

43 Phil. 400

[ G. R. No. 16932. May 31, 1922 ]

**FRANCISCO J. AGUADO, PLAINTIFF AND APPELLANT, VS. PAZ ROMAN DE GUERIGUET ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

Paz Roman de Gueriguet, being the owner of a lot with three buildings of strong materials thereon, situated at the corner of Gunao and Arlegui Streets in this city of Manila and desiring to sell the said property, so advised her nephew, Angel Ma. Roman, by letters dated December 4, 1916, and October 2, 1917, from Spain where she was then living with her husband.

Angel Ma. Roman looked for purchasers and secured the services of the real estate broker, Juan Pardo, who on August 18, 1918, offered \$11,000 gold for the property; this offer was submitted by cable to his aunt Paz, and as Angel Ma. Roman did not receive an answer, he cabled her again on August 24, 1918, as follows:

“Telegraph urgently decision my offer ninth.”

On September 1, 1918, Angel Ma. Roman received a cablegram from the husband of Paz Roman advising him to wait for a letter, referring to that which Paz Roman wrote on August 29, 1918, wherein she rejected the offer of \$11,000 and suggested that “it would be better” if it were \$12,000.

On September 19, 1918, Paz Roman again wrote Angel Ma. Roman a letter in which she said among other things: “\* \* \* If there should be an offer of \$12,000 for the houses at Gunao which is a little less than its assessed value (P24,900) cable me right away so that I may send you the necessary power to enable you to make the sale, but it must be \$12,000 net.

“Find out if Mr. Jose V. Ramirez, who is our attorney in fact, has already arrived there because if he is not there we cannot do anything \* \* \*”

This letter was not received by Angel Ma. Roman until November 22, 1918. And in the same month of September, to be exact, on the 27th thereof, Jose V. Ramirez received a cablegram from the husband of Paz Roman in which, in part, he stated:

“\* \* \* Notify nephew Roman Street Zacateros seven hundred fifty six Gunao house twelve thousand dollars free.”

Jose V. Ramirez did not know Angel Ma. Roman personally and he sent a messenger to the address mentioned in the cablegram but Angel Ma. Roman did not live there, and the messenger was unable to find him. Upon investigation he learned that Angel Ma. Roman had his office in the commercial firm of Sontua and to this place several errands were sent but Angel was not to be found every time.

In the meanwhile, Ramirez received an offer of \$15,000 for the property; \$1,000 to be deducted therefrom as commission, and he cabled this fact to the husband of Paz Roman on September 28, 1918. On October 7, 1918, Paz Roman answered Ramirez with the following cable message:

“While I send power I authorize Joseph Ramirez provisional sale house one hundred thirty eight Gunao fifteen thousand dollars paying one thousand commission.”

As the description of the property, which also fronted Arlegui Street, was not complete, Ramirez had to cable asking for a more detailed description of the property, and which was cabled to him the opportune time.

On November 2, 1918, Paz Roman, with the consent of her husband, executed at Madrid a power of attorney in favor of Jose V. Ramirez authorizing him to sell the property, the essential part of that power being as follows:

“\* \* \* In order that, in the name and stead of the principal, he may sell the

absolute right of ownership to whomever he may elect, of the whole of the aforesaid property composed of three houses, but forming one house, with, all the accessories and things appurtenant thereto, for a total price of not less than \$15,000 which the agent shall collect from the purchaser in cash \* \* \*."

At the request of Ramirez, Paz Roman on the 19th of November, 1918, by cable, authorized him to definitely sell the said property.

And on the 23d of that same month, Paz Roman wrote to Angel Ma. Roman a letter in which among other things she said the following:

"In view of the telegram that you sent me last month I wrote you to the effect that I wanted one thousand dollars more for the houses at Gunao and San Geronimo Streets, but as Ramirez telegraphed us saying that there was an offer of \$15,000 and requested us to answer by telegraph if we were agreeable with the offer, we answered in the affirmative, as there was nothing to doubt about, since the offer was \$3,000 more than what your purchaser offered, and that is how it came to be sold for \$15,000, minus \$1,000 commission, thus leaving a net receipt of \$14,000.

"A few days ago we sent there the necessary power of attorney and I am writing you this for your information and so that you will not bother yourself any more about the said houses."

On November 22, 1918, Angel Ma. Roman received his aunt's letter of the 19th of September of that year which is, in part, quoted above; but notwithstanding the advice contained in the letter, the records do not show that he did anything to find whether Ramirez was back in Manila, it being stated in the letter that "if he should not be there nothing can be done," because Ramirez was the attorney in fact of Paz Roman, and on November 23, 1918, without coming to an understanding with Ramirez, he merely notified his broker, Juan Pardo, that as regards the offer of the latter the owner of the property was asking \$1,000 more.

On November 27, 1918, Francisco J. Aguado, the prospective purchaser of the agent, Juan Pardo, offered P27,000 for the property and in a letter dated that same day he so advised Angel Ma, Roman who on the same day sent to his aunt the following cablegram:

“Twelve thousand dollars net sale Gunao authorize telegraphically sent power without amount.”

As was to be expected, Angel Ma. Roman did not receive a favorable answer. As a matter of fact he received no reply at all, which was not strange. The contract with Ramirez’s purchaser had been perfected through his mediation, as the offer of \$15,000 had been accepted more than a month ago, or on October 7, 1918, when Paz Roman cabled her acceptance to Ramirez, as evidenced by the message above quoted.

On December 2, 1918, by virtue of the power of attorney by him received, Jose V. Ramirez sold the property in question to Amos G. Bellis for the sum of P130,000.

Francisco J. Aguado now prosecutes this action with a complaint dated January 10, 1919, and amended on April 15, 1920, praying, among other things, that the preliminary injunction prohibiting the defendants, their agents or representatives from registering or causing to be registered, during the pendency of this case, the sale of this property effected by Jose V. Ramirez in the registry of deeds, be declared permanent; that the said sale be annulled; that Paz Roman be sentenced to sell to the plaintiff the aforesaid property for the price of P27,000 which he offered to Angel Ma. Roman; that all the defendants be sentenced to vacate the premises; that in the event of the sale made through Ramirez be held valid that the defendants Paz Roman, Amos G. Bellis, J. P. Heilbronn, and Watsonal Drug Co., be sentenced to pay the plaintiff the sum of P8,000 by way of damages.

For the purposes of this decision it is not necessary to recite further the other pleadings filed by the parties.

Suffice it to say that the plaintiff’s allegation of fraud and conspiracy among the defendants has not been proven.

The facts as stated by us are borne out by the evidence.

Plaintiff’s offer would never have been made if Angel Ma. Roman and Jose V. Ramirez had come to an understanding. It has been proven that Ramirez made efforts to locate Angel Ma. Roman, but there is no proof that the latter had ever attempted to look for, and come to an understanding with, Ramirez until on December 12, 1918, only when the property had already been sold, the sale having taken place on the second of the aforesaid month.

As we have said the contract between Paz Roman and the purchaser found by Ramirez was

perfected on October 7, 1918, which is the date of the acceptance of the offer made by the purchaser through Ramirez (articles 1258 and 1450, Civil Code).

We cannot say the same thing about plaintiff's offer conveyed to Paz Roman after the contract of Ramirez had been perfected.

Prior to October 7, 1918, Paz Roman was free to accept any offer for the purchase of the property, because since the latter part of August she had already rejected the offer of \$11,000 made-through Angel Ma. Roman who was not able to find a better purchaser until long after October 7, that is, on November 27 when he cabled a new offer of \$12,000.

There are no means for annulling the contract of sale in question ; and there being no evidence that the defendants had obligated themselves in any way to the plaintiff, nor that they had acted fraudulently in the premises arid with deceit they cannot be held responsible for anything.

None of the errors assigned by the appellant is justified.

The judgment appealed from is affirmed with costs of both instances against the appellant. So ordered.

*Araullo, C. J., Malcolm, Avaceña, Villamor, and Ostrand, J., concur.*