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SECOND DIVISION

[G.R. No. 243765; January 5, 2022]

MALATE CONSTRUCTION DEVELOPMENT CORPORATION* **and GIOVANNI OLIVARES,** *Petitioners*, *v*. **EXTRAORDINARY REALTY AGENTS & BROKERS COOPERATIVE,** *Respondent*.

D E C I S I O N

GAERLAN, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Malate Construction Development Corporation (MCDC) and Giovanni Olivares (Olivares), praying for the reversal of the May 10, 2018 Decision[2] and December 17, 2018 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 103092, which affirmed the October 21, 2013 Decision[4] of the Regional Trial Court (RTC) of Manila, Branch 47 awarding broker's fees and attorney's fees in favor of respondent Extraordinary Realty Agents & Brokers Cooperative (ERABCO).

Antecedents

MCDC is a domestic corporation engaged in developing and selling residential subdivisions, most of which consist of low-cost housing projects. Olivares is MCDC's President.[5]

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* Also referred to as Malate Construction and Development Corporation.

[1] *Rollo*, pp. 21-39.

[2] Id. at 45-61. Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring.

[3] Id. at 62-63.

[4] Id. at 195-219. Penned by Judge Paulino Q. Gallegos.

[5] Id. at 22.

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Sometime in July 2003, MCDC entered into a Marketing Agreement[6] with ERABCO, a cooperative engaged in the realty business as a broker.[7] ERABCO undertook to promote and sell the former's properties in Mahogany Villas in Looc, Calamba, Laguna. Particularly, ERABCO's promotional activities consist of project briefing, presentation to interested individuals and groups, campaign, site visit, open house, and other similar undertakings. Meanwhile, its selling activities include conducting orientations on the project and home financing options, buyer screening, sales counseling, solicitation, review of the required documents, and other like activities.[8] ERABCO was further commissioned to sell at least ten housing units within two months.[9]

In turn, MCDC agreed to pay ERABCO a sales commissions of nine percent (9%) for the latter's first fifty million sales within the period of two to five months, and a higher commission of ten percent (10%) if ERABCO's sales reached the fifty million mark within the said period. All commissions shall be based on the selling price of the housing package, excluding processing fees, move-in fees, and interest income on in-house financing.[10]

The Marketing Agreement further stated that for Pag-IBIG and Bank Financing accounts, ERABCO shall be entitled to receive a pro-rated commission based on its fulfillment of the following conditions: (i) twenty percent (20%) of its total commission under the first tranche upon the buyer's full payment of the reservation fee, and submission of the reservation agreement, Buyers Information Sheet, Income Tax Return (ITR) or Certificate of Employment and Compensation (CEC), and one latest pay slip; (ii) ten percent (10%) under the second tranche upon the buyer's submission of the MCDC loan requirements;[11] (iii) thirty percent

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[6] Id. at 71-75.

[7] Id. at 64.

[8] Id. at 71.

[9] Id.

[10] Id. at 72.

[11] The loan requirements consisted the following:
1. MCDC Contract to Sell

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(30%) under the third tranche upon the buyer's remittance of four amortizations of equity payments and the approved Membership Status Verification Slip (MSVS); and (iv) forty percent (40%) under the fourth tranche upon the release of the take out proceeds to MCDC and the submission of 24 post-dated checks for Pag-IBIG amortization, as well as the post-dated checks for the remaining equities. It was clearly indicated that prior to the delivery of the commissions under the third and fourth tranches, all accounts must be in current status.[12]

However, in 2005 and 2006, MCDC suddenly refused to pay ERABCO's commissions. Thus, ERABCO sent demand letters to MCDC, which were unfortunately, unheeded. This prompted ERABCO to file a complaint for sum of money with damages[13] demanding the payment of ₱4,962,935.77 including interest, with ₱50,000.00 as exemplary damages, and ₱50,000.00 as attorney's fees.[14] ERABCO impleaded Olivares as a party-defendant.

MCDC and Olivares filed their Answer with Counterclaim and Special Affirmative Defenses,[15] vehemently denying ERABCO's

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2. HLA, MSVS, Claim Stub (For Pag-IBIG Members)
2. 3 copies of 1x1 picture
3. Proof of billing address
4. Residence certificate
5. Marriage contract/birth certificate
6. Photocopy of company and TIN ID . . .

