

CONSTANTE AMOR DE CASTRO AND CORAZON AMOR DE CASTRO, PETITIONERS, VS. COURT OF APPEALS AND FRANCISCO ARTIGO, RESPONDENTS.

G.R. No. 115838. July 18, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

Before us is a Petition for Review on Certiorari[1] seeking to annul the Decision of the Court of Appeals[2] dated May 4, 1994 in CA-G.R. CV No. 37996, which affirmed in toto the decision[3] of the Regional Trial Court of Quezon City, Branch 80, in Civil Case No. Q-89-2631. The trial court disposed as follows:

“WHEREFORE, the Court finds defendants Constante and Corazon Amor de Castro jointly and solidarily liable to plaintiff the sum of:

- a) P303,606.24 representing unpaid commission;
- b) P25,000.00 for and by way of moral damages;
- c) P45,000.00 for and by way of attorney’s fees;
- d) To pay the cost of this suit.

Quezon City, Metro Manila, December 20, 1991.”

The Antecedent Facts

On May 29, 1989, private respondent Francisco Artigo (“Artigo” for brevity) sued petitioners Constante A. De Castro (“Constante” for brevity) and Corazon A. De Castro (“Corazon” for brevity) to collect the unpaid balance of his broker’s commission from the De Castros.[4] The Court of Appeals summarized the facts in this wise:

“x x x. Appellants[5] were co-owners of four (4) lots located at EDSA corner New York and Denver Streets in Cubao, Quezon City. In a letter dated January 24, 1984 (Exhibit “A-1, p. 144, Records), appellee[6] was authorized by appellants to act as real estate broker in the sale of these properties for the amount of P23,000,000.00, five percent (5%) of which will be given to the agent as commission. It was appellee who first found Times Transit Corporation, represented by its president Mr. Rondaris, as prospective buyer which desired to buy two (2) lots only, specifically lots 14 and 15. Eventually, sometime in May of 1985, the sale of lots 14 and 15 was consummated. Appellee received from appellants P48,893.76 as commission.

It was then that the rift between the contending parties soon emerged. Appellee apparently felt short changed because according to him, his total commission should be P352,500.00 which is five percent (5%) of the agreed price of P7,050,000.00 paid by Times Transit Corporation to appellants for the two (2) lots, and that it was he who introduced the buyer to appellants and unceasingly facilitated the negotiation which ultimately led to the consummation of the sale. Hence, he sued below to collect the balance of P303,606.24 after having received P48,893.76 in advance.

On the other hand, appellants completely traverse appellee's claims and essentially argue that appellee is selfishly asking for more than what he truly deserved as commission to the prejudice of other agents who were more instrumental in the consummation of the sale. Although appellants readily concede that it was appellee who first introduced Times Transit Corp. to them, appellee was not designated by them as their exclusive real estate agent but that in fact there were more or less eighteen (18) others whose collective efforts in the long run dwarfed those of appellee's, considering that the first negotiation for the sale where appellee took active participation failed and it was these other agents who successfully brokered in the second negotiation. But despite this and out of appellants' "pure liberality, beneficence and magnanimity", appellee nevertheless was given the largest cut in the commission (P48,893.76), although on the principle of quantum meruit he would have certainly been entitled to less. So appellee should not have been heard to complain of getting only a pittance when he actually got the lion's share of the commission and worse, he should not have been allowed to get the entire commission. Furthermore, the purchase price for the two lots was only P3.6 million as appearing in the deed of sale and not P7.05 million as alleged by appellee. Thus, even assuming that appellee is entitled to the entire commission, he would only be getting 5% of the P3.6 million, or P180,000.00."

Ruling of the Court of Appeals

The Court of Appeals affirmed in toto the decision of the trial court.

First. The Court of Appeals found that Constante authorized Artigo to act as agent in the sale of two lots in Cubao, Quezon City. The handwritten authorization letter signed by Constante clearly established a contract of agency between Constante and Artigo. Thus, Artigo sought prospective buyers and found Times Transit Corporation ("Times Transit" for brevity). Artigo facilitated the negotiations which eventually led to the sale of the two lots. Therefore, the Court of Appeals decided that Artigo is entitled to the 5% commission on the purchase price as provided in the contract of agency.

Second. The Court of Appeals ruled that Artigo's complaint is not dismissible for failure to implead as indispensable parties the other co-owners of the two lots. The Court of Appeals explained that it is not necessary to implead the other co-owners since the action is exclusively based on a contract of agency between Artigo and Constante.

Third. The Court of Appeals likewise declared that the trial court did not err in admitting parol evidence to prove the true amount paid by Times Transit to the De Castros for the two lots. The Court of Appeals ruled that evidence aliunde could be presented to prove that the actual purchase price was P7.05 million and not P3.6 million as appearing in the deed of sale. Evidence aliunde is admissible considering that Artigo is not a party, but a mere witness in the deed of sale between the De Castros and Times Transit. The Court of Appeals explained that, "the rule that oral evidence is inadmissible to vary the terms of written instruments is generally applied only in suits between parties to the instrument and strangers to the contract are not bound by it." Besides, Artigo was not suing under the deed of sale, but solely under the contract of agency. Thus, the Court of Appeals upheld the trial court's finding that the purchase price was P7.05 million and not P3.6 million.

Hence, the instant petition.

The Issues

According to petitioners, the Court of Appeals erred in -

I. NOT ORDERING THE DISMISSAL OF THE COMPLAINT FOR FAILURE TO IMPLEAD INDISPENSABLE PARTIES-IN-INTEREST;

II. NOT ORDERING THE DISMISSAL OF THE COMPLAINT ON THE GROUND THAT ARTIGO'S CLAIM HAS BEEN EXTINGUISHED BY FULL PAYMENT, WAIVER, OR ABANDONMENT;

III. CONSIDERING INCOMPETENT EVIDENCE;**IV. GIVING CREDENCE TO PATENTLY PERJURED TESTIMONY;****V. SANCTIONING AN AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES;****VI. NOT AWARDING THE DE CASTRO'S MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.****The Court's Ruling**

The petition is bereft of merit.

First Issue: whether the complaint merits dismissal for failure to implead other co-owners as indispensable parties

The De Castros argue that Artigo's complaint should have been dismissed for failure to implead all the co-owners of the two lots. The De Castros claim that Artigo always knew that the two lots were co-owned by Constante and Corazon with their other siblings Jose and Carmela whom Constante merely represented. The De Castros contend that failure to implead such indispensable parties is fatal to the complaint since Artigo, as agent of all the four co-owners, would be paid with funds co-owned by the four co-owners.

The De Castros' contentions are devoid of legal basis.

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had.[7] The joinder of indispensable parties is mandatory and courts cannot proceed without their presence.[8] Whenever it appears to the court in the course of a proceeding that an indispensable party has not been joined, it is the duty of the court to stop the trial and order the inclusion of such party.[9]

However, the rule on mandatory joinder of indispensable parties is not applicable to the instant case.

There is no dispute that Constante appointed Artigo in a handwritten note dated January 24, 1984 to sell the properties of the De Castros for P23 million at a 5 percent commission. The authority was on a first come, first serve basis. The authority reads in full:

"24 Jan. 84

To Whom It May Concern:

This is to state that Mr. Francisco Artigo is authorized as our real estate broker in connection with the sale of our property located at Edsa Corner New York & Denver, Cubao, Quezon City.

Asking price P23,000,000.00 with

5% commission as agent's fee.

C.C. de Castro

owner & representing

co-owners

This authority is on a first-come

First serve basis –CAC"

Constante signed the note as owner and as representative of the other co-owners. Under this note, a contract of agency was clearly constituted between Constante and Artigo. Whether Constante appointed Artigo as agent, in Constante's individual or representative capacity, or both, the De Castros cannot seek the dismissal of the case for failure to implead the other co-owners as indispensable parties. The De Castros admit that the other co-owners are solidarily liable under the contract of agency,[10] citing Article 1915 of the Civil Code, which reads:

Art. 1915. If two or more persons have appointed an agent for a common transaction or undertaking, they shall be solidarily liable to the agent for all the consequences of the agency.

The solidary liability of the four co-owners, however, militates against the De Castros' theory that the other co-owners should be impleaded as indispensable parties. A noted commentator explained Article 1915 thus—

“The rule in this article applies even when the appointments were made by the principals in separate acts, provided that they are for the same transaction. The solidarity arises from the common interest of the principals, and not from the act of constituting the agency. By virtue of this solidarity, the agent can recover from any principal the whole compensation and indemnity owing to him by the others. The parties, however, may, by express agreement, negate this solidary responsibility. The solidarity does not disappear by the mere partition effected by the principals after the accomplishment of the agency.

If the undertaking is one in which several are interested, but only some create the agency, only the latter are solidarily liable, without prejudice to the effects of negotiorum gestio with respect to the others. And if the power granted includes various transactions some of which are common and others are not, only those interested in each transaction shall be liable for it.”[11]

When the law expressly provides for solidarity of the obligation, as in the liability of co-principals in a contract of agency, each obligor may be compelled to pay the entire obligation.[12] The agent may recover the whole compensation from any one of the co-principals, as in this case.

Indeed, Article 1216 of the Civil Code provides that a creditor may sue any of the solidary debtors. This article reads:

Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Thus, the Court has ruled in *Operators Incorporated vs. American Biscuit Co., Inc.*[13] that—

“x x x solidarity does not make a solidary obligor an indispensable party in a suit filed by the creditor. Article 1216 of the Civil Code says that the creditor ‘may proceed against anyone of the solidary debtors or some or all of them simultaneously.’” (Emphasis supplied)

Second Issue: whether Artigo's claim has been extinguished by full payment, waiver or abandonment

The De Castros claim that Artigo was fully paid on June 14, 1985, that is, Artigo was given “his proportionate share and no longer entitled to any balance.” According to them, Artigo was just one of the agents involved in the sale and entitled to a “proportionate share” in the commission. They assert that Artigo did absolutely nothing during the second negotiation but to sign as a witness in the deed of sale. He did not even prepare the documents for the transaction as an active real estate broker usually does.

The De Castros' arguments are flimsy.

A contract of agency which is not contrary to law, public order, public policy, morals or good custom is a valid contract, and constitutes the law between the parties.[14] The contract of agency entered into by Constante with Artigo is the law between them and both are bound to comply with its terms and conditions in good faith.

The mere fact that “other agents” intervened in the consummation of the sale and were paid their respective commissions cannot vary the terms of the contract of agency granting Artigo a 5 percent commission based on the selling price. These “other agents” turned out to be employees of Times Transit, the buyer Artigo introduced to the De Castros. This prompted the trial court to observe:

“The alleged ‘second group’ of agents came into the picture only during the so-called ‘second negotiation’ and it is amusing to note that these (sic) second group, prominent among whom are Atty. Del Castillo and Ms. Prudencio, happened to be employees of Times Transit, the buyer of the properties. And their efforts were limited to convincing Constante to ‘part away’ with the properties because the redemption period of the foreclosed properties is around the corner, so to speak. (tsn. June 6, 1991).

x x x

To accept Constante’s version of the story is to open the floodgates of fraud and deceit. A seller could always pretend rejection of the offer and wait for sometime for others to renew it who are much willing to accept a commission far less than the original broker. The immorality in the instant case easily presents itself if one has to consider that the alleged ‘second group’ are the employees of the buyer, Times Transit and they have not bettered the offer secured by Mr. Artigo for P7 million.

It is to be noted also that while Constante was too particular about the unexpired real estate broker’s license of Mr. Artigo, he did not bother at all to inquire as to the licenses of Prudencio and Castillo. (tsn, April 11, 1991, pp. 39-40).”[15] (Emphasis supplied)

In any event, we find that the 5 percent real estate broker’s commission is reasonable and within the standard practice in the real estate industry for transactions of this nature.

The De Castros also contend that Artigo’s inaction as well as failure to protest estops him from recovering more than what was actually paid him. The De Castros cite Article 1235 of the Civil Code which reads:

Art. 1235. When the obligee accepts the performance, knowing its incompleteness and irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.

The De Castros’ reliance on Article 1235 of the Civil Code is misplaced. Artigo’s acceptance of partial payment of his commission neither amounts to a waiver of the balance nor puts him in estoppel. This is the import of Article 1235 which was explained in this wise:

“The word accept, as used in Article 1235 of the Civil Code, means to take as satisfactory or sufficient, or agree to an incomplete or irregular performance. Hence, the mere receipt of a partial payment is not equivalent to the required acceptance of performance as would extinguish the whole obligation.”[16] (Emphasis supplied)

There is thus a clear distinction between acceptance and mere receipt. In this case, it is evident that Artigo merely received the partial payment without waiving the balance. Thus, there is no estoppel to speak of.

The De Castros further argue that laches should apply because Artigo did not file his complaint in court until May 29, 1989, or almost four years later. Hence, Artigo’s claim for the balance of his commission is barred by laches.

Laches means the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[17]

Artigo disputes the claim that he neglected to assert his rights. He was appointed as agent on January 24, 1984. The two lots were finally sold in June 1985. As found by the trial court, Artigo demanded in April and July of

1985 the payment of his commission by Constante on the basis of the selling price of P7.05 million but there was no response from Constante.[18] After it became clear that his demands for payment have fallen on deaf ears, Artigo decided to sue on May 29, 1989.

Actions upon a written contract, such as a contract of agency, must be brought within ten years from the time the right of action accrues.[19] The right of action accrues from the moment the breach of right or duty occurs. From this moment, the creditor can institute the action even as the ten-year prescriptive period begins to run.[20]

The De Castros admit that Artigo's claim was filed within the ten-year prescriptive period. The De Castros, however, still maintain that Artigo's cause of action is barred by laches. Laches does not apply because only four years had lapsed from the time of the sale in June 1985. Artigo made a demand in July 1985 and filed the action in court on May 29, 1989, well within the ten-year prescriptive period. This does not constitute an unreasonable delay in asserting one's right. The Court has ruled, "a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief." [21] In explaining that laches applies only in the absence of a statutory prescriptive period, the Court has stated -

"Laches is recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches, cannot, as a rule, be used to abate a collection suit filed within the prescriptive period mandated by the Civil Code." [22]

Clearly, the De Castros' defense of laches finds no support in law, equity or jurisprudence.

Third issue: whether the determination of the purchase price was made in violation of the Rules on Evidence

The De Castros want the Court to re-examine the probative value of the evidence adduced in the trial court to determine whether the actual selling price of the two lots was P7.05 million and not P3.6 million. The De Castros contend that it is erroneous to base the 5 percent commission on a purchase price of P7.05 million as ordered by the trial court and the appellate court. The De Castros insist that the purchase price is P3.6 million as expressly stated in the deed of sale, the due execution and authenticity of which was admitted during the trial.

The De Castros believe that the trial and appellate courts committed a mistake in considering incompetent evidence and disregarding the best evidence and parole evidence rules. They claim that the Court of Appeals erroneously affirmed sub silentio the trial court's reliance on the various correspondences between Constante and Times Transit which were mere photocopies that do not satisfy the best evidence rule. Further, these letters covered only the first negotiations between Constante and Times Transit which failed; hence, these are immaterial in determining the final purchase price.

The De Castros further argue that if there was an undervaluation, Artigo who signed as witness benefited therefrom, and being equally guilty, should be left where he presently stands. They likewise claim that the Court of Appeals erred in relying on evidence which were not offered for the purpose considered by the trial court. Specifically, Exhibits "B", "C", "D" and "E" were not offered to prove that the purchase price was P7.05 Million. Finally, they argue that the courts a quo erred in giving credence to the perjured testimony of Artigo. They want the entire testimony of Artigo rejected as a falsehood because he was lying when he claimed at the outset that he was a licensed real estate broker when he was not.

Whether the actual purchase price was P7.05 Million as found by the trial court and affirmed by the Court of Appeals, or P3.6 Million as claimed by the De Castros, is a question of fact and not of law. Inevitably, this calls for an inquiry into the facts and evidence on record. This we can not do.

It is not the function of this Court to re-examine the evidence submitted by the parties, or analyze or weigh the evidence again.[23] This Court is not the proper venue to consider a factual issue as it is not a trier of facts. In

petitions for review on certiorari as a mode of appeal under Rule 45, a petitioner can only raise questions of law. Our pronouncement in the case of *Cormero vs. Court of Appeals*[24] bears reiteration:

“At the outset, it is evident from the errors assigned that the petition is anchored on a plea to review the factual conclusion reached by the respondent court. Such task however is foreclosed by the rule that in petitions for certiorari as a mode of appeal, like this one, only questions of law distinctly set forth may be raised. These questions have been defined as those that do not call for any examination of the probative value of the evidence presented by the parties. (*Uniland Resources vs. Development Bank of the Philippines*, 200 SCRA 751 [1991] citing *Goduco vs. Court of appeals, et al.*, 119 Phil. 531; *Hernandez vs. Court of Appeals*, 149 SCRA 67). And when this court is asked to go over the proof presented by the parties, and analyze, assess and weigh them to ascertain if the trial court and the appellate court were correct in according superior credit to this or that piece of evidence and eventually, to the totality of the evidence of one party or the other, the court cannot and will not do the same. (*Elayda vs. Court of Appeals*, 199 SCRA 349 [1991]). Thus, in the absence of any showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this court is not expected or required to examine or contrast the oral and documentary evidence submitted by the parties. (*Morales vs. Court of Appeals*, 197 SCRA 391 [1991] citing *Santa Ana vs. Hernandez*, 18 SCRA 973 [1966]).”

