

**PLAINTIFF-APPELLEE, VS. FILIPINAS DAEWOO INDUSTRIES CORP.,
REPRESENTED BY ITS PRESIDENT MR. SUK KI CHO,
DEFENDANTS-APPELLANTS.**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This treats of the Motion for Partial Reconsideration[1] filed by defendant-appellant on August 31, 2012 seeking reconsideration of this Court's earlier Decision[2] dated July 25, 2012.

After a judicious perusal of the motion, We find that the grounds relied upon by the defendant-appellant therein have already been carefully considered, evaluated and passed upon by this Court in the assailed Decision. Accordingly, to require Us to once again discuss the ratio decidendi of Our decision would be to belabor the issues ad infinitum.

Our July 25, 2012 ratio decidendi prayed to be reconsidered is hereunder quoted:

We scrutinized the facts established in evidence viz-a-viz the elements of agency as provided by law, but found no sufficient basis to conclude that agency was created between FDIC and Zuzon. The element of consent to establish agency relationship, either express or implied, was lacking.

In dealing with prospective buyers, Zuzon has not acted in representation of or in behalf of the FDIC. FDIC on the other hand has not expressly or impliedly authorized Zuzon to represent the company as its agent. What is clear from the records is that Zuzon was authorized to “negotiate” the sale of the buses of the company. He only promoted the products, looked for prospect buyers and facilitated the sale and delivery of the products to the buyer. There was no authority or consent for him to act as if his acts are that of the company. He cannot act in behalf of the company, thus, in executing his engagement as salesman or “agent” of FDIC, he merely acted as a go-between, a facilitator of the sale.

Apparently, Zuzon's acts are not binding to the company. He cannot decide a sale in behalf of FDIC or close a deal without the company's approval. Zuzon was fully aware of this fact. In one transaction, Zuzon told a potential buyer who wants to purchase certain units of buses that it will depend upon the FDIC's approval of the proposal. Also gleaned from his letter to Jose Salita on March 29, 1995, Zuzon knew that he by himself, could not close the deal with the bus buyers in behalf of FDIC. He has to request the FDIC people to come to Davao and help him close the sale, thus:

“Just received inside information from lawyer LTFRB that there is an applicant for forty aircon buses for Davao Gensan Line. Would appreciate if you come Davao to help me close sale. Also prepare to make trip to call on bus operators in Davao and Gensan.

xxxx”

It would also evince from the letters that Zuzon has to request for invoice slips, brochures, pictures of the units, price quotation of the units for sale. Despite several communications made by Zuzon, none of these were answered by FDIC, or by the Sales Manager, Jose Salita.

Even the Pro-Forma Invoice Slip does not support a finding of existence of agency. Before a sale is effected, Zuzon will provide the prospect buyers with Pro-Forma Invoice Slips. This invoice slip is actually an order slip form from FDIC. Once filled up, the invoice slips shall be submitted to FDIC. It was FDIC, not Zuzon for FDIC, who shall approve the sale. We take particular note on the invoice slip covering the seven buses sold to Fontanilla, where it is shown that it was Jose Salita who signed for the FDIC, not Francisco Zuzon.

Throughout the transaction, there was no document in which Francisco Zuzon signed in behalf of the FDIC. In one document called the Sales Agreement, he signed not in behalf of FDIC, but as the person who prepared the agreement. Notably, the said sales agreement was also signed by Jose Salita, who accepted the terms thereof, as FDIC's General Manager for Sales and Marketing. If indeed Zuzon was the duly constituted agent of FDIC, there would have been no necessity for Jose Salita to accept the terms in the sales agreement in behalf of the company.

The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it. Whether or not an agency has been created is a question to be determined by the fact that one represents and is acting for another. Regrettably, the records could not sustain a finding that in dealing with buyers, Zuzon represents or acts in behalf of the FDIC.

We do not however foreclose the right of Zuzon to claim his commission from the sale of the seven units of buses.

Commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal.

Since it is clear from the foregoing that Zuzon was engaged by FDIC only to promote the sale of the latter's buses, to procure prospect buyers and to negotiate with the prospect buyers, the relationship of Zuzon to FDIC is akin to that of a broker, not an agent under Article 1868 of the New Civil Code. Accordingly, this Court finds that Zuzon is entitled to the payment of the commission as a broker.

A broker is one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him. A broker is one whose occupation is to bring the parties together, in matters of trade, commerce or navigation." A broker is strictly a middleman and for some purposes the agent of both parties.

