

PHILIPPINE FREE PRESS, INC., PETITIONER, VS. COURT OF APPEALS (12TH DIVISION) AND LIWAYWAY PUBLISHING, INC., RESPONDENTS.

G.R. NO. 132864. October 24, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Philippine Free Press, Inc. seeks the reversal of the Decision[1] dated February 25, 1998 of the Court of Appeals (CA) in CA-GR CV No. 52660, affirming, with modification, an earlier decision of the Regional Trial Court at Makati, Branch 146, in an action for annulment of deeds of sale thereat instituted by petitioner against the Presidential Commission for Good Government (PCGG) and the herein private respondent, Liwayway Publishing, Inc.

As found by the appellate court in the decision under review, the facts are:

xxx [Petitioner] . . . is a domestic corporation engaged in the publication of Philippine Free Press Magazine, one of the . . . widely circulated political magazines in the Philippines. Due to its wide circulation, the publication of the Free Press magazine enabled [petitioner] to attain considerable prestige prior to the declaration of Martial Law as well as to achieve a high profit margin. . . .

Sometime in . . . 1963, [petitioner] purchased a parcel of land situated at No. 2249, Pasong Tamo Street, Makati which had an area of 5,000 square meters as evidenced by . . . (TCT) No. 109767 issued by the Register of Deeds of Makati (Exh. Z). Upon taking possession of the subject land, [petitioner] constructed an office building thereon to house its various machineries, equipment, office furniture and fixture. [Petitioner] thereafter made the subject building its main office

During the 1965 presidential elections, [petitioner] supported the late President Diosdado Macapagal against then Senate President Ferdinand Marcos. Upon the election of the late President Ferdinand Marcos in 1965 and prior to the imposition of Martial law on September 21, 1972, [petitioner] printed numerous articles highly critical of the Marcos administration, exposing the corruption and abuses of the regime. The [petitioner] likewise ran a series of articles exposing the plan of the Marcoses to impose a dictatorship in the guise of Martial Law

In the evening of September 20, 1972, soldiers surrounded the Free Press Building, forced out its employees at gunpoint and padlocked the said establishment. The soldier in charge of the military contingent then informed Teodoro Locsin, Jr., the son of Teodoro Locsin, Sr., the President of [petitioner], that Martial Law had been declared and that they were instructed by the late President Marcos to take over the building and to close the printing press. xxx.

On September 21, 1972 . . . , Teodoro Locsin, Sr. was arrested [and] . . . was brought to Camp Crame and was subsequently transferred to the maximum security bloc at Fort Bonifacio.

Sometime in December, 1972, Locsin, Sr. was informed . . . that no charges were to be filed against him and that he was to be provisionally released subject to the following conditions, to wit: (1) he remained (sic) under "city arrest"; xxx (5) he was not to publish the Philippine Free Press nor was he to do, say or write anything

critical of the Marcos administration

Consequently, the publication of the Philippine Free Press ceased. The subject building remained padlocked and under heavy military guard (TSB, 27 May 1993, pp. 51-52; stipulated). The cessation of the publication of the ... magazine led to the financial ruin of [petitioner] [Petitioner's] situation was further aggravated when its employees demanded the payment of separation pay as a result of the cessation of its operations. [Petitioner's] minority stockholders, furthermore, made demands that Locsin, Sr. buy out their shares. xxx.

On separate occasions in 1973, Locsin, Sr. was approached by the late Atty. Crispin Baizas with offers from then President Marcos for the acquisition of the [petitioner]. However, Locsin, Sr. refused the offer stating that [petitioner] was not for sale (TSN, 2 May 1988, pp. 8-9, 40; 27 May 1993, pp. 66-67).

A few months later, the late Secretary Guillermo De Vega approached Locsin, Sr. reiterating Marcos's offer to purchase the name and the assets of the [petitioner].xxx

