

## SECOND DIVISION

[ G.R. NO. 156015, August 11, 2005 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY LT. GEN. JOSE M. CALIMLIM, IN HIS CAPACITY AS FORMER CHIEF OF THE INTELLIGENCE SERVICE, ARMED FORCES OF THE PHILIPPINES (ISAFP), AND FORMER COMMANDING GENERAL, PRESIDENTIAL SECURITY GROUP (PSG), AND MAJ. DAVID B. DICIANO, IN HIS CAPACITY AS AN OFFICER OF ISAFP AND FORMER MEMBER OF THE PSG, PETITIONERS, VS. HON. VICTORINO EVANGELISTA, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 223, QUEZON CITY, AND DANTE LEGASPI, REPRESENTED BY HIS ATTORNEY-IN-FACT, PAUL GUTIERREZ, RESPONDENTS.**

### DECISION

**PUNO, J.:**

The case at bar stems from a complaint for damages, with prayer for the issuance of a writ of preliminary injunction, filed by private respondent Dante Legaspi, through his attorney-in-fact Paul Gutierrez, against petitioners Gen. Jose M. Calimlim, Ciriaco Reyes and Maj. David Diciano before the Regional Trial Court (RTC) of Quezon City.  
[1]

The Complaint alleged that private respondent Legaspi is the owner of a land located in Bigte, Norzagaray, Bulacan. In November 1999, petitioner Calimlim, representing the Republic of the Philippines, and as then head of the Intelligence Service of the Armed Forces of the Philippines and the Presidential Security Group, entered into a Memorandum of Agreement (MOA) with one Ciriaco Reyes. The MOA granted Reyes a permit to hunt for treasure in a land in Bigte, Norzagaray, Bulacan. Petitioner Diciano signed the MOA as a witness.<sup>[2]</sup> It was further alleged that thereafter, Reyes, together with petitioners, started, digging, tunneling and blasting works on the said land of Legaspi. The complaint also alleged that petitioner Calimlim assigned about 80 military personnel to guard the area and encamp thereon to intimidate Legaspi and other occupants of the area from going near the subject land.

On February 15, 2000, Legaspi executed a special power of attorney (SPA) appointing his nephew, private respondent Gutierrez, as his attorney-in-fact. Gutierrez was given the power to deal with the treasure hunting activities on Legaspi's land and to file charges against those who may enter it without the latter's authority.<sup>[3]</sup> Legaspi agreed to give Gutierrez 40% of the treasure that may be found in the land.

On February 29, 2000, Gutierrez filed a case for damages and injunction against petitioners for illegally entering Legaspi's land. He hired the legal services of Atty.

Homobono Adaza. Their contract provided that as legal fees, Atty. Adaza shall be entitled to 30% of Legaspi's share in whatever treasure may be found in the land. In addition, Gutierrez agreed to pay Atty. Adaza P5,000.00 as appearance fee per court hearing and defray all expenses for the cost of the litigation.<sup>[4]</sup> Upon the filing of the complaint, then Executive Judge Perlita J. Tria Tirona issued a 72-hour temporary restraining order (TRO) against petitioners.

The case<sup>[5]</sup> was subsequently raffled to the RTC of Quezon City, Branch 223, then presided by public respondent Judge Victorino P. Evangelista. On March 2, 2000, respondent judge issued another 72-hour TRO and a summary hearing for its extension was set on March 7, 2000.

On March 14, 2000, petitioners filed a Motion to Dismiss<sup>[6]</sup> contending: first, there is no real party-in-interest as the SPA of Gutierrez to bring the suit was already revoked by Legaspi on March 7, 2000, as evidenced by a Deed of Revocation,<sup>[7]</sup> and, second, Gutierrez failed to establish that the alleged armed men guarding the area were acting on orders of petitioners. On March 17, 2000, petitioners also filed a Motion for Inhibition<sup>[8]</sup> of the respondent judge on the ground of alleged partiality in favor of private respondent.

