

**PURITA PAHUD, SOLEDAD PAHUD, AND IAN LEE CASTILLA
(REPRESENTED BY MOTHER AND ATTORNEY-IN-FACT VIRGINIA
CASTILLA), PETITIONERS, VS. COURT OF APPEALS, SPOUSES
ISAGANI BELARMINO AN...**

G.R. No. 160346. August 25, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For our resolution is a petition for review on certiorari assailing the April 23, 2003 Decision[1] and October 8, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 59426. The appellate court, in the said decision and resolution, reversed and set aside the January 14, 1998 Decision[3] of the Regional Trial Court (RTC), which ruled in favor of petitioners.

The dispute stemmed from the following facts.

During their lifetime, spouses Pedro San Agustin and Agatona Genil were able to acquire a 246-square meter parcel of land situated in Barangay Anos, Los Baños, Laguna and covered by Original Certificate of Title (OCT) No. O-(1655) 0-15.[4] Agatona Genil died on September 13, 1990 while Pedro San Agustin died on September 14, 1991. Both died intestate, survived by their eight (8) children: respondents Eufemia, Raul, Ferdinand, Zenaida, Milagros, Minerva, Isabelita and Virgilio.

Sometime in 1992, Eufemia, Ferdinand and Raul executed a Deed of Absolute Sale of Undivided Shares[5] conveying in favor of petitioners (the Pahuds, for brevity) their respective shares from the lot they inherited from their deceased parents for P525,000.00.[6] Eufemia also signed the deed on behalf of her four (4) other co-heirs, namely: Isabelita on the basis of a special power of attorney executed on September 28, 1991,[7] and also for Milagros, Minerva, and Zenaida but without their apparent written authority.[8] The deed of sale was also not notarized.[9]

On July 21, 1992, the Pahuds paid P35,792.31 to the Los Baños Rural Bank where the subject property was mortgaged.[10] The bank issued a release of mortgage and turned over the owner's copy of the OCT to the Pahuds.[11] Over the following months, the Pahuds made more payments to Eufemia and her siblings totaling to P350,000.00.[12] They agreed to use the remaining P87,500.00[13] to defray the payment for taxes and the expenses in transferring the title of the property.[14] When Eufemia and her co-heirs drafted an extra-judicial settlement of estate to facilitate the transfer of the title to the Pahuds, Virgilio refused to sign it.[15]

On July 8, 1993, Virgilio's co-heirs filed a complaint[16] for judicial partition of the subject property before the RTC of Calamba, Laguna. On November 28, 1994, in the course of the proceedings for judicial partition, a Compromise Agreement[17] was signed with seven (7) of the co-heirs agreeing to sell their undivided shares to Virgilio for P700,000.00. The compromise agreement was, however, not approved by the trial court because Atty. Dimetrio Hilbero, lawyer for Eufemia and her six (6) co-heirs, refused to sign the agreement because he knew of

the previous sale made to the Pahuds.[18]

On December 1, 1994, Eufemia acknowledged having received P700,000.00 from Virgilio.[19] Virgilio then sold the entire property to spouses Isagani Belarmino and Leticia Ocampo (Belarminos) sometime in 1994. The Belarminos immediately constructed a building on the subject property.

Alarmed and bewildered by the ongoing construction on the lot they purchased, the Pahuds immediately confronted Eufemia who confirmed to them that Virgilio had sold the property to the Belarminos.[20] Aggrieved, the Pahuds filed a complaint in intervention[21] in the pending case for judicial partition.

After trial, the RTC upheld the validity of the sale to petitioners. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, the Court orders:

- the sale of the 7/8 portion of the property covered by OCT No. O (1655) O-15 by the plaintiffs as heirs of deceased Sps. Pedro San Agustin and Agatona Genil in favor of the Intervenors-Third Party plaintiffs as valid and enforceable, but obligating the Intervenors-Third Party plaintiffs to complete the payment of the purchase price of P437,500.00 by paying the balance of P87,500.00 to defendant Fe (sic) San Agustin Magsino. Upon receipt of the balance, the plaintiff shall formalize the sale of the 7/8 portion in favor of the Intervenor[s]-Third Party plaintiffs;
- declaring the document entitled "Salaysay sa Pagsang-ayon sa Bilihan" (Exh. "2-a") signed by plaintiff Eufemia San Agustin attached to the unapproved Compromise Agreement (Exh. "2") as not a valid sale in favor of defendant Virgilio San Agustin;
- declaring the sale (Exh. "4") made by defendant Virgilio San Agustin of the property covered by OCT No. O (1655)-O-15 registered in the names of Spouses Pedro San Agustin and Agatona Genil in favor of Third-party defendant Spouses Isagani and Leticia Belarmino as not a valid sale and as inexistent;
- declaring the defendant Virgilio San Agustin and the Third-Party defendants spouses Isagani and Leticia Belarmino as in bad faith in buying the portion of the property already sold by the plaintiffs in favor of the Intervenors-Third Party Plaintiffs and the Third-Party Defendant Sps. Isagani and Leticia Belarmino in constructing the two-[storey] building in (sic)the property subject of this case; and
- declaring the parties as not entitled to any damages, with the parties shouldering their respective responsibilities regarding the payment of attorney[']s fees to their respective lawyers.

