

EMERITO M. RAMOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SPECIAL FIRST DIVISION) AND CESARIO P. CALANOC, RESPONDENTS.

G.R. No. L-25463. April 04, 1975

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

Petitioner Emerito M. Ramos seeks a review of the decision of the Court of Appeals in its case CA-G.R. No. 28032, affirming the decision of the Court of First Instance of Manila (Branch XII) in its Civil Case No. 24070 entitled "Cesario Calanoc vs. Emerito M. Ramos and Farm Implement & Machinery Co."

The facts as found by the appellate court are as follows: About the latter part of 1953 Emerito M. Ramos, a businessman engaged in the import-export trade and using the firm name FIMCO (Farm Implement & Machinery Co.), entered into a contract with the Board of Liquidators of the Philippine Government for the purchase of 20,000 tons of rice from the now defunct National Rice and Corn Corporation (NARIC) at the rate of P404.00 per metric ton, F.O.B. Manila. The rice was in turn to be sold by Emerito M. Ramos to the Nippon Trading Co., Ltd. in Japan, which firm made available to the FIMCO through the Bank of Tokyo the sum of \$136.00 for every ton of rice shipped to Japan. The arrangement was for the Bank of Tokyo, in representation of the Nippon Trading Co., Ltd., to effect the transfer to Japanese shippers/suppliers of sufficient dollars to cover the value of merchandise to be purchased by FIMCO's customers in the Philippines. To make up for the difference between the purchase price of the NARIC rice in Philippine pesos and the selling price in dollars at the rate of two-to-one, the Central Bank of the Philippines granted FIMCO an allocation of \$66.00 for every metric ton of rice shipped to Japan.

FIMCO entered into several contracts with local merchants for the resale to them of the imported goods which were forthcoming as a result of the above-stated transactions. One such contract was concluded with Mrs. Salustiana Dee, or Wellington & Co., in the amount of \$1,333,000.00 or P2,666,000.00[1] Cesario P. Calanoc, plaintiff in the lower court, claiming that Emerito M. Ramos had engaged his services to procure purchasers for the imported goods and that he was directly instrumental in bringing about the contracts in question, instituted an action to recover his alleged agreed commissions of 2% on the contract with Wellington & Co. and 1% on those with the International Mercantile Co.

After trial the Court of First Instance of Manila rendered judgment ordering Emerito M. Ramos to pay plaintiff commissions in the amount of P53,320.00 on the first transaction, and in the amounts of P10,000.00, P4,040.00 and P180.00, respectively, on the other three, or a total of P67,540.00, plus interest at the legal rate from the date of the filing of the complaint until fully paid. Defendant was also ordered to pay plaintiff the sum of P10,000.00 by way of attorney's fees, plus the costs. Emerito M. Ramos appealed to the Court of Appeals, which rendered, on May 20, 1965, a judgment of affirmance on the following findings:

"Plaintiff declared that sometime in 1953, he went to Ramos' suite at the Manila Hotel upon the latter's

invitation. Appellant asked Calanoc to bond him in the amount of P400,000.00, and to look for importers of merchandise from Japan. Appellant told Calanoc to sell the merchandise at a mark-up price of twenty-three percent of the invoice value of the importation and that the overprice would constitute his commission.

Plaintiff was introduced to Mrs. Salustiana Dee, the owner of Wellington & Co., by Jose Ang Uco. He explained to the prospective buyer the terms of the contract between FIMCO and the NARIC. In order to verify the existence of the barter agreement, Mrs. Dee instructed the plaintiff to cable her supplier in Kobe, Japan, the Lam Tai Trading, Co., as well as the Nippon Trading Co., FIMCO 's representative in Tokyo. During this period of verification, Mrs. Dee was in frequent communication with the plaintiff and Ang Uco either by telephone or by conferences in the broker's office. Plaintiff also explained to Mrs. Dee that she was to open two letters of credit, one local and the other a dollar letter of credit; that she was to pay the customs tax, the sales tax and the clearance duties at the Bureau of Customs; that the municipal license tax was to be paid by Mr. Ramos, and that she was to pay a premium of 25% mark-up on the value of her imported commodities. Calanoc, accordingly informed appellant that Mrs. Dee had agreed to pay a premium of 25% and that, therefore, after deducting the 23% required mark-up, he (plaintiff) had a commission of 2% on said transaction.