On March 23, 2000, the trial court granted private respondent's application for a writ of preliminary injunction on the following grounds: (1) the diggings and blastings appear to have been made on the land of Legaspi, hence, there is an urgent need to maintain the *status quo* to prevent serious damage to Legaspi's land; and, (2) the SPA granted to Gutierrez continues to be valid.<sup>[9]</sup> The trial court ordered thus:

WHEREFORE, in view of all the foregoing, the Court hereby resolves to GRANT plaintiff's application for a writ of preliminary injunction. Upon plaintiff's filing of an injunction bond in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), let a Writ of Preliminary Injunction issue enjoining the defendants as well as their associates, agents or representatives from continuing to occupy and encamp on the land of the plaintiff LEGASPI as well as the vicinity thereof; from digging, tunneling and blasting the said land of plaintiff LEGASPI; from removing whatever treasure may be found on the said land; from preventing and threatening the plaintiffs and their representatives from entering the said land and performing acts of ownership; from threatening the plaintiffs and their representatives as well as plaintiffs' lawyer.

On even date, the trial court issued another Order<sup>[10]</sup> denying petitioners' motion to dismiss and requiring petitioners to answer the complaint. On April 4, 2000, it likewise denied petitioners' motion for inhibition.<sup>[11]</sup>

On appeal, the Court of Appeals affirmed the decision of the trial court.<sup>[12]</sup>

Hence this petition, with the following assigned errors:

## I

WHETHER THE CONTRACT OF AGENCY BETWEEN LEGASPI AND PRIVATE

RESPONDENT GUTIERREZ HAS BEEN EFFECTIVELY REVOKED BY LEGASPI.

## II

WHETHER THE COMPLAINT AGAINST PETITIONERS SHOULD BE DISMISSED.

## III

WHETHER RESPONDENT JUDGE OUGHT TO HAVE INHIBITED HIMSELF FROM FURTHER PROCEEDING WITH THE CASE.

We find no merit in the petition.

On the first issue, petitioners claim that the special power of attorney of Gutierrez to represent Legaspi has already been revoked by the latter. Private respondent Gutierrez, however, contends that the unilateral revocation is invalid as his agency is coupled with interest.

We agree with private respondent.

Art. 1868 of the Civil Code provides that by the contract of agency, an agent binds himself to render some service or do something in representation or on behalf of another, known as the principal, with the consent or authority of the latter.<sup>[13]</sup>

A contract of agency is generally revocable as it is a personal contract of representation based on trust and confidence reposed by the principal on his agent. As the power of the agent to act depends on the will and license of the principal he represents, the power of the agent ceases when the will or permission is withdrawn by the principal. Thus, generally, the agency may be revoked by the principal at will.

<sup>[14]</sup>

However, an exception to the revocability of a contract of agency is when it is coupled with interest, *i.e.*, if a bilateral contract depends upon the agency.<sup>[15]</sup> The reason for its irrevocability is because the agency becomes part of another obligation or agreement. It is not solely the rights of the principal but also that of the agent and third persons which are affected. Hence, the law provides that in such cases, the agency cannot be revoked at the sole will of the principal.

In the case at bar, we agree with the finding of the trial and appellate courts that the agency granted by Legaspi to Gutierrez is coupled with interest as a bilateral contract depends on it. It is clear from the records that **Gutierrez was given by Legaspi, *inter alia*, the power to manage the treasure hunting activities in the subject land; to file any case against anyone who enters the land without authority from Legaspi; to engage the services of lawyers to carry out the agency; and, to dig for any treasure within the land and enter into agreements relative thereto.** It was likewise agreed upon that **Gutierrez shall be entitled to 40% of whatever treasure may be found in the land.** Pursuant to this authority and to protect Legaspi's land from the alleged illegal entry of petitioners, agent Gutierrez hired the services of Atty. Adaza to prosecute the case for damages and injunction against petitioners. **As payment for legal services,**