Sometime during the middle of 1973, Locsin, Sr. was contacted by Brig. Gen. Hans Menzi, the former aide-de-camp of then President Marcos concerning the sale of the [petitioner]. Locsin, Sr. requested that the meeting be held inside the [petitioner] Building and this was arranged by Menzi (TSN, 27 May 1993, pp. 69-70). During the said meeting, Menzi once more reiterated Marcos's offer to purchase both the name and the assets of [petitioner] adding that "Marcos cannot be denied" (TSN, 27 May 1993, p. 71). Locsin, Sr. refused but Menzi insisted that he had no choice but to sell. Locsin, Sr. then made a counteroffer that he will sell the land, the building and all the machineries and equipment therein but he will be allowed to keep the name of the [petitioner]. Menzi promised to clear the matter with then President Marcos (TSN, 27 May 1993, p. 72). Menzi thereafter contacted Locsin, Sr. and informed him that President Marcos was amenable to his counteroffer and is offering the purchase price of Five Million Seven Hundred Fifty Thousand (P5, 750,000.00) Pesos for the land, the building, the machineries, the office furnishing and the fixtures of the [petitioner] on a "take-it-or-leave-it" basis (TSN, 2 May 1988, pp.42-43; 27 May 1993, p. 88).

On August 22, 1973, Menzi tendered to Locsin, Sr. a check for One Million (P1, 000,000.00) Pesos downpayment for the sale, . . . Locsin, Sr. accepted the check, subject to the condition that he will refund the same in case the sale will not push through. (Exh. 7).

On August 23, 1973, the Board of Directors of [petitioner] held a meeting and reluctantly passed a resolution authorizing Locsin, Sr. to sell the assets of the [petitioner] to Menzi minus the name "Philippine Free Press (Exhs. A-1 and 1; TSN, 27 May 1993, pp. 73-76).

On October 23, 1973, the parties [petitioner, as vendor and private respondent, represented by B/Gen. Menzi, as vendee] met . . . and executed two (2) notarized Deeds of Sale covering the land, building and the machineries of the [petitioner]. Menzi paid the balance of the purchase price in the amount of . . . (P4,750,000.00) Pesos (Exhs. A and ; B and 10;TSN, 27 May 1993, pp. 81-82; 3 June 1993, p. 89).

Locsin, Sr. thereafter used the proceeds of the sale to pay the separation pay of [petitioner's] employees, buy out the shares of the minority stockholders as well as to settle all its obligations.

On February 26, 1987, [petitioner] filed a complaint for Annulment of Sale against [respondent] Liwayway and the PCGG before the Regional Trial Court of Makati, Branch 146 on the grounds of vitiated consent and gross inadequacy of purchase price. On motion of defendant PCGG, the complaint against it was dismissed on October 22, 1987. (Words in bracket and underscoring added)

In a decision dated October 31, 1995,[2] the trial court dismissed petitioner's complaint and granted private respondent's counterclaim, to wit:

WHEREFORE, in view of all the foregoing premises, the herein complaint for annulment of sales is hereby dismissed for lack of merit.

On [respondent] counterclaim, the court finds for [respondent] and against [petitioner] for the recovery of attorney's fees already paid for at P1,945,395.98, plus a further P316,405.00 remaining due and payable.

SO ORDERED. (Words in bracket added)

In time, petitioner appealed to the Court of Appeals (CA) whereat its appellate recourse was docketed as CA-G.R. C.V. No. 52660.

As stated at the outset hereof, the appellate court, in a decision dated February 25, 1998, affirmed with modification the appealed decision of the trial court, the modification consisting of the deletion of the award of attorney's fees to private respondent, thus:

WHEREFORE, with the sole modification that the award of attorney's fees in favor of [respondent] be deleted, the Decision appealed from is hereby AFFIRMED in all respects.

SO ORDERED.

Hence, petitioner's present recourse, urging the setting aside of the decision under review which, to petitioner, decided questions of substance in a way not in accord with law and applicable jurisprudence considering that the appellate court gravely erred:

I

xxx IN ITS MISAPPLICATION OF THE DECISIONS OF THE HONORABLE COURT THAT RESULTED IN ITS ERRONEOUS CONCLUSION THAT PETITIONER'S CAUSE OF ACTION HAD ALREADY PRESCRIBED.

II

xxx IN CONCLUDING THAT THE UNDISPUTED FACTS AND CIRCUMSTANCES PRECEDING THE EXECUTION OF THE CONTRACTS OF SALE FOR THE PETITIONER'S PROPERTIES DID NOT ESTABLISH THE FORCE, INTIMIDATION, DURESS AND UNDUE INFLUENCE WHICH VITIATED PETITIONER'S CONSENT.

A. xxx IN CONSIDERING AS HEARSAY THE TESTIMONIAL EVIDENCE WHICH CLEARLY ESTABLISHED THE THREATS MADE UPON PETITIONER AND THAT RESPONDENT LIWAYWAY WILL BE USED AS THE CORPORATE VEHICLE FOR THE FORCED ACQUISITION OF PETITIONER'S PROPERTIES.