For self-employed:
1. Business License/Permit
2. Latest ITR
3. Audited Financial Statement with Balance Sheet
4. BIR Letter of Confirmation

For OCW:
1. Contract of Employment
2. Non-Residence Certificate/W2
3. Passbook (if POP member) Photocopy
4. Passport Photocopy back to back

[12] Id. at 74.

[13] Id. at 64-69.

[14] Id. at 47.

[15] Id. at 110-118.

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allegations. They pointed out that the total payment claimed by ERABCO is inconsistent with the amounts it sought in the body of its complaint and in the Police Report it filed. Furthermore, MCDC and Olivares averred that ERABCO even received a higher commission than what it was lawfully entitled to.[16]

Ruling of the RTC

On October 21, 2013, the RTC rendered a Decision[17] awarding broker's commission and attorney's fees in favor of ERABCO. The RTC held that ERABCO proved that its agents sold 202 units in Mahogany Villas worth ₱140,461,655.56. Thus, since ERABCO's services have been completed and pursuant to the Marketing Agreement, it is entitled to a nine percent (9%) commission of ₱12,641,549.00. The RTC observed that ERABCO's claim and evidence have not been rebutted by contradictory proof. Thus, the RTC concluded that since MCDC had already paid ERABCO ₱8,571,629.12 as commission, it should be held liable for the remaining balance of ₱4,069,919.88.

However, the RTC rejected ERABCO's pleas for the higher commission of ten percent (10%) of its total sales, considering that it failed to prove that it sold the units worth more than ₱50,000,000.00 in a period of two to five months from the inception of the agreement.

Furthermore, the RTC denied MCDC's defense that some of the units sold should have been merely subjected to a five or seven percent (5 or 7%) commission because they were bought back by MCDC from Pag-IBIG.

Finally, the RTC declared Olivares solidarily liable with MCDC and awarded attorney's fees in favor of ERABCO.

The RTC disposed of the case as follows:

> **WHEREFORE,** premises considered, judgment is hereby rendered:
>
> 1. Ordering defendants to solidarily pay [ERABCO] the amount of **Four Million Sixty Nine Thousand Nine Hundred Nineteen**

[16] Id. at 47.

[17] Id. at 195-219.

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Pesos and Eighty Eight Centavos (Php4,069,919.88) plus **legal interest of twelve percent (12%) per annum** computed from the time of the last demand to pay up to the time of payment, and;

2. Ordering [MCDC] to solidarily pay [ERABCO] the amount of **Fifty Thousand Pesos (Php50,000.00)** by way of attorney's fees[;]

3. Dismissing [MCDC's] claims for actual damages, moral and exemplary damages and attorney's fees for lack of sufficient basis.

SO ORDERED.[18]

Dissatisfied with the ruling, MCDC filed an appeal[19] with the CA.

Ruling of the CA

In a Decision[20] dated May 10, 2018, the CA affirmed the RTC's ruling. The CA held that the provisions of the Marketing Agreement are clear, unequivocal, and leave no room for interpretation.[21] The CA noted that ERABCO sold 202 units and complied with what was incumbent upon it under Sections A, B, and F of the Marketing Agreement. In contrast, MCDC failed to disprove and rebut the fact that ERABCO was able to sell the 202 units.[22] Thus, according to the CA, ERABCO may not be deprived of its right to its nine percent (9%) commission for all the units it sold.[23]

Moreover, the CA explained that MCDC's act of buying back from Pag-IBIG the 44 units sold by ERABCO does not absolve MCDC from its obligation to pay the commission. What matters is that the take-out loan proceeds were released for said 44 units, and Pag-IBIG paid MCDC in full for the same. The "buy-back" transpired only after the housing loan of the buyer

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[18] Id. at 219.

[19] Id. at 220.

[20] Id. at 45-61.

[21] Id. at 54.

[22] Id. at 58.

[23] Id. at 57.