No pronouncement as to costs.

SO ORDERED.[22]

Not satisfied, respondents appealed the decision to the CA arguing, in the main, that the sale made by Eufemia for and on behalf of her other co-heirs to the Pahuds should have been declared void and inexistent for want of a written authority from her co-heirs. The CA yielded and set aside the findings of the trial court. In disposing the issue, the CA ruled:

WHEREFORE, in view of the foregoing, the Decision dated January 14, 1998, rendered by the Regional Trial Court of Calamba, Laguna, Branch 92 in Civil Case No. 2011-93-C for Judicial Partition is hereby REVERSED and SET ASIDE, and a new one entered, as follows:

(1)

The case for partition among the plaintiffs-appellees and appellant Virgilio is now considered closed and terminated;

(2)

Ordering plaintiffs-appellees to return to intervenors-appellees the total amount they received from the latter, plus an interest of 12% per annum from the time the complaint [in] intervention was filed on April 12, 1995 until actual payment of the same;

(3)

Declaring the sale of appellant Virgilio San Agustin to appellants spouses, Isagani and Leticia Belarmino[,] as valid and binding;

(4)

Declaring appellants-spouses as buyers in good faith and for value and are the owners of the subject property.

No pronouncement as to costs.

SO ORDERED.[23]

Petitioners now come to this Court raising the following arguments:

- The Court of Appeals committed grave and reversible error when it did not apply the second paragraph of Article 1317 of the New Civil Code insofar as ratification is concerned to the sale of the 4/8 portion of the subject property executed by respondents San Agustin in favor of petitioners;
- The Court of Appeals committed grave and reversible error in holding that respondents spouses Belarminos are in good faith when they bought the subject property from respondent Virgilio San Agustin despite the findings of fact by the court a quo that they were in bad faith which clearly contravenes the presence of long line of case laws upholding the task of giving utmost weight and value to the factual findings of the trial court during appeals; [and]
- The Court of Appeals committed grave and reversible error in holding that respondents spouses Belarminos have superior rights over the property in question than petitioners despite the fact that the latter were prior in possession thereby misapplying the provisions of Article 1544 of the New Civil Code.[24]

The focal issue to be resolved is the status of the sale of the subject property by Eufemia and her co-heirs to the Pahuds. We find the transaction to be valid and enforceable.

Article 1874 of the Civil Code plainly provides:

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Also, under Article 1878,[25] a special power of attorney is necessary for an agent to enter into a contract by which the ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration. Such stringent statutory requirement has been explained in *Cosmic Lumber Corporation v. Court of Appeals*:[26]

[T]he authority of an agent to execute a contract [of] sale of real estate must be conferred in writing and must give him specific authority, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. 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. The express mandate required by law to enable an appointee of an agency (couched) in general terms to sell must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned. For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language.

When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.[27]

In several cases, we have repeatedly held that the absence of a written authority to sell a piece of land is, ipso jure, void,[28] precisely to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another.

Based on the foregoing, it is not difficult to conclude, in principle, that the sale made by Eufemia, Isabelita and her two brothers to the Pahuds sometime in 1992 should be valid only with respect to the 4/8 portion of the subject property. The sale with respect to the 3/8 portion, representing the shares of Zenaida, Milagros, and Minerva, is void because Eufemia could not dispose of the interest of her co-heirs in the said lot absent any written authority from the latter, as explicitly required by law. This was, in fact, the ruling of the CA.

Still, in their petition, the Pahuds argue that the sale with respect to the 3/8 portion of the land should have been deemed ratified when the three co-heirs, namely: Milagros, Minerva, and Zenaida, executed their respective special power of attorneys[29] authorizing Eufemia to represent them in the sale of their shares in the subject property.[30]

While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification,[31] we nevertheless uphold its validity on the basis of the common law principle of estoppel.

