

ALFRED FRITZ FRENZEL, PETITIONER, VS. EDERLINA P. CATITO, RESPONDENT.*G.R. No. 143958. July 11, 2003*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 53485 which affirmed the Decision[2] of the Regional Trial Court of Davao City, Branch 14, in Civil Case No. 17,817 dismissing the petitioner's complaint, and the resolution of the Court of Appeals denying his motion for reconsideration of the said decision.

The Antecedents[3]

As gleaned from the evidence of the petitioner, the case at bar stemmed from the following factual backdrop:

Petitioner Alfred Fritz Frenzel is an Australian citizen of German descent. He is an electrical engineer by profession, but worked as a pilot with the New Guinea Airlines. He arrived in the Philippines in 1974, started engaging in business in the country two years thereafter, and married Teresita Santos, a Filipino citizen. In 1981, Alfred and Teresita separated from bed and board without obtaining a divorce.

Sometime in February 1983, Alfred arrived in Sydney, Australia for a vacation. He went to King's Cross, a night spot in Sydney, for a massage where he met Ederlina Catito, a Filipina and a native of Bajada, Davao City. Unknown to Alfred, she resided for a time in Germany and was married to Klaus Muller, a German national. She left Germany and tried her luck in Sydney, Australia, where she found employment as a masseuse in the King's Cross nightclub. She was fluent in German, and Alfred enjoyed talking with her. The two saw each other again; this time Ederlina ended up staying in Alfred's hotel for three days. Alfred gave Ederlina sums of money for her services.[4]

Alfred was so enamored with Ederlina that he persuaded her to stop working at King's Cross, return to the Philippines, and engage in a wholesome business of her own. He also proposed that they meet in Manila, to which she assented. Alfred gave her money for her plane fare to the Philippines. Within two weeks of Ederlina's arrival in Manila, Alfred joined her. Alfred reiterated his proposal for Ederlina to stay in the Philippines and engage in business, even offering to finance her business venture. Ederlina was delighted at the idea and proposed to put up a beauty parlor. Alfred happily agreed.

Alfred told Ederlina that he was married but that he was eager to divorce his wife in Australia. Alfred proposed marriage to Ederlina, but she replied that they should wait a little bit longer.

Ederlina found a building at No. 444 M.H. del Pilar corner Arquiza Street, Ermita, Manila, owned by one Atty. Jose Hidalgo who offered to convey his rights over the property for P18,000.00. Alfred and Ederlina accepted the offer. Ederlina put up a beauty parlor on the property under the business name Editorial Beauty Salon, and had it registered with the Department of Trade and Industry under her name. Alfred paid Atty. Hidalgo P20,000.00 for

his right over the property and gave P300,000.00 to Ederlina for the purchase of equipment and furnitures for the parlor. As Ederlina was going to Germany, she executed a special power of attorney on December 13, 1983[5] appointing her brother, Aser Catito, as her attorney-in-fact in managing the beauty parlor business. She stated in the said deed that she was married to Klaus Muller. Alfred went back to Papua New Guinea to resume his work as a pilot.

When Alfred returned to the Philippines, he visited Ederlina in her Manila residence and found it unsuitable for her. He decided to purchase a house and lot owned by Victoria Binuya Steckel in San Francisco del Monte, Quezon City, covered by Transfer Certificate of Title No. 218429 for US\$20,000.00. Since Alfred knew that as an alien he was disqualified from owning lands in the Philippines, he agreed that only Ederlina's name would appear in the deed of sale as the buyer of the property, as well as in the title covering the same. After all, he was planning to marry Ederlina and he believed that after their marriage, the two of them would jointly own the property. On January 23, 1984, a Contract to Sell was entered into between Victoria Binuya Steckel as the vendor and Ederlina as the sole vendee. Alfred signed therein as a witness.[6] Victoria received from Alfred, for and in behalf of Ederlina, the amount of US\$10,000.00 as partial payment, for which Victoria issued a receipt.[7] When Victoria executed the deed of absolute sale over the property on March 6, 1984,[8] she received from Alfred, for and in behalf of Ederlina, the amount of US\$10,000.00 as final and full payment. Victoria likewise issued a receipt for the said amount.[9] After Victoria had vacated the property, Ederlina moved into her new house. When she left for Germany to visit Klaus, she had her father Narciso Catito and her two sisters occupy the property.

