

RIVIERA FILIPINA, INC., PETITIONER, VS. COURT OF APPEALS, JUAN L. REYES, (NOW DECEASED), SUBSTITUTED BY HIS HEIRS, NAMELY, ESTEFANIA B. REYES, JUANITA R. DE LA ROSA, JUAN B. REY...

G.R. No. 117355. April 05, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals[2] dated June 6, 1994 in CA-G.R. CV No. 26513 affirming the Decision[3] dated March 20, 1990 of the Regional Trial Court of Quezon City, Branch 89 dismissing Civil Case No. Q-89-3371.

Civil Case No. Q-89-3371 is a suit instituted by Riviera Filipina, Inc. (Riviera) on August 31, 1989[4] to compel the defendants therein Juan L. Reyes, now deceased, Philippine Cypress Construction & Development Corporation (Cypress), Cornhill Trading Corporation (Cornhill) and Urban Development Bank to transfer the title covering a 1,018 square meter parcel of land located along EDSA, Quezon City for alleged violation of Riviera's right of first refusal.

It appears that on November 23, 1982, respondent Juan L. Reyes (Reyes, for brevity) executed a Contract of Lease with Riviera. The ten-year (10) renewable lease of Riviera, which started on August 1, 1982, involved a 1,018 square meter parcel of land located along Edsa, Quezon City, covered and described in Transfer Certificate of Title No. 186326 of the Registry of Deeds of Quezon City in the name of Juan L. Reyes.[5]

The said parcel of land was subject of a Real Estate Mortgage executed by Reyes in favor of Prudential Bank. Since the loan with Prudential Bank remained unpaid upon maturity, the mortgagee bank extrajudicially foreclosed the mortgage thereon. At the public auction sale, the mortgagee bank emerged as the highest bidder. The redemption period was set to expire on March 7, 1989. Realizing that he could not possibly raise in time the money needed to redeem the subject property, Reyes decided to sell the same.[6]

Since paragraph 11 of the lease contract expressly provided that the "LESSEE shall have the right of first refusal should the LESSOR decide to sell the property during the term of the lease,"[7] Reyes offered to sell the subject property to Riviera, through its President Vicente C. Angeles, for Five Thousand Pesos (P5,000.00) per square meter. However, Angeles bargained for Three Thousand Five Hundred Pesos (P3,500.00) per square meter. Since Reyes was not amenable to the said price and insisted on Five Thousand Pesos (P5,000.00) per square meter, Angeles requested Reyes to allow him to consult the other members of the Board of Directors of Riviera.[8]

Seven (7) months later, or sometime in October 1988, Angeles communicated with Reyes Riviera's offer to purchase the subject property for Four Thousand Pesos (P4,000.00) per square meter. However, Reyes did not accept the offer. This time he asked for Six Thousand Pesos (P6,000.00) per square meter since the value of the property in the area had appreciated in view of the plans of Araneta to develop the vicinity.[9]

In a letter dated November 2, 1988, Atty. Irineo S. Juan, acting as counsel for Reyes, informed Riviera that Reyes

was selling the subject property for Six Thousand Pesos (P6,000.00) per square meter, net of capital gains and transfer taxes, registration fees, notarial fees and all other attendant charges. He further stated therein that:

In this connection, conformably to the provisions stipulated in Paragraph/Item No. 11 of your CONTRACT OF LEASE (Doc. No. 365, Page No. 63, Book No. X, Series of 1982, of the Notarial Registry of Notary Public Leovillo S. Agustin), notice is served upon your goodselves for you to exercise “the right of first refusal” in the sale of said property, for which purpose you are hereby given a period of ten (10) days from your receipt hereof within which to thus purchase the same under the terms and conditions aforestated, and failing which you shall be deemed to have thereby waived such pre-emptive right and my client shall thereafter be absolutely free to sell the subject property to interested buyers.[10]

To answer the foregoing letter and confirm their telephone conversation on the matter, Riviera sent a letter dated November 22, 1988 to Atty. Juan, counsel for Reyes, expressing Riviera’s interest to purchase the subject property and that Riviera is already negotiating with Reyes which will take a couple of days to formalize.[11] Riviera increased its offer to Five Thousand Pesos (P5,000.00) per square meter but Reyes did not accede to said price as it was still lower than his quoted price of Six Thousand Pesos (P6,000.00) per square meter.[12] Angeles asked Reyes to give him until the end of November 1988 for Riviera’s final decision.

