

**MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY,
PETITIONER, VS. COURT OF APPEALS, REGIONAL TRIAL COURT,
BRANCH 9, CEBU CITY, MELBA LIMBACO, LINDA C. LOGARTA AND
RAMON C. LOGARTA, R...**

G.R. No. 121506. October 30, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Petitioner Mactan Cebu International Airport Authority (MCIAA)[1] seeks a reversal of the decision[2] of the Court of Appeals (CA) dated March 23, 1995 as well as the resolution[3] dated August 7, 1995 denying petitioner's motion for reconsideration. The facts, as stated in the assailed decision, and which we adopt, are as follows:

"Sometime in 1949, officers of the National Airport Corporation informed the owners of the various lots surrounding the Lahug Airport that the government will purchase their lands for the expansion of the airport. The landowners were convinced to sell their properties, otherwise, the government will be forced to institute expropriation proceedings in courts. They were also assured that their properties will be returned to them when these are no longer being used by the airport (TSN-Daclan, 15 June 1992, pp. 5-7; TSN-Sanchez, 29 September 1992, p. 12; TSN-Daclan, 9 February 1993, pp. 7-9, 12).

"Initially, Inez Ouano did not want to sell her property because she does not have enough to bequeath to her grandchildren and the price offered by the government was very low. Nonetheless, she agreed to sell since the government was going to expropriate the land anyway. She was also reassured by the promise that the land will be returned to her when it is no longer in use (TSN-Daclan, 15 June 1992, pp. 5-6).

"Eufemio Vercide, one of the affected landowners testified that in a meeting called by the NAC, the landowners were given documents to sign, and he asked for a rider or certification which would indicate that the land will be returned to him should it not be used by the airport. He testified that it was only after the rider was given to him that he signed the document of sale (TSN-Catin, 24 September 1992; Deposition of Eufemio Vercide; Records pp. 146-155). The rider dated 8 November, 1949, signed by Mariano Reyes for the NAC and Vercide reads, as follows:

"This RIDDER (sic), shall remain in full force up to whensoever and whatever the Lahug Airport may happen in the future. All statements in anticipations herein below stated, shall remain valid in favor of the landowners.

"That in the event that this Lahug Airport will be left dead and of no use, or be transferred to another place or locality, then the parcels of land mentioned in the attached Doc. no. 698, Page 8, Book No. XVII, Series of 1949 by Atty. Daniel Tumulak, shall be returned to the same owner, EUFEMIO O. VERCIDE at the same selling price without any interest (Exhibit "F-1"; Records, p. 92)."

"The sale of Inez' property was covered by a Deed of Sale signed by her and Mariano Reyes representing the NAC. The deed indicates that the Lot 742 was sold for P2,596.40; and Lot 953 for P1,125.20. The deed does not contain any provision regarding Inez' right to repurchase the properties. Nor does she have any rider such

as the one given to Vercide.

"Nonetheless, during her lifetime, Inez used to remind her granddaughter Melba Limbaco, who was living with her, about the assurance by the NAC officials that the properties will be returned. Inez also made Melba understand that the latter can recover the land herself should Inez die before the proper time arises.

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"Upon learning that other landowners were able to recover their properties and that the then Pres. Aquino had ordered that the airport be transferred to Mactan, the appellees tried to repurchase the properties originally owned by their grandmother. On 2 October 1991, they wrote to Capt. Antonio Oppus, the manager of appellant, signifying their intention to repurchase the properties originally owned by their grandmother (Exhibit "D", Records, pp. 82-83). Capt. Oppus replied through a letter dated 17 October 1991 denying their request because the deed of sale covering the properties does not contain any condition relating to the right to repurchase. These properties, it was explained, had become the absolute properties of the NAC (Exhibit "E", Records, p. 84).[4]

Private respondents thereafter filed a case for reconveyance with the Regional Trial Court (RTC) which ruled in their favor. On appeal to the CA, the same was affirmed in toto. Hence, this petition assigning the following errors:

"I. RESPONDENT COURT ERRED IN RULING THAT THERE WAS AN AGREEMENT ALLOWING INEZ OUANO AND HER SUCCESSORS TO REPURCHASE THE LOTS IN QUESTION ABSENT ANY "RIDER" IN THE DEED OF SALE SIMILAR TO THE SALES OF ADJACENT LOTS WHICH CONTAINED RIDERS.