We find no reason to depart from this principle. The trial and appellate courts are in a much better position to evaluate properly the evidence. Hence, we find no other recourse but to affirm their finding on the actual purchase price.

Fourth Issue: whether award of moral damages and attorney’s fees is proper

The De Castros claim that Artigo failed to prove that he is entitled to moral damages and attorney’s fees. The De Castros, however, cite no concrete reason except to say that they are the ones entitled to damages since the case was filed to harass and extort money from them.

Law and jurisprudence support the award of moral damages and attorney’s fees in favor of Artigo. The award of damages and attorney’s fees is left to the sound discretion of the court, and if such discretion is well exercised, as in this case, it will not be disturbed on appeal.[25] Moral damages may be awarded when in a breach of contract the defendant acted in bad faith, or in wanton disregard of his contractual obligation.[26] On the other hand, attorney’s fees are awarded in instances where “the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff’s plainly valid, just and demandable claim.”[27] There is no reason to disturb the trial court’s finding that “the defendants’ lack of good faith and unkind treatment of the plaintiff in refusing to give his due commission deserve censure.” This warrants the award of P25,000.00 in moral damages and P45,000.00 in attorney’s fees. The amounts are, in our view, fair and reasonable. Having found a buyer for the two lots, Artigo had already performed his part of the bargain under the contract of agency. The De Castros should have exercised fairness and good judgment in dealing with Artigo by fulfilling their own part of the bargain - paying Artigo his 5 percent broker’s commission based on the actual purchase price of the two lots.

WHEREFORE, the petition is denied for lack of merit. The Decision of the Court of Appeals dated May 4, 1994 in CA-G.R. CV No. 37996 is AFFIRMED in toto.

SO ORDERED.

Puno, (Chairman), and Panganiban, JJ., concur.

Sandoval-Gutierrez, J., no part due to close family relation with a party.

[1] Under Rule 45 of the Rules of Court.

- [2] Seventh Division composed of Justices Ricardo J. Francisco (Chairman and Ponente); Salome A. Montoya and Ramon A. Barcelona (Members).
- [3] Penned by Judge Benigno T. Dayaw.
- [4] When referred to collectively.
- [5] Referring to the De Castros.
- [6] Referring to Artigo.
- [7] Rule 3, Section 7 of the Rules of Court; *Seno vs. Mangubat*, 156 SCRA 113 (1987); *Quisumbing vs. Court of Appeals*, 189 SCRA 325 (1990); *Lozano vs. Ballesteros*, 195 SCRA 681 (1991).
- [8] *Ibid*.
- [9] Vicente J. Francisco, *The Revised Rules of Court*, Vol. 1, p. 271, 1973 ed.
- [10] Memorandum of Petitioner dated April 23, 1997, p.8; Rollo, p. 175.
- [11] Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 5, pp. 428-429, 1992 ed.
- [12] Art. 1207 of the Civil Code provides as follows: “Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.”
- [13] 154 SCRA 738 (1987), reiterated in *Republic vs. Sandiganbayan*, 173 SCRA 72 (1989).
- [14] *San Andres vs. Rodriguez*, 332 SCRA 769 (2000).
- [15] Decision dated December 20, 1991 of RTC Judge Benigno T. Dayan, Rollo, pp. 33-34.
- [16] Tolentino, *supra*, see note 11, Vol. 4, p. 279.
- [17] *Republic vs. Court of Appeals*, 301 SCRA 366 (1999); *Ochagabia vs. Court of Appeals*, 304 SCRA 587 (1999).
- [18] RTC Decision, p. 7; Rollo, pp. 20-36, see p. 35.
- [19] Article 1144 of the Civil Code provides as follows: “Art. 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; (3) Upon a judgment.”
- [20] Tolention, *supra*, see note 16, p. 44.
- [21] *Agra vs. Philippine National Bank*, 309 SCRA 509 (1999).
- [22] *Ibid*.
- [23] *Moomba Mining Exploration Company vs. Court of Appeals*, , 317 SCRA 388 (1999).

[24] 247 SCRA 291 (1995).

[25] Barzaga vs. Court of Appeals, 268 SCRA 105 (1997).

[26] Jose C. Vitug, Compendium of Civil Law and Jurisprudence, p. 841, 1993 Ed.

[27] Art. 2208, Civil Code of the Philippines.

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