

SECOND DIVISION

[G.R. No. 145817, October 19, 2011]

**URBAN BANK, INC, PETITIONER, VS. MAGDALENO M. PEÑA,
RESPONDENT.**

[G. R. NO. 145822]

**DELFIN C. GONZALEZ, JR., BENJAMIN L. DE LEON, AND ERIC L.
LEE, PETITIONERS, VS. MAGDALENO M. PEÑA, RESPONDENT.**

[G. R. NO. 162562]

**MAGDALENO M. PEÑA, VS. URBAN BANK, INC., TEODORO
BORLONGAN, DELFIN C. GONZALEZ, JR., BENJAMIN L. DE LEON,
P. SIERVO H. DIZON, ERIC L. LEE, BEN T. LIM, JR., CORAZON
BEJASA, AND ARTURO MANUEL, JR., RESPONDENTS.**

D E C I S I O N

SERENO, J.:

These consolidated petitions began as a simple case for payment of services rendered and for reimbursement of costs. The case spun a web of suits and counter-suits because of: (1) the size of the award for agent's fee rendered in favor of Atty. Magdaleno Peña (Peña) - PhP24,000,000 - rendered by the trial court; (2) the controversial execution of the full judgment award of PhP28,500,000 (agent's fee plus reimbursement for costs and other damages) pending appeal; and (3) the finding of solidary liability against Urban Bank, Inc., and several of its corporate officers and directors together with the concomitant levying and sale in execution of the personal (even conjugal) properties of those officers and directors; and (4) the fact that assets with declared conservative values of at least **PhP181 Million** which, together with those with undeclared values could reach very much more than such amount,^[1] were levied or sold on execution pending appeal to satisfy the PhP28.5 Million award in favor of Atty. Peña. Incidentally, two supersedeas bonds worth PhP80 Million (2.8 times the amount of the judgment) were filed by Urban Bank and some of its officers and directors to stay the execution pending appeal.

Had the four attendant circumstances not afflicted the original case, it would have been an open-and-shut review where this Court, applying even just the minimum equitable principle against unjust enrichment would have easily affirmed the grant of fair recompense to Atty. Peña for services he rendered for Urban Bank if such had been ordered by the trial court.

That Atty. Peña should be paid something by Urban Bank is not in dispute - the Court of Appeals (CA) and the Regional Trial Court (RTC) of Bago City, agreed on that. What they disagreed on is the basis and the size of the award. The trial court

claims that the basis is an oral contract of agency and the award should be PhP28,500,000; while, the appellate court said that Atty. Peña can only be paid under the legal principle against unjust enrichment, and the total award in his favor should only amount to PhP3,000,000.

In the eyes of the trial court, the controlling finding is that Atty. Peña should be believed when he testified that in a telephone conversation, the president of Urban Bank, Teodoro Borlongan, a respondent herein, agreed to pay him for his services 10% of the value of the property then worth PhP240,000,000, or PhP24,000,000. Costs and other awards additionally amount to PhP4,500,000, for a total award of PhP28,500,000 according to the trial court. To the Court of Appeals, such an award has no basis, as in fact, no contract of agency exists between Atty. Peña and Urban Bank. Hence, Atty. Peña should only be recompensed according to the principle of unjust enrichment, and that he should be awarded the amount of PhP3,000,000 only for his services and reimbursements of costs.

The disparity in the size of the award given by the trial court vis-à-vis that of the Court of Appeals (PhP28,500,000 v. PhP3,000,000) must be placed in the context of the service that Atty. Peña proved that he rendered for Urban Bank. As the records bear, Atty. Peña's services consisted of causing the departure of unauthorized sub-tenants in twenty-three commercial establishments in an entertainment compound along Roxas Boulevard. It involved the filing of ejectment suits against them, Peña's personal defense in the counter-suits filed against him, his settlement with them to the tune of PhP1,500,000, which he advanced from his own funds, and his retention of security guards and expenditure for other costs amounting to more or less PhP1,500,000. There is no claim by Atty. Peña of any service beyond those. He claims damages from the threats to his life and safety from the angry tenants, as well as a vexatious collection suit he had to face from a creditor-friend from whom he borrowed PhP3,000,000 to finance the expenses for the services he rendered Urban Bank.

