

MA. LORENA TICONG, PETITIONER, VS. MANUEL A. MALIM, MINDA ABANGAN AND MAY MACAL, RESPONDENTS.*G.R. No. 220785. March 01, 2017*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-220785/>**MENDOZA, J.:**

Before the Court are these two (2) petitions for review on certiorari under Rule 45 of the Rules of Court, separately filed by Ma. Lorena Ticong (Ma. Lorena) docketed as G.R. No. 220785, and by Patrocinio S. Ticong and Wilma Lao (Patrocinio and Wilma), docketed as G.R. No. 222887. These consolidated petitions assail the May 27, 2015 Decision[1] and the September 23, 2015[2] and January 12, 2016[3] Resolutions of the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. CV No. 01838-MIN, which affirmed with modification, the December 3, 2007 Decision[4] of the Regional Trial Court, Branch 11, Davao City (RTC), ordering the petitioners to pay overprice commission to the respondents.

The Antecedents

These consolidated cases originated from a complaint filed before the RTC for collection of sum of money, damages and attorney's fees by Manuel A. Malim (Malim), Minda Abangan (Abangan) and May Macal (Macal) against Lorenzo Ticong, Patrocinio Ticong and Wilma Ticong Lao (Ticongs). The complaint alleged that Malim was a realty broker/dealer while Abangan and Macal were his associates; that the Ticongs were the registered owners of several parcels of land located in Digos, Davao del Sur, covered by Transfer Certificate of Title (TCT) Nos. T-11244, T-11246, T-18686, and T-18687, with a total area of 5,000 square meters (subject properties); that on February 5, 2000, Malim, presenting himself as the authorized representative of the Ticongs, sent a letter of "formal intent to sell" to Jainus C. Perez (Perez), the real estate field supervisor of the Church of Jesus Christ of Latter-Day Saints (Buyer), offering to sell the subject properties for P2,000.00 per square meter; and that below Malim's signature were inscribed the words, "NOTED/CONFORMED" with the signature of Lorenzo Ticong above "Lorenzo Ticong, Lot Owner." [5]

Malim, Abangan and Macal (Malim, et al.) further averred that on February 11, 2000, they signed the Memorandum of Agreement (MOA) authorizing them to "look, negotiate, and sell to any prospective buyer" for their properties on a commission basis; that they were also authorized by the Ticongs to charge an "overprice" on top of the P900.00 per square meter price; that the subject properties were eventually sold at P1,460.00 per square meter or for the total amount of P7,300,000.00; that the sale was made possible due to their efforts which should entitle them to an overprice commission of P2,800,000.00 based on the P560.00 per square meter overprice; and that the Ticongs, however, paid them only P50,000.00 and refused to pay the remaining balance despite demands. [6]

The Ticongs, on the other hand, stressed that Malim, et al. were not entitled to the overprice commission; that the MOA was crafted and solely prepared by Malim, et al. and that they signed the same without comprehending the salient aspects thereof due to their limited education; that the sale of their properties prospered through their own

active, direct and personal efforts and was eventually attained when they sued the Buyer; and that Malim, et al. had received not only the amount of P50,000.00 but a total of P225,000.00. The Ticongs denied that Malim, et al. offered to sell their properties to the Buyer. They pointed out that Malim, et al. were not even licensed realty brokers and considering the questionable and anomalous nature of the MOA, the provision therein with respect to the overprice commission and 5% finders' fee were not valid, binding and enforceable against them.[7]

The Ruling of the RTC

On December 3, 2007, the RTC rendered a decision upholding the validity of the MOA as the parties' expression of their intention to enter into a real estate brokerage. It debunked the Ticongs' allegation of fraud in signing the MOA for want of sufficient proof. Lastly, the RTC stressed that it was through the efforts of Malim, et al. that the Ticongs and the Buyer had come together for the finalization of the sale. Thus, it disposed:

WHEREFORE, in view of the foregoing, the plaintiffs being authorized agent/broker of the defendants by virtue of the Memorandum of Agreement executed by them, judgment is hereby rendered in favor of the plaintiffs ordering the defendants:

- To pay the plaintiffs jointly and solidarity the sum of P2,750,000.00 with interest from April 2001 until fully paid representing the plaintiffs' commission;
- To pay the plaintiffs the sum of P100,000.00 as attorney's fees.

Moral and exemplary damages will not be awarded because plaintiffs failed to substantiate their claim.

SO ORDERED.[8]

Not in conformity with the RTC decision, the Ticongs appealed it before the CA.

The Ruling of the CA

In its assailed May 27, 2015 Decision, the CA denied the appeal. In upholding the judgment of the RTC, the CA wrote:

1]

The claim of the Ticongs that Malim, et al. were not licensed realty brokers did not result in the nullification or invalidation of the MOA, citing the case of *Moldex Realty, Inc. v. Saberon*[9] which declared sale transactions by those who lacked certificates of registration and licenses to sell as valid.

2]

Malim, et al. were entitled to their commission because they were the procuring cause of the sale of the subject properties to the Buyer and, without their intervention, the sale would not have been consummated.

3]

A perusal of the MOA revealed that Malim, et al. were entitled to the overprice of P560.00 per square meter on top of the Ticongs' selling price of P900.00 per square meter or for a total amount of P2,800,000.00.

4]

The award of attorney's fees by the RTC had no factual and legal basis and, hence, must be deleted.

Thus, the CA decreed:

WHEREFORE, the appeal is DENIED. The December 3, 2007 Decision of the Regional Trial Court (RTC), Branch 11, 11[th] Judicial Region, Davao City, in Civil Case No. 29,620-2003 is AFFIRMED with the

MODIFICATION that the award of attorney's fees is DELETED.

SO ORDERED.[10]

Ma. Lorena, as one of the children and heirs of Lorenzo Ticong,[11] filed a motion for reconsideration which was denied by the CA on September 23, 2015. Patrocinio and Wilma also moved for the reconsideration of the said decision, but their separate motion was denied by the CA in its assailed January 12, 2016 Resolution.

G.R. No. 220785

Undaunted, Ma. Lorena seasonably filed the present petition anchored on the following

GROUND

THE HONORABLE COURT OF APPEALS VIOLATED THE ESTABLISHED LAW AND JURISPRUDENCE ON AGENCY IN AFFIRMING THE TRIAL COURT'S FINDING THAT RESPONDENTS ARE THE EFFICIENT PROCURING CAUSE IN BRINGING ABOUT THE CONSUMMATION OF THE SALE BETWEEN THE TICONGS AND THE CHURCH THEREBY ENTITLING THEM TO THE PAYMENT OF THE OVERPRICE.[12]

In its January 20, 2016 Resolution,[13] the Court denied the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Ma. Lorena then filed her manifestation and motion for reconsideration of the January 20, 2016 Resolution which denied her petition. The said motion was granted and her petition was reinstated in the Court's Resolution[14] dated June 8, 2016.

G.R. No. 222887

Patrocinio and Wilma, on the other hand, cited the following

FOUNDATIONS

- THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT AWARDING RESPONDENTS THE AMOUNT OF P2.8 MILLION AS COMMISSION/OVERPRICE FOR THE P7.3 MILLION SALE OF THE 5,000 SQUARE METER LOT OF THE TICONGS TO THE MORMONS.
- THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN IGNORING THE UNDISPUTED FACTS OF THE CASE AND THE CLEAR PROVISIONS OF THE MEMORANDUM OF AGREEMENT BETWEEN THE TICONGS AND THE RESPONDENTS WHICH IF CONSIDERED WOULD ALTER AND REVERSE THE ASSAILED DECISION.[15]

On February 22, 2017, the Court ordered the consolidation of these two petitions.

Thus, the issues raised by the petitioners can be reduced to a single pivotal question - whether respondents Malim, et al. were entitled to the payment of their brokers' overprice commission for being the procuring cause of the sale.

Petitioner Ma. Lorena argues that the CA committed serious and reversible error when it summarily ignored the evidence presented by the Ticongs substantiating their claim that Malim, et al. were not the efficient procuring cause in the consummation of the sale. She stated that although it was admitted that the respondents were the ones who introduced and brought the parties together for negotiations, their meager efforts did not contribute to the conclusion of the transaction. She reiterates that it was Wilma who followed up with the representative of the Buyer as regards its decision in buying the properties; but the Buyer replied that it would no longer push through

with the purchase of the lots because the results of the soil test and survey showed that developing the land would entail a high cost. Thus, the Ticongs were forced to file a complaint for specific performance which was eventually settled by the parties. She avers that the institution of the civil action for specific performance against the Buyer constituted a break in the continuity of the series of events which the respondents had initially set in motion.

Considering that the respondents were not the efficient procuring cause of the final sale, the petitioners insist that they were not entitled to the overprice commission mistakenly awarded by the CA, but only to the 5% Broker's Finders Fee as stipulated in the MOA. Even granting, according to Patrocinio and Wilma, that the respondents were entitled to receive the overprice commission, the amount awarded was unconscionable, considering that they were not even licensed brokers.

The respondents counter that they were the ones who caused the sale of the subject property. Documentary evidence such as the letter of intent, dated February 5, 2000, signed by Malim with the conformity of Lorenzo Ticong, addressed to Perez, the representative of Buyer; the letter of the Ticongs sent to Perez stating that their "official and registered broker is M.A.M. & Associates & Brokerage and no other authorized agents" and the acknowledgment receipt, dated March 30, 2001, showing the Ticongs' payment of P50,000.00 to the respondents as "partial payment to commission," were proof that the Ticongs recognized them as the procuring cause of the sale. Lastly, the respondents underscored that they were entitled to the overprice based on the clear import of the valid MOA executed by the parties. They also claim that the petition, docketed as G.R. No. 222887, was filed without proper verification and certification of non-forum shopping.[16]

The Court's Ruling

The Court sees no cogent reason to grant the consolidated petitions.

Preliminarily, the Court cannot overemphasize the principle that in petitions for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be put into issue. Questions of fact are not cognizable by this Court.[17] Notably, the issues raised by the petitioner in this case, such as whether the respondents were the procuring cause of the sale which entitled them to the broker's overprice commission, are factual in nature as they would require this Court to delve into the records of the case and review the evidence presented by the parties in order to properly resolve the dispute.

It is also worth emphasizing that, based on the records, the petition in G.R. No. 222887 was filed out of time. Further, as noted by the respondents, the petition contained a defective Verification and Certification of Non-Forum Shopping as it was verified and notarized on February 6, 2016 or nine (9) days ahead of the petition, dated February 15, 2016. The petition, thus, failed to comply with the jurisdictional requirements under the Rules.

Nevertheless, even if the Court would gloss over these defects, the petitions must still fail.

The Court is in complete accord with the RTC and the CA in concluding that the respondents were the procuring cause of the sale. At the very least, the respondents were able to bring together the Ticongs and the Buyer to negotiate and lay the groundwork for a sale transaction.

The term "procuring cause," in describing a broker's activity, refers to a cause originating a series of events which, without break in their continuity, results in the accomplishment of the prime objective of employing the broker - to produce a purchaser ready, willing and able to buy real estate on the owner's terms.[18] To be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale.[19] "The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed

from his efforts acting as broker."[20]

In this case, the role of the respondents in the successful consummation of the sale transaction is undisputed. Indeed, the evidence on record shows that the respondents were instrumental in the sale of the properties of the Ticongs. Without their intervention, no sale would have been consummated. They were the ones who set the sale of the said lots in motion. If not for the respondents, the Buyer would not have known about the lots being sold by the Ticongs. As correctly observed by the CA, the respondents were the procuring cause of the sale as shown by the following: a) on February 5, 2000, Malim, with the conformity of Lorenzo Ticong, sent a formal letter of intent informing the representative of the Buyer regarding the availability for sale of the Ticongs' properties; b) in a letter, dated April 15, 2000, the Ticongs expressly recognized the respondents as their sole agents and middlemen with respect to the sale transaction and that the latter were in constant communication with the Buyer and the Ticongs; c) Javier Alvero, an employee of the Ticongs, testified that the respondents were the agents who negotiated the sale of the subject lots with the Buyer; d) the Ticongs gave the respondents P50,000.00 as partial payment of their commission as stated in the acknowledgment receipt, dated March 30, 2001, which implied that they recognized the respondents as the procuring cause of the sale; and e) the testimony of Malim clearly proved the efforts exerted by the respondents to bring about the consummation of the sale through constant follow-ups with the Buyer by letters and telephone calls.[21]

All these circumstances led the Court to conclude that the respondents' actions indeed constituted the procuring cause of the sale. When there is a close, proximate and causal connection between the agent's efforts and the sale of the property, the agents are entitled to their commission.[22]

On the issue of whether the respondents are entitled to the overprice commission or to the 5% finders' fee only, the Court finds that the CA correctly upheld the award of P2.8 million as overprice commission in favor of the respondents.

The pertinent provisions of the MOA, paragraphs 3, 4 and 5, read:

THAT, the First Party decided to sell the above lots for a net of NINE HUNDRED PESOS (P900.00) PER SQUARE METER to the Second Party, provided, that the SECOND PARTY shall take care/shoulder all the expenses related to the sale of the above properties, such as Capital Gains Tax, Documentary Stamps, Commissions, legal expenses and notarizations;

THAT, the SECOND PARTY is authorized to make an OVERPRICE at top of the P900.00/sq. meter as our net asking price; that the FIRST PARTY, hereby Authorize the SECOND PARTY to look, negotiate, and sell to any prospective buyer/buyers to the above lots;

THAT, both parties agree that this MEMORANDUM OF AGREEMENT/AUTHORITY TO SALE is good for 90 days only and may be renewed, however, even this authority LAPSE but the same registered buyer able to buy the above(any) property/properties mentioned above, the SECOND PARTY shall still be entitle for whatever OVERPRICE at top of P900.00/Sq.Meter; that the FIRST PARTY agrees/commit/bind themselves to observe the terms and conditions set on paragraph 3 & 4, otherwise, failure on their part to observe paragraph 3 & 4, the SECOND PARTY shall automatically be entitled for a FIVE(s) PERCENT COMMISSION as Broker's Finders Fee based on the P900.00/Sq.M. and that all expenses shall be shouldered by the Buyer and Seller.[23] [Emphasis supplied]

Under the said provisions, the respondents, as the Second Party, were entitled to a 5% commission if they themselves bought the property for P900.00 per square meter or had sold it to a third party for the exact amount of P900.00 per square meter. In this case, however, the respondents sold the property to a third party, the Buyer, for a higher price. The respondents were, thus, entitled to the overprice amount as commission. Given the sale of the subject lots at P1,460.00 per square meter, the over price was P560.00 per square meter or a total of

P2,800,000.00 (P560.00 multiplied by 5,000 square meters). From this amount, however, the amounts[24] paid by the Ticongs to the respondents should be deducted, which the RTC can determine in a summary hearing in the execution stage.

Basic is the principle that a contract (the MOA in this case) is the law between the parties, and its stipulations are binding on them, unless the contract is contrary to law, morals, good customs, public order or public policy.[25] The Ticongs, having freely and willingly entered into a contract by executing the MOA, cannot renege on their obligation to pay the overprice commission on the flimsy excuse that the respondents were not licensed brokers who did not spend much money in partially negotiating with the Buyer.

Accordingly, the Court finds no reversible error in the findings of the CA and the RTC that the Ticongs were liable to pay the overprice commission to the respondents pursuant to the MOA. The Court is bound by such factual findings in the absence of any compelling reason to reverse the same.

Anent the claim for attorney's fees, the CA properly deleted the award, there being no basis for such claim.

All awards shall earn interest of 12% per annum from April 2001 until June 30, 2013, and interest of 6% per annum from July 1, 2013 until its full satisfaction.

WHEREFORE, the consolidated petitions are DENIED. Accordingly, the May 27, 2015 Decision of the Court of Appeals, Cagayan de Oro City and its September 23, 2015 and January 12, 2016 Resolutions in CA-G.R. CV No. 01838-MIN, are AFFIRMED, without prejudice to the deduction of the amount already paid by the Ticongs.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), Peralta, and Jardeleza,[**] JJ., concur.
Leonen, J., on official leave.

[**] Designated additional member per Raffle dated December 28, 2016 vice Brion, J. (ret.).

[1] Penned by Associate Justice Romulo V. Borja, with Associate Justice Oscar V. Badelles and Associate Justice Edward B. Contreras, concurring; rollo (G.R. No. 220785), pp. 41-51; rollo (G.R. No. 222887), pp. 17-30.

[2] Rollo (G.R. No. 220785), pp. 56-58; Penned by Associate Justice Romulo V. Borja with Associate Justice Edgardo T. Lloren and Associate Justice Ronaldo B. Martin, concurring.

[3] Rollo (G.R. No. 222887), pp. 47-49; Penned by Associate Justice Romulo V. Borja with Associate Justice Oscar V. Badelles and Associate Justice Ronaldo B. Martin, concurring.

[4] Rollo (G.R. No. 220785), pp. 100-105; (G.R. No. 222887) pp. 83-88; penned by Judge Virginia Hofileña-Europa.

[5] Rollo (G.R. No. 222887), pp. 17-18.

[6] Id. at 18.

[7] Rollo (G.R. No. 220785), pp. 92-99; (G.R. No. 222887), pp. 75-81.

[8] Rollo (G.R. No. 220785), pp. 104-105; (G.R. No. 222887), pp. 87-88.

[9] 708 Phil. 314 (2013).

[10] Rollo (G.R. No. 220785), p. 58.

[11] Rollo (G.R. No. 222887), p. 9.

[12] Rollo (G.R. No. 220785), p. 23.

[13] Id. at 114.

[14] Id. at 152.

[15] Rollo (G.R. No. 222887), p. 9.

[16] Comments, dated June 17, 2016, rollo (G.R. No. 222887), pp. 91-97; Comment, dated August 1, 2016, rollo (G.R. No. 220785), pp. 153-160.

[17] Philippine Health-Care Providers, Inc. (MAXICARE) v. Estrada, 566 Phil. 603, 611 (2008).

[18] Medrano v. Court of Appeals, 492 Phil. 222, 232 (2005), citing Clark v. Ellsworth, 66 Ariz, 119, 184 P. 2d 821 (1947).

[19] Oriental Petroleum and Minerals Corp. v. Tuscan Realty, Inc., 713 Phil. 693, 695-696 (2013).

[20] Supra note 18 at 232-233 (2005), citing Danon v. Brimo, 42 Phil. 133, 139 (1921).

[21] Rollo (G.R. No. 222887) pp. 24-27.

[22] Supra note 18 at 234, citing Manotok Brothers, Inc. v. Court of Appeals, G.R. No. 94753, April 7, 1993, 221 SCRA 224.

[23] Rollo (G.R. No. 222887), p. 50.

[24] The Ticongs claimed that the respondents had received not only the initial commission of P50,000.00 but the total amount of P225,000.00.

[25] Mendiola v. Commerz Trading Int'l, Inc., 715 Phil. 856, 862 (2013).

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