Before negotiating a sale, a broker must first and foremost bring in a prospective buyer. It has been held that a broker earns his pay merely by bringing the buyer and the seller together, even if no sale is eventually made. The essential feature of a broker's conventional employment is merely to procure a purchaser for a property ready, able, and willing to buy at the price and on the terms mutually agreed upon by the owner and the purchaser. And it is not a prerequisite to the right to compensation that the broker conduct the negotiations between the parties after they have been brought into contact with each other through his efforts.

In the absence of an express contract between the broker and his principal, the implication generally is that the broker becomes entitled to the usual commissions whenever he brings to his principal a party who is able and willing to take the property and enter into a valid contract upon the terms then named by the principal, although the particulars may be arranged and the matter negotiated and completed between the principal and the purchaser directly.

Indeed, it is readily apparent that Francisco Zuzon was instrumental in the sale of the buses. He set in motion the sale transaction of the subject seven buses. Without Zuzon, FDIC would not have made contact with Fontanilla, and several other prospect buyers. It was Zuzon's efforts in promoting the units of FDIC that convinced Fontanilla to purchase seven units from FDIC.

There is no gainsaying of this fact. Zuzon's contact with Fontanilla was clear in the letter dated July 10, 1995, where Zuzon updated FDIC of the prospect buyers he had made contact with, among which is Mr. Fontanilla. In fact, a Sales Agreement was prepared by Zuzon himself, which was signed by Fontanilla, the buyer, and Jose Salita, for FDIC.

We also give serious consideration to the fact that at that time FDIC could only negotiate prospect buyers in Mindanao through Zuzon. At the time that the sale was transacted, FDIC does not have any branch office in Davao City. FDIC has no salesman for Davao, it was only on 1996 that the company employed two salesmen, that was after the sale to Fontanilla was already consummated. Fontanilla who operates passenger buses in Davao, could only be convinced by Zuzon. There is no showing that some other person made contact with Fontanilla.

Jose Salita, the General Manager of FDIC attested that Zuzon was entitled to the commission when the seven units of buses were sold and delivered to Fontanilla. After several demands from Zuzon, the company has decided to pay Zuzon's commission. However, the commission to be paid shall be based only on the collected amount, which is contrary to what was agreed from the start that commission shall be paid upon delivery of the units.

From all the foregoing, there can be no other conclusion than that Zuzon played a significant role in bringing FDIC and Fontanilla together to come to terms and agree on the sale of seven buses. If not for Zuzon, Fontanilla would not have known about the units of buses for sale. It was through Zuzon's resources that the sale was consummated and FDIC had profited from such transaction. It would certainly be iniquitous if Zuzon would not be rewarded even with the measly commission of 1½% he asked for.

This is likewise in consonance with the long standing principle against unjust enrichment. Unjust enrichment is a term used to depict the result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them.

Under the circumstances, this Court deems reasonable the agreed commission of 1½% of the total purchase price of the units sold. Per Pro-Forma Invoice the seven bus sold to Fontanilla cost P20,355,000.00. One and one-half percent of P20,355,000.00 is P305,325.00, thus the award should accordingly be modified.

Anent the interest imposed by the trial court, We modify the amount. Pursuant to the pronouncement in *Eastern Shipping Lines*, since the claim involves an obligation arising from an agreement entered by and between the parties, and not a loan or forbearance of money, the interest rate should be six percent (6%) per annum of the amount claimed from the time of judicial demand or on September 8, 1998 when the complaint was filed. The interest rate of twelve percent (12%) per annum, however, shall apply from the finality of judgment until the total amount awarded is fully paid.

With respect to the award of attorney's fees, We uphold the amount of P80,000.00 plus P2,500.00 for each appearance of counsel in court as

reasonable attorney's fees. It must be recalled that Zuzon's repeated demands for the payment of his commission were not heeded by FDIC. It bears emphasizing that Zuzon had to spend other litigation expenses for the transportation of his witnesses, particularly Mr. Jose Salita who came all the way from Manila, and has to come to Davao City to testify. FDIC's unjust refusal to satisfy Zuzon's valid, just and demandable claim constrained the latter to litigate and incur expenses to protect his interest. We find basis in Article 2208 of the Civil Code, which provides:

“Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx

xxx

xxx

When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; xxxx”

However, We could not sustain the award of exemplary damages as there was no showing that FDIC acted in wanton, reckless, fraudulent, oppressive, or malevolent manner. Further, Article 2234 of the Civil Code requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Since no reason exists to award moral damages, so too can there be no reason to award exemplary damages.[3]

WHEREFORE, premises considered, the Motion for Reconsideration filed by defendant-appellant is hereby DENIED.

SO ORDERED.

Camello, J., Chairperson and Badelles, JJ., concur.

[*] New Ponente vice J. Yap per raffle dated January 8, 2013.

[1] Rollo, p. 104.

[2] Rollo, p. 89.

[3] Rollo, pp. 95-102.

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