

ATTY. MARTIN T. SUELTO, PETITIONER, VS. NELSON A. SISON, EMIL A. SISON, FRANKLIN A. SISON AND SANTOS LAND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 158130. July 29, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the decision of the Court of Appeals[1] reversing that of the Regional Trial Court (RTC) of Davao City[2] which adjudged herein respondents brothers Nelson, Emil and Franklin, all surnamed Sison, to pay herein petitioner Atty. Martin T. Suelto the sum of P100,000.00 "for and as notarial fees for services the latter has rendered, as well as actual litigation costs in the form of filing and docket fees,"[3] petitioner lodged the present Petition for Review on Certiorari.

Before January 15, 1994, respondents Sison brothers started negotiating for the sale of their three (3) parcels of land to their herein co-respondent Santos Land Development Corporation (the corporation).

In the series of negotiations, Atty. Danilo A. Basa, one of two[4] retained counsel of the corporation,[5] was present in order to incorporate whatever the parties agreed upon in the draft of the Memorandum of Agreement (MOA)[6] and the Deed of Absolute Sale they were going to forge.

A Road Right-of-Way Agreement[7] between the Heirs of Bernardo D. Carpio and the Sisons reading:

x x x

WITNESSETH:

WHEREAS, the persons composing the FIRST PARTY are the surviving heirs and successors-in-interest of the late BERNARDO D. CARPIO, the late husband of SOL T. CARPIO, one of the signatories herein, and the father of the rest of the signatories to this agreement;

WHEREAS, the late BERNARDO D. CARPIO, on the one hand, and C. A. SISON ENTERPRISES, INC. & CONCORDIA A. SISON, on the other hand, executed a document called "Road Right-of-Way Agreement" dated May 29, 1984, consisting of three (3) pages and entered in the Notarial Registry of Notary Public Renato B. Pagatpatan of Davao City as Doc. No. 78; Page No. 16; Book No. 21; Series of 1984;

WHEREAS, the parties composing the SECOND PARTY are the successors-in-interests of C.A. SISON ENTERPRISES, INC. and Concordia A. Sison;

WHEREAS, the parties herein have agreed to go on with and fulfill the aforesaid "Road Right-of-Way Agreement";

NOW THEREFORE, for and in consideration of the foregoing, the parties herein have agreed, as follows:

- That by this agreement, the rights and obligation of the late Bernardo D. Carpio under the aforesaid "Road

Right-of-Way Agreement" are deemed to have been transmitted to the FIRST PARTY [while] those rights and obligations under the same "Road Right-of-Way Agreement" pertaining to C. A. SISON ENTERPRISES, INC. and Concordia A. Sison are deemed to have been transmitted to the SECOND PARTY. A copy of the aforesaid "Road Right-of-Way Agreement" is attached to this agreement as Annex "A" to form an integral part thereof; shall (sic)

- That the parties have the right to assign, transfer, or in any other way, transmit their rights and obligations under this agreement and the aforesaid "Road Right-of-Way Agreement" — Annex "A" hereof, to any party or parties provided that the party making such assignment, or transfer shall give notice to the other;

- That the two (2) year period mentioned in paragraph 1 found on page 1 of the Road Right-of-Way Agreement - Annex "A" hereof shall be reckoned from _____ (sic), 1994.

x x x[8] (Emphasis and underscoring supplied),

was in the meantime prepared and signed by the parties. It was notarized by the Sisons' counsel Atty. Arturo V. Agudo on January 10, 1994.

On January 15, 1994, the parties agreed to conclude and sign the MOA prepared by Atty. Basa whereon the Sisons had in fact affixed their signatures.[9] The parties met at the office of the corporation.

Since Atty. Basa was at the time out of the country, the corporation asked its other retained counsel, herein petitioner, to give the MOA a final look.

On perusing the MOA prepared by Atty. Basa, petitioner inputed therein the names of the respective spouses of the Sisons. And to paragraph 5(h) of the MOA which reads:

(h) That the FIRST PARTY shall within thirty (30) days from date of execution of this document undertake the delineation of the Road Right of Way Agreement as stipulated in the Road Right of Way Agreement dated May 29, 1984 between Bernardo Carpio and C.A. Sison Enterprises, Inc. and Concordia A. Sison.[10] (Underscoring supplied),

petitioner added a second sentence reading:

The delineation shall include the technical description of the exact location of the Road Right of Way which should be incorporated in an affidavit of confirmation thereof to be executed by the parties therein and/or their duly authorized representatives and which should be accordingly registered in the involved certificates o[f] title in the office of the Register of Deeds by and at the expense of the FIRST PARTY.

x x x[11] (Underscoring supplied).

Aside from incorporating to the MOA the above-stated amendments, petitioner prepared a Joint Affidavit of Clarification and Confirmation (Joint Affidavit),[12] in conformity with the immediately-quoted second sentence he introduced to paragraph 5(h) of the MOA, executed by Sol T. Carpio as representative of Bernardo D. Carpio, and Nelson A. Sison as representative of the Sisons, reading:

WE, SOL T. CARPIO, of legal age, widow, Filipino and a resident of Davao City, Philippines, and NELSON A. SISON, of legal age, Filipino, married and a resident of Davao City, Philippines, after having been duly sworn to in accordance with law hereby depose and say that:

That we are both representatives of the parties to that ROAD RIGHT OF WAY AGREEMENT dated May 29, 1984 by and between Bernardo Carpio and C.A. Sison Enterprises, Inc., and Concordia A. Sison; Sol T. Carpio being the widow of Bernardo Carpio and the attorney-in-fact of her children who are her co-heirs of said decedent (Bernardo Carpio) while Nelson A. Sison is duly authorized representative of C.A. Sison Enterprises,

Inc., and Concordia A. Sison, as well as the registered owner himself of one of the parcels of land involved in the aforementioned Road Right of Way Agreement;

That while the specific location and technical description of the area agreed by the parties have already been determined and in fact actually established on the ground, the same was not properly indicated or annotated in the Certificates of Title thereof, hence, the need of this affidavit for that purpose, and thus be duly annotated.

That the aforementioned area subject-matter of the aforementioned Road Right of Way Agreement, as now established, has the following Technical Description, to wit:

x x x (Emphasis and underscoring supplied).

A pertinent provision in the MOA prepared by Atty. Basa, which was retained in the final MOA, called for the retention by the corporation of 10% of the total purchase price for the following purpose:[13]

(3) x x x

(b) . . . Provided, further, that the [CORPORATION] shall withhold an amount equivalent to TEN PERCENT (10%) of the total purchase price to defray expenses for taxes, notarial and attorney's fees and other fees and charges and incidental expenses relative to the sale of the parcels of land and the improvements thereof and to carry out the transfer thereof to the [CORPORATION]. (Emphasis and underscoring supplied).

There was, however, no agreement on the amount of notarial fees to be paid or taken from the 10% retained amount.[14]

On January 15, 1994, the Sisons and the corporation affixed their signatures on the MOA, as finalized by petitioner who notarized it on even date.

The Sisons and the corporation subsequently executed three Deeds of Absolute Sale dated February 11, 1994 covering the 3 Sison properties[15] in favor of the corporation. The deeds of sale were notarized by the Sisons' counsel Atty. Agudo.

On February 3, 1994, the corporation received from petitioner a Statement of Account[16] dated January 15, 1994 addressed to it, "for the account of Nelson A. Sison, Emil A. Sison and Franklin A. Sison," wherein petitioner made the following billing:

Legal fees for preparation and notarization of Memorandum of Agreement dated January 15, 1994 between Santos Land Development Corporation and Nelson A. Sison, Emil A. Sison and Franklin A. Sison recorded as Doc. No. 06; Page No. 03, Book No. XVI, Series of 1994 at the minimum rate of one and one-half per cent (1½) of the consideration of P40,274,870.00; for final preparation of the Deeds of Absolute Sale per stipulations therein but was notarized by another lawyer after signing thereof . . .

P604,123.05

(Emphasis and underscoring supplied).

On February 7, 1994, Mrs. Sol T. Carpio and Nelson Sison signed the Joint Affidavit[17] prepared and notarized on even date by petitioner.

It appears that petitioner sent a letter dated February 18, 1994 to the Sisons stating his fees and charges in connection with the preparation of documents on the sale. For by letter of February 21, 1994,[18] the Sisons wrote petitioner the following:

We received your letter dated February 18, 1994, stating your fees and charges regarding the preparation of documents of the Deed of Sale of our land to Santos Land. The families of Franklin, Emil and Nelson would

like to make it clear to you that it is our understanding with the Santos Land particularly with Mrs. Nelia Partoza (President of Santos Land) that all documents regarding the sale of the lands to be sold will be prepared by the Sison family with their chosen lawyer/adviser which is not you.

We made this clear to them because our family is also in the subdivision business and the preparation of the Deed of Sale and other pertinent papers regarding its transfer to the buyers is just an ordinary thing to us and to our lawyer.

You have never been hired by us or asked your help in any matter dealing with the sale of our land to Santos Land in all our talk to Santos Land you are always the adviser of Santos Land and not on our side. We have our own legal adviser so you have no right to charge us with any legal fees whatsoever.

In the making of the memorandum agreement between Santos Land and Sison family, it has been our understanding with Mrs. Nelia Partoza that they will shoulder all expenses regarding its being finalized.

We hope that this letter will clarify everything regarding the matter of fees. (Emphasis and underscoring supplied).

A copy of the Sisons' February 21, 1994 letter was received on February 26, 1994[19] by the corporation.

In the meantime, the Sisons requested from the corporation through its President, Nelia D. Partoza, the remittance to them of the balance of the 10% of the purchase price retained pursuant to the earlier-quoted paragraph 3(b) of the MOA. Partoza complied with the request, drawing the Sisons to send her a letter of April 28, 1994[20] reading:

We thank you very much for releasing the checks covering the balance of the 10 percent retention.

We have transferred and given to you the title of the lands which you bought from us and all legal fees, taxes and incidental expenses have already been covered by us.

As to the case of your legal adviser and retainer Atty. Martin Suelto, please refer to the letter which we wrote to him and of which you have been copy furnished.

Enclosed herewith is the copy of the letter which we sent to him for your perusal. (Underscoring supplied).

The April 28, 1994 letter of the Sisons was received by the corporation on April 29, 1994.[21] The records do not show that this letter drew any comment or response from the corporation.

As petitioner failed to collect his fees in connection with his finalization and notarization of the MOA and preparation and notarization of the Joint Affidavit of Clarification and Confirmation, he filed on August 24, 1994 a complaint before the RTC of Davao City for Collection of Sum of Money and Attorney's Fees[22] against the Sisons alleging, inter alia, that:

x x x

- Plaintiff prepared and notarized a MEMORAN-DUM OF AGREEMENT dated January 15, 1994 between Santos Land Development Corporation and defendants Emil A. Sison, Franklin A. Sison, and Nelson A. Sison, the latter in his personal capacity and as the attorney-in-fact for Franklin A. Sison, concerning the sale of certain parcels of land, recorded in his Notarial Register as Doc. No. 06; Page No. 03; Book No. XVI, Series of 1994, copy hereto attached and made integral part hereof as Annex "A".