Alfred decided to stay in the Philippines for good and live with Ederlina. He returned to Australia and sold his fiber glass pleasure boat to John Reid for \$7,500.00 on May 4, 1984.[10] He also sold his television and video business in Papua New Guinea for K135,000.00 to Tekeraoi Pty. Ltd.[11] He had his personal properties shipped to the Philippines and stored at No. 14 Fernandez Street, San Francisco del Monte, Quezon City. The proceeds of the sale were deposited in Alfred's account with the Hong Kong Shanghai Banking Corporation (HSBC), Kowloon Branch under Bank Account No. 018-2-807016.[12] When Alfred was in Papua New Guinea selling his other properties, the bank sent telegraphic letters updating him of his account.[13] Several checks were credited to his HSBC bank account from Papua New Guinea Banking Corporation, Westpac Bank of Australia and New Zealand Banking Group Limited and Westpac Bank-PNG-Limited. Alfred also had a peso savings account with HSBC, Manila, under Savings Account No. 01-725-183-01.[14]

Once, when Alfred and Ederlina were in Hong Kong, they opened another account with HSBC, Kowloon, this time in the name of Ederlina, under Savings Account No. 018-0-807950.[15] Alfred transferred his deposits in Savings Account No. 018-2-807016 with the said bank to this new account. Ederlina also opened a savings account with the Bank of America Kowloon Main Office under Account No. 30069016.[16]

On July 28, 1984, while Alfred was in Papua New Guinea, he received a Letter dated December 7, 1983 from Klaus Muller who was then residing in Berlin, Germany. Klaus informed Alfred that he and Ederlina had been married on October 16, 1978 and had a blissful married life until Alfred intruded therein. Klaus stated that he knew of Alfred and Ederlina's amorous relationship, and discovered the same sometime in November 1983 when he arrived in Manila. He also begged Alfred to leave Ederlina alone and to return her to him, saying that Alfred could not possibly build his future on his (Klaus') misfortune.[17]

Alfred had occasion to talk to Sally MacCarron, a close friend of Ederlina. He inquired if there was any truth to Klaus' statements and Sally confirmed that Klaus was married to Ederlina. When Alfred confronted Ederlina, she admitted that she and Klaus were, indeed, married. But she assured Alfred that she would divorce Klaus. Alfred was appeased. He agreed to continue the amorous relationship and wait for the outcome of Ederlina's petition for divorce. After all, he intended to marry her. He retained the services of Rechtsanwältin Banzhaf with offices in

Berlin, as her counsel who informed her of the progress of the proceedings.[18] Alfred paid for the services of the lawyer.

In the meantime, Alfred decided to purchase another house and lot, owned by Rodolfo Morelos covered by TCT No. 92456 located in Peña Street, Bajada, Davao City.[19] Alfred again agreed to have the deed of sale made out in the name of Ederlina. On September 7, 1984, Rodolfo Morelos executed a deed of absolute sale over the said property in favor of Ederlina as the sole vendee for the amount of P80,000.00.[20] Alfred paid US\$12,500.00 for the property.

Alfred purchased another parcel of land from one Atty. Mardoecheo Camporedondo, located in Moncado, Babak, Davao, covered by TCT No. 35251. Alfred once more agreed for the name of Ederlina to appear as the sole vendee in the deed of sale. On December 31, 1984, Atty. Camporedondo executed a deed of sale over the property for P65,000.00 in favor of Ederlina as the sole vendee.[21] Alfred, through Ederlina, paid the lot at the cost of P33,682.00 and US\$7,000.00, respectively, for which the vendor signed receipts.[22] On August 14, 1985, TCT No. 47246 was issued to Ederlina as the sole owner of the said property.[23]

Meanwhile, Ederlina deposited on December 27, 1985, the total amount of US\$250,000 with the HSBC Kowloon under Joint Deposit Account No. 018-462341-145.[24]

The couple decided to put up a beach resort on a four-hectare land in Camudmud, Babak, Davao, owned by spouses Enrique and Rosela Serrano. Alfred purchased the property from the spouses for P90,000.00, and the latter issued a receipt therefor.[25] A draftsman commissioned by the couple submitted a sketch of the beach resort.[26] Beach houses were forthwith constructed on a portion of the property and were eventually rented out by Ederlina's father, Narciso Catito. The rentals were collected by Narciso, while Ederlina kept the proceeds of the sale of copra from the coconut trees in the property. By this time, Alfred had already spent P200,000.00 for the purchase, construction and upkeep of the property.

Ederlina often wrote letters to her family informing them of her life with Alfred. In a Letter dated January 21, 1985, she wrote about how Alfred had financed the purchases of some real properties, the establishment of her beauty parlor business, and her petition to divorce Klaus.[27]

Because Ederlina was preoccupied with her business in Manila, she executed on July 8, 1985, two special powers of attorney[28] appointing Alfred as attorney-in-fact to receive in her behalf the title and the deed of sale over the property sold by the spouses Enrique Serrano.

In the meantime, Ederlina's petition for divorce was denied because Klaus opposed the same. A second petition filed by her met the same fate. Klaus wanted half of all the properties owned by Ederlina in the Philippines before he would agree to a divorce. Worse, Klaus threatened to file a bigamy case against Ederlina.[29]

Alfred proposed the creation of a partnership to Ederlina, or as an alternative, the establishment of a corporation, with Ederlina owning 30% of the equity thereof. She initially agreed to put up a corporation and contacted Atty. Armando Dominguez to prepare the necessary documents. Ederlina changed her mind at the last minute when she was advised to insist on claiming ownership over the properties acquired by them during their coverture.

Alfred and Ederlina's relationship started deteriorating. Ederlina had not been able to secure a divorce from Klaus. The latter could charge her for bigamy and could even involve Alfred, who himself was still married. To avoid complications, Alfred decided to live separately from Ederlina and cut off all contacts with her. In one of her letters to Alfred, Ederlina complained that he had ruined her life. She admitted that the money used for the purchase of the properties in Davao were his. She offered to convey the properties deeded to her by Atty. Mardoecheo Camporedondo and Rodolfo Morelos, asking Alfred to prepare her affidavit for the said purpose and

send it to her for her signature.[30] The last straw for Alfred came on September 2, 1985, when someone smashed the front and rear windshields of Alfred's car and damaged the windows. Alfred thereafter executed an affidavit-complaint charging Ederlina and Sally MacCarron with malicious mischief.[31]

On October 15, 1985, Alfred wrote to Ederlina's father, complaining that Ederlina had taken all his life savings and because of this, he was virtually penniless. He further accused the Catito family of acquiring for themselves the properties he had purchased with his own money. He demanded the return of all the amounts that Ederlina and her family had "stolen" and turn over all the properties acquired by him and Ederlina during their coverture.[32]

Shortly thereafter, Alfred filed a Complaint[33] dated October 28, 1985, against Ederlina, with the Regional Trial Court of Quezon City, for recovery of real and personal properties located in Quezon City and Manila. In his complaint, Alfred alleged, inter alia, that Ederlina, without his knowledge and consent, managed to transfer funds from their joint account in HSBC Hong Kong, to her own account with the same bank. Using the said funds, Ederlina was able to purchase the properties subject of the complaints. He also alleged that the beauty parlor in Ermita was established with his own funds, and that the Quezon City property was likewise acquired by him with his personal funds.[34]

Ederlina failed to file her answer and was declared in default. Alfred adduced his evidence ex-parte.

In the meantime, on November 7, 1985, Alfred also filed a complaint[35] against Ederlina with the Regional Trial Court, Davao City, for specific performance, declaration of ownership of real and personal properties, sum of money, and damages. He alleged, inter alia, in his complaint:

- That during the period of their common-law relationship, plaintiff solely through his own efforts and resources acquired in the Philippines real and personal properties valued more or less at P724,000.00; The defendant's common-law wife or live-in partner did not contribute anything financially to the acquisition of the said real and personal properties. These properties are as follows:

I. Real Properties

- TCT No. T-92456 located at Bajada, Davao City, consisting of 286 square meters, (with residential house) registered in the name of the original title owner Rodolfo M. Morelos but already fully paid by plaintiff. Valued at P342,000.00;

- TCT No. T-47246 (with residential house) located at Babak, Samal, Davao, consisting of 600 square meters, registered in the name of Ederlina Catito, with the Register of Deeds of Tagum, Davao del Norte valued at P144,000.00;

- A parcel of agricultural land located at Camudmud, Babak, Samal, Davao del Norte, consisting of 4.2936 hectares purchased from Enrique Serrano and Rosela B. Serrano. Already paid in full by plaintiff. Valued at P228,608.32;

II. Personal Properties:

- Furniture valued at P10,000.00.

- That defendant made no contribution at all to the acquisition of the above-mentioned properties as all the monies (sic) used in acquiring said properties belonged solely to plaintiff;[36]

Alfred prayed that after hearing, judgment be rendered in his favor:

WHEREFORE, in view of the foregoing premises, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendant:

a) Ordering the defendant to execute the corresponding deeds of transfer and/or conveyances in favor of plaintiff over those real and personal properties enumerated in Paragraph 4 of this complaint;

b) Ordering the defendant to deliver to the plaintiff all the above real and personal properties or their money value, which are in defendant's name and custody because these were acquired solely with plaintiff's money and resources during the duration of the common-law relationship between plaintiff and defendant, the description of which are as follows:

(1) TCT No. T-92456 (with residential house) located at Bajada, Davao City, consisting of 286 square meters, registered in the name of the original title owner Rodolfo Morelos but already fully paid by plaintiff. Valued at P342,000.00;

(2) TCT No. T-47246 (with residential house) located at Babak, Samal, Davao, consisting of 600 square meters, registered in the name of Ederlina Catito, with the Register of Deeds of Tagum, Davao del Norte, valued at P144,000.00;

(3) A parcel of agricultural land located at Camudmud, Babak, Samal, Davao del Norte, consisting of 4.2936 hectares purchased from Enrique Serrano and Rosela B. Serrano. Already fully paid by plaintiff. Valued at P228,608.32;

c) Declaring the plaintiff to be the sole and absolute owner of the above-mentioned real and personal properties;

d) Awarding moral damages to plaintiff in an amount deemed reasonable by the trial court;

e) To reimburse plaintiff the sum of P12,000.00 as attorney's fees for having compelled the plaintiff to litigate;

f) To reimburse plaintiff the sum of P5,000.00 incurred as litigation expenses also for having compelled the plaintiff to litigate; and

g) To pay the costs of this suit;

Plaintiff prays for other reliefs just and equitable in the premises.[37]

In her answer, Ederlina denied all the material allegations in the complaint, insisting that she acquired the said properties with her personal funds, and as such, Alfred had no right to the same. She alleged that the deeds of sale, the receipts, and certificates of titles of the subject properties were all made out in her name.[38] By way of special and affirmative defense, she alleged that Alfred had no cause of action against her. She interposed counterclaims against the petitioner.[39]

In the meantime, the petitioner filed a Complaint dated August 25, 1987, against the HSBC in the Regional Trial Court of Davao City[40] for recovery of bank deposits and damages.[41] He prayed that after due proceedings, judgment be rendered in his favor, thus:

WHEREFORE, plaintiff respectfully prays that the Honorable Court adjudge defendant bank, upon hearing the evidence that the parties might present, to pay plaintiff:

- ONE HUNDRED TWENTY SIX THOUSAND TWO HUNDRED AND THIRTY U.S. DOLLARS AND NINETY EIGHT CENTS (US\$126,230.98) plus legal interests, either of Hong Kong or of the Philippines, from 20 December 1984 up to the date of execution or satisfaction of judgment, as actual damages or in restoration of plaintiff's lost dollar savings;

- The same amount in (1) above as moral damages;
- Attorney's fees in the amount equivalent to TWENTY FIVE PER CENT (25%) of (1) and (2) above;
- Litigation expenses in the amount equivalent to TEN PER CENT (10%) of the amount in (1) above; and
- For such other reliefs as are just and equitable under the circumstances.[42]

On April 28, 1986, the RTC of Quezon City rendered its decision in Civil Case No. Q-46350, in favor of Alfred, the decretal portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the defendant to perform the following:

- (1) To execute a document waiving her claim to the house and lot in No. 14 Fernandez St., San Francisco Del Monte, Quezon City in favor of plaintiff or to return to the plaintiff the acquisition cost of the same in the amount of \$20,000.00, or to sell the said property and turn over the proceeds thereof to the plaintiff;
- (2) To deliver to the plaintiff the rights of ownership and management of the beauty parlor located at 444 Arquiza St., Ermita, Manila, including the equipment and fixtures therein;
- (3) To account for the earnings of rental of the house and lot in No. 14 Fernandez St., San Francisco Del Monte, Quezon City, as well as the earnings in the beauty parlor at 444 Arquiza St., Ermita, Manila and turn over one-half of the net earnings of both properties to the plaintiff;
- (4) To surrender or return to the plaintiff the personal properties of the latter left in the house at San Francisco Del Monte, to wit:

“(1) Mamy automatic camera
(1) 12 inch “Sonny” T.V. set, colored with remote control.
(1) Micro oven
(1) Electric fan (tall, adjustable stand)
(1) Office safe with (2) drawers and safe
(1) Electric Washing Machine
(1) Office desk and chair
(1) Double bed suits
(1) Mirror/dresser
(1) Heavy duty voice/working mechanic
(1) “Sony” Beta-Movie camera
(1) Suitcase with personal belongings
(1) Cardboard box with belongings
(1) Guitar Amplifier
(1) Hanger with men's suit (white).”

To return to the plaintiff, (1) Hi-Fi Stereo equipment left at 444 Arquiza Street, Ermita, Manila, as well as the Fronte Suzuki car.

- (4) To account for the monies (sic) deposited with the joint account of the plaintiff and defendant (Account No. 018-0-807950); and to restore to the plaintiff all the monies (sic) spent by the defendant without proper authority;
- (5) To pay the amount of P5,000.00 by way of attorney's fees, and the costs of suit.

SO ORDERED.[43]

However, after due proceedings in the RTC of Davao City, in Civil Case No. 17,817, the trial court rendered judgment on September 28, 1995 in favor of Ederlina, the dispositive portion of which reads:

WHEREFORE, the Court cannot give due course to the complaint and hereby orders its dismissal. The counterclaims of the defendant are likewise dismissed.

SO ORDERED.[44]

The trial court ruled that based on documentary evidence, the purchaser of the three parcels of land subject of the complaint was Ederlina. The court further stated that even if Alfred was the buyer of the properties, he had no cause of action against Ederlina for the recovery of the same because as an alien, he was disqualified from acquiring and owning lands in the Philippines. The sale of the three parcels of land to the petitioner was null and void ab initio. Applying the *pari delicto* doctrine, the petitioner was precluded from recovering the properties from the respondent.

Alfred appealed the decision to the Court of Appeals[45] in which the petitioner posited the view that although he prayed in his complaint in the court a quo that he be declared the owner of the three parcels of land, he had no intention of owning the same permanently. His principal intention therein was to be declared the transient owner for the purpose of selling the properties at public auction, ultimately enabling him to recover the money he had spent for the purchase thereof.

On March 8, 2000, the CA rendered a decision affirming in toto the decision of the RTC. The appellate court ruled that the petitioner knowingly violated the Constitution; hence, was barred from recovering the money used in the purchase of the three parcels of land. It held that to allow the petitioner to recover the money used for the purchase of the properties would embolden aliens to violate the Constitution, and defeat, rather than enhance, the public policy.[46]

Hence, the petition at bar.

The petitioner assails the decision of the court contending that:

THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE RULE OF IN PARI DELICTO IN THE INSTANT CASE BECAUSE BY THE FACTS AS NARRATED IN THE DECISION IT IS APPARENT THAT THE PARTIES ARE NOT EQUALLY GUILTY BUT RATHER IT WAS THE RESPONDENT WHO EMPLOYED FRAUD AS WHEN SHE DID NOT INFORM PETITIONER THAT SHE WAS ALREADY MARRIED TO ANOTHER GERMAN NATIONAL AND WITHOUT SUCH FRAUDULENT DESIGN PETITIONER COULD NOT HAVE PARTED WITH HIS MONEY FOR THE PURCHASE OF THE PROPERTIES.[47]

and

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE INTENTION OF THE PETITIONER IS NOT TO OWN REAL PROPERTIES IN THE PHILIPPINES BUT TO SELL THEM AT PUBLIC AUCTION TO BE ABLE TO RECOVER HIS MONEY USED IN PURCHASING THEM.[48]

Since the assignment of errors are intertwined with each other, the Court shall resolve the same simultaneously.

The petitioner contends that he purchased the three parcels of land subject of his complaint because of his desire to marry the respondent, and not to violate the Philippine Constitution. He was, however, deceived by the respondent when the latter failed to disclose her previous marriage to Klaus Muller. It cannot, thus, be said that he

and the respondent are “equally guilty;” as such, the *pari delicto* doctrine is not applicable to him. He acted in good faith, on the advice of the respondent’s uncle, Atty. Mardoecheo Camporedondo. There is no evidence on record that he was aware of the constitutional prohibition against aliens acquiring real property in the Philippines when he purchased the real properties subject of his complaint with his own funds. The transactions were not illegal *per se* but merely prohibited, and under Article 1416 of the New Civil Code, he is entitled to recover the money used for the purchase of the properties. At any rate, the petitioner avers, he filed his complaint in the court *a quo* merely for the purpose of having him declared as the owner of the properties, to enable him to sell the same at public auction. Applying by analogy Republic Act No. 133[49] as amended by Rep. Act No. 4381 and Rep. Act No. 4882, the proceeds of the sale would be remitted to him, by way of refund for the money he used to purchase the said properties. To bar the petitioner from recovering the subject properties, or at the very least, the money used for the purchase thereof, is to allow the respondent to enrich herself at the expense of the petitioner in violation of Article 22 of the New Civil Code.

The petition is bereft of merit.

Section 14, Article XIV of the 1973 Constitution provides, as follows:

Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands in the public domain.[50]

Lands of the public domain, which include private lands, may be transferred or conveyed only to individuals or entities qualified to acquire or hold private lands or lands of the public domain. Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain. Hence, they have also been disqualified from acquiring private lands.[51]

Even if, as claimed by the petitioner, the sales in question were entered into by him as the real vendee, the said transactions are in violation of the Constitution; hence, are null and void *ab initio*. [52] A contract that violates the Constitution and the law, is null and void and vests no rights and creates no obligations. It produces no legal effect at all. [53] The petitioner, being a party to an illegal contract, cannot come into a court of law and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in a contract or transaction which involves his own moral turpitude may not maintain an action for his losses. To him who moves in deliberation and premeditation, the law is unyielding. [54] The law will not aid either party to an illegal contract or agreement; it leaves the parties where it finds them. [55] Under Article 1412 of the New Civil Code, the petitioner cannot have the subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. [56] Equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly. [57] Where the wrong of one party equals that of the other, the defendant is in the stronger position ... it signifies that in such a situation, neither a court of equity nor a court of law will administer a remedy. [58] The rule is expressed in the maxims: *EX DOLO MALO NON ORITUR ACTIO* and *IN PARI DELICTO POTIOR EST CONDITIO DEFENDENTIS*. [59]

The petitioner cannot feign ignorance of the constitutional proscription, nor claim that he acted in good faith, let alone assert that he is less guilty than the respondent. The petitioner is charged with knowledge of the constitutional prohibition. [60] As can be gleaned from the decision of the trial court, the petitioner was fully aware that he was disqualified from acquiring and owning lands under Philippine law even before he purchased the properties in question; and, to skirt the constitutional prohibition, the petitioner had the deed of sale placed under the respondent’s name as the sole vendee thereof:

Such being the case, the plaintiff is subject to the constitutional restrictions governing the acquisition of real properties in the Philippines by aliens.

From the plaintiff's complaint before the Regional Trial Court, National Capital Judicial Region, Branch 84, Quezon City in Civil Case No. Q-46350 he alleged:

xxx "That on account that foreigners are not allowed by the Philippine laws to acquire real properties in their name as in the case of my vendor Miss Victoria Vinuya (sic) although married to a foreigner, we agreed and I consented in having the title to subject property placed in defendant's name alone although I paid for the whole price out of my own exclusive funds." (paragraph IV, Exhibit "W.")

and his testimony before this Court which is hereby quoted:

ATTY. ABARQUEZ:

Q. In whose name the said house and lot placed, by the way, where is his house and lot located?

A. In 14 Fernandez St., San Francisco, del Monte, Manila.

Q. In whose name was the house placed?

A. Ederlina Catito because I was informed being not a Filipino, I cannot own the property. (tsn, p. 11, August 27, 1986).

xxx

xxx

xxx

COURT:

Q. So you understand that you are a foreigner that you cannot buy land in the Philippines?

A. That is correct but as she would eventually be my wife that would be owned by us later on. (tsn, p. 5, September 3, 1986)

xxx

xxx

xxx

Q. What happened after that?

A. She said you foreigner you are using Filipinos to buy property.

Q. And what did you answer?

A. I said thank you very much for the property I bought because I gave you a lot of money (tsn., p. 14, *ibid*).

It is evident that the plaintiff was fully aware that as a non-citizen of the Philippines, he was disqualified from validly purchasing any land within the country.[61]

The petitioner's claim that he acquired the subject properties because of his desire to marry the respondent, believing that both of them would thereafter jointly own the said properties, is belied by his own evidence. It is merely an afterthought to salvage a lost cause. The petitioner admitted on cross-examination that he was all along legally married to Teresita Santos Frenzel, while he was having an amorous relationship with the respondent:

ATTY. YAP:

Q

When you were asked to identify yourself on direct examination you claimed before this Honorable Court that your status is that of being married, do you confirm that?

A

Yes, sir.

Q

To whom are you married?

A To a Filipina, since 1976.

Q Would you tell us who is that particular person you are married since 1976?

A Teresita Santos Frenzel.

Q Where is she now?

A In Australia.

Q Is this not the person of Teresita Frenzel who became an Australian citizen?

A I am not sure, since 1981 we were separated.

Q You were only separated, in fact, but not legally separated?

A Thru my counsel in Australia I filed a separation case.

Q As of the present you are not legally divorce[d]?

A I am still legally married.[62]

The respondent was herself married to Klaus Muller, a German citizen. Thus, the petitioner and the respondent could not lawfully join in wedlock. The evidence on record shows that the petitioner in fact knew of the respondent's marriage to another man, but nonetheless purchased the subject properties under the name of the respondent and paid the purchase prices therefor. Even if it is assumed *gratia arguendi* that the respondent and the petitioner were capacitated to marry, the petitioner is still disqualified to own the properties in tandem with the respondent.[63]

The petitioner cannot find solace in Article 1416 of the New Civil Code which reads:

Art. 1416. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.[64]

The provision applies only to those contracts which are merely prohibited, in order to benefit private interests. It does not apply to contracts void *ab initio*. The sales of three parcels of land in favor of the petitioner who is a foreigner is illegal *per se*. The transactions are void *ab initio* because they were entered into in violation of the Constitution. Thus, to allow the petitioner to recover the properties or the money used in the purchase of the parcels of land would be subversive of public policy.

Neither may the petitioner find solace in Rep. Act No. 133, as amended by Rep. Act No. 4882, which reads:

SEC. 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, but the mortgagee or his successor-in-interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession and shall not bid or take part in any sale of such real property in case of foreclosure: Provided, That said mortgagee or successor-in-interest may take possession of said property after default in accordance with the prescribed judicial procedures for foreclosure and receivership and in no case exceeding five years from actual possession.[65]

From the evidence on record, the three parcels of land subject of the complaint were not mortgaged to the petitioner by the owners thereof but were sold to the respondent as the vendee, albeit with the use of the petitioner's personal funds.

Futile, too, is petitioner's reliance on Article 22 of the New Civil Code which reads:

Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.[66]

The provision is expressed in the maxim: "MEMO CUM ALTERIUS DETRIMENTO PROTEST" (No person should unjustly enrich himself at the expense of another). An action for recovery of what has been paid without just cause has been designated as an *accion in rem verso*. [67] This provision does not apply if, as in this case, the action is proscribed by the Constitution or by the application of the *pari delicto* doctrine.[68] It may be unfair and unjust to bar the petitioner from filing an *accion in rem verso* over the subject properties, or from recovering the money he paid for the said properties, but, as Lord Mansfield stated in the early case of *Holman vs. Johnson*: [69] "The objection that a contract is immoral or illegal as between the plaintiff and the defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff."

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. The decision of the Court of Appeals is AFFIRMED in toto.

Costs against the petitioner.

SO ORDERED.

Bellosillo, J., (Chairman), Austria-Martinez, and Tinga, JJ., concur.

Quisumbing, on leave.

[1] Penned by Justice Martin Villarama, Jr., with Presiding Justice Cancio C. Garcia and Justice Andres B. Reyes, Jr. concurring.

[2] Penned by Judge William M. Layague.

[3] The petitioner adduced testimonial and documentary evidence. The respondent did not adduce any testimonial evidence, but adduced as Exhibit “5,” the petitioner’s complaint in Civil Case No. 18,750-87 filed with the RTC of Davao City.

[4] Exhibits “A” to “D-4.”

[5] Exhibits “B” and “B-1.”

[6] Exhibit “C.”

[7] Exhibit “E.”

[8] Exhibit “D.”

[9] Exhibit “F.”

[10] Exhibit “G.”

[11] Exhibits “H” to “H-12.”

[12] Exhibit “J.”

[13] Exhibits “K” to “K-5.”

[14] Exhibit “L.”

[15] Exhibit “M.”

[16] Exhibit “V.”

[17] Exhibit “N.”

[18] Exhibits “O” to “O-4.”

[19] Exhibit “P-4.”

[20] Exhibit “P” & “P-1.”

[21] Exhibit “Q” & “Q-1.”

[22] Exhibits “Q-4” to “Q-6.”

- [23] Exhibit “Q-20.”
- [24] Exhibits “V-4”-“V-10.”
- [25] Exhibit “R-5.”
- [26] Exhibit “R-13.”
- [27] Exhibit “BB.”
- [28] Exhibits “S” and “T.”
- [29] Exhibit “BB.”
- [30] Exhibits “CC” to “CC-4.”
- [31] Exhibit “U;” Entitled and docketed as Alfred Fritz Frenzel vs. Ederlina P. Catito, Civil Case No. 46350.
- [32] Exhibit “GG.”
- [33] Entitled and docketed as Alfred Fritz Frenzel vs. Ederlina P. Catito, Civil Case No. Q-46350.
- [34] Exhibit “W.”
- [35] Entitled and docketed as Alfred Frenzel vs. Ederlina P. Catito, Civil Case No. 17,817.
- [36] Records, p. 2.
- [37] Records, pp. 4-5.
- [38] Exhibit “5.”
- [39] Records, pp. 13-16.
- [40] Docketed as Civil Case No. 18,750-87.
- [41] Exhibit “5;” Records, pp. 194-198
- [42] Exhibit “5-D;” Records, pp. 197-198.
- [43] Exhibit “X-2”-“X-3.”
- [44] Records, p. 232.
- [45] Docketed as CA-G.R. CV. No. 53485.
- [46] Rollo, p. 30.
- [47] Id., at 16.
- [48] Id., at 19.
- [49] An act to authorize the mortgage of private real property in favor of any individual, corporation or association subject to certain conditions.
- [50] Supra. The conveyances subject of the case were executed when the 1973 Constitution was in effect.
- [51] Ong Ching Po vs. Court of Appeals, 239 SCRA 341 [1994].
- [52] Alexander Krivenko, vs. Register of Deeds, et al., 79 Phil. 461 [1947]; Rellosa vs. Hun, 93 Phil. 827 [1953];

Caoile vs. Peng, 93 Phil. 861 [1953]; Ong Ching Po vs. Court of Appeals, *supra*.

[53] Francisco Chavez vs. Presidential Commission on Good Government, et al., 307 SCRA 394 [1999].

[54] Aikman vs. City of Wheeling, Southeastern Reporter, 667 [1938].

[55] Rellosa vs. Hun, *supra*.

[56] ART. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking. . .

[57] Corkins vs. Ritter, 40 N.W., Reporter, 2d 726 [1950], Daley vs. City of Melvindale, 260 N.W. Reporter, 898 [1935].

[58] 19 Am. Jur., Equity, Section 478.

[59] Bough & Bough vs. Cantiveros and Hanopol, 40 Phil. 209 [1919], Reporter.

[60] Cheesman vs. Intermediate Appellate Court, et al., 193 SCRA 93 [1991].

[61] Records, pp. 230-231.

[62] TSN, 7 April 1987, pp. 2-3 (Frenzel).

[63] See note 57.

[64] *Supra*.

[65] *Supra*.

[66] *Supra*.

[67] *Id.*, at 85.

[68] Tolentino, Civil Code of the Philippines, 1990 ed., Vol. I, p. 85.

[69] Cited in Marissey vs. Bologna, 123 So.2d 537 [1960].

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