Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ABSOLUTE MANAGEMENT CORPORATION, Petitioner,	**G.R. No. 190277**
	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
METROPOLITAN BANK AND TRUST COMPANY, Respondent.	Promulgated: JUL 23 2014

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DECISION

VILLARAMA, JR., *J.*:

At bar is a Petition for Review on Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 101568 dated August 13, 2009 and November 13, 2009, respectively, reversing the Orders dated May 2, 2007[3] and September 3, 2007[4] of the Regional Trial Court (RTC) of Quezon City, Branch 80, and requiring the court *a quo* to allow respondent to participate in the proceedings of Civil Case No. Q-00-42105.

The following undisputed facts are stated in the opinion of the appellate court:

> On October 5, 2000, Sherwood Holdings Corporation and Spouses Sandy Ang and Arlene Ang filed a case for sum of money against private respondent Absolute Management Corporation before the Regional Trial

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1 *Rollo*, pp. 45-50. Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla concurring.

2 Id. at 43-44. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Apolinario D. Bruselas, Jr. and Priscilla J. Baltazar-Padilla concurring.

3 Id. at 134-135.

4 Id. at 136-137.

> Court of Quezon City, Branch 80 and docketed as Civil Case No. Q-00-42105. Private respondent filed its answer and incorporated a third-party complaint against petitioner Metropolitan Bank and Trust Company.
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> In an Order dated January 30, 2004, the trial court set the case for pre-trial on February 7, 2004, but the same was cancelled on account of the filing by petitioner of a motion to admit fourth-party-complaint against the Estate of Jose L. Chua.
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> On September 5, 2005, the trial court issued an Order directing petitioner to produce and allow private respondent to copy, microfilm copies of several checks and the bank ledgers of Current Account Nos. 00719-250162-4 and 00700-250691-9. On November 20, 2006, the trial court set the case for pre-trial. When the counsels of the parties were asked by the trial court to produce their respective authorizations to appear at the said hearing, [counsel for petitioner] manifested that [her] authority to appear for petitioner was submitted by them at the first pre-trial hearing way back [in] 2004.
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> Petitioner's counsel was given the chance to go over the records to look for [the] Secretary's Certificate she allegedly submitted in 2004. Petitioner's counsel, however, failed to show any written authority. As a result thereof, the trial court, upon motion of the private respondent, declared petitioner in default. Accordingly, the trial court allowed private respondent to present evidence ex-parte.
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> Without waiting for the written order of default, petitioner, on December 5, 2006, filed a Motion to Lift Order of Default seeking reconsideration of the Order dated November 20, 2006, attaching thereto an Affidavit of Merit together with the required Secretary's Certificate dated July 16, 2006 and Special Power of Attorney dated December 5, 2006.
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> On May 2, 2007, the trial court issued an Order denying petitioner's motion to lift the order of default, which reads:
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> x x x x
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> Petitioner filed a motion for reconsideration of the above-quoted Order but the same was denied by the trial court in its Order dated September 3, 2007.[5]

Respondent filed a petition for certiorari with the CA alleging that the RTC committed grave abuse of discretion in issuing the aforestated Orders dated May 2 and September 3, 2007.

In its assailed decision, the CA reversed the trial court's ruling that respondent's counsel cannot validly represent respondent due to "the failure on the part of the representative of [respondent] to present a Secretary's Certificate and Special Power of Attorney authorizing her to represent [respondent] during the pre-trial stage."[6] The CA ruled that the RTC's determination holding that respondent's counsel cannot validly represent respondent due to lack of authorization lacks merit, *viz.*:

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5 Id. at 45-47. Emphases omitted.

6 Id. at 134-135.

> The presumption in favor of the counsel's authority to appear in behalf of a client is a strong one. A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name. However, the court, on its own initiative or on motion of the other party[,] [may] require a lawyer to adduce authorization from the client.
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> x x x x
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> It is evident therefore that the trial court gravely abused its discretion in denying [respondent's] counsel to represent it. In the same vein, it is a clear disregard of the oft repeated principle that courts should not resort to a rigid application of the rules where the end result would frustrate the just, speedy and inexpensive determination of the controversy.[7]

Petitioner's motion for reconsideration was denied in a Resolution dated November 13, 2009. Hence, this petition raising the following assignment of errors:

