

**INTERNATIONAL MARKETING GROUP INSURANCE BROKERS CORP.,
PETITIONER, VS. HON. DINNAH C. AGUILA-TOPACIO, PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 42,
AND PHILA...**

Ponente: GARCIA, R.R., J.

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GARCIA, R.R., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court assailing the Order[2] dated August 22, 2013 of the Regional Trial Court, Branch 42, City of Manila denying petitioner International Marketing Group Insurance Brokers Corp.'s Motion for Partial Summary Judgment; and the Order[3] dated February 12, 2014 denying the motion for reconsideration[4] thereof.

THE FACTS

On March 7, 2002, petitioner International Marketing Group Insurance Brokers Corporation and private respondent Philam Plans, Inc. entered into a Memorandum of Agreement[5] (MOA) whereby petitioner was appointed to sell exclusively the products of private respondent and other companies in the Philam Group. As compensation, petitioner was to receive 75% of all payments due and collected by it during the first year of the plan from the date of first payment by the plan holder; collecting commission equivalent to 5% of all subsequent payments and collected by it starting on the second year of the plan; and 18.6% of the pre-need price for spot cash payments. Petitioner was also allowed under the agreement to deduct its 75% commission for the first year premium payments before remitting the same to private respondent. It was also stipulated that the MOA can be terminated by either party with a sixty (60)-day notice. Private respondent, however, may withhold any clearance until and after full and final audit has been made and that petitioner has been cleared of all accountabilities with private respondent. Petitioner should also promptly account for and pay private respondent all amounts which may be due private respondent and to return all property of private respondent in its possession.

On December 29, 2004, petitioner sent a notice to private respondent terminating the MOA within sixty (60) days from notice. While the parties underwent negotiations for the renewal of their agency relations, the same failed.[6] On March 3, 2005, petitioner entered into a general agency agreement with Prudentiallife Plans, Inc. whereby it agreed to market and sell the latter's pre-need plans.[7] In a letter[8] dated March 10, 2005, private respondent informed petitioner that it is no longer authorized to collect payments of plan holders in behalf of private respondent.

On May 13, 2005, petitioner filed with the Regional Trial Court of Manila the instant complaint[9] for breach of contract, specific performance, accounting, collection of sum of money and damages with application for temporary restraining order and/or writ of preliminary injunction against private respondent. The complaint alleged that the true agreement between petitioner and private respondent was for the former to receive commissions on all premium payments made by the plan holders on the plans it has sold, regardless of whether or not it has rendered further service on the plans. Accordingly, private respondent allegedly paid petitioner

commissions on all premium payments made by plan holders even on premium payments made directly to private respondent. Further, while the MOA allows petitioner to deduct its commission only from the premium payments made by the plan holders for the first year of their plans, private respondent agreed for petitioner to also deduct its commissions on all premium payments coursed through it by the plan holders, regardless of whether the premium payments were made during the first year or subsequent years of their plans. As such, petitioner has a vested right to all the commissions on premium payments made even after the termination of the MOA for the plans petitioner has sold prior to such termination. At the time of the filing of the complaint, however, private respondent refused and failed to render an accounting and to turn over to petitioner the commissions earned by the latter on the premium payments made by plan holders for the months of April and May 2005. Also, in an attempt to deny petitioner's right to deduct its commissions from the premium payments made by the plan holders, private respondent has written its plan holders advising them against making premium payments through petitioner.

The complaint further alleged that private respondent unlawfully withheld the commissions due petitioner for the second half of the month of February and the entire month of March 2005 on the pretext that it was applying the same on the commission overpayments allegedly made to petitioner between October 28, 2002 to January 6, 2004. The set-off was effected by private respondent without giving petitioner a detailed breakdown and a full accounting of its alleged overpayments to petitioner. Also, it is private respondent which owes petitioner the sum of P865,573.40. This amount forms part of the P3,595,759.16 surreptitiously debited by private respondent from petitioner's account in September 2002 purportedly to refund private respondent for the commission overpayments made to petitioner from March 2002 to September 2002.

The complaint prayed that a writ of preliminary injunction be issued directing private respondent to desist from making false representations to its plan holders and the public as to the right of petitioner to collect its commissions on the plans it has sold, to receive premium payments for said plans and to deduct its commissions therefrom, and from doing any act that will impede, hamper, limit or adversely affect the full enjoyment by petitioner of all its vested rights under the MOA including but not limited to the right to collect premium payments on the plans petitioner has sold and to deduct its commissions therefrom before remitting the balance to private respondent. It was likewise prayed that private respondent be ordered to pay petitioner its commissions for premium payments made from April 2005 until the termination of the plans petitioner has sold under the MOA and its commissions for the second half of the month of February 2005 and the entire month of March 2005 which are being withheld by private respondent.