B. xxx IN CONCLUDING THAT THE ACTS OF THEN PRESIDENT MARCOS DURING MARTIAL LAW DID NOT CONSTITUTE THE FORCE, INTIMIDATION, DURESS AND UNDUE INFLUENCE WHICH VITIATED PETITIONER'S CONSENT.

C. xxx IN RESOLVING THE INSTANT CASE ON THE BASIS OF MERE SURMISES AND SPECULATIONS INSTEAD OF THE UNDISPUTED EVIDENCE ON RECORD.

III

xxx IN CONCLUDING THAT THE GROSSLY INADEQUATE PURCHASE PRICE FOR PETITIONER'S PROPERTIES DOES NOT INDICATE THE VITIATION OF PETITIONER'S CONSENT TO THE CONTRACTS OF SALE.

IV

xxx IN CONCLUDING THAT PETITIONER'S USE OF THE PROCEEDS OF THE SALE FOR ITS SURVIVAL CONSTITUTE AN IMPLIED RATIFICATION [OF] THE CONTRACTS OF SALE.

V

xxx IN EXCLUDING PETITIONER'S EXHIBITS "X-6" TO "X-7" AND "Y-3" (PROFFER) WHICH ARE ADMISSIBLE EVIDENCE WHICH COMPETENTLY PROVE THAT THEN PRESIDENT MARCOS OWNED PRIVATE RESPONDENT LIWAYWAY, WHICH WAS USED AS THE CORPORATE VEHICLE FOR THE ACQUISITION OF PETITIONER'S PROPERTIES.

The petition lacks merit.

Petitioner starts off with its quest for the allowance of the instant recourse on the submission that the martial law regime tolled the prescriptive period under Article 1391 of the Civil Code, which pertinently reads:

Article 391. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

xxx xxx xxx

It may be recalled that the separate deeds of sale[3] sought to be annulled under petitioner's basic complaint were both executed on October 23, 1973. Per the appellate court, citing Development Bank of the Philippines [DBP] vs. Pundogar[4], the 4-year prescriptive period for the annulment of the aforesaid deeds ended "in late 1977", doubtless suggesting that petitioner's right to seek such annulment accrued four (4) years earlier, a starting time-point corresponding, more or less, to the date of the conveying deed, i.e., October 23, 1973. Petitioner contends, however, that the 4-year prescriptive period could not have commenced to run on October 23, 1973, martial law being then in full swing. Plodding on, petitioner avers that the continuing threats on the life of Mr. Teodoro Locsin, Sr. and his family and other menacing effects of martial law - which should be considered as force majeure - ceased only after the February 25, 1986 People Power uprising.

Petitioner instituted its complaint for annulment of contracts on February 26, 1987. The question that now comes to the fore is: Did the 4year prescriptive period start to run in late October 1973, as postulated in the decision subject of review, or on February 25, 1986, as petitioner argues, on the theory that martial law has the effects of a force majeure[5], which, in turn, works to suspend the running of the prescriptive period for the main case filed with the trial court.

Petitioner presently faults the Court of Appeals for its misapplication of the doctrinal rule laid down in DBP vs. Pundogar[6] where this Court, citing and quoting excerpts from the ruling in Tan vs. Court of Appeals [7], as reiterated in National Development Company vs. Court of Appeals, [8] wrote -

We can not accept the petitioners' contention that the period during which authoritarian rule was in force had interrupted prescription and that the same began to run only on February 25, 1986, when the Aquino government took power. It is true that under Article 1154 [of the Civil Code] xxx fortuitous events have the effect of tolling the period of prescription. However, we can not say, as a universal rule, that the period from September 21, 1972 through February 25, 1986 involves a force majeure. Plainly, we can not box in the "dictatorial" period within the term without distinction, and without, by necessity, suspending all liabilities, however demandable, incurred during that period, including perhaps those ordered by this Court to be paid. While this Court is cognizant of acts of the last regime, especially political acts, that might have indeed precluded the enforcement of liability against that regime and/or its minions, the Court is not inclined to make quite a sweeping pronouncement, . . . It is our opinion that claims should be taken on a case-to-case basis. This selective rule is compelled, among others, by the fact that not all those imprisoned or detained by the past dictatorship were true political oppositionists, or, for that matter, innocent of any crime or wrongdoing. Indeed, not a few of them were manipulators and scoundrels. [Italization in the original; Underscoring and words in

bracket added]

