

43 Phil. 397

[G. R. No. 16716. May 31, 1922]

**ALFONSO ROCHA, PLAINTIFF AND APPELLANT, VS. PRATS & COMPANY,
DEFENDANT AND APPELLEE.**

D E C I S I O N

OSTRAND, J.:

This action was brought to recover the sum of P15,000 as broker's commission on the sale of a building and lot situated on Calle David, Manila. The trial court rendered judgment in favor of the defendant company absolving it from the complaint. From this judgment the plaintiff appealed.

It appears from the evidence that some time in the month of May, 1919, Antonio A. Brimo, the manager of the defendant company, verbally authorized one Joaquin Mencarini to negotiate the sale of the property above-mentioned, Mencarini to receive as his compensation the excess of the purchase price over and above P150,000. Subsequently, the plaintiff Rocha agreed to help Mencarini in finding a purchaser and received from Brimo an authorization similar to that of Mencarini.

Both Mencarini and Rocha from time to time submitted propositions from various prospective purchasers, none of which were acceptable to the defendant. Finally, on July 30, 1919, Rocha obtained an offer from Vicente Madrigal to buy the property for P165,000 of which the sum of P65,000 was to be paid in cash and the balance within a year from the date of the sale. Before closing the sale Brimo, at Rocha's request, gave the latter the following power in writing:

"We hereby authorize you to close in our name during this day the sale of our real estates on Pinpin, Martinez, and David Streets, containing a total area of 1,529 square meters, for the price of one hundred sixty-five thousand pesos (P165,000) under the following conditions: "Sixty-five thousand pesos should be

paid to us at the time of signing the deed.

“The remaining one hundred thousand pesos should be paid to us within the period of one year from date with interest at 6 per cent per annum until paid. Provided that the purchaser shall give banking security for the payment of these one hundred thousand pesos (P100,000).

“We reserve the right to vacate within six months the premises we are actually occupying for which we will pay a monthly rent of one thousand pesos (P1,000), and in the event that they are vacated before the six months stipulated, we will pay only for the months during which we shall have occupied the premises.

(Sgd.) “PRATS & Co.

“Good until July 31, 1919.”

Rocha testifies that when the document quoted was handed to him he protested against the clause “Entendiendose que el comprador pondra garantia bancaria para responder de estos cien mil pesos (provided that the purchaser shall give banking security for the payment of these one hundred thousand pesos)” and Brimo then told him that if the sale was made to Madrigal he could strike out this clause. Brimo denies that he authorized Rocha to waive this condition.

The following day, July 31, Rocha endeavored to close the transaction with Madrigal who offered to secure the deferred payment on the purchase price with a mortgage on the property, but Brimo then insisting on a *credito bancario* as security and Madrigal declining to agree to this, the sale failed. A few days later Brimo, through another agent, sold the property to one Concepcion Leyba for P175,000.

Mencarini at first claimed compensation for his services in connection with the negotiations for the sale to Madrigal, but now appears to have relinquished his claim in favor of Rocha.

The decision of the case hinges on questions of fact upon which we do not feel justified in disturbing the findings of the trial court. There is no doubt that if Exhibit B, the authorization above quoted, correctly states the terms of the proposed sale, the plaintiff cannot recover; he never quite succeeded in bringing the minds of the buyer and seller to an agreement. In the case of *Danon vs. Antonio A. Brimo & Co.* (42 Phil., 133), which, in some respects, bears close resemblance to the present case, this court quoted, with approval, the

rule laid down in *Sibbald vs. Bethlehem Iron Co.* (83 N. Y., 378), that “In all cases, under all and varying forms of expression, the fundamental and correct doctrine is, that the duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price and terms on which it is to be made, and until that is done his right to commission does not accrue.”

It may be conceded that if it were clearly established that the defendant waived the condition that the deferred payments of the purchase price were to be secured by bank credits, the plaintiff would be entitled to a recovery, but we do not think the oral evidence presented by the plaintiff is sufficient to vary the terms of the written instrument Exhibit B. We agree with the trial court that had there been a clear understanding as to the waiver, ordinary prudence should have led the plaintiff to have that understanding appear in writing.

The judgment appealed from is therefore affirmed, without costs. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.