

**ANTONIO K. LITONJUA AND AURELIO K. LITONJUA, JR.,
PETITIONERS, VS. MARY ANN GRACE FERNANDEZ, HEIRS OF PAZ
TICZON ELEOSIDA, REPRESENTED BY GREGORIO T. ELEOSIDA,
HEIRS OF DOMINGO ...**

G.R. No. 148116. April 14, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 64940, which reversed and set aside the June 23, 1999 Decision[2] of the Regional Trial Court of Pasig City, Branch 68, in Civil Case No. 65629, as well as its Resolution dated April 30, 2001 denying the petitioners' motion for reconsideration of the aforesaid decision.

The heirs of Domingo B. Ticzon[3] are the owners of a parcel of land located in San Pablo City, covered by Transfer Certificate of Title (TCT) No. T-36766 of the Register of Deeds of San Pablo City.[4] On the other hand, the heirs of Paz Ticzon Eleosida, represented by Gregorio T. Eleosida, are the owners of a parcel of land located in San Pablo City, covered by TCT No. 36754, also of the Register of Deeds of San Pablo City.[5]

The Case for the Petitioners

Sometime in September 1995, Mrs. Lourdes Alimario and Agapito Fisico who worked as brokers, offered to sell to the petitioners, Antonio K. Litonjua and Aurelio K. Litonjua, Jr., the parcels of land covered by TCT Nos. 36754 and 36766. The petitioners were shown a locator plan and copies of the titles showing that the owners of the properties were represented by Mary Mediatrix Fernandez and Gregorio T. Eleosida, respectively. The brokers told the petitioners that they were authorized by respondent Fernandez to offer the property for sale. The petitioners, thereafter, made two ocular inspections of the property, in the course of which they saw some people gathering coconuts.

In the afternoon of November 27, 1995, the petitioners met with respondent Fernandez and the two brokers at the petitioners' office in Mandaluyong City.[6] The petitioners and respondent Fernandez agreed that the petitioners would buy the property consisting of 36,742 square meters, for the price of P150 per square meter, or the total sum of P5,098,500. They also agreed that the owners would shoulder the capital gains tax, transfer tax and the expenses for the documentation of the sale. The petitioners and respondent Fernandez also agreed to meet on December 8, 1995 to finalize the sale. It was also agreed upon that on the said date, respondent Fernandez would present a special power of attorney executed by the owners of the property, authorizing her to sell the property for and in their behalf, and to execute a deed of absolute sale thereon. The petitioners would also remit the purchase price to the owners, through respondent Fernandez. However, only Agapito Fisico attended the meeting. He informed the petitioners that respondent Fernandez was encountering some problems with the tenants and was trying to work out a settlement with them.[7] After a few weeks of waiting, the petitioners wrote respondent

Fernandez on January 5, 1995, demanding that their transaction be finalized by January 30, 1996.[8]

When the petitioners received no response from respondent Fernandez, the petitioners sent her another Letter[9] dated February 1, 1996, asking that the Deed of Absolute Sale covering the property be executed in accordance with their verbal agreement dated November 27, 1995. The petitioners also demanded the turnover of the subject properties to them within fifteen days from receipt of the said letter; otherwise, they would have no option but to protect their interest through legal means.

Upon receipt of the above letter, respondent Fernandez wrote the petitioners on February 14, 1996[10] and clarified her stand on the matter in this wise:

1) It is not true I agreed to shoulder registration fees and other miscellaneous expenses, etc. I do not recall we ever discussed about them. Nonetheless, I made an assurance at that time that there was no liens/encumbrances and tenants on my property (TCT – 36755).

2) It is not true that we agreed to meet on December 8, 1995 in order to sign the Deed of Absolute Sale. The truth of the matter is that you were the one who emphatically stated that you would prepare a Contract to Sell and requested us to come back first week of December as you would be leaving the country then. In fact, what you were demanding from us was to apprise you of the status of the property, whether we would be able to ascertain that there are really no tenants. Ms. Alimario and I left your office, but we did not assure you that we would be back on the first week of December.

