

VICENTE M. DOMINGO, REPRESENTED BY HIS HEIRS, ANTONINA RAYMUNDO VDA. DE DOMINGO, RICARDO, CESAR, AMELIA, VICENTE JR., SAL-VACION, IRENE AND JOSELITO, ALL SURNAMED DOMINGO, PETIT...

G.R. No. L-30573. October 29, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner-appellant Vicente M. Domingo, now deceased and represented by his heirs, Antonina Raymundo vda. de Domingo, Ricardo, Cesar, Amelia, Vicente Jr., Salvacion, Irene and Joselito, all surnamed Domingo, sought the reversal of the majority decision dated March 12, 1969 of the Special Division of Five of the Court of Appeals affirming the judgment of the trial court, which sentenced the said Vicente M. Domingo to pay Gregorio M. Domingo P2,307.50 and the intervenor Teofilo P. Purisima P2,607.50 with legal interest on both amounts from the date of the filing of the complaint, to pay Gregorio Domingo P1,000.00 as moral and exemplary damages and P500.00 as attorney's fees plus costs.

The following facts were found to be established by the majority of the special Division of Five of the Court of Appeals:

In a document Exhibit "A" executed on June 2, 1956, Vicente M. Domingo granted Gregorio Domingo, a real estate broker, the exclusive agency to sell his lot No. 883 of Piedad Estate with an area of about 88,477 square meters at the rate of P2.00 per square meter (or for P176,954.00) with a commission of 5% on the total price, if the property is sold by Vicente or by anyone else during the 30-day duration of the agency or if the property is sold by Vicente within three months from the termination of the agency to a purchaser to whom it was submitted by Gregorio during the continuance of the agency with notice to Vicente. The said agency contract was in triplicate, one copy was given to Vicente, while the original and another copy were retained by Gregorio.

On June 3, 1956, Gregorio authorized the intervenor Teofilo P. Purisima to look for a buyer, promising him one-half of the 5% commission.

Thereafter, Teofilo Purisima introduced Oscar de Leon to Gregorio as a prospective buyer.

Oscar de Leon submitted a written offer which was very much lower than the price of P2.00 per square meter (Exhibit "B"). Vicente directed Gregorio to tell Oscar de Leon to raise his offer. After several conferences between Gregorio and Oscar de Leon, the latter raised his offer to P109,000.00 on June 20, 1956 as evidenced by Exhibit "C", to which Vicente agreed by signing Exhibit "C". Upon demand of Vicente, Oscar de Leon issued to him a check in the amount of P1,000.00 as earnest money, after which Vicente advanced to Gregorio the sum of P300.00. Oscar de Leon confirmed his former offer to pay for the property at P1.20 per square meter in another letter, Exhibit "D". Subsequently, Vicente asked for an additional amount of P1,000.00 as earnest money, which Oscar de Leon promised to deliver to him. Thereafter, Exhibit "C" was amended to the effect that Oscar de Leon

