

VILLONCO REALTY COMPANY, PLAINTIFF AND APPELLEE, EDITH PEREZ DE TAGLE, INTERVENOR AND APPELLEE, VS. BORMAHECO, INC., FRANCISCO N. CERVANTES AND ROSARIO N. CERVANTES, DEFENDANTS ...

G.R. No. L-26872. July 25, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This action was instituted by Villonco Realty Company against Bormaheco, Inc. and the spouses Francisco N. Cervantes and Rosario N. Cervantes for the specific performance of a supposed contract for the sale of land and the improvements thereon for one million four hundred thousand pesos. Edith Perez de Tagle, as agent, intervened in order to recover her commission. The lower court enforced the sale. Bormaheco, Inc. and the Cervantes spouses, as supposed vendors, appealed.

This Court took cognizance of the appeal because the amount involved is more than P200,000 and the appeal was perfected before Republic Act No. 5440 took effect on September 9, 1968. The facts are as follows:

Francisco N. Cervantes and his wife, Rosario P. Navarra-Cervantes, are the owners of Lots 3, 15 and 16 located at 245 Buendia Avenue, Makati, Rizal with a total area of three thousand five hundred square meters (TCT Nos. 43530, 43531 and 43532, Exh. A, A-1 and A-2). The lots were mortgaged to the Development Bank of the Philippines (DBP) on April 21, 1959 as security for a loan of P441,000. The mortgage debt was fully paid on July 10, 1969.

Cervantes is the president of Bormaheco, Inc., a dealer and importer of industrial and agricultural machinery. The entire three lots are occupied by the building, machinery and equipment of Bormaheco, Inc. and are adjacent to the property of Villonco Realty Company situated at 219 Buendia Avenue.

In the early part of February, 1964 there were negotiations for the sale of the said lots and the improvements thereon between Romeo Villonco of Villonco Realty Company "and Bormaheco, Inc., represented by its president, Francisco N. Cervantes, through the intervention of Edith Perez de Tagle, a real estate broker."

In the course of the negotiations, the brothers Romeo Villonco and Teofilo Villonco conferred with Cervantes in his office to discuss the price and terms of the sale. Later, Cervantes "went to see Villonco for the same reason until some agreement" was arrived at. On a subsequent occasion, Cervantes, accompanied by Edith Perez de Tagle, discussed again the terms of the sale with Villonco.

During the negotiations, Villonco Realty Company assumed that the lots belonged to Bormaheco, Inc. and that Cervantes was duly authorized to sell the same. Cervantes did not disclose to the broker and to Villonco Realty Company that the lots were conjugal properties of himself and his wife and that they were mortgaged to the DBP.

Bormaheco, Inc., through Cervantes, made a written offer dated February 12, 1964, to Romeo Villonco for the

sale of the property. The offer reads (Exh. B):

"BORMAHECO, INC.

February 12, 1964

"Mr. Romeo Villonco
Villonco Building
Buendia Avenue
Makati, Rizal

"Dear Mr. Villonco:

"This is with reference to our telephone conversation this noon on the matter of the sale of our property located at Buendia Avenue, with a total area of 3,500 sq. m., under the following conditions:

"(1) That we are offering to sell to you the above property at the price of P400.00 per square meter;

"(2) That a deposit of P100,000.00 must be placed as earnest money on the purchase of the above property which will become part payment of the property in the event that the sale is consummated;

"(3) That this sale is to be consummated only after I shall have also consummated my purchase of another property located at Sta. Ana, Manila;

"(4) That if my negotiations with said property will not be consummated by reason beyond my control, I will return to you your deposit of P100,000 and the sale of my property to you will not also be consummated; and

"(5) That final negotiations on both properties can be definitely known after 45 days.

"If the above terms is (are) acceptable to your Board, please issue out the said earnest money in favor of Bormaheco, Inc., and deliver the same thru the bearer, Miss Edith Perez de Tagle.

Very truly yours,

SGD. FRANCISCO N. CERVANTES

President"

The property mentioned in Bormaheco's letter was the land of the National Shipyards & Steel Corporation (Nassco), with an area of twenty thousand square meters, located at Punta, Sta. Ana, Manila. At the bidding held on January 17, 1964 that land was awarded to Bormaheco, Inc., the highest bidder, for the price of P552,000. The Nassco Board of Directors in its resolution of February 18, 1964 authorized the General Manager to sign the necessary contract (Exh. H).

On February 28, 1964, the Nassco Acting General Manager wrote a letter to the Economic Coordinator, requesting approval of that resolution. The Acting Economic Coordinator approved the resolution on March 24, 1964 (Exh. I).

In the meanwhile, Bormaheco, Inc. and Villonco Realty Company continued their negotiations for the sale of the Buendia Avenue property. Cervantes and Teofilo Villonco had a final conference on February 27, 1964. As a result of that conference Villonco Realty Company, through Teofilo Villonco, in its letter of March 4, 1964 made a revised counter-offer (Romeo Villonco's first counter-offer was dated February 24, 1964, Exh. C) for the purchase of the property. The counter-offer was accepted by Cervantes as shown in Exhibit D, which is quoted below:

"VILLONCO REALTY COMPANY

V.R.C. Building

219 Buendia Avenue, Makati,

Rizal, Philippines

March 4, 1964

Mr. Francisco Cervantes

Bormaheco, Inc.

245 Buendia Avenue

Makati, Rizal

Dear Mr. Cervantes:

In reference to the letter of Miss E. Perez de Tagle dated February 12th and 26, 1964 in respect to the terms and conditions on the purchase of your property located at Buendia Ave., Makati, Rizal, with a total area of 3,500 sq. mets., we hereby revise our offer, as follows:

1.

That the price of the property shall be P400.00 per sq. m., including the improvements thereon;

2.

That a deposit of P100,000.00 shall be given to you as earnest money which will become as part payment in the event the sale is consummated;

3.

This sale shall be cancelled, only if your deal with another property in Sta. Ana shall not be consummated and in such case, the P100,000.00 earnest money will be returned to us with a 10% interest p.a. However, if our deal with you is finalized, said P100,000.00 will become as part payment for the purchase of your property without interest:

4.

The manner of payment shall be as follows:

a.

P100,000.00 earnest money, and 650,000.00 as part of the down payment, or P750,000.00 as total down payment

b.

The balance is payable as follows:

P100,000.00 after 3 months

125,000.00 — do —

212,500.00

— do —

212,500.00 — do —

P650,000.00 Total

As regards to the other conditions which we have discussed during our last conference on February 27, 1964, the same shall be finalized upon preparation of the contract to sell.[*]

If the above terms and conditions are acceptable to you, kindly sign your conformity hereunder. Enclosed is our check for ONE HUNDRED THOUSAND (P100,000.00) PESOS, MBTC Check No. 448314, as earnest money.

