

## SECOND DIVISION

[ G.R. No. 181560, November 15, 2010 ]

**VITARICH CORPORATION, PETITIONER, VS. CHONA LOSIN,  
RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review under Rule 45 of the Rules of Court seeking to reverse and set aside the November 26, 2007 Decision<sup>[1]</sup> of the Court of Appeals, Cagayan de Oro (CA-CDO), in CA G.R. CV No.73726,<sup>[2]</sup> which *reversed* the August 9, 2001 Decision of the Regional Trial Court, Branch 23, General Santos City (RTC), in Civil Case No. 6287, in favor of petitioner Vitarich Corporation (*Vitarich*).

#### **THE FACTS:**

Respondent Chona Losin (*Losin*) was in the fastfood and catering services business named Glamours Chicken House, with address at Parang Road, Cotabato City. Since 1993, Vitarich, particularly its Davao Branch, had been her supplier of poultry meat.<sup>[3]</sup> In 1995, however, her account was transferred to the newly opened Vitarich branch in General Santos City.

In the months of July to November 1996, Losin's orders of dressed chicken and other meat products allegedly amounted to P921,083.10. During this said period, Losin's poultry meat needs for her business were serviced by Rodrigo Directo (*Directo*) and Allan Rosa (*Rosa*), both salesmen and authorized collectors of Vitarich, and Arnold Baybay (*Baybay*), a supervisor of said corporation. Unfortunately, it was also during the same period that her account started to experience problems because of the fact that Directo delivered stocks to her even without prior booking which is the customary process of doing business with her.<sup>[4]</sup>

On August 24, 1996, Directo's services were terminated by Vitarich without Losin's knowledge. He left without turning over some supporting invoices covering the orders of Losin. Rosa and Baybay, on the other hand, resigned on November 30, 1996 and December 30, 1996, respectively. Just like Directo, they did not also turn over pertinent invoices covering Losin's account.<sup>[5]</sup>

On February 12, 1997, demand letters were sent to Losin covering her alleged unpaid account amounting to P921,083.10. Because of said demands, she checked her records and discovered that she had an overpayment to Vitarich in the amount of P500,000.00. She relayed this fact to Vitarich and further informed the latter that checks were issued and the same were collected by Directo.<sup>[6]</sup>

It appears that Losin had issued three (3) checks amounting to P288,463.30 which

were dishonored either for reasons - Drawn Against Insufficient Funds (DAIF) or Stop Payment.<sup>[7]</sup>

On March 2, 1998, Vitarich filed a complaint for Sum of Money against Losin, Directo, Rosa, and Baybay before the RTC.

On August 9, 2001, the RTC rendered its Decision<sup>[8]</sup> in favor of Vitarich, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff, ordering defendant Chona Losin to pay plaintiff the following:

1. P297,462.50 representing the three checks which had been stopped payment with interest at 12% per annum from the date of this Decision until the whole amount is fully paid;
2. P101,450.20 representing the unpaid sales (Exhibits `L' and `M') with interest at 12% from date of this Decision until the whole amount is fully paid;
3. P20,000.00 in concept of attorney's fees; and
4. The cost of suit.

As to the complaint against defendant Allan Rosa and Arnold Baybay, the same is dismissed. The complaint against Rodrigo Directo still remains and is hereby ordered archived until he could be served with summons.

SO ORDERED.<sup>[9]</sup>

Not satisfied with the RTC decision, Losin appealed to the CA presenting the following:

**ASSIGNMENT OF ERRORS:**

- I. **THE LOWER COURT ERRED IN NOT APPRECIATING THE OVERPAYMENT MADE BY DEFENDANT-APPELLANT TO VITARICH CORPORATION;**
- II. **THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF THE THREE (3) CHECKS WITH STOP PAYMENT ORDERS AND WITHOUT ANY ANTECEDENT DOCUMENTARY EVIDENCES FOR THE TWO (2) CHECKS, NAMELY: RCBC CHECK NO. CX 046324 AND RCBC CHECK NO. CX 046327 ; AND**
- III. **THE LOWER COURT ERRED IN NOT FINDING VITARICH CORPORATION NEGLIGENT IN THE SELECTION OF ITS**

**EMPLOYEES AND NEITHER FINDING THE CORPORATION  
LIABLE FOR DAMAGES A CLEAR VIOLATION OF ARTICLE  
2180 OF THE CIVIL CODE.<sup>[10]</sup>**

On November 26, 2007, the CA rendered the assailed decision in favor of Losin. Pertinently, the said decision reads:

It is axiomatic that we should not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstances of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason is that the trial court is in a better position to determine questions involving credibility having heard the witnesses and having observed their deportment and manner of testifying during the trial unless there is showing that the findings of the lower court are totally devoid of support or glaringly erroneous as to constitute palpable error or grave abuse of discretion. This is such an instance.

