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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSE ULLOA,

Plaintiff,

v.

EDWARD U. MARATITA, *et al.*,

Defendants.

Civil Action No. 91-365

FINDINGS OF FACT
AND CONCLUSIONS
OF LAW

This matter came before the Court for trial on March 6 and 7, 1995, and reconvened on March 13 through 22, 1995. The jury returned a verdict on March 22, 1995, **finding** that Defendant Edward Maratita was not **guilty** of the alleged **fraud**. Proposed **findings** of fact and conclusions of law were **submitted** on **April** 10 and 11, 1995, regarding the equitable issues still remaining before the Court. This Court now renders its decision.

FOR PUBLICATION

1 **L PROCEDURAL HISTORY**

2 **Plaintiff** Jose Ulloa **filed** his complaint on May 28, 1991. In the complaint, Ulloa argued that his
3 nephew, Defendant Maratita, did not have the authority to sell his property to Defendant Vincent
4 **Manglona**, who then sold the property to Defendant Marianas Management Corporation (MMC). The
5 complaint contained a request for a jury trial and **defendants** jointly moved to strike **Ulloa's** request. The
6 Court held that Ulloa was entitled to a **jury** trial on the issue of **fraud**. *See* Decision and Order on
7 Defendant's Motion to Strike **Jury** Demand (Sept. 9, 1994). Moreover, the Court reserved the following
8 issues for the Court: 1) whether Ulloa is entitled to a constructive trust over the proceeds of the sale; 2)
9 whether Maratita **breached** his fiduciary duty; and 3) whether Ulloa is entitled to the rescission of the
10 warranty deeds conveyed to **Manglona** and **MMC**. *Id.* On March 22, 1995, the Court instructed the jury
11 as to the three theories of **fraud**,¹ and the case was submitted to the **jury**. The same day the jury returned
12 a verdict **finding** that Maratita did not **defraud Ulloa** by concealing or suppressing a material fact
13 regarding the sale of the land. *See* Jury Verdict Form (Mar. 22, 1995).

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15 **II. FINDINGS OF FACT**

16 **A. The Power Ulloa Vested in Maratita**

17 **Ulloa** was the **original** owner in fee simple of the real property at issue. The property, Lot 3159,
18 is located in **Tinian** and **Chama**, Rota, and consists of approximately 9.5 hectares. Sometime before June
19 23, 1988, Ulloa and Maratita had several discussions regarding the sale of the property. As a result of
20 these discussions, two documents were **drafted** by Maratita and executed by Ulloa.

21 The **first** document (Power of Attorney), dated June 23, 1988, states:

22 Know all men by these presents, that I, Jose A. Ulloa undersigned, of **Saipan**, Commonwealth of
23 the Northern **Mariana** Islands, hereby make, constitute, and appoint Edward U. Maratita . . . my
true and **lawful** attorney in fact for me . . . giving him the following power:

- 24 1. To endorse in my name and on my **behalf**, **all** real estate transactions and other
25 negotiable instruments that may require my endorsement pertaining to my real estates
[sic] in **Tinian** and **Chama** situated, lying and being located on Rota, **Mariana** Islands,
26 described as follows:

27 ¹ The theories of **fraud** were misrepresentation, breach of promise and concealment.

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Lot No. 3159 (TD No. 420) containing an area of 9.5 Hectares, more or less

The above mentioned power of said attorney in fact herein granted shall commence and be in full force and effect on June 23, 1988 and shall remain in full force and effect thereafter until June 23, 1989.

See Plaintiff's Exh. 1. Ulloa testified that when he executed the Power of Attorney on June 23, 1988, the document did not contain the last three paragraphs. See Plaintiff's Exh. 1A.

The second document, a letter addressed to Maratita (Letter) dated June 23, 1988, states:

Based on my June 23, 1988 Power of Attorney to you, if a lease or sale of my property is to be made my price is \$250,000.00 per square meter. TWO HUNDRED FIFTY THOUSAND DOLLARS.

