

CMS LOGGING, INC., PETITIONER, VS. THE COURT OF APPEALS AND D.R. AGUINALDO CORPORATION, RESPONDENTS.

G.R. No. L-41420. July 10, 1992

Ponente: NOCON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6a8dabd3810e/>

NOCON, J.:

This is a petition for review on certiorari from the decision dated July 31, 1975 of the Court of Appeals in CA-G.R. No. 47763-R which affirmed in toto the decision of the Court of First Instance of Manila, Branch VII, in Civil Case No. 56355 dismissing the complaint filed by petitioner CMS Logging, Inc., (CMS, for brevity) against private respondent D.R. Aguinaldo Corporation (DRACOR, for brevity) and ordering the former to pay the latter attorney's fees in the amount of P1,000.00 and the costs.

The facts of the case are as follows: Petitioner CMS is a forest concessionaire engaged in the logging business, while private respondent DRACOR is engaged in the business of exporting and selling logs and lumber. On August 28, 1957, CMS and DRACOR entered into a contract of agency^[1] whereby the former appointed the latter as its exclusive export and sales agent for all logs that the former may produce, for a period of five (5) years. The pertinent portions of the agreement, which was drawn up by DRACOR,^[2] are as follows:

"1. - SISON [CMS] hereby appoints DRACOR as his sole and exclusive export sales agent with full authority, subject to the conditions and limitations hereinafter set forth, to sell and export under a firm sales contract acceptable to SISON, all logs produced by SISON for a period of five (5) years commencing upon the execution of the agreement and upon the terms and conditions hereinafter provided and DRACOR hereby accepts such appointment;

x x x

"3. It is expressly agreed that DRACOR shall handle exclusively all negotiations of all export sales of SISON with the buyers and arrange the procurement and schedules of the vessel or vessels for the shipment of SISON's logs in accordance with SISON's written requests, but DRACOR shall not in anyway [sic] be liable or responsible for any delay, default or failure of the vessel or vessels to comply with the schedules agreed upon;

x x x

"9. It is expressly agreed by the parties hereto that DRACOR shall receive five (5%) per cent commission of the gross sales of logs of SISON based on F.O.B. invoice value which commission shall be deducted from the proceeds of any and/or all moneys received by DRACOR for and in behalf and for the account of SISON;"

By virtue of the aforesaid agreement, CMS was able to sell through DRACOR a total of 77,264,672 board feet of logs in Japan, from September 20, 1957 to April 4, 1962.

About six months prior to the expiration of the agreement, while on a trip to Tokyo, Japan, CMS's president, Atty. Carlos Moran Sison, and general manager and legal counsel, Atty. Teodoro R. Dominguez, discovered that DRACOR had used Shinko Trading Co., Ltd. (Shinko for brevity) as agent, representative or liaison officer in

selling CMS's logs in Japan for which Shinko earned a commission of U.S. \$1.00 per 1,000 board feet from the buyer of the logs. Under this arrangement, Shinko was able to collect a total of U.S. \$77,264.67.[3]

CMS claimed that this commission paid to Shinko was in violation of the agreement and that it (CMS) is entitled to this amount as part of the proceeds of the sale of the logs. CMS contended that since DRACOR had been paid the 5% commission under the agreement, it is no longer entitled to the additional commission paid to Shinko as this tantamount to DRACOR receiving double compensation for the services it rendered.

After this discovery, CMS sold and shipped logs valued at U.S. \$739,321.13 or P2,883,351.90,[4] directly to several firms in Japan without the aid or intervention of DRACOR.

CMS sued DRACOR for the commission received by Shinko and for moral and exemplary damages, while DRACOR counterclaimed for its commission, amounting to P144,167.59, from the sales made by CMS of logs to Japanese firms. In its reply, CMS averred as a defense to the counterclaim that DRACOR had retained the sum of P101,167.59 as part of its commission for the sales made by CMS.[5] Thus, as its counterclaim to DRACOR's counterclaim, CMS demanded DRACOR return the amount it unlawfully retained. DRACOR later filed an amended counterclaim, alleging that the balance of its commission on the sales made by CMS was P42,630.82,[6] thus impliedly admitting that it retained the amount alleged by CMS.

In dismissing the complaint, the trial court ruled that no evidence was presented to show that Shinko received the commission of U.S. \$77,264.67 arising from the sale of CMS's logs in Japan, though the trial court stated that "Shinko was able to collect the total amount of \$77,264.67 US Dollars (Exhs. M and M-1)."[7] The counterclaim was likewise dismissed, as it was shown that DRACOR had waived its rights to the balance of its commission in a letter dated February 2, 1963 to Atty. Carlos Moran Sison, president of CMS.[8] From said decision, only CMS appealed to the Court of Appeals.

