

**MACONDRAY & CO., INC., PLAINTIFF AND APPELLEE, VS.
GEORGE C. SELLNER, DEFENDANT AND APPELLANT.***G.R. No. 9184. February 02, 1916*

Ponente: CARSON, J.

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This action was brought to recover the sum of P17,175 by way of damages alleged to have been suffered by the plaintiff as a result of the sale of a parcel of land which it is alleged was made by the defendant for and on behalf of the plaintiff after authority to make the sale had been revoked. Judgment was rendered in favor of the plaintiff for the sum of P3,435, together with interest at 6 per cent per annum from the date of the institution of this action. From this judgment defendant appealed, and brought the case here on his duly certified bill of exceptions.

Early in 1912 the defendant, a real estate broker, sold the parcel of land described in the complaint to the plaintiff company for P17,175. The formal deed of sale was not executed and accepted until July 29, 1912, the agreement to purchase being conditioned on the delivery of a Torrens title, which was not secured until early in that month. In the meantime the land was flooded by high tides, and the plaintiff company became highly dissatisfied with its purchase. When the final transfer was made the plaintiff company informed defendant that the land was wholly unsuited for use as a coal-yard, for which it had been purchased, and requested him to find another purchaser. At that time it was expressly understood and agreed that the plaintiff company was willing to dispose of the land for P17,175, and that defendant was to have as his commission for securing a purchaser anything over that amount which he could get.

A short time thereafter, defendant reported to plaintiff that he had a purchaser for the land in the person of Antonio M. Barretto, who was willing to pay P2.75 per square meter, or a total of P18,892.50. Plaintiff thereupon executed a formal deed of conveyance which, together with the certificate of title (Torrens), was delivered to defendant, with the understanding that he was to conclude the sale, deliver the title-deed and certificate to Barretto, and receive from him the purchase price. The deed was dated August, 21, 1912. Thereafter defendant advised Barretto that plaintiff had executed the title-deed and that he was ready to close the deal. Barretto agreed to accept the land if, upon examination, the title and the deed should prove satisfactory; and defendant left the deed of conveyance with him, with the understanding that if the title and the deed of conveyance were as represented, Barretto would give him his check for the amount of the purchase price. Defendant retained possession of the Torrens certificate of title. A few days afterwards Barretto was compelled to go to Tayabas on business and was detained by a typhoon which delayed his return until the 31st of August.

During Barretto's absence the plaintiff company advised defendant that he must consummate the sale and collect the purchase money without delay upon Barretto's return to Manila. On the arrival of Barretto on Saturday, August 31st, defendant called upon him and informed him that the plaintiff company desired to close up the transaction at once, and Barretto, who was somewhat indisposed from his trip, promised to examine the papers as soon as he could get to them, and assured the defendant that he would send his check for the purchase price in a day or two if he found the documents in proper shape. These assurances were reported to Young, the plaintiff

company's general manager and representative throughout the transaction, on Monday morning, September 2d. Young then formally notified defendant that unless the purchase price was paid before five o'clock of that same afternoon the deal would be off. Defendant again called upon Barretto, who informed him that if he would turn over the Torrens certificate of title he would let him have a check for the purchase price. Defendant sent the certificate as requested, but did not receive the check until thirty-six hours afterwards, on Wednesday morning. On receipt of Barretto's check he immediately tendered plaintiff company a check for the agreed selling price, P17,175. Plaintiff's manager refused to accept the check and soon thereafter filed this action, claiming that the sale had been "cancelled" upon the failure of defendant to turn over the purchase price on the afternoon of Monday, September 2d.

The following is a copy of plaintiff company's letter to defendant advising him that the sale would be "cancelled" unless the purchase price was paid at five o'clock of the day on which it was written.

"SEPT. 2, 1912,

"Mr. GEO. C. SELLNER, Manila.

"DEAR SIR: In accordance with our conversation today, this is to notify you that we consider the sale of our lot in Nagtajan to Antonio M. Barretto as cancelled in view of the nonpayment of the purchase price before five o'clock this afternoon.

"Please confirm.

"Yours very truly, MACONDRAY & CO., INC.,

(Sgd.) "CARLOS YOUNG

"General Manager."

As to the facts just narrated there is practically no dispute, the only matters of fact as to which there is any real contention in the record being limited to questions as to the value of the land, and as to the original instructions to defendant in regard to the delivery of the title deeds.

Plaintiff's manager testified that as he had no confidence in Barretto, he expressly instructed defendant not to deliver the title deeds until Barretto turned over the purchase price. Defendant swore that he had received no such instructions. Upon this conflict of testimony we do not deem it necessary to make an express finding, because, as we view the transaction, it could in no event affect our disposition of this appeal.

We are of opinion that the disputed evidence clearly discloses that on August 21st the plaintiff company, through the defendant real estate broker, agreed to sell the land to Barretto for P18,892.50, and that Barretto agreed to buy the land at that price on the usual condition precedent that before turning over the purchase price the title deeds and deed of transfer from the company should be found to be in due and legal form. That for the purpose of consummating the sale the plaintiff company turned over to the defendant a deed of transfer to Barretto, together with a Torrens title certificate to the land, executed as of the day when the agreement to sell was entered into. That the defendant, with full authority from plaintiff company, agreed to deliver the deed and certificate to Barretto on payment of the purchase price. That from the very nature of the transaction it was understood that the purchaser should have a reasonable time in which to examine the deed of transfer and the other documents of title, and that defendant exercising an authority impliedly if not expressly conferred upon him, gave the purchaser a reasonable time in which to satisfy himself as to the legality and correctness of the documents of title. That the company through its manager Young, acquiesced in and ratified what had been done by defendant in this regard

when, with full knowledge of all the facts, Young advised the defendant, during Barretto's absence in Tayabas, that the deal must be closed up without delay on Barretto's return to Manila.

No reason appears, nor has any reason been assigned for the demand by the plaintiff company for the delivery of the purchase price at the hour specified under threat in the event of failure to make payment at that hour it would decline to carry out the agreement, other than that the manager of the plaintiff company had been annoyed by the delays which occurred during the earlier stage of the negotiations, and had changed his mind as to the desirability of making the sale at the price agreed upon, either because he believed that he could get a better price elsewhere, or that the land was worth more to his company than the price he had agreed to take for it. It is very evident that plaintiff company's manager hoped that by setting a limit of a few hours upon the time within which he would receive the money, his company would be relieved of the obligation to carry out its contract.

Upon the question of the value of the land we think that the evidence clearly discloses that at the date of the sale its actual and its true market value was not more than the amount paid for it by Barretto, that is to say, P18,892.50. The evidence discloses that it had been in the hands of an expert real estate agent for many months prior to the sale, with every inducement to him to secure the highest cash price which could be gotten for it. That he actually sold it to the plaintiff company, a few months prior to the sale to Barretto, for P17,175. That the plaintiff company was highly dissatisfied with its purchase, and readily agreed to resell at that price. That the defendant, in his capacity as a real estate agent, with a personal and direct interest in securing the highest possible price for the land, sold it to Barretto for P18,892.50.

The only evidence in the record tending to prove that the land had a higher market value than the price actually paid for it under such circumstances is the testimony of a rival real estate broker, who had never been on the land, but claimed that he was familiar with its general location from maps and discription, and asserted that in his opinion it was worth considerably more than the price actually paid for it, and that he thought he could have sold the land for P3 a meter, or approximately P20,610. Of course an expert opinion of this kind, however sincere and honest the witness may have been in forming it, is wholly insufficient to maintain a finding that the land was worth any more than it actually brought when sold under the conditions above set forth.