See Plaintiff's Exh. 2. Although Ulloa knew the Letter was dated June 23, 1988, he testified that he signed it in August of 1988.² Moreover, Ulloa argued that when he executed the Letter, the document did not contain the handwritten figures "\$250,000.00" and "TWO HUNDRED FIFTY THOUSAND DOLLARS" and "per square meter" was not crossed-out. Maratita's sister Ramana was present when Ulloa executed the Letter, and her signature appears at the bottom of the document.

This Court finds that both documents were signed on June 23, 1988, and neither document was materially altered. First, the Power of Attorney would be illogical if it only contained the first paragraph. The first paragraph is not complete since it ends with a colon indicating that additional language follows. Moreover, the first paragraph grants Maratita the "following powers" which would indicate to a reader that additional language would define these powers. Second, Maratita's testimony is corroborated by Ramana's regarding the execution of the Letter. She testified that she was present on June 23, 1988, when Ulloa signed the Letter. She stated that she fully explained the contents of the document to Ulloa and told him to only sign it if he understood and agreed with its terms. Ramana also testified that Maratita had crossed out "per square meter" and wrote "\$250,000.00" and "TWO HUNDRED FIFTY THOUSAND DOLLARS" before Ulloa signed the Letter. Third, after taking into consideration the numerous inconsistencies in Ulloa's testimony, as well as observing his demeanor and manner at trial the

² Ulloa testified that although he cannot read or understand English, he can read and understand numbers.

1 Court views his testimony with a somewhat jaundiced **eye**.³ Finally, Ulloa admitted that he was told the
2 Letter would be the last document he was required to sign for the land to be sold. Accordingly, this
3 Court **finds** that when Ulloa signed the both documents, and he did so **with** the intent to allow Maratita
4 to sell his property.

6 **B. The Conveyances of the Property**

7 After Ulloa executed the Power of Attorney and the Letter, Maratita began the search for a buyer.
8 On August 11, 1988, Maratita, on behalf of Ulloa, executed an agreement to transfer the property to
9 Manglona in exchange for \$550,000.00. **See Plaintiff's** Exh. 3. Maratita testified that he showed
10 Manglona both the Power of Attorney and the Letter, and Manglona believed those documents
11 authorized Maratita to sell the property on behalf of Ulloa. Maratita did not however, inform Ulloa of
12 this agreement.

13 On August 23, 1988, Manglona entered into a conditional land sale agreement to convey the
14 property to MMC once Manglona obtained clear title. **See Plaintiff's** Exh. 4. This Court **finds** that
15 **Maratita's** testimony is **credible** when he stated that he was not aware of **Manglona's** intention to sell the
16 property to MMC prior to the actual sale to Manglona. Maratita **further** testified that if he knew of
17 **MMC's** interest in the property for the amount it bought it **from** Manglona, he would have gone directly
18 to MMC; thus increasing not only his own profit, but Ulloa's as well.

19 **On** October 31, 1988, Maratita executed a deed transferring the property to Manglona for the
20 **final** amount of \$525,821.39. **See Plaintiff's** Exh. 5. **On** the deed, Maratita signed his name above
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22 ³ Although Ulloa claims that he does not understand or speak English, the record reflects the
23 following. Ulloa's daughter testified that he required his children to only speak English at home. Ulloa
24 lived in Guam for approximately twenty consecutive years. Ulloa's former wife is Filipino and his present
25 wife is Chinese and the **only** language he has in common with both women is English. Ulloa ran a
26 business **with** his former wife in **Guam**, ran a construction business in Saipan and presently owns and **runs**
27 a store in **Saipan**. He communicated **with** workers in **English** and part of his duties were to sign contracts
28 for alien workers written in **English**. In fact, **Ulloa's** foreman of his construction business was Palauan
and they spoke English on a regular basis. Ulloa's first deposition taken on February 5, 1993, was
conducted almost completely in English, although an interpreter was present. At trial, **Ulloa** testified in
Chamorro, occasionally correcting the interpreter. Moreover, Ulloa testified at trial that his earlier
testimony during his February 5 deposition should be discounted since it was conducted in English.