- Paragraph 3 (b) of the aforementioned Memorandum of Agreement, provides:

x x x x

- That the total price of FORTY MILLION TWO HUNDRED SEVENTY FOUR THOUSAND EIGHT

HUNDRED SEVENTY (P40,274,870.00) PESOS shall be payable in accordance with the following manner:

(a) x x x x

(b) That the balance of THIRTY FOUR MILLION TWO HUNDRED THIRTY THREE THOUSAND SIX HUNDRED THIRTY NINE PESOS & 50/100 (P34,233,639.50) shall be payable in three (3) years computed five months after the date of execution of this Memorandum of Agreement. Provided, that payments herein shall be payable in equal quarterly installments covered by postdated checks of the SECOND PARTY. Provided, further, that the SECOND PARTY shall withhold an amount equivalent to TEN PERCENT (10%) of the total purchase price to defray expenses for taxes, notarial and attorney's fees and other fees and charges and incidental expenses relative to the sale of the parcels of land and the improvements thereof and to carry out the transfer thereof to the SECOND PARTY.

x x x x (Emphasis supplied by petitioner)

- Furthermore, he gave extensive legal advises (sic) and services to the defendants concerning the implementation of the Memorandum of Agreement. Plaintiff likewise prepared and notarized a JOINT AFFIDAVIT OF CLARIFICATION AND CONFIRMATION between Sol T. Carpio and Nelson A. Sison concerning a ROAD RIGHT OF WAY AGREEMENT affecting the parcels of land subject of the Memorandum of Agreement and the deeds of Absolute Sale, to facilitate and expedite the implementation of the said Memorandum of Agreement.

x x x x

- For failure and refusal of the defendants to pay the just claim of plaintiff, plaintiff was constrained to engage the services of counsel on a contingent basis equal to 25% of whatever plaintiff may recover from defendants for which defendants should be held liable.

- Plaintiff will spend about TEN THOUSAND PESOS (P10,000.00) to file and prosecute this case but the exact amount shall be proved during the trial of this case.[23]

The Sisons, in their Answer with Counterclaim,[24] denied having any obligation to petitioner, they alleging that they never engaged his legal services nor received any legal advice from him as it was the corporation, petitioner's client, which retained his services and requested him to finalize and notarize the MOA prepared by Atty. Basa; and that they had no obligation in his preparation and notarization of the Joint Affidavit.

As special defense, the Sisons alleged that when petitioner finalized and notarized the MOA and prepared the Joint Affidavit, the corporation assured them that it would take care of his legal fees.

By way of compulsory counterclaim, the Sisons alleged that the filing of the baseless complaint against them was malicious, as a result of which they were compelled to engage the services of counsel to protect them and would likely incur incidental expenses of at least P10,000.00; moral damages in the amount of P500,000.00 each, and exemplary damages in the amount of P50,000.00 each.[25]

The Sisons later filed a Third Party Complaint[26] against the corporation, alleging, inter alia, as follows:

x x x

4. Inasmuch as it was third-party defendant which retained the services of [petitioner] in connection with the notarization of the said memorandum of agreement including the other related documents and committed to pay all the legal fees therefor, then the fees being collected by plaintiff should be borne solely by the third-party defendant;

5. However, third-party defendant failed to make the necessary arrangement for the payment of Atty. Suelto's attorney's fees as a consequence of which third-party plaintiffs were unnecessarily haled to court by Atty.

Suelto and was thereafter compelled to file this third-party complaint for which they incurred expenses of P50,000.00 as and by way of attorney's fees.[27] (Underscoring supplied).

The Third Party Complaint thus prayed that judgment be rendered ordering the third party defendant-corporation to indemnify third party plaintiffs, the Sisons, for whatever they may be required to pay petitioner and to pay them P50,000.000 for attorney's fees.[28]

To the Third Party Complaint the corporation filed their Answer,[29] alleging, inter alia, that the Sisons had no cause of action against it, it being their agreement that the Sisons would "pay the services of petitioner."