Very truly yours,

VILLONCO REALTY COMPANY

(Sgd.) TEOFILO VILLONCO

CONFORME:

BORMAHECO, INC.

(Sgd.) FRANCISCO CERVANTES

That this sale shall be subject to favorable consummation of a property in Sta. Ana we are negotiating.

(Sgd.) FRANCISCO CERVANTES"

The check for P100,000 (Exh. E) mentioned in the foregoing letter-contract was delivered by Edith Perez de Tagle to Bormaheco, Inc. on March 4, 1964 and was received by Cervantes. In the voucher-receipt evidencing the delivery the broker indicated in her handwriting that the earnest money was "subject to the terms and conditions embodied in Bormaheco's letter" of February 12 and Villonco Realty Company's letter of March 4, 1964 (Exh. E-1; 14 tsn).

Then, unexpectedly, in a letter dated March 30, 1964, or twenty-six days after the signing of the contract of sale, Exhibit D, Cervantes returned the earnest money, with interest amounting to P694.24 (at ten percent per annum). Cervantes cited as an excuse the circumstance that "despite the lapse of 45 days from February 12, 1964 there is no certainty yet" for the acquisition of the Punta property (Exh. F, F-1 and F-2). Villonco Realty Company refused to accept the letter and the checks of Bormaheco, Inc. Cervantes sent them by registered mail. When he rescinded the contract, he was already aware that the Punta lot had been awarded to Bormaheco, Inc. (25-26 tsn).

Edith Perez de Tagle, the broker, in a letter to Cervantes dated March 31, 1964 articulated her shock and surprise at Bormaheco's turnabout. She reviewed the history of the deal and explained why Romeo Villonco could not agree to the rescission of the sale (Exh. G).[**]

Cervantes in his letter of April 6, 1964, a reply to Miss Tagle's letter, alleged that the forty-five day period had already expired and the sale to Bormaheco, Inc. of the Punta property had not been consummated. Cervantes said that his letter was a "manifestation that we are no longer interested to sell" the Buendia Avenue property to Villonco Realty Company (Annex I of Stipulation of Facts). The latter was furnished with a copy of that letter.

In a letter dated April 7, 1964 Villonco Realty Company returned the two checks to Bormaheco, Inc., stating that the condition for the cancellation of the contract had not arisen and at the same time announcing that an action for breach of contract would be filed against Bormaheco, Inc. (Annex G of Stipulation of Facts).

On that same date, April 7, 1964 Villonco Realty Company filed the complaint (dated April 6) for specific

performance against Bormaheco, Inc. Also on that same date, April 7, at eight-forty-five in the morning, a notice of lis pendens was annotated on the titles of the said lots.

Bormaheco, Inc. in its answers dated May 5 and 25, 1964 pleaded the defense that the perfection of the contract of sale was subject to the conditions (a) "that final acceptance or not shall be made after 45 days" (sic) and (b) that Bormaheco, Inc. "acquires the Sta. Ana property".

On June 2, 1964 or during the pendency of this case, the Nassco Acting General Manager wrote to Bormaheco, Inc., advising it that the Board of Directors and the Economic Coordinator had approved the sale of the Punta lot to Bormaheco, Inc. and requesting the latter to send its duly authorized representative to the Nassco for the signing of the deed of sale (Exh. 1).

The deed of sale for the Punta land was executed on June 26, 1964. Bormaheco, Inc. was represented by Cervantes (Exh. J. See Bormaheco, Inc. vs. Abanes, L--28087, July 31, 1973, 52 SCRA 73).

In view of the disclosure in Bormaheco's amended answer that the three lots were registered in the names of the Cervantes spouses and not in the name of Bormaheco, Inc., Villonco Realty Company on July 21, 1964 filed an amended complaint impleading the said spouses as defendants. Bormaheco, Inc. and the Cervantes spouses filed separate answers.

As of January 15, 1965 Villonco Realty Company had paid to the Manufacturers' Bank & Trust Company the sum of P8,712.25 as interests on the overdraft line of P100,000 and the sum of P27.39 as interests daily on the same loan since January 16, 1965. (That overdraft line was later settled by Villonco Realty Company on a date not mentioned in its manifestation of February 19, 1975).

Villonco Realty Company had obligated itself to pay the sum of P20,000 as attorney's fees to its lawyers. It claimed that it was damaged in the sum of P10,000 a month from March 24, 1964 when the award of the Punta lot to Bormaheco, Inc. was approved. On the other hand, Bormaheco, Inc. claimed that it had sustained damages of P200,000 annually due to the notice of lis pendens which had prevented it from constructing a multi-story building on the three lots. (Pars. 18 and 19, Stipulation of Facts).

Miss Tagle testified that for her services Bormaheco, Inc., through Cervantes, obligated itself to pay her a three percent commission on the price of P1,400,000 or the amount of forty-two thousand pesos (14 tsn).

After trial, the lower court rendered a decision ordering the Cervantes spouses to execute in favor of Bormaheco, Inc. a deed of conveyance for the three lots in question and directing Bormaheco, Inc. (a) to convey the same lots to Villonco Realty Company, (b) to pay the latter, as consequential damages, the sum of P10,000 monthly from March 24, 1964 up to the consummation of the sale, (c) to pay Edith Perez de Tagle the sum of P42,000 as broker's commission and (d) to pay P20,000 as attorney's fees (Civil Case No. 8109).

Bormaheco, Inc. and the Cervantes spouses appealed. Their principal contentions are (a) that no contract of sale was perfected because Cervantes made a supposedly qualified acceptance of the revised offer contained in Exhibit D, which acceptance amounted to a counter-offer, and because the condition that Bormaheco, Inc. would acquire the Punta land within the forty-five-day period was not fulfilled; (2) that Bormaheco, Inc. cannot be compelled to sell the land which belongs to the Cervantes spouses and (3) that Francisco N. Cervantes did not bind the conjugal partnership and his wife when, as president of Bormaheco, Inc., he entered into negotiations with Villonco Realty Company regarding the said land.

We hold that the appeal, except as to the issue of damages, is devoid of merit.

"By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver

a determining thing, and the other to pay therefor a price certain in money or its equivalent. A contract of sale may be absolute or conditional" (Art. 1458, Civil Code).

"The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts" (Art. 1475, Ibid.).

"Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law" (Art. 1315, Civil Code).

"Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer" (Art. 1319, Civil Code). "An acceptance may be express or implied" (Art. 1320, Civil Code).