It may be that the land has a speculative value much higher than the actual market value at the time of the sale, so that if held for an opportune turn in the market, or until a buyer of some special need for it happened to present himself, a price approximating that indicated by this witness might be secured for it. But the question of fact ruled upon is the actual market value of the land at the time of its sale to Barretto, and not any speculative value which might be assigned to it in anticipation of unknown, indefinite and uncertain contingencies.

Among other definitions of "market value" to be found in "Words and Phrases," vol. 5, p. 4383, and supported by citation of authority, are the following:

"The 'market value' of property is the price which the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it.

* * * * *

"The market value of land is the price that would in all probability result from fair negotiations where the seller is willing to sell and the buyer desires to buy."

Upon the foregoing statement of the facts disclosed by the record, we are of opinion that the judgment entered in the court below should be reversed and the complaint dismissed without costs in this instance.

- Even were we to admit, which we do not, that the plaintiff company had the right to terminate the negotiations at the time indicated by its manager, and to direct its real estate agent not to make the sale to Barretto after the hour

indicated, nevertheless we would be compelled to hold, upon the evidence before us, that the plaintiff company has no cause of action for monetary damages against the defendant real estate agent.

The measure of the damages which the plaintiff would be entitled to recover from the real estate agent for the unauthorized sale of its property would be the actual market value of the property, title to which had been lost as a result of the sale. We are not now considering any question as to the right of the owner, under such circumstances, to recover the property from the purchaser, or damages for its detention or the like; but merely his right to recover monetary damages from his agent should he elect, as the plaintiff company did in this case, to ratify the sale and recoup from the agent any loss resulting from his alleged unauthorized consummation of the sale.

The market value of the land in question was P18,892.50. Of this the plaintiff company has received P17,175, leaving a balance of P1,717.50 unpaid. But, whatever may be the view which should be taken as to the right of the plaintiff company to terminate the negotiations for the sale of the property to Barretto at the time fixed by it in its letter to the defendant real estate agent, there can be no question as to the liability of the plaintiff company to the real estate agent, in the event that it did so terminate the negotiations, for the amount of the commission which it agreed to pay him should he find a purchaser for the land at the price agreed upon in his agency contract. The commission agreed upon was all over P17,175 which the defendant could secure from the property, and it is clear that allowing the defendant this commission, and offsetting it against the unpaid balance of the market value of the land, the plaintiff company is not entitled to a money judgment against the defendant.

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 question as to what constitutes a sale so as to entitle a real estate broker to his commissions is extensively annotated in the case of *Lunney vs. Healey* (Nebraska) 56313 reported in 44 Law Rep. Ann., 593 [Note], and the long line of authorities there cited support the following rule:

"The business of a real estate broker or agent, generally, is only to find a purchaser, and the settled rule as stated by the courts is that, in the absence of an express contract between the broker and his principal, the implication generally is that the broker becomes entitled to the usual commissions whenever he brings to his principal a party who is able and willing to take the property and enter into a valid contract upon the terms then named by the principal, although the particulars may be arranged and the matter negotiated and completed between the principal and the purchaser directly."

In the case of *Watson vs. Brooks* (17 Fed. Rep., 540; 8 Sawy., 316), it was held that a sale of real property, entitling a broker to his commissions, was an agreement by the vendor to convey the title thereto, or an estate therein to the vendee for a certain valuable consideration then or thereafter to be paid, and was complete without conveyance, although the legal title remained in the vendor.

The rights of a real estate broker to be protected against the arbitrary revocation of his agency, without remuneration for services rendered in finding a suitable purchaser prior to the revocation, are clearly and forcefully stated in the following citation from the opinion in the case of *Blumenthal vs. Goodall* (89 Cal., 251).

"The act of the agent in finding a purchaser required time and labor for its completion, and within three days of the execution of the contract, and prior to its revocation, he had placed the matter in the position that success was practically certain and immediate, and it would be the height of injustice to permit the principal then to

withdraw the authority and terminate the agency as against an express provision of the contract, and perchance reap the benefit of the agent's labors, without being liable to him for his commissions. This would be to make the contract an unconscionable one, and would offer a premium for fraud by enabling one of the parties to take advantage of his own wrong and secure the labor of the other without remuneration."

- We are of opinion that under all the circumstances surrounding the negotiations as disclosed by the practically undisputed evidence of record, the plaintiff company could not lawfully terminate the negotiations at the time it attempted to do so and thereafter decline to convey the land to Barretto, who had accepted an offer of sale made to him by the plaintiff's duly authorized agent, subject only to an examination of the documents of title, and stood ready to pay the purchase price upon the delivery of the duly executed deed of conveyance and other necessary documents of title. We are not now considering the right or the power of the plaintiff company to terminate or revoke the agency of the defendant at that time. The revocation of the agent's authority at that time could in no wise relieve the plaintiff company of its obligation to sell the land to Barretto for the price and on the terms agreed upon before the agency was revoked.

If we are correct in our conclusions in this regard, it follows, of course that no matter what was the actual value of the land, the plaintiff company suffered no damage by the delivery of the title deeds to Barretto, and the consummation of the sale by the defendant upon the terms and at the price agreed upon prior to the revocation of his agency.

Without considering any of the disputed questions of fact it clearly appears that before the manager of the plaintiff company wrote the letter dated September 2, 1912, which is set forth in the foregoing statement of facts, and before the conversation was had to which that letter refers, the defendant real estate agent had offered to sell the land to Barretto for P18,892.50 and that he did so with the knowledge and consent, and under the authority of the plaintiff company. It further clearly appears that this offer had been duly accepted by Barretto, who stood ready and willing to pay over the agreed purchase price, upon the production and delivery of the necessary documents of title, should these documents be found, upon examination, to be executed in due and legal form. The only question, then, which we need consider, is whether the plaintiff company could lawfully "cancel" or rescind this agreement for the sale and purchase of the land, on the sole ground that the purchase price was not paid at the hour designated in the letter to the defendant.

The only reasons assigned for the sudden and arbitrary demand for the payment of the purchase price which was made with the manifest hope that it would defeat the agent's deal with Barretto, are that the plaintiff company's manager had become satisfied that the land was worth more than he had agreed to accept for it; and that he was piqued and annoyed at the delays which marked the earlier stages of the negotiations.

Time does not appear to have been of the essence of the contract. The agreement to sell was made without any express stipulation as to the time within which the purchase price was to be paid, except that the purchaser reserved the right to examine the documents of title before making payment of the purchase price, though it was understood that the sale was for cash upon the delivery of the documents of title executed in due form. Under the agreement with the agent of the plaintiff company, the purchaser had a perfect right to examine the documents of title; and in the absence of an express agreement fixing the time to be allowed therefore, he was clearly entitled to such time as might be reasonably necessary for that purpose.

The plaintiff company, through its agent, had given Barretto an opportunity to examine the documents of title, with the express understanding that if they were satisfactory he would hand the agent his check for the purchase price, and it is very clear that the plaintiff company could not arbitrarily, and for its own convenience, deprive Barretto of this opportunity to make such examination of the documents as might be reasonably necessary.

Of course we are not to be understood as denying the right of the vendor to couple his agreement to sell with a stipulation that the purchase price must be paid at a specific day, hour and minute; nor that the obligation to pay over the purchase price forthwith may not be inferred from all the circumstances surrounding the transaction in a particular case. Time may be, and often is of the very essence of the contract. But in a contract for the sale of real estate, where no agreement to the contrary appears, it may fairly be assumed that it was the intention of the parties to allow a reasonable time for the examination of the documents of title; and in any case in which time has been expressly allowed for that purpose, the vendor cannot arbitrarily demand the payment of the purchase price before the expiration of the time reasonably necessary therefor.

The doctrine supported by citation of authority is set forth as follows on page 165, "Maupin on Marketable Title to Real Estate:"

"The contract of sale usually specifies a time in which the purchaser may examine the title before completing the purchase. If no time be specified, he will be entitled to a reasonable time for that purpose, but cannot keep the contract open indefinitely so as to avail himself of a rise in the value of the property or escape loss in case of depreciation. He cannot be required to pay the purchase money before he has examined the abstract, unless he has expressly stipulated so to do. It has been held that if the contract provide that the purchaser shall be furnished an abstract of title, and shall have a specified time in which to examine the title and pay the purchase money, the purchaser must determine in that time whether he will take the title, and that he cannot tender the purchase money after that time, even though no abstract of the title was furnished.

"The purchaser is entitled to a reasonable time within which to determine by investigation the validity of apparent liens disclosed by the record. After the purchaser has examined the abstract, or investigated the title in the time allowed for that purpose, it is his duty to point out or make known his objections to the title, if any, so as to give the vendor an opportunity to remove them."

In the case of *Hoyt vs. Tuxbury* (70 111., 331, 332), the rule is stated as follows:

"Where the purchase of land is made upon condition the title is found good, the purchaser is only entitled to a reasonable time in which to determine whether he will take the title the vendor has, or reject it. He cannot keep the contract open indefinitely, so as to avail of a rise in the value of the property, or relieve himself in case of a depreciation."

In the case of *Easton vs. Montgomery* (90 Cal., 307), the rule is set forth as follows:

"A contract for the sale of land which provides 'title to prove good or no sale,' without specifying the time within which the examination is to be made, implies a reasonable time."

In 39 Cyc, 1332, the general rule, supported by numerous citations, is set forth as follows:

"If the contract of sale does not specify the time of performance, a reasonable time will be implied. In other words a reasonable time for performance will be allowed, and performance within a reasonable time will be required. What is a reasonable time necessarily depends upon the facts and circumstances of the particular case. The rule permitting and requiring performance within a reasonable time applies both to the time for making and executing the conveyance by the vendor, and to the time for making or tendering payment by the purchaser; and where some precedent act or demand is necessary, the rule applies to the time of performance after such act is done, or after such demand has been made. It also applies to the time within which any condition precedent is to be performed, or within which a contingency upon which the transaction depends is to happen, and to the performance of various acts by the parties such as the furnishing of an abstract of title, or making a survey, or any act which is to precede or may affect the time of conveyance or payment, or which one of the parties may do at his option which may affect the rights of the parties under the contract. If the purchaser is entitled to an examination of the title a reasonable time therefor will be implied."

Under all the circumstances surrounding the transaction in the case at bar, as they appear from the evidence of record, we have no hesitation in holding that the plaintiff company's letter of September 2, 1912 demanding payment before five o'clock of the afternoon of that day, under penalty of the cancellation of its agreement to sell, was an arbitrary and unreasonable attempt to deny to the purchaser the reasonable opportunity to inspect the documents of title, to which he was entitled by virtue of the express agreement of the plaintiff company's agent before any attempt was made to revoke his agency. It follows that Barretto's right to enforce the agreement to sell was in no wise affected by the attempt of the plaintiff company to "cancel" the agreement; and that the plaintiff company suffered no damage by the consummation of the agreement by the acceptance of the stipulated purchase price by the defendant real estate agent.

Perhaps we should indicate that in arriving at these conclusions we have not found it necessary to pass upon the disputed question of fact, as to whether or not the plaintiff company's manager instructed the defendant not to deliver the title-deed until he had received the purchase price. On this point there is a direct conflict of evidence. But as we understand the transaction, it was clearly understood that the purchaser would have a reasonable opportunity to inspect and examine the documents of title before paying over a large sum of money in exchange therefor, whether the agent did or did not have the authority to make actual delivery of the title deed for that purpose.

Twenty days hereafter let judgment be entered reversing the judgment entered in the court below without costs in this instance, and directing the dismissal of the complaint with the costs in first instance against the plaintiff company, and ten days thereafter let the record be returned to the court wherein it originated. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araullo, JJ., concur.

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