In a letter dated December 2, 1988, Angeles wrote Reyes confirming Riviera’s intent to purchase the subject property for the fixed and final[13] price of Five Thousand Pesos (P5,000.00) per square meter, complete payment within sixty (60) to ninety (90) days which “offer is what we feel should be the market price of your property.” Angeles asked that the decision of Reyes and his written reply to the offer be given within fifteen (15) days since there are also other properties being offered to them at the moment.[14]

In response to the foregoing letter, Atty. Juan sent a letter to Riviera dated December 5, 1988 informing Riviera that Riviera’s offer is not acceptable to his client. He further expressed, “let it be made clear that, much as it is the earnest desire of my client to really give you the preference to purchase the subject property, you have unfortunately failed to take advantage of such opportunity and thus lost your right of first refusal in sale of said property.”[15]

Meanwhile, on December 4, 1988, Reyes confided to Rolando P. Traballo, a close family friend and President of Cypress, his predicament about the nearing expiry date of the redemption period of the foreclosed mortgaged property with Prudential Bank, the money for which he could not raise on time thereby offering the subject property to him for Six Thousand Pesos (P6,000.00) per square meter. Traballo expressed interest in buying the said property, told Reyes that he will study the matter and suggested for them to meet the next day.[16]

They met the next day, December 5, 1988, at which time Traballo bargained for Five Thousand Three Hundred Pesos (P5,300.00) per square meter. After considering the reasons cited by Traballo for his quoted price, Reyes accepted the same. However, since Traballo did not have the amount with which to pay Reyes, he told the latter that he will look for a partner for that purpose.[17] Reyes told Traballo that he had already afforded Riviera its right of first refusal but they cannot agree because Riviera’s final offer was for Five Thousand Pesos (P5,000.00) per square meter.[18]

Sometime in January 1989, apprehensive of the impending expiration in March 1989 of the redemption period of the foreclosed mortgaged property with Prudential Bank and the deal between Reyes and Traballo was not yet formally concluded, Reyes decided to approach anew Riviera. For this purpose, he requested his nephew, Atty. Estanislao Alinea, to approach Angeles and find out if the latter was still interested in buying the subject property and ask him to raise his offer for the purchase of the said property a little higher. As instructed, Atty. Alinea met with Angeles and asked the latter to increase his offer of Five Thousand Pesos (P5,000.00) per square meter but

Angeles said that his offer is Five Thousand Pesos (P5,000.00) per square meter.[19]

Following the meeting, Angeles sent a letter dated February 4, 1989 to Reyes, through Atty. Alinea, that his offer is Five Thousand Pesos (P5,000.00) per square meter payment of which would be fifty percent (50%) down within thirty (30) days upon submission of certain documents in three (3) days, the balance payable in five (5) years in equal monthly installments at twelve percent (12%) interest in diminishing balance.[20] With the terms of this second offer, Angeles admittedly downgraded the previous offer of Riviera on December 2, 1988.[21]

Atty. Alinea conveyed to Reyes Riviera's offer of Five Thousand Pesos (P5,000.00) per square meter but Reyes did not agree. Consequently, Atty. Alinea contacted again Angeles and asked him if he can increase his price. Angeles, however, said he cannot add anymore.[22] Reyes did not expressly offer his subject property to Riviera at the price of Five Thousand Three Hundred Pesos (P5,300.00) per square meter.[23]