Unfortunately, some people suddenly appeared and claiming to be “tenants” for the entire properties (including those belonging to my other relatives.) Another thing, the Barangay Captain now refuses to give a certification that our properties are not tenanted.

Thereafter, I informed my broker, Ms. Lulu Alimario, to relay to Mr. Agapito that due to the appearance of “alleged tenants” who are demanding for a one-hectare share, my cousin and I have thereby changed our mind and that the sale will no longer push through. I specifically instructed her to inform you thru your broker that we will not be attending the meeting to be held sometime first week of December.

In view thereof, I regret to formally inform you now that we are no longer selling the property until all problems are fully settled. We have not demanded and received from you any earnest money, thereby, no obligations exist. In the meantime, we hope that in the future we will eventually be able to transact business since we still have other properties in San Pablo City.[11]

Appended thereto was a copy of respondent Fernandez’ letter to the petitioners dated January 16, 1996, in response to the latter’s January 5, 1996 letter.[12]

On April 12, 1996, the petitioners filed the instant Complaint for specific performance with damages[13] against respondent Fernandez and the registered owners of the property. In their complaint, the petitioners alleged, inter alia, the following:

- On 27 November 1995, defendants offered to sell to plaintiffs two (2) parcels of land covered by Transfer Certificates of Title Nos. 36766 and 36754 measuring a total of 36,742 square meters in Barrio Concepcion, San Pablo City. ... After a brief negotiation, defendants committed and specifically agreed to sell to plaintiffs 33,990 square meters of the two (2) aforementioned parcels of land at P150.00 per square meter.

- The parties also unequivocally agreed to the following:

(a) The transfer tax and all the other fees and expenses for the titling of the subject property in plaintiffs’ names would be for defendants’ account.

(b) The plaintiffs would pay the entire purchase price of P5,098,500.00 for the aforementioned 33,990 square meters of land in plaintiffs’ office on 8 December 1995.

- Defendants repeatedly assured plaintiffs that the two (2) subject parcels of land were free from all liens and encumbrances and that no squatters or tenants occupied them.

- Plaintiffs, true to their word, and relying in good faith on the commitment of defendants, pursued the purchase of the subject parcels of lands. On 5 January 1996, plaintiffs sent a letter of even date to defendants, ... setting the date of sale and payment on 30 January 1996.

7.1 Defendants received the letter on 12 January 1996 but did not reply to it.

- On 1 February 1996, plaintiffs again sent a letter of even date to defendants demanding execution of the Deed of Sale.

8.1 Defendants received the same on 6 February 1996. Again, there was no reply. Defendants thus reneged on their commitment a second time.

- On 14 February 1996, defendant Fernandez sent a written communication of the same date to plaintiffs enclosing therein a copy of her 16 January 1996 letter to plaintiffs which plaintiffs never received before. Defendant Fernandez stated in her 16 January 1996 letter that despite the meeting of minds among the parties over the 33,990 square meters of land for P150.00 per square meter on 27 November 1995, defendants suddenly had a change of heart and no longer wished to sell the same. Paragraph 6 thereof unquestionably shows defendants' previous agreement as above-mentioned and their unjustified breach of their obligations under it. ...

- Defendants cannot unilaterally, whimsically and capriciously cancel a perfected contract to sell. ...

- Plaintiffs intended to use the subject property for their subdivision project to support plaintiffs' quarry operations, processing of aggregate products and manufacture of construction materials. Consequently, by reason of defendants' failure to honor their just obligations, plaintiffs suffered, and continue to suffer, actual damages, consisting in unrealized profits and cost of money, in the amount of at least P5 Million.

- Plaintiffs also suffered sleepless nights and mental anxiety on account of defendants' fraudulent actuations for which reason defendants are liable to plaintiffs for moral damages in the amount of at least P1.5 Million.