Upon the following issues, to wit:

- Whether or not plaintiff has been retained by, and/or rendered legal services to, either of the other parties (defendants/third-party plaintiffs and third-party defendant) in connection with the preparation and notarization of the Memorandum of Agreement and other documents and legal advices as to justify him to claim for such fees, and whether the fees had been agreed upon beforehand?
- Assuming the plaintiff is entitled to claim notarial and attorney's fees, who is liable to pay the same, and whether the amount being claimed is fair and reasonable?
- On the part of the plaintiff, whether he is entitled to damages and attorney's fees from the defendant/third-party plaintiffs; on the part of the defendants/third-party plaintiffs, whether [they are] entitled to damages and attorney's fees from the plaintiff on [their] counterclaim and for reimbursement from the third-party defendant; and on the part of the third-party defendant, whether it is entitled to its claim for damages and attorney's fees from defendants/third-party plaintiffs. (Underscoring supplied),

the trial court, Branch 33 of the RTC of Davao, by decision of July 28, 1997,[30] held that the participation of petitioner in the final negotiation of the sale was not as lawyer of the Sisons but of the corporation, and if petitioner rendered some advice in connection therewith, it should be for the account of the corporation in accordance with their Retainership Agreement.

Respecting notarial fees, the trial court found no evidence to show that the parties had any agreement beforehand on the amount thereof.

On the 10% retention provision in the MOA, the trial court held that the same was not for attorney's and notarial fees alone, it having stated that it was "to defray expenses for taxes, notarial and attorney's fees, and other fees and charges and incidental expenses relative to the sale . . . and to carry out the transfer [of the properties] to [the corporation]."

Passing on the services of petitioner, the trial court held that with respect to the MOA, as finalized, he did some revisions thereon, albeit "the revision . . . to include the names of the wives of the Sisons is not material to the effectivity of the MOA . . ." As for the addition by petitioner of a sentence to paragraph 5(h) bearing on the Road Right-of-Way provision, the trial court held:

The clause "x x x exact location of the Road Right of Way which should be incorporated in an affidavit of confirmation thereof to be executed by the parties therein and/or their duly authorized representatives and which should be accordingly registered in the involved certificates of title in the office of the Register of Deeds by and at the expense of the FIRST PARTY", which was added on by the plaintiff to the MOA is but an amplification of the first clause in the paragraph, and may even be dispensed with. As a matter of fact, the Memorandum of Agreement (Exh. 6) which was already signed by the SISIONS when presented to SUELTO had this last sentence in its paragraph 5(h): "The delineation shall include the Technical Description of the road register (sic) with the Register of Deeds" which practically encompasses the idea suggested in the revision made by the plaintiff. If the delineation shall include the technical description then the exact location of the

road will definitely be identified. This delineation will definitely be in a public instrument in order that it will be registered with the Register of Deeds. There is no need for the confirmation of Sol T. Carpio because the original Road Right of Way Agreement was already embodied in a public instrument, and binding on the successors-in-interest of the contracting parties, and there is no indication that the heirs of Bernardo Carpio are reneging on that agreement. At most, plaintiff could have refined the last sentence in paragraph 5(h) of Exh. 6 by adding a word or words between "road" and "register" and it would have served the import of paragraph 5(h).[31] (Emphasis and underscoring supplied).

In other words, the trial court found that petitioner's addition of the second sentence to paragraph 5(h) of the MOA was a mere amplification of the first sentence thereof, and the execution of the Joint Affidavit was not necessary as the Road Right-of-Way Agreement dated May 29, 1984 was embodied in a public instrument which is binding on the successors-in-interest of the parties absent any indication that the heirs of Bernardo D. Carpio are reneging on that agreement.

In any event, the trial court held that petitioner's preparation and notarization of the Joint Affidavit was done "not for the benefit of the Sisons but for the benefit of his client, the corporation, and that the argument of petitioner that the January 10, 1994 Road Right-of-Way Agreement earlier prepared, signed by the parties, and notarized by the Sisons" counsel Atty. Agudo could not be registered in the absence of technical description of the properties covered is untenable, for the Registry of Deeds has the ministerial duty to register deeds, conveyances, and the like, whether effecting registered or unregistered land, executed in accordance with law in the form of public instruments.