According to petitioner, the appellate court misappreciated and thus misapplied the correct thrust of the Tan case, as reiterated in DBP which, per petitioner's own formulation, is the following:[9]

The prevailing rule, therefore, is that on a case-to-case basis, the Martial Law regime may be treated as force majeure that suspends the running of the applicable prescriptive period provided that it is established that the party invoking the imposition of Martial Law as a force majeure are true oppositionists during the Martial Law regime and that said party was so circumstanced that it was impossible for said party to commence, continue or to even resist an action during the dictatorial regime. (Emphasis and underscoring in the original)

We are not persuaded.

It strains credulity to believe that petitioner found it impossible to commence and succeed in an annulment suit during the entire stretch of the dictatorial regime. The Court can grant that Mr. Locsin, Sr. and petitioner were, in the context of DBP and Tan, "true oppositionists" during the period of martial law. Petitioner, however, has failed to convincingly prove that Mr. Locsin, Sr., as its then President, and/or its governing board, were so circumstanced that it was well-nigh impossible for him/them to successfully institute an action during the martial law years. Petitioner cannot plausibly feign ignorance of the fact that shortly after his arrest in the evening of September 20, 1972, Mr. Locsin, Sr., together with several other journalists[10], dared to file suits against powerful figures of the dictatorial regime and veritably challenged the legality of the declaration of martial law. Docketed in this Court as GR No. L-35538, the case, after its consolidation with eight (8) other petitions against the martial law regime, is now memorialized in books of jurisprudence and cited in legal publications and case studies as *Aquino vs. Enrile*. [11]

Incidentally, Mr. Locsin Sr., as gathered from the ponencia of then Chief Justice Querube Makalintal in *Aquino*, was released from detention notwithstanding his refusal to withdraw from his petition in said case. Judging from the actuations of Mr. Locsin, Sr. during the onset of martial law regime and immediately thereafter, any suggestion that intimidation or duress forcibly stayed his hands during the dark days of martial law to seek judicial assistance must be rejected. [12]

Given the foregoing perspective, the Court is not prepared to disturb the ensuing ruling of the appellate court on the effects of martial law on petitioner's right of action:

In their testimonies before the trial court, both Locsin, Sr. and Locsin, Jr. claimed that they had not filed suit to recover the properties until 1987 as they could not expect justice to be done because according to them, Marcos controlled every part of the government, including the courts, (TSN, 2 May 1988, pp. 23-24; 27 May 1993, p. 121). While that situation may have obtained during the early years of the martial law administration, We could not agree with the proposition that it remained consistently unchanged until 1986, a span of fourteen (14) years. The unfolding of subsequent events would show that while dissent was momentarily stifled, it was not totally silenced. On the contrary, it steadily simmered and smoldered beneath the political surface and culminated in that groundswell of popular protest which swept the dictatorship from power. [13]

The judiciary too, as an institution, was no ivory tower so detached from the ever changing political climate. While it was not totally impervious to the influence of the dictatorship's political power, it was not hamstrung as to render it inutile to perform its functions normally. To say that the Judiciary was not able to render justice to the persons who sought redress before it . . . during the Martial Law years is a sweeping and unwarranted generalization as well as an unfounded indictment. The Judiciary, . . . did not lack in gallant jurists and magistrates who refused to be cowed into silence by the Marcos administration. Be that as it may, the Locsin's mistrust of the courts and of judicial processes is no excuse for their non-observance of the prescriptive period set down by law.

Corollary to the presented issue of prescription of action for annulment of contract voidable on account of defect of consent^[14] is the question of whether or not duress, intimidation or undue influence vitiated the petitioner's consent to the subject contracts of sale. Petitioner delves at length on the vitiation issue and, relative thereto, ascribes the following errors to the appellate court: first, in considering as hearsay the testimonial evidence that may prove the element of "threat" against petitioner or Mr. Locsin, Sr., and the dictatorial regime's use of private respondent as a corporate vehicle for forcibly acquiring petitioner's properties; second, in concluding that the acts of then President Marcos during the martial law years did not have a consent-vitiating effect on petitioner; and third, in resolving the case on the basis of mere surmises and speculations.

