SPOUSES MARIO AND ELIZABETH TORCUATOR, PETITIONERS, VS. SPOUSES REMEGIO AND GLORIA BERNABE AND SPOUSES DIOSDADO AND LOURDES SALVADOR, RESPONDENTS.

G.R. NO. 134219. June 08, 2005

Ponente: TINGA, J.

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TINGA, J.:

In the instant Petition,[1] spouses Mario and Elizabeth Torcuator assail the Decision[2] of the Court of Appeals in C.A.-G.R. CV No. 36427, which affirmed the trial court's dismissal of their complaint for specific performance,[3] and its Resolution[4] which denied their motion for reconsideration.

The facts as summarized by the Court of Appeals are as follows:

> The subject of this action is Lot 17, Block 5 of the Ayala Alabang Village, Muntinlupa, Metro-Manila, with an area of 569 square meters and covered by TCT No. S-79773. The lower court found that the above parcel of land was purchased by the spouses Diosdado and Lourdes Salvador (Salvadors, for short) from the developers of Ayala Alabang subject, among others, to the following conditions:--
> "It is part of the condition of buying a lot in Ayala Alabang Village (a) that the lot buyer shall deposit with Ayala Corporation a cash bond (about P17,000.00 for the Salvadors) which shall be refunded to him if he builds a residence thereon within two (2) years of purchase, otherwise the deposit shall be forfeited, (b) architectural plans for any improvement shall be approved by Ayala Corporation, and (c) no lot may be resold by the buyer unless a residential house has been constructed thereon (Ayala Corporation keeps the Torrens Title in their [sic] possession).
>
> (p. 5, RTC Decision)

Evidences on record further reveal that on December 18, 1980, the Salvadors sold the parcel of land to the spouses Remigio and Gloria Bernabe (Bernabes, for expediency). Given the above restrictions, the Salvadors concomitantly executed a special power of attorney authorizing the Bernabes to construct a residential house on the lot and to transfer the title of the property in their names.

The Bernabes, on the other hand, without making any improvement, contracted to sell the parcel of land to the spouses Mario and Elizabeth Torcuator (Torcuators, for brevity) sometime in September of 1986. Then again, confronted by the Ayala Alabang restrictions, the parties agreed to cause the sale between the Salvadors and the Bernabes cancelled (Exhibit "D"), in favor of (a) a new deed of sale from the Salvadors directly to the Torcuators; (b) a new Irrevocable Special Power of Attorney (Exhibit F) executed by the Salvadors to the Torcuators in order for the latter to build a house on the land in question; and (c) an Irrevocable Special Power of Attorney (Exhibit E) from the Salvadors to the Bernabes authorizing the latter to sell, transfer and convey, with power of substitution, the subject lot.

The Torcuators thereafter had the plans of their house prepared and offered to pay the Bernabes for the land upon delivery of the sale contract. For one reason or another, the deed of sale was never consummated nor was payment

on the said sale ever effected. Subseuqently, the Bernabes sold the subject land to Leonardo Angeles, a brother-in-law (Exh. "7"). The document however is not notarized. As a result, the Torcuators commenced the instant action against the Bernabes and Salvadors for Specific Performance or Rescission with Damages.

After trial, the court a quo rendered its decision, the decretal portion reads:--

> "From all the foregoing disquisition, especially since the plaintiffs did not suffer any real damage (by January, 1987 they could have purchased another lot in Ayala Alabang, and the architectural plans they commissioned Arch. Selga to prepare could then be used by the plaintiffs), the complaint filed by the plaintiff spouses is dismissed. Since the plaintiff acted with sincerity and without delay in asserting what they believed to be their prerogatives, i.e., without any malice or desire to take advantage of another, the counter-claim interposed by the Bernabes against the Torcuator spouses is similarly dismissed.
>
> Makati, Metro-Manila, August 20, 1991.[5]

The Court of Appeals dismissed the appeal, ruling that the sale between the Bernabes and the Torcuators was tainted with serious irregularities and bad faith. The appellate court agreed with the trial court's conclusion that the parties entered into the contract with the intention of reneging on the stipulation disallowing the sale or transfer of vacant lots in Ayala Alabang Village.