> I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT A SPECIAL POWER OF ATTORNEY NEED NOT BE PRESENTED IN COURT DURING PRE-TRIAL HEARINGS SINCE THE AUTHORITY OF A LAWYER TO APPEAR IN BEHALF OF HIS CLIENT IS PRESUMED.
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> A) THE NON-APPEARANCE OF A PARTY IN PRE-TRIAL MAY BE EXCUSED ONLY IF A VALID CAUSE IS SHOWN THEREFORE OR IF A REPRESENTATIVE SHALL APPEAR IN HIS BEHALF FULLY [AUTHORIZED] IN WRITING.
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> B) THE CASES CITED BY THE HONORABLE COURT OF APPEALS, NAMELY: (1) *LANDBANK OF THE PHILIPPINES VS. [PAMINTUAN], CO.* AND (2) *CEBU STEVEDORING VS. RAMOLETE*, TO SUPPORT ITS RULING THAT THE AUTHORITY OF [A] LAWYER TO APPEAR IN BEHALF OF THE CLIENT IS PRESUMED, ARE INAPPLICABLE TO THE INSTANT CASE.
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> II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE LOWER COURT, WHEN IN FACT THE LOWER COURT ONLY PROPERLY APPLIED THE PROVISIONS OF THE LAW REQUIRING THE PRESENTATION OF A SPECIAL POWER OF ATTORNEY DURING PRE-TRIAL.
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> III. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THE LIBERAL APPLICATION OF THE RULES SHOULD BE APPLIED IN THE CASE OF RESPONDENT.
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> IV. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ORDERED RESPONDENT TO PARTICIPATE IN THE TRIAL OF THE COLLECTION CASE FILED WITH THE

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[7] Id. at 48-49. Citations omitted.

REGIONAL TRIAL COURT.

> A) RESPONDENT'S PARTICIPATION IN THE TRIAL WOULD ONLY CAUSE THE DELAY IN THE RESOLUTION OF THE CASE, CONSIDERING THAT IN ITS ANSWER, *THEY FAILED TO PRESENT A VALID DEFENSE*.[8]

We grant the petition.

A petition for certiorari may be filed if the trial court declared the defendant in default with grave abuse of discretion.[9] However, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.[10]

The court *a quo* did not commit such grave abuse of discretion in the case at bar. The Order given by the RTC in open court dated November 20, 2006 stated, *viz.*:

> When this case was called for pre-trial conference, co-plaintiff Sandy Ang failed to appear despite notice, thus, this case is hereby dismissed, insofar as he is concerned. Accordingly, defendant Absolute Management Corp. may now adduce evidence *ex parte* in support of its counterclaim against co-plaintiff Sandy Ang.
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> **With respect to the third-party complaint of Absolute Management Corp., against third-party defendant Metropolitan Bank and Trust Company whose counsel failed to present a Secretary's Certificate and Special Power of Attorney authorizing her to represent said bank in today's pre-trial, said third-party plaintiff is hereby allowed to present evidence *ex parte* pursuant to the provisions of Sec. 5, Rule 18 of the 1997 Rules of Civil Procedure.**
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> Meanwhile, let this case be referred to the Philippine Mediation Center for mediation proceedings on December 6, 2006 at 10:00 in the morning. Let the pre-trial conference between the remaining plaintiffs and defendant Absolute Management Corp. be set on January 29, 2007 at 1:30 in the afternoon.
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> SO ORDERED.
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> Given in Open Court on November 20, 2006[11]

When respondent tendered its explanation in a Motion to Lift Order of Default dated December 4, 2006, respondent clarified that:

> 2. The failure of the undersigned counsel to present the above-mentioned authorization at the said occasion was due to their impression

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8 Id. at 15-16.

9 *Lui Enterprises, Inc. v. Zuellig Pharma Corporation and the Philippine Bank of Communications*, G.R. No. 193494, March 12, 2014, p. 18, citing *Sps. Delos Santos v. Judge Carpio*, 533 Phil. 42, 52-53 (2006); *Acance v. Court of Appeals*, 493 Phil. 676, 685 (2005); *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483, 497 (2001).

10 *INC Shipmanagement, Inc., et al. v. Moradas*, G.R. No. 178564, January 15, 2014, p. 11. Citations omitted.

11 *Rollo*, p. 113. Emphasis supplied.