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had been approved and the fund was released to MCDC. The only problem was the buyer's inability to continue paying his/her obligation.[24] The CA further elucidated that the subsequent cancellation of the Marketing Agreement does not free MCDC from its obligation to pay ERABCO's commissions.[25] Accordingly, the CA agreed with the RTC that MCDC is liable to pay ERABCO the balance of ₱4,069,919.88. However, the CA modified the interest rates to conform with jurisprudence.[26]

The dispositive portion of the CA's ruling states:

> **FOR THE STATED REASONS,** the appeal is **DENIED**. The October 21, 2013 Decision of the Regional Trial Court, City of Manila, Branch 47, is **AFFIRMED with MODIFICATION** as to the rate of interest awarded. [MCDC and Olivares] are ordered to pay [ERABCO] the amount of Four Million Sixty-Nine Thousand Nine Hundred Nineteen Pesos [and Eighty-Eight Centavos] (Php4,069,919.88) with twelve percent (12%) interest *per annum* to be computed from the time of the filing of the complaint up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until finality of the Decision. When the judgment of the court becomes final and executory, an interest of 6% *per annum* shall be imposed from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. Also [MCDC and Olivares] are ordered to pay attorney's fees of Fifty Thousand Pesos (₱50,000.00) which shall likewise earn an interest at the rate of 6% *per annum* from the finality of the Decision until full satisfaction.
>
> **SO ORDERED.**[27] (Citations omitted)

Aggrieved, on June 13, 2018, MCDC filed a Motion for Reconsideration, which was denied in the CA's December 17, 2018 Resolution.[28]

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[24] Id.

[25] Id. at 58.

[26] Id. at 59.

[27] Id. at 59-60.

[28] Id. at 62-63.

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Undeterred, MCDC filed the instant Petition for Review on *Certiorari.*[29]

Issues

The pivotal issues in the case at bar may be summarized into (i) whether or not MCDC is liable for broker's fees; and (ii) whether or not Olivares may be held solidarily liable with MCDC.

At the outset, MCDC and Olivares implore the Court to resolve their questions of fact in their Rule 45 Petition, arguing that the conclusions and findings of the CA are grounded on speculation, surmises, and conjectures.[30] They allege that the CA merely speculated that ERABCO complied with the conditions required for the payment of commissions despite the lack of evidence on record proving ERABCO's compliance.[31] Particularly, they state that ERABCO failed to present in court the documents that would prove its entitlement to the release of the first, second, third, and fourth tranches of its commissions. Alternatively, MCDC and Olivares urge that even assuming that ERABCO submitted the necessary documents in evidence, it violated the best evidence rule by merely presenting photocopies.[32]

Furthermore, MCDC and Olivares fault the CA for shifting the burden of proof to them rather than on ERABCO.[33] They disagree with the CA's statement that they failed to dispute by competent evidence the number of units sold by ERABCO and that they failed to rebut or negate the accounting report where ERABCO based its claims.[34] They contend that since it was ERABCO who claimed that it complied with all the conditions to be entitled to the commissions, then it should prove its claim, not the other way around.[35]

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[29] Id. at 21-39.

[30] Id. at 29.

[31] Id.

[32] Id. at 34.

[33] Id. at 37.

[34] Id.

[35] Id. at 38.

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Lastly, Olivares claims that being a mere officer of MCDC, he should not be held personally liable for the latter's obligations.[36]

On the other hand, ERABCO counters that the findings of fact of the RTC, as affirmed by the CA are entitled to full weight and great respect.[37] It explains that the original documents were all in MCDC's possession. It relates that during the pre-trial of the case, it moved for the production of all documents in MCDC's possession, which motion was granted by the RTC.[38] Then, MCDC's counsel admitted the existence, due execution and genuineness of the requested documents with the only caveat that "provided that it contained their signatures."[39] Thus, the receipts, vouchers, slips were marked in bulk by folder to save time. MCDC did not object. Neither did it alter or modify its admissions, or raise such issue as a matter on appeal before the CA.[40]

Additionally, ERABCO retorts that the best evidence rule was never violated. MCDC and Olivares are bound by the admission made by their former counsel.[41] Said admission allowed ERABCO to dispense with the presentation of the originals and offer photocopies.[42] Furthermore, ERABCO points out that MCDC and Olivares never objected to the submission of photocopies in evidence during ERABCO's formal offer of its documentary exhibits.[43]

Also, ERABCO clarifies that the CA did not shift the burden of proof to MCDC and Olivares, but only the burden of evidence after it had amply proven its claim.[44] ERABCO explains that the minor

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[36] Id.

[37] Id. at 318.

[38] Id. at 316.

[39] Id.

[40] Id. at 317.

[41] Id. at 322.

[42] Id. at 324.

[43] Id.

[44] Id. at 325-326.

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inconsistency in the amount it initially sought as a commission was due to its claim for a ten percent (10%) commission, which, at best, is merely due to a human error.[45]

Finally, ERABCO argues that Olivares was impleaded in the case because of his solitary role in the transactions subject of the complaint. It asserts that Olivares was the lone arm behind MCDC. His family owns it, and he directs and manages all of its affairs by himself. ERABCO likewise claims that Olivares blatantly violated the contract, filed malicious criminal suits, engaged in harassment tactics against ERABCO's agents, and acted in bad faith in the performance of MCDC's obligations with it.[46]

Ruling of the Court

The petition is partly granted.

Parameters of Judicial Review under Rule 45

It is noted at the outset that the issue pertaining to MCDC's liability for the payment of ERABCO's commission, as well as Olivares' personal liability are factual issues. As a general rule, factual matters are not the proper subject of an appeal by *certiorari*,[47] as it is not the Court's function to analyze or weigh the evidence which has been considered in the proceedings below.[48]

Nevertheless, a review of the factual findings is justified under the following circumstances:

> (i) when the findings are grounded entirely on speculations, surmises or conjectures; (ii) when the inference made is manifestly mistaken, absurd or impossible; (iii) when there is grave abuse of discretion; (iv) when the judgment is based on a misapprehension of facts; (v) when the findings of fact are conflicting; (vi) when in making its findings[,] the Court of

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[45] Id. at 327.

[46] Id. at 330-332.

[47] See *Miro v. Vda. De Erederos, et al.*, 721 Phil. 772 (2013).

[48] Id. at 785.

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Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (vii) when the findings are contrary to that of the trial court; (viii) when the findings are conclusions without citation of specific evidence on which they are based; (ix) when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;' (x) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or] (xi) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[49]

The findings of the RTC and the CA regarding Olivares' personal liability were based on speculations and bereft of evidence, thereby warranting a review of the facts.

The Marketing Agreement is the Law Between the Parties

It is settled that a contract is the law between the parties and the courts must enforce the contract as long as it is not contrary to law, morals, good customs or public policy. Courts cannot stipulate for the parties or amend their agreement, for to do so would transgress their freedom of contract and alter their real intention.[50]

In line with this, Article 1370 of the Civil Code mandates that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."[51] Thus, the court must conduct a preliminary inquiry as to whether the contract is indeed ambiguous, or if its provisions are susceptible of two reasonable alternative interpretations. After all, its ultimate purpose in examining a contract is to interpret the parties' intent, as objectively manifested by them.[52]

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[49] *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 538-539 (2017).

[50] See *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.*, 620 Phil. 381, 391-392 (2009).

[51] CIVIL CODE, Article 1370.

[52] *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.,* supra note 50 at 388, citing *Benguet Corp., et al. v. Cabildo*, 585 Phil. 23 (2008).

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Notably, if the language of the contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The parties' intention must be determined solely from the language of their contract. The contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make better or more equitable agreements than the parties themselves have been satisfied to make; or rewrite contracts because they operate harshly or inequitably against one of the parties; or alter them for the benefit of one and to the detriment of the other; or relieve a party from a term he/she voluntarily consented to; or impose on him/her a condition which he/she did not agree to.[53]

In the case at bar, the terms of the Marketing Agreement freely and voluntarily entered into by MCDC and ERABCO are clear and leave no room for interpretation.

Particularly, the broker's scope of work and responsibilities are plainly and distinctly enumerated as follows, (i) to promote the units in Mahogany Villas by performing project briefings, presentations, campaigns, site visits, open house activities, and other related promotional activities; (ii) to sell the units in Mahogany Villas by conducting buyer orientations on the sale and home financing, screening buyers, counseling and following up on sales, soliciting buyers, reviewing the required documents and other similar tasks; (iii) to sell at least ten housing units within two months; (iv) to underwrite the marketing of the Mahogany Villas within one year by using its technical expertise and material capability; (v) to participate in company-initiated marketing activities; (vi) to exercise due prudence in screening and endorsing buyers; (vii) to collect the documentary requirements from the buyers on or before the due date; (viii) to compile and examine the documentary requirements for acceptability and validity; (ix) to schedule agents' visits and provide the necessary logistical support; (x) to inform MCDC of the status of its sales; and (xi) to

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[53] Id. at 388-389.

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assist the buyer in the fulfillment of the requirements of the sale until the buyer finally moves in to the unit.[54]

In exchange for ERABCO's services, MCDC undertook to pay the former's commissions upon its compliance with the requisites in Section F of the Marketing Agreement, which states:

SECTION F. Compensation

1. For the services completed herein the Broker shall be entitled to a sales commission of NINE PERCENT (9%) for the FIRST FIFTY MILLION SALES (₱50,000,000.00) within the period of 2-5 months and TEN PERCENT (10%) if the Broker has reached the FIFTY MILLION SALES (₱50,000,000.00) within the specified period of time, otherwise, the NINE PERCENT (9%) commission will still be applicable. All Commissions shall be based on the selling price of the housing package excluding processing fees and move-in fees and interests income on in House financing.[55]

Furthermore, for Pag-IBIG and Bank financing accounts, ERABCO's commission will be released in the following manner:

(i) 20% as the first tranche upon the buyer's full payment of the reservation fee, and the submission of the reservation agreement, buyers information sheet, ITR or CEC, and 1 latest pay slip;

(ii) 10% as the second tranche upon the submission of the MCDC loan requirements;[56]

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[54] *Rollo*, p. 71.

[55] Id. at 72.

[56] Id. at 73. The loan requirements consisted the following:
1. MCDC Contract to Sell
2. HLA, MSVS, Claim Stub (For Pag-IBIG Members)
2. 3 copies of 1x1 picture
3. Proof of billing address
4. Residence certificate
5. Marriage contract/birth certificate
6. Photocopy of company and TIN ID . . .
For self-employed:
1. Business License/Permit
2. Latest ITR
3. Audited Financial Statement with Balance Sheet
4. BIR Letter of Confirmation

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(iii) 30% as the third tranche upon the payment of four amortizations of equity payments and the approved MSVS; and

(iv) 40% as the fourth and last tranche upon the release of take out proceeds to MCDC and the submission of 24 post-dated checks for Pag-IBIG amortization, and the post-dated checks for the remaining equities.[57]

As correctly ruled by the RTC and the CA, ERABCO performed its obligations under the Marketing Agreement. It complied with what was incumbent upon it under Sections A, B, and F of the Marketing Agreement, and fulfilled the pre-requisites for the release of its commission in tranches. It promoted and sold 202 housing units and assisted the buyers in the submission of the requirements until the loan proceeds were released by Pag-IBIG and the buyer finally moved in to the housing unit. All in all, it obtained total sales worth ₱140,461,655.56.

MCDC cannot forget that under the Marketing Agreement, it bound itself to "pay all commissions when due upon satisfaction of the requirements pertinent to such payment."[58] It cannot renege on its covenant. Thus, pursuant to Section F of the Marketing Agreement, MCDC must pay ERABCO the balance of its nine percent (9%) commission, which is ₱4,069,919.88.

ERABCO was able to prove its claim by a preponderance of evidence. Its evidence consisted of receipts and vouchers issued by MCDC,[59] voluminous records containing lists of the balance or deficiency in the total commissions payable by MCDC,[60] accountant's collation, check and balance, analysis

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For OCW:
1. Contract of Employment
2. Non-Residence Certificate/W2
3. Passbook (if POP member) Photocopy
4. Passport Photocopy back to back

[57] Id. at 74.

[58] Id. at 72.

[59] Id. at 120.

[60] Id. at 136.

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and computation of MCDC's obligations,[61] coupled with the testimonies of its witnesses.[62]

In contrast, MCDC and Olivares failed to rebut the evidence presented by ERABCO. They only presented one witness who testified on the commission paid to ERABCO which amounted to ₱8,571,629.12, based on checks and vouchers. In fact, ERABCO did not contest said amount.[63] Hence, ERABCO is entitled to a balance of ₱4,069,919.88, which represents the commission of ₱12,641,549.00 minus the amount of ₱8,571,629.12.

It bears noting that the burden of proof was never shifted to MCDC and Olivares. Quite the contrary, ERABCO, as the plaintiff in the action for sum of money and damages, was tasked to present evidence to prove its entitlement to its commission. As uniformly held by the RTC and the CA, to which the Court agrees, ERABCO fulfilled its burden. Thus, the burden of evidence was shifted unto MCDC and Olivares to refute ERABCO's claim, which unfortunately, they failed to do.

Remarkably, the distinction between the burden of proof and evidence was clarified in Section 1, Rule 131 of the Rules on Evidence, to wit:

> ***Section 1. Burden of proof and burden of evidence.*** — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. Burden of proof never shifts.
>
> Burden of evidence is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a prima facie case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case.