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Jose Ang Uco testified that he introduced Mrs. Salustiana Dee to Calanoc as a prospective buyer of imported merchandise. Together, the three of them went to Mr. Recto of the Equitable Bank who explained to Mrs. Dee about the banking procedure involved in the transaction. Thereafter, he and the plaintiff were in frequent communication with Mrs. Dee until the latter went directly to Ramos and closed the contract in question without their presence. Mrs. Dee had agreed to pay him a 2% commission on the transaction. x x x.

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Plaintiff's testimony also finds corroboration in appellant's own admission that in engaging the broker's services he specified that the latter's compensation would consist of the excess of the required 23% mark-up price."

In the appellate court's thinking, there was "a clear preponderance of evidence that in compliance with his undertaking to procure purchasers for appellant's merchandise, he produced the importers, Wellington & Co. x x x and as a result of his efforts said companies entered into the contracts in question with the defendant-appellant (thereby entitling plaintiff) to recover the commissions claimed by him as compensation for his successful efforts."

Only two errors are attributed by the petitioner to the appellate court, there being no issue raised regarding the affirmance of the awards made by the trial court in favor of Cesario Calanoc in connection with the transaction concluded by the petitioner with the International Mercantile Company. Petitioner contends: (1) that the Court of Appeals "erred in holding petitioner Emerito M. Ramos liable to respondent Cesario P. Calanoc for the sum of P53,320.00, representing a commission of 2% of the contract price of P2,666,000.00 in the sale made by petitioner Ramos to Wellington & Company, instead of only P13,330.00, representing the 1/2% overprice actually paid by the buyer to the petitioner Ramos in excess of the 23% mark-up price of the invoice value of the importation notwithstanding the express finding made by the respondent Court itself, x x x that the contract existing between petitioner Ramos and respondent Calanoc was to sell the merchandise to any buyer, at a mark-up price of 23% of the invoice value of the importation, and that any overprice actually received by petitioner Ramos, above the stated 23% premium, would accrue to respondent Calanoc as his commission;" and (2) that the Court of Appeals "erred in holding petitioner Emerito M. Ramos liable to respondent Cesario P. Calanoc for the sum of P10,000.00, by way of attorney's fees, in the absence of any specific finding by the Honorable respondent Court that petitioner Ramos had acted in gross and evident bad faith in refusing to accede to respondent Calanoc's demand and defending himself from the complaint filed against him."

The preliminary question which poses itself in connection with the first assigned error is whether this Court may make its own findings of fact independently of those made by the Court of Appeals. The general rule is that the appellate court's findings are conclusive, but this rule is not without some recognized exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures (*Joaquin vs. Navarro*, 93 Phil. 257); (2) when the inference made is manifestly mistaken, absurd or impossible (*Luna vs. Linatoc*, 74 Phil. 15); (3) where there is a grave abuse of discretion (*Buyco vs. People*, 51 O.G. 2929); (4) when the judgment is based on a misapprehension of facts (*Cruz vs. Sosing*, 94 Phil. 26); and (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both appellant and appellee (*Evangelista vs. Alto*, 103 Phil. 401). See also *Garcia vs. Court of Appeals, et al.*, 33 SCRA 622; *Roque vs. Buan*, 21 SCRA 642.

Several circumstances compel Us to go into the record of this case in order to find out whether or not it falls within any of the exceptions above-stated. First, the findings of both the trial court and the Court of Appeals are in the nature of conclusions, without citation of the specific evidence on which they are based; and second, the facts set forth in the petition as well as in the petitioner's main brief, with the corresponding references to the record, are not materially denied or disputed by the private respondent. These facts are necessary for a clear understanding and proper resolution of the issue of how much private respondent Calanoc is entitled to as commission in the Wellington & Company transaction.

