered the dismissal of the case without prejudice.

ISSUE

Whether Sevilla is an employee of Tourist World Service

RULING

No, she is an agent.

The fact that Sevilla had been designated 'branch manager" does not make her, ergo, Tourist World's employee. As we said, employment is determined by the right-of-control test and certain economic parameters. But titles are weak indicators.

In rejecting Tourist World Service, Inc.'s arguments however, we are not, as a consequence, accepting Lina Sevilla's own, that is, that the parties had embarked on a joint venture or otherwise, a partnership. And apparently, Sevilla herself did not recognize the existence of such a relation. In her letter of November 28, 1961, she expressly 'concedes your [Tourist World Service, Inc.'s] right to stop the operation of your branch office [14] in effect, accepting Tourist World Service, Inc.'s control over the manner in which the business was run. A joint venture, including a partnership, presupposes generally a of standing between the joint co-venturers or partners, in which each party has an equal proprietary interest in the capital or property contributed [15] and where each party exercises equal rights in the conduct of the business.[16] furthermore, the parties did not hold themselves out as partners, and the building itself was embellished with the electric sign "Tourist World Service, Inc. [17]in lieu of a distinct partnership name.

It is the Court's considered opinion, that when the petitioner, Lina Sevilla, agreed to (wo)man the private respondent, Tourist World Service, Inc.'s Ermita office, she must have done so pursuant to a contract of agency. It is the essence of this contract that the agent renders services "in representation or on behalf of another.[18] In the case at bar, Sevilla solicited airline fares, but she did so for and on behalf of her principal, Tourist World Service, Inc. As compensation, she received 4% of the proceeds in the concept of commissions. And as we said, Sevilla herself based on her letter of November 28, 1961, pre-assumed her principal's authority as owner of the business undertaking. We are convinced, considering the circumstances and from the respondent Court's recital of facts, that the ties had contemplated a principal agent relationship, rather than a joint managament or a partnership..

But unlike simple grants of a power of attorney, the agency that we hereby declare to be compatible with the intent of the parties, cannot be revoked at will. The reason is that it is one coupled with an interest, the agency having been created for mutual interest, of the agent and the principal. [19] It appears that Lina Sevilla is a *bona fide* travel agent herself, and as such, she had acquired an interest in the business entrusted to her. Moreover, she had assumed a personal obligation for the operation thereof, holding herself solidarily liable for the payment of rentals. She continued the business, using her own name, after Tourist World had stopped further operations. Her interest, obviously, is not to the commissions she earned as a result of her business transactions, but one that extends to the very subject matter of the power of management delegated to her. It is an agency that, as we said, cannot be revoked at the pleasure of the principal. Accordingly, the revocation complained of should entitle the petitioner, Lina Sevilla, to damages.

INTERNATIONAL EXCHANGE BANK NOW UNION BANK OF THE PHILIPPINES vs SPOUSES JEROME AND QUINNIE BRIONES, AND JOHN DOE
G.R. No. 205657, March 29, 2017*, Leonen,J.*

Upon accepting an agency, the agent becomes bound to carry out the agency and shall be held liable for the damages, which the principal may incur due to the agent's non-performance

FACTS:

Spouses Briones took out a loan of P3.7M from iBank (now Union Bank) to purchase a BMW Z4 Roadster. They executed a promissory note that required them to take out an insurance policy on the car and to give iBank, as attomey-infact, irrevocable authority to file an insurance claim in case of loss or damage to the vehicle. The BMW was carnapped so the spouses declared the loss to iBank, which instructed them to continue paying the next three monthly installments "as a sign of good faith," a directive they complied with. After they finished paying the 3 installments, iBank demanded full payment of the lost vehicle. The spouses submitted a notice of claim with their insurance company which was denied due to a delay in the reporting of the lost vehicle. iBank filed a complaint for replevin or sum of money against the spouses alleging default in paying the monthly amortizations of the mortgaged vehicle

ISSUE:

W/N Spouses Briones are liable to iBank for the monthly amortizations of the BMW.

RULING:

NO. Under the promissory note, Spouses Briones appointed iBank as their attorney-in-fact (agent), authorizing it to file a claim with the insurance company if the mortgaged vehicle was lost or damaged. iBank was also authorized to collect the insurance proceeds as the beneficiary of the insurance policy.

As the agent, petitioner was mandated to look after the interests of the Spouses Briones by collecting the insurance proceeds. However, instead of going after the insurance proceeds, as expected of it as the agent, petitioner opted to claim the full amount from the Spouses Briones, disregarding the established principal-agency relationship, and putting its own interests before those of its principal. The insurance policy was valid when the vehicle was lost, and that the insurance claim was only denied because of the belated filing.

Having been negligent in its duties as the duly constituted agent, petitioner must be held liable for the denial of the insurance claim suffered by the Spouses Briones because of non-performance of its obligation as the agent, and because it prioritized its interests over that of its principal. Petitioner's bad faith was evident when it advised the Spouses Briones to continue paying three (3) monthly installments after the loss, purportedly to show their good faith.

If petitioner was indeed acting in good faith, it could have timely informed the Spouses Briones that it was terminating the agency and its right to file an insurance claim, and could have advised them to facilitate the insurance proceeds themselves. This would have allowed the spouses to collect from their insurer and pay the amortizations on the BMW. Petitioner's failure to do so only

compounds its negligence and underscores its bad faith. Thus, it will be inequitable now to compel the Spouses Briones to pay the full amount of the lost property.