Bormaheco's acceptance of Villonco Realty Company's offer to purchase the Buendia Avenue property, as shown in Teofilo Villonco's letter dated March 4, 1964 (Exh. D), indubitably proves that there was a meeting of minds upon the subject matter and consideration of the sale. Therefore, on that date the sale was perfected. (Compare with *McCullough vs. Aenlle & Co.*, 3 Phil. 285; *Goyena vs. Tambunting*, 1 Phil. 490). Not only that.

Bormaheco's acceptance of the part payment of one hundred thousand pesos shows that the sale was conditionally consummated or partly executed subject to the purchase by Bormaheco, Inc. of the Punta property. The nonconsummation of that purchase would be a negative resolutive condition (*Taylor vs. Uy Tieng Piao*, 43 Phil. 873).

On February 18, 1964 Bormaheco's bid for the Punta property was already accepted by the Nassco which had authorized its General Manager to sign the corresponding deed of sale. What was necessary only was the approval of the sale by the Economic Coordinator and a request for that approval was already pending in the office of that functionary on March 4, 1964.

Bormaheco, Inc. and the Cervantes spouses contend that the sale was not perfected because Cervantes allegedly qualified his acceptance of Villonco's revised offer and, therefore, his acceptance amounted to a counter-offer which Villonco Realty Company should accept but no such acceptance was ever transmitted to Bormaheco, Inc. which, therefore, could withdraw its offer.

That contention is not well-taken. It should be stressed that there is no evidence as to what changes were made by Cervantes in Villonco's revised offer. And there is no evidence that Villonco Realty Company did not assent to the supposed changes and that such assent was never made known to Cervantes.

What the record reveals is that the broker, Miss Tagle, acted as intermediary between the parties. It is safe to assume that the alleged changes or qualifications made by Cervantes were approved by Villonco Realty Company and that such approval was duly communicated to Cervantes or Bormaheco, Inc. by the broker as shown by the fact that Villonco Realty Company paid, and Bormaheco, Inc. accepted, the sum of P100,000 as earnest money or down payment. That crucial fact implies that Cervantes was aware that Villonco Realty Company had accepted the modifications which he had made in Villonco's counter-offer. Had Villonco Realty Company not assented to those insertions and annotations, then it would have stopped payment on its check for P100,000. The fact that Villonco Realty Company allowed its check to be cashed by Bormaheco, Inc. signifies that the company was in conformity with the changes made by Cervantes and that Bormaheco, Inc. was aware of that conformity. Had those insertions not been binding, then Bormaheco, Inc. would not have paid interest at the rate of ten percent per annum on the earnest money of P100,000.

The truth is that the alleged changes or qualifications in the revised counter-offer (Exh. D) are not material or are mere clarifications of what the parties had previously agreed upon.

Thus, Cervantes' alleged insertion in his handwriting of the figure and the words "12th and" in Villonco's counter-offer is the same as the statement found in the voucher-receipt for the earnest money, which reads: "subject to the terms and conditions embodied in Bormaheco's letter of Feb. 12, 1964 and your letter of March 4, 1964" (Exh. E-1).

Cervantes allegedly crossed out the word "Nassco" in paragraph 3 of Villonco's revised counter-offer and substituted for it the word "another" so that the original phrase, "Nassco's property in Sta. Ana", was made to read as "another property in Sta. Ana". That change is trivial. What Cervantes did was merely to adhere to the wording of paragraph 3 of Bormaheco's original offer (Exh. B) which mentions "another property located at Sta. Ana". His obvious purpose was to avoid jeopardizing his negotiation with the Nassco for the purchase of its Sta. Ana property by unduly publicizing it.

It is noteworthy that Cervantes, in his letter to the broker dated April 6, 1964 (Annex I) or after the Nassco property had been awarded to Bormaheco, Inc., alluded to the "Nassco property". At that time, there was no more need of concealing from the public that Bormaheco, Inc. was interested in the Nassco property.

Similarly, Cervantes alleged insertion of the letters "PA" (per annum) after the word "interest" in that same paragraph 3 of the revised counter-offer (Exh. D) could not be categorized as a major alteration of that counter-offer that prevented a meeting of the minds of the parties. It was understood that the parties had contemplated a rate of ten percent per annum since ten percent a month or semi-annually would be usurious.

Appellants Bormaheco, Inc. and Cervantes further contend that Cervantes, in clarifying in the voucher for the earnest money of P100,000 that Bormaheco's acceptance thereof was "subject to the terms and conditions embodied in Bormaheco's letter of February 12, 1964 and your (Villonco's) letter of March 4, 1964" made Bormaheco's acceptance "qualified and conditional".

That contention is not correct. There is no incompatibility between Bormaheco's offer of February 12, 1964 (Exh. B) and Villonco's counter-offer of March 4, 1964 (Exh. D). The revised counter-offer merely amplified Bormaheco's original offer.

The controlling fact is that there was agreement between the parties on the subject matter, the price and the mode of payment and that part of the price was paid. "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract" (Art. 1482, Civil Code).

"It is true that an acceptance may contain a request for certain changes in the terms of the offer and yet be a binding acceptance. 'So long as it is clear that the meaning of the acceptance is positively and unequivocally to accept the offer, whether such request is granted or not, a contract is formed.'" (Stuart vs. Franklin Life Ins. Co., 165 Fed. 2nd 965, citing Sec. 79, Williston on Contracts).

Thus, it was held that the vendor's change is a phrase of the offer to purchase, which change does not essentially change the terms of the offer, does not amount to a rejection of the offer and the tender of a counter-offer (Stuart vs. Franklin Life Ins. Co., supra).

The instant case is not governed by the rulings laid down in *Beaumont vs. Prieto*, 41 Phil. 670, 985, 63 L. Ed. 770, and *Zayco vs. Serra*, 44 Phil. 326. In those two cases the acceptance radically altered the offer and, consequently, there was no meeting of the minds of the parties.

Thus, in the *Zayco* case, Salvador Serra offered to sell to Lorenzo Zayco his sugar central for P1,000,000 on

condition that the price be paid in cash, or, if not paid in cash, the price would be payable within three years provided security is given for the payment of the balance within three years with interest. Zayco, instead of unconditionally accepting those terms, countered that he was going to make a down payment of P100,000, that Serra's mortgage obligation to the Philippine National Bank of P600,000 could be transferred to Zayco's account and that he (plaintiff) would give a bond to secure payment of the balance of the price. It was held that the acceptance was conditional or was a counter-offer which had to be accepted by Serra. There was no such acceptance. Serra revoked his offer. Hence, there was no perfected contract.

In the Beaumont case, Benito Valdes offered to sell to W. Borck the Nagtahan Hacienda owned by Benito Legarda, who had empowered Valdes to sell it. Borck was given three months from December 4, 1911 to buy the hacienda for P307,000. On January 17, 1912 Borck wrote to Valdes, offering to purchase the hacienda for P307,000 payable on May 1, 1912. No reply was made to that letter. Borck wrote other letters modifying his proposal. Legarda refused to convey the property.

It was held that Borck's January 17th letter plainly departed from the terms of the offer as to the time of payment and was a counter-offer which amounted to a rejection of Valdes' original offer. A subsequent unconditional acceptance could not revive that offer.

The instant case is different from *Laudico and Harden vs. Arias Rodriguez*, 43 Phil. 270 where the written offer to sell was revoked by the offeror before the offeree's acceptance came to the offeror's knowledge.

Appellants' next contention is that the contract was not perfected because the condition that Bormaheco, Inc. would acquire the Nassco land within forty-five days from February 12, 1964 or on or before March 28, 1964 was not fulfilled. This contention is tied up with the following letter of Bormaheco, Inc. (Exh. F): -

"BORMAHECO, INC.

March 30, 1964

Villonco Realty Company

V.R.C. Building

219 Buendia Ave.,

Makati, Rizal

Gentlemen:

We are returning here with your earnest money together with interest thereon at 10% per annum. Please be informed that despite the lapse of the 45 days from February 12, 1964 there is no certainty yet for us to acquire a substitute property, hence the return of the earnest money as agreed upon.

Very truly yours,

SGD. FRANCISCO N. CERVANTES

President

Encl.:

P.N.B. Check No. 112994 J

P.N.B. Check No. 112996 J"

That contention is predicated on the erroneous assumption that Bormaheco, Inc. was to acquire the Nassco land within forty-five days or on or before March 28, 1964.

The trial court ruled that the forty-five-day period was merely an estimate or a forecast of how long it would take Bormaheco, Inc. to acquire the Nassco property and it was not "a condition or a deadline set for the defendant corporation to decide whether or not to go through with the sale of its Buendia property".

The record does not support the theory of Bormaheco, Inc. and the Cervantes spouses that the forty-five-day period was the time within which (a) the Nassco property and two Pasong Tamo lots should be acquired, (b) when Cervantes would secure his wife's consent to the sale of the three lots and (c) when Bormaheco, Inc. had to decide what to do with the DBP encumbrance.

Cervantes in paragraph 3 of his offer of February 12, 1964 stated that the sale of the Buendia lots would be consummated after he had consummated the purchase of the Nassco property. Then, in paragraph 5 of the same offer he stated "that final negotiations on both properties can be definitely known after forty-five days" (See Exh. B).

It is deducible from the tenor of those statements that the consummation of the sale of the Buendia lots to Villonco Realty Company was conditioned on Bormaheco's acquisition of the Nassco land. But it was not spelled out that such acquisition should be effected within forty-five days from February 12, 1964. Had it been Cervantes' intention that the forty-five days would be the period within which the Nassco land should be acquired by Bormaheco, then he would have specified that period in paragraph 3 of his offer so that that paragraph would read in this wise: "That this sale is to be consummated only after I shall have consummated my purchase of another property located at Sta. Ana, Manila within forty-five days from the date hereof." He could have also specified that period in his "conforme" to Villonco's counter-offer of March 4, 1964 (Exh. D) so that instead of merely stating "that this sale shall be subject to favorable consummation of a property in Sta. Ana we are negotiating" he could have said: "That this sale shall be subject to favorable consummation within forty-five days from February 12, 1964 of a property in Sta. Ana we are negotiating."

No such specification was made. The term of forty-five days was not a part of the condition that the Nassco property should be acquired. It is clear that the statement "that final negotiations on both property can be definitely known after 45 days" does not and cannot mean that Bormeheco, Inc. should acquire the Nassco

property should be acquired. It is clear that the statement "that final negotiations on both property can be definitely known after 45 days" does not and cannot mean that Bormaheco, Inc. should acquire the Nassco property should be acquired. It is clear that the statement "that final negotiations on both property can be definitely known after 45 days" does not and cannot mean that Bormaheco, Inc. should acquire the Nassco property within forty-five days from February 12, 1964 as pretended by Cervantes. It is simply a surmise that after forty-five days (in fact when the forty-five day period should be computed is not clear) it would be known whether Bormaheco, Inc. would be able to acquire the Nassco property and whether it would be able to sell the Buendia property. That aforementioned paragraph 5 does not even specify how long after the forty-five days the outcome of the final negotiations would be known.

It is interesting to note that in paragraph 6 of Bormaheco's answer to the amended complaint, which answer was verified by Cervantes, it was alleged that Cervantes accepted Villonco's revised counter-offer of March 4, 1964 subject to the condition that "the final negotiations (acceptance) will have to be made by defendant within 45 days from said acceptance" (31 Record on Appeal). If that were so, then the consummation of Bormaheco's purchase of the Nassco property would be made within forty-five days from March 4, 1964.

What makes Bormaheco's stand more confusing and untenable is that in its three answers it invariably articulated the incoherent and vague affirmative defense that its acceptance of Villonco's revised counter-offer was conditioned on the circumstance "that final acceptance or not shall be made after 45 days" whatever that means. That affirmative defense is inconsistent with the other aforementioned incoherent statement in its third answer that "the final negotiations (acceptance) will have to be made by defendant within 45 days from said acceptance." (31 Record on Appeal).

Thus, Bormaheco's three answers and paragraph 5 of his offer of February 12, 1964 do not sustain at all its theory that the Nassco property should be acquired on or before March 28, 1964. Its rescission or revocation of its acceptance cannot be anchored on that theory which, as articulated in its pleadings, is quite equivocal and unclear.

It should be underscored that the condition that Bormaheco, Inc. should acquire the Nassco property was fulfilled. As admitted by the appellants, the Nassco property was conveyed to Bormaheco, Inc. on June 26, 1964. As early as January 17, 1964 the property was awarded to Bormaheco, Inc. as the highest bidder. On February 18, 1964 the Nassco Board authorized its General Manager to sell the property to Bormaheco, Inc. (Exh. H). The Economic Coordinator approved the award on March 24, 1964. It is reasonable to assume that had Cervantes been more assiduous in following up the transaction, the Nassco property could have been transferred to Bormaheco, Inc. on or before March 28, 1964, the supposed last day of the forty-five-day period.

The appellants, in their fifth assignment of error, argue that Bormaheco, Inc. cannot be required to sell the three lots in question because they are conjugal properties of the Cervantes spouses. They aver that Cervantes in dealing with the Villonco brothers acted as president of Bormaheco, Inc. and not in his individual capacity and, therefore, he did not bind the conjugal partnership nor Mrs. Cervantes who was allegedly opposed to the sale.

Those arguments are not sustainable. It should be remembered that Cervantes, in rescinding the contract of sale and in returning the earnest money, cited as an excuse the circumstance that there was no certainty in Bormaheco's acquisition of the Nassco property (Exh. F and Annex I). He did not say that Mrs. Cervantes was opposed to the sale of the three lots. He did not tell Villonco Realty Company that he could not bind the conjugal partnership. In truth, he concealed the fact that the three lots were registered "in the name of FRANCISCO CERVANTES, Filipino, of legal age, married to Rosario P. Navarra, as owner thereof in fee simple". He certainly led the Villonco brothers to believe that as president of Bormaheco, Inc. he could dispose of the said lots. He inveigled the Villoncos into believing that he had untrammelled control of Bormaheco, Inc., that Bormaheco, Inc.

owned the lots and that he was invested with adequate authority to sell the same.

Thus, in Bormaheco's offer of February 12, 1964, Cervantes first identified the three lots as "our property" which "we are offering to sell . . ." (Opening paragraph and par. 1 of Exh. B). Whether the pronoun "we" refers to himself and his wife or to Bormaheco, Inc. is not clear. Then, in paragraphs 3 and 4 of the offer, he used the first person and said: "I shall have consummated my purchase" of the Nassco property; ". . . my negotiations with said property" and "I will return to you your deposit". Those expressions conveyed the impression and generated the belief that the Villoncos did not have to deal with Mrs. Cervantes nor with any other official of Bormaheco, Inc.

The pleadings disclose that Bormaheco, Inc. and Cervantes deliberately and studiously avoided making the allegation that Cervantes was not authorized by his wife to sell the three lots or that he acted merely as president of Bormaheco, Inc. That defense was not interposed so as not to place Cervantes in the ridiculous position of having acted under false pretenses when he negotiated with the Villoncos for the sale of the three lots.

Villonco Realty Company, in paragraph 2 of its original complaint, alleged that "on February 12, 1964, after some prior negotiations, the defendant (Bormaheco, Inc. made a formal offer to sell to the plaintiff the property of the said defendant situated at the abovenamed address along Buendia Avenue, Makati, Rizal, under the terms of the letter-offer, a copy of which is hereto attached as Annex A hereof", now Exhibit B (2 Record on Appeal).

That paragraph 2 was not, repeat, was not denied by Bormaheco, Inc. in its answer dated May 5, 1964. It did not traverse that paragraph 2. Hence, it was deemed admitted. However, it filed an amended answer dated May 25, 1964 wherein it denied that it was the owner of the three lots. It revealed that the three lots "belong and are registered in the names of the spouses Francisco N. Cervantes and Rosario N. Cervantes."

The three answers of Bormaheco, Inc. contain the following affirmative defense:

"13. That defendant's insistence to finally decide on the proposed sale of the land in question after 45 days had not only for its purpose the determination of its acquisition of the said Sta. Ana (Nassco) property during the said period, but also to negotiate with the actual and registered owner of the parcels of land covered by T.C.T. Nos. 43530, 43531 and 43532 in question which plaintiff was fully aware that the same were not in the name of the defendant" (sic; Par. 18 of to Answer Amended Complaint, 10, 18 and 34, Record on Appeal).

In that affirmative defense, Bormaheco, Inc. pretended that it needed forty-five days within which to acquire the Nassco property and "to negotiate" with the registered owner of the three lots. The absurdity of that pretension stands out in bold relief when it is borne in mind that the answers of Bormaheco, Inc. were verified by Cervantes and that the registered owner of the three lots is Cervantes himself. That affirmative defense means that Cervantes as president of Bormaheco, Inc. needed forty-five days in order to "negotiate" with himself (Cervantes).

The incongruous stance of the Cervantes spouses is also patent in their answer to the amended complaint. In that answer they disclaimed knowledge or information of certain allegations which were well-known to Cervantes as president of Bormaheco, Inc. and which were admitted in Bormaheco's three answers that were verified by Cervantes.

It is significant to note that Bormaheco, Inc. in its three answers, which were verified by Cervantes, never pleaded as an affirmative defense that Mrs. Cervantes opposed the sale of the three lots or that she did not authorize her husband to sell those lots. Likewise, it should be noted that in their separate answer the Cervantes spouses never pleaded as a defense that Mrs. Cervantes was opposed to the sale of three lots or that Cervantes could not bind the conjugal partnership. The appellants were at first hesitant to make it appear that Cervantes had committed the skullduggery of trying to sell property which he had no authority to alienate.

It was only during the trial on May 17, 1965 that Cervantes declared on the witness stand that his wife was

opposed to the sale of the three lots, a defense which, as already stated, was never interposed in the three answers of Bormaheco, Inc. and in the separate answer of the Cervantes spouses. That same viewpoint was adopted in defendants' motion for reconsideration dated November 20, 1965.

But that defense must have been an afterthought or was evolved post litem motam since it was never disclosed in Cervantes' letter of rescission and in his letter to Miss Tagle (Exh. F and Annex I). Moreover, Mrs. Cervantes did not testify at the trial to fortify that defense which had already been waived for not having been pleaded (See sec. 2, Rule 9, Rules of Court).

Taking into account the situation of Cervantes vis-a-vis, Bormaheco, Inc. and his wife and the fact that the three lots were entirely occupied by Bormaheco's building, machinery and equipment and were mortgaged to the DBP as security for its obligation, and considering that appellants' vague affirmative defenses do not include Mrs. Cervantes' alleged opposition to the sale, the plea that Cervantes had no authority to sell the lots strains the rivets of credibility (Cf. Papa and Delgado vs. Montenegro, 54 Phil. 331; Riobo vs. Hontiveros, 21 Phil. 31).

"Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith" (Art. 1159, Civil Code). Inasmuch as the sale was perfected and even partly executed, Bormaheco, Inc. and the Cervantes spouses, as a matter of justice and good faith, are bound to comply with their contractual commitments.

Parenthetically, it may be observed that much misunderstanding could have been avoided had the broker and the buyer taken the trouble of making some research in the Registry of Deeds and availing themselves of the services of a competent lawyer in drafting the contract to sell.

Bormaheco, Inc. and the Cervantes spouses in their sixth assignment of error assail the trial court's award to Villonco Realty Company of consequential damages amounting to ten thousand pesos monthly from March 24, 1964 (when the Economic Coordinator approved the award of the Nassco property to Bormaheco, Inc.) up to the consummation of the sale. The award was based on paragraph 18 of the stipulation of facts wherein Villonco Realty Company "submits that the delay in the consummation of the sale" has caused it to suffer the aforementioned damages.

The appellants contend that that statement in the stipulation of facts simply means that Villonco Realty Company speculates that it has suffered damages but it does not mean that the parties have agreed that Villonco Realty Company is entitled to those damages.

