

[ G. R. No. L-9354. February 15, 1957 ]

**CASILDA M. VDA. DE MEJIA, ETC., PLAINTIFF AND APPELLEE, VS. MARY H. LOHLA AND EUGENIO B. LOHLA, DEFENDANTS. MARY N. LOHLA, DEFENDANT AND APPELLANT.**

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

### **MONTEMAYOR, J.:**

This is an appeal from the order of the Court of First Instance of Cebu, dated March 31, 1953, denying appellant's petition for relief from its judgment rendered on September 4, 1952, in Civil Case No. 1763-R. The appeal was first taken to the Court of Appeals but said court, in its resolution of April 30, 1955, certified the case to us on the ground that only questions of law were involved.

Eugenio B. Lohla (Genny) and Mary Nichols Lohla are husband and wife. On March 6, 1950, they executed what purported to be a deed of absolute sale in favor of Casilda M. Vda. de Mejia of a residential lot at Mango Avenue, Cebu City, with the improvements thereon, covered by Transfer Certificate of Title No. 4464, with an area of 15,650 square meters, for the sum of P37,000. The deed was registered on May 24, 1950 and Transfer Certificate of Title No. 4918 was issued in the name of Casilda. After the issuance of the Transfer Certificate of Title, Casilda demanded the delivery to her of the possession of the lot, but the spouses refused and instead filed Civil Case No. 1662-R in the Cebu court for the annulment of the above mentioned deed of sale, claiming that the transaction was not an absolute sale but only a sale with a right of repurchase.

Although said Civil Case No. 1662-R was filed on September 7, 1951, summons was issued only on January 11, 1952 and served on January 21 of the same year on Casilda. In the meantime, Casilda filed the present action, Civil Case No. R-1763, in the same Cebu court on December 17, 1951 to recover possession of the lot. In answering her complaint, the Lohlas claim that the contract regarding the lot in question was not one of sale with a right to repurchase, but only a mortgage, as evidenced by the inadequacy of the price, and called

attention to the fact that the present action was filed despite the previous filing of their complaint against Casilda, Civil Case No. 1662-R.

On September 3, 1953, appellee Casilda, represented by tier attorney in fact, Remedios Mejia, on one side, and Eugenio B. Lohla, one of the defendants, on the other, with their respective counsel, executed a compromise agreement in the present case, Civil Case No. R-4.763, wherein:

“Plaintiff granted to th© defendants the option to repurchase the land in question on or before December 4, 1952, for the sum of P52,792.25. on condition that upon the expiration of the said date without the defendants’ having repurchased the property, the later bound themselves to deliver possession of the premises to the plaintiff without any further obligation to pay any sum of money and that Civil Case No. 1662-R filed in the same court entitled ‘Mary N. Lohla and Eugenio B. Lohla vs. Casilda M. Vda. de Mejia’, for annulment of contract, involving the said Lot No. 874, be dismissed.” (p. 4, Appellant’s Brief; p. 7, Appellee’s Brief based on Annex “A” of R. A.)

Submitted to the trial court for approval, it was approved and made the basis of its decision rendered the following day, September 4, 1952, which we quote below:

“Both parties accompanied by their respective counsel appeared today and submitted a written agreement, to wit:”That plaintiff concedes to defendants the option to repurchase the land in quetsion on or before December 4, 1952, for the sum of P52,792.25 on condition that upon the expiration of said date without defendants’ having taken advantage of repurchasing the property, said defendants bind themselves to deliver to plaintiff the possession of the aforementioned land in question, without any obligation to pay whatever sum of money to said party.””Let decision be rendered in accordance therewith; with costs.’

Thereafter, Eugenio (Genny) came to Manila, presumably for the purpose of looking for buyers of the lot, perhaps expecting to sell it for a sum above the stipulated price of P52.792.25, then making the repurchase on or before December 4, 1952, and keeping- the difference from him and his wife, Mary. Eugenio (Genny) found prospective buyers in the

persons of Lucas P. Paredes and Aurora Clarin, general merchants, operating under the business-name of "Clarin Enterprises". The period for repurchase was soon to expire, but the prospective buyers had not yet made up their minds to buy because it seems that they wanted to see the papers concerning the lot for sale. So on December 2, 1952, Eugenio (Genny) from Manila sent the following telegram to his wife, Mary, in Cebu, asking her to request Atty. Francisco M. Mercado (Paking), one of the counsels of plaintiff Casilda, for an extension of the option and period of repurchase.

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MANILA DEC 2 52

MARY LOHLA

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535 AM"

Mary received the telegram and she indorsed it to Atty. Francisco M. Mercado by writing the following on the back of the telegram:

"Dear packing,

I received this telegram just this morning. The 'her' that Daddy is referring to in the telegram is the buyer of or Sikatuna place. She is the wife of Governor of Abra, Lukas Paredes. She is from Bohol. They say she is a millionaire.

(Sgd.) Mary"

To confirm the telegram Mr. Lucas Paredes wrote a letter to plaintiff Casilda, which we quote below:

"Dna. Casilda Vda. de Mejia

Cebu City

Quirida Dna. Casilda,

Esto es para advertir a usted que Aurora y yo estamos interesados en la propiedad del Sr. Eugenio B. Lohla, que hoy se encuentra en sus manos. Pedimos de su bondad de usted dar si Sr. Lohla unos cuantos días para que nos pueda enseñar los papeles y darnos tiempo para examinarlos.

Con esto le aseguro a usted que si encontramos en orden los papeles, y llegamos al acuerdo que el Sr. Lohla nos ha ofrecido; pues no tendrá usted ninguna dificultad recibir la cantidad que usted espera al Sr. Lohla,

De usted muy sinceramente,

(Sgd.) LUC48 PAREDES”.

Because of the telegram of Eugenio and the letter of Mr. Paredes, the original period of three months for repurchase was extended. However for reasons not disclosed, the prospective buyers were not able to buy the lot and the Lohlas failed to repurchase the same from Casilda within the period as extended. Casilda then asked for the execution of the decision. The corresponding writ of execution was issued and a copy thereof was received by Mary Lohla on February 17, 1953. On March 25, 1953, Mary Lohla filed her petition for relief from judgment, which was denied, the order of denial being the subject of the present appeal.

She makes the following assigned errors :

“III. Assigned Errors:

1. The trial court erred in approving the compromise agreement entered into by appellee and the defendant Eugenio B. Lohla and their counsels on September 4, 1954 and in rendering a decision based on the same, it being very clear therefrom that appellant Mary N. Lohla had no knowledge of nor had she given anyone authority to submit the case on a compromise.
2. The trial court erred in denying the motion for relief filed by defendant appellant, it appearing that said motion sought relief from a judgment which was based on an unauthorized compromise agreement wherein defendant-appellant had no participation whatsoever.”

It will be remembered that the compromise agreement was signed only by Eugenio and that his wife Mary did not take part in it. We agree with appellant that under Art. 1878 of the New Civil Code, special powers of attorneys without special authority may not compromise under Section 11, Rule 127, of the Rules of Court, attorneys without special authority may not compromise, their clients' litigation. Tested by these legal provisions, the compromise agreement of September 3, 1952 did not bind Mary Lohla, who claims the lot in question to be her paraphernal property. On the other hand, there is every reason to believe that she had actual knowledge of said compromise agreement and tacitly approved it even before, at least soon after it was entered into by her husband. It is hard to believe that said husband would, without the knowledge and consent of his wife, enter into the compromise agreement which after all, was beneficial to the couple, because it gave them an option to repurchase the property which had previously been sold by them to Casilda under the deed of absolute sale. It will be recalled that in their complaint in Civil Case No. 1662-R, Genny and Mary alleged that the transaction over the lot between them and Casilda was not an absolute sale, but rather a sale with a right to repurchase. So the compromise agreement was in accordance with that contention of theirs, for they were given an option to repurchase the property. Their present stand that the transaction was only a mortgage was taken later, when Casilda brought the present action against them to recover possession of the lot.

When Eugenio (Genny) came to Manila to look for buyers of the lot for a sum higher than the repurchase price, there is also reason to believe that it was with the knowledge and consent of his wife Mary. That is why when she received the telegram of her husband, which we have quoted, she readily and favorably indorsed it to the counsel of Casilda, which resulted in the extension of the period for repurchase. This action of hers alone may be regarded as a tacit ratification of the compromise agreement entered into by her husband and their counsel.

With such ratification, she may not now be heard to complain that the trial court erred in remembering its decision on the basis of said compromise, for the reason that the ratification retroacts to the date of the compromise agreement.

Furthermore, it would appear that as early as December 28, 1950, Mary had appointed her husband Eugenio (Genny) her true and lawful attorney in fact, as may be seen from the following special power of attorney:

“SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, Mary Nichols Lohla, of legal age, married to Eugenio B. Lohla, a resident of and with postal address at Mango Avenue, Cebu City, Philippines, have been made, constituted and appointed, and do hereby, by these presents, make, constitute and appoint my husband, Eugenio B. Lohla, Filipino citizen, of legal age, married to Mary Nichols Lohla, a resident of and with postal address at Mango Avenue, Cebu City, Philippines, my true and lawful attorney-in-fact to act for me, in my name, stead and representation as if I were personally present and as if all his acts and contracts were all mine; particularly and specially to sell, alienate, hypothecate, mortgage or *dispose of any and all my properties* and to perform any such other acts necessary to carry into effect the purpose for which this Special Power of Attorney is granted. In witness whereof, I have hereunto signed my name and affixed my signature at the City of Cebu, Philippines, this 28th day of December. 1950.

(Sgd.) MARY NICHOLS LOHLA

(t) MARY NICHOLS LOHLA

SIGNED IN THE PRESENCE OF:

CLARA NICHOLS and BERNARDO PAGOBIS

(ACKNOWLEDGMENT)"

The phrase "dispose of any and all my properties" would seem to us quite comprehensive, sufficient to include the power to compromise, so that in addition to her tacit ratification of the compromise her husband was sufficiently empowered to enter into the compromise agreement. Another objection to the petition for relief is that it was filed out of time. The Rules of Court provide that a petition for relief should be filed within a period of sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after said judgment or order was entered or such proceeding was taken. Appellant argues that the sixty day period should be counted from the time she received the writ of execution on February 17, 1953, because it was only then that she learned of the existence of the decision. We have already said that there is reason to believe that all along, appellant knew of the compromise and the decision rendered on the basis

thereof, and that it was with her knowledge and consent that her husband came to Manila to look for buyers. But even assuming that she did not know of the compromise, nor was she aware of the purpose of her husband in coming to Manila, still the receipt of the telegram aforementioned and the action taken by her on it may, in our opinion, be regarded as sufficient notice to her of the existence of the compromise of September 3, 1952 and the rendition of the judgment the following day. If she learned of the judgment when she received the telegram on December 2, 1952 and acted upon it on the same day, then her petition filed on March 25, 1953 was presented beyond the sixty day period.

In view of the foregoing, the order appealed from is hereby affirmed, with costs.

*Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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