MCDC waived its right to question ERABCO's presentation of photocopies

[61] Id. at 190.

[62] Id.

[63] Id. at 255.

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Trying to renege on its responsibility to pay, MCDC and Olivares raise a novel argument claiming that ERABCO's evidence consisted of mere photocopies which are inadmissible under the "best evidence rule."[64]

MCDC's and Olivares' contention fails to persuade.

It cannot be gainsaid that the rules on admissibility of documentary evidence require that the original document be produced whenever its contents are the subject of inquiry. Specifically, under the original document rule, when the subject of inquiry is the contents of a document, no evidence is admissible other than the original document itself,[65] except in the following instances:

RULE 130
RULES OF ADMISSIBILITY

B. DOCUMENTARY EVIDENCE

x x x x

2. Secondary Evidence

Section 5. When original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his or her part, may prove its contents by a copy, or by recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Section 6. When original document is in adverse party's custody or control. – If the document is in the custody or under the control of the adverse party, he or she must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he or she fails to produce the document, secondary evidence may be presented as in the case of its loss.

Section 7. Summaries. – When the contents of documents, records, photographs, or numerous accounts are voluminous and cannot be examined in court without great loss of time, and the fact sought to

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[64] Id. at 34.

[65] RULES ON EVIDENCE, Rule 130, Section 3.

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be established is only the general result of the whole, the contents of such evidence may be presented in the form of a chart, summary, or calculation. The originals shall be available for examination or copying, or both, by the adverse party at a reasonable time and place. The court may order that they be produced in court.

Section 8. Evidence admissible when original document is a public record. – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

Equally important, a timely objection must be made against the introduction of photocopies. Otherwise, evidence not objected to shall be deemed admitted and may be validly considered by the court in arriving at its judgment. Courts are not precluded from accepting in evidence a mere photocopy of a document if no objection is raised during its formal offer.[66]

Consequently, to exclude photocopies as evidence, the objection to their admissibility must be made at the proper time, and the grounds thereof must be specified. In case of documentary evidence, the offer must be made after the witness of the party making the offer has testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that the objection to the documentary evidence may be made. If a party fails to interpose a timely objection to evidence at the time they were offered, such objection shall be considered as waived. This holds true even if by its nature, the evidence is inadmissible and would have been rejected had it been challenged at the proper time. **To reiterate, grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Hence, even on appeal, the appellate court may not consider any other ground of objection, except those that were properly and timely raised.**[67]

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[66] *Sps. Tapayan v. Martinez*, 804 Phil. 523, 536 (2017), citing *Lorenzana v. Lelina*, 793 Phil. 271, 281-282 (2016).

[67] Id., citing *Lorenzana v. Lelina*, 793 Phil. 271, 282-283 (2016).

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Interestingly, in *Sps. Tapayan v. Martinez*,[68] the Court noted that the opposing parties' failure to object to a plain copy of the Deed of Undertaking at the time it was formally offered in evidence before the RTC is equivalent to a waiver of the right to object, and is a bar to assail the probative value of the copy.[69]

In this case, ERABCO presented photocopies of the documents, vouchers, and receipts considering that said evidence were voluminous, and the original documents were in MCDC's possession. It related that by practice, MCDC furnished it with photocopies of the documents, and kept the originals.[70]

Strangely, MCDC and Olivares never objected to the presentation of the photocopies. In their Comment (to the plaintiff's formal offer of exhibits),[71] MCDC's and Olivares' counsel never objected to the admissibility of the documents for being mere photocopies in violation of the original document rule. On the contrary, the only objections they raised were that the documents (Exhibits A to V) were self-serving and misleading; that no one appeared before the trial court to testify thereon; and the witness presented by ERABCO did not identify them as the basis for the claim for an alleged unpaid commission.[72] Although their objections were varied, not one of them was due to an alleged violation of the original document rule.

Additionally, the Court notes that the argument regarding the submission of photocopies in lieu of the originals was raised belatedly in MCDC's and Olivares' petition for review. It must be remembered that points of law, theories, arguments, and issues not adequately brought to the trial court's attention need not be, and ordinarily will not be, considered by a reviewing court. Such matters cannot be raised for the first time on appeal. To allow

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[68] Id.

[69] Id. at 536.

[70] *Rollo*, p. 316.