The evidence referred to as hearsay pertains mainly to the testimonies of Messrs. Locsin, Sr. and Teodoro Locsin, Jr. (the Locsins, collectively), which, in gist, established the following facts: 1) the widely circulated Free Press magazine, which, prior to the declaration of Martial Law, took the strongest critical stand against the Marcos administration, was closed down on the eve of such declaration, which closure eventually drove petitioner to financial ruin; 2) upon Marcos' orders, Mr. Locsin, Sr. was arrested and detained for over 2 months without charges and, together with his family, was threatened with execution; 3) Mr. Locsin, Sr. was provisionally released on the condition that he refrains from reopening Free Press and writing anything critical of the Marcos administration; and 4) Mr. Locsin, Sr. and his family remained fearful of reprisals from Marcos until the 1986 EDSA Revolution.

Per the Locsins, it was amidst the foregoing circumstances that petitioner's property in question was sold to private respondent, represented by Gen. Menzi, who, before the sale, allegedly applied the squeeze on Mr. Locsin, Sr. thru the medium of the "Marcos cannot be denied" and "[you] have no choice but to sell" line.

The appellate court, in rejecting petitioner's above posture of vitiation of consent, observed:

It was under the above-enumerated circumstances that the late Hans Menzi, allegedly acting on behalf of the late President Marcos, made his offer to purchase the Free Press. It must be noted, however, that the testimonies of Locsin, Sr. and Locsin, Jr. regarding Menzi's alleged implied threat that "Marcos cannot be denied" and that [respondent] was to be the corporate vehicle for Marcos's takeover of the Free Press is hearsay as Menzi already passed away and is no longer in a position to defend himself; the same can be said of the offers to purchase made by Atty. Crispin Baizas and Secretary Guillermo de Vega who are also both dead. It is clear from the provisions of Section 36, Rule 130 of the 1989 Revised Rules on Evidence that any evidence, . . . is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule (Citations omitted)

The appellate court's disposition on the vitiation-of-consent angle and the ratio therefor commends itself for concurrence.

Jurisprudence instructs that evidence of statement made or a testimony is hearsay if offered against a party who has no opportunity to cross-examine the witness. Hearsay evidence is excluded precisely because the party against whom it is presented is deprived of or is bereft of opportunity to cross-examine the persons to whom the statements or writings are attributed.^[15] And there can be no quibbling that because death has supervened, the late Gen Menzi, like the other purported Marcos subalterns, Messrs. Baizas and De Vega, cannot cross-examine the Locsins for the threatening statements allegedly made by them for the late President.

Like the Court of Appeals, we are not unmindful of the exception to the hearsay rule provided in Section 38, Rule 130 of the Rules of Court, which reads:

SEC. 38. Declaration against interest. - The declaration made by a person deceased or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to the declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons.

However, in assessing the probative value of Gen. Menzi's supposed declaration against interest, i.e., that he was acting for the late President Marcos when he purportedly coerced Mr. Locsin, Sr. to sell the Free Press property, we are loathed to give it the evidentiary weight petitioner endeavors to impress upon us. For, the Locsins can hardly be considered as disinterested witnesses. They are likely to gain the most from the annulment of the subject contracts. Moreover, allegations of duress or coercion should, like fraud, be viewed with utmost caution. They should not be laid lightly at the door of men whose lips had been sealed by death.[16] Francisco explains why:

[I]t has been said that "of all evidence, the narration of a witness of his conversation with a dead person is esteemed in justice the weakest." One reason for its unreliability is that the alleged declarant can not recall to the witness the circumstances under which his statement were made. The temptation and opportunity for fraud in such cases also operate against the testimony. Testimony to statements of a deceased person, at least where proof of them will prejudice his estate, is regarded as an unsafe foundation for judicial action except in so far as such evidence is borne out by what is natural and probable under the circumstances taken in connection with actual known facts. And a court should be very slow to act upon the statement of one of the parties to a supposed agreement after the death of the other party; such corroborative evidence should be adduced as to satisfy the court of the truth of the story which is to benefit materially the person telling it. [17]

Excepting, petitioner insists that the testimonies of its witnesses - the Locsins - are not hearsay because:

In this regard, hearsay evidence has been defined as "the evidence not of what the witness knows himself but of what he has heard from others." xxx Thus, the mere fact that the other parties to the conversations testified to by the witness are already deceased does [not] render such testimony inadmissible for being hearsay. [18]

xxx xxx xxx

The testimonies of Teodoro Locsin, Sr. and Teodoro Locsin, Jr. that the late Atty. Baizas, Gen. Menzi and Secretary de Vega stated that they were representing Marcos, that "Marcos cannot be denied", and the fact that Gen. Menzi stated that private respondent Liwayway was to be the corporate vehicle for the then President Marcos' take-over of petitioner Free Press are not hearsay. Teodoro Locsin, Sr. and Teodoro Locsin, Jr. were in fact testifying to matters of their own personal knowledge because they were either parties to the said conversation or were present at the time the said statements were made. [19]

Again, we disagree.