- By reason of defendants' above-described fraudulent actuations, plaintiffs, despite their willingness and ability to pay the agreed purchase price, have to date been unable to take delivery of the title to the subject property. Defendants acted in a wanton, fraudulent and malevolent manner in violating the contract to sell. By way of example or correction for the public good, defendants are liable to plaintiff for exemplary damages in the amount of P500,000.00.

- Defendants' bad faith and refusal to honor their just obligations to plaintiffs constrained the latter to litigate and to engage the services of undersigned counsel for a fee in the amount of at least P250,000.00.[14]

The petitioners prayed that, after due hearing, judgment be rendered in their favor ordering the respondents to –

(a) Secure at defendants' expense all clearances from the appropriate government agencies that will enable defendants to comply with their obligations under the Contract to Sell;

(b) Execute a Contract to Sell with terms agreed upon by the parties;

(c) Solidarily pay the plaintiffs the following amounts:

- P5,000,000.00 in actual damages;

- P1,500,000.00 in moral damages;

- P500,000.00 in exemplary damages;

- P250,000.00 in attorney's fees.[15]

On July 5, 1996, respondent Fernandez filed her Answer to the complaint.[16] She claimed that while the petitioners offered to buy the property during the meeting of November 27, 1995, she did not accept the offer; thus, no verbal contract to sell was ever perfected. She specifically alleged that the said contract to sell was unenforceable for failure to comply with the statute of frauds. She also maintained that even assuming arguendo that she had, indeed, made a commitment or promise to sell the property to the petitioners, the same was not binding upon her in the absence of any consideration distinct and separate from the price. She, thus, prayed that judgment be rendered as follows:

- Dismissing the Complaint, with costs against the plaintiffs;

- On the COUNTERCLAIM, ordering plaintiffs to pay defendant moral damages in the amount of not less than P2,000,000.00 and exemplary damages in the amount of not less than P500,000.00 and attorney's fees and reimbursement expenses of litigation in the amount of P300,000.00.[17]

On September 24, 1997, the trial court, upon motion of the petitioners, declared the other respondents in default for failure to file their responsive pleading within the reglementary period.[18] At the pre-trial conference held on March 2, 1998, the parties agreed that the following issues were to be resolved by the trial court: (1) whether or not there was a perfected contract to sell; (2) in the event that there was, indeed, a perfected contract to sell, whether or not the respondents breached the said contract to sell; and (3) the corollary issue of damages.[19]

Respondent Fernandez testified that she requested Lourdes Alimario to look for a buyer of the properties in San Pablo City "on a best offer basis." She was later informed by Alimario that the petitioners were interested to buy the properties. On November 27, 1995, along with Alimario and another person, she met with the petitioners in the latter's office and told them that she was at the conference merely to hear their offer, that she could not bind the owners of the properties as she had no written authority to sell the same. The petitioners offered to buy the property at P150 per square meter. After the meeting, respondent Fernandez requested Joy Marquez to secure a barangay clearance stating that the property was free of any tenants. She was surprised to learn that the clearance could not be secured. She contacted a cousin of hers, also one of the owners of the property, and informed him that there was a prospective buyer of the property but that there were tenants thereon. Her cousin told her that he was not selling his share of the property and that he was not agreeable to the price of P150 per square meter. She no longer informed the other owners of the petitioners' offer. Respondent Fernandez then asked Alimario to apprise the petitioners of the foregoing developments, through their agent, Agapito Fisico. She was surprised to receive a letter from the petitioners dated January 5, 1996. Nonetheless, she informed the petitioners that she had changed her mind in pursuing the negotiations in a Letter dated January 18, 1996. When she received petitioners' February 1, 1996 Letter, she sent a Reply-Letter dated February 14, 1996.

