

**FELINA J. SANTOS, PLAINTIFF-APPELLEE, VS. TOMICH PHILS., INC.,
TOM SHIEH, AND SPOUSES CELERINO AUSTRIA AND LORENZA
AUSTRIA, DEFENDANTS, LORENZA AUSTRIA,
DEFENDANT-APPELLANT.**

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

Before this Court is an appeal from the decision dated February 28, 2012[1] of the Regional Trial Court (RTC) of Pasig City, Branch 71, the dispositive portion of which states:

“WHEREFORE, judgment is hereby rendered ORDERING the defendant TO PAY the plaintiff the amount of P30,000.00 representing the balance of the commission owing to plaintiff with an interest rate of 12% per annum from September 9, 2002 which is the date of the Deed of Sale, until fully paid, and to pay the amount of P10,000.00 as litigation expenses and P10,000.00 as attorney’s fees, plus costs.”

Culled from the records are the following facts:

On August 16, 2002, Tomich, Phils. (Tomich), thru its President, Tom Shieh (Shieh), executed a document denominated as Authority to Sell-Agency Contract[2] authorizing the appellee Felina Santos (appellee) to sell its properties situated in Maybunga, Pasig City, covered by TCT Nos. PT-101706, PT-101707, PT-101708 and PT-101709. In the said contract, Tomich agreed to pay the appellee the broker’s fee in the amount equivalent to three percent (3%) of the purchase price.

The appellee introduced to Shieh the would-be buyers, Spouses Celerino Austria and Lorenza Austria. After the negotiation, Tomich and the Spouses Austria executed a Deed of Absolute Sale[3] on September 9, 2002 with respect to the parcels of land covered by TCT Nos. PT-101706, PT-101708 and PT-101709, together with the improvements thereon, at an agreed price of P16,000,000.00. Further, as per the Deed of Absolute Sale, the buyers agreed to pay 3% commission on the total purchase price.[4]

On March 2, 2006, the appellee filed a complaint[5] for sum of money with damages against Tomich, Tom Shieh, and the Spouses Austria with the RTC of Pasig City for their failure to pay her (appellee) the broker’s fee amounting to P480,000.00.

Tomich and Shieh were not served with summons because their whereabouts could no longer be established. With respect to the Spouses Austria, only the appellant Lorenza Austria filed her answer because her husband is already deceased.[6]

For her part, the appellant alleged that she had already paid in full her commitment to pay the commission.[7] She attached in her Answer copies of the three (3) vouchers evidencing payment of the commission to the appellee, in the amount of P300,000.00, P110,000.00 and P40,000.00, respectively.[8]

During the trial, the parties submitted as common evidence the cash vouchers, marked as follows:

For the Appellee

For the Appellant

Date

Amount

Exhibit E[9]

Exhibit 1[10]

February 17, 2003

P300,000.00

Exhibit F[11]

Exhibit 2[12]

February 17, 2003

P110,000.00

Exhibit G[13]

Exhibit 3[14]

August 23, 2002

P 40,000.00

When she testified, the appellee admitted having received only the amount of P40,000.00 by way of commission.[15] She denied having received the amount of P300,000.00 and P110,000.00, as appearing in the two other cash vouchers.[16] She testified that she signed Exhibits E and F in blank, such that the entries under the “particular” and “amount” were not yet written.[17] The appellant's son, Ariel, told her to sign the blank cash vouchers and he will show the same to his mother so that she will be paid her commission.[18]

On the other hand, the appellant presented as witness her son, Ariel Austria. Ariel testified that the appellee is not the appellant's agent, but the agent of Tomich. Ariel testified that they had already made full payment of the appellee's 3% commission in connection with the sale between Tomich and his parents, in the total amount of P480,000.00, as evidenced by the cash vouchers marked as Exhibits 1, 2 and 3.[19]

After trial on the merits, the trial court, applying the parol evidence rule, relied upon the cash vouchers marked as Exhibits “E”, “F” and “G” (Exhibits “1”, “2” and “3” for the appellant) wherein the appellee acknowledged having received the amount of P450,000.00 from the appellant. The trial court ruled that of the P480,000.00 due to the appellee, the amount of P450,000.00 had already been paid by the appellant. Thus, the appellant still owes the appellee the amount of P30,000.00.[20]

On March 22, 2012, the appellant filed a Notice of Death of Party with Motion for Substitution,[21] praying that deceased Celerino be substituted by his heirs, which was not acted upon. On even date, the appellant filed a Notice of Appeal.[22] Hence, this case.

In his brief, the appellant assigned the following errors[23] allegedly committed by the trial court:

“1. With all due respect, the Honorable Regional Trial Court, Branch 71, Pasig City erred in failing to consider that FELINA was lying when (sic) she denied having received the payment of Php450,000.00 when in truth and

in fact she received the said amount;

2. Also with all due respect, the Honorable Regional Trial Court, Branch 71, Pasig City erred in failing to note that FELINA's claim was not entitled to any credence by virtue of the fact that she clearly wanted to get double payment;”

The appeal lacks merit.

The appellant contends that Felina has no cause of action against her. It was Tomich which was duty bound to pay the commission. The appellant merely agreed to pay the same, which she, in all good faith and honesty, paid. Felina denied the payments made by the appellant but she (appellant) was able to prove thru the cash vouchers that Felina received the amounts of P40,000.00, P300,000.00 and P110,000.00, respectively or a total of P450,000.00. The appellant claims that clearly then, Felina was lying when she denied having received the aforesaid amounts. The appellant also avers that she likewise paid Felina the remaining P30,000.00 but she can no longer find the voucher.