will vacate on or about September 15, 1956 his house and lot at Denver Street, Quezon City which is part of the purchase price. It was again amended to the effect that Oscar will vacate his house and lot on December 1, 1956, because his wife was on the family way and Vicente could stay in lot No. 883 of Piedad Estate until June 1, 1957, in a document dated June 30, 1956 (the year 1957 therein is a mere typographical error) and marked Exhibit "D". Pursuant to his promise to Gregorio, Oscar gave him as a gift or propina the sum of One Thousand Pesos (P1,000.00) for succeeding in persuading Vicente to sell his lot at P1.20 per square meter or a total in round figure of One Hundred Nine Thousand Pesos (P109,000.00). This gift of One Thousand Pesos (P1,000.00) was not disclosed by Gregorio to Vicente. Neither did Oscar pay Vicente the additional amount of One Thousand Pesos (P1,000.00) by way of earnest money when the deed of sale was not executed on August 1, 1956 as stipulated in Exhibit "C" nor on August 15, 1956 as extended by Vicente, Oscar told Gregorio that he did not receive his money from his brother in the United States, for which reason he was giving up the negotiation including the amount of One Thousand Pesos (P1,000.00) given as earnest money to Vicente and the One Thousand Pesos (P1,000.00) given to Gregorio as propina or gift. When Oscar did not see him after several weeks, Gregorio sensed something fishy. So, he went to Vicente and read a portion of Exhibit "A" marked Exhibit "A-1" to the effect that Vicente was still committed to pay him 5% commission, if the sale is consummated within three months after the expiration of the 30-day period of the exclusive agency in this favor from the execution of the agency contract on June 2, 1956 to a purchaser brought by Gregorio to Vicente during the said 30-day period. Vicente grabbed the original of Exhibit "A" and tore it to pieces. Gregorio held his peace, not wanting to antagonize Vicente further, because he had still the duplicate of Exhibit "A". From his meeting with Vicente, Gregorio proceeded to the office of the Register of Deeds of Quezon City, where he discovered Exhibit "G", a deed of sale executed on September 17, 1956 by Amparo Diaz, wife of Oscar de Leon, over their house and lot at No. 40 Denver Street, Cubao, Quezon City, in favor of Vicente as down payment by Oscar de Leon on the purchase price of Vicente's lot No. 383 of Piedad Estate. Upon thus learning that Vicente sold his property to the same buyer, Oscar de Leon and his wife, he demanded in writing payment of his commission on the sale price of One Hundred Nine Thousand Pesos (P109,000.00), Exhibit "H". He also conferred with Oscar de Leon, who told him that Vicente went to him and asked him to eliminate Gregorio in the transaction and that he would sell his property to him for One Hundred Four Thousand Pesos (P104,000.00). In Vicente's reply to Gregorio's letter, Exhibit "H", Vicente stated that Gregorio is not entitled to the 5% commission because he sold the property not to Gregorio's buyer, Oscar de Leon, but to another buyer, Amparo Diaz, wife of Oscar de Leon.

The Court of Appeals found from the evidence that Exhibit "A", the exclusive agency contract, is genuine; that Amparo Diaz, the vendee, being the wife of Oscar de Leon, the sale by Vicente of his property is practically a sale to Oscar de Leon since husband and wife have common or identical interests; that Gregorio and intervenor Teofilo Purisima were the efficient cause in the consummation of the sale in favor of the spouses Oscar de Leon and Amparo Diaz; that Oscar de Leon paid Gregorio the sum of One Thousand Pesos (P1,000, 000.00) as "propina" or gift and not as additional earnest money to be given to the plaintiff, because Exhibit "6", Vicente's letter addressed to Oscar de Leon with respect to the additional earnest money, does not appear to have been answered by Oscar de Leon and therefore there is no writing or document supporting Oscar de Leon's testimony that he paid an additional earnest money of One Thousand Pesos (P1,000.00) to Gregorio for delivery to Vicente, unlike the first amount of One Thousand Pesos (P1,000.00) paid by Oscar de Leon to Vicente as earnest money, evidenced by the letter Exhibit "4"; and that Vicente did not even mention such additional earnest money in his two replies Exhibits "I" and "J" to Gregorio's letter of demand of the 5% commission.

The three issues in this appeal are (1) whether the failure on the part of Gregorio to disclose to Vicente the payment to him by Oscar de Leon of the amount of One Thousand Pesos (P1,000.00) as gift or "propina" for having persuaded Vicente to reduce the purchase price from P2.00 to P1.20 per square meter, so constitutes fraud

as to cause a forfeiture of his 5% commission on the sale price; (2) whether Vicente or Gregorio should be liable directly to the intervenor Teofilo Purisima for the latter's share in the expected commission of Gregorio by reason of the sale; and (3) whether the award of legal interest, moral and exemplary damages, attorney's fees and costs, was proper.