After trial on the merits, the trial court rendered judgment in favor of the petitioners on June 23, 1999,[20] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of plaintiffs ANTONIO K. LITONJUA and AURELIO K. LITONJUA and against defendants MARY MEDIATRIX T. FERNANDEZ, HEIRS OF PAZ TICZON ELEOSIDA, represented by GREGORIO T. ELEOSIDA, JOHN DOES and JANE DOES; HEIRS OF DOMINGO B. TICZON, represented by MARY MEDIATRIX T. FERNANDEZ, CRISTETA TICZON, EVANGELINE JILL R. TICZON, ERLINDA T. BENITEZ, DOMINIC TICZON, JOSEFINA LUISA PIAMONTE, JOHN DOES and JANE DOES, ordering defendants to:

- execute a Contract of Sale and/or Absolute Deed of Sale with the terms agreed upon by the parties and to secure all clearances from the concerned government agencies and removal of any tenants from the subject

property at their expense to enable defendants to comply with their obligations under the perfected agreement to sell; and

- pay to plaintiffs the sum of Two Hundred Thousand (P200,000.00) Pesos as and by way of attorney's fees.[21]

On appeal to the Court of Appeals, the respondents ascribed the following errors to the court a quo:

- THE LOWER COURT ERRED IN HOLDING THAT THERE WAS A PERFECTED CONTRACT OF SALE OF THE TWO LOTS ON NOVEMBER 27, 1995.

- THE LOWER COURT ERRED IN NOT HOLDING THAT THE VERBAL CONTRACT OF SALE AS CLAIMED BY PLAINTIFFS-APPELLEES ANTONIO LITONJUA AND AURELIO LITONJUA WAS UNENFORCEABLE.

- THE LOWER COURT ERRED IN HOLDING THAT THE LETTER OF DEFENDANT-APPELLANT FERNANDEZ DATED JANUARY 16, 1996 WAS A CONFIRMATION OF THE PERFECTED SALE AND CONSTITUTED AS WRITTEN EVIDENCE THEREOF.

- THE LOWER COURT ERRED IN NOT HOLDING THAT A SPECIAL POWER OF ATTORNEY WAS REQUIRED IN ORDER THAT DEFENDANT-APPELLANT FERNANDEZ COULD NEGOTIATE THE SALE ON BEHALF OF THE OTHER REGISTERED CO-OWNERS OF THE TWO LOTS.

- THE LOWER COURT ERRED IN AWARDING ATTORNEY'S FEES IN THE DISPOSITIVE PORTION OF THE DECISION WITHOUT STATING THE BASIS IN THE TEXT OF SAID DECISION.[22]

On February 28, 2001, the appellate court promulgated its decision reversing and setting aside the judgment of the trial court and dismissing the petitioners' complaint, as well as the respondents' counterclaim.[23] The appellate court ruled that the petitioners failed to prove that a sale or a contract to sell over the property between the petitioners and the private respondent had been perfected.

Hence, the instant petition for review on certiorari under Rule 45 of the Revised Rules of Court.

The petitioners submit the following issues for the Court's resolution:

- WHETHER OR NOT THERE WAS A PERFECTED CONTRACT OF SALE BETWEEN THE PARTIES.

- WHETHER OR NOT THE CONTRACT FALLS UNDER THE COVERAGE OF THE STATUTE OF FRAUDS.

- WHETHER OR NOT THE DEFENDANTS DECLARED IN DEFAULT ARE BENEFITED BY THE ASSAILED DECISION OF THE COURT OF APPEALS.[24]

The petition has no merit.

The general rule is that the Court's jurisdiction under Rule 45 of the Rules of Court is limited to the review of errors of law committed by the appellate court. As the findings of fact of the appellate court are deemed continued, this Court is not duty-bound to analyze and calibrate all over again the evidence adduced by the parties in the court a quo.[25] This rule, however, is not without exceptions, such as where the factual findings of the Court of Appeals and the trial court are conflicting or contradictory.[26] Indeed, in this case, the findings of the trial court and its conclusion based on the said findings contradict those of the appellate court. However, upon careful review of the records of this case, we find no justification to grant the petition. We, thus, affirm the decision of the appellate court.