Article 1431 of the Civil Code provides:

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

True, at the time of the sale to the Pahuds, Eufemia was not armed with the requisite special power of attorney to dispose of the 3/8 portion of the property. Initially, in their answer to the complaint in intervention,[32] Eufemia and her other co-heirs denied having sold their shares to the Pahuds. During the pre-trial conference, however, they admitted that they had indeed sold 7/8 of the property to the Pahuds sometime in 1992.[33] Thus, the previous denial was superseded, if not accordingly amended, by their subsequent admission.[34] Moreover, in their Comment,[35] the said co-heirs again admitted the sale made to petitioners.[36]

Interestingly, in no instance did the three (3) heirs concerned assail the validity of the transaction made by Eufemia to the Pahuds on the basis of want of written authority to sell. They could have easily filed a case for annulment of the sale of their respective shares against Eufemia and the Pahuds. Instead, they opted to remain silent and left the task of raising the validity of the sale as an issue to their co-heir, Virgilio, who is not privy to the said transaction. They cannot be allowed to rely on Eufemia, their attorney-in-fact, to impugn the validity of the first transaction because to allow them to do so would be tantamount to giving premium to their sister's dishonest and fraudulent deed. Undeniably, therefore, the silence and passivity of the three co-heirs on the issue bar them from making a contrary claim.

It is a basic rule in the law of agency that a principal is subject to liability for loss caused to another by the latter's reliance upon a deceitful representation by an agent in the course of his employment (1) if the representation is authorized; (2) if it is within the implied authority of the agent to make for the principal; or (3) if it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation.[37]

By their continued silence, Zenaida, Milagros and Minerva have caused the Pahuds to believe that they have indeed clothed Eufemia with the authority to transact on their behalf. Clearly, the three co-heirs are now estopped from impugning the validity of the sale from assailing the authority of Eufemia to enter into such transaction.

Accordingly, the subsequent sale made by the seven co-heirs to Virgilio was void because they no longer had any interest over the subject property which they could alienate at the time of the second transaction.[38] *Nemo dat quod non habet*. Virgilio, however, could still alienate his 1/8 undivided share to the Belarminos.

The Belarminos, for their part, cannot argue that they purchased the property from Virgilio in good faith. As a general rule, a purchaser of a real property is not required to make any further inquiry beyond what the certificate of title indicates on its face.[39] But the rule excludes those who purchase with knowledge of the defect in the title of the vendor or of facts sufficient to induce a reasonable and prudent person to inquire into the status of the property.[40] Such purchaser cannot close his eyes to facts which should put a reasonable man on guard, and later claim that he acted in good faith on the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists, or his obvious neglect by closing his eyes to the possibility of the existence of a defect in the vendor's title, will not make him an innocent purchaser for value, if afterwards it turns out that the title was, in fact, defective. In such a case, he is deemed to have bought the property at his own risk, and any injury or prejudice occasioned by such transaction must be borne by him.[41]

In the case at bar, the Belarminos were fully aware that the property was registered not in the name of the immediate transferor, Virgilio, but remained in the name of Pedro San Agustin and Agatona Genil.[42] This fact alone is sufficient impetus to make further inquiry and, thus, negate their claim that they are purchasers for value in good faith.[43] They knew that the property was still subject of partition proceedings before the trial court, and that the compromise agreement signed by the heirs was not approved by the RTC following the opposition of the counsel for Eufemia and her six other co-heirs.[44] The Belarminos, being transferees *pendente lite*, are deemed buyers in *mala fide*, and they stand exactly in the shoes of the transferor and are bound by any judgment or decree which may be rendered for or against the transferor.[45] Furthermore, had they verified the status of the property by asking the neighboring residents, they would have been able to talk to the Pahuds who occupy an adjoining business establishment[46] and would have known that a portion of the property had already been sold. All these existing and readily verifiable facts are sufficient to suggest that the Belarminos knew that they were buying the property at their own risk.

WHEREFORE, premises considered, the April 23, 2003 Decision of the Court of Appeals as well as its October 8, 2003 Resolution in CA-G.R. CV No. 59426, are REVERSED and SET ASIDE. Accordingly, the January 14, 1998 Decision of Branch 92 of the Regional Trial Court of Calamba, Laguna is REINSTATED with the MODIFICATION that the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid only with respect to the 1/8 portion of the subject property. The trial court is ordered to proceed with the partition of the property with dispatch.