II. RESPONDENT COURT ERRED IN RULING THAT THE STATUTE OF FRAUDS DOES NOT APPLY IN THE INSTANT CASE AS THE CONTRACT HAS BEEN PARTIALLY EXECUTED."[5]

Anent the first error, the CA's finding that there was an agreement allowing the right of repurchase, was established after admitting the parol evidence presented by private respondents. We reject petitioner's argument that in the absence of any rider providing for such right of repurchase, no evidence, whatsoever can be received to establish that such a right indeed exists. Both the RTC and the CA correctly ruled that the right of repurchase granted by the NAC to Inez Ouano can be sufficiently established by parol evidence. The Court of Appeals, based on the parol evidence presented by private respondents, thus stated:

"We see no reason, however, why Inez should be considered as not similarly situated as the owners of these other lots. All these lots surround the Lahug Airport and were acquired by the government for the proposed expansion of the airport. The appellee has not presented any evidence to show that Inez' lots were acquired for a different purpose or under different conditions. Why then should the sale of such lots be singled out as not subject to the right to repurchase when a good number of the lots around them were already repurchased by their original owners?"[6]

Under the parol evidence rule, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon, and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading, the failure of the written agreement to express the true intent of the parties thereto.[7] In the case at bench, the fact which private respondents seek to establish by parol evidence consist of the agreement or representation made by NAC that induced Inez Ouano to execute the deed of sale; that the vendors and their heirs are given the right of repurchase should the government no longer need the property. Where a parol contemporaneous agreement was the moving cause of the written contract, or where the parol agreement forms part of the consideration of the written contract,

and it appears that the written contract was executed on the faith of the parol contract or representation, such evidence is admissible.[8] It is recognized that proof is admissible of any collateral parol agreement that is not inconsistent with the terms of the written contract though it may relate to the same subject matter. The rule excluding parol evidence to vary or contradict a writing does not extend so far as to preclude the admission of existing evidence to show prior or contemporaneous collateral parol agreements between the parties, but such evidence may be received, regardless of whether or not the written agreement contains any reference to such collateral agreement, and whether the action is at law or in equity.[9]

More importantly, no objection was made by petitioner when private respondents introduced evidence to show the right of repurchase granted by the NAC to Inez Ouano. It has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and if not so made, it will be understood to have been waived.[10]

As regards the second assigned error, the CA correctly held that the Statute of Frauds does not apply to the case at bench. In support thereof, the CA declared:

"It will be stressed that the right to repurchase is part of the contract of sale, albeit not incorporated in the deed of sale. It is not an independent agreement or contract. It is therefore, correct for the trial court to hold that the contract has been partially executed by the sale of the properties to the appellant." [11]

Under Art. 1403 of the Civil Code, a contract for the sale of real property shall be unenforceable unless the same or some note or memorandum thereof be in writing and subscribed by the party charged or his agent. Evidence of the agreement cannot be received without the writing, or a secondary evidence of its contents. In the case at bench, the deed of sale and the verbal agreement allowing the right of repurchase should be considered as an integral whole. The deed of sale relied upon by petitioner is in itself the note or memorandum evidencing the contract. Thus, the requirement of the Statute of Frauds has been sufficiently complied with. Moreover, the principle of the Statute of frauds only applies to executory contracts and not to contracts either partially or totally performed,[12] as in this case, where the sale has been consummated; hence, the same is taken out of the scope of the Statute of Frauds. As the deed of sale has been consummated, by virtue of which, petitioner accepted some benefits thereunder, it cannot now deny the existence of the agreement.[13] The Statute of Frauds was enacted for the purpose of preventing fraud. It should not be made the instrument to further them.[14]

ACCORDINGLY, the petition is hereby DENIED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Successor-in-interest of the National Airport Corporation (NAC).

[2] Rollo, pp. 22, 24-31.

[3] Rollo, p. 23.

[4] Decision dated March 23, 1995 pp. 2-4 1995; Rollo, pp. 24-26.

[5] Appellant's Brief, p. 6; Rollo, p. 15.

[6] Decision dated March 23, 1995, p. 7; Rollo, p. 29.

[7] Rule 130 Sec 9, par. 2 (b).

[8] 3 Jones on Evidence, Sec 1492; Woodhouse vs. Halili, 49 O.G. 3374, cited in V.J. Francisco, the Revised

Rules of Court, Vol. VII, 1973 ed., p. 166.

[9] Robles vs. Lizarraga Hermanos, 50 SCRA 387.

[10] Cruz vs. CA, 192 SCRA 209.

[11] Decision dated March 23, 1995, p. 9; Rollo, p. 31

[12] Victoriano vs. CA, 194 SCRA 19.

[13] Art. 1405, Civil Code.

[14] National Bank vs. Philippine Vegetable Oil, Co, 49 Phil. 857.

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