

SECOND DIVISION

[G.R. No. 163720, December 16, 2004]

**GENEVIEVE LIM, PETITIONER, VS. FLORENCIO SABAN,
RESPONDENT.**

D E C I S I O N

TINGA, J,:

Before the Court is a Petition for Review on Certiorari assailing the *Decision*^[1] dated October 27, 2003 of the Court of Appeals, Seventh Division, in CA-G.R. V No. 60392.^[2]

The late Eduardo Ybañez (Ybañez), the owner of a 1,000-square meter lot in Cebu City (the "lot"), entered into an *Agreement and Authority to Negotiate and Sell* (Agency Agreement) with respondent Florencio Saban (Saban) on February 8, 1994. Under the Agency Agreement, Ybañez authorized Saban to look for a buyer of the lot for Two Hundred Thousand Pesos (P200,000.00) and to mark up the selling price to include the amounts needed for payment of taxes, transfer of title and other expenses incident to the sale, as well as Saban's commission for the sale.^[3]

Through Saban's efforts, Ybañez and his wife were able to sell the lot to the petitioner Genevieve Lim (Lim) and the spouses Benjamin and Lourdes Lim (the Spouses Lim) on March 10, 1994. The price of the lot as indicated in the *Deed of Absolute Sale* is Two Hundred Thousand Pesos (P200,000.00).^[4] It appears, however, that the vendees agreed to purchase the lot at the price of Six Hundred Thousand Pesos (P600,000.00), inclusive of taxes and other incidental expenses of the sale. After the sale, Lim remitted to Saban the amounts of One Hundred Thirteen Thousand Two Hundred Fifty Seven Pesos (P113,257.00) for payment of taxes due on the transaction as well as Fifty Thousand Pesos (P50,000.00) as broker's commission.^[5] Lim also issued in the name of Saban four postdated checks in the aggregate amount of Two Hundred Thirty Six Thousand Seven Hundred Forty Three Pesos (P236,743.00). These checks were Bank of the Philippine Islands (BPI) Check No. 1112645 dated June 12, 1994 for P25,000.00; BPI Check No. 1112647 dated June 19, 1994 for P18,743.00; BPI Check No. 1112646 dated June 26, 1994 for P25,000.00; and Equitable PCI Bank Check No. 021491B dated June 20, 1994 for P168,000.00.

Subsequently, Ybañez sent a letter dated June 10, 1994 addressed to Lim. In the letter Ybañez asked Lim to cancel all the checks issued by her in Saban's favor and to "extend another partial payment" for the lot in his (Ybañez's) favor.^[6]

After the four checks in his favor were dishonored upon presentment, Saban filed a *Complaint* for collection of sum of money and damages against Ybañez and Lim with the Regional Trial Court (RTC) of Cebu City on August 3, 1994.^[7] The case was

assigned to Branch 20 of the RTC.

In his *Complaint*, Saban alleged that Lim and the Spouses Lim agreed to purchase the lot for P600,000.00, i.e., with a mark-up of Four Hundred Thousand Pesos (P400,000.00) from the price set by Ybañez. Of the total purchase price of P600,000.00, P200,000.00 went to Ybañez, P50,000.00 allegedly went to Lim's agent, and P113,257.00 was given to Saban to cover taxes and other expenses incidental to the sale. Lim also issued four (4) postdated checks^[8] in favor of Saban for the remaining P236,743.00.^[9]

Saban alleged that Ybañez told Lim that he (Saban) was not entitled to any commission for the sale since he concealed the actual selling price of the lot from Ybañez and because he was not a licensed real estate broker. Ybañez was able to convince Lim to cancel all four checks.

Saban further averred that Ybañez and Lim connived to deprive him of his sales commission by withholding payment of the first three checks. He also claimed that Lim failed to make good the fourth check which was dishonored because the account against which it was drawn was closed.

In his *Answer*, Ybañez claimed that Saban was not entitled to any commission because he concealed the actual selling price from him and because he was not a licensed real estate broker.

Lim, for her part, argued that she was not privy to the agreement between Ybañez and Saban, and that she issued stop payment orders for the three checks because Ybañez requested her to pay the purchase price directly to him, instead of coursing it through Saban. She also alleged that she agreed with Ybañez that the purchase price of the lot was only P200,000.00.

Ybañez died during the pendency of the case before the RTC. Upon motion of his counsel, the trial court dismissed the case only against him without any objection from the other parties.^[10]

On May 14, 1997, the RTC rendered its *Decision*^[11] dismissing Saban's complaint, declaring the four (4) checks issued by Lim as stale and non-negotiable, and absolving Lim from any liability towards Saban.

Saban appealed the trial court's *Decision* to the Court of Appeals.

On October 27, 2003, the appellate court promulgated its *Decision*^[12] reversing the trial court's ruling. It held that Saban was entitled to his commission amounting to P236,743.00.^[13]

The Court of Appeals ruled that Ybañez's revocation of his contract of agency with Saban was invalid because the agency was coupled with an interest and Ybañez effected the revocation in bad faith in order to deprive Saban of his commission and to keep the profits for himself.^[14]

The appellate court found that Ybañez and Lim connived to deprive Saban of his

commission. It declared that Lim is liable to pay Saban the amount of the purchase price of the lot corresponding to his commission because she issued the four checks knowing that the total amount thereof corresponded to Saban's commission for the sale, as the agent of Ybañez. The appellate court further ruled that, in issuing the checks in payment of Saban's commission, Lim acted as an accommodation party. She signed the checks as drawer, without receiving value therefor, for the purpose of lending her name to a third person. As such, she is liable to pay Saban as the holder for value of the checks.^[15]

Lim filed a *Motion for Reconsideration* of the appellate court's *Decision*, but her *Motion* was denied by the Court of Appeals in a *Resolution* dated May 6, 2004.^[16]

Not satisfied with the decision of the Court of Appeals, Lim filed the present petition.

Lim argues that the appellate court ignored the fact that after paying her agent and remitting to Saban the amounts due for taxes and transfer of title, she paid the balance of the purchase price directly to Ybañez.^[17]

She further contends that she is not liable for Ybañez's debt to Saban under the Agency Agreement as she is not privy thereto, and that Saban has no one but himself to blame for consenting to the dismissal of the case against Ybañez and not moving for his substitution by his heirs.^[18]

Lim also assails the findings of the appellate court that she issued the checks as an accommodation party for Ybañez and that she connived with the latter to deprive Saban of his commission.^[19]

Lim prays that should she be found liable to pay Saban the amount of his commission, she should only be held liable to the extent of one-third (1/3) of the amount, since she had two co-vendees (the Spouses Lim) who should share such liability.^[20]

In his *Comment*, Saban maintains that Lim agreed to purchase the lot for P600,000.00, which consisted of the P200,000.00 which would be paid to Ybañez, the P50,000.00 due to her broker, the P113,257.00 earmarked for taxes and other expenses incidental to the sale and Saban's commission as broker for Ybañez. According to Saban, Lim assumed the obligation to pay him his commission. He insists that Lim and Ybañez connived to unjustly deprive him of his commission from the negotiation of the sale.^[21]

The issues for the Court's resolution are whether Saban is entitled to receive his commission from the sale; and, assuming that Saban is entitled thereto, whether it is Lim who is liable to pay Saban his sales commission.

The Court gives due course to the petition, but agrees with the result reached by the Court of Appeals.

The Court affirms the appellate court's finding that the agency was not revoked since Ybañez requested that Lim make stop payment orders for the checks payable to Saban only after the consummation of the sale on March 10, 1994. At that time,

Saban had already performed his obligation as Ybañez's agent when, through his (Saban's) efforts, Ybañez executed the *Deed of Absolute Sale* of the lot with Lim and the Spouses Lim.

To deprive Saban of his commission subsequent to the sale which was consummated through his efforts would be a breach of his contract of agency with Ybañez which expressly states that Saban would be entitled to any excess in the purchase price after deducting the P200,000.00 due to Ybañez and the transfer taxes and other incidental expenses of the sale.^[22]

In *Macondray & Co. v. Sellner*,^[23] the Court recognized the right of a broker to his commission for finding a suitable buyer for the seller's property even though the seller himself consummated the sale with the buyer.^[24] The Court held that it would be in the height of injustice to permit the principal to terminate the contract of agency to the prejudice of the broker when he had already reaped the benefits of the broker's efforts.

In *Infante v. Cunanan, et al.*,^[25] the Court upheld the right of the brokers to their commissions although the seller revoked their authority to act in his behalf after they had found a buyer for his properties and negotiated the sale directly with the buyer whom he met through the brokers' efforts. The Court ruled that the seller's withdrawal in bad faith of the brokers' authority cannot unjustly deprive the brokers of their commissions as the seller's duly constituted agents.

The pronouncements of the Court in the aforecited cases are applicable to the present case, especially considering that Saban had completely performed his obligations under his contract of agency with Ybañez by finding a suitable buyer to preparing the *Deed of Absolute Sale* between Ybañez and Lim and her co-vendees. Moreover, the contract of agency very clearly states that Saban is entitled to the excess of the mark-up of the price of the lot after deducting Ybañez's share of P200,000.00 and the taxes and other incidental expenses of the sale.

However, the Court does not agree with the appellate court's pronouncement that Saban's agency was one coupled with an interest. Under Article 1927 of the Civil Code, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. Stated differently, an agency is deemed as one coupled with an interest where it is established for the mutual benefit of the principal and of the agent, or for the interest of the principal and of third persons, and it cannot be revoked by the principal so long as the interest of the agent or of a third person subsists. In an agency coupled with an interest, the agent's interest must be in the subject matter of the power conferred and not merely an interest in the exercise of the power because it entitles him to compensation. When an agent's interest is confined to earning his agreed compensation, the agency is not one coupled with an interest, since an agent's interest in obtaining his compensation as such agent is an ordinary incident of the agency relationship.^[26]

Saban's entitlement to his commission having been settled, the Court must now determine whether Lim is the proper party against whom Saban should address his claim.