1 **Ulloa's** indicating he was signing "**for**" Ulloa. The Court finds that the notary improperly signed the deed
2 by stating that Ulloa was personally present.

3 On November 1, 1988, Manglona executed a deed conveying the property to **MMC** in exchange
4 for \$2,581,305.00. **See** Plaintiff's Exh. 6. **MMC's** attorney, now Associate Judge **Miguel S. Demapan**,
5 testified that he advised his client to purchase the property since he believed that the Power of Attorney
6 along with the Letter granted Maratita the requisite power to execute the sale on behalf of Ulloa.
7 Therefore, this Court **finds** that **MMC's** reliance on the Power of Attorney and the Letter in granting
8 Maratita the authority to endorse the instruments of conveyance was reasonable.

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10 **C. Ulloa's Knowledge of the Conveyances the Property**

11 Sometime in September of 1988, Ulloa received a letter **from** the Division of Revenue and
12 Taxation dated September 7, 1988, which stated that Ulloa owed taxes as a result of the sale or lease of
13 his real property. **See Plaintiff's** Exh. 8. Ulloa's testimony varied as to the events following his receipt
14 **of the** letter. **During** his deposition, Ulloa **testified** that he visited the Division of Revenue and Taxation
15 after he received the September 7, 1988 notice. Ulloa Deposition p.34 (Feb. 5, 1993). It was during this
16 visit he first discovered the August 23, 1988, "Agreement for the Sale of Real Property" executed
17 between Manglona and Maratita. **See** Plaintiff's Exh. 3. This document reveals that Maratita signed his
18 name above Ulloa's typewritten name, signing "**for**" Ulloa for the sale of the property. The document
19 states that the buyer was Manglona, and the agreed **sales** price was \$550,000.00. Ulloa stated that
20 directly following this visit to the Division of Revenue and Taxation he called Maratita to inquire as to
21 the status of his property. During this conversation, Maratita told Ulloa that the Division of Revenue and
22 Taxation was incorrect in **telling** him he owed taxes since the land had not yet been sold. If Ulloa's
23 deposition is a correct account **of the** facts, then in September of 1988, Ulloa had notice of the impending
24 sale of his property to Manglona for the price of **\$550,000.00** and observed that Maratita was signing
25 documents on his behalf.

26 Ulloa related a different story **from** the witness stand at trial. He **claims** that after he received the
27 September notice, he asked Maratita's sister Bobbie to read the letter to him, and he showed the letter

1 to his accountant. He **further** stated at trial that he disregarded the notice upon **learning** its contents
2 because Maratita never informed him that the land was sold. He stated at trial that he did not go to the
3 Division of Revenue and Taxation until sometime in December of 1988, after he **first** received
4 \$250,000.00 from Maratita and after he received a second notice from the Division of Revenue and
5 Taxation. He stated that it was only at this time he became concerned that the property may have been
6 sold.

7 Sometime between November 9 and 15, 1988, Ulloa received and deposited a cashier's check
8 **from** Maratita for \$250,000.00. See Plaintiff's **Exh. 11**. He testified at trial he thought that it was money
9 for a down payment, and when he received the money, Ulloa asked Maratita about the taxes. Maratita's
10 response was that the deal was not finished.

11 On December 6, 1988, Ulloa received the second notice **from** the Department of Taxation and
12 Revenue dated November 23, 1988, which stated that taxes were due as a result of the sale of his
13 property. According to his ~~trial~~ testimony, Ulloa contacted Maratita sometime between December 6 and
14 19, 1988, to **inquire** about the letter and the taxes. Ulloa testified at trial that he went to the Division of
15 Revenue and Taxation on December 19, 1988. Accompanying him was his accountant and Juan
16 Maratita. The Division of Revenue and Taxation directed Ulloa to go to the Recorder's Office once they
17 provided him with a Recorder's reference number. At the Recorder's Office **Ulloa** discovered the
18 "Agreement for the Sale of Real Property" signed between Maratita and **Manglona** dated August 23,
19 1988. See Plaintiff's **Exh. 3**. The Recorder's **Office** advised Ulloa to **find** an attorney if he did not agree
20 with the contents **of the** document. **Ulloa** stated that he did not obtain an attorney directly **after** this visit
21 since his lack of command of the English language prevented him from doing so. He testified at trial that
22 he tried to call Maratita after his visit to the Recorder's Office but Maratita's line was busy. Ulloa
23 ultimately obtained counsel in May of 1990. If Ulloa's trial testimony is the accurate account of the
24 events, he received notice in December of 1988, that Maratita was signing documents on his **behalf**, how
25 much his **land** was sold for and to whom.