SO ORDERED.

Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

Carpio-Morales, J., Please see concurring dissenting opinion.

* Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 679 dated August 3, 2009.

** In lieu of Associate Justice Consuelo-Ynares-Santiago per Special Order No. 678 dated August 3, 2009.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Mercedes Gozo-Dadole and Hakim S. Abdulwahid, concurring; rollo, pp. 35-45.

- [2] Id. at 47-48.
- [3] Rollo, pp. 121-146.
- [4] Id. at 85-86.
- [5] Id. at 49-50.
- [6] Id. at 37-38.
- [7] Id. at 61.
- [8] Id. at 37.
- [9] Id. at 50, 140.
- [10] Id. at 13.
- [11] Id. at 38.
- [12] Id. at 89-96.
- [13] Id. at 97.
- [14] Id. at 13, 140.
- [15] Id. at 38.
- [16] Id. at 51-54. The complaint was docketed as Civil Case No. 2011-93-C.
- [17] Id. at 69-71.
- [18] Id. at 136, 139.
- [19] Id. at 106.
- [20] Id. at 135-136.
- [21] Id. at 72-84.
- [22] Id. at 145-146.
- [23] Id. at 44-45.
- [24] Id. at 19.
- [25] Article 1878(5) provides:
- Art. 1878. Special powers of attorney are necessary in the following cases:
- x x x x
- (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.
- [26] 332 Phil. 948 (1996).
- [27] Id. at 957-958. (Emphasis supplied, citations omitted.)
- [28] Estate of Lino Olaguer, etc. v. Hon. CA and Emiliano M. Ongjoco, G.R. No. 173312, August 26, 2008;

Dizon v. Court of Appeals, G.R. Nos. 122544 and 124741, January 28, 2003, 396 SCRA 151, 155; AF Realty & Development, Inc. v. Dieselman Freight Services, Co., 424 Phil. 446, 455 (2002); San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, G.R. No. 129459, September 29, 1998, 296 SCRA 631, 648.

[29] Special Power of Attorney of Isabelita San Agustin-Lustenberger was executed on September 28, 1991, rollo, p. 61 (Annex "E"); Special Power of Attorney of Milagros San Agustin-Fortman was executed in December 1992, id. at 62 (Annex "F"); Special Power of Attorney of Minerva San Agustin-Atkinson was executed, undated, but was witnessed by G.R. Stephenson, Commissioner for Oaths, on February 12, 1993, id. at 63 (Annex "G"); and Special Power of Attorney of Zenaida San Agustin-McCrae was executed on May 10, 1993, id. at 64 (Annex "H").

[30] Rollo, p. 20.

[31] CIVIL CODE, Art. 1409 provides in part:

Art. 1409. The following contracts are inexistent and void from the beginning:

x x x x

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[32] I Records, p. 26; Exh. "I-A," entitled Answer to Counterclaim dated December 14, 1993.

[33] II Records, pp. 262-264.

[34] RULES OF COURT, Rule 10, Sec. 5 provides in full:

SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[35] Rollo, pp. 200-204.

[36] Id. at 200.

[37] See De Leon, Comments and Cases on Partnership, Agency and Trusts, 2005 edition, p. 538, citing Mechem, Cases on the Law of Agency, p. 230.

[38] CIVIL CODE, Art. 1409 provides in part:

Art. 1409. The following contracts are inexistent and void from the beginning:

x x x x

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[39] *Lu v. Intermediate Appellate Court*, G.R. No. 70149, January 30, 1989, 169 SCRA 595, 604; *Lopez v. Court of Appeals*, G.R. No. 49739, January 20, 1989, 169 SCRA 271, 275-276.

[40] *Abad v. Guimba*, G.R. No. 157002, July 29, 2005, 465 SCRA 356, 367.

[41] *Bailon-Casilao v. Court of Appeals*, G.R. No. L-78178, April 15, 1988, 160 SCRA 738, 750.

[42] *I Records*, pp. 5-6.

[43] *Guaranteed Homes, Inc. v. Heirs of Maria P. Valdez, et al.*, G.R. No. 171531, January 30, 2009.

[44] *I Records*, pp. at 60-61.

[45] *Voluntad v. Dizon*, G.R. No. 132294, August 26, 1999, 313 SCRA 209.

[46] *Rollo*, p. 16.