The appellant further contends that, as shown by the Deed of Absolute Sale, the name of the broker/agent is a certain Bong H. Dungo, and not Felina, as she merely signed as a witness to the deed.[24]

The appellant's arguments deserve scant consideration. The appellant's son and witness, Ariel Austria, testified that the appellee is not their agent, but the agent of Tomich. Ariel, however, admitted in his cross-examination the existence of the 3% commission in favor of the appellee, viz:

Q

Going over these cash vouchers which you presented in which were marked respectively as Exhibits 1,2 and 3 with submarkings, I notice on Exhibit 1 there is an annotation here that the payment of this amount Php300,000.00 appearing in Exhibit 1 is supposed to be an advance payment, so my question is, advance payment for what?

A

For the 3% commission.

Q

So you are now admitting that there is supposed to be a 3% commission?

A

Yes, sir.

Q

Commission for what?

A

For agent's commission.

Q

So you are now practically admitting that your parents acknowledges (sic) the fact that Mrs. Felina Santos is entitled to that 3% commission because you paid her, is that correct?

A

Yes, sir.

Q

My question is, is this amount appearing in Exhibit 1 paid to Mrs. Felina Santos upon instruction from your parents?

A

Yes, sir.

Q

How about the amount appearing in Exhibit 2 which is P110,000.00, was this amount paid to Mrs. Felina Santos upon instruction from your parents?

A

Yes, sir.

Q

Again, in Exhibit 2 it states here that in the particulars that the amount of P110,000.0000 is supposed to be payment of commission. My question is, does this also refers (sic) to the 3% commission?

A

Part of the 3% commission.

xxx xxx xxx

Q

How about Exhibit 3 dated August 23, 2002, this cash voucher is for the amount of Php40,000.00, it states here in the particulars that this amount of P40,000.00 is part of the commission for the sale of Tomich Building, does this also refers (sic) to part of the 3% commission?

A

Yes, sir.

Q

So, in other words, all these cash vouchers Exhibits 1, 2 and 3 were all executed and issued in relation to the 3% commission related to the sale of the real property to your parents, is that correct?

A

Yes, sir.[25]

Moreover, the appellant, as the buyer, obliged herself to pay the 3% commission as per the Deed of Absolute Sale, viz:

“4.A. The BUYER agreed to pay 3% commission on the total purchase price.”[26]

In fact, in her Brief, the appellant admitted that she agreed to pay the commission due to the appellee.[27]

Clearly, the appellant is duty-bound to perform her obligation to pay the 3% commission of the P16,000,000.00 purchase price, or the amount of P480,000.00 to the appellee.

Going now to the total amount of commission given to the appellee, this Court agrees with the trial court that based on the cash vouchers, the appellant had already paid the appellee the amount of P450,000.00.

As to the remaining P30,000.00, we are not persuaded by the appellant's contention that she likewise paid the same but she can no longer find the corresponding voucher. The appellant, however, belatedly raised this argument and failed to substantiate the same. It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.[28]

Anent the appellant's claim that she was not able to pay the purchase price in full, suffice it to say that this allegation was never substantiated. In any case, the appellant's undertaking as per the Deed of Absolute Sale is to pay 3% commission on the total purchase price.

Basic is the rule that the party making an allegation in a civil case has the burden of proving it by a preponderance of evidence.[29] In this case, the appellant established by preponderance of evidence that out of the P480,000.00 commission, she already gave the appellee the amount of P450,000.00. Thus, the appellant's remaining balance to the appellee is P30,000.00.

This Court, however, is constrained to modify the decision with respect to the rate of interest consistent with the recent jurisprudence in *Nacar v. Gallery Frames*,[30] that:

“xxx in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.”

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The assailed decision dated February 28, 2012 is affirmed with modification, as follows:

“WHEREFORE, judgment is hereby rendered ORDERING the defendant TO PAY the plaintiff the amount of P30,000.00 representing the balance of the commission owing to plaintiff with an interest rate of 12% per annum from September 9, 2002 to June 30, 2013, and 6% per annum from July 1, 2013 until fully paid, and to

pay the amount of P10,000.00 as litigation expenses and P10,000.00 as attorney's fees, plus costs.”

SO ORDERED.

Rosario and Barrios[*], JJ., concur.

[*] Vice Justice Leoncia R. Dimagiba, per Office Order No. 199-14-ABR dated May 9, 2014.

[1] Records, pp. 178-181

[2] Records, p. 108

[3] Records, pp. 100-104

[4] Records, p. 102

[5] Records, pp. 2-6

[6] Records, p. 178

[7] Records, p. 51

[8] Records, pp. 55-56

[9] Records, p. 109

[10] Records, p. 174

[11] Records, p. 109

[12] Records, p. 175

[13] Records, p. 110

[14] Records, p. 176

[15] tsn, hearing dated June 27, 2007, p. 28

[16] tsn, hearing dated June 27, 2007, pp. 22, 28

[17] tsn, hearing dated June 27, 2007 pp. 70-78

[18] tsn, hearing dated June 27, 2007, p. 23

[19] tsn, hearing dated April 28, 2010, pp. 4-11

[20] Records, pp. 180-181

[21] Records, pp. 182-183

[22] Records, pp. 185-186

[23] Rollo, p. 11

[24] Rollo, p. 14

[25] tsn, hearing dated April 12, 2010, pp. 9-11

[26] Records, p. 102

[27] Rollo, p. 14

[28] Ayala Land, Inc. v. Castillo, G.R. No. 178110, June 15, 2011; See also Saraza v. Francisco, G.R. No. 198718, November 27, 2013.

[29] Salas, Jr. v. Aguila, G.R. No. 202370, September 23, 2013.

[30] G.R. No. 189871, August 13, 2013.

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