At the time the award of PhP28,500,000 by the trial court came out in 1999, the net worth of Urban Bank was PhP2,219,781,104.^[2] While the bank would be closed by the *Bangko Sentral ng Pilipinas* (BSP) a year later for having unilaterally declared a bank holiday contrary to banking rules, there was no reason to believe that at the time such award came out it could not satisfy a judgment of PhP28,500,000, a sum that was only 1% of its net worth, and a miniscule 0.2% of its total assets of PhP11,933,383,630.^[3] In fact, no allegation of impending insolvency or attempt to abscond was ever raised by Atty. Peña and yet, the trial court granted execution pending appeal.

Interestingly, Peña had included as co-defendants with Urban Bank in the RTC case, several officers and board directors of Urban Bank. Not all board directors were sued, however. With respect to those included in the complaint, other than against Teodoro Borlongan, Corazon Bejasa, and Arturo Manuel, no evidence was ever offered as to their individual actions that gave rise to Atty. Peña's cause of action - the execution of the agency contract and its breach - and yet, these officers and directors were made solidarily liable by the trial court with Urban Bank for the alleged breach of the alleged corporate contract of agency. Execution pending appeal was also granted against them for this solidary liability resulting in the levy and sale in execution pending appeal of not only corporate properties of Urban Bank

but also personal properties of the individual bank officers and directors. It would have been interesting to find out what drove Atty. Peña to sue the bank officers and directors of Urban Bank and why he chose to sue only some, but not all of the board directors of Urban Bank, but there is nothing on the record with which this analysis can be pursued.

Before us are: (a) the Petitions of Urban Bank (G. R. No. 145817) and the De Leon Group (G. R. No. 145822) questioning the propriety of the grant of execution pending appeal, and (b) the Petition of Atty. Peña (G. R. No. 162562) assailing the CA's decision on the substantive merits of the case with respect to his claims of compensation based on an agency agreement.

Ordinarily, the final resolution by the Supreme Court of an appeal from a trial court decision would have automatic, generally-understood consequences on an order issued by the trial court for execution pending appeal. But this is no ordinary case, and the magnitude of the disproportions in this case is too mind-boggling that this Court must exert extra effort to correct whatever injustices have been occasioned in this case. Thus, our dispositions will include detailed instructions for several judicial officials to implement.

At core, these petitions can be resolved if we answer the following questions:

1. What is the legal basis for an award in favor of Peña for the services he rendered to Urban Bank? Should it be a contract of agency the fee for which was orally agreed on as Peña claims? Should it be the application of the Civil Code provisions on unjust enrichment? Or is it to be based on something else or a combination of the legal findings of both the RTC and the CA? How much should the award be?
2. Are the officers and directors of Urban Bank liable in their personal capacities for the amount claimed by Peña?
3. What are the effects of our answers to questions (1) and (2), on the various results of the execution pending appeal that happened here?

Factual Background of the Controversy

Urban Bank, Inc. (both petitioner and respondent in these two consolidated cases),^[4] was a domestic Philippine corporation, engaged in the business of banking.^[5] The eight individual respondents in G. R. No. 162562 were officers and members of Urban Bank's board of directors, who were sued in their official and personal capacities.^[6] On the other hand, Benjamin L. De Leon, Delfin C. Gonzalez, Jr., and Eric L. Lee, (hereinafter the de Leon Group), are the petitioners in G. R. No. 145822 and are three of the same bank officers and directors, who had separately filed the instant Petition before the Court.

Petitioner-respondent Atty. Magdaleno M. Peña (Peña)^[7] is a lawyer by profession and was formerly a stockholder, director and corporate secretary of Isabel Sugar Company, Inc. (ISCI).^[8]

ISCI owned a parcel of land^[9] located in Pasay City (the Pasay property).^[10] In 1984, ISCI leased the Pasay property for a period of 10 years.^[11] Without its consent^[12] and in violation of the lease contract,^[13] the lessee subleased the land to several tenants, who in turn put up 23 establishments, mostly beer houses and night clubs, inside the compound.^[14] In 1994, a few months before the lease contract was to expire, ISCI informed the lessee^[15] and his tenants^[16] that the lease would no longer be renewed and that it intended to take over the Pasay property^[17] for the purpose of selling it.^[18]