Unfortunately, the majority opinion penned by Justice Edilberto Soriano and concurred in by Justice Juan Enriquez did not touch on these issues which were extensively discussed by Justice Magno Gatmaitan in his dissenting opinion. However, Justice Esguerra, in his concurring opinion, affirmed that it does not constitute breach of trust or fraud on the part of the broker and regarded the same as merely part of the whole process of bringing about the meeting of the minds of the seller and the purchaser and that the commitment from the prospective buyer that he would give a reward to Gregorio if he could effect better terms for him from the seller, independent of his legitimate commission, is not fraudulent, because the principal can reject the terms offered by the prospective buyer if he believes that such terms are onerous or disadvantageous to him. On the other hand, Justice Gatmaitan, with whom Justice Antonio Cañizares concurred, held the view that such an act on the part of Gregorio was fraudulent and constituted a breach of trust, which should deprive him of his right to the commission.

The duties and liabilities of a broker to his employer are essentially those which an agent owes to his principal[1]

Consequently, the decisive legal provisions are found in articles 1891 and 1909 of the New Civil Code.

"Art. 1891. Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.

"Every stipulation exempting the agent from the obligation to render an account shall be void."

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"Art. 1909. The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation."

Article 1891 of the New Civil Code amends Article 1727 of the old Spanish Civil Code which provides that:

"Art. 1720. Every agent is bound to give an account of his transaction and to pay to the principal whatever he may have received by virtue of the agency, even though what he has received is not due to the principal."

The modification contained in the first paragraph of Article 1891 consists in changing the phrase "to pay" to "to deliver", which latter term is more comprehensive than the former.

Paragraph 2 of Article 1891 is a new addition designed to stress the highest loyalty that is required of an agent -- con-demning as void any stipulation exempting the agent from the duty and liability imposed on him in paragraph one thereof.

Article 1909 of the New Civil Code is essentially a re-instatement of Article 1726 of the old Spanish Civil Code which reads thus:

"Art. 1726. The agent is liable not only for fraud, but also for negligence, which shall be judged with more or less severity by the courts, according to whether the agency was gratuitous or for a price or reward."

The aforecited provisions demand the utmost good faith, fidelity, honesty, candor and fairness on the part of the agent, the real estate broker in this case, to his principal, the vendor. The law imposes upon the agent the absolute obligation to make a full disclosure or complete account to his principal of all his transactions and other material facts relevant to the agency, so much so that the law as amended does not countenance any stipulation

exempting the agent from such an obligation and considers such an exemption as void. The duty of an agent is likened to that of a trustee. This is not a technical or arbitrary rule but a rule founded on the highest and truest principle of morality as well as of the strictest justice.[2]

Hence, an agent who takes a secret profit in the nature of a bonus, gratuity or personal benefit from the vendee, without revealing the same to his principal, the vendor, is guilty of a breach of his loyalty to the principal and forfeits his right to collect the commission from his principal, even if the principal does not suffer any injury by reason of such breach of fidelity, or that he obtained better results or that the agency is a gratuitous one, or that usage or custom allows it; because the rule is to prevent the possibility of any wrong, not to remedy or repair an actual damage.[3] By taking such profit or bonus or gift or propina from the vendee, the agent thereby assumes a position wholly inconsistent with that of being an agent for his principal, who has a right to treat him, insofar as his commission is concerned, as if no agency had existed. The fact that the principal may have been benefited by the valuable services of the said agent does not exculpate the agent who has only himself to blame for such a result by reason of his treachery or perfidy.

This Court has been consistent in the rigorous application of Article 17 of the old Spanish Civil Code. Thus, for failure to deliver sums money paid to him as an insurance agent for the account of his employer as required by said Article 1720, said insurance agent was convicted of estafa.[4] An administrator of an estate was likewise liable under the same Article 1720 for failure to render an account of his administration to the heirs unless the heirs consented thereto or are estopped by having accepted the correctness of his account previously rendered.[5]

Because of his responsibility under the aforecited Article 1720, an agent is likewise liable for estafa for failure to deliver to his principal the total amount collected by in behalf of his principal and cannot retain the commission pertaining to him by subtracting the same from his collections.[6]

A lawyer is equally liable under said Article 1720 if he fails to deliver to his client all the money and property received by him for his client despite his attorney's lien.[7] The duty of a commission agent to render a full account of his operations to his principal was reiterated in *Duhart, etc. vs. Macias*. [8]

The American jurisprudence on this score is well-nigh unanimous.

