

## **THIRD DIVISION**

**[ G.R. No. 195481, July 10, 2013 ]**

**ORIENTAL PETROLEUM AND MINERALS CORPORATION,  
PETITIONER, VS. TUSCAN REALTY, INC., RESPONDENT.**

### **D E C I S I O N**

**ABAD, J.:**

This case is about a broker's claim for commission for having referred a possible buyer who later served as an intermediary to the eventual sale of the property to a third party.

#### **The Facts and the Case**

On June 9, 1999 respondent Tuscan Realty, Inc. (Tuscan Realty) filed a complaint for sum of money with application for preliminary attachment against petitioner Oriental Petroleum and Minerals Corporation (Oriental Petroleum) before the Makati Regional Trial Court (RTC).

Oriental Petroleum owned two condominium units at Corinthian Plaza in Makati City. On August 13, 1996 it gave Tuscan Realty a "non-exclusive authority to offer" these units for sale. On August 14, 1996 Tuscan Realty submitted an initial list of its prospective client-buyers that included Gateway Holdings Corporation (Gateway). Tuscan Realty updated this list on September 18, 1996. Subsequently, Oriental Petroleum advised Tuscan Realty that it would undertake direct negotiation with a certain Gene de los Reyes of Gateway for the sale of the units. This resulted in a contract to sell between Oriental Petroleum and Gateway on August 1, 1997.

Meantime, Gateway apparently turned around nearly two months later on September 29, 1997 and assigned its rights as buyer of the units to Alonzo Ancheta in whose favor Oriental Petroleum executed a deed of absolute sale on December 10, 1997 for the price of P69,595,400.00. Prompted by this development, Tuscan Realty demanded payment of its broker's commission of P2,087,862.00 by Oriental Petroleum. The latter refused to pay, however, claiming that Tuscan Realty did nothing to close its deal with Gateway and Ancheta.

On July 28, 1999 the RTC granted Tuscan Realty's application for preliminary attachment but rendered a decision six years later or on November 2, 2005, dismissing the complaint on the ground of Tuscan Realty's failure to substantiate its allegation that it was responsible for closing the sale of the subject condominium units. Tuscan Realty appealed the RTC decision to the Court of Appeals (CA).

On August 11, 2010 the CA granted the appeal and set aside the RTC decision. The CA ordered Oriental Petroleum to pay Tuscan Realty its broker's commission of P2,087,862.00, which is 3% of the final purchase price, plus 6% interest from the

finality of its decision until actual payment. Hence, the present petition.

### **The Issue Presented**

The issue in this case is whether or not Tuscan Realty is entitled to a broker's commission for the sale of Oriental Petroleum's condominium units to Ancheta.

### **The Ruling of the Court**

The CA invoked the principle of "procuring cause" in ordering the payment of broker's commission to Tuscan Realty. The term "procuring cause" refers to a cause which starts a series of events and results, without break in their continuity, in the accomplishment of a broker's prime objective of producing a purchaser who is ready, willing, and able to buy on the owner's terms.<sup>[1]</sup> This is similar to the concept of proximate cause in Torts, without which the injury would not have occurred. To be regarded as the procuring cause of a sale, a broker's efforts must have been the foundation of the negotiations which subsequently resulted in a sale.<sup>[2]</sup>

Here, it was Tuscan Realty that introduced Gateway to Oriental Petroleum as an interested buyer of its condominium units. Oriental Petroleum's own Executive Vice-President attested to this, saying that they learned of Gateway's interest in the properties from Mr. Capotosto of Tuscan Realty. Thus:

- Q: So you are saying that it was Mr. Capotosto of plaintiff who introduced or who manifested that Gateway Holdings is interested in buying the properties?
- A: Yes, Ma'am. I never denied that.<sup>[3]</sup>

The evidence shows that on August 14, 1996 Tuscan Realty submitted an initial list<sup>[4]</sup> of prospective buyers with contact details. It twice updated this list<sup>[5]</sup> with Gateway always on top of the lists. Clearly then, it was on account of Tuscan Realty's effort that Oriental Petroleum got connected to Gateway, the prospective buyer, resulting in the latter two entering into a contract to sell involving the two condominium units. Although Gateway turned around and sold the condominium units to Ancheta, the fact is that such ultimate sale could not have happened without Gateway's indispensable intervention as intermediate buyer. Applying the principle of procuring cause, therefore, Tuscan Realty should be given its broker's commission.

Oriental Petroleum of course claims that Gateway was not a ready, willing, and able purchaser and that it in fact assigned its right to Ancheta who became the ultimate buyer and that, moreover, it was not Tuscan Realty that introduced Ancheta to Oriental Petroleum. But there is no question that the contract to sell that Oriental Petroleum concluded with Gateway was a valid and binding contract to sell, which precluded Oriental Petroleum from peddling the properties to others. Indeed, Oriental Petroleum executed a deed of absolute sale in Ancheta's favor by virtue of Gateway's assignment to him of its rights under the contract to sell. Consequently, it cannot be said that Oriental Petroleum found a direct buyer in Ancheta without the intermediate contract to sell in favor of Gateway, Tuscan Realty's proposed buyer.