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SECOND DIVISION

[G.R. No. 205179. July 18, 2014]

GERVE MAGALLANES, *petitioner, vs.* **PALMER ASIA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; REAL PARTY-IN-INTEREST; DETERMINATION THEREOF; REQUIREMENTS.— Under our procedural rules, "a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action."x x x Section 2 of Rule 3 of the Rules of Court has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Parties who are not the real parties in interest may be included in a suit in accordance with the provisions of Section 3 of Rule 3 of the Rules of Court.

2. ID.; APPEALS; PETITION FOR REVIEW; PROCEDURAL RULES FORBID PARTIES TO CHANGE THEORY OF THE CASE ON APPEAL; RATIONALE.— Procedural rules forbid parties to change the theory of the case on appeal. In *Bote v. Spouses Veloso*, we defined the theory of the case as: [a] comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate. The rationale for this rule was discussed in the earlier case of *Goyanko, Jr. v. United Coconut Planters Bank*: [Changing the theory of the case] violates

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basic rules of fair play, justice and due process. Our rulings are clear — "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal"; otherwise, the lower courts will effectively be deprived of the opportunity to decide the merits of the case fairly. Besides, courts of justice are devoid of jurisdiction to resolve a question not in issue.

APPEARANCES OF COUNSEL

Bermudez Law Office for petitioner.
Escudero Marasigan Vallente & E.H. Villareal Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review that seeks to set aside the Decision[1] dated 17 September 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 111314 and the Resolution[2] dated 14 January 2013 which denied the Motion for Reconsideration dated 25 September 2012.

The Facts

Andrews International Product, Inc. (Andrews) is a domestic corporation that manufactures and sells fire extinguishers. Gerve Magallanes (Magallanes) was employed by Andrews as a Sales Agent.[3]

Magallanes negotiated with three (3) prospective buyers of Andrews fire extinguishers: Cecile Arboleda, Jose Cruz, and

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[1] *Rollo*, pp. 26-38. Penned by Justice Rodil V. Zalameda, with Justices Andres B. Reyes, Jr. and Eduardo B. Peralta, Jr., concurring.

[2] *Id*. at 40-41. Penned by Justice Rodil V. Zalameda, with Justices Andres B. Reyes, Jr. and Eduardo B. Peralta, Jr., concurring.

[3] *Id*. at 27.

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Proceso Jarobilla, who all issued checks payable to Andrews. These checks, however, bounced.[4]

Angel Palmiery (Palmiery), the President of Andrews, returned the bum checks to Magallanes. Desirous of obtaining his accrued commissions, and upon the advice of Palmiery, Magallanes signed Sales Invoices covering the fire extinguishers that were intended to be sold to the prospective buyers, and he also issued five (5) checks covering the purchase price of the items:

Bank	**Check number**	**Date of check**	**Date deposited**	**Amount**
Citytrust Banking Corp.	000721	28 July 1993	25 January 1994	₱17,740.00
Citytrust Banking Corp.	000743	2 September 1993	25 January 1994	₱16,440.00
Prudential Bank	001579	7 January 1994	7 January 1994	₱ 49,230.00
Prudential Bank	001582	9 January 1994	18 January 1994	₱19,880.00
Prudential Bank	001585	15 January 1994	17 January 1994	₱45,440.00
Total				**₱148,800.20**

However, Magallanes' checks were dishonored upon presentment to the bank.

Sometime in 1995, Andrews and another corporation, Palmer Asia, Inc. (Palmer), entered into an agreement whereby all the business of Andrews was going to be handled by Palmer. As explained by Palmer:

> a change of name was in order to appeal to a bigger and more sophisticated market. Hence, Palmer Asia was born. Being a family corporation and since the change of name was more of a marketing strategy, all legal niceties were dispensed with. Andrews x x x thus ceased to be active in the business.[5]

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[4] *Id.* at 28.

[5] *Id.* at 178-179.