Even if petitioner succeeds in halving its testimonial evidence, one-half purporting to quote the words of a live witness and the other half purporting to quote what the live witness heard from one already dead, the other pertaining to the dead shall nevertheless remain hearsay in character.

The all too familiar rule is that "a witness can testify only to those facts which he knows of his own knowledge". [20] There can be no quibbling that petitioner's witnesses cannot testify respecting what President Marcos said to Gen. Menzi about the acquisition of petitioner's newspaper, if any there be, precisely because none of said witnesses ever had an opportunity to hear what the two talked about.

Neither may petitioner circumvent the hearsay rule by invoking the exception under the declaration-against-interest rule. In context, the only declaration supposedly made by Gen. Menzi which can conceivably be labeled as adverse to his interest could be that he was acting in behalf of Marcos in offering to

acquire the physical assets of petitioner. Far from making a statement contrary to his own interest, a declaration conveying the notion that the declarant possessed the authority to speak and to act for the President of the Republic can hardly be considered as a declaration against interest.

Petitioner next assails the Court of Appeals on its conclusion that Martial Law is not per se a consent-vitiating phenomenon. Wrote the appellate court: [21]

In other words, the act of the ruling power, in this case the martial law administration, was not an act of mere trespass but a trespass in law - not a *perturbacion de mero hecho* but a *perturbacion de derecho* - justified as it is by an act of government in legitimate self-defense (*IFC Leasing & Acceptance Corporation v. Sarmiento Distributors Corporation*, ..., citing *Caltex (Phils.) v. Reyes*, 84 Phil. 654 [1949]). Consequently, the act of the Philippine Government in declaring martial law can not be considered as an act of intimidation of a third person who did not take part in the contract (Article 1336, Civil Code). It is, therefore, incumbent on [petitioner] to present clear and convincing evidence showing that the late President Marcos, acting through the late Hans Menzi, abused his martial law powers by forcing plaintiff-appellant to sell its assets. In view of the largely hearsay nature of appellant's evidence on this point, appellant's cause must fall.

According to petitioner, the reasoning of the appellate court is "flawed" because:[22]

It is implicit from the foregoing reasoning of the Court of Appeals that it treated the forced closure of the petitioner's printing press, the arrest and incarceration without charges of Teodoro Locsin, Sr., the threats that he will be shot and the threats that other members of his family will be arrested as legal acts done by a dictator under the Martial Law regime. The same flawed reasoning led the Court of Appeals to the erroneous conclusion that such acts do not constitute force, intimidation, duress and undue influence that vitiated petitioner's consent to the Contracts of Sale.

The contention is a rehash of petitioner's bid to impute on private respondent acts of force and intimidation that were made to bear on petitioner or Mr. Locsin, Sr. during the early years of martial law. It failed to take stock of a very plausible situation depicted in the appellate court's decision which supports its case disposition on the issue respecting vitiation. Wrote that court:

Even assuming that the late president Marcos is indeed the owner of [respondent], it does not necessarily follow that he, acting through the late Hans Menzi, abused his power by resorting to intimidation and undue influence to coerce the Locsins into selling the assets of Free Press to them (sic).