Two weeks before the lease over the Pasay property was to expire, ISCI and Urban Bank executed a Contract to Sell, whereby the latter would pay ISCI the amount of Php241,612,000 in installments for the Pasay property.^[19] Both parties agreed that the final installment of Php25,000,000 would be released by the bank upon ISCI's delivery of full and actual possession of the land, free from any tenants.^[20] In the meantime, the amount of the final installment would be held by the bank in escrow. The escrow provision in the Contract to Sell, thus, reads:

"The SELLER (ISCI) agrees that from the proceeds of the purchase prices of the subject Property (Pasay property), the BUYER (Urban Bank) shall withhold the amount of PHP 25,000,000.00 by way of escrow and **shall release this amount to the SELLER only upon its delivery to the BUYER of the full and actual possession and control of the Subject Property, free from tenants, occupants, squatters or other structures or from any liens, encumbrances, easements or any other obstruction or impediment to the free use and occupancy by the buyer of the subject Property or its exercise of the rights to ownership over the subject Property**, within a period of sixty (60) days from the date of payment by the BUYER of the purchase price of the subject Property net of the amounts authorized to be deducted or withheld under Item II (a) of this Contract.^[21] (Emphasis supplied)

ISCI then instructed Peña, who was its director and corporate secretary, to take over possession of the Pasay property^[22] against the tenants upon the expiration of the lease. ISCI's president, Mr. Enrique G. Montilla III (Montilla), faxed a letter to Peña, confirming the latter's engagement as the corporation's agent to handle the eviction of the tenants from the Pasay property, to wit:^[23]

MEMORANDUM

TO: Atty. Magdaleno M. Pena
Director

FROM: Enrique G. Montilla III
President

DATE: 26 November 1994

You are hereby directed to recover and take possession of the property of the corporation situated at Roxas Boulevard covered by TCT No. 5382 of the Register of Deeds for Pasay City immediately upon the expiration of the contract of lease over the said property on 29 November 1994. For this purpose you are authorized to engage the services of security guards to protect the property against intruders. You may also engage the services of a lawyer in case there is a need to go to court to protect the said property of the corporation. In addition you may take whatever steps or measures are necessary to ensure our continued possession of the property.

(sgd.) ENRIQUE G. MONTILLA III
President^[24]

On 29 November 1994, the day the lease contract was to expire, ISCI and Urban Bank executed a Deed of Absolute Sale^[25] over the Pasay property for the amount agreed upon in the Contract to Sell, but subject to the above escrow provision.^[26] The title to the land was eventually transferred to the name of Urban Bank on 05 December 1994.^[27]

On 30 November 1994, the lessee duly surrendered possession of the Pasay property to ISCI,^[28] but the unauthorized sub-tenants refused to leave the area.^[29] Pursuant to his authority from ISCI, Peña had the gates of the property closed to keep the sub-tenants out.^[30] He also posted security guards at the property,^[31] services for which he advanced payments.^[32] Despite the closure of the gates and the posting of the guards, the sub-tenants would come back in the evening, force open the gates, and proceed to carry on with their businesses.^[33] On three separate occasions, the sub-tenants tried to break down the gates of the property, threw stones, and even threatened to return and inflict greater harm on those guarding it.^[34]

In the meantime, a certain Marilyn G. Ong, as representative of ISCI, faxed a letter to Urban Bank - addressed to respondent Corazon Bejasa, who was then the bank's Senior Vice-President - requesting the issuance of a formal authority for Peña.^[35] Two days thereafter, Ms. Ong faxed another letter to the bank, this time addressed to its president, respondent Teodoro Borlongan.^[36] She repeated therein the earlier request for authority for Peña, since the tenants were questioning ISCI's authority to take over the Pasay property.^[37]

In response to the letters of Ms. Ong, petitioner-respondent bank, through individual respondents Bejasa and Arturo E. Manuel - Senior Vice-President and Vice-President, respectively - advised Peña^[38] that the bank had noted the engagement of his services by ISCI and stressed that ISCI remained as the lawyer's principal.^[39]

To prevent the sub-tenants from further appropriating the Pasay property,^[40] petitioner-respondent Peña, as director and representative of ISCI, filed a complaint for injunction^[41] (the First Injunction Complaint) with the RTC-Pasay City.^[42] Acting on ISCI's prayer for preliminary relief, the trial court favorably issued a temporary