Sometime in February 1989, Cypress and its partner in the venture, Cornhill Trading Corporation, were able to come up with the amount sufficient to cover the redemption money, with which Reyes paid to the Prudential Bank to redeem the subject property.[24] On May 1, 1989, a Deed of Absolute Sale covering the subject property was executed by Reyes in favor of Cypress and Cornhill for the consideration of Five Million Three Hundred Ninety Five Thousand Four Hundred Pesos (P5,395,400.00).[25] On the same date, Cypress and Cornhill mortgaged the subject property to Urban Development Bank for Three Million Pesos (P3,000,000.00).[26]

Thereafter, Riviera sought from Reyes, Cypress and Cornhill a resale of the subject property to it claiming that its right of first refusal under the lease contract was violated. After several unsuccessful attempts,[27] Riviera filed the suit to compel Reyes, Cypress, Cornhill and Urban Development Bank to transfer the disputed title to the land in favor of Riviera upon its payment of the price paid by Cypress and Cornhill.

Following trial on the merits, the trial court dismissed the complaint of Riviera as well as the counterclaims and cross-claims of the other parties.[28] It ruled that the defendants therein did not violate Riviera's right of first refusal, ratiocinating in this wise:

Resolving the first issue, this Court takes note that since the beginning of the negotiation between the plaintiff and defendant Reyes for the purchase of the property, in question, the plaintiff was firm and steadfast in its position, expressed in writing by its President Vicente Angeles, that it was not willing to buy the said property higher than P5,000.00, per square meter, which was far lower than the asking price of defendant Reyes for P6,000.00, per square meter, undoubtedly, because, in its perception, it would be difficult for other parties to buy the property, at a higher price than what it was offering, since it is in occupation of the property, as lessee, the term of which was to expire after about four (4) years more.

On the other hand, it was obvious, upon the basis of the last ditch effort of defendant Reyes, thru his nephew, Atty. Alinea, to have the plaintiff buy the property, in question, that he was willing to sell the said property at a price less than P6,000.00 and a little higher than P5,000.00, per square meter, precisely, because Atty. Alinea, in behalf of his uncle, defendant Reyes, sought plaintiff's Angeles and asked him to raise his price a little higher, indicating thereby the willingness of defendant Reyes to sell said property at less than his offer of P6,000.00, per square meter.

This being the case, it can hardly be validly said by the plaintiff that he was deprived of his right of first refusal to buy the subject property at a price of P5,300.00, per square meter which is the amount defendants Cypress/Cornhill bought the said property from defendant Reyes. For, it was again given such an opportunity to exercise its right of first refusal by defendant Reyes had it only signified its willingness to increase a little higher its purchase price above P5,000.00, per square meter, when its President, Angeles, was asked by Atty. Alinea to do so, instead of adamantly sticking to its offer of only P5,000.00 per square meter, by reason of which, therefore, the plaintiff had lost, for the second time, its right of first refusal, even if defendant Reyes did

not expressly offer to sell to it the subject land at P5,300.00, per square meter, considering that by the plea of Atty. Alinea, in behalf of defendant Reyes, for it to increase its price a little, the plaintiff is to be considered as having forfeited again its right of first refusal, it having refused to budged from its rigid (sic) offer to buy the subject property at no more than P5,000.00, per square meter.

As such, this Court holds that it was no longer necessary for the defendant Reyes to expressly and categorically offer to the plaintiff the subject property at P5,300.00, per square meter, in order that he can comply with his obligation to give first refusal to the plaintiff as stipulated in the Contract of Lease, the plaintiff having had already lost its right of first refusal, at the first instance, by refusing to buy the said property at P6,000.00, per square meter, which was the asking price of defendant Reyes, since to do so would be a useless ceremony and would only be an exercise in futility, considering the firm and unbending position of the plaintiff, which defendant Reyes already knew, that the plaintiff, at any event, was not amenable to increasing its price at over P5,000.00, per square meter.

Dissatisfied with the decision of the trial court, both parties appealed to the Court of Appeals.[29] However, the appellate court, through its Special Seventh Division, rendered a Decision dated June 6, 1994 which affirmed the decision of the trial court in its entirety.[30] In sustaining the decision of the trial court, the Court of Appeals adopted the above-quoted ratiocination of the trial court and further added:

To put things in its proper perspective in accordance with the peculiar attendant circumstances herein, particular stress should be given to RIVIERA's uncompromising counter offer of only P5,000.00 per square meter on all the occasions when REYES offered the subject property to it. RIVIERA, in its letter to REYES dated December 2, 1988 (Exhibit "D", p. 68, Rollo) justified its rigid offer by saying that "the above offer is what we feel should be the market price of your property." If that be the case, We are convinced, the same manner that REYES was, that RIVIERA was unwilling to increase its counter offer at any present or future time. RIVIERA's unilateral valuation of the subject property thus binds him, it cannot now be heard to claim that it could have upped its offer had it been informed of CYPRESS' and CORNHILL'S offer of P5,000.00 (sic) per square meter. Defendants CYPRESS and CORNHILL were therefore right in saying that:

On the basic assumption that RIVIERA really meant what it said in its letter, DR. REYES could not be faulted for believing that RIVIERA was definitely NOT WILLING TO PAY MORE THAN P5,000.00 PER SQUARE METER ON HIS PROPERTY. The fault lies with the deceptive and insincere words of RIVIERA. Injustice (sic) and equity, RIVIERA must be deemed in estoppel in now belatedly asserting that it would have been willing to pay a price higher than P5,000.00 x x x." (Defendants-Appellees Cypress' and Cornhill's Brief, p. 8)

For this reason, no adverse inference can be drawn from REYES' failure to disclose to RIVIERA the intervening counter-offer of CYPRESS and CORNHILL.

It would have been far different had REYES' non-disclosure of CYPRESS' and CORNHILL's counter-offer to RIVIERA resulted in the sale of the subject property at equal or less than RIVIERA's offer; in which case, REYES would have been rightly accused of cunningly circumventing RIVIERA's right of first refusal. But the incontrovertible antecedents obtaining here clearly reveal REYES' earnest efforts in respecting RIVIERA's contractual right to initially purchase the subject property. Not only once – but twice – did REYES approach RIVIERA, the last one being the most telling indication of REYES' sincerest intention in RIVIERA eventually purchasing the subject property if only the latter would increase a little its offer of P5,000.00 per square meter. And to this REYES was desperately willing to accede to despite the financial quandary he was then in as the expiration of the redemption period drew closer and closer, and despite the better offer of CYPRESS and CORNHILL. REYES unquestionably had displayed good faith. Can the same be said of RIVIERA? We do not think so. It appears that RIVIERA all along was trying to push REYES' back against the wall, for RIVIERA was well-aware of REYES' precarious financial needs at that time, and by clinging to its offer, REYES might

eventually succumb to its offer out of sheer desperation. RIVIERA was, to be frank, whimsically exercising its contractual right to the prejudice of REYES who had commendably given RIVIERA extra leeway in exercising it. And to this We say that no amount of jurisprudence RIVIERA might avail of for the purpose of construing the right of first refusal, however enlightening and persuasive they may be, will cover-up for its arrogant exercise of its right as can be gleaned from the factual premises. Equity in this case tilts in favor of defendants REYES, CYPRESS and CORNHILL that the consummated sale between them concerning the subject property be given this Court's imprimatur, for if RIVIERA lost its opportunity to acquire it, it has only itself to blame. For after all, REYES' fundamental and intrinsic right of ownership which necessarily carries with it the exclusive right to dispose of it to whoever he pleases, must ultimately prevail over RIVIERA's right of first refusal which it unscrupulously tried to exercise.

From this decision, Riviera filed a motion for reconsideration,[31] but the appellate court denied the same in a Resolution dated September 22, 1994.[32]

Hence, Riviera interposed the instant petition anchored on the following errors:[33]

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF ITS JURISDICTION IN RULING THAT PETITIONER RIVIERA FILIPINA, INC. ALREADY LOST ITS RIGHT OF FIRST REFUSAL.

