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THIRD DIVISION

[G.R. No. 115838, July 18, 2002]

CONSTANTE AMOR DE CASTRO AND CORAZON AMOR DE CASTRO, PETITIONERS, VS. COURT OF APPEALS AND FRANCISCO ARTIGO, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

Before us is a Petition for Review on Certiorari[1] seeking to annul the Decision of the Court of Appeals[2] dated May 4, 1994 in CA-G.R. CV No. 37996, which affirmed in toto the decision[3] of the Regional Trial Court of Quezon City, Branch 80, in Civil Case No. Q-89-2631. The trial court disposed as follows:

"WHEREFORE, the Court finds defendants Constante and Corazon Amor de Castro jointly and solidarily liable to plaintiff the sum of:

a) P303,606.24 representing unpaid commission;

b) P25,000.00 for and by way of moral damages;

c) P45,000.00 for and by way of attorney's fees;

d) To pay the cost of this suit.

Quezon City, Metro Manila, December 20, 1991."

The Antecedent Facts

On May 29, 1989, private respondent Francisco Artigo ("Artigo" for brevity) sued petitioners Constante A. De Castro ("Constante" for brevity) and Corazon A. De Castro ("Corazon" for brevity) to collect the unpaid balance of his broker's commission from the De Castros.[4] The Court of Appeals summarized the facts in this wise:

> "x x x. Appellants[5] were co-owners of four (4) lots located at EDSA corner New York and Denver Streets in Cubao, Quezon City. In a letter dated January 24, 1984 (Exhibit "A-1, p. 144, Records), appellee[6] was authorized by appellants to act as real estate broker in the sale of these properties for the amount of P23,000,000.00, five percent (5%) of which will be given to the agent as commission. It was appellee who first found Times Transit Corporation, represented by its president Mr. Rondaris, as prospective buyer which desired to buy two (2) lots only, specifically lots 14 and 15. Eventually, sometime in May of 1985, the sale of lots 14 and 15 was consummated. Appellee received from appellants P48,893.76 as commission.

> It was then that the rift between the contending parties soon emerged. Appellee apparently felt short changed because according to him, his total commission should be P352,500.00 which is five percent (5%) of the agreed price of P7,050,000.00 paid by Times Transit Corporation to appellants for the two (2) lots, and that it was he who introduced the buyer to appellants and unceasingly facilitated the negotiation which ultimately led to the consummation of the sale. Hence, he sued below to collect the balance of P303,606.24 after having received P48,893.76 in advance.
>
> On the other hand, appellants completely traverse appellee's claims and essentially argue that appellee is selfishly asking for more than what he truly deserved as commission to the prejudice of other agents who were more instrumental in the consummation of the sale. Although appellants readily concede that it was appellee who first introduced Times Transit Corp. to them, appellee was not designated by them as their exclusive real estate agent but that in fact there were more or less eighteen (18) others whose collective efforts in the long run dwarfed those of appellee's, considering that the first negotiation for the sale where appellee took active participation failed and it was these other agents who successfully brokered in the second negotiation. But despite this and out of appellants' "pure liberality, beneficence and magnanimity", appellee nevertheless was given the largest cut in the commission (P48,893.76), although on the principle of *quantum meruit* he would have certainly been entitled to less. So appellee should not have been heard to complain of getting only a pittance when he actually got the lion's share of the commission and worse, he should not have been allowed to get the entire commission. Furthermore, the purchase price for the two lots was only P3.6 million as appearing in the deed of sale and not P7.05 million as alleged by appellee. Thus, even assuming that appellee is entitled to the entire commission, he would only be getting 5% of the P3.6 million, or P180,000.00."

Ruling of the Court of Appeals

The Court of Appeals affirmed in toto the decision of the trial court.

First. The Court of Appeals found that Constante authorized Artigo to act as agent in the sale of two lots in Cubao, Quezon City. The handwritten authorization letter signed by Constante clearly established a contract of agency between Constante and Artigo. Thus, Artigo sought prospective buyers and found Times Transit Corporation ("Times Transit" for brevity). Artigo facilitated the negotiations which eventually led to the sale of the two lots. Therefore, the Court of Appeals decided that Artigo is entitled to the 5% commission on the purchase price as provided in the contract of agency.

Second. The Court of Appeals ruled that Artigo's complaint is not dismissible for failure to implead as indispensable parties the other co-owners of the two lots. The Court of Appeals explained that it is not necessary to implead the other co-owners since the action is exclusively based on a contract of agency between Artigo and Constante.

Third. The Court of Appeals likewise declared that the trial court did not err in admitting parol evidence to prove the true amount paid by Times Transit to the De Castros for the two lots. The Court of Appeals ruled that evidence aliunde could be presented to prove that the actual purchase price was P7.05 million and not P3.6 million as appearing in the deed of sale. Evidence aliunde is admissible considering that Artigo is not a party, but a mere witness in the deed of sale between the De Castros and Times Transit. The Court of Appeals explained that, "the rule that oral evidence is inadmissible to vary the terms of written instruments is generally applied only in suits between parties to the instrument and strangers to the contract are not bound by it." Besides, Artigo was not suing under the deed of sale, but solely under the contract of agency. Thus, the Court of Appeals upheld the trial court's finding that the purchase price was P7.05 million and not P3.6 million.

Hence, the instant petition.

