

**SALOME M. CASTILLO, REPRESENTED BY HER ATTORNEY-IN-FACT
ATTY. JOSE M. CASTILLO, PETITIONER, VS. HON. COURT OF
APPEALS, AND SPS. RUBEN AND ERLINDA ASEDILLO, RESPONDENTS.**

G.R. No. 159971. March 25, 2004

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TINGA, J.:

Petitioner Salome M. Castillo (“Castillo”) seeks to set aside the Resolution, dated 17 March 2003, of the Court of Appeals First Division,[1] dismissing her Petition for Review on procedural grounds, as well as the Resolution, dated 17 September 2003, of the Court of Appeals Former First Division, denying her Motion for Reconsideration of the earlier resolution. Hence, the present Petition for Review.

Salome Castillo is a resident of Long Beach, California, and the registered owner of a duly titled[2] parcel of land with improvements, located at 960 Adelina Street, Sampaloc, Manila. On 5 June 1989, Salome Castillo executed a Special Power of Attorney (“SPA”) in favor of her son, Jose M. Castillo (“Jose Castillo”), authorizing the latter, among others things, to sell the property. Jose Castillo caused the publication of an advertisement that the property was for sale for the sum of Two Million Eight Hundred Pesos (P2,800,000.00). The advertisement caught the attention of defendant Erlinda Asedillo, who promptly approached Jose Castillo about purchasing the property. Allegedly, Asedillo agreed to purchase the property for the amount of Two Million Four Hundred Thirty Seven Thousand Five Hundred Pesos (P2,437,500.00). Asedillo issued to Jose Castillo City Trust Check No. 1544262[3] dated 13 June 1995, for One Hundred Thousand Pesos (P100,000.00). However, on the same day, Asedillo instructed City Trust Bank to stop payment of the check. Asedillo also refused to give further payment to Jose Castillo, citing as basis the fact that a notice of lis pendens was annotated on the title of the property. Still, Jose Castillo insisted that Asedillo pay what according to him was the stipulated purchase price. When Asedillo refused to proceed with the sale and give further payment, Jose Castillo, representing Salome Castillo, filed against her a complaint with the Quezon City Metropolitan Trial Court (MTC), Branch 32.[4] In the complaint, captioned “Salome M. Castillo represented by her attorney-in fact, Atty. Jose M. Castillo, Plaintiff, versus Spouses Ruben and Erlinda Asedillo, Defendants”, the plaintiff prayed, among others, that the “earnest money” of One Hundred Thousand Pesos (P100,000.00) covered by the City Trust Check “be forfeited” in her favor.[5]

Jose Castillo, as attorney-in-fact of his mother, alleged that Asedillo had agreed to purchase the property, and that the amount of One Hundred Thousand Pesos (P100,000.00) represented “earnest money” in relation to the sale.[6] In support of the allegation, Jose Castillo presented a receipt[7] which he himself signed, stating that he received the amount from Asedillo as “earnest money” in connection with the sale of the property.

On the other hand, Asedillo denied that there was a definite agreement to purchase the property. She claimed that her negotiations with Jose Castillo were merely preliminary, with the final agreement to purchase, if any, subject to verification, confirmation and eventual documentation by her husband.[8] She further alleged that Jose Castillo had initially demanded a large amount for deposit, but she agreed to give as deposit only the token amount of One Hundred Thousand Pesos (P100,000.00). On 14 June 1995, Asedillo’s husband, Atty. Ruben Asedillo, confronted Jose Castillo, inquiring whether the SPA signed by Salome Castillo in 1989 was still good; whether Salome

Castillo was still alive considering that her son Jose appeared to be already in his sixties; and whether the property was paraphernal.[9] Jose Castillo allegedly evaded the questions and instead demanded that the sale push through, since the contract of sale was already perfected.

The MTC dismissed the complaint, holding that no contract of sale was perfected but only a contract to sell which depended on the conditions laid down by Asedillo.[10] On appeal, the Quezon City Regional Trial Court (RTC), Branch 99,[11] initially reversed the MTC,[12] but on Asedillo's Motion for Reconsideration later upheld the MTC Decision.[13] Salome Castillo, represented by Jose Castillo, then filed a Petition for Review with the Court of Appeals.

The assailed Resolution of the Court of Appeals First Division dated 17 March 2003 dismissed the petition on the following grounds, viz: the certification of non-forum shopping was not signed by Atty. Jose M. Castillo as attorney-in-fact of the petitioner, and even if duly signed, the certification could be properly repudiated since the attached SPA executed by Salome Castillo is merely a photocopy and does not bear the acknowledgement page; the petitioner failed to submit the mandatory written explanation on why copies of the petition were served upon respondents by way of registered mail rather than through personal service; and the attached RTC decision was only a photocopy while the MTC decision was not even attached.[14] Castillo moved to reconsider the ruling of the Court of Appeals, citing substantial compliance and resort to a liberal application of procedural rules. The Court of Appeals denied the Motion for Reconsideration.[15]

Before this Court, Castillo claims that the omissions "are all within the tolerable limit, a matter of sound discretion xxx to overlook." [16] This submission is contrary to procedural law and jurisprudence.