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF ITS JURISDICTION IN NOT FINDING THAT IT WAS THE PETITIONER, NOT RESPONDENT JUAN L. REYES, WHICH HAD BEEN THOROUGHLY DECEIVED BY THE LATTER OUT OF ITS RIGHTS TO ITS CONTINUING PREJUDICE.

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF ITS JURISDICTION IN DENYING RECONSIDERATION.

IV

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF ITS JURISDICTION IN DECIDING PETITIONER'S APPEAL AT A TIME WHEN THE PRINCIPAL APPELLEE IS ALLEGEDLY DEAD AND NO PROPER SUBSTITUTION OF THE ALLEGED DECEASED PARTY HAS BEEN MADE; HENCE, THE DECISION OF THE COURT OF APPEALS AND ITS RESOLUTION DENYING RECONSIDERATION, IS NULL AND VOID.

At the outset, we note that, while Riviera alleges that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction, the instant petition is, as it should be, treated as a petition for review under Rule 45 and not as a special civil action for certiorari under Rule 65 of the Revised Rules of Court, now the 1997 Rules of Civil Procedure.

The distinctions between Rule 45 and 65 are far and wide, the most notable of which is that errors of jurisdiction are best reviewed in a special civil action for certiorari under Rule 65, while errors of judgment are correctible only by appeal in a petition for review under Rule 45.[34] The rationale for the distinction is simple. When a court exercises its jurisdiction an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its

jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not countenance such a rule. Thus, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original special civil action of certiorari.[35] Appeal from a final disposition of the Court of Appeals, as in the case at bar, is by way of a petition for review under Rule 45.[36]

In the petition at bar, Riviera posits the view that its right of first refusal was totally disregarded or violated by Reyes by the latter's sale of the subject property to Cypress and Cornhill. It contends that the right of first refusal principally amounts to a right to match in the sense that it needs another offer for the right to be exercised.

The concept and interpretation of the right of first refusal and the consequences of a breach thereof evolved in Philippine juristic sphere only within the last decade. It all started in 1992 with *Guzman, Bocaling & Co. v. Bonnevie*[37] where the Court held that a lease with a proviso granting the lessee the right of first priority "all things and conditions being equal" meant that there should be identity of the terms and conditions to be offered to the lessee and all other prospective buyers, with the lessee to enjoy the right of first priority. A deed of sale executed in favor of a third party who cannot be deemed a purchaser in good faith, and which is in violation of a right of first refusal granted to the lessee is not voidable under the Statute of Frauds but rescissible under Articles 1380 to 1381 (3) of the New Civil Code.

Subsequently in 1994, in the case of *Ang Yu Asuncion v. Court of Appeals*,[38] the Court en banc departed from the doctrine laid down in *Guzman, Bocaling & Co. v. Bonnevie* and refused to rescind a contract of sale which violated the right of first refusal. The Court held that the so-called "right of first refusal" cannot be deemed a perfected contract of sale under Article 1458 of the New Civil Code and, as such, a breach thereof decreed under a final judgment does not entitle the aggrieved party to a writ of execution of the judgment but to an action for damages in a proper forum for the purpose.

In the 1996 case of *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*,[39] the Court en banc reverted back to the doctrine in *Guzman Bocaling & Co. v. Bonnevie* stating that rescission is a relief allowed for the protection of one of the contracting parties and even third persons from all injury and damage the contract may cause or to protect some incompatible and preferred right by the contract.

Thereafter in 1997, in *Parañaque Kings Enterprises, Inc. v. Court of Appeals*,[40] the Court affirmed the nature of and the concomitant rights and obligations of parties under a right of first refusal. The Court, summarizing the rulings in *Guzman, Bocaling & Co. v. Bonnevie* and *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, held that in order to have full compliance with the contractual right granting petitioner the first option to purchase, the sale of the properties for the price for which they were finally sold to a third person should have likewise been first offered to the former. Further, there should be identity of terms and conditions to be offered to the buyer holding a right of first refusal if such right is not to be rendered illusory. Lastly, the basis of the right of first refusal must be the current offer to sell of the seller or offer to purchase of any prospective buyer.

