

FIRST DIVISION

[G.R. No. 143978, December 03, 2002]

**MANUEL B. TAN, GREGG M. TECSON AND ALEXANDER SALDAÑA,
PETITIONERS, VS. EDUARDO R. GULLAS AND NORMA S. GULLAS,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review seeking to set aside the decision^[1] of the Court of Appeals^[2] in CA-G.R. CV No. 46539, which reversed and set aside the decision^[3] of the Regional Trial Court of Cebu City, Branch 22 in Civil Case No. CEB-12740.

The records show that private respondents, Spouses Eduardo R. Gullas and Norma S. Gullas, were the registered owners of a parcel of land in the Municipality of Minglanilla, Province of Cebu, measuring 104,114 sq. m., with Transfer Certificate of Title No. 31465.^[4] On June 29, 1992, they executed a special power of attorney^[5] authorizing petitioners Manuel B. Tan, a licensed real estate broker,^[6] and his associates Gregg M. Tecson and Alexander Saldaña, to negotiate for the sale of the land at Five Hundred Fifty Pesos (P550.00) per square meter, at a commission of 3% of the gross price. The power of attorney was non-exclusive and effective for one month from June 29, 1992.^[7]

On the same date, petitioner Tan contacted Engineer Edsel Ledesma, construction manager of the Sisters of Mary of Banneaux, Inc. (hereafter, Sisters of Mary), a religious organization interested in acquiring a property in the Minglanilla area.

In the morning of July 1, 1992, petitioner Tan visited the property with Engineer Ledesma. Thereafter, the two men accompanied Sisters Michaela Kim and Azucena Gaviola, representing the Sisters of Mary, to see private respondent Eduardo Gullas in his office at the University of Visayas. The Sisters, who had already seen and inspected the land, found the same suitable for their purpose and expressed their desire to buy it.^[8] However, they requested that the selling price be reduced to Five Hundred Thirty Pesos (P530.00) per square meter instead of Five Hundred Fifty Pesos (P550.00) per square meter. Private respondent Eduardo Gullas referred the prospective buyers to his wife.

It was the first time that the buyers came to know that private respondent Eduardo Gullas was the owner of the property. On July 3, 1992, private respondents agreed to sell the property to the Sisters of Mary, and subsequently executed a special power of attorney^[9] in favor of Eufemia Cañete, giving her the special authority to sell, transfer and convey the land at a fixed price of Two Hundred Pesos (P200.00) per square meter.

On July 17, 1992, attorney-in-fact Eufemia Cañete executed a deed of sale in favor of the Sisters of Mary for the price of Twenty Million Eight Hundred Twenty Two Thousand Eight Hundred Pesos (P20,822,800.00), or at the rate of Two Hundred Pesos (P200.00) per square meter.^[10] The buyers subsequently paid the corresponding taxes.^[11] Thereafter, the Register of Deeds of Cebu Province issued TCT No. 75981 in the name of the Sisters of Mary of Banneaux, Inc.^[12]

Earlier, on July 3, 1992, in the afternoon, petitioners went to see private respondent Eduardo Gullas to claim their commission, but the latter told them that he and his wife have already agreed to sell the property to the Sisters of Mary. Private respondents refused to pay the broker's fee and alleged that another group of agents was responsible for the sale of land to the Sisters of Mary.

On August 28, 1992, petitioners filed a complaint^[13] against the defendants for recovery of their broker's fee in the sum of One Million Six Hundred Fifty Five Thousand Four Hundred Twelve and 60/100 Pesos (P1,655,412.60), as well as moral and exemplary damages and attorney's fees. They alleged that they were the efficient procuring cause in bringing about the sale of the property to the Sisters of Mary, but that their efforts in consummating the sale were frustrated by the private respondents who, in evident bad faith, malice and in order to evade payment of broker's fee, dealt directly with the buyer whom petitioners introduced to them. They further pointed out that the deed of sale was undervalued obviously to evade payment of the correct amount of capital gains tax, documentary stamps and other internal revenue taxes.

In their answer, private respondents countered that, contrary to petitioners' claim, they were not the efficient procuring cause in bringing about the consummation of the sale because another broker, Roberto Pacana, introduced the property to the Sisters of Mary ahead of the petitioners.^[14] Private respondents maintained that when petitioners introduced the buyers to private respondent Eduardo Gullas, the former were already decided in buying the property through Pacana, who had been paid his commission. Private respondent Eduardo Gullas admitted that petitioners were in his office on July 3, 1992, but only to ask for the reimbursement of their cellular phone expenses.

In their reply and answer to counterclaim,^[15] petitioners alleged that although the Sisters of Mary knew that the subject land was for sale through various agents, it was petitioners who introduced them to the owners thereof.

After trial, the lower court rendered judgment in favor of petitioners, the dispositive portion of which reads:

WHEREFORE, UPON THE AEGIS OF THE FOREGOING, judgment is hereby rendered for the plaintiffs and against the defendants. By virtue hereof, defendants Eduardo and Norma Gullas are hereby ordered to pay jointly and severally plaintiffs Manuel Tan, Gregg Tecson and Alexander Saldaña;

1) The sum of SIX HUNDRED TWENTY FOUR THOUSAND AND SIX HUNDRED EIGHTY FOUR PESOS (P624,684.00) as broker's fee with legal interest at the rate of 6% per annum from the date of filing of the complaint; and

2) The sum of FIFTY THOUSAND PESOS (P50,000.00) as attorney's fees and costs of litigation.

For lack of merit, defendants' counterclaim is hereby DISMISSED.

IT IS SO ORDERED.^[16]

Both parties appealed to the Court of Appeals. Private respondents argued that the lower court committed errors of fact and law in holding that it was petitioners' efforts which brought about the sale of the property and disregarding the previous negotiations between private respondent Norma Gullas and the Sisters of Mary and Pacana. They further alleged that the lower court had no basis for awarding broker's fee, attorney's fees and the costs of litigation to petitioners.^[17]

Petitioners, for their part, assailed the lower court's basis of the award of broker's fee given to them. They contended that their 3% commission for the sale of the property should be based on the price of P55,180,420.00, or at P530.00 per square meter as agreed upon and not on the alleged actual selling price of P20,822,800.00 or at P200.00 per square meter, since the actual purchase price was undervalued for taxation purposes. They also claimed that the lower court erred in not awarding moral and exemplary damages in spite of its finding of bad faith; and that the amount of P50,000.00 as attorney's fees awarded to them is insufficient. Finally, petitioners argued that the legal interest imposed on their claim should have been pegged at 12% per annum instead of the 6% fixed by the court.^[18]

The Court of Appeals reversed and set aside the lower court's decision and rendered another judgment dismissing the complaint.^[19]

Hence, this appeal.

Petitioners raise following issues for resolution:

I.

THE APPELLATE COURT GROSSLY ERRED IN THEIR FINDING THAT THE PETITIONERS ARE NOT ENTITLED TO THE BROKERAGE COMMISSION.

II.

IN DISMISSING THE COMPLAINT, THE APPELLATE COURT HAS DEPRIVED THE PETITIONERS OF MORAL AND EXEMPLARY DAMAGES, ATTORNEYS' FEES AND INTEREST IN THE FOREBEARANCE OF MONEY.

The petition is impressed with merit.

The records show that petitioner Manuel B. Tan is a licensed real estate broker, and petitioners Gregg M. Tecson and Alexander Saldaña are his associates. In *Schmid and Oberly v. RJL Martinez Fishing Corporation*,^[20] we defined a "broker" as "one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him. x x x a broker is one whose occupation is to *bring the parties together*, in matters of trade, commerce or navigation." (Emphasis supplied)