

FREDERICK L. WORCESTER, PETITIONER, VS. RAMON LORENZANA, RESPONDENT.*G. R. No. L-9435. July 31, 1958*

Ponente: REYES, A., J.

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This is an appeal by certiorari from a judgment of the Court of Appeals.

It appears that the appellant Frederick L. Worcester was the owner of a piece of real estate known as "La Cumbre de Guadalupe", situated in San Pedro, Makati, Rizal, which, in July, 1950, was sold by him to the Roman Catholic Archbishop of Manila through the mediation of a broker named Benito V. Jalbuena. Claiming credit for having negotiated and brought about the sale, another broker, the herein appellee Ramon Lorenzana, asked Worcester to pay him his brokerage commission and, upon the demand being refused, he brought suit in the Court of First Instance of Manila to recover commission and moral damages. Worcester contested the suit, characterized its filing as "malicious and unjustified", and set up a counterclaim for actual and moral damages. Replying to the counterclaim, Lorenzana denied its allegations and on his part set up a claim for moral damages suffered on account thereof.

It also appears that once the suit was filed, Lorenzana had attachment levied on property belonging to Worcester upon verified petition that the latter was disposing of his properties with the intent to defraud him. But the attachment was discharged upon the filing of the required bond.

After trial, the Court of First Instance of Manila found Lorenzana not entitled to any commission and rendered judgment dismissing his complaint and, on the other hand, awarding Worcester, on his counterclaim, P5,895.80 as compensatory damages and P1,000.00 as moral damages. On appeal to the Court of Appeals, that court upheld the judgment of dismissal but revoked the award of damages. Protesting against the revocation of the award, Worcester brought the case here on appeal by certiorari.

It would appear that the award of damages in the Court of First Instance was based on the theory that plaintiff's action was clearly unfounded and that plaintiff was not entitled to the attachment of defendant's property.

After going over the record, we agree with the Court of Appeals that the award of damages to defendant was unwarranted. That court found from the evidence that defendant had placed his property for sale in the hands of several brokers, among them plaintiff himself and Benito V. Jalbuena, without giving any of them exclusive authority to sell, but "on a winner take all basis", by which it was meant that "the broker who could close the deal and sell the property would receive the whole commission of 5%" which defendant had agreed to pay; that once defendant had engaged plaintiff's services on that basis, plaintiff was able to interest the Roman Catholic Archbishop of Manila as a prospective buyer to the extent of having His Grace promise that he would study the offer of sale and inspect the property; that though he was informed of this development, "defendant did not then revoke the authority he had given plaintiff, but allowed the latter to proceed with the negotiations"; that informed several days later by broker Jalbuena that he too had found a prospective buyer, who was no other than the

Archbishop of Manila, and seeing that "plaintiff's and Mr. Jalbuena's prospects were the same, the defendant advised Mr. Jalbuena that the plaintiff was ahead of him for about a week, and so he would be given a chance to close the deal"; that to this "Jalbuena agreed" and "the defendant communicated this incident to the plaintiff"; that notwithstanding this fact, defendant, some time later, instructed plaintiff to withdraw the offer he had made to the Archbishop and then got in touch with Jalbuena and instructed him to proceed with his negotiations with His Grace; that proceeding as instructed, Jalbuena was able to secure a definite offer from the Archbishop, which defendant accepted; that defendant then instructed his lawyers to prepare the necessary deed of sale, and upon the deed being signed, the purchase price paid and the transaction consummated, defendant paid Jalbuena his commission and thereafter left for Jamaica. On the basis of these facts the Court of Appeals ruled that plaintiff was not entitled to a commission on the theory that it was Jalbuena and not he "who was the efficient procuring cause of the sale in question." But that court also found that plaintiff's suit was not clearly unfounded and was not filed in bad faith. It says:

* * * The present action is not clearly unfounded. It is admitted that the appellant was engaged by the appellee to sell the property in question, and that he was the first to offer the property to the Archbishop of Manila, to whom he wrote a letter containing the offer to sell with a detailed description thereof, and whom he interviewed several times for the purpose. The appellant is not a lawyer. He is not supposed to know the intricacies of the law which regulates broker's commission in this jurisdiction. Such being the case, it is not improbable that he believed in good faith that, as he had intervened, with proper authority, in the sale of the property in question, he was entitled to a commission for its sale. In bringing this action, therefore, it cannot be held that he acted in gross and evident bad faith."

We agree to this finding, for it is obvious that plaintiff did really have some intervention in the sale to the extent and under circumstances which might lead an ordinary person to believe in good faith that he was entitled to a commission.

Defendant makes capital of the fact that the reply to his counter-claim was in the form of a general denial, which, according to him, constitutes an admission of the averment in said counter-claim that he had incurred damages as a consequence of the "malicious and unjustified" institution of the present action. But while the rule is that the material allegations in the complaint other than those as to the amount of damages shall be deemed admitted when not specifically denied (section 8, Rule 9), it is to be noted that the counterclaim for damages in the present case is based on the supposition that plaintiff's action was "malicious and unjustified", which is a mere conclusion unsupported by the facts alleged in the counter-claim and which the Court of Appeals, as already stated, found to be without basis. Needless to say, that conclusion cannot be deemed admitted even when not specifically denied.

With respect to the premium on defendant's bond for the lifting of the attachment, the Court of Appeals found and it is not disputed that defendant at the time this action was instituted was disposing of all his properties in the Philippines, and this fact was known to plaintiff. Consequently, we agree with the Court of Appeals that plaintiff's action in seeking the attachment of defendant's property was justified. We may add that, as already stated, plaintiff acted in good faith and "this circumstance is fatal to any award for damages." (*Beige et al. vs. Walter Bull & Co.*, 84 Phil., 164; 47 Off. Gaz. 138).

There is nothing to the contention that as plaintiff in his appeal to the Court of Appeals did not present any argument in support of the setting aside of the award of damages, that court erred in so doing. It is admitted that plaintiff in his brief before that appellate court, assigned as errors the award of damages by the trial court, and even if they were not properly argued, as claimed by defendant, the fact remains that the Court of Appeals considered them. It is well-settled that the appellate court, at its option, may determine question not raised by appellant in his brief. (*Moran's Rules of Court*, Vol. I, 1957 ed.; p. 738.)

In view of the foregoing, the judgment appealed from is affirmed, with costs against the petitioner.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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