

UNILAND RESOURCES, PETITIONER, VS. DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENT. &NBSP;

G.R. No. 95909. August 16, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In the law on agency, it is elementary that when the main transaction between the principal parties does not materialize, the claim for commission of the duly authorized broker is disallowed.[1] How about the instance when the sale was eventually consummated between parties introduced by a middleman who, in the first place, had no authority, express or implied, from the seller to broker the transaction? Should the interloper be allowed a commission? On these simplified terms rests the nature of the controversy on which this case turns.

As stated by the respondent Court of Appeals[2] the ambient circumstances of this case are as follows:

(1) [Petitioner] Uniland Resources is a private corporation engaged in real estate brokerage and licensed as such (p. 2, Rec.), while [respondent] DBP, as we all know [sic], is a government corporation engaged in finance and banking in a proprietary capacity.

(2) Long before this case arose, Marinduque Mining Corporation obtained a loan from the DBP and as security therefor, mortgaged certain real properties to the latter, among them two lots located in Makati, M.M., described as follows:

(a) Corner lot, covered by TCT No. 114138, located at Pasong Tamo, Makati, with an area of 3,330 sq. mts., on which is constructed a [four]-story concrete building, etc., which, for brevity, shall be called the office building lot; and

(b) Lot covered by TCT No. 16279 with 12,355 sq. mts., located at Pasong Tamo, Makati, on which is constructed a concrete/steel warehouse, etc., which, for brevity, shall be called the warehouse lot.

The aforesaid lots had, however, been previously mortgaged by Marinduque Mining Corp., to Caltex, and the mortgage in favor of DBP was entered on their titles as a second mortgage (Pre-Trial Order, p. 37, Rec.).

The account of the Marinduque Mining Corp., with the DBP was later transferred to the Assets Privatization Trust (APT) pursuant to Proclamation [No.] 50.

(3) For failure of the Marinduque Mining Corp. to pay its obligations to Caltex, the latter foreclosed its mortgage on the aforesaid two lots (pp. 37-38, Rec.). APT, on the other hand, to recover its investment on the Marinduque Account, offered for sale to the public through DBP its right of redemption on said two lots by public bidding (Exhs. "1" and "2").

(4) Considering, however, that Caltex had required that both lots be redeemed, the bidding guidelines set by DBP provided that any bid to purchase either of the two lots would be considered only should there be two bids or a bid for the two items which, when combined, would fully cover the sale of the two lots in question (Exh. "1").

(5) The aforesaid bidding was held on May 5, 1987 with only one bidder, the Counsel Realty Corp. [an affiliate of Glaxo, Philippines, the client of petitioner], which offered a bid only for the warehouse lot in the amount of P23,900,000.00. Said bid was thus rejected by DBP.

(6) Seeing, however, that it would make a profit if it redeemed the two lots and then offer them for sale, and as its right to redeem said lots from Caltex would expire on May 8, 1987, DBP retrieved the account from APT and, on the last day for the exercise of its right of redemption, May 8, 1987, redeemed said lots from Caltex for P33,096,321.62 (Exh. "5"), thus acquiring them as its physical assets.

(7) In preparation for the sale of the two lots in question, DBP called a pre-bidding conference wherein a new set of bidding guidelines were formulated (Exh. "3"). Then, on July 30, 1987, the public bidding for the sale of the two lots was held and again, there was only one bidder, the Clarges Realty Corp. [another affiliate of Glaxo, Philippines], for only the warehouse lot and for the amount of P24,070,000.00, which is slightly higher than the amount previously offered by Counsel Realty Corp., therefor at the May 5, 1987 bidding (see Exh. "5," p. 100, Rec.). No bid was submitted for the office building lot (id.).

(8) Notwithstanding that there was no bidder for the office building lot, the DBP approved the sale of the warehouse lot to Clarges Realty Corp., and on November 23, 1987, the proper documentation of the sale was made (Exh. "D"). As for the office building lot, it was later sold by DBP in a negotiated sale to the Bank of P. I. as trustee for the "Perpetual Care Fund of the Manila Memorial Park" for P17,460,000.00, and proper documentation of the sale was made on November 17, 1987 (Exh. "E" and submarkings). The DBP admittedly paid the [five percent] broker's fee on this sale to the DBP Management Corporation, which acted as broker for said negotiated sale (p. 15, Appellant DBP's brief).

(9) After the aforesaid sale, [petitioner], through its President, wrote two letters [respondent DBP], the first through its Senior Vice President (Exh. "C"), and the second, through its Vice Chairman (Exh. "4" [sic]), asking for the payment of its broker's fee in instrumenting the sale of its (DBP's) warehouse lot to Clarges Realty Corp. The claim was referred to the Bidding Committee chaired by Amanda S. Guiam, which met on November 9, 1987, and which, on November 18, 1987, issued a decision denying [petitioner's] claim (Exh. "5"). Hence, the instant case filed by [petitioner] to recover from [respondent] DBP the aforesaid broker's fee.

After trial, the lower court, on October 25, 1988, rendered judgment

"ORDERING [respondent DBP] to pay [petitioner] the sum of P1,203,500.00 which is the equivalent of [five percent] broker's fee plus legal interest thereto (sic) from the filing of the complaint on February 18, 1988 until fully paid and the sum of P50,000.00 as and for attorney's fees. Costs against [respondent DBP]." (p. 122, Rec.)[3]

On appeal, the Court of Appeals reversed the judgment of the lower court[4] and dismissed the complaint. The motion for reconsideration filed by petitioner was also subsequently denied.[5]

Petitioner is now before this Court alleging that the petition "RAISES A QUESTION OF LAW IN THE SENSE THAT THE RESPONDENT COURT OF APPEALS BASED ITS DECISION ONLY ON THE CONTROVERSIAL FACTS FAVORABLE TO THE PRIVATE RESPONDENT DBP,"[6] primarily making capital of the disparity between the factual conclusions of the trial court and of the appellate court. Petitioner asserts that the respondent Court of Appeals disregarded evidence in its favor consisting of its letters to respondent DBP's higher officers sent prior to the bidding and sale, wherein petitioner requested accreditation as a broker and, in the process of informing that it had offered the DBP properties for sale, also volunteered the name of its client, Glaxo, Philippines, as an interested prospective buyer.[7]

The rule is that in petitions for certiorari as a mode of appeal, only questions of law distinctly set forth may be raised.[8] Such questions have been defined as those that do not call for any examination of the probative value of

the evidence presented by the parties.[9] Petitioner's singular assignment of error would, however, have this Court go over the facts of this case because it necessarily involves the examination of the evidence and its subsequent re-evaluation. Under the present proceeding, the same, therefore, cannot be done.

It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.[10] While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions.[11]

Be that as it may, the Court has perused the assailed decision of the Court of Appeals and still finds the primary assertion of petitioner to be unfounded. The Court of Appeals has addressed all the factual contentions of petitioner and chose not to give credence to petitioner's version. Moreover, the findings of the Court of Appeals are consistent with, and sufficiently supported by, the records of this case.

It is obvious that petitioner was never able to secure the required accreditation from respondent DBP to transact business on behalf of the latter. The letters sent by petitioner to the higher officers of the DBP and the APT are merely indicative of petitioner's desire to secure such accreditation. At best these missives are self-serving; the most that they prove is that they were sent by petitioner and received by respondent DBP, which clearly never agreed to be bound thereto. As declared by the trial court even when it found in favor of petitioner, there was no express reply from the DBP or the APT as to the accreditation sought by petitioner.[12] From the very beginning, therefore, petitioner was aware that it had no express authority from DBP to find buyers of its properties.

In its reply submitted pursuant to the resolution requiring the same,[13] petitioner also invokes Article 1869 of the new Civil Code[14] in contending that an implied agency existed. Petitioner argues that it "should have been stopped, disauthorized and outrightly prevented from dealing the 12,355 sq. m. (with warehouse) [sic] by the DBP from the inception." [15] On the contrary, these steps were never necessary. In the course of petitioner's dealings with the DBP, it was always made clear to petitioner that only accredited brokers may look for buyers on behalf of respondent DBP. This is not a situation wherein a third party was prejudiced by the refusal of respondent DBP to recognize petitioner as its broker. The controversy is only between the DBP and petitioner, to whom it was emphasized in no uncertain terms that the arrangement sought did not exist. Article 1869, therefore, has no room for operation in this case.

Petitioner would also disparage the formality of accreditation as "merely a mechanical act, which requires not much discretion, as long as a person or entity looks for a buyer [and] initiate or promote [sic] the interests of the seller." [16] Being engaged in business, petitioner should do better to adopt the opposite attitude and appreciate that formalities, such as the need for accreditation, result from the evolution of sound business practices for the protection and benefit of all parties concerned. They are designed and adopted specifically to prevent the occurrence of situations similar to that obtaining in this case.

More importantly, petitioner's stance goes against the basic axiom in Civil Law that no one may contract in the name of another without being authorized by the latter, unless the former has by law a right to represent him.[17] From this principle, among others, springs the relationship of agency which, as with other contracts, is one founded on mutual consent: the principal agrees to be bound by the acts of the agent and the latter in turn consents to render service on behalf or in representation of the principal.[18]

Petitioner, however, also invokes equity considerations, and in equity, the Court recognizes the efforts of

petitioner in bringing together respondent DBP and an interested and financially-able buyer. While not actively involved in the actual bidding and transfer of ownership of the warehouse property, petitioner may be said to have initiated, albeit without proper authority, the transaction that eventually took place. The Court is also aware that respondent DBP was able to realize a substantial profit from the sale of its two properties. While purely circumstantial, there is sufficient reason to believe that the DBP became more confident to venture and redeem the properties from the APT due to the presence of a ready and willing buyer, as communicated and assured by petitioner.

In *Prats v. Court of Appeals*,^[19] there was a finding that the petitioner therein as the agent was no longer the efficient procuring cause in bringing about the sale proceeding from the fact of expiration of his exclusive authority. There was therefore, no basis in law to grant the relief sought. Nevertheless, this Court in equity granted the sum of P100,000.00, out of the P1,380,000.00 claimed as commission, by way of compensation for the efforts and assistance rendered by the agent in the transaction prior to the expiration of his authority. These consist in offering the lot for sale to the eventual buyer, sending follow-up letters, inviting the buyer to dinner and luncheon meetings, etc.

Parallel circumstances obtain in the case at bar. It was petitioner who advised Glaxo, Philippines of the availability of the warehouse property and aroused its interest over the same. Through petitioner, respondent DBP was directly informed of the existence of an interested buyer. Petitioner's persistence in communicating with respondent DBP reinforced the seriousness of the offer. This piece of information no doubt had a bearing on the subsequent decisions made by respondent DBP as regards the disposition of its properties.

Petitioner claims the amount of P1,203,500.00 awarded by the trial court as commission computed at five percent of the sale price of the warehouse property. Under the foregoing disquisition and following the precedent, as well as roughly the proportion, set in *Prats*, the Court in equity grants petitioner the sum of One Hundred Thousand Pesos (P100,000.00) for the role it played in the transaction between respondent DBP and buyer Glaxo, Philippines. It is emphasized, however, that the circumstances that came into play in this case do not meet the minimum legal standards required for the existence of an agency relationship and that the award is based purely on equity considerations. Accordingly, petitioner's other arguments need not now be discussed.

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the **MODIFICATION** that in equity respondent DBP is ordered to pay petitioner the amount of One Hundred Thousand Pesos (P100,000.00). No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

* Pursuant to the clarification made in *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals* [G. R. No. L-54526, 25 August 1986, 143 SCRA 623], citing *Elks Club v. Rovira* [G. R. No. 48411, 24 February 1948, 80 Phil. 272], the name of the Court of Appeals, which has been included by petitioner as party respondent in the title of this case, has been deleted.

[1] *Danon v. Antonio A. Brimo and Company*, G. R. No. 15823, 12 September 1921, citing *Sibbald v. Bethlehem Iron Company*, 83 N. Y., 378; 38 Am. Rep., 441 [1880]; reiterated in *Rocha v. Prats and Company*, G. R. No. 16716, 31 May 1922, 43 Phil. 397.

[2] Ninth Division composed of Justices Fidel P. Purisima, as Chairman, Venancio D. Aldecoa, Jr., and Alicia V.

Sempio Diy, with the latter as the ponente.

[3] Rollo, pp. 25-28.

[4] Regional Trial Court, Branch 105, Quezon City, with the Honorable Tomas V. Tadeo, Jr., presiding; Rollo, pp. 18-22.

[5] Rollo, p. 45.

[6] Rollo, p. 13.

[7] Exhibits "A" and "B."

[8] Rules of Court, Rule 45, sec. 2, par. 2.

[9] *Goduco v. Court of Appeals, et al.*, G. R. No. L-17647, 28 February 1964, 119 Phil. 531. See also *Hernandez v. Court of Appeals*, G. R. No. L-39767, 31 March 1987, 149 SCRA 67.

[10] *Alsua-Betts v. Court of Appeals*, G. R. Nos. L-46430-31, 30 July 1979, 92 SCRA 332.

[11] See *Sacay v. Sandigabayan*, G. R. Nos. 66497-98, 10 July 1986, 142 SCRA 593, and the cases cited therein.

[12] Rollo, p. 20.

[13] Rollo, p. 64.

[14] Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form.

[15] Reply, p. 8.

[16] Reply, p. 11.

[17] Art. 1317, Civil Code.

[18] See *Rallos v. Felix Go Chan and Sons Realty Corporation*, G. R. No. L-24332, 31 January 1978, 81 SCRA 251.

[19] G.R. No. L-39822, 31 January 1978, 81 SCRA 360.

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