The trial court added that the technical description of the Road Right-of-Way is needed only for purposes of issuing a separate title and that even without the technical description, the agreement may still be annotated on the grantor's certificate of title.

Be that as it may, the trial court held that since the Sisons were likewise benefited by petitioner's notarization of the MOA and of the Joint Affidavit, "it is only proper that they should recompense" him, pursuant to the earlier-quoted provision of the MOA on the retention of 10% of the purchase price, citing Article 2142 of the Civil Code which provides:

ART. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi contract to the end that no one shall be unjustly enriched or benefited at the expense of another.

Holding that the notarial services done by petitioner must be based on quantum meruit, there being no prior agreement thereon, the trial court found petitioner's bill for P604,123.05 unreasonable, unconscionable and grossly inflated, citing Section 24, Rule 138 of the Rules of Court which provides:

SEC. 24. An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefore unless found by the court to be unconscionable or unreasonable. (Underscoring supplied).

The trial court, noting that petitioner's services were limited to "perusing the MOA (Exhibit. 6), going over what [had] already been agreed upon and therefore, in [petitioner's] own word, he could not change what [the parties thereto] had agreed upon, and making two (2) additions in the MOA, one of which, as stated earlier, is a mere amplification of what had already been agreed upon, [the other being the furnishing of the names of the respective spouses of the Sisons], and . . . preparing the Joint Affidavit of Clarification and Confirmation, which to the mind of the Court benefited most his client, and which could have been prepared by [the] SISON'S' lawyer just as

well,"[32] and taking into account the value of the properties sold — P40 million plus — , held that the amount of P100,000.00 as notarial fees is reasonable and conscionable.

Accordingly, the trial court disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered adjudging the defendants SISON liable to pay SUELTO the sum of P100,000.00 for and as notarial fees for services the latter has rendered, as well as actual litigation costs in the form of filing and docket fees.

The counterclaim of the SISIONS and the counterclaim of SANTOS LAND are dismissed for lack of merit.

SO ORDERED.[33]

On appeal to the Court of Appeals, the defendants-third party-plaintiffs Sisons assigned to the trial court the following errors:

- THE LOWER COURT ERRED IN HOLDING DEFENDANTS-THIRD PARTY PLAINTIFFS-APPEL-LANTS LIABLE TO PAY THE NOTARIAL FEES OF PLAINTIFF-APPELLEE AS IT DOES NOT CONFORM WITH ITS FINDING THAT IT WAS THIRD PARTY DEFENDANT-APPELLEE WHICH ENGAGED THE SERVICES OF PLAINTIFF-APPELLEE.
- THE LOWER COURT ERRED IN NOT FINDING THAT THE THIRD-PARTY DEFENDANT-APPELLEE ASSUMED THE RESPONSIBILITY OF PAYING PLAINTIFF-APPELLEE'S NOTARIAL FEES WHICH FACT IS SUPPORTED BY THE EVIDENCE.
- THE LOWER COURT ERRED IN FIXING THE NOTARIAL FEES OF PLAINTIFF-APPELLEE AT P100,000.00, THE SAME BEING UNCONSCIONABLE CONSIDERING THE FACT THAT HIS SERVICES CONSISTED IN MAKING MINOR AND INCONSEQUENTIAL REVISIONS IN AN ALREADY PREPARED MEMORANDUM OF AGREEMENT AND NOTARIZING THE SAME, AND PREPARING AND NOTARIZING A JOINT AFFIDAVIT OF CLARIFICATION AND CONFIRMATION WHICH WAS FOUND TO BE IMMATERIAL AND BENEFICIAL TO HIS CLIENT.[34] (Underscoring supplied).

By the assailed decision of October 30, 2002,[35] the appellate court reversed that of the trial court.

The appellate court agreed with the Sisons' contention that the trial court's judgment is inconsistent with its factual findings that it was the corporation which engaged petitioner's services in connection with the finalization and notarization of the MOA and preparation and notarization of the Joint Affidavit. It too agreed with the Sisons' claim that the corporation, being in the real estate business, agreed to assume petitioner's notarial fees.

In another vein, the appellate court, noting the provision in the MOA regarding the retention of the 10% selling price by the buyer corporation to be applied to expenses including notarial and attorney's fees and the corporation's returning of the balance thereof to the seller-Sisons in the amount of more than P600,000.00 despite the corporation's previous receipt of petitioner's Statement of Account and copy of petitioner's demand letter to the Sisons, held that the return of the said balance elicited "the clear and un rebutted presumption . . . that all expenses pertinent to the sale have been discharged."

Accordingly, the appellate court set aside the trial court's decision.

His motion for reconsideration[36] having been denied by Resolution of April 11, 2003[37] by the Court of Appeals, petitioner comes before this Court[38] raising the following issues:

- WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO THE EVIDENCE PRESENTED.

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE BEST EVIDENCE RULE.

- WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN MARGINAL[I]ZING THE SERVICES OF THE PLAINTIFF-APPELLANT.[39] (Underscoring supplied).

Why the Sisons are not amenable to settle petitioner's billing for notarial fees is reflected in the following transcript of Nelson Sison's testimony:

Q

Of course, when that Memorandum of Agreement was being finalized, you were very much aware of the fact that there is that provision about the payment of the notarial fees and the attorney's fees as provided in the Memorandum of Agreement, is it not?

A

Yes, sir.

Q

And you are aware of the fact that you are the one, under the agreement, who will be paying for the notarial fees and other fees of the lawyer?

A

Yes.

Q

And of course, that provision was eventually included in the final draft that you signed the Memorandum of Agreement, is it not?

A

Yes, sir.

Q

x x x You are willing to pay for the notarial fees after it is finished to be taken out of the ten percent retention?

A

Yes.

Q

But of course, your only objection is that, it should be a lawyer of your own choice?

A

Yes, sir.

x x x

Q

You said that when you objected to Attorney Suelto's notarizing the Memorandum of Agreement, Mrs. Partoza, as President of Santos Land assured you and I quote: "Amin na lang yan." When she told you: "AMIN NA LANG YAN", what was your understanding when she said "AMIN NA LANG YAN"?

A

Our understanding when she said "Amin na lang yan", on our objection why the name of our lawyer was changed to Atty. Suelto is that, inasmuch as Atty. Suelto, we believe is their retainer, and there are lots of lawyers retaining them, so, they will absorb the expenses, if there is any, on signing of the Memorandum of Agreement, for convenience of both. x x x[40] (Emphasis and underscoring supplied).

As gathered from the above-quoted transcript of Nelson Sison's testimony, the Sisons were "willing to pay for the notarial fees" to be charged to the 10% retained amount of the purchase price, if the lawyer notarizing it is one of their choice. That the Sisons wanted to have a lawyer of their choice to notarize the MOA could be on account of their desire to be "able to save some expenses," as gleaned from petitioner's testimony regarding Nelson Sison's alleged reason why it should be the Sisons' own lawyer who should notarize the Deed of Sale:

[ATTY. LOREJO]:

Q.

You notarized [the Deed of Absolute Sale]?

A

Well, it was supposed to be finalized after I made the corrections but then, the Sisons, more specially Nelson Sison, made a request that the document, the deed of sale should be notarized by their lawyer so that they will be able to save some expenses. . .[41] (Emphasis and underscoring supplied).

Why the corporation returned to the Sisons the balance of the 10% retained purchase price, despite its awareness that petitioner, its own retained counsel, had a pending request to it to settle his notarial fees from said 10% retained purchase price spawns conflicting versions. The corporation claims that the Sisons had told it that they would settle petitioner's notarial fees. The Sisons claim, on the other hand, that the corporation through Nelia Partoza undertook to settle the same.