In its traverse, private respondent averred that there is nothing in the MOA that grants petitioner a vested right over all premium payments made for the plans it has sold before the termination of the MOA. Private respondent clarified that for petitioner to be entitled to commissions, the MOA requires that first, the premium payment for the plans sold by petitioner has become due; and second, that the premium that has become due was collected by petitioner and remitted to private respondent. Private respondent admitted that petitioner was allowed to deduct its commission for the first year premium payments on plans it has sold but denied that the same was likewise allowed with respect to subsequent years of the plan.

Private respondent did not unlawfully withhold from petitioner the commissions it has earned. The withholding was pursuant to paragraphs 9 and 11 of the MOA which provide that private respondent has the right to withhold any clearance until after full and final audit has been made and that petitioner has been cleared of all accountabilities with private respondent. Anent the commission overpayments, private respondent denied that it made a set-off against the alleged commissions due petitioner. Also, private respondent properly informed petitioner on how the overpayments came about by giving the latter an accounting and a detailed breakdown of the overpayments. Private respondent alleged further that petitioner's collection of commissions after the

termination of the MOA was unlawful.

In an Order[10] dated July 15, 2005, the court a quo ordered the issuance of a writ of preliminary injunction in favor of petitioner. Private respondent was enjoined from making false representations to its planholders and the public as to the right of petitioner to collect premium payments of the plans it has sold prior to the termination of the MOA and to deduct its commissions before remitting the same to private respondent; and from doing any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by petitioner of all its vested rights under the MOA including petitioner's right to collect premium payments from holders of plans sold prior to the termination of the MOA and to deduct its commissions therefrom.

The Order dated July 15, 2005, however, was annulled and set aside in a Decision[11] dated April 16, 2012 of the Former Fourth Division of the Court of Appeals which found no actual and existing right in favor of petitioner that demanded protection by the office of a preliminary injunction. It was explained therein that petitioner's alleged right to continuously collect premium payments and deduct its commissions therefrom after the termination of the MOA is not at all clear. The MOA that governed the relationship between petitioner and private respondent provides no clear right to petitioner.

On April 25, 2013, petitioner filed with the court a quo a Motion for Partial Summary Judgment[12] where it alleged that the issue of petitioner's entitlement to commission on premium payments made after the termination of the MOA is no longer a genuine issue of fact. Allegedly, private respondent admitted petitioner's entitlement thereto when it withheld taxes on premium payments collected by petitioner for the years 2005 and 2006 as shown by a document received by petitioner from the Bureau of Internal Revenue (BIR) denominated as Details of Withholding Agents/Payers and Payees/Income Recipients Records (Source: Withholding Tax Returns – Alphalists) for the years 2005 to 2006. Hence, petitioner prayed that a partial summary judgment be rendered regarding petitioner's right to receive commissions on premium payments made even after the termination of the MOA on plans it has sold before such termination; and order private respondent to pay petitioner the latter's commissions from the year 2005 until the termination of the plans petitioner sold under the MOA and to pay petitioner its commissions from late February to March 2005 in the amount of P9,243,909.25.

Petitioner attached to its motion the Judicial Affidavit[13] dated April 18, 2013 of its accounting head Maria Jinky S. Martinez. Martinez stated that as petitioner's accounting head, she is the custodian of all records and notices pertaining to the Bureau of Internal Revenue. On September 26, 2007 and January 9, 2008, petitioner received notices from BIR regarding the discrepancies on petitioner's income tax return and the amount withheld for it by private respondent for the years 2005 to 2006. Attached to the notices are documents denominated as Details of Withholding Agents/Payers and Payees/Income Recipients Records (Source: Withholding Tax Returns – Alphalists) which showed that private respondent continued to withhold tax from petitioner as its agent and remitted the same to BIR on petitioner's behalf for the years 2005 and 2006. Attached to the testimony of Martinez were copies of the aforementioned documents received from BIR.

In their Comment/Opposition[14] on the motion for partial summary judgment, private respondent averred that it cannot be considered to have admitted that petitioner was entitled to the disputed commissions on the basis of the documents allegedly prepared by BIR. The documents from BIR consisting of schedules refer to an alphalist where such admission on the part of private respondent may be found. The alphalists, however, were not presented in evidence.

