

## SECOND DIVISION

[ G.R. No. 220785, March 01, 2017 ]

**MA. LORENA TICONG, PETITIONER, VS. MANUEL A. MALIM,  
MINDA ABANGAN AND MAY MACAL, RESPONDENTS.**

**[G.R. NO. 222887]**

**PATROCINIO S. TICONG AND WILMA T. LAO, PETITIONERS, VS.  
MANUEL A. MALIM, MINDA ABANGAN AND MAY MACAL,  
RESPONDENTS.**

### D E C I S I O N

**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<sup>[1]</sup> and the September 23, 2015<sup>[2]</sup> and January 12, 2016<sup>[3]</sup> 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<sup>[4]</sup> 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."<sup>[5]</sup>

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.<sup>[6]</sup>

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.<sup>[7]</sup>

#### *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:

1. 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;
2. 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.<sup>[8]</sup>

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*<sup>[9]</sup> 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<sup>th</sup> 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.<sup>[10]</sup>

Ma. Lorena, as one of the children and heirs of Lorenzo Ticong,<sup>[11]</sup> 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.**<sup>[12]</sup>

In its January 20, 2016 Resolution,<sup>[13]</sup> 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<sup>[14]</sup> dated June 8, 2016.

**G.R. No. 222887**

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

**GROUND**

- 1. 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 F7.3 MILLION SALE OF THE 5,000 SQUARE METER LOT OF THE TICONGS TO THE MORMONS.**
- 2. 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.**<sup>[15]</sup>

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.