The Court of Appeals, in a 3 to 2 decision,[9] affirmed the dismissal of the complaint since "[t]he trial court could not have made a categorical finding that Shinko collected commissions from the buyers of Sison's logs in Japan, and could not have held that Sison is entitled to recover from Dracor the amount collected by Shinko as commissions, plaintiff-appellant having failed to prove by competent evidence its claims." [10]

Moreover, the appellate court held:

"There is reason to believe that Shinko Trading Co. Ltd., was paid by defendant-appellee out of its own commission of 5%, as indicated in the letter of its president to the president of Sison, dated February 2, 1963 (Exhibit "N"), and in the Agreement between Aguinaldo Development Corporation (ADECOR) and Shinko Trading Co., Ltd. (Exhibit "9"). Daniel R. Aguinaldo stated in his said letter:

"“x x x, I informed you that if you wanted to pay me for the service, then it would be no more than at the standard rate of 5% commission because in our own case, we pay our Japanese agents 2-1/2%. Accordingly, we would only add a similar amount of 2-1/2% for the service which we would render you in the Philippines.””[11]

Aggrieved, CMS appealed to this Court by way of a petition for review on certiorari, alleging (1) that the Court of Appeals erred in not making a complete findings of fact; (2) that the testimony of Atty. Teodoro R. Dominguez, regarding the admission by Shinko's president and director that it collected a commission of U.S. \$1.00 per \$1,000 board feet of logs from the Japanese buyers, is admissible against DRACOR; (3) that the statement of DRACOR's chief legal counsel his memorandum dated May 31, 1965, Exhibit "K", is an admission that Shinko was able to collect the commission in question; (4) that the fact that Shinko received the questioned commissions is deemed admitted by DRACOR by its silence under Section 23, Rule 130 of the Rules of Court when it failed to reply to Atty. Carlos Moran Sison's letter dated February 6, 1962; (5) that DRACOR is not entitled to its 5% commission

arising from the direct sales made by CMS to buyers in Japan; and (6) that DRACOR is guilty of fraud and bad faith in its dealings with CMS.

With regard to CMS's arguments concerning whether or not Shinko received the commission in question, We find the same unmeritorious.

To begin with, these arguments question the findings of fact made by the Court of Appeals, which are final and conclusive and can not be reviewed on appeal to the Supreme Court.[12]

Moreover, while it is true that the evidence adduced establishes the fact that Shinko is DRACOR's agent or liaison in Japan,[13] there is no evidence which established the fact that Shinko did receive the amount of U.S. \$77,264.67 as commission arising from the sale of CMS's logs to various Japanese firms.

The fact that Shinko received the commissions in question was not established by the testimony of Atty. Teodoro R. Dominguez to the effect that Shinko's president and director told him that Shinko received a commission of U.S. \$1.00 for every 1,000 board feet of logs sold, since the same is hearsay. Similarly, the letter of Mr. K. Shibata of Toyo Menka Kaisha, Ltd.[14] is also hearsay since Mr. Shibata was not presented to testify on his letter.

CMS's other evidence have little or no probative value at all. The statements made in the memorandum of Atty. Simplicio R. Ciocon to DRACOR dated May 31, 1965,[15] the letter dated February 2, 1963 of Daniel R. Aguinaldo,[16] president of DRACOR, and the reply-letter dated January 9, 1964[17] by DRACOR's counsel Atty. V. E. Del Rosario to CMS's demand letter dated September 25, 1963 can not be categorized as admissions that Shinko did receive the commissions in question.

The alleged admission made by Atty. Ciocon, to wit--

"Furthermore, as per our records, our shipment of logs to Toyo Menka Kaisha, Ltd., is only for a net volume of 67,747,732 board feet which should enable Shinko to collect a commission of US\$67,747.73 only"

can not be considered as such since the statement was made in the context of questioning CMS's tally of logs delivered to various Japanese firms.

Similarly, the statement of Daniel R. Aguinaldo, to wit --

"x x x Knowing as we do that Toyo Menka is a large and reputable company, it is obvious that they paid Shinko for certain services which Shinko must have satisfactorily performed for them in Japan otherwise they would not have paid Shinko"

and that of Atty. V. E. Del Rosario,

"x x x It does not seem proper, therefore, for CMS Logging, Inc., as principal, to concern itself with, much less question, the right of Shinko Trading Co., Ltd. with which our client dealt directly, to whatever benefits it might have derived from the ultimate consumer/buyer of these logs, Toyo Menka Kaisha, Ltd. There appears to be no justification for your client's contention that these benefits, whether they can be considered as commissions paid by Toyo Menka Kaisha to Shinko Trading, are to be regarded part of the gross sales"

can not be considered admissions that Shinko received the questioned commissions since neither statements declared categorically that Shinko did in fact receive the commissions and that these arose from the sale of CMS's logs.

As correctly stated by the appellate court:

"It is a rule that 'a statement is not competent as an admission where it does not, under a reasonable

construction, appear to admit or acknowledge the fact which is sought to be proved by it'. An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language (Bank of the Philippine Islands vs. Fidelity & Surety Co., 51 Phil. 57, 64)."[18]

CMS's contention that DRACOR had admitted by its silence the allegation that Shinko received the commissions in question when it failed to respond to Atty. Carlos Moran Sison's letter dated February 6, 1963, is not supported by the evidence. DRACOR did in fact reply to the letter of Atty. Sison, through the letter dated March 5, 1963 of F.A. Novenario,[19] which stated:

"This is to acknowledge receipt of your letter dated February 6, 1963, and addressed to Mr. D. R. Aguinaldo, who is at present out of the country.

x x x

"We have no record or knowledge of any such payment of commission made by Toyo Menka to Shinko. If the payment was made by Toyo Menka to Shinko, as stated in your letter, we knew nothing about it and had nothing to do with it."