On the first and second assignment of errors, the petitioners assert that there was a perfected contract of sale

between the petitioners as buyers and the respondents-owners, through respondent Fernandez, as sellers. The petitioners contend that the perfection of the said contract is evidenced by the January 16, 1996 Letter of respondent Fernandez.[27] The pertinent portions of the said letter are as follows:

... [M]y cousin and I have thereby changed our mind and that the sale will no longer push through. I specifically instructed her to inform you thru your broker that we will not be attending the meeting to be held sometime first week of December.

In view thereof, I regret to formally inform you now that we are no longer selling the property until all problems are fully settled. We have not demanded and received from you any earnest money, thereby, no obligations exist...[28]

The petitioners argue that the letter is a sufficient note or memorandum of the perfected contract, thus, removing it from the coverage of the statute of frauds. The letter specifically makes reference to a sale which respondent Fernandez agreed to initially, but which the latter withdrew because of the emergence of some people who claimed to be tenants on both parcels of land. According to the petitioners, the respondents-owners, in their answer to the complaint, as well as respondent Fernandez when she testified, admitted the authenticity and due execution of the said letter. Besides, when the petitioner Antonio Litonjua testified on the contract of sale entered into between themselves and the respondents-owners, the latter did not object thereto. Consequently, the respondents-owners thereby ratified the said contract of sale. The petitioners thus contend that the appellate court's declaration that there was no perfected contract of sale between the petitioners and the respondents-owners is belied by the evidence, the pleadings of the parties, and the law.

The petitioners' contention is bereft of merit. In its decision, the appellate court ruled that the Letter of respondent Fernandez dated January 16, 1996 is hardly the note or memorandum contemplated under Article 1403(2)(e) of the New Civil Code, which reads:

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 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 of an interest therein.[29]

The appellate court based its ruling on the following disquisitions:

In the case at bar, the letter dated January 16, 1996 of defendant-appellant can hardly be said to constitute the note or memorandum evidencing the agreement of the parties to enter into a contract of sale as it is very clear that defendant-appellant as seller did not accept the condition that she will be the one to pay the registration fees and miscellaneous expenses and therein also categorically denied she had already committed to execute the deed of sale as claimed by the plaintiffs-appellees. The letter, in fact, stated the reasons beyond the control of the defendant-appellant, why the sale could no longer push through – because of the problem with tenants. The trial court zeroed in on the statement of the defendant-appellant that she and her cousin changed their minds, thereby concluding that defendant-appellant had unilaterally cancelled the sale or backed out of her previous commitment. However, the tenor of the letter actually reveals a consistent denial that there was any such commitment on the part of defendant-appellant to sell the subject lands to plaintiffs-appellees. When defendant-appellant used the words “changed our mind,” she was clearly referring to the decision to sell the

property at all (not necessarily to plaintiffs-appellees) and not in selling the property to herein plaintiffs-appellees as defendant-appellant had not yet made the final decision to sell the property to said plaintiffs-appellees. This conclusion is buttressed by the last paragraph of the subject letter stating that “we are no longer selling the property until all problems are fully settled.” To read a definite previous agreement for the sale of the property in favor of plaintiffs-appellees into the contents of this letter is to unduly restrict the freedom of the contracting parties to negotiate and prejudice the right of every property owner to secure the best possible offer and terms in such sale transactions. We believe, therefore, that the trial court committed a reversible error in finding that there was a perfected contract of sale or contract to sell under the foregoing circumstances. Hence, the defendant-appellant may not be held liable in this action for specific performance with damages.[30]