[71] Id. at 138-139.

[72] Id. at 138.

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this would transgress the basic rules of fair play, justice, and due process.[73]

Moreover, it is odd that MCDC in its petition for review blames ERABCO for allegedly failing to move for the production of the originals.[74] On the contrary, the records clearly reveal that ERABCO actually filed a Motion for the Production of Evidence,[75] particularly of the documents vouchers, and slips that were in MCDC's possession. The trial court even granted the motion. However, instead of complying and producing the documents, MCDC's and Olivares' counsel **admitted the existence, due execution, and genuineness of the requested documents**, with the only caveat *"provided it contained their signatures."* Interestingly, the documents indeed contained Olivares' signature, thereby resulting to an admission of their existence, genuineness, and due execution.[76]

In addition, the trial court's ratiocination in its Decision is telling:

> [P]re-trial was conducted during which [ERABCO] and [MCDC and Olivares] submitted their briefs; marked their respective documentary exhibits (Exhibits "A" to "BB" and "1" to "645"); and stipulated on the facts of demands of payment of commission **and that the vouchers and receipts attached to the complaint and/or marked and submitted for preliminary conference were issued by [MCDC and Olivares] as long as these bore the signature of [MCDC and Olivares] x x x**[77] (Emphasis supplied)

Plainly, from the pre-trial stage to the rendition of the trial court's judgment, reconsideration before the trial court, and appeal with the CA, MCDC and Olivares never assailed or tried to

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[73] *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.,* supra note 50 at 392.

[74] *Rollo*, p. 36.

[75] Id. at 335-342.

[76] Id. at 321.

[77] Id. at 242.

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alter or modify their admissions.[78] It was only when they filed the instant petition before the Court that they suddenly and belatedly raised said issue.[79] Significantly, an admission, oral or written, made by the party in the court of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made.[80]

Furthermore, ERABCO's evidence, which consisted of receipts, vouchers, slips, and other documents, were voluminous. They were kept in several large boxes put inside at least nine (9) sacks. Hence, they were marked in bulk by folder to conserve time. MCDC and Olivares did not interpose any objections thereto.[81] Actually, their counsel even made an admission as to the genuineness of the bulk of receipts.[82]

The subsequent "buy-back" of the units does not release MCDC from its obligation to pay ERABCO's commission

MCDC claims that ERABCO should not be entitled to receive the commissions considering that some buyers reneged on their subsequent payments, and thus, they had to buy back the properties from Pag-IBIG.

The Court disagrees.

A scrutiny of the Marketing Agreement painstakingly enumerates the conditions for ERABCO to receive its commissions. As exhaustively discussed earlier, ERABCO fulfilled all of these conditions. Hence, the fact that MCDC subsequently bought back 44 units from Pag-IBIG does not change the fact that there had been completed services for the promotion and sale of the

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[78] Id. at 317.

[79] Id.

[80] *See* RULES ON EVIDENCE, Rule 129, Section 4.

[81] *Rollo*, pp. 316-317.

[82] Id. at 317.

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units. The take-out loan proceeds were released for the said 44 units, and Pag-IBIG paid MCDC in full for the same. The "buy-back" only happened after the housing loan of the buyer had been approved and the fund was released to MCDC, when the buyer could not continue paying his/her obligation. There could have been no buy-back of the units unless and until take-out loan proceeds were released by Pag-IBIG that completed the sale transactions.[83] Besides, if the "buy-back" was a valid justification for non-payment of the commission, then this should have been clearly stated in the Marketing Agreement. No such proviso exists in said Marketing Agreement. Pursuant to the rule strengthening the freedom to contract, the Court may not add provisions or conditions that run counter to the parties' original intent.

Additionally, MCDC's and Olivares' sole witness Rosemarie DC Faustino (Faustino) testified during her cross-examination that the extent of ERABCO's obligation regarding the sale of the units was until the buyer moves in to the unit. She likewise claimed that it was ERABCO's duty to ensure that the buyer continously pays his/her amortization after the loan take out or release of the loan within twenty-four months, and that ERABCO needed to monitor the payment because it is the pay back period or conversion of title of the buyer, "even if this was not stated in the marketing agreement."[84] Faustino's admission that said obligations are not specified in the Marketing Agreement certainly affirms that MCDC's excuses for refusing to pay were clearly unjustified. To stress, all that said Agreement mandates for the release of the final tranche of ERABCO's commission is the release of take out proceeds to MCDC and the submission of 24 post-dated checks for Pag-IBIG amortization, and the post-dated checks for the remaining equities,[85] which the former fulfilled.