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. Thus, the elements of agency are (i) consent, express or implied, of the parties to establish the relationship; (ii) the object is the execution of a juridical act in relation to a third person; (iii) the agent acts as a representative and not for himself; and (iv) the agent acts within the scope of his authority.

The Civil Code defines a contract of agency as follows:

*"Art. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."*

As far as Losin is concerned, Directo was a duly authorized agent of Vitarich Corporation. As such, it fell upon Directo to place her orders of dressed chicken and other related products to their General Santos City branch. All such orders were taken from the Vitarich bodega by Directo as testified by Alona Calinawan, then bookkeeper of Vitarich from March 1995 to September 1998, who was responsible for all the customers' accounts, receivables and withdrawals of dressed chicken from their bodega.

A perusal of the records would show that Vitarich included in their list of collectibles from Losin several amounts that were not supported by their Charge Sales Invoices such as P44,987.70, P3,300.00; P28,855.40; P98,166.20; P73,806.00; and P93,888.80 and which form part of their total claim of P912,083.10. Furthermore, Vitarich also submitted Charge Sales Invoices showing the amount of P70,000.00, P41,792.40, P104,137.40 and P158,522.80 as part of their exhibits but which

amounts are not included in its summary statement of collectibles against Losin.

It is noted that the dressed chicken and other related products as manifested by the Charge Sales Invoices, were taken out of the bodega and received by Directo, who is now 'at large.' There was no evidence presented by Vitarich to prove that aforesaid stocks were delivered to Losin. Contrary to what Vitarich claimed that Directo resigned on August 24, 1996, exhibit 'X' shows that he was 'terminated.' The fact can not be put aside that Directo was the salesman and authorized collector and by law, the agent of Vitarich. Criminal acts committed by Directo by his non-remittance of the proceeds of the checks given by Losin, is his separate accountability with Vitarich and should not be imputed to their client, Losin. In fact, defendant Directo absconded when plaintiff-appellee started to question his 'collectibles.' The totality of Directo's acts clearly indicated a deliberate attempt to escape liability.

The Civil Code provides:

"Art. 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation **shall not prejudice the latter if they were not given notice thereof.**"

"Art. 1922. If the agent had general powers, revocation of the agency **does not prejudice third persons who acted in good faith** and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons." (Emphasis Ours)

The reason for the law is obvious. Since the third persons have been made to believe by the principal that the agent is authorized to deal with them, they have the right to presume that the representation continues to exist in the absence of notification by the principal.

Nowhere in the records can it be found that Losin was notified of the fact that Directo was no longer representing the interest of Vitarich and that the latter has terminated Directo's services. There is also an absence of any proof to show that Directo's termination has been published in a newspaper of general circulation.

It is well settled that a question of fact is to be determined by the evidence offered to support the particular contention. In defendant-appellant's 'Statement of Payments Made to Vitarich,' prepared and signed by Losin's bookkeeper, Imelda S. Cinco, all the checks enumerated therein coincides with the bank statements submitted by RCBC, thus corroborating Losin's claim that she has paid Vitarich. Vitarich's contention that 'defendant Baybay tried very hard to hide his accountabilities to the plaintiff x x x but failed to explain why the account remained unpaid,' confirms its belief that their own agents as such, are

accountable for transactions made with third persons. "As a Sales Supervisor, he is principally liable for the behavior of his subordinates (Directo & Rosa) and for the enforcement of company rules" which may have gone beyond their authority to do such acts.

Anent the third assigned error that the lower court erred in not finding Vitarich negligent in the selection of its employees thereby making the former liable for damages under Article 2180 of the Civil Code, We find the same to be without basis as said article explicitly holds that:

"`ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

Xxx xxx xxx

Xxx xxx xxx

Xxx xxx xxx

**Employers shall be liable for the damages caused by their employees** and household helpers **acting within the scope of their assigned tasks**, even though the former are not engaged in any business or industry.

Xxx xxx xxx."

Pursuant to Article 2180 of the Civil Code, that vicarious liability attaches only to an employer when the tortuous conduct of the employee relates to, or is in the course of, his employment. The question to ask should be whether at the time of the damage or injury, the employee is engaged in the affairs or concerns of the employer or, independently, in that of his own? Vitarich incurred no liability when Directo's conduct, act or omission went beyond the range of his employment.

Section 1, Rule 133 of the Rules of Court provides:

"`SECTION 1. *Preponderance of evidence, how determined.* - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also