

LEDESCO DEVELOPMENT CORPORATION, PETITIONER, VS. WORLDWIDE STANDARD INTERNATIONAL REALTY, INC., RESPONDENT.

G.R. No. 173339. November 24, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Civil Procedure filed by Ledesco Development Corporation assailing the August 22, 2005 Decision[1] of the Court of Appeals (CA) in CA G.R. CV No. 61584 which ordered it to pay commissions to its contracted marketing agent, Worldwide Standard International Realty, Inc.

From the records, it appears that on December 21, 1993, respondent Worldwide Standard International Realty, Inc. (WSIRI) filed a collection suit against petitioner Ledesco Development Corporation (Ledesco) before the Regional Trial Court of Makati City (RTC). The case was docketed as Civil Case No. 93-4683 and raffled to Branch 134. In the said case, WSIRI sought to recover from Ledesco sums representing commissions on sales and interest thereon plus damages.[2]

The controversy centered on the interpretation of the provisions on the payment of commissions in the Project and Marketing Management Agreement (Agreement)[3] entered into by Ledesco and WSIRI on February 27, 1992. Under the Agreement, Ledesco appointed WSIRI as its marketing manager for the Makiling Heights Resort Subdivision project to generate sales to the general public.

The Agreement provides that Ledesco shall pay WSIRI a sales commission of ten percent (10%) based on the contract value of the sales and an additional two percent (2%) incentive if WSIRI meets the agreed quota of P30,000,000.00 within six (6) months from the signing thereof, or until August 27, 1992.[4]

The Agreement further stipulates that the commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment, and that the amount payable shall be proportional to the amount received, until the full downpayment and six (6) postdated checks are received. At such time, the full ten percent (10%) commission will be paid to WSIRI within four (4) days from receipt of the downpayment of the contract value.[5]

Moreover, in the event that Ledesco fails to pay the commission within four (4) banking days from clearance of buyer's check payment, a twenty-four percent (24%) "interest penalty" will automatically accrue in favor of WSIRI.[6]

In the Complaint, WSIRI alleged that despite Ledesco's receipt of the full downpayment on the transactions attributable to its marketing efforts, and its demands to pay, Ledesco still failed to pay P1,610,091.18 out of its full ten percent (10%) commission amounting to P5,496,140.30.[7] WSIRI also claimed interest at the rate of 24% per annum on the delayed payment.[8]

WSIRI further claimed that it is entitled to an additional two percent (2%) commission, on top of its regular ten

percent (10%) commission, having generated sales amounting to P37,313,428.00[9] within the six (6) month period from the execution of the Agreement. Ledesco likewise failed to pay such additional commission amounting to P743,912.06,[10] and refused to pay despite demand.[11]

In its Answer,[12] Ledesco explained that WSIRI generated sales of P34,876,011.00,[13] and that the 10% commission had already been paid as it already paid P3,592,735.21.[14] It claimed that it had actually overpaid WSIRI by P279,514.17.[15] It also alleged that the erroneous computation by WSIRI included sales made to buyers who later cancelled their purchases.

Ledesco listed ten (10) transactions which allegedly failed to materialize and on which no commission was due. Nonetheless, commissions were inadvertently paid to WSIRI:[16]

Lot Buyer

Overpayment by Ledesco to WSIRI

(1) Alexander Tan

Php 50,350.00

(2) Elizabeth Rodriguez

8,502.50

(3) GRC Properties

9,695.00

(4) Josephine Pinon

31,887.00

(5) J. Garcellano

2,950.00

(6) Lilia Aaron

38,000.00

(7) Magdalena de Vera

43,263.00

(8) Ofelia Roque

6,175.00

(9) Teresita Martinez

59,602.62

(10) Theresa Nagasima

6,275.00

(11) Magdalena Cordora

2,365.60

TOTAL

Php 259,065.72

In addition to these contested sales, Ledesco and WSIRI also disagreed over the First Asia Ventures Capital (First Asia) transaction, the net price of which is P6,384,000.00.[17] The amount is wholly determinative of WSIRI's entitlement to the additional 2% commission. Without the full value of the said transaction, WSIRI's generated sales within the 6-month period would only amount to Php27,692,011,[18] less than the P30 million pesos threshold.

Ledesco further denied WSIRI's claim that it was able to hurdle the 30-million mark within six (6) months from the execution of the Agreement, countering that the 30-million quota was reached only after the six-month period. Per its computation, only P27,692,011.00 worth of sales was generated by WSIRI during the said period,[19] and the quota was reached only on September 20, 1993, after the six-month period.[20]

Ledesco explained that only P3,172,848.00 of the First Asia transaction was credited to WSIRI's sales for the 6-month reckoning period[21] it being the amount actually paid by First Asia within the 6-month period. Ledesco received an additional payment from First Asia in the amount of P3,172,848.00 representing the remainder of the net price on September 20, 1993, at which time the 6-month reckoning period had already expired.[22]

WSIRI, however, argued that the entire net price should have been credited as a sale made within the 6-month period.

WSIRI further claimed that Ledesco's disclaimer of its entitlement to the 2% commission was anchored on a false claim that the First Asia transaction did not materialize within the six-month reckoning period when, in fact, it did, as shown by Ledesco's payment of the 10% commission due on the said sale.[23]

On June 10, 1998, the RTC decided in favor of WSIRI awarding it the two percent (2%) incentive commission based on generated sales of P34,076,011.00, plus a penalty at the rate of 24% per annum from the filing of the complaint, attorney's fees and cost of suit.

Both parties moved for reconsideration. Resolving the motions, the RTC, in its September 29, 1998 Order, set aside its June 10, 1998 decision and dismissed the case.[24] The dispositive portion of the September 29, 1998 Order reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

- This Court's June 10, 1998 Decision is hereby set aside;
- Defendant's Motion for Reconsideration is hereby GRANTED and plaintiff's Motion for Reconsideration is consequently denied;
- Civil Case No. 93-4683 is hereby DISMISSED in favor of defendant and against the plaintiff.

SO ORDERED.[25]

On appeal by WSIRI, the CA reversed the appealed RTC Order. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the assailed Order dated 29 September 1998 of the Regional Trial Court of Makati City, Branch 134 is hereby REVERSED and SET ASIDE and its Decision dated 10 June 1998 is hereby REINSTATED and AFFIRMED with the following modifications:

Defendant-appellee is hereby ordered to pay plaintiff-appellant -

(1) ten (10%) percent commission on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia

Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez, based on contract price; and

(2) two (2%) percent commission on sales amounting to Thirty Four Million Seventy Six Thousand Eleven Pesos (P34,076,011.00).

The award of 24% penalty interest, attorney's fees and cost of suit is hereby deleted.

SO ORDERED.[26]

The CA held that WSIRI's claim for commissions on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez was meritorious.[27]

Although the names are listed in Annex 2 [a list of all accounts on which commissions had purportedly been paid by Ledesco], of Ledesco's Answer, no competent evidence was presented to substantiate its claim that commissions had been paid on these accounts. The letters and documents presented in evidence and allegedly signed by the said buyers withdrawing and cancelling their purchases did not clearly and satisfactorily prove the alleged withdrawal or cancellation, as such documentary evidence had not been authenticated by the persons whose signatures appeared thereon.[28] Moreover, the disbursement vouchers mentioned by Ledesco's witness, Eulogio F. Brosas (Brosas), evidencing the alleged refunds made to the buyers who withdrew or cancelled their purchase were never presented and authenticated in court. Without satisfactory proof that the buyers indeed withdrew or cancelled their purchases, the said sales were deemed consummated, entitling WSIRI to the ten percent (10%) commission.[29]

The CA further held that paragraph 4 of the Agreement does not show that entitlement to the two percent (2%) incentive commission depends on the buyer's full payment of the net price.[30] Paragraph 4 was interpreted by the CA to mean that if first, the sale is consummated, second, the whole downpayment is completed, and third, six (6) postdated checks are received within the six-month period, then such sale would be considered as a sale made and consummated within the said period, even if amortization payments are made after the lapse of the 6-month reckoning period.[31]

The CA ruled that WSIRI is no longer entitled to a ten percent (10%) commission on the sales made to First Asia and to Teresita Martinez. The Court stated that by WSIRI's own admissions, Ledesco had already paid commissions on the said accounts.[32]

On May 24, 2006, the CA denied WSIRI's motion for reconsideration.[33]

Hence, this petition.

ISSUES

I.

WHETHER THE SALES MADE TO THERESA NAGASIMA, LILIA AARON, RODOLFO GARCIA, OFELIA ROQUE, JULIETA GARCELLANO, ERMELO ALMEDA, GRC PROPERTIES, INC., ALEXANDER TAN, JOSEPHINE PINON, MAGDALENA DE VERA, AND ELIZABETH RODRIGUEZ SHOULD BE INCLUDED IN THE COMPUTATION OF THE TEN PERCENT (10%) COMMISSION -

II.

WHETHER THE SALE OF THE LAND TO FIRST ASIA VENTURE WAS MADE WITHIN SIX (6) MONTHS AS CONTEMPLATED IN THE MARKETING AGREEMENT -

III.

WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE ON THE CLAIMS OF PETITIONER FOR OVERPAYMENT OF COMMISSION -

THE COURT'S RULING

The sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties, Inc., Alexander Tan, Josephine Pinon, Magdalena De Vera and Elizabeth Rodriguez should be included in the computation of the 10% commission.

Ledesco submits that commission is due only on "consummated" sales,[34] which it implies to be the contract price of which have already been fully paid.[35] It insists that the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera and Elizabeth Rodriguez (Buyers) were cancelled or withdrawn after the signing of the Reservation Agreement.[36] According to Ledesco, as these "sales" were not consummated contracts, they should no longer be considered in the computation of commission.[37]

Ledesco points out that the testimony of its witness, Brosas, and the list shown in Annex "2" of its Answer,[38] which is in the records of the transaction of WSIRI, are indubitable proof that the transactions in question were indeed withdrawn or cancelled.[39] WSIRI failed to show proof to the contrary.[40] Regarding the disbursement vouchers, they are of no moment for they would only show the payments, if there were indeed reimbursements.[41]

WSIRI, on the other hand, counters that the sales should be included in the computation of commissions because there is no competent evidence to prove that these sales were cancelled or withdrawn.[42]

After going over the records, the Court finds no cogent reason to disturb the findings of the CA on the matter of WSIRI's claim for commissions. As this Court has ruled in a long line of cases, the Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[43]

At any rate, the CA ruling is in accordance with the rules and prevailing jurisprudence. Section 20 of Rule 132 of the Rules of Evidence provides:

SEC. 20. Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as what it is claimed to be.

Truly, the best evidence of the cancellation of a contract is the original of the deed. The testimony of Brosas alone, without any supporting documentation, is insufficient to prove that the sales to the Buyers had indeed been withdrawn or cancelled.

In *Harris Sy Chua v. Court of Appeals and State Financing Center, Inc.*,[44] it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents.[45] When there is no proof as to the authenticity of the writer's signature appearing in a

private document, such private document may be excluded.[46]

Failure to comply with this rule on authentication of private documents resulted in the exclusion of the document sought to be admitted.[47]

In this case, the disbursement vouchers referred to by Brosas were never presented and authenticated. Without satisfactory proof that the buyers withdrew or cancelled their purchases, the said sales are deemed current, binding and consummated. Therefore, WSIRI is entitled to recover from Ledesco the corresponding ten percent (10%) commission on these sales.

The sale to First Asia Ventures Capital was made within six (6) months as contemplated in the Agreement.

On this second issue, Ledesco emphasizes that the two percent (2%) incentive was conditioned on WSIRI's reaching the Php30,000,000.00 hurdle within six (6) months from the signing of the Agreement.[48] Corollary to its position that the agreed commission is determined only on the basis of perfected sales, Ledesco argues that since the contract price of the First Asia sale was not paid within the six-month reckoning period, such sale should not be considered in determining whether WSIRI is entitled to the 2% incentive.[49]

WSIRI, on the other hand, posits that because it generated sales of more than P30 million within the six-month reckoning period, it is entitled to the 2% incentive.[50]

As earlier stated, the CA interpreted paragraph 4 to mean that a sale is considered completed and accomplished within the six-month reckoning period if first, the sale is consummated; second, the whole downpayment is made, third, six (6) postdated checks are received, and lastly, if all such acts are completed within the six-month period, even if amortization payments are made after the lapse of the six-month reckoning period.[51]

The conflict here stems from a divergence of opinion as to the interpretation of this provision of the Agreement, the computation of commissions due, and the applicability of the additional two percent (2%) incentive.

Ledesco apparently proceeds from a misleading premise, that is, that commission is due only when full payment is received. This is contrary not only to the provisions of the Agreement but also to its previous conduct.

The disputed provision of the Agreement states:

4. COMMISSION - The FIRST PARTY agrees to pay the SECOND PARTY direct sales commission and overrides of ten (10) percent based on the contract value of the sales and an additional two (2) percent incentive upon reaching the quota of P30 Million within six (6) months from signing of this agreement. The FIRST PARTY further agrees to pay a 2% Management Fee to the SECOND PARTY of all sales made by in-house sales of the FIRST PARTY (In-house sales meaning any sales made by anyone other than Globo Realty).

This commission is payable within 4 banking days from receipt and clearance of Buyer's Check payment and the amount payable is proportional to the account received, until full downpayment and six (6) postdated checks are received. At this point, the full 10% commission will be paid to the SECOND PARTY within 4 days from receipt of the downpayment of the contract value. Further, in the event that the full downpayment is received but six (6) postdated checks are not received then only proportionate commission shall be paid the SECOND PARTY until such time that six (6) postdated checks are submitted. In the event the account of the Buyer is thru Bank Financing, full commission is due upon approval and release of loan.

In case of failure of FIRST PARTY to pay the commission within four (4) banking days from clearance of Buyer's check payment pursuant to the abovementioned schedule then a 24% interest will automatically accrue in favor of the second party. [Underscoring supplied][52]

Under the above provision, commission becomes due upon the occurrence of three events: first, the buyer signs the reservation agreement; second, the buyer pays Ledesco the amount representing the downpayment; third, the buyer delivers to Ledesco six (6) postdated checks.

To be entitled to the 2% incentive, there are two additional qualifying circumstances, to wit: (1) that all three required acts must be completed within a specific reckoning period (within six (6) months from the signing of the Project and Marketing Agreement); and (2) that the contract price of such sales totals at least Php30,000,000.00.

The Court agrees with the CA that paragraph 4 of the Agreement shows that entitlement to the two percent (2%) incentive commission does not depend on the buyer's payment of the entire purchase price, but rather on the accomplishment of the five qualifying items enumerated above. Thus, upon completion of all three acts within the reckoning period of six months from signing of the Agreement, WSIRI automatically becomes entitled to payment of the 2% commission, regardless of whether amortization payments are made outside of the six-month reckoning period.

It is clear from the wording of paragraph 4 of the Agreement that upon delivery of the six (6) postdated checks, the full 10% commission becomes payable. The only conclusion that can be arrived at is that in the regular sequence of events, the operative act for the entitlement to commission is the delivery of the six postdated checks, as such delivery is normally the last expected event.

This commission is payable within 4 banking days from receipt and clearance of Buyer's Check payment and the amount payable is proportional to the account received, until full downpayment and six (6) postdated checks are received. At this point, the full 10% commission will be paid to the SECOND PARTY within 4 days from receipt of the downpayment of the contract value. Further, in the event that the full downpayment is received but six (6) postdated checks are not received then only proportionate commission shall be paid the SECOND PARTY until such time that six (6) postdated checks are submitted. In the event the account of the Buyer is thru Bank Financing, full commission is due upon approval and release of loan. [Underscoring supplied]

It is clear that commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment, and the amount payable is proportional to the amount received, until full downpayment and six postdated checks are received. At such point, the full 10% commission will be paid to WSIRI within four days from receipt of the downpayment of the contract value. Moreover, in the event that the full downpayment is received but the six postdated checks are not delivered, only proportionate commission shall be paid to WSIRI until such time that the checks are submitted.

The observations of the CA as to Ledesco's contemporaneous and subsequent acts are also instructive as to the real intention of the parties:

To prove defendant-appellee's contemporaneous and subsequent acts, plaintiff-appellant presented as evidence a letter dated 23 March 1993 of defendant-appellee addressed to plaintiff-appellant stating as follows:

"Lastly, the first amortization payment of First Asia Venture is still due in September 1993. We have to find out if they will make good their payments.

As of date we acknowledge as accredited sales for the 2% incentive bonus the amount of P26,334,320. If the 3rd, 4th and 5th categories (as above) are perfected, the total amount will reach P29,834,916. As such, it is imperative that the First Asia Venture payment is made good so that LEDESCO provides only the manner as to how the commission shall be paid on a consummated sale." [53]

Thus, as the CA ruled, all conditions for entitlement to the 2% incentive have been met, and there is no adequate proof to show that the questioned sales have been cancelled or withdrawn.

Significantly, Ledesco did not challenge the fact that the First Asia sale had been consummated. What Ledesco questioned was the point when the sale was consummated - whether it was within or outside of the six-month reckoning period. At any rate, Ledesco admitted having already paid WSIRI's 10% commission on such sale. The Court cannot fathom why it would pay commission on an unconsummated sale. Such is not only an unwise business practice, but also contrary to logic.

In view of the foregoing, the First Asia sale is considered to have been completed within the six-month reckoning period, and should be considered for the computation of the 2% incentive commission.

On the matter of entitlement to the 2% additional incentive, according to Ledesco's computation, if the First Asia sale is not considered consummated within the reckoning period, WSIRI would have generated sales of Php27,692,011.00.[54] Thus, based on Ledesco's own representation, if the First Asia sale, priced at Php6,384,000.00,[55] is considered to have been consummated within six months from the signing of the Agreement, then WSIRI will be entitled to the 2% additional commission, as the total sales generated by WSIRI would then be Php34,076,011.00, or well above the Php30 million mark.

On the third issue, suffice it to state that overpayment, if any, should be threshed out in the court of origin where the matter of execution would be due. There, the final amount due to WSIRI will be finally computed.

WHEREFORE, the August 22, 2005 of the Court of Appeals in CA-G.R. CV No. 61584 is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 24-39. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justice Godardo A. Jacinto and Associate Justice Bienvenido L. Reyes.

[2] Id. at 44-58.

[3] Id. at 59-63.

[4] Id. at 60.

[5] Id.

[6] Id. at 61.

[7] Id. at 47.

[8] Id. at 47-48.

[9] Id. at 48

[10] Id.

[11] Id.

[12] Id. at 79-87.

[13] Id. at 79.

[14] Id. at 83.

[15] Id.

[16] Id. at 89.

[17] Id. at 88.

[18] Id. at 84.

[19] Id.

[20] Id. at 81.

[21] Id. at 94.

[22] Id. at 81.

[23] Id. at 54.

[24] Id. at 25-26.

[25] Id. at 240.

[26] Id. at 29-30.

[27] Id. at 29.

[28] Id. at 30.

[29] Id. at 32.

[30] Id. at 33.

[31] Id. at 33.

[32] Id. at 28.

[33] Id. at 41.

[34] Id. at 15.

[35] Id. at 14-19.

[36] Id. at 15.

[37] Id.

[38] Id. at 89.

[39] Id. at 315.

[40] Id.

[41] Id. at 315-316.

[42] Id. at 495.

[43] *Gonzales v. Civil Service Commission and Philippine Amusement and Gaming Corporation*, G.R. No. 156253, June 15, 2006, 490 SCRA 741, 747-748.

[44] G.R. No. 88383, February 19, 1992, 206 SCRA 339, 345, citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*, 120 Phil. 702, 717 (1964).

[45] Id.

[46] Id.

[47] See *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*, 430 Phil. 162, 168-169 (2003); *Tigno v. Spouses Aquino*, 486 Phil. 254, 274-275 (2004).

[48] Rollo, p. 317.

[49] Id. at 318.

[50] Id. at 300.

[51] Id. at 33.

[52] Id. at 60-61.

[53] Id. at 33-34.

[54] Id. at 84.

[55] Id. at 88.

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