CONCURRING AND DISSENTING OPINION

CARPIO MORALES, J.:

The ponencia reinstates the trial court's Decision of January 14, 1998 with the modification that "the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid only with respect to the 1/8 portion of the subject property."^[1]

I submit that the validity of the sale to spouses Belarmino extends to 4/8 or one-half of the property, inclusive of the combined 3/8 share of respondents-sisters Zenaida, Milagros and Minerva, all bearing the maiden surname of San Agustin, thus leaving only one-half of the property to petitioners Purita Pahud, et al. who earlier purchased from Eufemia San Agustin (Eufemia) the property including the 3/8 portion over which no written authority from the three sisters was secured. The ponente, Justice Nachura, in fact, agrees to this proposition "in principle."^[2]

The ponencia even rejects petitioners' contention that the special power of attorney subsequently executed by Zenaida, Milagros and Minerva in favor of Eufemia effectively ratified their earlier purchase of the property insofar as the 3/8 portion is concerned, for the established reason that void contracts or the illegal terms thereof^[3] are not susceptible to ratification. The subsequent execution by the three sisters of the respective special powers of attorney only means that they considered the previous sale null and recognized the salability of their 3/8 portion, thus paving the way for its transfer to Virgilio San Agustin and its eventual sale to the spouses Belarmino.

Indeed, as the ponencia elucidates, Articles 1874 and 1878 of the Civil Code clearly provide that a special power of attorney is necessary for an agent to "enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration" and that specifically in cases of sale of a piece of land or any interest therein through an agent, "the authority of the latter shall be in writing; otherwise the sale shall be void."

The ponencia takes one step further, however, in upholding the validity of the sale of the 3/8 portion belonging to the 3 sisters to petitioner notwithstanding the want of a written authority to sell, by applying the principle of estoppel. It ratiocinates:

While the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification, we nevertheless uphold its validity on the basis of the common law principle of estoppel.

Article 1431 of the Civil Code provides:

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon

True, at the time of the sale to the Pahuds, Eufemia was not armed with the requisite special power of attorney to dispose of the 3/8 portion of the property. Initially, in their answer to the complaint in intervention, Eufemia and her other co-heirs denied having sold their shares to the Pahuds. During the pre-trial conference, however, they admitted that they had indeed sold 7/8 of the property to the Pahuds sometime in 1992. Thus, the previous denial was superseded, if not accordingly amended, by their subsequent admission. Moreover, in their Comment, the said co-heirs again admitted the sale made to petitioners.

Interestingly, in no instance did the three (3) heirs concerned assail the validity of the transaction made by Eufemia to the Pahuds on the basis of want of written authority to sell. They could have easily filed a case for annulment of the sale of their respective shares against Eufemia and the Pahuds. Instead, they opted to remain silent and left the task of raising the validity of the sale as an issue to their co-heir, Virgilio, who is not privy to the said transaction. They cannot be allowed to rely on Eufemia, their attorney-in-fact, to impugn the validity of the first transaction because to allow them to do so would be tantamount to giving premium to their sister's dishonest and fraudulent deed. Undeniably, therefore, the silence and passivity of the three co-heirs on the issue bar them from making a contrary claim.

It is a basic rule in the law of agency that a principal is subject to liability for loss caused to another by the latter's reliance upon a deceitful representation by an agent in the course of his employment (1) if the representation is authorized; (2) if it is within the implied authority of the agent to make for the principal; or (3) if it is apparently authorized, regardless of whether the agent was authorized by him or not to make the representation.

By their continued silence, Zenaida, Milagros and Minerva have caused the Pahuds to believe that they have indeed clothed Eufemia with the authority to transact on their behalf. Clearly, the three co-heirs are now estopped from impugning the validity of the sale from assailing the authority of Eufemia to enter such transaction.[4] (Emphasis and underscoring supplied)

It is from this aspect of the ponencia that I respectfully dissent.

Equity cannot supplant or contravene the law.[5]

Article 1432 of the Civil Code expressly states that the principles of estoppel are adopted "insofar as they are not in conflict with the provisions of this Code," among other laws.

