

## SECOND DIVISION

[ CA-G.R. SP No. 135460, December 12, 2014 ]

**INTERNATIONAL MARKETING GROUP INSURANCE BROKERS CORP., PETITIONER, VS. HON. DINNAH C. AGUILA-TOPACIO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 42, AND PHILAM PLANS, INC., RESPONDENTS.**

### DECISION

**GARCIA, R.R., J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Revised Rules of Court assailing the Order<sup>[2]</sup> dated August 22, 2013 of the Regional Trial Court, Branch 42, City of Manila denying petitioner International Marketing Group Insurance Brokers Corp.'s Motion for Partial Summary Judgment; and the Order<sup>[3]</sup> dated February 12, 2014 denying the motion for reconsideration<sup>[4]</sup> thereof.

### THE FACTS

On March 7, 2002, petitioner International Marketing Group Insurance Brokers Corporation and private respondent Philam Plans, Inc. entered into a Memorandum of Agreement<sup>[5]</sup> (MOA) whereby petitioner was appointed to sell exclusively the products of private respondent and other companies in the Philam Group. As compensation, petitioner was to receive 75% of all payments due and collected by it during the first year of the plan from the date of first payment by the plan holder; collecting commission equivalent to 5% of all subsequent payments and collected by it starting on the second year of the plan; and 18.6% of the pre-need price for spot cash payments. Petitioner was also allowed under the agreement to deduct its 75% commission for the first year premium payments before remitting the same to private respondent. It was also stipulated that the MOA can be terminated by either party with a sixty (60)-day notice. Private respondent, however, may withhold any clearance until and after full and final audit has been made and that petitioner has been cleared of all accountabilities with private respondent. Petitioner should also promptly account for and pay private respondent all amounts which may be due private respondent and to return all property of private respondent in its possession.

On December 29, 2004, petitioner sent a notice to private respondent terminating the MOA within sixty (60) days from notice. While the parties underwent negotiations for the renewal of their agency relations, the same failed.<sup>[6]</sup> On March 3, 2005, petitioner entered into a general agency agreement with Prudentialife Plans, Inc. whereby it agreed to market and sell the latter's pre-need plans.<sup>[7]</sup> In a letter<sup>[8]</sup> dated March 10, 2005, private respondent informed petitioner that it is no longer authorized to collect payments of plan holders in behalf of private respondent.

On May 13, 2005, petitioner filed with the Regional Trial Court of Manila the instant complaint<sup>[9]</sup> for breach of contract, specific performance, accounting, collection of sum of money and damages with application for temporary restraining order and/or writ of preliminary injunction against private respondent. The complaint alleged that the true agreement between petitioner and private respondent was for the former to receive commissions on all premium payments made by the plan holders on the plans it has sold, regardless of whether or not it has rendered further service on the plans. Accordingly, private respondent allegedly paid petitioner commissions on all premium payments made by plan holders even on premium payments made directly to private respondent. Further, while the MOA allows petitioner to deduct its commission only from the premium payments made by the plan holders for the first year of their plans, private respondent agreed for petitioner to also deduct its commissions on all premium payments coursed through it by the plan holders, regardless of whether the premium payments were made during the first year or subsequent years of their plans. As such, petitioner has a vested right to all the commissions on premium payments made even after the termination of the MOA for the plans petitioner has sold prior to such termination. At the time of the filing of the complaint, however, private respondent refused and failed to render an accounting and to turn over to petitioner the commissions earned by the latter on the premium payments made by plan holders for the months of April and May 2005. Also, in an attempt to deny petitioner's right to deduct its commissions from the premium payments made by the plan holders, private respondent has written its plan holders advising them against making premium payments through petitioner.

The complaint further alleged that private respondent unlawfully withheld the commissions due petitioner for the second half of the month of February and the entire month of March 2005 on the pretext that it was applying the same on the commission overpayments allegedly made to petitioner between October 28, 2002 to January 6, 2004. The set-off was effected by private respondent without giving petitioner a detailed breakdown and a full accounting of its alleged overpayments to petitioner. Also, it is private respondent which owes petitioner the sum of P865,573.40. This amount forms part of the P3,595,759.16 surreptitiously debited by private respondent from petitioner's account in September 2002 purportedly to refund private respondent for the commission overpayments made to petitioner from March 2002 to September 2002.