What is clear, however, both in the pleadings and in the evidence of both parties, is that the notarial fees for the MOA, not to mention the Joint Affidavit, had not been paid. The appellate court's presumption that the notarial fees had been paid with the return by the corporation to the Sisons of the balance of the 10% retained purchase is thus incongruous with the clearly established fact that petitioner's notarial fees had not been paid.

As priorly stated, by Nelson Sison's admission, he and his siblings were willing to charge the payment of notarial fees to the 10% retained purchase price provided the lawyer-notary public was one of their choice. The MOA provision that notarial fees relative to the sale, among other expenses, would be charged to the 10% retained purchase price bears no qualification whatsoever, however, on which lawyer — whether of the Sisons or of the corporation — would perform notarial services for the provision to apply.

The Sisons, having agreed in the MOA, which is the law between them and the corporation, to charge notarial fees from the retained 10% of the purchase price, but the balance thereof having been returned to them without petitioner's notarial fees being settled, they are under obligation to settle the same, at a reasonable amount of course.

The trial court's determination of the amount of P100,000.00 as fair and reasonable notarial fees, inclusive of actual litigation cost, under the circumstances reflected above, merits this Court's approval. It levels the unreasonable, unconscionable billing of petitioner-retained counsel of the corporation and the desire of the Sisons made known to the corporation and petitioner to "save on expenses" by wanting a lawyer of their own choice to notarize the MOA and other documents.

WHEREFORE, the assailed decision of the Court of Appeals is hereby REVERSED and SET ASIDE, and the decision of Branch 33 of the Regional Trial Court of Davao City is, in light of the foregoing discussions, REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Corona, J., on official leave.

- [1] CA Rollo at 120-130.
- [2] Records at 244-269; CA Rollo at 48-73.
- [3] P3,861.75, dorsal side of page 1 of the Complaint, Records at 1.
- [4] TSN, October 11, 1996 at 9, Folder of TSN at 531.
- [5] TSN, July 15, 1996 at 11-12, Folder of TSN at 445-446.
- [6] Exhs. "6" - "6-e," Folder of Exhibits at 42-47.
- [7] Exh. "9," Folder of Exhibits at 61-63.
- [8] Ibid.
- [9] Supra, note 6.
- [10] Exh. "A" and "A-6," Folder of Exhibits at 1-7.
- [11] Ibid.
- [12] Exh. "B," Folder of Exhibits at 8-9.
- [13] Exh. "A-3," Folder of Exhibits at 4.
- [14] TSN, October 11, 1996 at 16, Folder of Exhibits at 538.
- [15] Exhs. "10," "11," and "12," Folder of Exhibits at 64-69.
- [16] Exh. "C," Folder of Exhibits at 10.
- [17] Supra, note 12.
- [18] Exh. "4," Folder of Exhibits at 40.
- [19] Ibid.
- [20] Exh. "5," Folder of Exhibits at 41.
- [21] Ibid.
- [22] Records at 1-5.
- [23] Id. at 2-4.
- [24] Id. at 19-22.

- [25] Id. at 21.
- [26] Id. at 59-62.
- [27] Id. at 60.
- [28] Ibid.
- [29] Id. at 85-89.
- [30] Id. at 244-269.
- [31] Id. at 264-265.
- [32] Id. at 71 (emphasis and underscoring supplied).
- [33] Page 25 of decision, Records at 268.
- [34] CA Rollo at 41.
- [35] Id. at 120-130.
- [36] Id. at 195-202.
- [37] Id. at 204-216.
- [38] Rollo at 5-24.
- [39] Id. at 6.
- [40] TSN, March 26, 1996 at 348-349, 351.
- [41] TSN, September 27, 1995 at 61-62.

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