

FIFTH DIVISION

[CA-G.R. CV NO. 100406, November 28, 2014]

ROMEO R. ROBISO, PLAINTIFF-APPELLEE, VS. CORAZON P. PAGNANI, DEFENDANT-APPELLANT.

DECISION

BARZA, J.:

Defendant-appellant Corazon Pagnani appeals to this Court the Order^[1] of summary judgment dated October 17, 2012, issued by the Regional Trial Court of Parañaque City, Branch 196.

Appellant, a resident of the United States of America, inherited a real property situated in Barangay San Roque, Pasay City, consisting an area of 735.47 square meters. The title covering said property was, however, lost.

To secure another title and to transfer the same to her name, appellant engaged the services of appellee for the filing before the court of a petition for reconstitution. The parties agreed that appellee will defray the expenses for the filing of the petition by advancing from the latter's personal funds. The expenditures for the proceeding will be reimbursed by appellant and the attorney's fees equivalent to 10% of the sale value of the property subject of the petition will be paid by appellant after the same has been sold.

The petition for reconstitution was granted and TCT No. 135785^[2] was issued in the name of appellant on January 24, 1996. However, the funds advanced by appellee in the amount of P700,000.00 for the expenses he defrayed during the litigation, inclusive of which is the payment of estate taxes^[3] and the payment of his legal services equivalent to 10% of the selling price of the property remained unpaid.

On September 22, 2010, appellee filed before the court *a quo* a complaint for *Sum of Money with Damages*, to collect from appellant the amount of P700,000.00 and the 10% equivalent to the selling price of the property. The complaint was amended on October 22, 2010. It reads, as follows:

xxx xxx xxx

3. Sometime in 1994, defendant engaged the legal services of the plaintiff to: (1) reconstitute the Certificate of Title over a 735.47 sq.m. lot situated in Brgy. San Roque, Pasay City, registered in the name of her parents, Potenciano Pecson and Geronima T. Pecson; (2) settle the estate of her aforementioned parents; (3) secure the issuance of the new certificate of title of the same land in defendant's name; (4) cancel the mortgage lien over the same property in favor of Republic Savings Bank; and, (5)

cancel the statutory lien over the same property. xxx

4. Conformably with the aforesaid retainer agreement, plaintiff commenced to take appropriate legal steps to comply with his legal obligations to the defendant and, with the conformity of the latter, advanced the sum of P700,000.00 for necessary expenses required therefor. Ultimately, plaintiff completed his legal services to the defendant sometime in January 1996 with the issuance of the new certificate of title in her name, free of any lien and encumbrance. xxx

5. Having been retained on a contingent basis, plaintiff then exhorted defendant to sell the property so that the former could collect his attorney's fees, equivalent to ten (10%) per cent of the selling price per retainer agreement as well as his advances in the amount of P700,000.00, which exhortation defendant seem to have ignored, thus forcing plaintiff to formally write her in March 1998 as well as register his attorney's lien on the said certificate of title. xxx

6. After the registration of plaintiff's claim over the defendant's property in 1998, defendant appeared to have a change of heart and promised to sell the property. Accordingly, when defendant visited the country in February 2006, she asked for a meeting with the plaintiff on February 14, 2006. Plaintiff went to see the defendant but prepared a letter which he personally handed over to the defendant. In the said letter, plaintiff reiterated his demand for settlement of his fees and reimbursement of his expenses. xxx. However, these promises died down in 2008 when defendant simply kept silent and has since then refused to communicate to plaintiff for reasons only known to her.

FIRST CAUSE OF ACTION

7. The act of the defendant in refusing to sell the property to which plaintiff had rendered legal services and incurred expenses was in breach of the retainer agreement, depriving the latter of what is due to him in the amount of P700,000.00 representing his advances, plus ten (10%) percent of the selling price of the property covered by Transfer Certificate of Title No. 135785, the said price not being less than P15,000.00 per square meter, or a total price of P11,032,050.00, and for which advances and percentage defendant must be assessed by way of actual damages.

SECOND CAUSE OF ACTION

8. As direct and natural consequence of the defendant's arbitrary, capricious and whimsical refusal to comply with her contractual obligation, plaintiff has suffered mental anguish and serious anxiety, owing to his unreimbursed advances for more than ten (10) years now, for which injury defendant must likewise be assessed moral damages in the amount as may be proven during the trial but in no case less than P100,000.00.

THIRD CAUSE OF ACTION

9. Having been compelled to litigate in the court to enforce and protect his rights violated by the defendant, plaintiff has engaged the services of the counsel to whom he agreed to pay the sum of P300,000.00 as attorney's fees, plus judicial expenses in such amount as will be proven during the trial, all of which together must likewise be assessed against the defendant by way and in the concept of actual damages.

FOURTH CAUSE OF ACTION

10. By way of example and correction for the public good, defendant must also be assessed exemplary damages in the amount the Honorable Court may find just and reasonable, but in no case less than P50,000.00^[4].