According to the trial court it was convinced that "plaintiff actually was engaged by defendant to look for buyers on commission basis; that plaintiff was directly instrumental in bringing about the contract with Wellington & Company in the amount of \$1,333,000.00 or P2,666,000.00, x x x; that defendant agreed to pay plaintiff 2% on the Wellington & Company transaction x x x." The Court of Appeals proceeded on the same theory and even adopted as its own the following observation of the trial court:

"The court deplores the actuations of defendant and Mrs. Dee in completely bypassing plaintiff when they were ready to finalize their contract to avoid having to pay to plaintiff his due, after the latter had exerted a lot of effort and spent a lot of time in bringing them together. Defendant was able to make an additional 1/2% profit and Mrs. Dee saved 3-1/2% but the ruse did not add to the business stature of the parties concerned."

In our view, the position adopted by both the trial court and the Court of Appeals, on the basis of their own findings of fact, is not justified. The contract between Ramos and Calanoc is quite explicit: the arrangement was for Calanoc to sell the merchandise to any buyer at a mark-up price of 23% over the invoice value of the importation and any overprice successfully collected above the stated 23% would accrue to Calanoc as his commission. The amount of such commission was therefore fluid, depending upon the overprice obtained above the 23% mark-up price of the invoice value set by Ramos.

The decision of the Court of Appeals is evidently based on the assumption that since Calanoc was the efficient agent who brought about the Wellington & Co. contract, it follows that he was entitled to the 2% commission which he claims was the overprice he secured for Ramos' merchandise. The assumption is not borne out by the record. As already observed, and this was confirmed by the Court of Appeals, the arrangement was for Calanoc "to sell the merchandise at a mark-up price of twenty-three percent of the invoice value of the importation and the overprice would constitute his commission." Nothing in the agreement guaranteed Calanoc a fixed commission, which depended upon the overprice the buyer would pay. And it is a fact, undisputed by Calanoc, that what Ramos received in the Wellington & Co. transaction in excess of his original 23% mark-up price was only P13,330.00 and not P53,320.00, the amount claimed and awarded by the trial court and the Court of Appeals.

The one feature of this case which militates most strongly against the conclusions arrived at by the courts below is that they did not necessarily follow from the facts established. Calanoc never brought the buyer, Mrs. Salustiana

Dee, to Ramos. The agreement, if any, regarding the 25% buying price was made solely between Calanoc and Mrs. Dee. Ramos did not intervene nor participate in any manner in that supposed agreement. While it is true, as Calanoc claims, that he informed petitioner that Mrs. Dee had already agreed to pay the 25% premium, there is absent in the records of this case any evidence to show that Mrs. Dee confirmed such agreement with petitioner and that the latter could have bound her to it. Petitioner had fixed for himself a 23% mark-up, allowing anything over that amount as commission. If Mrs. Dee changed her mind and refused to pay the 25% premium, and paid only 23-1/2%, that was her prerogative; petitioner had neither the duty nor the right to compel her to contract for more than what she was willing to pay, when she was ready to meet his price.

