

F.3 – Case Spotlight: *Bayanin v. Philippine National Bank* (2023)

One decided case that I was not able to include in the discussion of my first book, which deserves its own full treatment here, because it is the clearest modern illustration of the substitution pattern described in F.1. You would not expect that a publicly-listed financial institution will litigate a case all the way to the Supreme Court to stubbornly evade the payment of the commission of licensed REBs, who were accredited with it.

The Facts: Minerva E. Bayanin and Eden A. Cruz were licensed real estate brokers accredited by the Philippine National Bank (PNB). Under the terms of their accreditation, if they are able to sell PNB-owned properties, they shall be entitled to a broker's commission. In particular, if they successfully sold a PNB property which exceeds PhP10,000.00, they will be entitled to a 3% commission.

Sometime in October 2007, Bayanin and Cruz were able to facilitate negotiations between Avida Land Corporation (Avida) and PNB, wherein the former expressed its intent to purchase from the latter two parcels of land located along EDSA corner Reliance and Mayflower Streets, Brgy. Highway Hills, Mandaluyong City. By virtue of the efforts of Bayanin and Cruz, Avida made upon PNB a PhP 40,000,000.00 on June 25, 2008. However, the transaction stalled, prompting Avida to withdraw the same.

What happened next is the part every licensed real estate broker and accredited real estate salesperson should read twice.

PNB and Avida entered into backdoor negotiations with other, purportedly exploring the possibility of arriving at a joint venture agreement for the development of the real estates in question. In doing so, they purposely and deliberately withheld from Bayanin and Cruz access to all information on the progress of their discussions.

In April 2010, Bayanin and Cruz discovered that PNB and Avida had already agreed to develop the very same properties into what would be known as the Avida Towers Centera condominium. Caught unaware, Bayanin and Cruz demanded the payment of their respective broker's commission, to no avail. Hence, both REBs filed a case against PNB and Avida for specific performance and damages before the RTC of Makati.

PNB admitted that Bayanin and Cruz were both accredited with the bank as licensed real estate brokers. Their role in introducing Avida to PNB as a prospective buyer of the subject lots was likewise undisputed. However, PNB contended that Bayanin and Cruz are not entitled to a broker's commission because no sale of real property was involved in its joint venture with Avida.

PNB stated that the subject properties were conveyed to Avida only as a means to facilitate the said joint venture. To bolster its claim, PNB submitted a copy of their

Memorandum of Agreement (MOA) dated April 13, 2010 and an undated Deed of Conveyance for the transfer of the lots in question to Avida.

The MOA states, among others, that Avida shall pay PNB in installments the total amount of P 1,399,379,000.00 “[in] consideration for the conveyance by PNB of the Property. Based on this revelation, Bayanin and Cruz amended their complaint and demanded 3% as commission which was equivalent to to P 41,981,370.00.

Issue: Whether or not PNB is liable to Bayanin and Cruz for payment of their respective broker’s commission and damages.

The Ruling: The trial court, the Court of Appeals, and finally the Supreme Court all rejected PNB’s characterization. The Court examined the actual substance of the MOA and the accompanying Deed of Conveyance between PNB and Avida. In the end, the Court ruled in favor of the licensed real estate brokers.

In **Medrano v. Court of Appeals**, the Court delineated the role of brokers in contract negotiations and the instances when they are entitled to receive their respective commissions:

A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. A broker is one whose occupation is to bring parties together, in matters of trade, commerce or navigation. x x x

“Procuring cause” is meant to be the proximate cause. The term “procuring cause,” in describing a broker’s activity, refers to a cause originating a series of events which, without break in their continuity, result in accomplishment of prime objective of the employment of the broker – producing a purchaser ready, willing and able to buy real estate on the owner’s terms. A broker will be regarded as the “procuring cause” of a sale, so as to be entitled to commission, if his efforts are the foundation on which the negotiations resulting in a sale are begun. The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed from his efforts acting as broker.

Prescinding from the foregoing, it is apparent that brokers are due their commissions if they facilitate sale through their own efforts, with which such sales would never have been consummated in the first place.

The Court agrees with the RTC's assessment, as affirmed by the CA, that PNB and Avida had a perfected contract of sale which was wittingly or unwittingly obscured by their MOA. At this juncture, the Court quoted with affirmation the following comprehensive discussion of the CA on this matter:

Clearly, as evidenced by the *Deed of Conveyance*, it was the real intention of the parties in entering into a MOA to transfer the "*rights, title and interest*" of PNB over the PNB properties to Avida in exchange for a stipulated consideration. Said conveyance of PNB properties to Avida is essentially a contract of sale because all the elements of a sale are present in the transaction: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.

First there was a meeting of the minds between PNB and Avida when PNB ceded, transferred and conveyed to Avida all its rights, title and interest in and to the PNB properties and Avida accepted the same. Second, there was a definite subject matter to be sold, which were the PNB properties. Third, PNB agreed to cede, transfer, and convey the PNB properties to Avida for a price certain in money, that is not less than P 1,399,379,000.00, the payment of which shall be based on a formula provided in the MOA and the *Deed of Conveyance*.