Appellee filed a *Motion with Leave of Court for Extraterritorial Service of Summons*^[5] upon appellant at her address in Hollywood, Chicago, USA, which was granted by the court *a quo*. The summons was effected as per the *affidavit of service* from the Office of Legal Affairs of the Department of Foreign Affairs.^[6]

On September 1, 2011, appellee and appellant executed, before the Vice Consul of the Philippine Embassy in the State of Illinois, a *Compromise Agreement*.^[7] It contains:

COMPROMISE AGREEMENT

COME NOW plaintiff and defendant and unto this Honorable Court, respectfully submit for approval their compromise agreement under the following terms and conditions, to wit:

1. That defendant admits her liability in favor of the plaintiff in the amount of:

i. P700,000.00, plus 12% interest per annum from February 17, 1996 until fully paid. This amount represents the advances made by plaintiff to transfer the title of the property subject matter of the case to the defendant;

ii. P1,103,205.00 which represents the professional fees of the plaintiff. This is 10% of the estimated selling price of the property (or 10% of P11,032,050.00 or P15,000.00 per square meter);

iii. P300,000.00 attorney's fees paid for by plaintiff to prosecute this case;

iv. P23,420.00 cost/filing fees.

2. That defendant shall pay her above mentioned liability or obligation to the plaintiff on or before December 31, 2011.

3. In the meantime, to guarantee the performance of her obligation, defendant shall execute a Deed of Mortgage in favor of the plaintiff over the parcel of land covered by TCT No. 135785 of the Registry of Deeds of Pasay City, immediately upon execution of this compromise agreement.

4. The terms of the deed of mortgage shall be such that in case the defendant fails to pay her obligation on or before December 31, 2011, then plaintiff has a right to foreclose the said property extra-judicially under an authority given to the plaintiff in the said deed of mortgage. In case the defendant shall have performed her obligation, then the said deed of mortgage shall become null and void.

5. Failure of the defendant to execute the real estate mortgage shall entitle the plaintiff to ask for a writ of execution for the amount stated in sub paragraphs i, ii, iii and iv of paragraph 1 above.

WHEREFORE, it is respectfully prayed of this Honorable Court that a decision be rendered on the basis of this compromise agreement.

ROMEO R. ROBISO
(signed)

CORAZON PAGNANI
(signed)

Appellee filed a *Motion to Approve Compromise Agreement*^[8] but was denied by the court *a quo* in its Order dated September 8, 2011,^[9] due to the non-appearance of the appellant when the said motion was called for hearing. Appellee sought for the reconsideration of the court *a quo*'s denial of the compromise agreement.

In the Order of the court *a quo* dated November 3, 2011, it directed appellant to file her comment to appellee's motion for reconsideration.

In a handwritten letter dated November 14, 2011, addressed to the court *a quo*, appellant stated:

Judge Brigido Artemon M. Luna II

x x x

Re: Counter Proposal to redraft a new Compromise Agreement of Atty. R. Robiso that he wrote.

1. That I received the order of the Court dated November 3, 2011.

2. That the original agreement that Atty. R. Robiso and I agreed upon since 1996 -

A. P700,000.00 this amount represents the advances made by Atty. R. Robiso to transfer the title of the property TCT No. 135785 in my name; and the atty.'s fee will be paid by me after the Pasay property is sold. That Atty. R. Robiso will get 10% of the selling price.

3. That I don't agree to pay Atty. R. Robiso before December 31, 2011. It will be impossible to find a buyer then and also Atty. R. Robiso gave me an ultimatum stating: Failure of not paying by December 31, 2011 he will have the right to Foreclose the said property. I just wish Atty. R. Robiso gave me the breakdown of his expenses of the P700,000.00.

4. That the compromise agreement wrote (sic) by Atty. R. Robiso does not benefit on my part or help me, I (sic) needed to be change.

5. I gave a special power of atty to Atty. R. Robiso to sale (sic) my property, but in the condition the price is subject to my approval. I am sorry I cannot participate to come to court on December 15, 2011. Travel expenses is very high I cannot afford it.

6. I hope this new changes will benefit the two of us, Atty. R. Robiso and I. I would like to thank you your honor by giving me a chance to write this letter. x x x^[10]

In the Order dated December 15, 2011, the court *a quo* granted appellee's *motion to withdraw his motion for reconsideration*.

On June 5, 2012, appellant filed her *Answer with Counterclaim* which contains:

3. The defendant hereby denies the allegations in paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13, the truth of the matter being hereinafter set forth in the following:

4. The defendant never ignored the plaintiff's exhortation to sell the property and has in fact always been just as eager if not more so, to sell the property for the best possible price;

5. Despite repeated requests from the defendant for receipts, the plaintiff has never substantiated his claim that he advances the amount of P700,000.00 to effect the transfer of the title of the subject property to the name of the defendant;

6. Being in need of funds due to her lung cancer, and thyroid condition, the defendant has been ready to sell the property subject of this case for a fair price;

7. There was never any need for the plaintiff to engage the service of any counsel, he merely had to find a buyer willing to pay a fair price for the property;

8. There is no need for any preliminary attachment because the defendant has every intention of paying the plaintiff what is due to him and because the plaintiff has had an attorney's lien annotated on the title of the subject property;

9. The plaintiff has in fact no cause of action but rather should find a