"x x x a broker is never entitled to commissions for unsuccessful efforts. The risk of failure is wholly his. The reward comes only with his success. That is the plain contract and contemplation of the parties. The broker may devote his time and labor, and expend his money with ever so much of devotion to the interest of his employer, and yet if he fails, if without effecting an agreement or accomplishing a bargain, he abandons the effort, or his authority is fairly and in good faith terminated, he gains no right to commissions. x x x He may have introduced to each other parties who otherwise would have never met; he may have created impressions, which under later and more favorable circumstances naturally lead to and materially assist in the consummation of a sale; he may have planted the very seed from which others reap the harvest; but all that gives him no claim. It was part of his risk that failing himself, not successful in fulfilling his obligation, others might be left to some extent to avail themselves of the fruit of his labors. x x x in such a case the principal violates no right of the broker by selling to the first party who offers the price asked, and it matters not that sale is to the very party with whom the broker had been negotiating. He failed to find or produce a purchaser upon the terms prescribed in his employment, and the principal was under no obligation to wait longer that he might make further efforts. The failure therefore and its consequences were the risk of the broker only. This however must be taken with one important and necessary limitation. If the efforts of the broker are rendered a failure by the fault of the employer; if capriciously he changes his mind after the purchaser, ready and willing, and consenting to the prescribed terms, is produced; or if the latter declines to complete the contract because of some defect of title in the ownership of the seller, some unremoved encumbrance, some defect which is the fault of the latter, then the broker does not lose his commissions. And that upon the familiar principle that no one can avail himself of non-performance of a condition precedent who has himself occasioned its non-performance. But this limitation is not even an exception to the general rule affecting the broker's right for it goes on the ground that the broker has done his duty, that he has brought buyer and seller to an agreement, but that the contract is not consummated and fails through the after-fault of the seller." (Danon vs. Brimo & Co., 42 Phil. 133, 139-141).

It is significant that in his complaint Calanoc does not attribute bad faith, fraud or fault to Ramos. All that he claims is that since he had informed Ramos of Mrs. Dee's alleged commitment to pay a 25% mark-up, the latter had consequently lost the right to reduce it. But as already observed, there is no showing that such a commitment to Calanoc was a contract which Ramos himself could enforce against Mrs. Dee, or that she was ready and willing to pay him the 25% mark-up, despite which he accepted only 23-1/2%. And certainly, if she was, vis-a-vis Ramos, willing to pay only 23-1/2%, he was not precluded from accepting it without being liable to Calanoc for the difference.

In the absence of independent proof that the non-payment by Mrs. Dee of the 25% premium over the mark-up price was due to the fault, fraud or bad faith of Ramos, we are not prepared to share the Court of Appeals' view in this regard. He gained nothing by the reduction, and it cannot be presumed that he accepted it in order to cause prejudice to Calanoc.

The trial court awarded in favor of Calanoc attorney's fees in the amount of P10,000.00. This was affirmed by the Court of Appeals in view of its findings, established here to be not really indubitable, that Ramos acted in evident

bad faith in refusing to satisfy Calanoc's claim. Considering the nature and extent of the services rendered by respondent Calanoc's counsel both in the trial and appellate courts, coupled with the admitted refusal of Ramos to satisfy Calanoc's initial claim for the commissions he earned — to which Calanoc was later on found to be entitled although the amount involved in the Wellington & Co. transaction was considerably lessened — the attorney's fees both in the lower court and appellate courts should be fixed at P6,000.00. This may be done *motu proprio* by this Court under Article 2208 of the Civil Code, which provides that attorney's fees may be recovered in the instances therein enumerated and in "any other case where the Court deems it just and equitable that attorney's fees . . . should be recovered," provided the amount thereof be reasonable in all cases. (See: *Bank of America vs. Araneta*, 40 SCRA 144; *Balmes vs. Suson*, 28 SCRA 304).

PREMISES CONSIDERED, the Court of Appeals' decision under review is hereby modified by reducing the amount for which petitioner Ramos is liable to pay to respondent Calanoc on the Wellington & Co. transaction from P53,320.00 (2%) to P13,330.00 (1/2%) which latter figure represents the amount actually received by petitioner in excess of his original 23% mark-up; the attorney's fees awarded in favor of Calanoc is likewise reduced from P10,000.00 to P6,000.00. In all other respects the decision is affirmed, with no special pronouncement as to costs.

Makasiar, Barredo, Muñoz Palma, and Aquino, JJ., concur.

[1] There were three (3) other separately concluded contracts with the International Mercantile Company in the total amount of \$1,422,000.00 or P2,844,000.00.

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