It also ruled that the parties deprived the government of taxes when they made it appear that the property was sold directly by the Salvadors to the Torcuators. Since there were actually two sales, i.e., the first sale between the Salvadors and the Bernabes and the second between the Bernabes and Torcuators, taxes should have been paid for both transfers.[6]

The Court of Appeals denied petitioners' motion for reconsideration in its Resolution[7] dated June 15, 1998.

Petitioners then filed the instant petition, averring that the appellate court erred in dismissing their appeal on the strength of issues which were neither pleaded nor proved. The conditions allegedly imposed by Ayala Corporation on the sale of lots in Ayala Alabang Village were: "(a) that the lot-buyer shall deposit with Ayala Corporation a cash bond (about P17,000.00 for the Salvadors) which shall be refunded to him if he builds a residence thereon within two (2) years of purchase, otherwise the deposit shall be forfeited; (b) architectural plans for any improvement shall be approved by Ayala Corporation; and (c) no lot may be resold by the buyer unless a residential house has been constructed thereon (Ayala Corporation keeps the Torrens title in their (sic) possession.)"[8]

According to petitioners, the stipulation prohibiting the sale of vacant lots in Ayala Alabang Village, adverted to by the appellate court in its decision as evidence that the sale between the Bernabes and the Torcuators was tainted with serious irregularities, was never presented or offered in evidence by any of the parties. Without such stipulation having been presented, marked and offered in evidence, the trial court and the appellate court should not have considered the same.

The appellate court allegedly also erred in declaring that the contract of sale subject of the case is void, as it was intended to deprive the government of revenue since the matter of taxes was not even mentioned in the appealed decision of the trial court.

Further, petitioners assert that the contract was a perfected contract of sale not a mere contract to sell. The trial court thus erred in declaring that the contract was void due only to petitioners' failure to deliver the agreed consideration. Likewise, the fact that the contract calls for the payment of the agreed purchase price in United States Dollars does not result in the contract being void. The most that could be demanded, in accordance with jurisprudence, is to pay the obligation in Philippine currency.

Petitioners also dispute the trial court's finding that they did not suffer any real damage as a result of the transaction. On the contrary, they claim that respondents' refusal to transfer the property caused them actual and moral damages.

Respondents filed their Comment/Opposition (To the Petition for Certiorari)[9] dated November 4, 1998 countering that petitioners knew of the condition prohibiting the sale of vacant lots in Ayala Alabang Village as the same was annotated on the title of the property which was submitted and adopted by both parties as their evidence. The fact that the agreement required petitioners to construct a house in the name of the Salvadors shows that petitioners themselves knew of the condition and acknowledged its validity.

As regards petitioners' contention that the Court of Appeals should not have ruled on the matter of taxes due the government, respondents assert that the appellate court has the power to review the entire case to determine the validity of the judgment of the lower court. Thus, it may review even matters which were not raised on appeal.

Respondents refer to the circumstances surrounding the transaction as proof that the parties entered into a mere contract to sell and not a contract of sale. Allegedly, the memorandum containing the agreement of the parties merely used the term "offer." The payment of the purchase price was ostensibly a condition sine qua non to the execution of the deed of sale in favor of petitioners, especially since the Bernabes came to the Philippines with the express purpose of selling the property and were leaving for the United States as soon as they were paid. Moreover, petitioners were required to construct a residential house on the property before it could be sold to them in accordance with the condition imposed by Ayala Corporation.

Further, respondents maintain that the transaction was not consummated due to the fault of petitioners who failed not only to prepare the necessary documentation but also to pay the purchase price for the property. They also argue that the special power of attorney executed by the Salvadors in favor of petitioners merely granted the latter the right to construct a residential house on the property in the name of the Salvadors. The original document was not even given to the Torcuators precisely because they have not paid the purchase price.

Petitioners filed a Reply[10] dated January 20, 1999 in reiteration of their arguments.

In the Resolution[11] dated February 10, 1999, the parties were required to file their respective memoranda. Accordingly, petitioners filed their Memorandum[12] on April 19, 1999. On the other hand, in view of respondents' disappearance without notice, the Court resolved to dispense with their memorandum.[13]

The trial court denied petitioners' complaint on three (3) grounds, namely: (1) the alleged nullity of the contract between the parties as it violated Ayala Corporation's condition that the construction of a house is a prerequisite to any sale of lots in Ayala Alabang Village; (2) non-payment of the purchase price; and (3) the nullity of the contract as it called for payment in United States Dollars. To these reasons, the Court of Appeals added a fourth basis for denying petitioners' appeal and that is the alleged nullity of the agreement because it deprived the government of taxes.

An analysis of the facts obtaining in this case leads us to affirm the assailed decisions although from a slightly different but related thrust.

Let us begin by characterizing the agreement entered into by the parties, i.e., whether the agreement is a contract to sell as the trial court ruled, or a contract of sale as petitioners insist.

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, we held that in a contract of sale, title passes to the buyer upon delivery of the thing sold, while in a contract to sell, ownership is reserved in the seller and is not to pass until the full payment of the purchase price is made.

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In the first case, non-payment of the price is a negative resolutory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.[14]

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price or the fulfillment of some other conditions either of which is a future and uncertain event the non-happening of which is not a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.[15]

We have carefully examined the agreement between the parties and are far from persuaded that it was a contract of sale.

Firstly, the agreement imposed upon petitioners the obligation to fully pay the agreed purchase price for the property. That ownership shall not pass to petitioners until they have fully paid the price is implicit in the agreement. Notably, respondent Remigio Bernabe testified, without objection on the part of petitioners, that he specifically informed petitioners that the transaction should be completed, i.e., that he should receive the full payment for the property, before he left for the United States on October 14, 1986.[16]

Moreover, the deed of sale would have been issued only upon full payment of the purchase price, among other things. Petitioner Mario Torcuator acknowledged this fact when he testified that the deed of sale and original special power of attorney were only to be delivered upon full payment of the purchase price.[17]

As correctly observed by the trial court, the Salvadors did not execute a deed of sale in favor of petitioners, and instead executed a special power of attorney authorizing the Bernabes to sell the property on their behalf, in order to afford the latter a measure of protection that would guarantee full payment of the purchase price before any deed of sale in favor of petitioners was executed.

Remarkably, the records are bereft of any indication that petitioners ever attempted to tender payment or consign the purchase price as required by law. The Complaint[18] filed by petitioners makes no mention at all of a tender of payment or consignation having been made, much less that petitioners are willing and ready to pay the purchase price. Petitioners' averments to the effect that they have sufficient funds to pay for the property and have even applied for a telegraphic transfer from their bank account to the Bernabes' bank account, uncoupled with actual tender and consignation, are utterly self- serving.

The trial court correctly noted that petitioners should have consigned the amount due in court instead of merely sending respondents a letter expressing interest to push through with the transaction. Mere sending of a letter by the vendee expressing the intention to pay without the accompanying payment is not considered a valid tender of payment. Consignation of the amount due in court is essential in order to extinguish the obligation to pay and oblige the vendor to convey title.[19]

On this score, even assuming that the agreement was a contract of sale, respondents may not be compelled to deliver the property and execute the deed of absolute sale. In cases such as the one before us, which involve the performance of an obligation and not merely the exercise of a privilege or right, payment may be effected not by mere tender alone but by both tender and consignation. The rule is different in cases which involve an exercise of a right or privilege, such as in an option contract, legal redemption or sale with right to repurchase, wherein mere tender of payment would be sufficient to preserve the right or privilege.[20] Hence, absent a valid tender of payment and consignation, petitioners are deemed to have failed to discharge their obligation to pay.

Secondly, the parties clearly intended the construction of a residential house on the property as another suspensive condition which had to be fulfilled. Ayala Corporation retained title to the property and the Salvador spouses were precluded from selling it unless a residence had been constructed thereon. The Ayala stipulation was a pervasive, albeit unwritten, condition in light of which the transaction in this case was negotiated. The parties undoubtedly understood that they had to contend with the Ayala stipulation which is why they resorted to the execution of a special power of attorney authorizing petitioners to construct a residential building on the property in the name of the Salvadors. Had the agreement been a contract of sale as petitioners would impress upon the Court, the special power of attorney would have been entirely unnecessary as petitioners would have had the right to compel the Salvadors to transfer ownership to them.[21]

Thirdly, there was neither actual nor constructive delivery of the property to petitioners. Apart from the fact that no public document evidencing the sale was executed, which would have been considered equivalent to delivery, petitioners did not take actual, physical possession of the property. The special power of attorney, which petitioners count on as evidence that they took possession of the property, can by no means be interpreted as delivery or conveyance of ownership over the property. Taken by itself, in fact, the special power of attorney can be interpreted as tied up with any number of property arrangements, such as a contract of lease or a joint venture. That is why respondents, especially the Salvadors, never intended to deliver the title to petitioners and conformably with that they executed only a special power of attorney. Indeed, continuously looming large as an essentiality in their judgment to dispose of their valuable property is the prior or contemporaneous receipt of the commensurate price therefor.

This brings us to the application of the Statute of Frauds. Article 1403 of the Civil Code provides:

> Art. 1403. The following contracts are unenforceable unless they are ratified:
> ...
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:
> ...
> (e) An agreement for the leasing for a longer period than one year, or for the sale of real property or an interest therein;
> . . . .

The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts, such as agreements for the sale of real property, to be in writing. It does not deprive the parties the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. The purpose of the statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[22] The written note or memorandum, as contemplated by Article 1403 of the Civil Code, should embody the essentials of the contract.[23]

In the instant case, petitioners present as written evidence of the agreement the special power of attorney executed in their favor by the Salvadors and the summary of agreement[24] allegedly initialed by respondent Remigio Bernabe. These documents do not suffice as notes or memoranda as contemplated by Article 1403 of the Civil Code.

The special power of attorney does not contain the essential elements of the purported contract and, more

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tellingly, does not even refer to any agreement for the sale of the property. In any case, it was rendered virtually inoperable as a consequence of the Salvadors' adamant refusal to part with their title to the property.

The summary of agreement, on the other hand, is fatally deficient in the fundamentals and ambiguous in the rest of its terms. For one, it does not mention when the alleged consideration should be paid and transfer of ownership effected. The document does not even refer to a particular property as the object thereof. For another, it is unclear whether the supposed purchase price is P600.00, P590.00 or P570.00/square meter. The other conditions, such as payment of documentary stamp taxes, capital gains tax and other registration expenses, are likewise uncertain.

Conformably with Article 1405[25] of the Civil Code, however, respondents' acceptance of the agreement foisted by petitioners on them is deemed to have arisen from their failure to object to the testimony of petitioner Mario Torcuator on the matter[26] and their cross-examination of said petitioner thereon.[27]

Be that as it may, considering our ruling that the agreement was a contract to sell, respondents were not obliged to convey title to the property before the happening of two (2) suspensive conditions, namely: full payment of the purchase price and construction of a residence on the property. They were acting perfectly within their right when they considered the agreement cancelled after unsuccessfully demanding payment from petitioners.

That said, the question of whether the transaction violated the Uniform Currency Act, Republic Act No. 529, is already moot. The contract having been cancelled, any resolution regarding the validity of the stipulation requiring payment of the purchase price in foreign currency would not serve any further purpose.

Petitioners next insist that the condition requiring the construction of a house on any residential lot located in Ayala Alabang Village before it can be sold was never submitted in evidence and was never testified to by any of the witnesses presented during the trial. Hence, the trial court and the Court of Appeals should not have used this as basis for its denial of petitioners' cause.

This assertion, however, is completely untrue. While the Formal Offer of Evidence[28] of petitioners, respondents' Offer of Exhibits,[29] and the Formal Offer of Evidence (On Rebuttal)[30] of petitioners make no mention of any stipulation prohibiting the sale of vacant lots in Ayala Alabang Village, respondents maintain that petitioners are fully aware of the prohibition as the conditions imposed by Ayala Corporation on the sale of Ayala Alabang lots are inscribed on the title of the property which was submitted in evidence by both parties.

Despite petitioners' remonstration that the inscriptions on the title are "hardly legible,"[31] we are inclined to give credence to respondents' account. It is quite implausible that a lawyer such as petitioner Mario Torcuator would not take the precaution of checking the original title of the property with the Registry of Deeds to ascertain whether there are annotations therein that would prejudice his position.

More importantly, petitioner Mario Torcuator himself testified on the existence of the condition prohibiting the sale of vacant lots in Ayala Alabang Village, viz:

> ATTY. J. DE DIOS, JR.
>
> Q -
>
> Mr. witness aside from this summary of agreement which has been marked as Exhibit "J" do you still have a document relating to his transaction between you and the defendant?
>
> A -

Yes, sir, as I indicated in my earlier testimony there was supposed to be a letter addressed to Ayala Corporation which defendant Salvador should sign in order to request Ayala to deliver to me the TCT covering the lot subject of the transaction.