26 Maratita's testimony is identical to Ulloa's deposition testimony. Maratita testified that he
27 received a call **from Ulloa** sometime in early September. Maratita told Ulloa not to worry about the tax
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1 since the land had not yet been sold. Maratita also testified that the deal closed on October 31, 1988, he
2 received the money **from Manglona** on November 9, 1988, and gave Ulloa a cashier's check in the
3 amount of **\$250,000.00** the same *day*. Maratita stated that he again told Ulloa that there was nothing left
4 for him to sign after Ulloa questioned **him**. Maratita also testified that **after** Ulloa called him **m** late
5 November early December requesting that he pay the outstanding taxes. Maratita gave a personal check
6 to his mother, Ulloa's sister, in the amount of **\$27,000.00** for this purpose, who in turn gave it to Ulloa.

7 Therefore, because **of the** inconsistencies in Ulloa's testimony along with the fact that **Maratita's**
8 testimony is similar to Ulloa's deposition testimony this Court **finds** that **Ulloa** received notice of the
9 **terms** of the impending sale in September of 1988, after the receipt of the first letter from the Division
10 of Revenue and Taxation. Moreover, this Court finds that Ulloa waited over one and a half years to
11 object to the **terms** of the sale when he eventually hired an attorney **in** May of 1990.

12 13 **D. The Oral Agreement**

14 Both Ulloa and Maratita agreed that they entered into an oral agreement that Maratita would
15 receive a portion of the total sale price **if** Maratita found a buyer and the land was sold. The parties
16 however, disagree as to how they calculated this amount. Ulloa testified that he provided Maratita only
17 **with** the power to **find** a buyer and negotiate the sale, and Maratita was not authorized to endorse **any**
18 documents which would be necessary to convey the property. Ulloa **testified** in the same breath, however
19 that **if Maratita** sold the property for \$300,000.00, Maratita could keep \$50,000.00. Ulloa agreed that
20 **if Maratita** sold the property for \$250,000.00 then he was entitled to a ten percent commission.

21 Conversely, Maratita testified that if he sold the property for \$250,000.00 he would get a ten
22 percent commission. If however, he sold the property for an amount over \$250,000.00 but less than one
23 million dollars, he was entitled to keep the difference of the amount the property was sold for and
24 \$250,000.00, and he was responsible for the taxes. **If the** property was sold for one million dollars or
25 more, then the parties agreed to split the proceeds of the sale fifty-fifty.

26 Therefore, since the facts indicate that Ulloa failed to object to the terms of the sale within a
27 reasonable time coupled **with the fact** that Ulloa's testimony contained numerous inconsistencies, this

1 Court finds that the parties orally agreed to Maratita's compensation for the sale of the land as Maratita
2 recounted the events. Thus, Maratita's conduct was consistent with the power and authority given to
3 him by Ulloa.

4 5 **m. CONCLUSIONS OF LAW**

6 Ulloa claims that Maratita exceeded the authority granted to him under the Power of Attorney
7 when Maratita sold the property to Manglona on behalf of Ulloa. Ulloa urges the Court to strictly
8 construe the language of the Power of Attorney and find that the language does not include words which
9 describe the power to sell.

10 A power of attorney is an instrument authorizing another to act as one's agent. *CNMI v. Nabors*,
11 Civ. Act. No. 84-351 slip op. 5 n. 6 (Super. Ct. June 24, 1993) (citations omitted). A valid power of
12 attorney, which delineates the extent of the agent's authority, creates a principal-agency relationship.
13 Order Nov. 27, 1992; *King v. Bankerd*, 492 A.2d 608,611 (Md. Ct. App. 1985).