Thus, the prevailing doctrine is that a right of first refusal means identity of terms and conditions to be offered to the lessee and all other prospective buyers and a contract of sale entered into in violation of a right of first refusal of another person, while valid, is rescissible.

However, we must remember that general propositions do not decide specific cases. Rather, laws are interpreted in the context of the peculiar factual situation of each proceeding. Each case has its own flesh and blood and cannot be ruled upon on the basis of isolated clinical classroom principles.[41] Analysis and construction should not be limited to the words used in the contract, as they may not accurately reflect the parties' true intent.[42] The court must read a contract as the average person would read it and should not give it a strained or forced

construction.[43]

In the case at bar, the Court finds relevant and significant the cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration and in case of doubt, their contemporaneous and subsequent acts shall be principally considered.[44] Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time for contracting. The parties' practical construction of their contract has been characterized as a clue or index to, or as evidence of, their intention or meaning and as an important, significant, convincing, persuasive, or influential factor in determining the proper construction of the contract.[45]

An examination of the attendant particulars of the case do not persuade us to uphold Riviera's view. As clearly shown by the records and transcripts of the case, the actions of the parties to the contract of lease, Reyes and Riviera, shaped their understanding and interpretation of the lease provision "right of first refusal" to mean simply that should the lessor Reyes decide to sell the leased property during the term of the lease, such sale should first be offered to the lessee Riviera. And that is what exactly ensued between Reyes and Riviera, a series of negotiations on the price per square meter of the subject property with neither party, especially Riviera, unwilling to budge from his offer, as evidenced by the exchange of letters between the two contenders.

It can clearly be discerned from Riviera's letters dated December 2, 1988 and February 4, 1989 that Riviera was so intractable in its position and took obvious advantage of the knowledge of the time element in its negotiations with Reyes as the redemption period of the subject foreclosed property drew near. Riviera strongly exhibited a "take-it or leave-it" attitude in its negotiations with Reyes. It quoted its "fixed and final" price as Five Thousand Pesos (P5,000.00) and not any peso more. It voiced out that it had other properties to consider so Reyes should decide and make known its decision "within fifteen days." Riviera, in its letter dated February 4, 1989, admittedly, even downgraded its offer when Reyes offered anew the property to it, such that whatever amount Reyes initially receives from Riviera would absolutely be insufficient to pay off the redemption price of the subject property. Naturally, Reyes had to disagree with Riviera's highly disadvantageous offer.

Nary a howl of protest or shout of defiance spewed forth from Riviera's lips, as it were, but a seemingly whimper of acceptance when the counsel of Reyes strongly expressed in a letter dated December 5, 1989 that Riviera had lost its right of first refusal. Riviera cannot now be heard that had it been informed of the offer of Five Thousand Three Hundred Pesos (P5,300.00) of Cypress and Cornhill it would have matched said price. Its stubborn approach in its negotiations with Reyes showed crystal-clear that there was never any need to disclose such information and doing so would be just a futile effort on the part of Reyes. Reyes was under no obligation to disclose the same. Pursuant to Article 1339[46] of the New Civil Code, silence or concealment, by itself, does not constitute fraud, unless there is a special duty to disclose certain facts, or unless according to good faith and the usages of commerce the communication should be made.[47] We apply the general rule in the case at bar since Riviera failed to convincingly show that either of the exceptions are relevant to the case at bar.