> that the same was already submitted by them during the initial pre-trial hearing of the case that was held on February 27, 2004. Because of such impression, undersigned counsel did not bring anymore the required authorization from [respondent]. Upon inspection of the records of the case after the said pre-trial hearing, undersigned counsel, however, discovered and realized that no such authorization was submitted by them at the said first pre-trial hearing.
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> 3. The records of the instant case will show that the undersigned counsel has been representing [respondent] in all the proceedings of the present case from the very start, including the cases before the Court of Appeals (CA G.R. SP No. 86336) and the Supreme Court (SC G.R. SP No. 170498), involving the issue of whether or not the former has the right to file a fourth-party complaint against the Estate of Jose Chua.
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> 4. Indubitably, the undersigned counsel's inability to provide the Honorable Court the proper authority to represent [respondent] at the pre-trial hearing on November 20, 2006 was not willful and deliberate, but simply due to their excusable negligence. Nevertheless, undersigned counsel[s] are attaching herewith the Secretary's Certificate and the Special Power of Attorney, Annexes "A" and "B" hereof respectively, evidencing their authority to represent [respondent] in the instant case.[12]

Despite the explanation, the trial court denied the foregoing Motion to Lift Order of Default for lack of merit in its Order dated May 2, 2007.[13] It likewise found no compelling reason to grant reconsideration as stated in its Order dated September 3, 2007.[14]

We agree with petitioner that the court *a quo* merely applied the law in this case when it declared that respondent's counsel did not have the authority to act on behalf of respondent as its **representative** during the pre-trial on November 20, 2006. The applicable provision under Rule 18 of the 1997 Rules of Civil Procedure, as amended, states, *viz.*:

> SEC. 4. *Appearance of parties*. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or **if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.**[15]
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> SEC. 5. *Effect of failure to appear*. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

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12 Id. at 115-116.
13 Id. at 134-135.
14 Id. at 136-137.
15 Emphasis supplied.

This Court has incisively explained the ratiocination of the foregoing rule on pre-trial in the case of *Development Bank of the Philippines v. Court of Appeals*[16]:

> Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.
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> x x x x
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> What needs stressing is that the parties as well as the Trial Court must realize that at the pre-trial, *the parties are obliged* not only to make formal identification and specification of the issues and of their proofs, as above described – indeed, there is no reason why the Court may not oblige the parties to set these matters down in separate writings and submit them to the Court prior to the pre-trial, and then to discuss, refine and embody the matters agreed upon in a single document at or shortly after the pre-trial – but also and equally as peremptorily, to *directly address and discuss* with sincerity and candor and in entire good faith each of the other subjects enumerated in Section 1, Rule 20, *i.e*., the "possibility of an amicable settlement or of a submission to arbitration," the "advisability of a preliminary reference of issues to a commissioner," and "such other matters as may aid in the prompt disposition of the action," inclusive of a resort to the modes of discovery.
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> Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference (he) may be non-suited or considered as in default." The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial. And in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, **or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative of the lawyer to have "special authority" to make such substantive agreements as only the client otherwise has capacity to make. That "special authority" should ordinarily be in writing or at the very least be "duly established by evidence other than the self-serving assertion of counsel (or the proclaimed representative) himself." Without that special authority, the lawyer or representative cannot be deemed capacitated to appear in place of the party; hence, it will be considered that the latter has failed to put in an appearance**

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16 251 Phil. 390 (1989).

> **at all, and he [must] therefore "be non-suited or considered as in default," notwithstanding his lawyer's or delegate's presence.**[17]

Petitioner was correct when it pointed out that:

> x x x Atty. Raquel Buendia appeared on behalf of Respondent as both its counsel and representative in the pre-trial. Atty. Buendia's authority to appear as counsel on behalf of Respondent is not being questioned. In that regard, the Court of Appeals correctly ruled that the authority of a counsel to appear in behalf of his client is presumed. However, it should be noted that Atty. Buendia also appeared as a representative of Respondent in the pre-trial hearing. In this regard, Section 4, Rule 18 of the Rules of Court specifically mandates that such representative must be armed with a written authority from the party-litigant. Unfortunately, she was not able to present one.[18]

It behooves the Court that respondent did not refute the contention of petitioner that the ground for the trial court in declaring respondent in default was the absence of a Special Power of Attorney (SPA) authorizing its counsel to act on its behalf as "representative" in the pre-trial conference. All that respondent relentlessly invoked was the liberal application of the rules in order not to defeat the right of the respondent to be heard and to present evidence in its defense – citing that default orders are frowned upon and that all parties should be given the opportunity to litigate their claims. Nonetheless, even respondent itself is well aware of the weakness of its plea for a liberal application of the rules when it stated, *viz.*:

> x x x Citing this Honorable Court's rulings in the cases of *Land Bank of the Philippines vs. Pamintuan Development Co.* x x x and *Cebu Stevedoring Co. vs. Ramolete* x x x[,] the CA highlighted the established principles that a lawyer is not required to present a written authorization from a client such that even the absence of a formal notice of entry of appearance will not even invalidate the acts performed by counsel in the client's name. **Although not in all fours with the circumstances of the present case, the above cases nonetheless demonstrate the firmly held general principles on client representation which were properly and justly applied by the CA in the questioned Decision.**[19]

The facts in the case at bar do not warrant a liberal construction of the rules. To be sure, the only explanation proffered by respondent's counsel for not having the proper authorization to represent respondent at pre-trial was her manifestation in open court that the written authority was submitted to the court *a quo* during the first pre-trial hearing way back in 2004. When respondent's counsel was given the chance to go over the records of the court *a quo* to look for the Secretary's Certificate and the SPA that she allegedly submitted in 2004, these documents could not be found from the records of the case. Nonetheless, in its Motion to Lift Order of Default submitted to the trial court, respondent argued, *viz.*:

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17 Id. at 392-395. Italics in the original; emphasis supplied.
18 *Rollo*, p. 408. Underscoring in the original.
19 Id. at 464.

> Indubitably, the undersigned counsel's (*sic*) inability to provide the Honorable Court the proper authority to represent Third-Party Defendant at the pre-trial hearing on November 20, 2006 was not willful and deliberate, but simply due to their **excusable negligence**. Nevertheless, undersigned counsel[s] are attaching herewith the Secretary's Certificate and the Special Power of Attorney, Annexes "A" and "B" hereof respectively, evidencing their authority to represent Third-Party Defendant in the instant case.[20]

We disagree with respondent that its omission is excusable. Respondent had failed to substantiate its sole excuse for its representative's apparent lack of authority to be its representative, in addition to being its counsel, during the pre-trial conference. To be sure, if indeed there was such an authority previously executed by respondent in favor of its counsel as early as the pre-trial conferences that respondent alleges to have taken place on February 27, 2004 and April 16, 2004, this fact would have been easily proven by respondent. Such document conveying authority – having originated from and issued by respondent itself – would have been produced with relative facility. Respondent, however, failed to produce this document before the court *a quo*, the appellate court and this Court. As fairly observed by petitioner, the SPA later submitted by respondent's counsel is dated December 5, 2006 or "after" the pre-trial conference on November 20, 2006. Thus, petitioner asserts:

> 87. Moreover, a closer perusal of the SPA and the Secretary's Certificate, which Respondent allegedly thought were submitted during the 27 February 2004 scheduled pre-trial, would show that the same were dated only on 05 December 2006 and 16 July 2006, respectively.
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> 88. If it was true that Respondent mistakenly thought that the said SPA and Secretary's Certificate were presented in 2004, said documents would have been dated 2004 and not 2006. Moreover, it bears stressing that the SPA was executed after the 20 November 2006 pre-trial hearing.[21]

Finally, a cursory reading of the assailed decision of the appellate court shows that when it reversed the decision of the court *a quo*, it did so on the ground that respondent's counsel's filing of a notice of entry of appearance has given rise to the presumption that she (respondent's counsel) had the authority to represent respondent. As stated by the CA:

> x x x When her authority was challenged, she manifested that her authority for the [respondent] was submitted and were attached to the records of the case. The doubt entertained by the trial court is of no consequence in view of [respondent's] vigorous assertion that it authorized said lawyer to represent it. Indeed, even an unauthorized appearance of an attorney may be ratified by the client either expressly. Ratification retroacts to the date of the lawyer's first appearance and validates the action taken by him.[22]

Indubitably, the appellate court ruled on the capacity of respondent's

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20 Id. at 115-116. Emphasis supplied.
21 Id. at 416-417. Underscoring omitted.
22 Id. at 49. Citations omitted.

counsel to represent it as its lawyer, or as its attorney, in the court *a quo*. Perforce, it ruled that the RTC committed grave abuse of discretion when it declared that respondent's counsel did not have the authority to represent it. We are constrained to disagree with this ruling. The crux of this controversy is whether respondent's counsel had the authority to represent respondent in her capacity as its representative during the subject pre-trial, and not in her capacity as its counsel. Prescinding from the foregoing disquisitions, we agree with the court *a quo* that respondent's counsel did not have the proper authority.

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 101568 dated August 13, 2009 and November 13, 2009, respectively, are **REVERSED**. The Orders dated May 2, 2007 and September 3, 2007 of the Regional Trial Court of Quezon City, Branch 80, in Civil Case No. Q-00-42105 are hereby **REINSTATED and UPHELD**.

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice