

## THIRD DIVISION

[ G.R. No. 190408, July 20, 2016 ]

**BENJIE B. GEORG REPRESENTED BY BENJAMIN C. BELARMINO, JR., PETITIONER, VS. HOLY TRINITY COLLEGE, INC., RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

This petition for review seeks to reverse the 17 November 2009 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 89990 and reinstate the 29 November 2006 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 15, Tabaco City in Civil Case No. T-2161.

The Holy Trinity College Grand Chorale and Dance Company (the Group) was organized in 1987 by Sister Teresita Medalle (Sr. Medalle), the President of respondent Holy Trinity College in Puerto Princesa City. The Grand Chorale and Dance Company were two separate groups but for the purpose of performing locally or abroad, they were usually introduced as one entity. The Group was composed of students from Holy Trinity College.

In 2001, the Group was slated to perform in Greece, Italy, Spain and Germany. Edward Enriquez (Enriquez), who allegedly represented Sr. Medalle, contacted petitioner Benjie B. Georg to seek assistance for payment of the Group's international airplane tickets. Petitioner is the Filipino wife of a German national Heinz Georg. She owns a German travel agency named DTravellers Reiseburo Georg. Petitioner, in turn, requested her brother, Atty. Benjamin Belarmino, Jr. (Atty. Belarmino), to represent her in the negotiation with Enriquez. Enriquez was referred to petitioner by Leonora Dietz (Dietz), another Filipino-German who has helped Philippine cultural groups obtain European engagements, including financial assistance.

On 24 April 2001, a Memorandum of Agreement with Deed of Assignment<sup>[3]</sup> (MOA) was executed between petitioner, represented by Atty. Belarmino, as first party-assignee; the Group, represented by Sr. Medalle, O.P. and/or its Attorney-in-Fact Enriquez, as second-party assignor and S.C. Roque Group of Companies Holding Limited Corporation and S.C. Roque Foundation Incorporated, represented by Violeta P. Buenaventura, as foundation-grantor. Under the said Agreement, petitioner, through her travel agency, will advance the payment of international airplane tickets amounting to P4,624,705.00 in favor of the Group on the assurance of the Group represented by Sr. Medalle through Enriquez that there is a confirmed financial allocation of P4,624,705.00 from the foundation-grantor, S.C. Roque Foundation (the Foundation). The second-party assignor assigned said amount in favor of petitioner. Petitioner paid for the Group's domestic and international airplane tickets.

In an Amended Complaint<sup>[4]</sup> dated 15 August 2001 for a Sum of Money with Damages filed before the RTC, Branch 18, Tabaco City, petitioner claimed that the second-party assignor/respondent and the foundation-grantor have not paid and refused to pay their obligation under the MOA. Petitioner prayed that they be ordered to solidarily pay the amount of P4,624,705.00 representing the principal amount mentioned in the Agreement, moral, exemplary, and actual damages, legal fees, and cost of suit.<sup>[5]</sup> The corresponding summonses were served.

On 14 September 2001, respondent filed a motion to dismiss on the ground that petitioner had no cause of action against it. On 6 November 2001, petitioner filed a Petition for Issuance of a Writ of Attachment.

On 21 April 2003, the trial court issued an Order denying the motion to dismiss, as well as the petition for issuance of a writ of attachment against respondent. A Preliminary Attachment against the foundation-grantor has previously been issued.

An Order of Default has been pronounced by the trial court against the foundation-grantor and its responsible officers for the latter's failure to file its answer despite service of summons.

During the pre-trial, the following facts were stipulated:

1. Sr. Teresita Mcdalle, OP, [placed her thumbmark] in the subject MO A at the University of Sto. Tomas on 24 April 2001 in Espana, Manila.
2. At the time Sr. Teresita Medalle, O.P. [placed her thumbmark] in the subject MOA, she was still suffering from stroke.
3. The subject MOA was notarized in Makati City.<sup>[6]</sup>

and the following issues were submitted for resolution:

1. Whether or not when Sr. Teresita Medalle affixed her thumbmark in the MOA, she is affixing her thumbmark as President of the Holy Trinity College.
2. Whether or not Holy Trinity College is in estoppel?
3. Whether or not the Holy Trinity College may be bound by the acts of Sr. Teresita Medalle.
4. Whether or not the principle piercing the veil of corporate fiction may be applied in this case.
5. Whether or not Holy Trinity College may be considered a party in the MOA.

6. Whether or not defendant may be held liable to pay the sum due in the MOA plus damages and litigation expenses.
7. Whether or not [respondent] is entitled to the relief sought for the Complaint.
8. Whether or not the school is entitled to its counterclaim.<sup>[7]</sup>

On 4 August 2005, the trial court reconsidered its Order of 21 April 2003 and issued a Writ of Attachment against respondent.

In their Answer with Counterclaim, respondent argued that the MOA on which petitioner based its cause of action does not state that respondent is a party. Neither was respondent obligated to pay the amount of P4,624,705.00 for the European Tour of the Group nor did it consent to complying with the terms of the MOA. Respondent asserted that the thumbmark of Sr. Medalle was secured without her consent. Respondent maintained that since it was not a party to the MOA, it is not bound by the provisions stated therein. Respondent counterclaimed for damages.<sup>[8]</sup>

On 29 November 2006, the RTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

**WHEREFORE, PREMISES CONSIDERED,** Judgment is hereby rendered:

1. Ordering the defendants (1) S.C. Group of Companies Holding Limited Corporation, (2) S.C. Roque Foundation, Inc., (3) Holy Trinity College, Inc., (4) Holy Trinity College Grand Chorale, (5) Holy Trinity Dance Company and (5) Sister Teresita M. Medalle, O.P., to jointly and severally pay the Plaintiff Benjie B. Georg the following:

1 .a. The amount equivalent to Euro Currency of One Hundred Eight-Five Thousand Five Hundred Seventy-Six and Thirty-Seven Deutschmark (DM 185,576.37) with the legal interest thereon from May 21, 2001 until fully paid, by depositing the same at the designated account as provided in the Memorandum of Agreement as follows:

Account Name	Heinz Georg GmbH
Name of Bank	Volksbank Sud Siegerland eG
In	Neunkirchen, Germany
Account Number	210507600

1.b. The amount equivalent to eighteen percent (18%) of the principal amount due in the amount of One Hundred Eight-Five Thousand Five Hundred Seventy-Six and Thirty-Seven Deutschmark (DM 186,576.37) plus the accrued interest thereon until fully paid;

1.c. The amount equivalent to ten percent (10%) of the total amount above-mentioned under paragraph 1.b. as attorney's fees;

1.d The amount of One Million Pesos (P1,000,000.00) by way of Moral Damages;

1.e. The amount of One Million Pesos (P1,000,000.00) as Exemplary Damages;

1.f. Litigation expenses incurred by the Plaintiff which includes Exhibits S,T,U,V,W,AA-2-d, AA-2-e, AA-2-f, AA-2-G, AA-2-I, AA-2-J, AA-2-k, AA-2-1 to AA-2-1-5, AA-2-m to AA-2-m-7, AA-2-N to AA-2-N-3, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, AAA, BBB, CCC.

Cost against the defendants.<sup>[9]</sup>

Summed up, the findings of the trial court are:

1. The thumbmark appearing in the MOA is that of Sr. Medalle.
2. The Group was formed and organized by Sr. Medalle, in her capacity as the President of the Holy Trinity College, Inc. Said group is subject to the full control and supervision of the school administration, including selection and hiring of trainers, as well as their termination.
3. Sr. Medalle initiated the European Tour of the group in 2001. She even contacted one Dietz in Germany for the arrangement of the tour schedule and accomodation. She also was directly responsible for the procurement of the visa of the Group.
4. Even prior to and at the time of the departure of the Group, Sr. Lina Tuyac (Sr. Tuyac) and Sr. Estrella Tangan (Sr. Tangan), officers of Holy Trinity College, were already aware of the MOA.
5. During the pre-trial, the lawyer of respondent denied that Sr. Medalle's act of affixing her thumbmark was *ultra vires*. The trial court construed this denial as admission that Sr. Medalle acted within the scope of her authority.
6. When Sr. Medalle affixed her thumbmark in the MOA, it was in her capacity as President of Holy Trinity College and not of the Group.
7. Respondent is deemed to have admitted the genuineness and due execution of the MOA when it failed to specifically make any denial under oath.
8. The doctrine of Corporation by Estoppel operates against respondent. The school administration had itself allowed the existence of the Group and much more allowed its President, Sr. Medalle to operate the same under that calling before the general public and petitioner had truly acted in good faith in dealing with it.
9. The personality of the Holy Trinity College Grand Chorale, the Holy Trinity College

Dance Company, Holy Trinity College, Inc. and Sr. Medalle may be disregarded and may well be considered as identical.

10. There was a clear breach of and delay in the performance of the contractual obligation of respondent under the MOA.

On 5 January 2007, petitioner filed a motion for execution pending appeal. Said motion was granted and a corresponding writ was issued by the trial court. This decision was sustained by the Court of Appeals, and later on affirmed by this Court in G.R. No. 180787.

On 9 January 2007, respondent filed a notice of appeal.<sup>[10]</sup>

In a Decision dated 17 November 2009, the Court of Appeals relieved respondent of any liability for petitioner's monetary claims. The Court of Appeals synthesized the issues into three, thus:

1. Respondent's privity to the loan extended by petitioner and the MOA sued upon;
2. Sr. Medalle's capacity and/or authority to act for and in behalf of appellant in respect to the subject MOA; and
3. The applicability of the doctrines of apparent authority and/or corporation by estoppel to the factual and legal milieu of the case.

<sup>[11]</sup>

The Court of Appeals held that the record is bereft of any showing that Sr. Medalle participated in the negotiation, perfection and partial consummation of the contract whereby petitioner advanced the payment of international and domestic tickets required for the Group's European tour. The Court of Appeals found that petitioner had agreed to advance the payment based on the following considerations: 1) the representation made by Enriquez that he was respondent's employee/representative and that the funds were available for said tickets; 2) the supposed confirmation from Dietz that Enriquez was an employee/representative of respondent and that she had been in contact with Sr. Medalle regarding the Group's European tour; and 3) the assurance given by Fr. Vincent Brizuela that Sr. Medalle was, indeed, respondent's President. Petitioner relied on the confirmation of Dietz and did not even contact Sr. Medalle. The Court of Appeals held that petitioner failed to exercise reasonable diligence in ascertaining the existence and extent of Enriquez's authority to act for and in behalf of the Group or for that matter, respondent. The Court of Appeals noted the absence of respondent's name in the MOA, thus it concluded that respondent was clearly not a party to the MOA. The Court of Appeals took exception to the trial court's ruling that respondent admitted the genuineness and due execution of the MOA when it failed to deny the same under oath. The Court of Appeals, citing Section 8, Rule 8 of the Rules of Court, ruled that the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument upon which an action or defense is founded. The Court of Appeals also pointed out that Sr. Medalle affixed her thumbmark on the MOA under the mistaken belief that said agreement would facilitate the release of the donation from the