14 15 **A. Standard Interpreting Powers of Attorney**

16 There are various rules which govern the interpretation of powers of attorney. *King*, 492 A.2d
17 at 611. The Commonwealth Code however, makes it clear that where there is an absence of written or
18 local customary law the Restatement of Law should apply.⁴ See Order (Nov. 27, 1992). Since there is
19 no written or local customary law on this subject, the Restatement provides the governing law. 7 CMC
20 § 3401; but see *Matagolai v. Pangelinan*, 3 CR 591, 600 (D.N.M.I. App. 1988) (general powers of
21 attorney using broad language narrowly construed).

22 The Restatement provides that the rules governing the interpretation of contracts apply to the
23 interpretation of authority. RESTATEMENT (SECOND) OF AGENCY § 32 (1957). These rules do not
24 depend upon the existence of an ambiguity but are used to determine what meanings are reasonably
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26 ⁴ The Commonwealth Code provides that "the rules of the common law, as expressed in the
27 restatements of the law approved by the American Law Institute. . . , shall be the rules of decision in
28 Commonwealth courts in absence of written or local customary law to the contrary." 7 CMC § 3401.

1 **possible.** RESTATEMENT(SECOND)CONTRACTS §202 cmt. a (1979). The Restatement does not follow
2 a strict construction standard as **Ulloa** would believe, but states that words and conduct should be
3 "interpreted in light of all accompanying circumstances." RESTATEMENT (SECOND) OF AGENCY § 34
4 (1957); RESTATEMENT(SECOND) CONTRACTS §202 (1979). **The** manifestations of the intent of the
5 parties "are **interpreted** as consistent with each other and with any relevant course of performance, course
6 of dealing, or usage of trade." RESTATEMENT(SECOND) CONTRACTS at § 202 (5) (1979).⁵ Courts
7 should also consider **all** other matters which shed light on what a reasonable person in the position of the
8 agent at the time of acting would consider. RESTATEMENT(SECOND) AGENCY § 34 cmt. a (1957).

10 **B. Whether Maratita had the Authority to Sell the Property**

11 The application of these rules is a question of fact. *System Investment Corp. v. Montview*
12 *Acceptance Corp.*, 355 F.2d 463, 467 (10th Cir. 1966). Here, the facts clearly show that the parties
13 **intended** for Maratita to convey the **property** on Ulloa's behalf. **Ulloa** first signed the Power of Attorney
14 which **authorized** Maratita to "endorse m [Ulloa's name and on his behalf], all real estate transactions and
15 other **negotiable** instruments that may require [Ulloa's] endorsement pertaining to [Ulloa's] real estates
16 . . . " The Power of Attorney **specifically** refers to the location and size of the Ulloa's property.
17 Additionally, on the same date, Ulloa signed the Letter which relates back to the Power of Attorney,
18 stating that "**if** a lease or sale of my property is to be made" \$250,000.00 is the price. Moreover, both

20 ⁵ Courts should also take into account:

21 a) the situation of the parties, their relations to one another, and the business in which they are
22 engaged; b) . . . the business methods of the principal; c) facts of which the agent has notice
23 respecting the object which the principal desires to accomplish; d) the nature of the subject
24 matter, the circumstances under which the act is to be performed

24 RESTATEMENT(SECOND) AGENCY § 34 (1958); *see also Id.* at §§ 49 & 76.

25 Since powers of attorney are **normally carefully** drafted, courts give the instrument's terms a
26 **technical** and not a popular meaning. *Id.* at § 34 cmt. e. Nevertheless, the "attendant circumstances"
27 should be examined where a document is hastily drawn thus, may only contain the outlines and generally
28 indicate the extent of the authority. *Id.* Ambiguities in the instrument are usually resolved against the
party who drafted the document because that party had the better opportunity to understand and explain
the meaning; however, this is only done within the **frame** of the entire instrument. *Id.*

1 Ulloa and Maratita **testified** that they orally agreed on Maratita's compensation for the sale of the
2 property. Finally, Ulloa was told that he was not required to sign any additional documents after these
3 two documents were signed indicating that Maratita was granted all the powers enabling him to sell the
4 **property**.