Jose Castillo failed to sign the "Certification on Non-Forum Shopping." Thus, he failed to comply with the requirement ordained by Section 2, Rule 42 and made mandatory by Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides that failure to comply with the certification on non-forum shopping requirement is not curable by mere amendment, but shall be cause for the dismissal of the case without prejudice. Moreover, the second page of the SPA which is the page containing the acknowledgement was not attached to the Petition filed with the Court of Appeals and it is only a mere photocopy. As noted in the assailed Resolution, the Court of Appeals could very well repudiate the certification on that ground.[17] Likewise the failure to provide a written explanation on why copies of the petition were served by registered mail to the respondents violates Section 11, Rule 13 of the 1997 Rules on Civil Procedure. That is another mandatory rule and violation thereof is cause to consider the pleading as not having been filed at all. Finally, Castillo's failure to attach a duplicate original or true copy of the assailed judgment of the RTC contravenes Section 2, Rule 42 of the Rules of Civil Procedure and under Section 3 of the same Rule such a lapse constitutes ground for the dismissal of the Petition for Review.

Clearly then, the dismissal by the Court of Appeals of Castillo's Petition is warranted under the Rules and does not constitute reversible error. Strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[18]

Castillo also sought the Court's examination of what she has characterized as "the more substantive issue," [19] namely: whether "with the payment of earnest money was there a perfected contract of sale or was there a mere contract to sell." This submission is misleading, as it assumes that the issue is legal rather than factual. However, an examination of the assailed trial court decisions reveals that the disposal of the case requires a determination of the true circumstances surrounding the negotiations between Jose Castillo and Erlinda Asedillo. The MTC and RTC arrived at the twin factual findings that there was no perfected contract of sale and that the amount covered by the check issued by Asedillo does not constitute earnest money. Not a being a trier of facts, this Court has to

accord due credence to the factual conclusions reached by the MTC and the RTC, especially so when their conclusions are more than amply supported by the evidence.

Significantly, Salome Castillo lost her case at three levels of the judiciary, namely at the MTC, the RTC and the Court of Appeals.

One final note. In connection with the controversy subject of this case, Jose Castillo has consistently relied upon the SPA signed by his mother Salome Castillo as the basis of his representation of the latter. He used the SPA in filing the complaint before the MTC in 1994, in appealing the MTC Decision to the RTC in 1998, in elevating the RTC Order to the Court of Appeals in January of 2003, and finally in filing the present Petition with this Court in October of 2003.[20] However, the filing of a case in court in behalf of Soledad Castillo is not one of the acts Jose Castillo is explicitly authorized to do under the SPA. While certain powers in connection with possible litigation involving the property are mentioned in the SPA,[21] significantly it does not include the authority to decide for Soledad Castillo whether or not to file a case in her behalf, let alone an action for the forfeiture of “earnest money” which was not paid in cash but by check and is not supported by any written agreement. What is not included should be deemed excluded.

Even on the assumption that Jose Castillo is empowered under the SPA to file the complaint with the MTC and the present Petition before this Court,[22] still in view of the lapse of a considerable period of time since the time of its execution in 1989 it is doubtful that it still retained in efficacy at the time the present Petition was filed. In fact, the respondents had raised doubts whether the SPA was still effective five (5) years after it was executed. In 1994 when the MTC case was filed, Jose Castillo appeared to the respondents to be in his sixties. Hence, the respondents entertained skepticism as to whether Salome Castillo was still alive and, correspondingly, whether the SPA was still binding at that time. The same misgivings are relevant today ten (10) years later, in fact more than ever, if not on Soledad Castillo’s existence but certainly on her mental capacity in view of her advanced age. As noted before, in filing the current Petition, Jose Castillo relied on the same SPA which her mother executed fifteen (15) years ago.

ACCORDINGLY, the Petition is DENIED, no reversible error having been committed by the Court of Appeals.

SO ORDERED.

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

[1] Decision penned by Justice E.R. Bello, Jr., and concurred in by Presiding Justice C. Garcia and Justice S. Pestaño.

[2] The property is covered by Transfer Certificate of Title No. 102599 issued by the Register of Deeds of Manila, under the name “Salome Castillo, married to Feliberto V. Castillo.” Rollo, p. 30.

[3] See Rollo, p. 87.

[4] Presided by Judge Ofelia Arellano-Marquez.

[5] Rollo, p. 86.

[6] Id. at 83.

[7] Id. at 88.

[8] Id. at 93.

[9] Id. at 32.

[10] Id. at 30-39.

[11] Presided by Judge Rose Marie Alonzo-Legasto.

[12] Rollo, pp. 68-72.

[13] Id. at 79-81.

[14] Id. at 17-18.

[15] Id. at 54.

[16] Id. at 9.

[17] Id. at 17.

[18] Digital Microwave Corp. v. Court of Appeals, G.R. No. 128550, March 16, 2000, 328 SCRA 286.

[19] Rollo, p. 10.

[20] Rollo, pp. 23, 40, 67. 82.

[21] Paragraph No. 4 of the SPA states:

“4. In case of any litigation involving the said property/ies, to attend the pre-trial conference/s; for this purpose, to enter into amicable settlement or submit to arbitration; to enter into stipulations or admissions of facts and of documents, to agree to preliminary conference of the issues to a commissioner, and such other matters as may aid in the prompt disposition of the action or actions. See Rollo, p. 23.

[22] Yet oddly enough, the said SPA is attached to the current Petition only as one of the annexes to the copy of Castillo’s Motion for Reconsideration before the Court of Appeals.

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