The Issues

According to petitioners, the Court of Appeals erred in -

I. NOT ORDERING THE DISMISSAL OF THE COMPLAINT FOR FAILURE TO IMPLEAD INDISPENSABLE PARTIES-IN-INTEREST;

II. NOT ORDERING THE DISMISSAL OF THE COMPLAINT ON THE GROUND THAT ARTIGO'S CLAIM HAS BEEN EXTINGUISHED BY FULL PAYMENT, WAIVER, OR ABANDONMENT;

III. CONSIDERING INCOMPETENT EVIDENCE;

IV. GIVING CREDENCE TO PATENTLY PERJURED TESTIMONY;

V. SANCTIONING AN AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES;

VI. NOT AWARDING THE DE CASTRO'S MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.

The Court's Ruling

The petition is bereft of merit.

First Issue: whether the complaint merits dismissal for failure to implead other co-owners as indispensable parties

The De Castros argue that Artigo's complaint should have been dismissed for failure to implead all the co-owners of the two lots. The De Castros claim that Artigo always knew that the two lots were co-owned by Constante and Corazon with their other siblings Jose and Carmela whom Constante merely represented. The De Castros contend that failure to implead such indispensable parties is fatal to the complaint since Artigo, as agent of all the four co-owners, would be paid with funds co-owned by the four co-owners.

The De Castros' contentions are devoid of legal basis.

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had.[7] The joinder of indispensable parties is mandatory and courts cannot proceed without their presence.[8] Whenever it appears to the court in the course of a proceeding

that an indispensable party has not been joined, it is the duty of the court to stop the trial and order the inclusion of such party.[9]

However, the rule on mandatory joinder of indispensable parties is not applicable to the instant case.

There is no dispute that Constante appointed Artigo in a handwritten note dated January 24, 1984 to sell the properties of the De Castros for P23 million at a 5 percent commission. The authority was on a first come, first serve basis. The authority reads in full:

> "24 Jan. 84
>
> To Whom It May Concern:
>
> This is to state that Mr. Francisco Artigo is authorized as our real estate broker in connection with the sale of our property located at Edsa Corner New York & Denver, Cubao, Quezon City.
>
> Asking price P23,000,000.00 with
>
> 5% commission as agent's fee.
>
> C.C. de Castro
>
> owner & representing
>
> co-owners
>
> This authority is on a first-come
>
> First serve basis –CAC"

Constante signed the note as owner and as representative of the other co-owners. Under this note, a contract of agency was clearly constituted between Constante and Artigo. Whether Constante appointed Artigo as agent, in Constante's individual or representative capacity, or both, the De Castros cannot seek the dismissal of the case for failure to implead the other co-owners as indispensable parties. The **De Castros admit that the other co-owners are solidarily liable under the contract of agency,**[10] citing Article 1915 of the Civil Code, which reads:

> Art. 1915. If two or more persons have appointed an agent for a common transaction or undertaking, they shall be solidarily liable to the agent for all the consequences of the agency.

The solidary liability of the four co-owners, however, militates against the De Castros' theory that the other co-owners should be impleaded as indispensable parties. A noted commentator explained Article 1915 thus–

> "The rule in this article applies even when the appointments were made by the principals in separate acts, provided that they are for the same transaction. **The solidarity arises from the common interest of the principals, and not from the act of constituting the agency. By virtue of this solidarity, the agent can recover from any principal the whole compensation and indemnity owing to him by the others.** The parties, however, may, by express agreement, negate this

> solidary responsibility. The solidarity does not disappear by the mere partition effected by the principals after the accomplishment of the agency.
>
> If the undertaking is one in which several are interested, but only some create the agency, only the latter are solidarily liable, without prejudice to the effects of **negotiorum gestio** with respect to the others. And if the power granted includes various transactions some of which are common and others are not, only those interested in each transaction shall be liable for it."[11]

When the law expressly provides for solidarity of the obligation, as in the liability of co-principals in a contract of agency, each obligor may be compelled to pay the entire obligation.[12] The agent may recover the whole compensation from any one of the co-principals, as in this case.

Indeed, Article 1216 of the Civil Code provides that a creditor may sue **any** of the solidary debtors. This article reads:

> Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.
> Thus, the Court has ruled in Operators Incorporated vs. American Biscuit Co., Inc.[13] that–

"x x x ***solidarity does not make a solidary obligor an indispensable party in a suit filed by the creditor.*** Article 1216 of the Civil Code says that the creditor `may proceed against anyone of the solidary debtors or some or all of them simultaneously'." (Emphasis supplied)

Second Issue: whether Artigo's claim has been extinguished by full payment, waiver or abandonment

The De Castros claim that Artigo was fully paid on June 14, 1985, that is, Artigo was given "his proportionate share and no longer entitled to any balance." According to them, Artigo was just one of the agents involved in the sale and entitled to a "proportionate share" in the commission. They assert that Artigo did absolutely nothing during the second negotiation but to sign as a witness in the deed of sale. He did not even prepare the documents for the transaction as an active real estate broker usually does.

The De Castros' arguments are flimsy.

A contract of agency which is not contrary to law, public order, public policy, morals or good custom is a valid contract, and constitutes the law between the parties.[14] The contract of agency entered into by Constante with Artigo is the law between them and both are bound to comply with its terms and conditions in good faith.

The mere fact that "other agents" intervened in the consummation of the sale and were paid their respective commissions cannot vary the terms of the contract of agency granting Artigo a 5 percent commission based on the selling price. These