5 After Maratita explained that it would be easier for him to sell the property **if there** was a power
6 of attorney, Ulloa requested Maratita to **draft** one. Maratita never before sold property on behalf of
7 another, and Ulloa was new to this **kind** of transaction as well. Subsequently, Maratita, with the advice
8 of Senator Paul Manglona, drafted the document. Since Maratita and Ulloa are close blood **relatives**,⁶
9 one would **expect** that the parties may not have stressed the need for extreme **specificity** when preparing
10 the document. They both testified that they trusted one another. Further, since Ulloa resided on Saipan,
11 Maratita on Rota and the location of the land is Rota, it is reasonable that Ulloa granted to Maratita the
12 necessary powers in order for him to sell the land so that the distance would not make it **difficult** to
13 convey the property. Ulloa was also told that the Letter would be the last document he was required to
14 sign, thus, informing him that if a sale were to occur his signature was not needed on documents such
15 as the contract of sale or a deed of sale. Therefore, **from** the attendant circumstances including the
16 executed the Power of Attorney and the Letter, the inexperience of the parties, their blood relationship
17 and the distance between the them, this Court **finds** that Ulloa intended to give Maratita the necessary
18 powers to **sell** the property.

20 **C. Whether Maratita had the Apparent Authority to Sell the Property**

21 Likewise, the documents created the apparent authority to **Manglona** and **MMC** that Maratita was
22 authorized to sell the property. The Restatement provides that:

23 Whether or not it is an integration, however, a writing apparently containing the full terms of an
24 authorization creates apparent authority as to a third person to whom it is shown by the agent and
who relies thereon, if the agent is authorized to show it or if it is in such form that it is likely to

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26 ⁶ Ulloa welcomed Maratita into his home so that Maratita could attend school in Guam.
27 Maratita's mother, **Ulloa's** sister, invited Ulloa to stay in her residence in Saipan when Ulloa's home was
destroyed during a typhoon. After obtaining his own home, he continued to clean his laundry and take
showers at her residence.

1 deceive third persons.

2 RESTATEMENT (SECOND) AGENCY § 49 cmt. h (1957);⁷ *United Bonding Ins. Co. v. Banco Suizo-*
3 *Panameno, S.A.*, 422 F.2d 1142 (5th Cir. 1970) (ample support of apparent authority including power
4 of attorney appointing agent as well as corporate seal and stationary); *Cavic v. Grand Bahama*
5 *Developments Co*, 701 F.2d 879 (11th Cir. 1983) (obvious agent had broad apparent authority to handle
6 real estate transactions for the principal since nothing put third party on notice that agent acting beyond
7 scope). Since both documents, executed by Ulloa, contain the **full** terms of Ulloa's authorization, they
8 created an apparent authority to Manglona and MMC that Maratita had the authority to sell the property
9 and Manglona **and** MMC reasonably relied on this authority. The Power of Attorney gave Maratita the
10 apparent authority to endorse documents for transactions of the property, and the Letter **specifically**
11 refers to the sale **of the** land and the sale price of \$250,000.00. Besides, the actual sale actually exceeded
12 the minimum price Ulloa requested. Furthermore, since Maratita and Ulloa are relatives, it would not
13 appear unusual to a third person that an uncle-principal has granted his nephew-agent the power to sell
14 his land on his **behalf**. Moreover, neither Manglona nor MMC had any notice that Maratita was not
15 authorized to sell the property. Finally, both Manglona and MMC relied on the apparent authority by
16 purchasing the property in exchange for valuable consideration. Therefore, the warranty deed which
17 conveyed the property to Manglona is effective to both Manglona and MMC since Maratita had the
18 apparent authority to convey the property; thus, Ulloa is not entitled to the rescission of the deeds.