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Thus, Andrews remained to be existing, but not operational. It was neither dissolved nor liquidated. There was no transfer of assets and liabilities in the legal sense. Palmer simply took over the business of Andrews.[6]

According to Magallanes, Andrews demanded payment of the value of the checks. Since the demands were unheeded, Magallanes was charged with several counts of violation of Batas Pambansa Bilang 22 (B.P. 22) under several informations all dated 28 March 1997. The cases were docketed as Criminal Case Nos. 211340-44 in Branch 62 of the Metropolitan Trial Court of Makati City (MeTC Branch 62). Palmiery was authorized to file suit on behalf of Andrews.[7] Upon being arraigned on 13 November 1997, Magallanes pled not guilty.[8]

On 16 March 1998, Escudero Marasigan Sta. Ana & E.H. Villareal (EMSAVILL), the counsel of Andrews, entered its appearance as counsel for Palmer in Criminal Case Nos. 217336-44 entitled *Palmer Asia, Inc. v. Gerve Magallanes*, filed before Branch 67 of the Metropolitan Trial Court of Makati City (MeTC Branch 67). The docket numbers as stated in the Entry of Appearance differ from the docket numbers of the cases filed by Andrews. Also, the Entry of Appearance was filed before Branch 67 of the MeTC and not Branch 62, where the cases were previously filed. Furthermore, there was no mention of the relationship between Andrews and Palmer. Lastly, there was no registry receipt or stamp or signature or any other mark which could indicate that Magallanes was furnished a copy of the document.[9]

On 10 August 2003, Palmiery appeared before the MeTC Branch 62 and explained that Andrews transferred its assets, and relinquished control of its operations to Palmer. Thus, on 16 September 2004, Magallanes filed an Omnibus Motion to Disqualify Private Prosecutor and to Strike Out Testimony of Angel Palmiery (Omnibus Motion).

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[6] *Id.* at 177.

[7] *Id*. at 189.

[8] *Id*. at 45.

[9] *Id*. at 160.

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According to Magallanes, since the assets and credits of Andrews were transferred to Palmer, the real party in interest in this case is Palmer and not Andrews. Therefore, the criminal case should have been instituted by Palmer. Magallanes also asserted that:

> [i]ndeed the private prosecutor was hired by Palmer x x x solely for its own account and not by Andrews x x x for otherwise how can the Private Prosecutor explain the alleged direct payment of Palmer x x x of its attorney's fees in the present case. The problem however is that Palmer x x x has no right to participate in the present case as the recitals of the information refer to Andrews x x x. Hence, the private prosecutor should be thereupon disqualified x x x.[10]

Thus, Palmer filed its Opposition to Magallanes' motion, claiming that:

> 3.01.4 As a marketing strategy, Andrews International's business thus operated under the banner of Palmer Asia. Palmer Asia had exactly the same officers, occupied the same business office, retained all its employees and agents, had the same customers and sold the same products.
>
> x x x x x x x x x
>
> 3.01.6 Seen another way, Palmer Asia can be seen as in effect, for purposes of this litigation, an agent of Andrews International. x x x [A]n agency can be constituted in any form, even by sheer implication derived from the conduct of the parties.[11]

In its Joint Order dated 8 March 2005, the MeTC Branch 62 denied the motion filed by Magallanes for lack of merit.[12] It also acquitted Magallanes, but held him civilly liable. The dispositive portion of the Joint Decision[13] dated 10 December 2008 reads:

> Wherefore, foregoing considered, the accused GERVE MAGALLANES is ACQUITTED of the offense charged for lack of proof beyond reasonable doubt in Criminal Cases No. 211340, 211341,

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[10] *Id.* at 173.

[11] *Id.* at 179.

[12] *Id.* at 213.

[13] *Id.* at 59-64. Penned by Presiding Judge Carlito B. Calpatura.

