

## FIRST DIVISION

[ G. R. No. 129919, February 06, 2002 ]

**DOMINION INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS, RODOLFO S. GUEVARRA, AND FERNANDO AUSTRIA, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

This is an appeal *via certiorari*<sup>[1]</sup> from the decision of the Court of Appeals<sup>[2]</sup> affirming the decision<sup>[3]</sup> of the Regional Trial Court, Branch 44, San Fernando, Pampanga, which ordered petitioner Dominion Insurance Corporation (Dominion) to pay Rodolfo S. Guevarra (Guevarra) the sum of P156,473.90 representing the total amount advanced by Guevarra in the payment of the claims of Dominion's clients.

#### The Facts

The facts, as found by the Court of Appeals, are as follows:

"On January 25, 1991, plaintiff Rodolfo S. Guevarra instituted Civil Case No. 8855 for sum of money against defendant Dominion Insurance Corporation. Plaintiff sought to recover thereunder the sum of P156,473.90 which he claimed to have advanced in his capacity as manager of defendant to satisfy certain claims filed by defendant's clients.

"In its traverse, defendant denied any liability to plaintiff and asserted a counterclaim for P249,672.53, representing premiums that plaintiff allegedly failed to remit.

"On August 8, 1991, defendant filed a third-party complaint against Fernando Austria, who, at the time relevant to the case, was its Regional Manager for Central Luzon area.

"In due time, third-party defendant Austria filed his answer.

"Thereafter the pre-trial conference was set on the following dates: October 18, 1991, November 12, 1991, March 29, 1991, December 12, 1991, January 17, 1992, January 29, 1992, February 28, 1992, March 17, 1992 and April 6, 1992, in all of which dates no pre-trial conference was held. The record shows that except for the settings on October 18, 1991, January 17, 1992 and March 17, 1992 which were cancelled at the instance of defendant, third-party defendant and plaintiff, respectively,

the rest were postponed upon joint request of the parties.

"On May 22, 1992 the case was again called for pre-trial conference. Only plaintiff and counsel were present. Despite due notice, defendant and counsel did not appear, although a messenger, Roy Gamboa, submitted to the trial court a handwritten note sent to him by defendant's counsel which instructed him to request for postponement. Plaintiff's counsel objected to the desired postponement and moved to have defendant declared as in default. This was granted by the trial court in the following order:

"ORDER

"When this case was called for pre-trial this afternoon only plaintiff and his counsel Atty. Romeo Maglalang appeared. When shown a note dated May 21, 1992 addressed to a certain Roy who was requested to ask for postponement, Atty. Maglalang vigorously objected to any postponement on the ground that the note is but a mere scrap of paper and moved that the defendant corporation be declared as in default for its failure to appear in court despite due notice.

"Finding the verbal motion of plaintiff's counsel to be meritorious and considering that the pre-trial conference has been repeatedly postponed on motion of the defendant Corporation, the defendant Dominion Insurance Corporation is hereby declared (as) in default and plaintiff is allowed to present his evidence on June 16, 1992 at 9:00 o'clock in the morning.

"The plaintiff and his counsel are notified of this order in open court.

"SO ORDERED.

"Plaintiff presented his evidence on June 16, 1992. This was followed by a written offer of documentary exhibits on July 8 and a supplemental offer of additional exhibits on July 13, 1992. The exhibits were admitted in evidence in an order dated July 17, 1992.

"On August 7, 1992 defendant corporation filed a 'MOTION TO LIFT ORDER OF DEFAULT.' It alleged therein that the failure of counsel to attend the pre-trial conference was 'due to an unavoidable circumstance' and that counsel had sent his representative on that date to inform the trial court of his inability to appear. The Motion was vehemently opposed by plaintiff.

"On August 25, 1992 the trial court denied defendant's motion for reasons, among others, that it was neither verified nor supported by an affidavit of merit and that it further failed to allege or specify the facts constituting his meritorious defense.