Q -

This letter that you are referring to do you still have a copy of that letter?

A -

Yes, sir.

Q -

I am showing to you a xerox copy of a letter addressed to Ayala Corporation and signed by Diosdado and Lourdes Salvador, can you please explain to this Court what is the relation of this document with what you are referring to executed by the defendant Diosdado Salvador and Lourdes Salvador addressed to Ayala Corporation?

A -

This is the letter of Mr. Salvador, sir, signed in my presence.

Q -

Can you tell the Court where is the original of this document?

A -

All of the original copies of that letter are with the defendant Bernabe, sir.

Q -

Can you tell the Court how did you come to have a xerox copy of this document?

A -

Yes, because as soon as the copies of the documents for the transaction were signed by Mrs. Salvador who was then in New York, they were sent by the spouses to the daughter of Mr. Salvador who in turn told me that all the originals are supposed to be delivered to Mr. Bernabe and I was given a xerox copy of the same.

ATTY. J. DE DIOS, JR.

-

And which for purpose of identification, your Honor, may we request that this letter addressed to Ayala Corporation and signed by Diosdado Salvador and Lourdes Salvador be marked as Exhibit "K" for the plaintiff, your Honor.

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COURT

-

Mark it.

. . .

ATTY. J. DE DIOS, JR.

-

Mr. Witness, this letter appears to be, does it contain any date? Can you tell this Court why this document does not contain the date?

ATTY. A. MAGNO

-

Incompetent, your Honor, because he was not the one who made that document.

COURT

-

Let him explain.

ATTY. MAGNO

-

Yes, your Honor.

ATTY. J. DE DIOS, JR.

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Because, your Honor, there is a requirement by Ayala Corporation that no lot or property may be transferred until there is a complete building or structure built on the lot and so what I was supposed to get only from Mr. Salvador, aside from the deed of absolute sale, is merely a special power of attorney to authorize me to construct my house in the lot and upon completion of the house that is the time that I would be allowed by Ayala Corporation to transfer the property in my name. Therefore, the letter requesting Ayala Corporation to release the title in the name of Mr. Salvador to was deliberately undated because it would be only dated when I completed the house.[32] [Emphasis supplied]

The fact that petitioners agreed to construct a residential house on the property in the name of the Salvadors further proves that they knew that a direct sale to them of a vacant lot would contravene the condition imposed by Ayala Corporation on the original buyers of lots in Ayala Alabang Village. Hence, they agreed on the elaborate plan whereby the Salvador spouses, in whose names the property was registered, would execute a special power of attorney in favor of petitioners authorizing the latter to construct a residential house on the property in the name of the Salvadors. The records even indicate that the documents to effectuate this plan were prepared by petitioner Mario Torcuator himself.

In his testimony, for instance, petitioner Mario Torcuator stated that: "[B]ased on our discussion, your Honor, from the P600 per square meter price, we agreed upon, they agreed to give me a rebate of 5% in the form of discount because there was a problem in the documentation which I tried to solve which are the papers in favor of Bernabe missing. I suggested to Mr. Bernabe that we prepare a new set of document which will be signed by Mr. Salvador as the previous owner and because of that I will be getting in effect a 5% discount as my commission."[33]

This was confirmed by respondent Remigio Bernabe:

Q -

Now, where there any documents presented to you during that occasion?

A -

Yes, sir.

Q -

By whom?

A -

Mr. Torcuator prepared some documents for me to sign.

Q -

And do you recall what was that documents?

A -

Yes, sir. Mr. Torcuator prepared a documents for cancellation of the deed of sale of Mr. Salvador to Remigio Bernabe, and cancellation also of the irrevocable power of attorney of Salvador to Bernabe, and power of attorney of Salvador authorizing Remigio Bernabe to sell the property and power of attorney of Salvador given

to Mr. Torcuator.[34]

Petitioners therefore cannot feign ignorance of the condition imposed by Ayala Corporation.

We do not agree, however, with the trial court and appellate court's ruling that the transaction between the parties was void for being contrary to good customs and morals.[35]

In order to declare the agreement void for being contrary to good customs and morals, it must first be shown that the object, cause or purpose thereof contravenes the generally accepted principles of morality which have received some kind of social and practical confirmation.[36]

We are not inclined to rule that the transaction in this case offended good customs and morals. It should be emphasized that the proscription imposed by Ayala Corporation was on the resale of the property without a residential house having been constructed thereon. The condition did not require that the original lot buyer should himself construct a residential house on the property, only that the original buyer may not resell a vacant lot. In view of our finding that the agreement between the parties was a mere contract to sell, no violation of the condition may be inferred from the transaction as no transfer of ownership was made. In fact, the agreement in this case that petitioners will construct a residential house on the property in the name of the Salvadors (who retained ownership of the property until the fulfillment of the twin conditions of payment and construction of a residence) was actually in compliance with or obeisance to the condition.

Finally, the issue of whether the agreement violated the law as it deprived the government of capital gains tax is wholly irrelevant. Capital gains taxes, after all, are only imposed on gains presumed to have been realized from sales, exchanges or dispositions of property. Having declared that the contract to sell in this case was aborted by petitioners' failure to comply with the twin suspensive conditions of full payment and construction of a residence, the obligation to pay taxes never arose. Hence, any error the appellate court may have committed when it passed upon the issue of taxes despite the fact that no evidence on the matter was pleaded, adduced or proved is rather innocuous and does not warrant reversal of the decisions under review.

WHEREFORE, the instant petition is DENIED. Costs against petitioners.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Rollo, pp. 13-42; Dated August 6, 1998.

[2] Id. at 44-49. The Decision dated January 30, 1998 was penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Fermin A. Martin, Jr. and Artemio G. Tuquero.

[3] Decision, dated August 20, 1991 penned by Judge Salvador P. De Guzman, Jr., Regional Trial Court, Branch 142, Makati, Metro Manila; id. at 53-61.

[4] Id. at 51; Dated June 15, 1998.

[5] Id. at 44-46.

[6] Id. at 44-49.

[7] Supra, note 4.

[8] CA Records, pp. 36-37. Brief for the Appellants dated August 27, 1992.

[9] Rollo, pp. 70-83.

[10] Id. at 85-99.

[11] Id. at 104.

[12] Id. at 105-169.

[13] Id. at 209.

[14] Philippine National Bank v. Court of Appeals, 330 Phil. 1048 (1996), citing Bowe v. Court of Appeals 220 SCRA 158 (1993), Lim v. Court of Appeals, 182 SCRA 564 (1990) and Sing Yee v. Santos, 47 O.G. 6372 (1951). See also San Lorenzo Development Corporation v. Court of Appeals, G.R. No. 124242, January 21, 2005.

[15] Ibid citing Jacinto v. Kaparaz, 209 SCRA 246 (1992).

[16] TSN, June 22, 1989, pp. 24-26.

[17] TSN, November 8, 1988, p. 81.

[18] RTC Records, pp. 1-5.

[19] San Lorenzo Development Corporation v. Court of Appeals, G.R. No. 124242, January 21, 2005 citing Vda. De Zulueta, et al. v. Octaviano, 205 Phil. 247 (1983).

[20] Adelfa Properties, Inc. v. Court of Appeals, 310 Phil. 623 (1995).

[21] Supra note 15.

[22] Rosencor Development Corporation v. Inquing, G.R. No. 140479, March 8, 2001, 354 SCRA 119.

[23] Paredes v. Espino, 131 Phil. 94 (1968).

[24] RTC Records, pp. 73 and 147.

[25] Art. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

[26] TSN, November 8, 1988, pp. 11-12.

[27] TSN, November 8, 1988, pp. 38-103.

[28] RTC Records, pp. 141-148.

[29] Id. at 167-168.

[30] Id. at 183-185.

[31] Rollo, p. 119.

[32] TSN, November 8, 1988, pp. 24-36.

[33] TSN, November 6, 1987, pp. 42-43.

[34] TSN, June 22, 1989, pp. 14-16.

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[35] Civil Code, Art. 1409. The following contracts are inexistent and void from the beginning:

> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy.

[36] Cui v. Arellano University, No. L-15127, 112 Phil. 135 (1961) citing Manresa. See also Philippine American General Insurance Company, Inc. v. Mutuc, No. L-19632, November 13, 1974, 61 SCRA 22.

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