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211341, 211342, 211343 and 211344. He is ordered to pay the private complainant, the corresponding face value of the checks subject of the Criminal Cases No. 211340, 211341, 211342, 211343 and 211344, by way of civil liability, with 12% interest per annum counted from June 10, 1994, until the amount shall have been paid; attorney's fees at 10% of the total face value of the subject checks; and to pay the costs.

In case of execution of civil liability, the Clerk of Court is directed to determine and enforce collection of any unpaid docket or other lawful fees in accordance with Rule 111, Sec. 1-b in relation to Rule 141.

SO ORDERED.[14]

Magallanes filed a Partial Appeal before Branch 61 of the Regional Trial Court of Makati (RTC Branch 61). According to Magallanes, the checks were not issued for valuable consideration since the Sales Invoices, as well as the transactions reflected in the invoices were simulated and fictitious. He also claimed that as a Sales Agent, he is not liable for the bum checks issued by the prospective buyers of Andrews.[15] Andrews, as the private complainant mentioned in the Joint Decision of MeTC Branch 62, did not file any appeal.

When the parties were required by the RTC Branch 61 to submit their respective memoranda, the memorandum for the complainant was filed by Palmer, and not Andrews. The memorandum was prepared by EMSAVILL[16] and received by Magallanes on 9 March 2009.[17]

The RTC Branch 61, in its Decision[18] dated 25 May 2009, held that Magallanes was not civilly liable for the value of the checks because "the x x x complaining juridical entity has not fully established the existence of a debt by Mr. Magallanes in its favor."[19] Thus,

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[14] *Id.* at 64.

[15] *Id.* at 51-52.

[16] *Id.* at 11.

[17] *Id.*

[18] *Id.* at 43-58. Penned by Presiding Judge J. Cedrick O. Ruiz.

[19] *Id.* at 57.

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Palmer filed a motion for reconsideration on 15 June 2009,[20] which was denied by the RTC in its Resolution dated 14 October 2009.[21] Andrews did not file a motion for reconsideration.

Thus, Palmer filed a petition for review under Rule 42 of the Rules of Civil Procedure before the CA. It alleged that the RTC erred in reversing the decision of the MeTC Branch 62 and absolving Magallanes from civil liability. Andrews did not file a petition for review with the CA.

Magallanes then filed his Comments to Petition for Review (*ad cautelam*) with Motion to Dismiss Due to Finality of Judgment, wherein he alleged that:

> The Decision of the Regional Trial Court of Makati City dated 25 May 2003 has already attained finality there being no appeal interposed by Andrews International Products, Inc.
>
> Petitioner Palmer Asia, Inc. is not, can not and has never been a party plaintiff litigant in the civil aspect of Criminal Case Nos. 211340, 211341, 211342, 211343, 21134[4] before the Metropolitan Trial Court of Makati, Branch 62 for alleged violation of Batas [Pambansa] Bilang 22 and in the appealed Criminal Cases 09-031 to 035 [before the] Regional Trial Court of Makati City, Branch 61.[22]

The Ruling of the CA

The CA ruled against Magallanes. It held that Magallanes issued the checks for a consideration because he derived pecuniary benefit from it (collection of accrued commissions). According to the court *a quo*:

> The Supreme Court [has] held that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forebearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken

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[20] *Id.* at 12.

[21] *Id.* at 136-137.

[22] *Id.* at 143.

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by the other side. Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquires the same for a consideration or for value. In the instant case, respondent failed to present convincing evidence to overthrow the presumption and prove that the checks were indeed issued without valuable consideration. In fact, respondent categorically admitted that he issued the subject bum checks in order for him to collect his pending commissions with petitioner.[23]

Aggrieved, Magallanes then filed the instant petition before this Court.