Olivares is not personally liable for MCDC's obligation

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[83] Id. at 57.

[84] Id. at 253.

[85] Id. at 74.

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Although the Court agrees that MCDC is liable for ERABCO's unpaid commission of ₱4,069,919.88, Olivares should not be held personally liable for the same.

As a general rule, a corporation is invested by law with a personality separate and distinct from that of the persons comprising it, or from any other legal entity that it may be related to. The corporation's obligations are its sole liabilities. Accordingly, the corporate directors, officers, or employees are generally not personally liable for the corporation's obligations.[86]

Nonetheless, Section 30 of the Corporation Code enumerates particular instances that render corporate officers solidarily liable with the corporation:

> **Section 30.** *Liability of Directors, Trustees or Officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> A director, trustee or officer shall not attempt to acquire, or any interest adverse to the corporation in respect of any matter which has been reposed in them in confidence, and upon which, equity imposes a disability upon themselves to deal in their own behalf; otherwise, the said director, trustee or officer shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation."[87]

In *Heirs of Fe Tan Uy v. International Exchange Bank*,[88] the Court enumerated the requisites for holding a corporate officer and/or employee personally liable:

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[86] *Bank of Commerce v. Nite*, 764 Phil. 655, 663-664 (2015).

[87] REPUBLIC ACT NO. 11232, An Act Providing for the Revised Corporation Code of the Philippines, Section 30.

[88] 703 Phil. 477 (2013).

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Solidary liability will then attach to the directors, officers or employees of the corporation in certain circumstances, such as:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

While it is true that the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction is a question of fact which cannot be the subject of a petition for review on certiorari under Rule 45, this Court can take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts.[89] (Citations omitted)

This ruling was echoed in *Bank of Commerce v. Nite*,[90] where the Court warned that before holding a director personally liable for debts of the corporation, and thus piercing the veil of corporate fiction and disregarding the corporation's separate juridical

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[89] Id. at 485-486 (2013).

[90] Supra note 86.

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personality, the bad faith or wrongdoing of the director must first be established clearly and convincingly.[91] Such wrongdoing cannot be simply presumed.[92]

Olivares' purported bad faith and intentional wrongdoing were not proven during the trial of the case. Rather, Olivares' liability was vaguely premised on the allegations that he acted in bad faith and maliciously evaded his obligations.[93] However, no proof was adduced to establish said accusations. Lest it be forgotten, good faith is always presumed, and he who alleges bad faith has the duty to prove the same.[94] Neither did the RTC and the CA discuss their bases for holding Olivares solidarily liable with MCDC.

Hence, absent clear proof of bad faith and intentional wrongdoing, the general rule that the corporation's liabilities may not be shifted on to its officers, applies. Accordingly, Olivares may not be held personally liable for MCDC's liability.

All told, the Marketing Agreement serves as the law between the parties. ERABCO dutifully complied with its responsibilities. In turn, MCDC must fulfill its covenant and fully pay ERABCO's commission. The unpaid balance of ₱4,069,919.88 shall be subject to a legal interest of twelve percent (12%) *per annum* reckoned from the filing of the complaint until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment.

WHEREFORE, premises considered, the May 10, 2018 Decision and December 17, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 103092 are **MODIFIED** by **DELETING** Giovanni Olivares' personal liability. Malate Construction Development Corporation is hereby **ORDERED TO PAY** Extraordinary Realty Agents & Brokers Cooperative the amount of ₱4,069,919.88, with legal interest of twelve percent

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[91] Id. at 664.

[92] *Francisco v. Mallen, Jr.*, 645 Phil. 369, 377 (2010), citing *McLeod v. National Labor Relations Commission (1st Div.)*, 541 Phil. 214, 239 (2007).

[93] *Rollo*, p. 67.

[94] *Zambrano, et al. v. Philippine Carpet Manufacturing Corp., et al.*, 811 Phil. 569, 583 (2017).

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(12%) *per annum* reckoned from the filing of the complaint until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction. The total amount due shall earn a legal interest of six percent (6%) *per annum* from the finality of this Decision until full satisfaction.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Dimaampao, JJ.,* concur.

APPEARANCES OF COUNSEL

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