Even assuming that private respondent did submit to BIR the alphalists for the years 2005 and 2006 reflecting taxes withheld from the commissions of petitioner, the circumstances that obliged private respondent to withhold the taxes on the questioned commissions will explain why such withholding of taxes cannot be considered as an

admission of petitioner's right to the questioned commissions. By virtue of the court a quo's Order dated July 15, 2005 granting a writ of preliminary injunction in favor of petitioner, the latter continued to collect premium payments from plan holders of private respondent despite the termination of the MOA and to deduct its commissions before remitting its collections to private respondent. Private respondent was compelled to withhold taxes and remit the same to BIR in behalf of petitioner in order to comply with the said order. As such, private respondent cannot be deemed to have voluntarily recognized and admitted petitioner's right to commissions on premium payments made after the termination of the MOA.

Private respondent attached to its Comment/Opposition a sample remittance report prepared by petitioner pertaining to premium collections for the period August 8 to 12, 2005. The report includes the following: Cover Letter[15] dated August 15, 2005, Summary of Transmittals[16], Requests for Payment[17] and other supporting documents. These documents would show that petitioner already deducted its commissions on premiums it collected before remitting the same to private respondent.

In the assailed Order[18] dated August 22, 2013, the court a quo denied the motion for partial summary judgment for failure to comply with Section 5, Rule 35 of the 1997 Rules of Civil Procedure which provides that all documents referred to in the affidavit supporting the motion should be certified true copies. However, the documents attached to the affidavit supporting petitioner's motion for partial summary judgment were not certified true copies. The assailed order is quoted in full:

ORDER

For resolution of this Court is the "Motion for Partial Summary Judgment" filed by the counsel for the plaintiff, Atty. Joanne C. Gironella-Gastrock.

Upon perusal of the said motion, the Court found that the documents attached to the supporting affidavit were not certified true copies.

For the failure to comply with Sec. 5, Rule 35 of the 1997 Rules of Civil Procedure, the said motion is hereby Denied.

SO ORDERED.[19]

In its motion for reconsideration, petitioner attached certified true copies of the BIR documents. The motion, however, was nevertheless denied in an Order[20] dated February 12, 2014.

Hence, the instant petition for certiorari in which petitioner raised the following grounds[21] for its allowance, to wit:

I.

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN IGNORING PETITIONER'S CLEAR ENTITLEMENT UNDER THE MOA TO COMMISSIONS EVEN AFTER THE TERMINATION OF THE MOA FOR THE PLANS IT HAD SOLD PRIOR TO SUCH TERMINATION.

II.

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN IGNORING PETITIONER'S RIGHT TO SAID COMMISSIONS BY ARBITRARILY DENYING THE MOTION FOR PARTIAL SUMMARY JUDGMENT NOTWITHSTANDING PRIVATE RESPONDENT'S ADMISSION THAT PETITIONER IS ENTITLED TO SUCH COMMISSIONS.

III.

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED ORDERS CONSIDERING THAT THE SAME ARE CONTRARY TO EXISTING JURISPRUDENCE, SPECIFICALLY, THAT LITIGATION SHOULD BE DECIDED ON THE MERITS AND NOT ON TECHNICALITIES.

THE ISSUE

The pivotal issue to be resolved is whether or not the court a quo acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motion for partial summary judgment.

THE RULING

The petition is bereft of merit.

Petitioner essentially argues that the court a quo gravely abused its discretion when it denied its motion for partial summary judgment based on a mere technicality, that is, petitioner's failure to attach certified true copies of the BIR documents supporting its motion. The court a quo could have granted petitioner's motion based on its merits. The issue of petitioner's entitlement to commissions for premium payments on plans it has sold before the termination of the MOA can be resolved by a simple resort to the explicit terms of the MOA and to those terms deemed included therein. Also, per the BIR documents petitioner submitted to support its motion for partial summary judgment, there is an admission on the part of private respondent that petitioner is entitled to commissions on premium payments made after the termination of the MOA on plans sold before such termination. Consequently, there is no more need to present evidence on petitioner's entitlement to the said commissions and the court a quo should have rendered a partial summary judgment thereon.

We are not persuaded.