Issues

The petition alleges that the CA erred in not dismissing Palmer's petition for review under Rule 42 based on lack of jurisdiction and finality of judgment of the RTC's Joint Decision.[24] and in ruling that Magallanes failed to rebut the presumption of consideration in the issuance of the checks.[25]

The Ruling of this Court

We grant the petition. The RTC Decision absolving Magallanes from civil liability has attained finality, since no appeal was interposed by the private complainant, Andrews. While Palmer filed a petition for review before the CA, it is not the real party in interest; it was never a party to the proceedings at the trial court.

Under our procedural rules, "a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action."[26] In the instant case, Magallanes filed a motion to dismiss in accordance with the Rules of Court, wherein he claimed that:

x x x the obvious and only real party in interest in the filing and prosecution of the civil aspect impliedly instituted with x x x the filing

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[23] *Id.* at 33-34. Citations omitted.

[24] *Id.* at 13.

[25] *Id.* at 17.

[26] *Evangelista v. Santiago*, 497 Phil. 269, 285 (2005).

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of the foregoing Criminal Cases for B.P. 22 is Andrews International Products, Inc.

The alleged bounced checks issued by x x x Magallanes were issued payable in the name of Andrews International Products, Inc. The [n]arration of [facts] in the several Informations for violation of B.P. 22 filed against Magallanes solely mentioned the name of Andrews International Products, Inc.[27]

The real party in this case is Andrews, not Palmer. Section 2 of Rule 3 of the Rules of Court provides:

Sec. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In *Goco v. Court of Appeals*,[28] we explained that:

This provision has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.

Parties who are not the real parties in interest may be included in a suit in accordance with the provisions of Section 3 of Rule 3 of the Rules of Court:

Sec. 3. *Representatives as parties*. Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal

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[27] *Rollo,* p. 143.

[28] G.R. No. 157449, 6 April 2010, 617 SCRA 397, 405.

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may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

The CA erred in stating that Palmer and Andrews are the same entity.[29] These are two separate and distinct entities claiming civil liability against Magallanes. Andrews was the payee of the bum checks, and the former employer of Magallanes. It filed the complaint for B.P. 22 before MeTC Branch 62. Thus when the MeTC Branch 62 ordered Magallanes to "pay the private complainant the corresponding face value of the checks x x x",[30] it was referring to Andrews, not Palmer.

Palmer, on the other hand, was first mentioned in an Entry of Appearance filed by its counsel EMSAVILL (also the counsel of Andrews) before MeTC Branch 67 in connection with *Palmer Asia, Inc. v. Gerve Magallanes.* Palmer also filed the Memorandum required by the RTC.

Although Andrews relinquished control of its business to Palmer, it was never dissolved and thus remained existing. This was stated in Palmer's Comment and Opposition.[31] Quoting the Order dated 8 March 2005 of the MeTC Branch 62 denying Magallanes' Omnibus Motion, Palmer explained that:

> Under the Corporation Code, specifically Sections 117, 118, 120 and 121, a corporation can only be dissolved in two ways, voluntary and involuntary. In the case of Andrews International, no document was presented that majority of its Board of Directors passed a [r]esolution terminationg its corporate life. No complaint was also filed with the Securities and Exchange Commission to involuntarily terminate the same, ***thus, for all intents and purposes, it is still existing although not operational.***[32] (Emphasis in the original)

Given the foregoing facts, it is clear that the real party in interest here is Andrews. Following the Rules of Court, the action should

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[29] *Rollo*, p. 27.

[30] *Id.* at 64.

[31] *Id.* at 205-223.

[32] *Id.* at 214.

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be in the name of Andrews. As previously mentioned, Andrews instituted the action before the MeTC Branch 62 but it was Palmer which filed a petition for review before the CA. In fact, the case at the CA was entitled *Palmer Asia, Inc. v. Gerve Magallanes*.

