

PRIMITIVO SIASAT AND MARCELINO SIASAT, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT AND TERESITA NACIANCENO, RESPONDENTS.

G.R. No. 67889, October 10, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Intermediate Appellate Court affirming in toto the judgment of the Court of First Instance of Manila, Branch XXI, which ordered the petitioner to pay respondent the thirty percent (30%) commission on 15,666 pieces of Philippine flags worth P936,960.00, moral damages, attorney's fees and the costs of the suit.

Sometime in 1974, respondent Teresita Nacianceno succeeded in convincing officials of the then Department of Education and Culture, hereinafter called Department, to purchase without public bidding, one million pesos worth of national flags for the use of public schools throughout the country. The respondent was able to expedite the approval of the purchase by handcarrying the different indorsements from one office to another, so that by the first week of September, 1974, all the legal requirements had been complied with, except the release of the purchase orders. When Nacianceno was informed by the Chief of the Budget Division of the Department that the purchase orders could not be released unless a formal offer to deliver the flags in accordance with the required specifications was first submitted for approval, she contacted the owners of the United Flag Industry on September 17, 1974. The next day, after the transaction was discussed, the following document (Exhibit A) was drawn up:

"Mrs. Tessie Nacianceno,

"This is to formalize our agreement for you to represent United Flag Industry to deal with any entity or organization, private or government in connection with the marketing of our products — flags and all its accessories.

"For your service, you will be entitled to a commission of thirty (30%) percent.

Signed

Mr. Primitivo Siasat
Owner and Gen. Manager"

On October 16, 1974, the first delivery of 7,933 flags was made by the United Flag Industry. The next day, on October 17, 1974, the respondent's authority to represent the United Flag Industry was revoked by petitioner Primitivo Siasat.

According to the findings of the courts below, Siasat, after receiving the payment of P469,980.00 on October 23, 1974 for the first delivery, tendered the amount of P23,900.00 or five percent (5%) of the amount received, to the

respondent as payment of her commission. The latter allegedly protested. She refused to accept the said amount insisting on the 30% commission agreed upon. The respondent was prevailed upon to accept the same, however, because of the assurance of the petitioners that they would pay the commission in full after they delivered the other half of the order. The respondent states that she later on learned that petitioner Siasat had already received payment for the second delivery of 7,833 flags. When she confronted the petitioners, they vehemently denied receipt of the payment, at the same time claiming that the respondent had no participation whatsoever with regard to the second delivery of flags and that the agency had already been revoked.

The respondent originally filed a complaint with the Complaints and Investigation Office in Malacañang but when nothing came of the complaint, she filed an action in the Court of First Instance of Manila to recover the following commissions: 25% as balance on the first delivery and 30% on the second delivery.

The trial court decided in favor of the respondent. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered sentencing Primitivo Siasat to pay to the plaintiff the sum of P281,988.00, minus the sum P23,900.00, with legal interest from the date of this decision, and ordering the defendants to pay jointly and solidarily the sum of P25,000.00 as moral damages, and P25,000.00 as attorney's fees, also with legal interest from the date of this decision, and the costs."

The decision was affirmed in toto by the Intermediate Appellate Court. After their motion for reconsideration was denied, the petitioners went to this Court on a petition for review on August 6, 1984.

In assailing the appellate court's decision, the petition tenders the following arguments: first, the authorization making the respondent the petitioner's representative merely states that she could deal with any entity in connection with the marketing of their products for a commission of 30%. There was no specific authorization for the sale of 15,666 Philippine flags to the Department; second, there were two transactions involved evidenced by the separate purchase orders and separate delivery receipts, Exhibit 6-C for the purchase and delivery on October 16, 1974, and Exhibits 7 to 7-C, for the purchase and delivery on November 6, 1974. The revocation of agency effected by the parties with mutual consent on October 17, 1974, therefore, forecloses the respondent's claim of 30% commission on the second transaction; and last, there was no basis for the granting of attorney's fees and moral damages because there was no showing of bad faith on the part of the petitioner. It was respondent who showed bad faith in denying having received her commission on the first delivery. The petitioner's counterclaim, therefore, should have been granted.

This petition was initially dismissed for lack of merit in a minute resolution. On a motion for reconsideration, however, this Court gave due course to the petition on November 14, 1984.

After a careful review of the records, we are constrained to sustain with some modifications the decision of the appellate court.

We find petitioners' argument regarding respondent's incapacity to represent them in the transaction with the Department untenable. There are several kinds of agents. To quote a commentator on the matter:

"An agent may be (1) universal; (2) general, or (3) special. A universal agent is one authorized to do all acts for his principal which can lawfully be delegated to an agent. So far as such a condition is possible, such an agent may be said to have universal authority. (Mec. Sec. 58).

"A general agent is one authorized to do all acts pertaining to a business of a certain kind or at a particular place, or all acts pertaining to a business of a particular class or series. He has usually authority either expressly conferred in general terms or in effect made general by the usages, customs or nature of the business which he is authorized to transact.

"An agent, therefore, who is empowered to transact all the business of his principal of a particular kind or in a particular place, would, for this reason, be ordinarily deemed a general agent. (Mec. Sec. 60).

"A special agent is one authorized to do some particular act or to act upon some particular occasion. He acts usually in accordance with specific instructions or under limitations necessarily implied from the nature of the act to be done." (Mec. Sec. 61) (Padilla, Civil Law, The Civil Code Annotated, Vol. VI, 1969 Edition, p. 204).

One does not have to undertake a close scrutiny of the document embodying the agreement between the petitioners and the respondent to deduce that the latter was instituted as a general agent. Indeed, it can easily be seen by the way general words were employed in the agreement that no restrictions were intended as to the manner the agency was to be carried out or in the place where it was to be executed. The power granted to the respondent was so broad that it practically covers the negotiations leading to, and the execution of, a contract of sale of petitioners' merchandise with any entity or organization.

There is no merit in petitioners' allegations that the contract of agency between the parties was entered into under fraudulent representation because respondent "would not disclose the agency with which she was supposed to transact and made the petitioner believe that she would be dealing with the Visayas", and that "the petitioner had known of the transactions and/or project for the said purchase of the Philippine flags by the Department of Education and Culture and precisely it was the one being followed up also by petitioner."

If the circumstances were as claimed by the petitioners, they would have exerted efforts to protect their interests by limiting the respondent's authority. There was nothing to prevent the petitioners from stating in the contract of agency that the respondent could represent them only in the Visayas. Or to state that the Department of Education and Culture and the Department of National Defense, which alone would need a million pesos worth of flags, are outside the scope of the agency. As the trial court opined, it is incredible that they could be so careless after being in the business for fifteen years.

A cardinal rule of evidence embodied in Section 7 Rule 130 of our Revised Rules of Court states that "when the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be between the parties and their successors-in-interest, no evidence of the terms of the agreement other than the contents of the writing", except in cases specifically mentioned in the same rule. Petitioners have failed to show that their agreement falls under any of these exceptions. The respondent was given ample authority to transact with the Department in behalf of the petitioners. Equally without merit is the petitioners' proposition that the transaction involved two separate contracts because there were two purchase orders and two deliveries. The petitioners' evidence is overcome by other pieces of evidence proving that there was only one transaction.

The indorsement of then Assistant Executive Secretary Roberto Reyes to the Budget Commission on September 3, 1974 (Exhibit "C") attests to the fact that out of the total budget of the Department for the fiscal year 1975, "P1,000,000.00 is for the purchase of national flags." This is also reflected in the Financial and Work Plan Request for Allotment (Exhibit "F") submitted by Secretary Juan Manuel for fiscal year 1975 which however, divided the allocation and release of the funds into three, corresponding to the second, third, and fourth quarters of the said year. Later correspondence between the Department and the Budget Commission (Exhibits "D" and "E") show that the first allotment of P500,000.00 was released during the second quarter. However, due to the necessity of furnishing all of the public schools in the country with the Philippine flag, Secretary Manuel requested for the immediate release of the programmed allotments intended for the third and fourth quarters. These circumstances explain why two purchase orders and two deliveries had to be made on one transaction.

The petitioners' evidence does not necessarily prove that there were two separate transactions. Exhibit "6" is a

general indorsement made by Secretary Manuel for the purchase of the national flags for public schools. It contains no reference to the number of flags to be ordered or the amount of funds to be released. Exhibit "7" is a letter request for a "similar authority" to purchase flags from the United Flag Industry. This was, however, written by Dr. Narciso Albarracin who was appointed Acting Secretary of the Department after Secretary Manuel's tenure, and who may not have known the real nature of the transaction.

If the contracts were separate and distinct from one another, the whole or at least a substantial part of the government's supply procurement process would have been repeated. In this case, what were issued were mere indorsements for the release of funds and authorization for the next purchase.

Since only one transaction was involved, we deny the petitioners' contention that respondent Nacianceno is not entitled to the stipulated commission on the second delivery because of the revocation of the agency effected after the first delivery. The revocation of agency could not prevent the respondent from earning her commission because as the trial court opined, it came too late, the contract of sale having been already perfected and partly executed.

In *Macondray & Co. v. Sellner* (33 Phil. 370, 377), a case analogous to this one in principle, this Court held:

"We do not mean to question the general doctrine as to the power of a principal to revoke the authority of his agent at will, in the absence of a contract fixing the duration of the agency (subject, however, to some well defined exceptions). Our ruling is that at the time fixed by the manager of the plaintiff company for the termination of the negotiations, the defendant real estate agent had already earned the commissions agreed upon, and could not be deprived thereof by the arbitrary action of the plaintiff company in declining to execute the contract of sale for some reason personal to itself."

The principal cannot deprive his agent of the commission agreed upon by cancelling the agency and, thereafter, dealing directly with the buyer. (*Infante v. Cunanan*, 93 Phil. 691).

The appellate court's citation of its previous ruling in *Heimbrod, et al. v. Ledesma* (C.A. 49 O.G. 1507) is correct:

"The appellee is entitled to recovery. No citation is necessary to show that the general law of contracts the equitable principle of estoppel, and the principle against unjust enrichment at the expense of another, uphold payment of compensation for services rendered."

There is merit, however, in the petitioners' contention that the agent's commission on the first delivery was fully paid. The evidence does not sustain the respondent's claim that the petitioners paid her only 5% and that their right to collect another 25% commission on the first delivery must be upheld.

When respondent Nacianceno asked the Malacañang Complaints and Investigation Office to help her collect her commission, her statement under oath referred exclusively to the 30% commission on the second delivery. The statement was emphatic that "now" her demand was for the 30% commission on the second release of P469,980.00. The demand letter of the respondent's lawyer dated November 13, 1974 asked petitioner Siasat only for the 30% commission due from the second delivery. The fact that the respondent demanded only the commission on the second delivery without reference to the alleged unpaid balance — which was only slightly less than the amount claimed — can only mean that the commission on the first delivery was already fully paid. Considering the sizeable sum involved, such an omission is too glaringly remiss to be regarded as an oversight.

Moreover, the respondent's authorization letter (Exhibit "5") bears her signature with the handwritten words "Fully Paid" inscribed above it.

The respondent contested her signature as a forgery. Handwriting experts from two government agencies testified on the matter. The reason given by the trial court in ruling for the respondent is too flimsy to warrant a finding of

forgery.

The court stated that in thirteen documents presented as exhibits, the private respondent signed her name as "Tessie Nacianceno" while in this particular instance, she signed as "T. Nacianceno".

The stated basis is inadequate to sustain the respondent's allegation of forgery. A variance in the manner the respondent signed her name can not be considered as conclusive proof that the questioned signature is a forgery. The mere fact that the respondent signed thirteen documents using her full name does not rule out the possibility of her having signed the notation "Fully Paid", with her initial for the given name and the surname written in full. What she was signing was a mere acknowledgment.

This leaves the expert testimony as the sole basis for the verdict of forgery.

In support of their allegation of full payment as evidenced by the signed authorization letter (Exhibit "5-A"), the petitioners presented as witness Mr. Francisco Cruz, Jr. a senior document examiner of the Philippine Constabulary Crime Laboratory. In rebuttal, the respondent presented Mr. Arcadio Ramos, a junior document examiner of the National Bureau of Investigation.

While the experts testified in a civil case, the principles developed in criminal cases involving forgery are applicable. Forgery cannot be presumed. It must be proved.

In *Borromeo v. Court of Appeals* (131 SCRA 318, 326) we held that:

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"x x x Where the evidence, as here, gives rise to two probabilities, one consistent with the defendant's innocence and another indicative of his guilt, that which is favorable to the accused should be considered. The constitutional presumption of innocence continues until overthrown by proof of guilt beyond reasonable doubt, which requires moral certainty which convinces and satisfies the reason and conscience of those who are to act upon it. (*People v. Clores, et al.*, 125 SCRA 67; *People v. Bautista*, 81 Phil. 78).

We ruled in another case that where the supposed expert's testimony would constitute the sole ground for conviction and there is equally convincing expert testimony to the contrary, the constitutional presumption of innocence must prevail. (*Lorenzo Ga. Cesar v. Hon. Sandiganbayan and People of the Philippines*, 134 SCRA 105) In the present case, the circumstances earlier mentioned taken with the testimony of the PC senior document examiner lead us to rule against forgery.

We also rule against the respondent's allegation that the petitioners acted in bad faith when they revoked the agency given to the respondent.

Fraud and bad faith are matters not to be presumed but matters to be alleged with sufficient facts. To support a judgment for damages, facts which justify the inference of a lack or absence of good faith must be alleged and proven. (*Bacolod-Murcia Milling Co., Inc. v. First Farmers Milling Co., Inc., Etc.*, 103 SCRA 436).

There is no evidence on record from which to conclude that the revocation of the agency was deliberately effected by the petitioners to avoid payment of the respondent's commission. What appears before us is only the petitioner's use in court of such a factual allegation as a defense against the respondent's claim. This alone does not per se make the petitioners guilty of bad faith for that defense should have been fully litigated.

Moral damages cannot be awarded in the absence of a wrongful act or omission or of fraud or bad faith. (*R & B Surety & Insurance Co., Inc. v. Intermediate Appellate Court*, 129 SCRA 736).

We therefore, rule that the award of P25,000.00 as moral damages is without basis.

The additional award of P25,000.00 damages by way of attorney's fees, was given by the courts below on the basis of Article 2208, Paragraph 2, of the Civil Code, which provides: "When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;" attorney's fees may be awarded as damages. (Pirovano, et al. v. De la Rama Steamship Co., 96 Phil. 335).

The underlying circumstances of this case lead us to rule out any award of attorney's fees. For one thing, the respondent did not come to court with completely clean hands. For another, the petitioners apparently believed they could legally revoke the agency in the manner they did and deal directly with education officials handling the purchase of Philippine flags. They had reason to sincerely believe they did not have to pay a commission for the second delivery of flags.

We cannot close this case without commenting adversely on the inexplicably strange procurement policies of the Department of Education and Culture in its purchase of Philippine flags. There is no reason why a shocking 30% of the taxpayers' money should go to an agent or facilitator who had no flags to sell and whose only work was to secure and handcarry the indorsements of education and budget officials. There are only a few manufacturers of flags in our country with the petitioners claiming to have supplied flags for our public schools on earlier occasions. If public bidding was deemed unnecessary, the Department should have negotiated directly with flag manufacturers. Considering the sad plight of underpaid and overworked classroom teachers whose pitiful salaries and allowances cannot sometimes be paid on time, a P300,000.00 fee for a P1,000,000.00 purchase of flags is not only clearly unnecessary but a scandalous waste of public funds as well.

WHEREFORE, the decision of the respondent court is hereby MODIFIED. The petitioners are ordered to pay the respondent the amount of ONE HUNDRED FORTY THOUSAND NINE HUNDRED AND NINETY FOUR PESOS (P140,994.00) as her commission on the second delivery of flags with legal interest from the date of the trial court's decision. No pronouncement as to costs.

SO ORDERED.

Relova, De la Fuente, and Patajo, JJ., concur.

Teehankee, J., (Chairman), let copy hereof be furnished the Commission on Audit for appropriate remedial action, as it may take.

Melencio-Herrera, J., on leave.

Plana, J., no part.

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