

## SPECIAL NINETEENTH DIVISION

[ CA-G.R. CV. NO. 03102, June 30, 2014 ]

**MARIAN C. OCAMPO & ARIEL CABUEÑOS,\* PLAINTIFFS-  
APPELLEES, VS. ANTONIA D. TAN & CRESANALYN TAN,  
DEFENDANTS-APPELLANTS.**

### D E C I S I O N

**LAGURA-YAP, J.:**

The present appeal seeks to nullify the July 11, 2008 *Decision*<sup>[1]</sup> issued by Regional Trial Court, Branch 41, Gandara, Samar (RTC) in Civil Case No. 01-013 for *Restitution and Recovery of Indemnity and Damages*.

### THE ANTECEDENTS

The relevant facts of this case are as follows:

On April 2, 2001, appellees, who are siblings, filed the Complaint against their aunt and cousin, appellants Antonia and Cresanalyn, respectively.<sup>[2]</sup> The complaint states that appellee Ocampo entrusted and deposited the total amount of \$165,200.00, or P6,211,565.10,<sup>[3]</sup> jointly owned by appellees, to the account of appellants. However, appellants misappropriated the said amount. They made refunds but the amount of P1,609,395.73 remained unpaid despite appellees' demand.

The complaint also stated that appellee Cabueños is the attorney-in-fact of Ocampo, who resides in the United States of America. Attached to the complaint is a plain copy of the Special Power of Attorney (SPA) executed by Ocampo in Cabueños' favor.

In their *Answer and Compulsory Counterclaim*<sup>[4]</sup>, appellants alleged that the bank remittances were payments by appellees for obligations they incurred from them. The documents evidencing such obligation were, however, taken by Cabueños when he (Cabueños) ransacked and forcibly opened appellant Cresanalyn's office. Appellants also denied the genuineness and due execution of the SPA.

Trial ensued.

On July 20, 2003, appellees formally offered<sup>[5]</sup> only the following documentary evidence:

1. International Money Transfer Request amounting to US\$100,000.00<sup>[6]</sup> and US\$65,200.00<sup>[7]</sup> (Exhibits "A" and "B"), remitted by appellee Ocampo to appellant Antonia through the latter's bank account, as part of Cabueños'

testimony that Ocampo deposited in Antonia's account the said amount.

2. Certificate of Time Deposit,<sup>[8]</sup> as part of the Cabueños' testimony that Ocampo remitted US\$100,000.00 on February 24, 1998 and US\$65,200.00 on April 1, 1998 to appellee Antonia.<sup>[9]</sup>
3. Computation<sup>[10]</sup> made by Alexander Perez, CPA, as part of his testimony that despite the various payments by appellants, they still had unsettled obligation to appellees amounting to P1,609,395.72.
4. Letters<sup>[11]</sup> from appellees' counsel demanding appellant to pay P1,609,395.72, plus 10% interest.

Thereafter, appellees rested their case.<sup>[12]</sup>

On January 15, 2004, appellants filed their *Demurrer to Evidence*.<sup>[13]</sup>

On July 6, 2004, the RTC issued the order denying appellants' demurrer.<sup>[14]</sup> A hearing was set on November 8, 2004, for the reception of appellants' evidence,<sup>[15]</sup> but appellants failed to attend. They also failed to attend in a subsequent hearing,<sup>[16]</sup> thus, the RTC declared the case as submitted for decision<sup>[17]</sup> on July 1, 2008, without appellants being able to present evidence.

On July 11, 2008, the RTC issued the assailed Decision the dispositive portion of which reads:

WHEREFORE, for all the foregoing, the Court hereby renders judgment in favor of (*appellees*), ordering and directing as follows:

1. That (*appellants*) jointly and severally restitute and/or pay unto (*appellees*), the following amounts:
  - a) Php1,609,395.72, representing the uncollected balance of peso equivalent of the US\$100,000.00 which (*appellants*) converted into Philippines money at the rate of Php40.00 to a US dollar with legal interest of 13% annually starting August, 1998 until the amount is fully paid;
  - b) Php1,000,000.00 and Php100,000.00 for moral and exemplary damages, respectively;
  - c) Php94,476.20, actual expenses;
  - d) Php200,000.00 for attorney's fees;
  - e) Php26,814.44 for filing and docketing fees; and
  - f) The costs of the suit;

SO ORDERED.

Hence, this appeal.<sup>[18]</sup>

## ISSUES

- I. WHETHER APPELLANTS SHOULD BE DEEMED TO HAVE WAIVED THEIR RIGHT TO PRESENT EVIDENCE JUST BECAUSE THEY FAILED TO ATTEND THE JULY 1, 2008 HEARING;
- II. WHETHER APPELLEES WERE ABLE TO DISCHARGE THEIR BURDEN OF PROVING THEIR CAUSE OF ACTION;
- III. WHETHER APPELLANTS ARE LIABLE TO PAY INTEREST DESPITE THE ABSENCE OF ANY WRITTEN AGREEMENT WITH RESPECT THERETO;
- IV. WHETHER THERE IS FACTUAL AND LEGAL BASIS TO HOLD APPELLANTS ENTITLED TO PAYMENT OF MORAL AND EXEMPLARY DAMAGES;
- V. WHETHER THE IMPOSABLE INTEREST, IF ANY, IS 13% PER ANNUM AND RECKONED FROM AUGUST 1998.

### **THE ARGUMENTS**

Among the issues raised by appellants, We deem it logical to first resolve the second.

Appellants argue that appellees have no cause of action against them. Although appellees claim that they both own the money sent to appellees, Exhibits "A" and "B" show otherwise. The said documents indicate that it was only Ocampo who made the remittances to Antonia. Cabueños, therefore, has no interest in the case. He has no cause of action against appellees. On the other hand, here is no proof that Ocampo is a plaintiff in the case. Although there was an allegation that Ocampo appointed Cabueños as her attorney-in-fact, what was attached to the complaint was merely a plain copy of the SPA. Its truthfulness and veracity was denied by appellants in their answer. Appellees should have presented, identified, and formally offered the original of the said SPA during trial.

Appellees oppose. They contend that appellants cannot raise the issue of the defect in Cabueños' SPA for the first time on appeal as this was not raised during the proceedings *a quo*. They further assert that the following militate against appellants' assertions: (1) the caption of the complaint mentions the plaintiff as "*Marian C. Ocampo and Ariel Cabueños (in his own behalf and as Attorney-in-Fact of Marian C. Ocampo,*" and; (2) the complaint states:

1. Plaintiffs Marian C. Ocampo (hereinafter called Ocampo for brevity) and Ariel T. Cabueños (hereinfter called Cabueños for brevity) are both of legal age and natural-born Filipinos, Ocampo being a resident of Philadelphia, Pennsylvania, while Cabueños has established his residence at San Miguel Street, Poblacion, Municipality of Gandara, Samar.
2. Plaintiff Cabueños is the attorney-in-fact of plaintiff Ocampo duly authorized to act in behalf of the latter for purposes of the instant case and the incidents related thereto, as shown by its copy, marked Annex "A" and hereto attached as integral part thereof.

### **THE COURT'S RULING**