In *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*,[33] NM Rothschild changed its name to Investec Australia Limited, in accordance with Australian law, pending resolution of its petition before this Court. Thus, when we required the parties to file memoranda, NM Rothschild referred to itself as Investec Australia Limited (formerly "NM Rothschild & Sons [Australia] Limited"). Lepanto sought the dismissal of the case because the petition was not filed by the real party in interest. We held that:

> [The] submissions of petitioner on the change of its corporate name [are] satisfactory and [we] resolve not to dismiss the present Petition for Review on the ground of not being prosecuted under the name of the real party in interest. While we stand by our pronouncement in *Philips Export* on the importance of the corporate name to the very existence of corporations and the significance thereof in the corporation's right to sue, we shall not go so far as to dismiss a case filed by the proper party using its former name when adequate identification is presented. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. There is no doubt in our minds that the party who filed the present Petition, having presented sufficient evidence of its identity and being represented by the same counsel as that of the defendant in the case sought to be dismissed, is the entity that will be benefited if this Court grants the dismissal prayed for.[34]

This case is different, however, because it involves two separate and distinct entities. The corporation that initiated the complaint for B.P. 22 is different from the corporation that filed the memorandum at the RTC and the petition for review before the CA. It appears that Palmer is suing Magallanes in its own right, not as agent of Andrews, the real party in interest.

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[33] G.R. No. 175799, 28 November 2011, 661 SCRA 328.

[34] *Id.* at 336.

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Even assuming *arguendo* that Palmer is correct in asserting that it is the agent of Andrews, the latter should have been included in the title of the case, in accordance with procedural rules.

Admittedly, in his Omnibus Motion filed before the MeTC Branch 62, Magallanes concluded differently saying that the real party in interest is Palmer and not Andrews. This conclusion was based on Palmiery's testimony dated 10 August 2003 that Andrews transferred all its "assets and credits" to Palmer.[35]

Procedural rules forbid parties to change the theory of the case on appeal. In *Bote v. Spouses Veloso*,[36] we defined the theory of the case as:

> [a] comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.

The rationale for this rule was discussed in the earlier case of *Goyanko, Jr. v. United Coconut Planters Bank*:[37]

> [Changing the theory of the case] violates basic rules of fair play, justice and due process. Our rulings are clear — "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal"; otherwise, the lower courts will effectively be deprived of the opportunity to decide the merits of the case fairly. Besides, courts of justice are devoid of jurisdiction to resolve a question not in issue.

However, the change in Magallanes' posture was due to the confusing testimony of Palmiery. We quote below portions of Palmiery's testimony dated 16 September 2004, the same date the Omnibus Motion was filed:

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[35] *Rollo*, p. 173.

[36] G.R. No. 194270, 3 December 2012, 686 SCRA 759, 766.

[37] G.R. No. 179096, 6 February 2013, 690 SCRA 79, 88.

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Atty. Bermudez: Mr. Palmiery, the last hearing you undertook to bring before this Court the Deed of Assignment and Liabilities of Andrews to Palmer Asia, do you have it with you now?
A: No, Sir.

Q: Why?
A: There is no assignment.

Q: There was no assignment?
A: Yes, because it was mentioned by our lawyer a while ago it was not a legal transfer, it was a marketing transfer because the owners, the office, the line of business are exactly the same.[38] (Emphasis supplied)

EMSAVILL, counsel for Palmer and Andrews, even clarified in their Opposition to Magallanes' Omnibus Motion that:

x x x [A]ccused loses sight of the fact that Mr. Palmiery is an ordinary layman, not versed with the technicalities of the law. Expectedly, ordinary laymen, such as Mr. Palmiery, do not fully appeciate and understand the legal implications of x x x technical and legal term[s] such as "transfer of assets and liabilities."[39]

Thus, since Magallanes timely filed a motion to dismiss based on valid grounds, we rule that the CA erred in denying the said motion.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated 17 September 2012 and the Resolution dated 14 January 2013 are hereby **REVERSED** and **SET ASIDE**. The Decision of the Makati Regional Trial Court, Branch 61, is hereby **REINSTATED**.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[38] *Rollo,* p. 177.
[39] *Id.* at 177-178.