PNB's contention that there was no payment of price certain is belied by the fact that in the Certificate Authorizing Registration (CAR) issued by the Bureau of Internal Revenue, the said amount was used by PNB as basis in computing creditable withholding tax and the documentary stamp tax to be paid. In the CAR, the amount of P 1,399,379,000.00 was specifically indicated by the taxpayer (PNB) filing the return as the "Selling Price."

Moreover, the fact that the words of the stipulated consideration state that "Property Value which will not be less than One Billion, Three Hundred Ninety Nine Million, Three Hundred Seventy-Nine Thousand Pesos (PHP1,399,379,000.00), *provided that the development of the Project is completed in accordance with the master plan*" does not make the price uncertain.

Another indication that the conveyance of PNB properties is a sale and not a joint venture is the stipulation in Section 2 of the MOA that vests ownership and control of the residential condominium project to Avida. This means that after transferring ownership of the PNB properties to Avida, PNB will no longer have any participation in the supposed joint venture except to receive payment, as consideration for the value of the PNB properties based on a

formula provided in the MOA and the *Deed of Conveyance*. By vesting the ownership and control of the residential condominium project to Avida, PNB is denied of its mutual right of control as a partner to the supposed joint venture agreement. As noted by the Supreme Court in *Primelink Properties and Development Corporation v. Lazatin*, one of the elements of a joint venture is that the parties have a mutual right of control over the joint venture undertaking.

Now, even conceding that PNB and Avida entered into a joint venture agreement over the PNB properties, PNB's contention will still not lie. A reading of the MOA will show that, as in most MOAs, several agreements of the parties are contained therein, one of them would be the joint venture agreement to develop the "Project," and another agreement, which is a prerequisite of the joint venture, is the agreement to convey PNB's rights, title and interest in PNB properties to Avida, in order to implement the joint venture agreement.

Thus the joint venture agreement is only with respect to the development of the PNB properties into residential condominium project composed of a number of towers with share community amenities, utilities and facilities. The conveyance of PNB properties, which is a contract of sale as discussed above, is a separate but related agreement included in the MOA and implemented through the *Deed of Conveyance*.

In any case, regardless of whether the transaction between PNB and Avida is a sale or a joint venture, it is very clear, under the above-cited Supreme Court decisions, that [Bayanin and Cruz], as the efficient procuring cause, are entitled to their broker's commission for their role in bringing Avida to PNB as a potential buyer of its properties.

Indeed, a contract is what the law defines it to be, considering its essential elements, and not what it is called by the contracting parties. The denomination or title given by the parties in their contract is not conclusive of the nature of its contents. The label or rubric given to a contract cannot be used to camouflage the real import of an agreement as evinced by its main provisions.

In all stages of the proceedings before the RTC, the CA, and the Supreme Court, PNB never denied that were it not for Bayanin and Cruz, Avida would not have learned about the lots in question. The facts show that the subject lots were indeed sold by PNB to Avida, albeit they try to obscure this by using different legal terms. The Court cannot countenance this underhanded tactic because it amounts to unlawfully depriving Bayanin and Cruz the commissions that they have earned and rightfully deserve.

Why This Case Matters to You

The *Bayanin* case gives REBs and RESs something the older cases do not: a direct answer to the most sophisticated form of the substitution trick. An owner does not need to literally cut you out of the room to defeat your commission on paper. They can simply relabel the transaction – call a sale a joint venture, a partnership, a development agreement, anything other than a sale – and hope the label alone does the work of avoiding payment. The *Bayanin* case confirms that Philippine courts will look past the label to the substance of what was actually agreed.

The Court's reasoning on this point is the single most useful sentence in the entire decision for a working REB and RES: a contract is what the law defines it to be based on its essential elements, not what the parties choose to call it. PNB and Avida had, in substance, sold the properties to each other – regardless of what their paperwork was titled.

This matters most when your principal is a bank, a corporation, or any institutional seller with the legal sophistication to draft creative paperwork. The lesson is not that you are protected automatically. It is that your documentation of the underlying deal - who as introduced, when, and by whom – is exactly what allows a trial court to see through a relabeled transaction the way the Court did here.

AUTHOR'S INSIGHT - The Label Never Wins

In over twenty-six years of legal practice, I have seen owners try nearly every version of this maneuver – a management agreement instead of a sale, a lease with an option instead of a sale, and now, per the Bayanin case, a joint venture instead of a sale. The pattern is always the same: change the name on the document, hope the real estate broker's claim disappears with it. It never fully works, but it does succeed in delaying payment for years through litigation the REB did not choose and often cannot afford. The real protective move is not waiting for a court to see through the label after the fact. It is documenting your own role clearly enough, early enough, that the relabeling attempt never gets off the ground in the first place. That is the entire premise of Part I of this guide.

Citation: *Bayanin v. Philippine National Bank*, G.R. Nos. 240355 & 240375, February 27, 2023 [Third Division].