The finding of fact made by the trial court, i.e., that "Shinko was able to collect the total amount of \$77,264.67 US Dollars," can not be given weight since this was based on the summary prepared by CMS itself, Exhibits "M" and "M-1".

Moreover, even if it was shown that Shinko did in fact receive the commissions in question, CMS is not entitled thereto since these were apparently paid by the buyers to Shinko for arranging the sale. This is therefore not part of the gross sales of CMS's logs.

However, We find merit in CMS's contention that the appellate court erred in holding that DRACOR was entitled to its commission from the sales made by CMS to Japanese firms.

The principal may revoke a contract of agency at will, and such revocation may be express, or implied,[20] and may be availed of even if the period fixed in the contract of agency as not yet expired.[21] As the principal has this absolute right to revoke the agency, the agent can not object thereto; neither may he claim damages arising from such revocation,[22] unless it is shown that such was done in order to evade the payment of agent's commission.[23]

In the case at bar, CMS appointed DRACOR as its agent for the sale of its logs to Japanese firms. Yet, during the existence of the contract of agency, DRACOR admitted that CMS sold its logs directly to several Japanese firms. This act constituted an implied revocation of the contract of agency under Article 1924 of the Civil Code, which provides:

"Art. 1924 - The agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons."

In *New Manila Lumber Company, Inc. vs. Republic of the Philippines*,[24] this Court ruled that the act of a contractor, who, after executing powers of attorney in favor of another empowering the latter to collect whatever amounts may be due to him from the Government, and thereafter demanded and collected from the government the money the collection of which he entrusted to his attorney-in-fact, constituted revocation of the agency in favor of the attorney-in-fact.

Since the contract of agency was revoked by CMS when it sold its logs to Japanese firms without the intervention of DRACOR, the latter is no longer entitled to its commission from the proceeds of such sale and is not entitled to retain whatever moneys it may have received as its commission for said transactions. Neither would

DRACOR be entitled to collect damages from CMS, since damages are generally not awarded to the agent for the revocation of the agency, and the case at bar is not one falling under the exception mentioned, which is to evade the payment of the agent's commission.

Regarding CMS's contention that the Court of Appeals erred in not finding that DRACOR had committed acts of fraud and bad faith, We find the same unmeritorious. Like the contention involving Shinko and the questioned commissions, the findings of the Court of Appeals on the matter were based on its appreciation of the evidence, and these findings are binding on this Court.

In fine, We affirm the ruling of the Court of Appeals that there is no evidence to support CMS's contention that Shinko earned a separate commission of U.S. \$1.00 for every 1,000 board feet of logs from the buyer of CMS's logs. However, We reverse the ruling of the Court of Appeals with regard to DRACOR's right to retain the amount of P101,536.77 as part of its commission from the sale of logs by CMS, and hold that DRACOR has no right to its commission. Consequently, DRACOR is hereby ordered to remit to CMS the amount of P101,536.77.

WHEREFORE, the decision appealed from is hereby MODIFIED as stated in the preceding paragraph. Costs de officio.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Exhibit "A".

[2] Exhibit "B".

[3] Exhibits "M" and "M-1".

[4] Exhibit "AA-2".

[5] See Record on Appeal, p. 25.

[6] Exhibit BB-1".

[7] Records on Appeal, p. 39.

[8] Exhibit "N" and "N-1".

[9] Ponente: Justice Luis B. Reyes; Justices Ricardo Cc. Puno and Francisco Tantuico, Jr., concurring. Justices Roseller T. Lim and Magno S. Gatmaitan, dissenting. Because of a 2 to 1 vote within the division hearing the case, two additional members of the Court of Appeals were assigned to sit with the members of the division.

[10] Decision of the Court of Appeals, p. 12.

[11] Id. , pp. 13-14.

[12] Amigo vs. Teves, 50 O.G. 5799.

[13] Exhibits "C", "C-1", "C-2", "E", "E-1", "E-1-A", to "E-1-C". See also T.S.N., August 24, 1967, pp. 156-159, and T.S.N., October 12, 1967, pp. 164-169.

[14] Exhibit "FF", "FF-1" and "FF-2".

[15] Exhibit "K" and "K-1".

[16] Exhibit "N".

[17] Exhibit "X".

[18] Decision of the Court of Appeals, p. 13.

[19] Exhibit "P".

[20] Art. 1920, Civil Code.

[21] Barretto vs. Santa Marina, 26 Phil. 440.

[22] Padilla, Civil Law, Vol. VI, p. 297.

[23] Infante vs. Cunanan, 93 Phil. 691.

[24] 107 Phil. 824 (1960).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.