Appellants' contention is correct. As rightly observed by their counsel, the damages in question were not specifically pleaded and proven and were "clearly conjectural and speculative".

However, appellants' view in their seventh assignment of error that the trial court erred in ordering Bormaheco, Inc. to pay Villonco Realty Company the sum of twenty thousand pesos as attorney's fees is not tenable. Under the facts of the case, it is evident that Bormaheco, Inc. acted in gross and evident bad faith in refusing to satisfy the valid and just demand of Villonco Realty Company for specific performance. It compelled Villonco Realty Company to incur expenses to protect its interest. Moreover, this is a case where it is just and equitable that the plaintiff should recover attorney's fees (Art. 2208, Civil Code).

The appellants in their eighth assignment of error impugn the trial court's adjudication of forty-two thousand pesos as three percent broker's commission to Miss Tagle. They allege that there is no evidence that Bormaheco, Inc. engaged her services as a broker in the projected sale of the three lots and the improvements thereon. That allegation is refuted by paragraph 3 of the stipulation of facts and by the documentary evidence. It was stipulated that Miss Tagle intervened in the negotiations for the sale of the three lots. Cervantes in his original offer of

February 12, 1964 apprised Villonco Realty Company that the earnest money should be delivered to Miss Tagle, the bearer of the letter-offer. See also Exhibit G and Annex I of the stipulation of facts.

We hold that the trial court did not err in adjudging that Bormaheco, Inc. should pay Miss Tagle her three percent commission.

WHEREFORE, the trial court's decision is modified as follows:

1. Within ten (10) days from the date the defendants-appellants receive notice from the clerk of the lower court that the records of this case have been received from this Court, the spouses Francisco N. Cervantes and Rosario P. Navarra-Cervantes should execute a deed conveying to Bormaheco, Inc. their three lots covered by Transfer Certificate of Title Nos. 43530, 43531 and 43532 of the Registry of Deeds of Rizal.
2. Within five (5) days from the execution of such deed of conveyance, Bormaheco, Inc. should execute in favor of Villonco Realty Company, V.R.C. Building, 219 Buendia Avenue, Makati, Rizal a registerable deed of sale for the said three lots and all the improvements thereon, free from all lien and encumbrances, at the price of four hundred pesos per square meter, deducting from the total purchase price the sum of P100,000 previously paid by Villonco Realty Company to Bormaheco, Inc.
3. Upon the execution of such deed of sale, Villonco Realty Company is obligated to pay Bormaheco, Inc. the balance of the price in the sum off one million three hundred thousand pesos (P1,300,000).
4. Bormaheco, Inc. is ordered (a) to pay Villonco Realty Company twenty thousand pesos (P20,000) as attorney's fees and (b) to pay Edith Perez de Tagle the sum of forty-two thousand pesos (P42,000) as commission. Costs against the defendants-appellants. So ordered.

Makalintal, C.J., Castro, Fernando, Makasiar, Antonio, Esguerra, Muñoz Palma, Concepcion Jr., and Martin, JJ., concur.

Barredo, J., concurs in a separate opinion.

Teehankee, J., is on leave.

[*] Italics supplied. Note that, according to the defendants, Cervantes inserted "12th and" between the "February" and "26" in the second line of the foregoing letter, that in paragraph 3 of the terms and conditions he crossed out "Nassco's" and wrote "another" and that he inserted "pa" after "interest" (p. 7, defendants-appellants' brief). There is no stipulation nor testimony on the alleged insertions.

[**]

"March 31, 1964

Mr. Francisco Cervantes
President, BORMAHECO, INC.
245 Buendia Avenue
Makati, Rizal

Dear Mr. Cervantes:

As your official and authorized representative on the sale of your property located at 245 Buendia Avenue, Makati, Rizal, with a total area of 3,500 square meters, at P400.00 per square meter or a total purchase cost of P1,400,000.00, in favor of Mr. Romeo Villonco of Villonco Realty Co., I was surprised and shocked at the news of your actions yesterday afternoon when you had a certain Mr. de Guzman bring to Mr. Romeo Villonco, your

letter dated March 30th, 1964, together with 2 checks. One for P100,000.00 and another for P694.25 as 10% interest on the same.

If you will recall, this deal on selling your property started way back in October 1963 when you ordered me to negotiate for you certain properties to buy in order that you could move to a bigger location than that at 245 Buendia Avenue which was becoming too small for your needs.

You also authorized me to negotiate with my BUYERS, one of whom was the Villonco Brothers who owned the adjacent property, on the sale of your property. Plenty of conferences were held between you and me, and also between the Villoncos and me on the said property, specially after your Formal Bidding of the NASSCO PROPERTY, located at Punta, Sta. Ana, was made on January 17, 1964.

After this made (sic) was made, you called me and had me offer your property at 245 Buendia Avenue to the Villoncos. For this you made your formal offer as per your letter dated February 12, 1964. And that after there were many personal conferences made between you and the Villoncos either by phone and also personally at their office in my presence.

After your Formal Offer of February 12, 1964, and the subsequent acceptance by the Villoncos of your offer, and the payment of the EARNEST MONEY of P100,000.00 which you accepted on March 4, 1964 and signed CONFORME to the LETTER CONTRACT of the same date, this deal became a close deal as the said Earnest Money becomes a part of the down payment on the property.

The only stipulation mentioned in your Contractual Letter of March 4, 1964 which followed your letter of February 12, 1964, was that the said sale becomes ineffective only if the purchase of the property at Sta. Ana is not approved by the NASSCO or the OEC. However, from all my follow up on the matter at the NASSCO and the OEC, it appears that your bid on purchasing he said property at Sta. Ana has been approved by the NASSCO BOARD on March 3, 1964, and subsequently approved by the Office of the Economic Coordinator and signed by Mr. Adevosio on March 25, 1964. This, therefore, removes the stipulation on your letter of Feb. 12, 1964 and thus effecting the consummation of this deal.

Mr. Romeo Villonco has called me to his office and has returned to me your letter and the checks, as he is not agreeable to a cancellation of this deal with them on the purchase of your property at 245 Buendia Avenue, Makati, Rizal, for the following reasons:

- (1.) That this deal has been made after a Formal Written Offer from you after several lengthy verbal conferences between you, and which terms have been agreed upon;
- (2.) That after the Earnest Money had been received by you, I, as your official representative have followed the matter and have kept them informed on the progress of the deal with the NASSCO and the OEC, this being the only stipulation on the consummation of the deal; and as such made it necessary that the Villoncos mortgage several of their properties with the bank to have ready the Cash payment required by you as per your Contractual Letter of March 4, 1964;
- (3.) That in all big business firms, the presence of a large amount of spot cash is always not present, thus it was necessary that the Villoncos raised this spot cash which was one of your requirements for this sale;
- (4.) That the Villoncos have put aside all other projects in favor of this deal, since the same requires a large amount of cash, not only for the payment of the land, but also for the cost of the new building to be erected;
- (5.) That the stipulation on the letters of February 12, 1964 and March 4, 1964 wherein the approval and consequent purchase of the lot at Sta. Ana, Manila has been removed by the approval of your bid purchase of the property of the NASSCO, at Punta, Sta. Ana which has been approved by the NASSCO BOARD on March

3, 1964 and the OEC on March 25, 1964;

For all the above reasons, Mr. Romeo Villonco will not agree to your backing out of this deal or rescinding your Contractual Agreement with them for any other reason whatsoever.

Trusting that you will see your way clear in all this, I am

Very truly yours,

(Sgd.) Edith Perez de Tagle

Realtor"

(Typed) EDITH PEREZ DE TAGLE

CONCURRING

BARREDO, J.,:

The comprehensive and well prepared opinion of Mr. Justice Aquino deserves concurrence and I do not hesitate to accord my assent to it. The only purpose of the following lines is to express my personal view regarding two basic points which I feel should be thoroughly emphasized.

1. I am not for giving the letter proposal of appellant Francisco Cervantes to Romeo Villonco of February 12, 1964, Exhibit B, any decisive importance. To my mind, it has no more legal significance than what is appears to be — a mere unaccepted proposal. Accordingly, to my mind, paragraph (5) thereof to the effect that "final negotiations on both properties can be definitely known after 45 days" has no relevance in the disposition of this case, there being nothing in the record to show that the same was accepted by appellee.

What to me is the actual contract between appellee and appellant Francisco Cervantes is the counter-offer signed by Teofilo Villonco and addressed to the latter of March 4, 1964, Exhibit D, which does not even make any reference to the abovementioned proposal of Cervantes of February 12, 1964, even as it mentions specifically the letters of the agent, Miss E. Perez de Tagle, of February 12 and 26, 1964. The last paragraph of said Exhibit D reads thus: "If the above terms and conditions are acceptable to you, kindly sign your conformity hereunder. Enclosed is our check for One Hundred Thousand (P100,000) Pesos, M.B.T.C. Check No. 448314, as earnest money." And it is undisputed that Francisco Cervantes did affix his signature in the place indicated for his conformity, albeit under the typewritten words, Bormaheco, Inc. It is also a fact that on the same date, the stipulated P100,000 earnest money was received by Cervantes.

It is true that in the voucher-receipt evidencing the delivery of the earnest money, the agent, Miss Tagle, indicated in her own handwriting that the same was "subject to the terms and conditions embodied in Bormaheco's letter of February 12, 1974 and Villonco Realty Company's letter of March 4, 1974," but it is my considered opinion that

such reservation cannot be understood as comprehending reference to the above-quoted paragraph (5) of the proposal of February 12, for the simple reason that since the parties had in fact continued negotiating after February 12 until the final conference of February 27, Cervantes must be deemed as having intended his signing of his conformity to the letter of March 4 to be the formalization of the "final negotiations" referred to in said paragraph (5), thereby rendering said provision of no further consequence. It should be noted that, to be sure, as said paragraph (5) was worded, the idea it conveyed was that Cervantes was just making a mere tentative offer which he would finalize only April 45 days, and so, when he signed Villonco's counter-offer of March 4 and accepted the P100,000 earnest money tendered therein, no other significance could be given to such acts than that they were meant to finalize and perfect the transaction in advance of the 45-day waiting period originally proposed by him. Indeed, in the addendum written and signed by Cervantes himself (not by the agent) to the March 4 letter, all that he stated was that "this sale shall be subject to favorable consummation of a property in Sta. Ana we are negotiating", and this was none other than the Nassco property which the Nassco Board authorized its manager on February 18, 1964 to sell to appellants who had won the award the day before. In other words, when Cervantes signed the space for his conformity to the terms of that letter of March 4, he already knew or must have known that the acquisition of the Nassco property was already an impending certainty and must have cared less about what had become an unnecessary waiting period, hence the omission of any mention thereof by him in his addendum.

My conclusion, therefore, is that said acts of Cervantes of signing his conformity to Villonco's counter-offer of March 4 and accepting the P100,000 earnest money therein offered resulted in a completely perfected contract of sale between the parties per Article 1482 of the Civil Code, needing only the execution of the corresponding deed of sale for its consummation and subject solely to the negative resolutive condition that the "sale shall be cancelled, only if your (Cervantes') deal with another property in Sta. Ana (indisputably the Nassco transaction) shall not be consummated", without stipulating anymore a period for such consummation, since evidently, with the sale thereof having been authorized already by the Nassco Board on February 18, 1964, the Villoncos must have been made to understand or they did understand that such consummation was inexorably forthcoming. In fact, the Nassco Board already approved on March 3, 1964 not only the award but the actual sale of the property to appellants, and the Economic Coordinator gave his sanction thereto on March 24 following. Thus, as of March 3, one day before Cervantes accepted Villonco's counter-offer, nothing more was left to formalize the transaction with Nassco except that approval of the Economic Coordinator.

I cannot believe that Cervantes did not have up-to-date information of the progress of his transactions with Nassco. Actually, from the legal standpoint, he was under obligation, if only in consequence of his offer of February 12 and his continuous conversations and negotiations with the Villoncos up to the signing of their agreement on March 4, to keep constant and close tract thereof in order that he might be able to inform the parties he was dealing with of the real status thereof, the finalization of the same being a material factor in the accomplishment of their common purpose. Withal, equity would assume that he did what ought to have been done by him in taking ordinary care of his concerns, which he is presumed to have taken, according to Section 5 (d) of Rule 131. Under these circumstances, I am amply persuaded that he must have been aware of the favorable actuations of the Nassco authorities all the while that he was dealing with appellee up to March 4, the day after the Nassco Board approved the sale. Accordingly, I hold that when he gave his conformity to the counter-offer of the Villoncos of March 4, he was already fully confident his transaction with Nassco would eventually materialize.

What is worse is that assuming that the 45-day period invoked by him could be considered in this discussion, it would be inequitable to allow him to take advantage thereof in the light of the circumstances extant in the record. It cannot be denied that, as already stated, the Economic Coordinator approved the Nassco transaction on March 24, 1964. Anyone would know, and much more so Cervantes who was directly interested therein and must have

been anxiously and even excitedly waiting for it, that was the last requisite for the inevitable execution of the deed of sale in his favor. One has to be very naive and it would be contrary to the ordinary course of human experience and business practices for anyone to concede to appellants that when Cervantes wrote his letter to Villonco Realty Company of March 30, 1964 stating that "despite the lapse of 45 days from February 12, 1964, there is no certainty yet for us to acquire a substitute property", he did not even have the slightest inkling of the favorable action of the Economic Coordinator of March 24. The same or more may be said relative to his letter to Miss Tagle of as late as April 6, 1964 wherein he alleged that the forty-five day period had already expired and the sale to Bormaheco, Inc. of the Punta (Nassco) property had not been consummated as of then and that, therefore, his letter was a "manifestation that we are no longer interested to sell" the Buendia property to the Villoncos.

I have no doubt whatsoever that the whole trouble here is that after Cervantes had already signed his conformity and received earnest money on March 4, he had a change of heart, perhaps dictated by reasons of better economic advantage, and banking on the idea, albeit erroneous, that he could utilize paragraph (5) of his letter of February 12 as a escape door through which he could squeeze out of the perfected contract with the Villoncos, he opted to actually back out and break with them thru his letters of March 30 to them and of April 6 to the agent, Miss Tagle. The Court would certainly be sanctioning a deliberate mala fide breach of a contract already definitely perfected were it to buy the theory of non-perfection appellants are lamely pressing on Us. No amount of rationalization can convince me that the Villoncos had agreed to any 45-day suspensive condition for the perfection of the agreement, but even on the remote assumption that they did, I would hold as I do hold that the purchase of the Nassco property by appellants was virtually consummated, from the viewpoint of the spirit and intent of the contract here in question, on March 24, 1964, when the Economic Coordinator approved the same and nothing else remained to be done to formalize it except the actual execution of the deed of sale which in fact took place on June 26, 1964, hence, Cervantes had no more excuse for further delaying compliance with his agreement with the Villoncos. In other words, for all legal purposes, assuming hypothetically the plausibility of the theory of appellants about a 45-day waiting period, the negative resolutive condition arising from said theory became inoperative four days before said 45 days expired. After the approval of the sale by the Economic Coordinator, there was nothing anymore that could impede the formal conveyance of the Nassco property to appellants, other than their own desistance, and even that might have been legally controversial if Nassco insisted otherwise. Reading all the communications exchanged between the parties, the conclusion therefrom is inevitable that the 45-day period stipulation was inextricably tied up with appellants' being able to acquire the Nassco property. In other words, Cervantes merely wanted to be sure that they would get the Nassco property before proceeding with the sale of the Buendia property. To construe the 45-day stipulation as giving Cervantes the absolute right to disregard the Villoncos entirely until after the 45 days had expired is to render the whole of Cervantes' letter of February 12 as totally meaningless, legally nonexistent and as deceitfully farcical. Consequently, the acquisition of the Nassco property having actually eventualized, it cannot lie in the lips of Cervantes to claim that he may not be compelled to proceed with the transaction. To view the situation otherwise is to condone resort to ambiguity as a means of deception and informality in contractual obligations, which in my opinion is contrary to the elementary requirements of candidness and honest dealing between responsible contracting parties, and in that sense offensive to public policy.

2. The contention of appellants that inasmuch as in actual fact the Buendia property contemplated in the contract is the conjugal property of Cervantes spouses and that since in dealing with the Villoncos, Cervantes acted as President of Bormaheco, Inc., the appellee cannot have any right to compel the conveyance to them thereof is in my view definitely puerile. It is predicated on duplicity and smacks of utter bad faith.

I do not find in the evidence before Us adequate basis for accepting the suggestion that Francisco Cervantes acted for and in behalf of Bormaheco, Inc. in his dealings with the Villoncos. The mere fact that he signed his letter of

February 12, 1964 over the title of President, there being no showing that he was duly authorized to make the offer therein contained in the name of the corporation, did not convert it into a corporate act. The language of the letter which is conspicuously sprinkled with the pronoun I used by Cervantes to refer to himself rather than exclusively the pronoun we does not so indicate. Besides, Cervantes is undisputably the registered owner with his wife of the property therein mentioned, and being evidently conscious, as he ought to have been of this fact, he knew his act would be ultra vires and void, if he were to act for the corporation. He was the manager of the conjugal partnership and he knew it was only in that capacity that he could in good faith give validity to his representation, assuming the conformity of his wife. Unless Cervantes wants Us to hold that he deliberately negotiated with the Villoncos clothed in dubious garments of authority precisely to afford him the opportunity to repudiate at his convenience any agreement they may enter into with him, I am for holding as I do hold that Bormaheco, Inc. had nothing to do with the transaction here in controversy. In any event, if Cervantes may be held to have acted for Bormaheco, Inc., in spite of the absence of evidence of any authority for him to do so, it must be because Bormaheco, Inc. is Cervantes himself, and there being no proof to the contrary, the corporate shield of Bormaheco, Inc. may be deemed pierced in order to prevent any further fraudulent implications in his actuations. Moreover, it may be observed that the March 4 letter of Teofilo Villonco was not addressed to Bormaheco, Inc. but to Francisco Cervantes and it does not even mention his being President of that corporation.

Anent the requirement of consent of Mrs. Cervantes under Article 166 of the Civil Code, I consider any defense along this line as unavailing to the appellants in this case. As very ably discussed in the main opinion of Mr. Justice Aquino, the answer of the defendants make no reference at all to any lack of such consent. And considering that the subsequent testimony of Cervantes to the effect that his wife opposed the transaction cannot cure such omission, if only because any husband in the circumstances revealed in the record is estopped from setting up such a defense (cf *Riobo vs. Hontiveros*, 21 Phil. 31; *Papa vs. Montenegro*, 54 Phil. 531; see *Civil Law* by Reyes & Puno, 1964 ed. p. 192), and that from her silence in her answer in this respect Mrs. Cervantes may either be presumed to have given her consent thereto or to have ratified the same (*Montedevamos vs. Ynonoy*, 56 Phil. 457; *Castaneda vs. Samson*, 43 Phil. 751), it is obvious that the belated invocation of this defense now should be deemed in fact and in law as an unacceptable and ineffective afterthought. Besides, it appearing that the sale of the Buendia property was purposely to enable the spouses to acquire the Nassco property, I have grave doubts

as to the application of Article 166 to the sale here in dispute. I believe that the disposition by a husband prohibited by the Code unless consented to by the wife refers to a transaction outrightly prejudicial to the partnership and cannot comprehend a sale made precisely for its benefit and causing no loss thereto beyond the ordinary risks of misjudgment of a manager acting in good faith.

IN VIEW OF THE FOREGOING, I would not even require the formality of the serial execution of instruments by the Cervantes spouses and Bormaheco, Inc. In the view I have taken above, it would be legally feasible for the sale to the Villonco Realty Property to be made directly by the spouses. But I would not insist in the modification of the dispositive portion of the judgment, since the result would be the same anyway.

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