It is an equally plausible scenario that Menzi convinced the Locsins to sell the assets of the Free Press without resorting to threats or moral coercion by simply pointing out to them the hard fact that the Free Press was in dire financial straits after the declaration of Martial Law and was being sued by its former employees, minority stockholders and creditors. Given such a state of affairs, the Locsins had no choice but to sell their assets.[23]

Petitioner laments that the scenario depicted in the immediately preceding quotation as a case of a court resorting to "mere surmises and speculations", [24] oblivious that petitioner itself can only offer, as counterpoint, also mere surmises and speculations, such as its claim about Eugenio Lopez Sr. and Imelda R. Marcos offering "enticing amounts" to buy Free Press.[25]

It bears stressing at this point that even after the imposition of martial law, petitioner, represented by Mr. Locsin, Sr., appeared to have dared the ire of the powers-that-be. He did not succumb to, but in fact spurned offers to buy, lock-stock-and-barrel, the Free Press magazine, dispatching Marcos' emissaries with what amounts to a curt "Free Press is not for sale". This reality argues against petitioner's thesis about vitiation of its contracting mind, and, to be sure, belying the notion that Martial Law worked as a Sword of Damocles that reduced petitioner or Mr. Locsin, Sr. into being a mere automaton. The following excerpt from the Court of Appeals' decision is self-explanatory: [26]

Noteworthy is the fact that although the threat of arrest hung over his head like the Sword of Damocles, Locsin Sr. was still able to reject the offers of Atty. Baizas and Secretary De Vega, both of whom were supposedly acting on behalf of the late President Marcos, without being subjected to reprisals. In fact, the Locsins testified that the initial offer of Menzi was rejected even though it was supposedly accompanied by the threat that "Marcos cannot be denied". Locsin, Sr. was, moreover, even able to secure a compromise that only the assets of the Free Press will be sold. It is, therefore, quite possible that plaintiff-appellant's financial condition, albeit caused by the declaration of Martial Law, was a major factor in influencing Locsin, Sr. to accept Menzi's offer. It is not farfetched to consider that Locsin, Sr. would have eventually proceeded with the sale even in the absence of the alleged intimidation and undue influence because of the absence of other buyers.

Petitioner's third assigned error centers on the gross inadequacy of the purchase price, referring to the amount of P5,775,000.00 private respondent paid for the property in question. To petitioner, the amount thus paid does not even approximate the actual market value of the assets and properties,[27] and is very much less than the P18 Million offered by Eugenio Lopez.[28] Accordingly, petitioner urges the striking down, as erroneous, the ruling of the Court of Appeals on purchase price inadequacy, stating in this regard as follows: [29]

Furthermore, the Court of Appeals in determining the adequacy of the price for the properties and assets of petitioner Free Press relied heavily on the claim that the audited financial statements for the years 1971 and 1972 stated that the book value of the land is set at Two Hundred Thirty-Seven Thousand Five Hundred Pesos (P237,500.00). However, the Court of Appeals' reliance on the book value of said assets is clearly misplaced. It should be noted that the book value of fixed assets bears very little correlation with the actual market value of an asset. (Emphasis and underscoring in the original).

With the view we take of the matter, the book or actual market value of the property at the time of sale is presently of little moment. For, petitioner is effectively precluded, by force of the principle of estoppel,[30] from cavalierly disregarding with impunity its own books of account in which the property in question is assigned a value less than what was paid therefor. And, in line with the rule on the quantum of evidence required in civil cases, neither can we cavalierly brush aside private respondent's evidence, cited with approval by the appellate court, that tends to prove that-[31]

xxx the net book value of the Properties was actually only P994,723.66 as appearing in Free Press's Balance Sheet as of November 30, 1972 (marked as Exh. 13 and Exh. V), which was duly audited by SyCip, Gorres, and Velayo, thus clearly showing that Free Press actually realized a hefty profit of P4,755,276.34 from the sale to Liwayway.

Lest it be overlooked, gross inadequacy of the purchase price does not, as a matter of civil law, per se affect a contract of sale. Article 1470 of the Civil Code says so. It reads:

Article 1470. Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract.

Following the aforequoted codal provision, it behooves petitioner to first prove "a defect in the consent", failing which its case for annulment contract of sale on ground gross inadequacy of price must fall. The categorical conclusion of the Court of Appeals, confirmatory of that of the trial court, is that the price paid for the Free Press' office building, and other physical assets is not unreasonable to justify the nullification of the sale. This factual determination, predicated as it were on offered evidence, notably petitioner's Balance Sheet as of November 30, 1972 (Exh. 13), must be accorded great weight if not finality.[32]

In the light of the foregoing disquisition, the question of whether or not petitioner's undisputed utilization of the proceeds of the sale constitutes, within the purview of Article 1393 of the Civil Code,[33] implied ratification of the contracts of sale need not detain us long. Suffice it to state in this regard that the ruling of the Court of

Appeals on the matter is well-taken. Wrote the appellate court: [34]

In the case at bench, Free Press's own witnesses admitted that the proceeds of the 1973 sale were used to settle the claims of its employees, redeem the shares of its stockholders and finance the company's entry into money-market shareholdings and fishpond business activities (TSN, 2 May 1988, pp. 16, 42-45). It need not be overemphasized that by using the proceeds in this manner, Free Press only too clearly confirmed the voluntaries of its consent and ratified the sale. Needless to state, such ratification cleanses the assailed contract from any alleged defects from the moment it was constituted (Art. 1396, Civil Code).

