

## SECOND DIVISION

**[ G.R. No. 173339, November 24, 2010 ]**

**LEDESCO DEVELOPMENT CORPORATION, PETITIONER, VS.  
WORLDWIDE STANDARD INTERNATIONAL REALTY, INC.,  
RESPONDENT.**

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

**MENDOZA, J.:**

This is a petition for review under Rule 45 of the Rules of Civil Procedure filed by Ledesco Development Corporation assailing the August 22, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA G.R. CV No. 61584 which ordered it to pay commissions to its contracted marketing agent, Worldwide Standard International Realty, Inc.

From the records, it appears that on December 21, 1993, respondent Worldwide Standard International Realty, Inc. (*WSIRI*) filed a collection suit against petitioner Ledesco Development Corporation (*Ledesco*) before the Regional Trial Court of Makati City (*RTC*). The case was docketed as Civil Case No. 93-4683 and raffled to Branch 134. In the said case, WSIRI sought to recover from Ledesco sums representing commissions on sales and interest thereon plus damages.<sup>[2]</sup>

The controversy centered on the interpretation of the provisions on the payment of commissions in the Project and Marketing Management Agreement (*Agreement*)<sup>[3]</sup> entered into by Ledesco and WSIRI on February 27, 1992. Under the Agreement, Ledesco appointed WSIRI as its marketing manager for the Makiling Heights Resort Subdivision project to generate sales to the general public.

The Agreement provides that Ledesco shall pay WSIRI a sales commission of ten percent (10%) based on the contract value of the sales and an additional two percent (2%) incentive if WSIRI meets the agreed quota of P30,000,000.00 within six (6) months from the signing thereof, or until August 27, 1992.<sup>[4]</sup>

The Agreement further stipulates that the commission is payable within four (4) banking days from receipt and clearance of the buyer's check payment, and that the amount payable shall be proportional to the amount received, until the full downpayment and six (6) postdated checks are received. At such time, the full ten percent (10%) commission will be paid to WSIRI within four (4) days from receipt of the downpayment of the contract value.<sup>[5]</sup>

Moreover, in the event that Ledesco fails to pay the commission within four (4) banking days from clearance of buyer's check payment, a twenty-four percent (24%) "interest penalty" will automatically accrue in favor of WSIRI.<sup>[6]</sup>

In the Complaint, WSIRI alleged that despite Ledesco's receipt of the full downpayment on the transactions attributable to its marketing efforts, and its demands to pay, Ledesco still failed to pay P1,610,091.18 out of its full ten percent (10%) commission amounting to P5,496,140.30.<sup>[7]</sup> WSIRI also claimed interest at the rate of 24% per annum on the delayed payment.<sup>[8]</sup>

WSIRI further claimed that it is entitled to an additional two percent (2%) commission, on top of its regular ten percent (10%) commission, having generated sales amounting to P37,313,428.00<sup>[9]</sup> within the six (6) month period from the execution of the Agreement. Ledesco likewise failed to pay such additional commission amounting to P743,912.06,<sup>[10]</sup> and refused to pay despite demand.<sup>[11]</sup>

In its Answer,<sup>[12]</sup> Ledesco explained that WSIRI generated sales of P34,876,011.00,<sup>[13]</sup> and that the 10% commission had already been paid as it already paid P3,592,735.21.<sup>[14]</sup> It claimed that it had actually overpaid WSIRI by P279,514.17.<sup>[15]</sup> It also alleged that the erroneous computation by WSIRI included sales made to buyers who later cancelled their purchases.

Ledesco listed ten (10) transactions which allegedly failed to materialize and on which no commission was due. Nonetheless, commissions were inadvertently paid to WSIRI:<sup>[16]</sup>

Lot Buyer	Overpayment by Ledesco to WSIRI
(1) Alexander Tan	Php 50,350.00
(2) Elizabeth Rodriguez	8,502.50
(3) GRC Properties	9,695.00
(4) Josephine Pinon	31,887.00
(5) J. Garcellano	2,950.00
(6) Lilia Aaron	38,000.00
(7) Magdalena de Vera	43,263.00
(8) Ofelia Roque	6,175.00
(9) Teresita Martinez	59,602.62
(10) Theresa Nagasima	6,275.00
(11) Magdalena Cordora	2,365.60
<b>TOTAL</b>	<b>Php 259,065.72</b>

In addition to these contested sales, Ledesco and WSIRI also disagreed over the First Asia Ventures Capital (*First Asia*) transaction, the net price of which is P6,384,000.00.<sup>[17]</sup> The amount is wholly determinative of WSIRI's entitlement to the additional 2% commission. Without the full value of the said transaction, WSIRI's generated sales within the 6-month period would only amount to Php27,692,011,<sup>[18]</sup> less than the P30 million pesos threshold.

Ledesco further denied WSIRI's claim that it was able to hurdle the 30-million mark *within* six (6) months from the execution of the Agreement, countering that the 30-million quota was reached only *after* the six-month period. Per its computation, only

P27,692,011.00 worth of sales was generated by WSIRI during the said period,<sup>[19]</sup> and the quota was reached only on September 20, 1993, *after* the six-month period.<sup>[20]</sup>

Ledesco explained that only P3,172,848.00 of the First Asia transaction was credited to WSIRI's sales for the 6-month reckoning period<sup>[21]</sup> it being the amount actually paid by First Asia within the 6-month period. Ledesco received an additional payment from First Asia in the amount of P3,172,848.00 representing the remainder of the net price on September 20, 1993, at which time the 6-month reckoning period had already expired.<sup>[22]</sup>

WSIRI, however, argued that the entire net price should have been credited as a sale made within the 6-month period.