In sum, the Court finds that in the interpretation of the right of first refusal as understood by the parties herein, the question as to what is to be included therein or what is meant by the same, as in all other provisions of the contract, is for the parties and not for the court to determine, and this question may not be resolved by what the parties might have provided had they thought about it, which is evident from Riviera claims, or by what the court might conclude regarding abstract fairness.[48]

The Court would be rewriting the contract of Reyes and Riviera under the guise of construction were we to interpret the right of first refusal as Riviera propounds it, despite a contrary construction as exhibited by its

actions. A court, even the Supreme Court, has no right to make new contracts for the parties or ignore those already made by them, simply to avoid seeming hardships. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract of an obligation not assumed.[49]

On the last error attributed to the Court of Appeals which is the effect on the jurisdiction of the appellate court of the non-substitution of Reyes, who died during the pendency of the appeal, the Court notes that when Riviera filed its petition with this Court and assigned this error, it later filed on October 27, 1994 a Manifestation[50] with the Court of Appeals stating that it has discovered that Reyes is already dead, in view of which the appellate court issued a Resolution dated December 16, 1994 which noted the manifestation of Riviera and directed the counsel of Reyes to submit a copy of the latter's death certificate and to file the proper motion for substitution of party.[51] Complying therewith, the necessary motion for substitution of deceased Reyes, who died on January 7, 1994, was filed by the heirs, namely, Estefania B. Reyes, Juanita R. de la Rosa, Juan B. Reyes, Jr. and Fidel B. Reyes.[52] Acting on the motion for substitution, the Court of Appeals granted the same.[53]

Notwithstanding the foregoing, Section 16[54] and 17[55] of Rule 3 of the Revised Rules of Court, upon which Riviera anchors its argument, has already been amended by the 1997 Rules of Civil Procedure.[56] Even applying the old Rules, the failure of a counsel to comply with his duty under Section 16 of Rule 3 of the Revised Rules of Court, to inform the court of the death of his client and no substitution of such is effected, will not invalidate the proceedings and the judgment thereon if the action survives the death of such party,[57] as this case does, since the death of Reyes did not extinguish his civil personality. The appellate court was well within its jurisdiction to proceed as it did with the case since the death of a party is not subject to its judicial notice. Needless to stress, the purpose behind the rule on substitution of parties is the protection of the right of every party to due process. This purpose has been adequately met in this case since both parties argued their respective positions through their pleadings in the trial court and the appellate court. Besides, the Court has already acquired jurisdiction over the heirs of Reyes by voluntarily submitting themselves to our jurisdiction.[58]

In view of all the foregoing, the Court is convinced that the appellate court committed no reversible error in its challenged Decision.

WHEREFORE, the instant petition is hereby DENIED, and the Decision of the Court of Appeals dated June 6, 1994 in CA-G.R. CV No. 26513 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Quisumbing, JJ., concur.

[1] Penned by Associate Justice Ricardo J. Francisco and concurred in by Associate Justices Ramon A. Barcelona and Hector L. Hofileña, Rollo, pp. 126-135.

[2] Special Seventh Division.

[3] Penned by Judge Rodolfo A. Ortiz, Rollo, pp. 115-125.

[4] Original Record, pp. 1-5.

[5] Original Record, pp. 6-11.

[6] TSN, February 12, 1990, pp. 17-18.

[7] Original Record, p. 8.