Petitioner's posture that its use of the proceeds of the sale does not translate to tacit ratification of what it viewed as voidable contracts of sale, such use being a "matter of [its financial] survival", [35] is untenable. As couched, Article 1393 of the Civil Code is concerned only with the act which passes for ratification of contract, not the reason which actuated the ratifying person to act the way he did. "Ubi lex non distinguit nec nos distinguere debemus. When the law does not distinguish, neither should we". [36]

Finally, petitioner would fault the Court of Appeals for excluding Exhibits "X-6" to "X-7" and "Y-3" (proffer). These excluded documents which were apparently found in the presidential palace or turned over by the US Government to the PCGG, consist of, among others, what appears to be private respondent's Certificate of Stock for 24,502 shares in the name of Gen. Menzi, but endorsed in blank. The proffer was evidently intended to show that then President Marcos owned private respondent, Liwayway Publishing Inc. Said exhibits are of little relevance to the resolution of the main issue tendered in this case. Whether or not the contracts of sale in question are voidable is the issue, not the ownership of Liwayway Publishing, Inc.

WHEREFORE, the petition is DENIED, and the challenged decision of the Court of Appeals AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Penned by then Associate Justice Consuelo Ynares-Santiago (now a member of this Court), with then Associate Justices Bernardo LL. Salas (ret.) and Demetrio G. Demetria, concurring; Rollo, pp. 149-177.

[2] Rollo, pp. 194-201.

[3] Rollo, p. 178 et seq., and p. 182 et seq.

[4] 218 SCRA 118 [1993].

[5] Art. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.

[6] See Note #4, *supra*.

[7] 195 SCRA 355 [1991].

[8] 211 SCRA 422, 435 [1992].

[9] Petition, p. 32; Rollo, p-40.

[10] Joaquin P. Roces, Rolando Fadul, Rosalind Galang, Go Eng Guan, Maximo M. Soliven, Renato Constantino,

and Luis R. Mauricio.

[11] 59 SCRA 183, 184 [1974].

[12] Tan v. Court of Appeals, See Note # 7, supra.

[13] Court of Appeals Decision, Rollo, pp. 172-173.

[14] Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence or frauds is voidable.

[15] Philippine Home Assurance Corp. vs. Court of Appeals, 257 SCRA 468 [1996], citing Bagueio v. Court of Appeals, 226 SCRA 366 [1993].

[16] Rodriguez v. Rodriguez, 20 SCRA 908 [1967]).

[17] Francisco R. J., BASIC EVIDENCE, 1999 ed., p. 496; citing II Moore on Facts, 1014-1015.

[18] Petition, p. 83; Rollo, p. 90.

[19] Petition, p. 83; Rollo, p. 91.

[20] Rules on Evidence, Rule 130, Section 36.

[21] Court of Appeals Decision; Rollo, pp. 166-167.

[22] Petition, p. 94; Rollo, p. 102.

[23] Court of Appeals Decision; Rollo, pp. 167.

[24] Petition, pp. 100-105; Rollo, pp. 108-113.

[25] Petition, pp. 101; Rollo, p. 109.

[26] Court of Appeals Decision; Rollo, pp. 168.

[27] Petition, p. 109.

[28] Ibid., p. 107.

[29] Petition, p. 108; Rollo, p. 116.

[30] Civil Code, Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

[31] Memorandum for Liwayway, p. 35; Rollo, p. 880.

[32] Chan vs. Court of Appeals, 298 SCRA 713; Ibay vs. Court of Appeals, 212 SCRA 160 [1992).

[33] Article 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

[34] Court of Appeals Decision; Rollo, p. 174.

[35] Memorandum for Free Press, p. 146; Rollo, p. 1041.

[36] Tecson vs. COMELEC, 424 SCRA 277, 439 [2004], separate opinion of Justice Alicia Austria-Martinez.

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