"Where a principal has paid an agent or broker a commission while ignorant of the fact that the latter has been unfaithful, the principal may re-cover back the commission paid, since an agent or broker who has been unfaithful is not entitled to any compensation.

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"In discussing the right of the principal to recover commissions retained by an unfaithful agent, the court in *Little vs. Phipps* (1911) 208 Mass 331, 94 NE 260, 34 LRA(NS) 1046, said: 'It is well settled that the agent is bound to exercise the utmost good faith in his dealings with his principal. As Lord Cairns said, this rule "is not a technical or arbitrary rule. It is a rule founded on the highest and truest principles of morality." *Parker vs. McKenna* (1874) LR 10 Ch(Eng) 96, 118... If the agent does not conduct himself with entire fidelity towards his principal, but is guilty of taking a secret profit or commission in regard the matter in which he is employed he loses his right to compensation on the ground that he has taken a position wholly inconsistent with that of agent for his employer, and which gives his employer, upon discovering it, the right to treat him so far as compensation, at least, is concerned as if no agency had existed. This may operate to give to the principal the benefit of valuable services rendered by the agent, but the agent has only himself to blame for that result.'

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"The intent with which the agent took a secret profit has been held immaterial where the agent has in fact entered into a relationship inconsistent with his agency, since the law condemns the corrupting tendency of the

inconsistent relationship. *Little vs. Phipps* (1911) 94 NE 260." [9]

"As a general rule, it is a breach of good faith and loyalty to his principal for an agent, while the agency exists, so to deal with the subject matter thereof, or with information acquired during the course of the agency, as to make a profit out of it for himself in excess of his lawful compensation; and if he does so he may be held as a trustee and may be compelled to account to his principal for all profits, advantages, rights, or privileges acquired by him in such dealings, whether in performance or in violation of his duties, and be required to transfer them to his principal upon being reimbursed for his expenditures for the same, unless the principal has consented to or ratified the transaction knowing that benefit or profit would accrue, or had accrued, to the agent, or unless with such knowledge he has allowed the agent so as to change his condition that he cannot be put in status quo. The application of this rule is not affected by the fact that the principal did not suffer any injury by reason of the agent's dealings, or that he in fact obtained better results; nor is it affected by the fact that there is a usage or custom to the contrary, or that the agency is a gratuitous one." (Underscoring supplied.) [10]

In the case at bar, defendant-appellee Gregorio Domingo as the broker, received a gift or propina in the amount of One Thousand Pesos (P1,000.00) from the prospective buyer Oscar de Leon, without the knowledge and consent of his principal, herein petitioner-appellant Vicente Domingo. His acceptance of said substantial monetary gift corrupted his duty to serve the interests only of his principal and undermined his loyalty to his principal, who gave him a partial advance of Three Hundred Pesos (P300.00) on his commission. As a consequence, instead of exerting his best to persuade his prospective buyer to purchase the property on the most advantageous terms desired by his principal, the broker, herein defendant-appellee Gregorio Domingo, succeeded in persuading his principal to accept the counter-offer of the prospective buyer to purchase the property at P1.20 per square meter or One Hundred Nine Thousand Pesos (P109,000.00) in round figure for the lot of 86,477 square meters, which is very much lower than the price of P2.00 per square meter or One Hundred Seventy Six Thousand Nine Hundred Fifty-Four Pesos (P178,954.00) for said lot originally offered by his principal.