- [8] TSNs, February 5, 1990, pp. 17-18; February 12, 1990, pp. 18-22.
- [9] TSNs, February 5, 1990, pp. 17, 21; February 12, 1990, p 30.
- [10] Original Record, p. 66.
- [11] Original Record, p. 67.
- [12] TSN, February 12, 1990, pp. 28-30.
- [13] TSN, February 5, 1990, p. 33.
- [14] Original Record, p. 68; TSN, February 5, 1990, pp. 25-26.
- [15] Original Record, p. 69.
- [16] TSNs, February 12, 1990, pp. 33-34; February 14, 1990, pp. 9-10.
- [17] TSNs, February 12, 1990, pp. 34-37; February 14, 1990, pp. 10, 15-16, 23-24.
- [18] TSNs, February 12, 1990, pp. 48-49; February 14, 1990, pp. 12-15.
- [19] TSN, February 12, 1990, pp. 37-41, 54-56.
- [20] Original Record, pp. 72-73.
- [21] TSN, February 5, 1990, p. 35.
- [22] TSN, February 5, 1990, pp. 40-41, 56-57.
- [23] TSN, February 12, 1990, pp. 60-61.
- [24] TSN, February 14, 1990, pp. 16-17, 24.
- [25] Original Record, pp. 14-15.
- [26] Original Record, p. 80.
- [27] Original Record, p. 71.
- [28] See Note No. 3, *supra*.
- [29] Rollo, pp. 43-114.
- [30] See Note No. 1, *supra*.
- [31] Rollo, pp. 136-155.
- [32] Rollo, p. 186.
- [33] Rollo, pp. 19-20.
- [34] *Toyota Autoparts, Philippines, Inc. v. Director of the Bureau of Labor Relations of the Department of Labor and Employment*, 304 SCRA 95, 105 [1999] citing *Fernando v. Vasquez* 31 SCRA 288 [1970].
- [35] *Asian Trading Corporation v. Court of Appeals*, 303 SCRA 152, 162 [1999]; *Jamer v. National Labor Relations Commission*, 278 SCRA 632, 646 [1997]; *Lalican v. Vergara*, 276 SCRA 518, 529 [1997].
- [36] *National Irrigation Administration v. Court of Appeals*, 318 SCRA 255, 264 [1999]; *Director of Lands v. Court of Appeals*, 276 SCRA 276, 282 [1997].

[37] 206 SCRA 668 [1992].

[38] 238 SCRA 602 [1994].

[39] 264 SCRA 483 [1996].

[40] 268 SCRA 727 [1997]. See also *Litonjua v. L & R Corporation*, 320 SCRA 405 [1999] and *Rosencor Development Corporation and Rene Joaquin v. Paterno Inquiring, Irene Guillermo, Federico Bantugan, Fernando Magbanua and Lizza Tiangco*, G.R. No. 140479, March 8, 2001.

[41] *Equatorial Realty Development, Inc. v. Mayfair Theatre, Inc.*, G.R. No. 133879, November 21, 2001, pp. 1-2.

[42] *Carceller v. Court of Appeals*, 302 SCRA 718, 725 [1999].

[43] 17 Am Jur 2d Contracts §336.

[44] Article 1371, New Civil Code; *Agro Conglomerates, Inc. v. Court of Appeals*, 348 SCRA 450, 459 [2000]; *Matanguihan v. Court of Appeals*, 275 SCRA 380, 389 [1997]; *Tanguilig v. Court of Appeals*, 266 SCRA 78, 84 [1997]; *Manila Surety & Fidelity Co., Inc. v. Court of Appeals*, 191 SCRA 805, 812 [1990]; *Mercantile Insurance Co., Inc. v. Felipe Ysmael, Jr. & Co., Inc.*, 169 SCRA 66, 74 [1989]; *GSIS v. Court of Appeals*, 145 SCRA 311, 318-319 [1986].

[45] *Javier v. Court of Appeals*, 183 SCRA 171, 179 [1990]; 17A C.J.S. Contracts § 325.

[46] Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

[47] *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 314 SCRA 255, 270 [1999].

[48] *Stockton Dry Goods Co. v. Girsh*, 36 Cal 2d 677, 227 P2d 1, 22 ALR 2d 1460.

[49] *Collins v. Northwest Casualty Co.*, 180 Wash 347, 39 P2d 986, 97 ALR 1235.

[50] Rollo, pp. 187-188.

[51] Rollo, p. 344.

[52] Rollo, pp. 345-349.

[53] Rollo, p. 351.

[54] Sec. 16. Duty of attorney upon death, incapacity, or incompetency of party. – Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

[55] Sec. 17. Death of a party. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.

[56] Now under Sec. 16, which reads:

Sec. 16. Death of party; duty of counsel. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[57] *Benavidez v. Court of Appeals*, 313 SCRA 714, 722 [1999]; *Florendo, Jr. v. Coloma*, 129 SCRA 304, 310 [1984].

[58] *Cordova v. Tornilla*, 246 SCRA 430, 432 [1995].

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