WSIRI further claimed that Ledesco's disclaimer of its entitlement to the 2% commission was anchored on a false claim that the First Asia transaction did not materialize within the six-month reckoning period when, in fact, it did, as shown by Ledesco's payment of the 10% commission due on the said sale.<sup>[23]</sup>

On June 10, 1998, the RTC *decided in favor of WSIRI* awarding it the two percent (2%) incentive commission based on generated sales of P34,076,011.00, plus a penalty at the rate of 24% per annum from the filing of the complaint, attorney's fees and cost of suit.

Both parties moved for reconsideration. Resolving the motions, the RTC, in its September 29, 1998 Order, *set aside* its June 10, 1998 decision and *dismissed* the case.<sup>[24]</sup> The dispositive portion of the September 29, 1998 Order reads:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

1. This Court's June 10, 1998 Decision is hereby set aside;
2. Defendant's Motion for Reconsideration is hereby GRANTED and plaintiff's Motion for Reconsideration is consequently denied;
3. Civil Case No. 93-4683 is hereby DISMISSED in favor of defendant and against the plaintiff.

SO ORDERED.<sup>[25]</sup>

On appeal by WSIRI, the CA *reversed* the appealed RTC Order. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the assailed Order dated 29 September 1998 of the Regional Trial Court of Makati City, Branch 134 is hereby REVERSED and SET ASIDE and its Decision dated 10 June 1998 is hereby REINSTATED and AFFIRMED with the following modifications:

Defendant-appellee is hereby ordered to pay plaintiff-appellant -

(1) ten (10%) percent commission on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez, based on contract price; and

(2) two (2%) percent commission on sales amounting to Thirty Four Million Seventy Six Thousand Eleven Pesos (P34,076,011.00).

The award of 24% penalty interest, attorney's fees and cost of suit is hereby deleted.

SO ORDERED.<sup>[26]</sup>

The CA held that WSIRI's claim for commissions on the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera, and Elizabeth Rodriguez was meritorious.<sup>[27]</sup>

Although the names are listed in Annex 2 [a list of all accounts on which commissions had purportedly been paid by Ledesco], of Ledesco's Answer, no competent evidence was presented to substantiate its claim that commissions had been paid on these accounts. The letters and documents presented in evidence and allegedly signed by the said buyers withdrawing and cancelling their purchases did not clearly and satisfactorily prove the alleged withdrawal or cancellation, as such documentary evidence had not been authenticated by the persons whose signatures appeared thereon.<sup>[28]</sup> Moreover, the disbursement vouchers mentioned by Ledesco's witness, Eulogio F. Brosas (*Brosas*), evidencing the alleged refunds made to the buyers who withdrew or cancelled their purchase were never presented and authenticated in court. Without satisfactory proof that the buyers indeed withdrew or cancelled their purchases, the said sales were deemed consummated, entitling WSIRI to the ten percent (10%) commission.<sup>[29]</sup>

The CA further held that paragraph 4 of the Agreement does not show that entitlement to the two percent (2%) incentive commission depends on the buyer's full payment of the net price.<sup>[30]</sup> Paragraph 4 was interpreted by the CA to mean that if *first*, the sale is consummated, *second*, the whole downpayment is completed, and *third*, six (6) postdated checks are received within the six-month period, then such sale would be considered as a sale made and consummated within the said period, even if amortization payments are made after the lapse of the 6-month reckoning period.<sup>[31]</sup>

The CA ruled that WSIRI is no longer entitled to a ten percent (10%) commission on the sales made to First Asia and to Teresita Martinez. The Court stated that by

WSIRI's own admissions, Ledesco had already paid commissions on the said accounts.<sup>[32]</sup>

On May 24, 2006, the CA denied WSIRI's motion for reconsideration.<sup>[33]</sup>

Hence, this petition.

## **ISSUES**

### **I.**

**WHETHER THE SALES MADE TO THERESA NAGASIMA, LILIA AARON, RODOLFO GARCIA, OFELIA ROQUE, JULIETA GARCELLANO, ERMELO ALMEDA, GRC PROPERTIES, INC., ALEXANDER TAN, JOSEPHINE PINON, MAGDALENA DE VERA, AND ELIZABETH RODRIGUEZ SHOULD BE INCLUDED IN THE COMPUTATION OF THE TEN PERCENT (10%) COMMISSION -**

### **II.**

**WHETHER THE SALE OF THE LAND TO FIRST ASIA VENTURE WAS MADE WITHIN SIX (6) MONTHS AS CONTEMPLATED IN THE MARKETING AGREEMENT -**

### **III.**

**WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE ON THE CLAIMS OF PETITIONER FOR OVERPAYMENT OF COMMISSION -**

## **THE COURT'S RULING**

***The sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcellano, Ermelo Almeda, GRC Properties, Inc., Alexander Tan, Josephine Pinon, Magdalena De Vera and Elizabeth Rodriguez should be included in the computation of the 10% commission.***

Ledesco submits that commission is due only on "consummated" sales,<sup>[34]</sup> which it implies to be the contract price of which have already been fully paid.<sup>[35]</sup> It insists that the sales made to Theresa Nagasima, Lilia Aaron, Rodolfo Garcia, Ofelia Roque, Julieta Garcillano, Ermelo Almeda, GRC Properties Inc., Alexander Tan, Josephine Pinon, Magdalena de Vera and Elizabeth Rodriguez (*Buyers*) were cancelled or withdrawn after the signing of the Reservation Agreement.<sup>[36]</sup> According to Ledesco, as these "sales" were not consummated contracts, they should no longer be considered in the computation of commission.<sup>[37]</sup>

Ledesco points out that the testimony of its witness, Brosas, and the list shown in Annex "2" of its Answer,<sup>[38]</sup> which is in the records of the transaction of WSIRI, are