

**MARIANO DIOLOSA AND ALEGRIA VILLANUEVA-DIOLOSA,
PETITIONERS, VS. THE HON. COURT OF APPEALS, AND QUIRINO
BATERNA (AS OWNER AND PROPRIETOR OF QUIN BATERNA
REALTY), RESPONDENTS.**

G.R. No. L-36585. July 16, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from a decision of the then Court of Appeals ordering herein petitioners to pay private respondent "the sum of P10,000.00 as damages and the sum of P2,000.00 as attorney's fees, and the costs."

This case originated in the then Court of First Instance of Iloilo where private respondent instituted a case of recovery of unpaid commission against petitioners over some of the lots subject of an agency agreement that were not sold. Said complaint, docketed as Civil Case No. 7864 and entitled: "Quirino Baterna vs. Mariano Diolosa and Alegria Villanueva-Diolosa," was dismissed by the trial court after hearing. Thereafter, private respondent elevated the case to respondent court whose decision is the subject of the present petition.

The parties - petitioners and respondents — agree on the findings of facts made by respondent court which are based largely on the pre-trial order of the trial court, as follows:

"PRE-TRIAL ORDER

When this case was called for a pre-trial conference today, the plaintiff, assisted by Atty. Domingo Laurea, appeared and the defendants, assisted by Atty. Enrique Soriano, also appeared.

"A. - During the pre-trial conference the parties, in addition to what have been admitted in the pleadings, have agreed and admitted that the following facts are attendant in this case and that they will no longer adduce evidence to prove them:

"1. That the plaintiff was and still is a licensed real estate broker, and as such licensed real estate broker on June 20, 1968, an agreement was entered into between him as party of the second part and the defendants spouses as party of the first part, whereby the former was constituted as exclusive sales agent of the defendants, its successors, heirs and assigns, to dispose of, sell, cede, transfer and convey the lots included in VILLA ALEGRE SUBDIVISION owned by the defendants, under the terms and conditions embodied in Exhibit "A", and pursuant to said agreement (Exhibit "A"), the plaintiff acted for and in behalf of the defendants as their agent in the sale of the lots included in the VILLA ALEGRE SUBDIVISION;

"2. That on September 27, 1968, the defendants terminated the services of plaintiff as their exclusive sales agent per letter marked as Exhibit "B", for the reason stated in the letter.

"B. - During the trial of this case on the merit, the plaintiff will adduce by competent evidence the following facts:

"1. That as a real estate broker, he had sold the lots comprised in several subdivisions, to wit: Greenfield Subdivision, the Villa Beach Subdivision, the Juntado Subdivision, the St. Joseph Village, the Ledesma

Subdivision, the Brookside Subdivision, the Villa Alegre Subdivision, and Cecilia Subdivision, all in the City of Iloilo except St. Joseph which is in Pavia, Iloilo.

"2. That the plaintiff, as a licensed real estate broker, has been seriously damaged by the action of the defendants in rescinding, by Exhibit "B"; the contract (Exhibit "A") for which the plaintiff suffered moral damages in the amount of P50,000.00, damages to his good will in the amount of P100,000.00, for attorney's fees the amount of P10,000.00 to protect his rights and interests, plus exemplary damages to be fixed by the Court.

"3. That the plaintiff is entitled to a commission on the lots unsold because of the rescission of the contract.

"C. - The defendants during the trial will prove by competent evidence the following:

"1. That the plaintiff's complaint was filed to make money out of the suit from defendants, to harass and to molest defendants;

"2. That because of the unjustified and unfounded complaint of the plaintiff, the defendants suffered moral damages in the amount of P50,000.00, and that for the public good, the court may order the plaintiff to pay the defendants exemplary damages in the amount of P20,000.00, plus attorney's fees of P10,000.00.

"D. - Contentions of the parties:

"1. The plaintiff contends:

(a) That under the terms of the contract (Exhibit "A") the plaintiff had unrevocable authority to sell all the lots included in the Villa Alegre Subdivision and to act as exclusive sales agent of the defendants until all the lots shall have been disposed of.

(b) That the rescission of the contract under Exhibit "B", contravenes the agreement of the parties,

"2. The Defendants contend:

(a) That they were within their legal right to terminate the agency on the ground that they needed the undisposed lots for the use of the family;

(b) That the plaintiff has no right in law to claim for commission on lots that they have not sold.

"E. - The parties hereby submit to the Court the following issues:

"1. Whether under the terms of Exhibit "A" the plaintiff has the irrevocable right to sell or dispose of all the lots included within Villa Alegre Subdivision;

"2. Can the defendants terminate their agreement with the plaintiff by a letter like Exhibit "B"?