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⁷ It is worthwhile to examine the following illustration:

22 P gives A a written power of attorney, purporting to authorize A to sell P's business without
23 limitation of price and to make warranties concerning the assets and liabilities of the business.
24 At the same time, P orally tells A that he is to sell the business for not less than \$25,000 and that
25 he is to make no warranties concerning the liabilities of the business. A shows T the power of
26 attorney and thereafter contracts with T to sell P's business to him for \$23,000, warranting that
the liabilities do not exceed \$10,000. T has no notices as to A's **authorizing**, except that
contained in the power of attorney. Whether or not the power of attorney was integrated, and
whether or not A was authorized to show it to R, the agreement with T is effective as a contract.

27 *Id.* at cmt. h **illus.** 13.

1 D. Whether Maratita Breached his Fiduciary Duty

2 The oral brokerage agreement is permissible under the Commonwealth Code since the Power
3 of Attorney explicitly states that Maratita's powers were authorized for one year. The statute provides:

4 The following contracts are invalid unless the same, or some note or memorandum **thereof**, is in
5 writing and subscribed by the party to be charged or by his agent.

6 (d) An agreement authorizing or employing an agent, broker or any other person to
7 purchase or sell real estate for a longer period than one year, or to procure, introduce
or find a purchaser or seller of real estate or a lessor or lessee of real estate **where** such
lease is for a longer period than one year for compensation or commission.

8 7 CMC § 4914 (d) (emphasis added).

9 Contrary to **Ulloa's belief**, under the terms of the oral agreement Maratita did act in accordance
10 with his promise: he sold the land, selling it for a price more than what Ulloa requested. **RESTATEMENT**
11 **(SECOND) AGENCY § 377 cmt. a (1957)** (an agent need not inform principal that a person is willing to
12 pay a higher price where the agent is to receive a commission all above a **fixed** price). Since under the
13 oral agreement, Maratita would keep the proceeds of the sale over \$250,000.00 unless the property was
14 sold for more that one million dollars, he was not required to **inform** Ulloa that he received a higher price
15 because that money went directly to Maratita under the oral agreement. Therefore, there can be no
16 breach of a fiduciary duty *since* under the terms of the oral brokerage agreement **if the** property was sold
17 for an amount between \$250,000.00 and one million dollars, there would be no monetary effect on Ulloa.
18 This Court also previously found that Maratita did not have knowledge of the transfer of the property
19 **from Manglona to MMC and** Maratita testified that **if he** knew about the transfer to MMC he would have
20 bypassed Manglona, thereby increasing the profit not only to Ulloa but also to himself. Thus, since
21 Maratita did have the authority to sell the property on **Ulloa's** behalf and he acted within that authority
22 he did not breach **his** fiduciary duty to Ulloa. Accordingly, Ulloa is not entitled to any remedies such as
23 a constructive trust over the proceeds of the sale, losses sustained or **restitution**.⁸

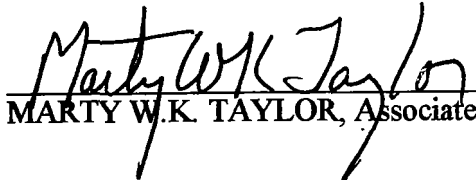
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26 ⁸ Since this Court has found that there is an principal-agent relationship between Ulloa and
27 Maratita, and Maratita had the express and apparent authority to sell the property, it need not address
28 defendants' alternative arguments.

1 **IV. JUDGMENT**

2 For the foregoing reasons this Court **finds** that:

- 3 1. The Power of Attorney and the Letter created a principal-agent relationship between Ulloa
4 and Maratita;
- 5 2. Ulloa gave Maratita the authority to sell the property;
- 6 3. Maratita had the apparent authority to sell the property;
- 7 4. Maratita did not breach his fiduciary duty to Ulloa;
- 8 5. Defendants shall recover their costs of the suit in this action upon the filing of a declaration
9 of counsel detailing such costs; and
- 10 6. This Court hereby renders Judgment in favor of Defendants **Manglona** and MMC and against
11 **Plaintiff** Ulloa.

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13 So ORDERED **this 31st** day of July, 1995.

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16 MARTY W.K. TAYLOR, Associate Judge
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