The complaint prayed that a writ of preliminary injunction be issued directing private respondent to desist from making false representations to its plan holders and the public as to the right of petitioner to collect its commissions on the plans it has sold, to receive premium payments for said plans and to deduct its commissions therefrom, and from doing any act that will impede, hamper, limit or adversely affect the full enjoyment by petitioner of all its vested rights under the MOA including but not limited to the right to collect premium payments on the plans petitioner has sold and to deduct its commissions therefrom before remitting the balance to private respondent. It was likewise prayed that private respondent be ordered to pay petitioner its commissions for premium payments made from April 2005 until the termination of the plans petitioner has sold under the MOA and its commissions for the second half of the month of February 2005 and the entire month of March 2005 which are being withheld by private respondent.

In its traverse, private respondent averred that there is nothing in the MOA that

grants petitioner a vested right over all premium payments made for the plans it has sold before the termination of the MOA. Private respondent clarified that for petitioner to be entitled to commissions, the MOA requires that first, the premium payment for the plans sold by petitioner has become due; and second, that the premium that has become due was collected by petitioner and remitted to private respondent. Private respondent admitted that petitioner was allowed to deduct its commission for the first year premium payments on plans it has sold but denied that the same was likewise allowed with respect to subsequent years of the plan.

Private respondent did not unlawfully withhold from petitioner the commissions it has earned. The withholding was pursuant to paragraphs 9 and 11 of the MOA which provide that private respondent has the right to withhold any clearance until after full and final audit has been made and that petitioner has been cleared of all accountabilities with private respondent. Anent the commission overpayments, private respondent denied that it made a set-off against the alleged commissions due petitioner. Also, private respondent properly informed petitioner on how the overpayments came about by giving the latter an accounting and a detailed breakdown of the overpayments. Private respondent alleged further that petitioner's collection of commissions after the termination of the MOA was unlawful.

In an Order<sup>[10]</sup> dated July 15, 2005, the court *a quo* ordered the issuance of a writ of preliminary injunction in favor of petitioner. Private respondent was enjoined from making false representations to its planholders and the public as to the right of petitioner to collect premium payments of the plans it has sold prior to the termination of the MOA and to deduct its commissions before remitting the same to private respondent; and from doing any act that will tend to impede, hamper, limit or adversely affect the full enjoyment by petitioner of all its vested rights under the MOA including petitioner's right to collect premium payments from holders of plans sold prior to the termination of the MOA and to deduct its commissions therefrom.

The Order dated July 15, 2005, however, was annulled and set aside in a Decision<sup>[11]</sup> dated April 16, 2012 of the Former Fourth Division of the Court of Appeals which found no actual and existing right in favor of petitioner that demanded protection by the office of a preliminary injunction. It was explained therein that petitioner's alleged right to continuously collect premium payments and deduct its commissions therefrom after the termination of the MOA is not at all clear. The MOA that governed the relationship between petitioner and private respondent provides no clear right to petitioner.

On April 25, 2013, petitioner filed with the court *a quo* a Motion for Partial Summary Judgment<sup>[12]</sup> where it alleged that the issue of petitioner's entitlement to commission on premium payments made after the termination of the MOA is no longer a genuine issue of fact. Allegedly, private respondent admitted petitioner's entitlement thereto when it withheld taxes on premium payments collected by petitioner for the years 2005 and 2006 as shown by a document received by petitioner from the Bureau of Internal Revenue (BIR) denominated as *Details of Withholding Agents/Payors and Payees/Income Recipients Records (Source: Withholding Tax Returns – Alphalists)* for the years 2005 to 2006. Hence, petitioner prayed that a partial summary judgment be rendered regarding petitioner's right to receive commissions on premium payments made even after the termination of the MOA on plans it has sold before such termination; and order private respondent to

pay petitioner the latter's commissions from the year 2005 until the termination of the plans petitioner sold under the MOA and to pay petitioner its commissions from late February to March 2005 in the amount of P9,243,909.25.