Central to the determination of the propriety of a summary judgment is Rule 35 Of the 1997 Rules of Court. Section 1 thereof provides that a party seeking to recover upon a claim may, at any time after the answer has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. A summary judgment shall be rendered if the pleadings, supporting affidavits, depositions and admissions on file show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. We quote:

Summary Judgments

Section 1. Summary judgment for claimant. – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

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Section 3. Motion and proceedings thereon. – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In *Smart Communications Inc. vs. Aldecoa, et al.*[22], the Supreme Court explained that for a summary judgment to prosper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment is called for. On the other hand, where the facts pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of a trial. The evidence on record must be viewed in the light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence. We quote:

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.

A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim.

The trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counter affidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment called for. On the other hand, where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence.

Judging by the aforequoted standards, the court a quo correctly ordered the denial of petitioner's motion for partial summary judgment. The issue pertaining to petitioner's entitlement to commissions on premium payments made on plans it has sold prior to the termination of the MOA remains to be a genuine factual issue, the same being contested by the parties. Contrary to petitioner's claim, its entitlement to these commissions cannot be ascertained by a mere resort to the terms of the MOA since nothing therein categorically states that petitioner is still entitled to commissions on premiums paid after the termination of the MOA on plans it has sold before the MOA ended. Neither is there a provision explicitly stating that petitioner is no longer entitled to such commissions after the termination of the MOA.

In the same wise, petitioner cannot be said to be entitled to a judgment anent its right to the disputed commissions as a matter of law on the basis of an alleged admission on the part of private respondent as contained in the BIR documents attached to its motion for partial summary judgment. Under these BIR documents, private respondent withheld taxes on behalf of petitioner for the commissions the latter earned from premium payments made in 2005 and 2006, or after the MOA has been terminated. While these documents indeed imply that petitioner was allowed commissions on premium payments paid to it by plan holders even after the MOA has ended, the same cannot be deemed as an admission that private respondent voluntarily allowed petitioner to claim and deduct the disputed commissions from its premium payments collection remitted to private respondent. The records show that these BIR documents pertain to the years 2005 and 2006 during which the Order dated July 15, 2005 of the court a quo was still in effect. Under this order, private respondent was enjoined from doing any act that will tend to impede, hamper limit or adversely affect the full enjoyment by petitioner of all its vested rights under the MOA

including the latter's right to collect premium payments from holders of plans sold prior to the termination of the MOA and to deduct its commissions therefrom. As such private respondent's act of allowing petitioner to claim commissions on premium payments made after the MOA was terminated and its act of withholding taxes in behalf of petitioner, were all compelled by the said order of the court a quo.

Accordingly, private respondent cannot be considered to have voluntarily admitted petitioner's entitlement to the disputed commissions. Absent the admission on the part of private respondent upon which petitioner's motion for partial summary judgment was solely anchored, the motion was correctly denied. Indeed, petitioner's entitlement to the disputed commissions remains to be a factual issue which has to be resolved after the parties are given an opportunity to present their respective evidence during the trial.

At this juncture, it is well to stress that trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, as in the instant case, proceedings for summary judgment cannot take the place of trial.[23]

In fine, this Court finds no reason, cause or justification for the issuance of the extraordinary writ of certiorari. It is well to stress that a special civil action for certiorari under Rule 65 of the Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[24] Such is not the case here.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Salazar-Fernando, R.A., (Chairperson) and Bueser, D.Q., JJ., concur.

[1] Rollo, pp. 3-32.

[2] Rollo, p. 35.

[3] Rollo, p. 36.

[4] Rollo, pp. 37-40.

[5] Rollo, pp. 62-64.

[6] Rollo, p. 720 .

[7] Ibid.

[8] Rollo, p. 470.

[9] Rollo, pp. 45-61.

[10] Rollo, pp. 732-735.

[11] Rollo, pp. 718-730.

- [12] Rollo, pp. 503-508.
- [13] Rollo, pp. 509-514.
- [14] Rollo, pp. 521-527.
- [15] Rollo, pp. 528-529.
- [16] Rollo, p. 530.
- [17] Rollo, pp. 531-535.
- [18] Rollo, p. 35.
- [19] Rollo, p. 35.
- [20] Rollo, p. 36.
- [21] Rollo, p. 13.
- [22] G.R. No. 166330 , September 11, 2013.
- [23] Maritime Industry Authority vs. Marc Properties Corporation, G.R. No. 173128, February 15, 2012.
- [24] Tagle vs. Equitable PCI Bank, et al., G.R. No. 172299, April 22, 2008.

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