In *Rosencor Development Corporation vs. Court of Appeals*,[31] the term “statute of frauds” is descriptive of statutes which require certain classes of contracts to be in writing. The statute does not deprive the parties of 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 existence 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. The statute is satisfied or, as it is often stated, a contract or bargain is taken within the statute by making and executing a note or memorandum of the contract which is sufficient to state the requirements of the statute.[32] The application of such statute presupposes the existence of a perfected contract. However, for a note or memorandum to satisfy the statute, it must be complete in itself and cannot rest partly in writing and partly in parol. The note or memorandum must contain the names of the parties, the terms and conditions of the contract and a description of the property sufficient to render it capable of identification.[33] Such note or memorandum must contain the essential elements of the contract expressed with certainty that may be ascertained from the note or memorandum itself, or some other writing to which it refers or within which it is connected, without resorting to parol evidence.[34] To be binding on the persons to be charged, such note or memorandum must be signed by the said party or by his agent duly authorized in writing.[35]

In *City of Cebu v. Heirs of Rubi*,[36] we held that the exchange of written correspondence between the parties may constitute sufficient writing to evidence the agreement for purposes of complying with the statute of frauds.

In this case, we agree with the findings of the appellate court that there was no perfected contract of sale between the respondents-owners, as sellers, and the petitioners, as buyers.

There is no documentary evidence on record that the respondents-owners specifically authorized respondent Fernandez to sell their properties to another, including the petitioners. Article 1878 of the New Civil Code provides that a special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration,[37] or to create or convey real rights over immovable property,[38] or for any other act of strict dominion.[39] Any sale of real property by one purporting to be the agent of the registered owner without any authority therefor in writing from the said owner is null and void.[40] The declarations of the agent alone are generally insufficient to establish the fact or extent of her authority.[41] In this case, the only evidence adduced by the petitioners to prove that respondent Fernandez was authorized by the respondents-owners is the testimony of petitioner Antonio Litonjua that respondent Fernandez openly represented herself to be the representative of the respondents-owners,[42] and that she promised to present to the petitioners on December 8, 1996 a written authority to sell the properties.[43] However, the petitioners’ claim was belied by respondent Fernandez when she testified, thus:

Q

Madam Witness, what else did you tell to the plaintiffs?

A

I told them that I was there representing myself as one of the owners of the properties, and I was just there to listen to his proposal because that time, we were just looking for the best offer and I did not have yet any written authorities from my brother and sisters and relatives. I cannot agree on anything yet since it is just a preliminary meeting, and so, I have to secure authorities and relate the matters to my relatives, brother and sisters, sir.

Q

And what else was taken up?

A

Mr. Antonio Litonjua told me that they will be leaving for another country and he requested me to come back on the first week of December and in the meantime, I should make an assurance that there are no tenants in our properties, sir.[44]

The petitioners cannot feign ignorance of respondent Fernandez' lack of authority to sell the properties for the respondents-owners. It must be stressed that the petitioners are noted businessmen who ought to be very familiar with the intricacies of business transactions, such as the sale of real property.

The settled rule is that persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it.[45] In this case, respondent Fernandez specifically denied that she was authorized by the respondents-owners to sell the properties, both in her answer to the complaint and when she testified. The Letter dated January 16, 1996 relied upon by the petitioners was signed by respondent Fernandez alone, without any authority from the respondents-owners. There is no evidence on record that the respondents-owners ratified all the actuations of respondent Fernandez in connection with her dealings with the petitioners. As such, said letter is not binding on the respondents as owners of the subject properties.

Contrary to the petitioners' contention, the letter of January 16, 1996[46] is not a note or memorandum within the context of Article 1403(2) because it does not contain the following: (a) all the essential terms and conditions of the sale of the properties; (b) an accurate description of the property subject of the sale; and, (c) the names of the respondents-owners of the properties. Furthermore, the letter made reference to only one property, that covered by TCT No. T-36755.

We note that the petitioners themselves were uncertain as to the specific area of the properties they were seeking to buy. In their complaint, they alleged to have agreed to buy from the respondents-owners 33,990 square meters of the total acreage of the two lots consisting of 36,742 square meters. In their Letter to respondent Fernandez dated January 5, 1996, the petitioners stated that they agreed to buy the two lots, with a total area of 36,742 square meters.[47] However, in their Letter dated February 1, 1996, the petitioners declared that they agreed to buy a portion of the properties consisting of 33,990 square meters.[48] When he testified, petitioner Antonio Litonjua declared that the petitioners agreed to buy from the respondents-owners 36,742 square meters at P150 per square meter or for the total price of P5,098,500.[49]

The failure of respondent Fernandez to object to parol evidence to prove (a) the essential terms and conditions of the contract asserted by the petitioners and, (b) her authority to sell the properties for the respondents-registered owners did not and should not prejudice the respondents-owners who had been declared in default.[50]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The decision of the appellate court is AFFIRMED IN TOTO. Costs against the petitioners.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Perlita J. Tria Tirona concurring.

[2] Penned by Judge Santiago G. Estrella.

[3] Cristeta R. Ticzon, single; Nellie R. Ticzon, single; Evangeline Jill R. Ticzon, single, all U.S. citizens; Erlinda T. Benitez, married to Lavio Benitez, residents of 379 Niagara Avenue, San Francisco, California; Dominic R. Ticzon, married to Shiela G. Ticzon, U.S. citizen, resident of 397 Coral Ridge Drive, Pacifica, California; Josefina Luisa T. Piamonte, married to Lope Piamonte, Filipino, resident of 346 West Dovan St., #5 Glendale, California, 91023, all of legal age (Exhibits "A" & "1," Records, pp. 7-8).

[4] Exhibits "A" and "1."

[5] Exhibits "B" and "2."

[6] TSN, 18 May 1998, p. 9; TSN, 11 January 1999, p. 5.

[7] Id. at 10-11; Id. at 8.

[8] Exhibit "D."

[9] Exhibit "G."

[10] Exhibit "G," Records, p. 13.

[11] Exhibit "F," Id. at 14.

[12] Ibid.

[13] Records, pp. 1-6.

[14] Id. at 2-4.

[15] Id. at 4-5.

[16] Id. at 25-29.

[17] Id. at 29.

[18] Id. at 90-91.

[19] Id. at 142-143.

[20] Vide, note 2.

[21] Records, p. 334.

[22] CA Rollo, p. 28.

[23] Id. at 107-118.

[24] Rollo, p. 9.

[25] Roble v. Arbasa, 362 SCRA 69 (2001).

[26] Fuentes v. Court of Appeals, 268 SCRA 703 (1997).

[27] Exhibit “F,” Records, p. 14.

[28] Ibid.

[29] Rollo, p. 29.

[30] Id. at 31.

[31] 354 SCRA 119 (2001).

[32] 49 Am. Jur. 133.

[33] Holsz vs. Stephen, 200 N.E. 601 (1936).

[34] Franklin Sugar Refining Co. v. Egerton, 288 Fed. Rep. 698 (1923); Williams v. Morris, 95 U.S. 360 (1877).

[35] Thompson v. New South Coal Co., 34 S. 31 (1903).

[36] 306 SCRA 408 (1999).

[37] Article 1878(5).

[38] Article 1878(12).

[39] Article 1878(15).

[40] City-Lite Realty Corporation v. Court of Appeals, 325 SCRA 385 (2000); Raet v. Court of Appeals, 295 SCRA 677 (1998).

[41] Yu Eng Cho v. Pan American World Airways, Inc., 328 SCRA 717 (2000).

[42] TSN, 18 May 1998, p. 8.

[43] Id. at 10.

[44] TSN, 11 January 1999, p. 7.

[45] Yu Eng Cho v. Pan American World Airways, Inc., *supra*.

[46] Exhibit “F.”

[47] Exhibit “D.”

[48] Exhibit “E.”

[49] TSN, 18 May 1998, p. 8.

[50] Section 28, Rule 130 of the Revised Rules of Evidence.

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