"On September 28, 1992 defendant moved for reconsideration of the aforesaid order. For the first time counsel revealed to the trial court that the reason for his nonappearance at the pre-trial conference was his illness. An Affidavit of Merit executed by its Executive Vice-President purporting to explain its meritorious defense was attached to the said Motion. Just the same, in an Order dated November 13, 1992, the trial court denied said Motion.

"On November 18, 1992, the court a quo rendered judgment as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering:

"1. The defendant Dominion Insurance Corporation to pay plaintiff the sum of P156,473.90 representing the total amount advanced by plaintiff in the payment of the claims of defendant's clients;

"2. The defendant to pay plaintiff P10,000.00 as and by way of attorney's fees;

"3. The dismissal of the counter-claim of the defendant and the third-party complaint;

"4. The defendant to pay the costs of suit."<sup>[4]</sup>

On December 14, 1992, Dominion appealed the decision to the Court of Appeals.<sup>[5]</sup>

On July 19, 1996, the Court of Appeals promulgated a decision affirming that of the trial court.<sup>[6]</sup> On September 3, 1996, Dominion filed with the Court of Appeals a motion for reconsideration.<sup>[7]</sup> On July 16, 1997, the Court of Appeals denied the motion.<sup>[8]</sup>

Hence, this appeal.<sup>[9]</sup>

### The Issues

The issues raised are: (1) whether respondent Guevarra acted within his authority as agent for petitioner, and (2) whether respondent Guevarra is entitled to reimbursement of amounts he paid out of his personal money in settling the claims of several insured.

### The Court

The petition is without merit.

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.<sup>[10]</sup> The basis for agency is representation.<sup>[11]</sup> On the part of the principal, there must be an actual intention to appoint<sup>[12]</sup> or an intention naturally inferable from his words or actions;<sup>[13]</sup> and on the part of the agent, there must be an

intention to accept the appointment and act on it,<sup>[14]</sup> and in the absence of such intent, there is generally no agency.<sup>[15]</sup>

A perusal of the Special Power of Attorney<sup>[16]</sup> would show that petitioner (represented by third-party defendant Austria) and respondent Guevarra intended to enter into a principal-agent relationship. Despite the word "special" in the title of the document, the contents reveal that what was constituted was actually a general agency. The terms of the agreement read:

"That we, FIRST CONTINENTAL ASSURANCE COMPANY, INC.,<sup>[17]</sup> a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, xxx represented by the undersigned as Regional Manager, xxx do *hereby appoint RSG Guevarra Insurance Services represented by Mr. Rodolfo Guevarra xxx to be our Agency Manager in San Fdo., for our place and stead, to do and perform the following acts and things:*

- "1. *To conduct, sign, manager (sic), carry on and transact Bonding and Insurance business as usually pertain to a Agency Office, or FIRE, MARINE, MOTOR CAR, PERSONAL ACCIDENT, and BONDING with the right, upon our prior written consent, to appoint agents and sub-agents.*
- "2. *To accept, underwrite and subscribed (sic) cover notes or Policies of Insurance and Bonds for and on our behalf.*
- "3. *To demand, sue, for (sic) collect, deposit, enforce payment, deliver and transfer for and receive and give effectual receipts and discharge for all money to which the FIRST CONTINENTAL ASSURANCE COMPANY, INC.,<sup>[18]</sup> may hereafter become due, owing payable or transferable to said Corporation by reason of or in connection with the above-mentioned appointment.*
- "4. *To receive notices, summons, and legal processes for and in behalf of the FIRST CONTINENTAL ASSURANCE COMPANY, INC., in connection with actions and all legal proceedings against the said Corporation."*<sup>[19]</sup> [Emphasis supplied]

The agency comprises all the business of the principal,<sup>[20]</sup> but, couched in general terms, it is limited only to acts of administration.<sup>[21]</sup>

A general power permits the agent to do all acts for which the law does not require a special power.<sup>[22]</sup> Thus, the acts enumerated in or similar to those enumerated in the Special Power of Attorney do not require a special power of attorney.

Article 1878, Civil Code, enumerates the instances when a special power of attorney is required. The pertinent portion that applies to this case provides that: