

**CORAZON L. ESCUETA, ASSISTED BY HER HUSBAND EDGAR ESCUETA, IGNACIO E. RUBIO, THE HEIRS OF LUZ R. BALOLOY, NAMELY, ALEJANDRINO R. BALOLOY AND BAYANI R. BALOLOY, PETITIONERS, VS. ...**

*G.R. NO. 137162. January 24, 2007*

Ponente: AZCUNA, J.

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**AZCUNA, J.:**

This is an appeal by certiorari[1] to annul and set aside the Decision and Resolution of the Court of Appeals (CA) dated October 26, 1998 and January 11, 1999, respectively, in CA-G.R. CV No. 48282, entitled “Rufina Lim v. Corazon L. Escueta, etc., et. al.”

The facts[2] appear as follows:

Respondent Rufina Lim filed an action to remove cloud on, or quiet title to, real property, with preliminary injunction and issuance of [a hold-departure order] from the Philippines against Ignacio E. Rubio. Respondent amended her complaint to include specific performance and damages.

In her amended complaint, respondent averred inter alia that she bought the hereditary shares (consisting of 10 lots) of Ignacio Rubio [and] the heirs of Luz Baloloy, namely: Alejandrino, Bayani, and other co-heirs; that said vendors executed a contract of sale dated April 10, 1990 in her favor; that Ignacio Rubio and the heirs of Luz Baloloy received [a down payment] or earnest money in the amount of P102,169.86 and P450,000, respectively; that it was agreed in the contract of sale that the vendors would secure certificates of title covering their respective hereditary shares; that the balance of the purchase price would be paid to each heir upon presentation of their individual certificate[s] of [title]; that Ignacio Rubio refused to receive the other half of the down payment which is P[100,000]; that Ignacio Rubio refused and still refuses to deliver to [respondent] the certificates of title covering his share on the two lots; that with respect to the heirs of Luz Baloloy, they also refused and still refuse to perform the delivery of the two certificates of title covering their share in the disputed lots; that respondent was and is ready and willing to pay Ignacio Rubio and the heirs of Luz Baloloy upon presentation of their individual certificates of title, free from whatever lien and encumbrance;

As to petitioner Corazon Escueta, in spite of her knowledge that the disputed lots have already been sold by Ignacio Rubio to respondent, it is alleged that a simulated deed of sale involving said lots was effected by Ignacio Rubio in her favor; and that the simulated deed of sale by Rubio to Escueta has raised doubts and clouds over respondent’s title.

In their separate amended answers, petitioners denied the material allegations of the complaint and alleged inter alia the following:

For the heirs of Luz Baloloy (Baloloys for brevity):

Respondent has no cause of action, because the subject contract of sale has no more force and effect as far as

the Baloloys are concerned, since they have withdrawn their offer to sell for the reason that respondent failed to pay the balance of the purchase price as orally promised on or before May 1, 1990.

For petitioners Ignacio Rubio (Rubio for brevity) and Corazon Escueta (Escueta for brevity):

Respondent has no cause of action, because Rubio has not entered into a contract of sale with her; that he has appointed his daughter Patricia Llamas to be his attorney-in-fact and not in favor of Virginia Rubio Laygo Lim (Lim for brevity) who was the one who represented him in the sale of the disputed lots in favor of respondent; that the P100,000 respondent claimed he received as down payment for the lots is a simple transaction by way of a loan with Lim.

The Baloloys failed to appear at the pre-trial. Upon motion of respondent, the trial court declared the Baloloys in default. They then filed a motion to lift the order declaring them in default, which was denied by the trial court in an order dated November 27, 1991. Consequently, respondent was allowed to adduce evidence ex parte. Thereafter, the trial court rendered a partial decision dated July 23, 1993 against the Baloloys, the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of [respondent] and against [petitioners, heirs] of Luz R. Balolo[y], namely: Alejandrino Baloloy and Bayani Baloloy. The [petitioners] Alejandrino Baloloy and Bayani Baloloy are ordered to immediately execute an [Absolute] Deed of Sale over their hereditary share in the properties covered by TCT No. 74392 and TCT No. 74394, after payment to them by [respondent] the amount of P[1,050,000] or consignment of said amount in Court. [For] failure of [petitioners] Alejandrino Baloloy and Bayani Baloloy to execute the Absolute Deed of Sale over their hereditary share in the property covered by TCT No. T-74392 and TCT No. T-74394 in favor of [respondent], the Clerk of Court is ordered to execute the necessary Absolute Deed of Sale in behalf of the Baloloys in favor of [respondent,] with a consideration of P[1,500,000]. Further[,] [petitioners] Alejandrino Baloloy and Bayani Baloloy are ordered to jointly and severally pay [respondent] moral damages in the amount of P[50,000] and P[20,000] for attorney's fees. The adverse claim annotated at the back of TCT No. T-74392 and TCT No. T-74394[,] insofar as the shares of Alejandrino Baloloy and Bayani Baloloy are concerned[,] [is] ordered cancelled.

With costs against [petitioners] Alejandrino Baloloy and Bayani Baloloy.

SO ORDERED.[3]

The Baloloys filed a petition for relief from judgment and order dated July 4, 1994 and supplemental petition dated July 7, 1994. This was denied by the trial court in an order dated September 16, 1994. Hence, appeal to the Court of Appeals was taken challenging the order denying the petition for relief.

Trial on the merits ensued between respondent and Rubio and Escueta. After trial, the trial court rendered its assailed Decision, as follows:

IN VIEW OF THE FOREGOING, the complaint [and] amended complaint are dismissed against [petitioners] Corazon L. Escueta, Ignacio E. Rubio[,] and the Register of Deeds. The counterclaim of [petitioners] [is] also dismissed. However, [petitioner] Ignacio E. Rubio is ordered to return to the [respondent], Rufina Lim[,] the amount of P102,169.80[,] with interest at the rate of six percent (6%) per annum from April 10, [1990] until the same is fully paid. Without pronouncement as to costs.

SO ORDERED.[4]

On appeal, the CA affirmed the trial court's order and partial decision, but reversed the later decision. The dispositive portion of its assailed Decision reads:

WHEREFORE, upon all the foregoing premises considered, this Court rules:

- the appeal of the Baloloys from the Order denying the Petition for Relief from Judgment and Orders dated July 4, 1994 and Supplemental Petition dated July 7, 1994 is DISMISSED. The Order appealed from is AFFIRMED.
- the Decision dismissing [respondent's] complaint is REVERSED and SET ASIDE and a new one is entered. Accordingly,
- the validity of the subject contract of sale in favor of [respondent] is upheld.
- Rubio is directed to execute a Deed of Absolute Sale conditioned upon the payment of the balance of the purchase price by [respondent] within 30 days from the receipt of the entry of judgment of this Decision.
- the contracts of sale between Rubio and Escueta involving Rubio's share in the disputed properties is declared NULL and VOID.
- Rubio and Escueta are ordered to pay jointly and severally the [respondent] the amount of P[20,000] as moral damages and P[20,000] as attorney's fees.
- the appeal of Rubio and Escueta on the denial of their counterclaim is DISMISSED.

**SO ORDERED.[5]**

Petitioners' Motion for Reconsideration of the CA Decision was denied. Hence, this petition.

The issues are:

I

THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE PETITION FOR RELIEF FROM JUDGMENT FILED BY THE BALOLOYS.

II

THE HONORABLE COURT OF APPEALS ERRED IN REINSTATING THE COMPLAINT AND IN AWARDING MORAL DAMAGES AND ATTORNEY'S FEES IN FAVOR OF RESPONDENT RUFINA L. LIM CONSIDERING THAT:

- IGNACIO E. RUBIO IS NOT BOUND BY THE CONTRACT OF SALE BETWEEN VIRGINIA LAYGO-LIM AND RUFINA LIM.
- THE CONTRACT ENTERED INTO BETWEEN RUFINA LIM AND VIRGINIA LAYGO-LIM IS A CONTRACT TO SELL AND NOT A CONTRACT OF SALE.
- RUFINA LIM FAILED TO FAITHFULLY COMPLY WITH HER OBLIGATIONS UNDER THE CONTRACT TO SELL THEREBY WARRANTING THE CANCELLATION THEREOF.
- CORAZON L. ESCUETA ACTED IN UTMOST GOOD FAITH IN ENTERING INTO THE CONTRACT OF SALE WITH IGNACIO E. RUBIO.

III

THE CONTRACT OF SALE EXECUTED BETWEEN IGNACIO E. RUBIO AND CORAZON L. ESCUETA IS VALID.

IV

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING PETITIONERS' COUNTERCLAIMS.

Briefly, the issue is whether the contract of sale between petitioners and respondent is valid.

Petitioners argue, as follows:

First, the CA did not consider the circumstances surrounding petitioners' failure to appear at the pre-trial and to file the petition for relief on time.

As to the failure to appear at the pre-trial, there was fraud, accident and/or excusable neglect, because petitioner Bayani was in the United States. There was no service of the notice of pre-trial or order. Neither did the former counsel of record inform him. Consequently, the order declaring him in default is void, and all subsequent proceedings, orders, or decision are void.

Furthermore, petitioner Alejandrino was not clothed with a power of attorney to appear on behalf of Bayani at the pre-trial conference.

Second, the sale by Virginia to respondent is not binding. Petitioner Rubio did not authorize Virginia to transact business in his behalf pertaining to the property. The Special Power of Attorney was constituted in favor of Llamas, and the latter was not empowered to designate a substitute attorney-in-fact. Llamas even disowned her signature appearing on the "Joint Special Power of Attorney," which constituted Virginia as her true and lawful attorney-in-fact in selling Rubio's properties.

Dealing with an assumed agent, respondent should ascertain not only the fact of agency, but also the nature and extent of the former's authority. Besides, Virginia exceeded the authority for failing to comply with her obligations under the "Joint Special Power of Attorney."

The amount encashed by Rubio represented not the down payment, but the payment of respondent's debt. His acceptance and encashment of the check was not a ratification of the contract of sale.

Third, the contract between respondent and Virginia is a contract to sell, not a contract of sale. The real character of the contract is not the title given, but the intention of the parties. They intended to reserve ownership of the property to petitioners pending full payment of the purchase price. Together with taxes and other fees due on the properties, these are conditions precedent for the perfection of the sale. Even assuming that the contract is ambiguous, the same must be resolved against respondent, the party who caused the same.

Fourth, Respondent failed to faithfully fulfill her part of the obligation. Thus, Rubio had the right to sell his properties to Escueta who exercised due diligence in ascertaining ownership of the properties sold to her. Besides, a purchaser need not inquire beyond what appears in a Torrens title.

The petition lacks merit. The contract of sale between petitioners and respondent is valid.

Bayani Baloloy was represented by his attorney-in-fact, Alejandrino Baloloy. In the Baloloys' answer to the original complaint and amended complaint, the allegations relating to the personal circumstances of the Baloloys are clearly admitted.

"An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof." [6] The "factual admission in the pleadings on record [dispenses] with the need x x x to present evidence to prove the admitted fact." [7] It cannot, therefore, "be controverted by the party making such admission, and [is] conclusive" [8] as to them. All proofs submitted by them "contrary thereto or inconsistent therewith should be ignored whether objection is interposed by a party or not." [9] Besides, there is no showing that a palpable mistake has been committed in their admission or that no admission has been made by them.

Pre-trial is mandatory. [10] The notices of pre-trial had been sent to both the Baloloys and their former counsel of record. Being served with notice, he is "charged with the duty of notifying the party represented by him." [11] He

must “see to it that his client receives such notice and attends the pre-trial.”[12] What the Baloloys and their former counsel have alleged instead in their Motion to Lift Order of As In Default dated December 11, 1991 is the belated receipt of Bayani Baloloy’s special power of attorney in favor of their former counsel, not that they have not received the notice or been informed of the scheduled pre-trial. Not having raised the ground of lack of a special power of attorney in their motion, they are now deemed to have waived it. Certainly, they cannot raise it at this late stage of the proceedings. For lack of representation, Bayani Baloloy was properly declared in default.

Section 3 of Rule 38 of the Rules of Court states:

SEC. 3. Time for filing petition; contents and verification. – A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner’s good and substantial cause of action or defense, as the case may be.

There is no reason for the Baloloys to ignore the effects of the above-cited rule. “The 60-day period is reckoned from the time the party acquired knowledge of the order, judgment or proceedings and not from the date he actually read the same.”[13] As aptly put by the appellate court:

The evidence on record as far as this issue is concerned shows that Atty. Arsenio Villalon, Jr., the former counsel of record of the Baloloys received a copy of the partial decision dated June 23, 1993 on April 5, 1994. At that time, said former counsel is still their counsel of record. The reckoning of the 60 day period therefore is the date when the said counsel of record received a copy of the partial decision which was on April 5, 1994. The petition for relief was filed by the new counsel on July 4, 1994 which means that 90 days have already lapsed or 30 days beyond the 60 day period. Moreover, the records further show that the Baloloys received the partial decision on September 13, 1993 as evidenced by Registry return cards which bear the numbers 02597 and 02598 signed by Mr. Alejandrino Baloloy.

The Baloloys[,] apparently in an attempt to cure the lapse of the aforesaid reglementary period to file a petition for relief from judgment[,] included in its petition the two Orders dated May 6, 1994 and June 29, 1994. The first Order denied Baloloys’ motion to fix the period within which plaintiffs-appellants pay the balance of the purchase price. The second Order refers to the grant of partial execution, i.e. on the aspect of damages. These Orders are only consequences of the partial decision subject of the petition for relief, and thus, cannot be considered in the determination of the reglementary period within which to file the said petition for relief.

Furthermore, no fraud, accident, mistake, or excusable negligence exists in order that the petition for relief may be granted.[14] There is no proof of extrinsic fraud that “prevents a party from having a trial x x x or from presenting all of his case to the court”[15] or an “accident x x x which ordinary prudence could not have guarded against, and by reason of which the party applying has probably been impaired in his rights.”[16] There is also no proof of either a “mistake x x x of law”[17] or an excusable negligence “caused by failure to receive notice of x x x the trial x x x that it would not be necessary for him to take an active part in the case x x x by relying on another person to attend to the case for him, when such other person x x x was chargeable with that duty x x x, or by other circumstances not involving fault of the moving party.”[18]

Article 1892 of the Civil Code provides:

Art. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one x x x.

Applying the above-quoted provision to the special power of attorney executed by Ignacio Rubio in favor of his daughter Patricia Llamas, it is clear that she is not prohibited from appointing a substitute. By authorizing Virginia Lim to sell the subject properties, Patricia merely acted within the limits of the authority given by her father, but she will have to be “responsible for the acts of the sub-agent,”[19] among which is precisely the sale of the subject properties in favor of respondent.

Even assuming that Virginia Lim has no authority to sell the subject properties, the contract she executed in favor of respondent is not void, but simply unenforceable, under the second paragraph of Article 1317 of the Civil Code which reads:

Art. 1317. x x x

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Ignacio Rubio merely denies the contract of sale. He claims, without substantiation, that what he received was a loan, not the down payment for the sale of the subject properties. His acceptance and encashment of the check, however, constitute ratification of the contract of sale and “produce the effects of an express power of agency.”[20] “[H]is action necessarily implies that he waived his right of action to avoid the contract, and, consequently, it also implies the tacit, if not express, confirmation of the said sale effected” by Virginia Lim in favor of respondent.

Similarly, the Baloloys have ratified the contract of sale when they accepted and enjoyed its benefits. “The doctrine of estoppel applicable to petitioners here is not only that which prohibits a party from assuming inconsistent positions, based on the principle of election, but that which precludes him from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity, and would put a premium on fraud or misrepresentation.”[21]

Indeed, Virginia Lim and respondent have entered into a contract of sale. Not only has the title to the subject properties passed to the latter upon delivery of the thing sold, but there is also no stipulation in the contract that states the ownership is to be reserved in or “retained by the vendor until full payment of the price.”[22]

Applying Article 1544 of the Civil Code, a second buyer of the property who may have had actual or constructive knowledge of such defect in the seller’s title, or at least was charged with the obligation to discover such defect, cannot be a registrant in good faith. Such second buyer cannot defeat the first buyer’s title. In case a title is issued to the second buyer, the first buyer may seek reconveyance of the property subject of the sale.[23] Even the argument that a purchaser need not inquire beyond what appears in a Torrens title does not hold water. A perusal of the certificates of title alone will reveal that the subject properties are registered in common, not in the individual names of the heirs.

Nothing in the contract “prevents the obligation of the vendor to convey title from becoming effective”[24] or gives “the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period.”[25] Petitioners themselves have failed to deliver their individual certificates of title, for which reason it is obvious that respondent cannot be expected to pay the stipulated taxes, fees, and expenses.

“[A]ll the elements of a valid contract of sale under Article 1458 of the Civil Code are present, such as: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.”[26] Ignacio Rubio, the Baloloys, and their co-heirs sold their hereditary shares for a price certain to which respondent agreed to buy and pay for the subject properties. “The offer and the acceptance are concurrent,

since the minds of the contracting parties meet in the terms of the agreement.”[27]

In fact, earnest money has been given by respondent. “[I]t shall be considered as part of the price and as proof of the perfection of the contract.[28] It constitutes an advance payment to “be deducted from the total price.”[29]

Article 1477 of the same Code also states that “[t]he ownership of the thing sold shall be transferred to the vendee upon actual or constructive delivery thereof.”[30] In the present case, there is actual delivery as manifested by acts simultaneous with and subsequent to the contract of sale when respondent not only took possession of the subject properties but also allowed their use as parking terminal for jeepneys and buses. Moreover, the execution itself of the contract of sale is constructive delivery.

Consequently, Ignacio Rubio could no longer sell the subject properties to Corazon Escueta, after having sold them to respondent. “[I]n a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded x x x.”[31] The records do not show that Ignacio Rubio asked for a rescission of the contract. What he adduced was a belated revocation of the special power of attorney he executed in favor of Patricia Llamas. “In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act.”[32]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 48282, dated

October 26, 1998 and January 11, 1999, respectively, are hereby AFFIRMED. Costs against petitioners.

### **SO ORDERED.**

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] RULES OF COURT, Rule 45.

[2] Rollo, pp. 70-73; CA Decision, pp. 2-5.

[3] Id., pp. 315-316; RTC Partial Decision, pp. 4-5.

[4] Records, p. 122; RTC Decision, p. 8.

[5] Rollo, p. 83; CA Decision, p. 15. All caps copied verbatim.

[6] RULES OF COURT, Rule 129, Sec. 4.

[7] Luzon Development Bank v. Conquilla, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 548.

[8] Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corp., G.R. No. 152228, September 23, 2005, 470 SCRA 650, 667, citing Elayda v. CA, G.R. No. 49327, July 18, 1991, 199 SCRA 349, 353.

[9] Republic v. Sarabia, G.R. No. 157847, August 25, 2005, 468 SCRA 142, 150, citing Santiago v. De los Santos, G.R. No. 20241, November 22, 1974, 61 SCRA 146, 149.

[10] RULES OF COURT, Rule 18, Sec. 2.

[11] RULES OF COURT, Rule 18, Sec. 3.

[12] I F. Regalado, REMEDIAL LAW COMPENDIUM 286-287 (8[th] rev. ed., 2002).

[13] Id. at 402.

[14] RULES OF COURT, Rule 38, Sec. 1.

[15] *Palu-ay v. CA*, 355 Phil. 94, 102-103 (1998) and *Anuran v. Aquino*, 38 Phil. 29, 32-33, 36 (1918).

[16] *Sunico v. Villapando*, 14 Phil. 352, 355 (1909), citing the old Code of Civil Procedure, Sec. 145, Subsec. 1.

[17] *Rili v. Chunaco*, 87 Phil. 545, 546-547 (1950).

[18] *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779 (1961).

[19] *Serona v. CA*, 440 Phil. 508, 521 (2002).

[20] *Gutierrez Hermanos v. Orense*, 28 Phil. 571, 579 (1914).

[21] *Saura Import & Export Co., Inc. v. Solidum*, 133 Phil. 505, 512 (1968).

[22] *Salazar v. CA*, 327 Phil. 944, 955 (1996), citing *Pingol v. CA*, G.R. No. 102909, September 6, 1993, 226 SCRA 118, 126; *Visayan Sawmill Co., Inc. v. CA*, G.R. No. 83851, March 3, 1993, 219 SCRA 378, 389; *Jacinto v. Kaparaz*, G.R. No. 81158, May 22, 1992, 209 SCRA 246, 254; and *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 150 Phil. 114, 125-126 (1972).

[23] *Coronel v. CA*, 331 Phil. 294, 311 (1996).

[24] *Salazar v. CA*, *supra* at 955.

[25] *Adelfa Properties, Inc. v. CA*, 310 Phil. 623, 637 (1995), citing *Pingol v. CA*, *supra* at 127.

[26] *Dignos v. CA*, G.R. No. 59266, February 29, 1988, 158 SCRA 375, 382-383, in relation to Article 1475 of the Civil Code, which provides:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[27] *Adelfa Properties, Inc. v. CA*, *supra* at 641, quoting *McMillan v. Philadelphia Co.*, 28 A. 220, 220-221, 159 Pa. St. 142, December 30, 1893.

[28] CIVIL CODE, Art. 1482.

[29] *Adelfa Properties, Inc. v. CA*, *supra* at 646.

[30] *Dignos v. CA*, *supra* at 383.

[31] *Salazar v. CA*, *supra*.

[32] CIVIL CODE, Art. 1592.

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