"F. - The plaintiff submitted the following exhibits which were admitted by the defendants:

Exhibit "A" - agreement entered into between the parties on June 20, 1968 whereby the plaintiff had the authority to sell the subdivision lots included in Villa Alegre Subdivision;

Exhibit "B" - letter of the defendant Alegria V. Diolosa dated September 27, 1968 addressed to the plaintiff terminating the agency and rescinding Exhibit "A" for the reason that the lots remained unsold lots were for reservation for their grandchildren.

"The Court will decide this case based on the facts admitted in the pleadings, those agreed by the parties during the pre-trial conference, and those which they can prove during the trial of this case, in accordance with the contention of the parties based on the issues submitted by them during the pre-trial conference.

SO ORDERED.

Iloilo City, Philippines, August 14, 1969.

(SGD) VALERIO V. ROVIRA

Judge"

(pp. 22-25, Rollo)

The only issue in this case is whether the petitioners could terminate the agency agreement, Exhibit "A", without paying damages to the private respondent. Pertinent portion of said Exhibit "A" reads:

"That the PARTY OF THE FIRST PART is the lawful and absolute owner in fee simple of VILLAGE ALEGRE SUBDIVISION situated in the District of Mandurriao, Iloilo City, which parcel of land is more particularly described as follows, to wit:

"A parcel of land, Lot No. 2110-b-2-C, PSD 74002, Transfer Certificate of Title No.T—situated in the District of Mandurriao, Iloilo, Philippines, containing an area of 39016 square meters, more or less, with improvements thereon.

"That the PARTY OF THE FIRST PART by virtue of these presents, to enhance the sale of the lots of the above-described subdivision, is engaging as their EXCLUSIVE SALES AGENT the PARTY OF THE SECOND PART, its successors, heirs and assigns to dispose of, sell, cede, transfer and convey the above-described property in whatever manner and nature of the PARTY OF THE SECOND PART, with the concurrence of the PARTY OF THE FIRST PART, may deem wise and proper under the premises, whether it be in cash or installment basis, until all the subject property as subdivided is fully disposed of. (p. 7, of Petitioner's brief. Italics supplied).

Respondent court, in its decision which is the subject of review, said:

"Article 1920 of the Civil Code of the Philippines notwithstanding, the defendants could not terminate the agency agreement, Exh. "A", at will without paying damages. The said agency agreement expressly stipulates x x x until all the subject property as subdivided is fully disposed of x x x. The testimony of Roberto Malundo (t.s.n. p. 99) that the plaintiff agreed to the intention of Mrs. Diolosa to reserve some lots for her own family use cannot prevail over the clear terms of the agency agreement. Moreover, the plaintiff denied that there was an agreement to reserve any of the lots for the family of the defendants (T.s.n. pp. 16).

"There are twenty-seven (27) lots of the subdivision remaining unsold on September 27, 1968 when the defendants rescinded the agency agreement, Exhibit "A". On that day the defendants had only six grandchildren. That the defendants wanted to reserve the twenty seven remaining lots for the six grandchildren is not a legal reason for defendants rescind the agency agreement. Even if the grandchildren were to be given one lot each, there would still be twenty one lots available for sale. Besides it is undisputed that the defendants have other lands which could be reserved for their grandchildren." (pp. 26-27, Rollo)

The present appeal is manifestly without merit.

Under the contract, Exhibit "A", herein petitioners allowed the private respondent to dispose of, sell, cede, transfer and convey xxx until all the subject property as subdivided is fully disposed of. The authority to sell is not extinguished until all the lots have been disposed of. When, therefore, the petitioners revoked the contract with private respondent in a letter, Exhibit "B" -

"Dear Mr. Baterna:

Please be informed that we have finally decided to reserve the remaining unsold lots, as of this date of our VILLA ALEGRE Subdi-vision for our grandchildren.

In view thereof, notice is hereby served upon you to the effect that our agreement dated June 20, 1968 giving

you the authority to sell as exclusive sales agent of our subdivision is hereby rescinded.

Please be duly guided.

Very truly yours,

(SGD) ALEGRIA V. DIOLOSA
Subdivision Owner"

(p. 11 of Petitioner's Brief)

they become liable to the private respondent for damages for breach of contract.

And, it may be added that since the agency agreement, Exhibit "A", is a valid contract, the same may be rescinded only on grounds specified in Articles 1381 and 1382 of the Civil Code, as follows:

"ART. 1381. The following contracts are rescissible:

"(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

"(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

"(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

"(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

"(5) All other contracts specially declared by law to be subject to rescission.

"ART. 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible."

In the case at bar, not one of the grounds mentioned above is present which may be the subject of an action of rescission, much less can petitioners say that the private respondent violated the terms of their agreement - such as failure to deliver to them (Subdivision owners) the proceeds of the purchase price of the lots.

ACCORDINGLY, the petition is hereby dismissed without pronouncement as to costs.

SO ORDERED.

Teehankee, Melencio-Herrera, Plana, Gutierrez, Jr., and de la Fuente. JJ, concur.

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