Petitioner attached to its motion the Judicial Affidavit<sup>[13]</sup> dated April 18, 2013 of its accounting head Maria Jinky S. Martinez. Martinez stated that as petitioner's accounting head, she is the custodian of all records and notices pertaining to the Bureau of Internal Revenue. On September 26, 2007 and January 9, 2008, petitioner received notices from BIR regarding the discrepancies on petitioner's income tax return and the amount withheld for it by private respondent for the years 2005 to 2006. Attached to the notices are documents denominated as *Details of Withholding Agents/Payors and Payees/Income Recipients Records (Source: Withholding Tax Returns – Alphalists)* which showed that private respondent continued to withhold tax from petitioner as its agent and remitted the same to BIR on petitioner's behalf for the years 2005 and 2006. Attached to the testimony of Martinez were copies of the aforementioned documents received from BIR.

In their Comment/Opposition<sup>[14]</sup> on the motion for partial summary judgment, private respondent averred that it cannot be considered to have admitted that petitioner was entitled to the disputed commissions on the basis of the documents allegedly prepared by BIR. The documents from BIR consisting of schedules refer to an alphalist where such admission on the part of private respondent may be found. The alphalists, however, were not presented in evidence.

Even assuming that private respondent did submit to BIR the alphalists for the years 2005 and 2006 reflecting taxes withheld from the commissions of petitioner, the circumstances that obliged private respondent to withhold the taxes on the questioned commissions will explain why such withholding of taxes cannot be considered as an admission of petitioner's right to the questioned commissions. By virtue of the court *a quo*'s Order dated July 15, 2005 granting a writ of preliminary injunction in favor of petitioner, the latter continued to collect premium payments from plan holders of private respondent despite the termination of the MOA and to deduct its commissions before remitting its collections to private respondent. Private respondent was compelled to withhold taxes and remit the same to BIR in behalf of petitioner in order to comply with the said order. As such, private respondent cannot be deemed to have voluntarily recognized and admitted petitioner's right to commissions on premium payments made after the termination of the MOA.

Private respondent attached to its Comment/Opposition a sample remittance report prepared by petitioner pertaining to premium collections for the period August 8 to 12, 2005. The report includes the following: Cover Letter<sup>[15]</sup> dated August 15, 2005, Summary of Transmittals<sup>[16]</sup>, Requests for Payment<sup>[17]</sup> and other supporting documents. These documents would show that petitioner already deducted its commissions on premiums it collected before remitting the same to private respondent.

In the assailed Order<sup>[18]</sup> dated August 22, 2013, the court *a quo* denied the motion for partial summary judgment for failure to comply with Section 5, Rule 35 of the 1997 Rules of Civil Procedure which provides that all documents referred to in the affidavit supporting the motion should be certified true copies. However, the documents attached to the affidavit supporting petitioner's motion for partial

summary judgment were not certified true copies. The assailed order is quoted in full:

#### ORDER

For resolution of this Court is the "Motion for Partial Summary Judgment" filed by the counsel for the plaintiff, Atty. Joanne C. Gironella-Gastrock.

Upon perusal of the said motion, the Court found that the documents attached to the supporting affidavit were not certified true copies.

For the failure to comply with Sec. 5, Rule 35 of the 1997 Rules of Civil Procedure, the said motion is hereby Denied.

SO ORDERED.<sup>[19]</sup>

In its motion for reconsideration, petitioner attached certified true copies of the BIR documents. The motion, however, was nevertheless denied in an Order<sup>[20]</sup> dated February 12, 2014.

Hence, the instant petition for certiorari in which petitioner raised the following grounds<sup>[21]</sup> for its allowance, to wit:

#### I.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN IGNORING PETITIONER'S CLEAR ENTITLEMENT UNDER THE MOA TO COMMISSIONS EVEN AFTER THE TERMINATION OF THE MOA FOR THE PLANS IT HAD SOLD PRIOR TO SUCH TERMINATION.

#### II.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN IGNORING PETITIONER'S RIGHT TO SAID COMMISSIONS BY ARBITRARILY DENYING THE MOTION FOR PARTIAL SUMMARY JUDGMENT NOTWITHSTANDING PRIVATE RESPONDENT'S ADMISSION THAT PETITIONER IS ENTITLED TO SUCH COMMISSIONS.

#### III.

THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED ORDERS CONSIDERING THAT THE SAME ARE CONTRARY TO EXISTING JURISPRUDENCE, SPECIFICALLY, THAT LITIGATION SHOULD BE DECIDED ON THE MERITS AND NOT ON TECHNICALITIES.