The duty embodied in Article 1891 of the New Civil Code will not apply if the agent or broker acted only as a middleman with the task of merely bringing together the vendor and vendee, who themselves thereafter will negotiate on the terms and conditions of the transaction. Neither would the rule apply if the agent or broker had informed the principal of the gift or bonus or profit he received from the purchaser and his principal did not object thereto. [11] Herein defendant-appellee Gregorio Domingo was not merely a middleman of the petitioner-appellant Vicente Domingo and the buyer Oscar de Leon. He was the broker and agent of said petitioner-appellant only. And herein petitioner-appellant was not aware of the gift of One Thousand Pesos (P1,000.00) received by Gregorio Domingo from the prospective buyer; much less did he consent to his agent's accepting such a gift.

The fact that the buyer appearing in the deed of sale is Amparo Diaz, the wife of Oscar de Leon, does not materially alter the situation; because the transaction, to be valid, must necessarily be with the consent of the husband Oscar de Leon, who is the administrator of their conjugal assets including their house and lot at No. 40 Denver Street, Cubao, Quezon City, which were given as part of and constituted the down payment on, the purchase price of herein petitioner-appellant's lot No. 883 of Piedad Estate. Hence, both in law and in fact, it was still Oscar de Leon who was the buyer.

As a necessary consequence of such breach of trust, defendant-appellee Gregorio Domingo must forfeit his right to the commission and must return the part of the commission he received from his principal.

Teofilo Purisima, the sub-agent of Gregorio Domingo, can only recover from Gregorio Domingo his one-half share of whatever amounts Gregorio Domingo received by virtue of the transaction as his sub-agency contract

was with Gregorio Domingo alone and not with Vicente Domingo, who was not even aware of such sub-agency. Since Gregorio Domingo received from Vicente Domingo and Oscar de Leon respectively the amounts of Three Hundred Pesos (P300.00) and One Thousand Pesos (P1,000.00) or a total of One Thousand Three Hundred Pesos (P1,300.00), one-half of the same, which is six Hundred Fifty Pesos (P650.00), should be paid by Gregorio Domingo to Teofilo Purisima.

Because Gregorio Domingo's clearly unfounded complaint caused Vicente Domingo mental anguish and serious anxiety as well as wounded feelings, petitioner-appellant Vicente Domingo should be awarded moral damages in the reasonable amount of One Thousand Pesos (P1,000.00) and attorney's fees in the reasonable amount of One Thousand Pesos (P1,000.00), considering that this case has been pending for the last fifteen (15) years from its filing on October 3, 1956.

WHEREFORE, the judgment is hereby rendered, reversing the decision of the Court of Appeals and directing the defendant-appellee Gregorio Domingo: (1) to pay to the heirs of Vicente Domingo the sum of One Thousand Pesos (P1,000.00) as moral damages and One Thousand Pesos (P1,000.00) as attorney's fees; (2) to pay Teofilo Purisima the sum of Six Hundred Fifty Pesos (P650.00); and (3) to pay the costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] 12 Am. Jur. 2d 835; 134 ALR 1346; 1 ALR 2d 987; Brown vs. Coates, 67 ALR 2d 943; Haymes vs. Rogers, 17 ALR 2d 896; Moore vs. Turner, 32 ALR 2d 713.

[2] See also Manresa, Vol. 2, p. 461, 4th ed.

[3] 12 Am. Jur. 2d Sec. 171, 811-12.

[4] U.S. vs. Kiene, 7 Phil. 736.

[5] Ojinaga vs. Estate of Perez, 9 Phil. 185.

[6] U.S. vs. Reyes, 36 Phil. 791.

[7] In Re: Bamberger, 49 Phil. 962.

[8] 54 Phil. 513.

[9] 134 ALR, Ann. pp. 1346, 1347-1348; see also 1 ALR 2d, 987.

[10] 3 CJS, 53-54; see also 12 Am. Jur. 2d 835-841, 908-912.

[11] 12 Am. Jur. 2d, 835-841, 908-912; Raymond vs. Davis, Jan. 3, 1936, 199 NE 321, 102 ALR, 1112-1115, 1116-1121.

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