Indeed, estoppel, being a principle in equity, cannot be applied in the presence of a law clearly applicable to the case. The Court is first and foremost a court of law. While equity might tilt on the side of one party, the same cannot be enforced so as to overrule positive provisions of law in favor of the other.[6]

Moreover, the evident purpose of the legal requirement of such written authority is not only to safeguard the interest of an unsuspecting owner from being prejudiced by the unauthorized act of another, but also to caution the buyer to assure himself of the specific authorization of the putative agent. In other words, the drafters of the law already saw the risky predicament of selling lands through agents which, in the absence of a specific law, would otherwise ultimately depend on equity to resolve disputes such as the present case. The law undoubtedly seeks to prevent the following confusion:

Case law tells us that the elements of estoppel are: "first, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; second, the other in fact relies, and relies reasonably or justifiably, upon that communication; third, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his

earlier conduct; and fourth, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action." [7]

The depicted scenario is precisely the misunderstanding between parties to such type of sale which the lawmakers sought to avoid in prescribing the conditions for the validity of such sale of land. The present case is a classic example of a tedious litigation which had ensued as a result of such misunderstanding. This is what the law endeavors to avert. [8] It is not for the Court to suspend the application of the law and revert to equitable grounds in resolving the present dispute.

Assuming arguendo that estoppel can contradict positive law, I submit that Article 1431 of the Civil Code does not apply since it speaks of one's prior admission or representation, without which the other person could not have relied on it before acting accordingly.

The ponencia cites acts or omissions on the part of the three sisters which came after the fact such as their "admission" and "continued silence" which, however, could not retroact to the time of the previous sale as to consider petitioners to have accordingly relied on such admission or representation before buying the property from Eufemia. The application of the principle of estoppel is proper and timely in heading off shrewd efforts at renouncing one's previous acts to the prejudice of another who had dealt honestly and in good faith. [9] It is thus erroneous to conclude that Zenaida, Milagros and Minerva have caused petitioners to believe that they have clothed Eufemia with the authority to transact on their behalf.

Could the three sisters ratify the previous sale through their subsequent acts or omissions? I opine they cannot. The ponencia concedes that "the sale with respect to the 3/8 portion is void by express provision of law and not susceptible to ratification."

The previous sale being violative of an express mandate of law, such cannot be ratified by estoppel. Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. Neither can the defense of illegality be waived. [10] An action or defense for the declaration of the inexistence of a contract does not prescribe. [11] Amid the confusion from the double dealing made by their sibling Eufemia, the three sisters expectedly kept mum about it. Succinctly, their "continued silence" cannot be taken against them. Bargaining away a provision of law should not be countenanced.

Neither can their "admission" to a question of law bind them. The ponencia highlights the admission made by Eufemia and her co-heirs during the pre-trial conference before the trial court and in their Comment on the present petition that they had earlier sold 7/8 of the property to petitioners. These statements could not mean, however, as an admission in petitioners' favor that Zenaida, Milagros and Minerva validly sold their respective shares to petitioners. They could only admit to the statement of fact [12] that the sale took place, but not to the conclusion of law that the sale was valid, precisely because the validity of the sales transaction is at issue as it was contested by the parties.

Further, the textbook citation of the rule involving a principal's responsibility for an agent's misrepresentation within the scope of an agent's authority as annotated by the cited author under Article 1900 of the Civil Code is inapplicable. The qualifying phrase "in the course of his employment" presupposes that an agency relationship is existing. The quoted rule clearly recites that a principal is held liable if the "deceitful representation" (not the agency relationship) is authorized either expressly, impliedly, or apparently. In this case, there was no agency relationship to speak of.

I, therefore, vote to reinstate the trial court's January 14, 1998 Decision with modification that the sale made by respondent Virgilio San Agustin to respondent spouses Isagani Belarmino and Leticia Ocampo is valid with respect to the 4/8 portion of the subject property.

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- [1] Ponencia, p. 12 (underscoring supplied).
- [2] Ponencia, p. 7.
- [3] CIVIL CODE, Art. 1420 in relation to Art. 493.
- [4] Ponencia, pp. 8-10.
- [5] Valdevieso v. Damalerio, 492 Phil. 51, 59 (2005).
- [6] Vide id. A waiver will be inoperative and void if it infringes on the rights of others (Ouano v. Court of Appeals, *infra* at 704).
- [7] Phil. Bank of Communications v. CA, 352 Phil. 1, 9 (1998).
- [8] Cf. Powton Conglomerate, Inc. v. Agcolicol, 448 Phil. 643, 653 (2003) for analogy respecting the vital preconditions to the validity of a contract for additional works under Article 1724 of the Civil Code.
- [9] Vide Pureza v. CA, 352 Phil. 717, 722 (1998).
- [10] Vide Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003).
- [11] CIVIL CODE, Art. 1410.
- [12] RULES OF COURT, Rule 18, Sec. 2 (d). Pre-trial allows the parties to obtain stipulations or admissions of fact and of documents.

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