

ADELA G. RAYMUNDO, EDGARDO R. RAYMUNDO, LOURDES R. RAYMUNDO, TERESITA N. RAYMUNDO, EVELYN R. SANTOS, ZENAIDA N. RAYMUNDO, LUIS N. RAYMUNDO, JR. AND LUCITA R. DELOS REYES, PETITI...

G.R. No. 171036. October 17, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Assailed in this petition for review are the Court of Appeals' Decision[1] dated October 10, 2005 and the Resolution[2] dated January 10, 2006 in CA-G.R. CV No. 75593.

The facts in this case are as follows:

Sometime in May 1996, petitioners approached respondent Lunaria to help them find a buyer for their property situated at Marilao, Bulacan with an area of 12,126 square meters for the amount of P60,630,000. Respondent Lunaria was promised a 5% agent's commission in the event that he finds a buyer. After respondents found a buyer, Cecilio Hipolito, an "Exclusive Authority to Sell"[3] was executed embodying the agreement made by the parties. After the corresponding Deed of Absolute Sale of Real Property[4] was registered in the Registry of Deeds, a copy thereof was given to the Far East Bank and Trust Co., which was then holding in escrow the amount of P50,000,000 to be disbursed or paid against the total consideration or price of the property.

On February 14, 1997, Ceferino G. Raymundo, one of the co-owners, advised respondents to go to the bank to receive the amount of P1,196,000 as partial payment of their total commission. Also, respondents were instructed to return after seven days to get the balance of the commission due them.

On February 21, 1997, respondents returned to the bank. However, the check covering the balance of their commission was already given by the bank manager to Lourdes R. Raymundo, the representative of the petitioners. Respondents tried to get the check from the petitioners, however, they were told that there is nothing more due them by way of commission as they have already divided and distributed the balance of the commissions among their nephews and nieces.

For their part, petitioners counter that there was a subsequent verbal agreement entered into by the parties after the execution of the written agreement. Said verbal agreement provides that the 5% agent's commission shall be divided as follows: 2/5 for the agents, 2/5 for Lourdes Raymundo, and 1/5 for the buyer, Hipolito. The share given to Lourdes Raymundo shall be in consideration for the help she would extend in the processing of documents of sale of the property, the payment of the capital gains tax to the Bureau of Internal Revenue and in securing an order from the court. The 1/5 commission given to Hipolito, on the other hand, will be used by him for the payment of realty taxes.

Hence, for failure of the respondents to receive the balance of their agent's commission, they filed an action for the collection of a sum of money before the Regional Trial Court of Valenzuela City, Branch 172. On January 22,

2002, the trial court rendered a Decision[5] in favor of the respondents. The dispositive portion of said decision reads:

WHEREFORE, judgment is hereby rendered as follows:

- 1) Ordering the defendants, jointly and severally, to pay the plaintiffs the amount of P1,834,900.00, representing the unpaid commission, plus interest thereon at the legal rate from the filing of this case until fully paid;
- 2) Ordering the defendants to, jointly and severally, pay the plaintiffs the amount of P200,000.00 as moral damages and the amount of P100,000.00 as exemplary damages; and
- 3) Ordering the defendants [to], jointly and severally, pay the plaintiffs the amount of P150,000.00 as attorney's fees, plus the costs of suit.

SO ORDERED.[6]

Aggrieved, petitioners appealed. In a Decision dated October 10, 2005, the Court of Appeals affirmed the decision of the trial court with the modification that the amount of moral and exemplary damages awarded to respondents shall be reduced. The dispositive portion reads:

WHEREFORE, the appealed Decision dated January 22, 2002 is affirmed, subject to the modification that the award of moral damages is reduced to P50,000.00 and exemplary damages to P25,000.00.

SO ORDERED.[7]

On October 28, 2005, petitioners filed a Motion for Reconsideration.[8] However, it was denied in a Resolution dated January 10, 2006. Hence, the instant petition raising the following issues:

I.

THE HONORABLE COURT SERIOUSLY ERRED IN APPLYING THE PAROLE EVIDENCE RULE IN THIS CASE (DECISION, PAGE 7, PARAGRAPH 1). THIS PRINCIPLE HAS NO APPLICATION TO THE FACTS OF THE INSTANT CASE.

II.

FURTHER, IT ERRED IN REQUIRING, ALBEIT IMPLICITLY, THE PETITIONERS TO ESTABLISH THE VERBAL AGREEMENT MODIFYING THE EARLIER WRITTEN AGREEMENT (THE EXCLUSIVE AUTHORITY TO SELL) BY MORE THAN A PREPONDERANCE OF EVIDENCE (DECISION, PAGE 8). THIS IS PLAINLY CONTRARY TO LAW THAT MERELY REQUIRES PREPONDERANCE OF EVIDENCE IN CIVIL CASES.

III.

FINALLY, EVEN CONCEDED FOR THE SAKE OF ARGUMENT THAT PETITIONERS STILL OWE THE RESPONDENTS THE "BALANCE" OF THEIR COMMISSION, THE HONORABLE COURT ERRED IN RULING THE PETITIONERS ARE EACH JOINTLY AND SEVERALLY [LIABLE] FOR THE PAYMENT OF THE ENTIRE BROKER'S FEES. THIS RULING HAS NO LEGAL BASIS AND IS CONTRARY TO ART. 1207 OF THE NEW CIVIL CODE.[9]

Plainly stated, the issues for resolution are: Did the Court of Appeals err (1) in applying the parole evidence rule; (2) in requiring petitioners to establish their case by more than a preponderance of evidence; and (3) in holding petitioners jointly and severally liable for the payment of the entire broker's fees?

Anent the first issue, petitioners contend that the Court of Appeals erred in applying the parole evidence rule to the

facts of the case because the verbal agreement was entered into subsequent to the written agreement. Further, they aver that there is no rule that requires an agreement modifying an earlier agreement to be in the same form as the earlier agreement in order for such modification or amendment to be valid.

Conversely, respondents argue that the Court of Appeals did not apply the parol evidence rule in this case. Although the appellate court stated and emphasized the general legal principle and rule on parol evidence, it did not apply the parol evidence rule with regard to the evidence adduced by the petitioners.

We rule for the respondents. To begin with, we agree with petitioners' claim that the parol evidence rule does not apply to the facts of this case. First, the parol evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, "at or before" the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract.^[10] Notably, the claimed verbal agreement was agreed upon not prior to but "subsequent to" the written agreement. Second, the validity of the written agreement is not the matter which is being put in issue here. What is questioned is the validity of the claim that a subsequent verbal agreement was agreed upon by the parties after the execution of the written agreement which substantially modified their earlier written agreement.

Nonetheless, even if we apply the parol evidence rule in this case, the evidence presented by the petitioners fell short in proving that a subsequent verbal agreement was in fact entered into by the parties. We subscribe to the findings of both the trial court and the appellate court that the evidence presented by petitioners did not establish the existence of the alleged subsequent verbal agreement. As pointed out by the trial court:

Note that no written evidence was presented by the defendants to show that the plaintiffs [herein respondents] agreed to the above-sharing of the commission. The fact is that the plaintiffs are denying having ever entered into such sharing agreement. For if the plaintiffs as sales agents indeed agreed to share the commission they are entitled to receive by virtue of the Exclusive Authority to Sell with Lourdes G. Raymundo and Hipolito, it passes understanding why no written agreement to that effect was ever made. The absence of such written agreement is mute but telling testimony that no such sharing arrangement was ever made.^[11]

As to the second issue, petitioners contend that the appellate court erred in requiring them to prove the existence of the subsequent verbal agreement by more than a mere preponderance of evidence since no rule of evidence requires them to do so. In support of this allegation, petitioners presented petitioner Lourdes Raymundo who testified that she was given 2/5 share of the commission pursuant to the verbal sharing scheme because she took care of the payment of the capital gains tax, the preparation of the documents of sale and of securing an authority from the court to sell the property.

For their part, respondents counter that the appellate court did not require petitioners to prove the existence of the subsequent oral agreement by more than a mere preponderance of evidence. What the appellate court said is that the petitioners failed to prove and establish the alleged subsequent verbal agreement even by mere preponderance of evidence.

Petitioners' abovecited allegation has no merit. By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other.^[12] It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.^[13]

Both the appellate court and trial court ruled that the evidence presented by the petitioners is not sufficient to support their allegation that a subsequent verbal agreement was entered into by the parties. In fact, both courts correctly observed that if Lourdes Raymundo was in reality offered the 2/5 share of the agent's commission for

the purpose of assisting respondent Lunaria in the documentation requirement, then why did the petitioners not present any written court order on her authority, tax receipt or sales document to support her self-serving testimony? Moreover, even the worksheet allegedly reflecting the commission sharing was unilaterally prepared by petitioner Lourdes Raymundo without any showing that respondents participated in the preparation thereof or gave their assent thereto. Even the alleged payment of 1/5 of the commission to the buyer to be used in the payment of the realty taxes cannot be given credence since the payment of realty taxes is the obligation of the owners, and not the buyer. Lastly, if the said sharing agreement was entered into pursuant to the wishes of the buyer, then he should have been presented as witness to corroborate the claim of the petitioners. However, he was not.

As to the third issue, petitioners contend that the appellate court erred in holding that the petitioners were each jointly and severally liable for the payment of the broker's fees. They contend that the Civil Code provides that unless the parties have expressly agreed to be jointly and severally liable for the entire broker's fees, each of the petitioners should only be held liable to the extent of their pro-indiviso share in the property sold.

For their part, respondents argue that the appellate court did not err in affirming the joint and several liability of the petitioners. They aver that if there was error on the part of the trial court, it was not raised or assigned as error by petitioners in their appeal. It was also not included in the Statement of Issues in their brief which they submitted for resolution by the Court of Appeals. In fact, the same was never mentioned, much less questioned, by petitioners in their brief.

On this score, we agree with respondents. The general rule is that once an issue has been adjudicated in a valid final judgment of a competent court, it can no longer be controverted anew and should be finally laid to rest.^[14] In this case, petitioners failed to address the issue on their solidary liability when they appealed to the Court of Appeals. They are now estopped to question that ruling. As to them, the issue on their liability is already valid and binding.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated October 10, 2005 and the Resolution dated January 10, 2006 of the Court of Appeals in CA-G.R. CV No. 75593 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 28-40. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga concurring.

[2] Id. at 43. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Roberto A. Barrios and Josefina Guevara-Salonga concurring.

[3] Exhibit "A," folder of exhibits, p. 1.

[4] Exhibit "3," folder of exhibits, pp. 6-10.

[5] Rollo, pp. 54-60. Penned by Judge Floro P. Alejo.

[6] Id. at 60.

[7] Id. at 40.

[8]CA rollo, pp. 166-175.

[9] Rollo, p. 17.

[10] Roble v. Arbasa, G.R. No. 130707, July 31, 2001, 362 SCRA 69, 82.

[11]Rollo, pp. 58-59.

[12]Floralde v. Court of Appeals, G.R. No. 123048, August 8, 2000, 337 SCRA 371, 377.

[13]Ong v. Yap, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 49-50.

[14]Rudecon Management Corporation v. Camacho, Adm. Case No. 6403, August 31, 2004, 437 SCRA 202, 206.

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