

**LA URBANA, SOCIEDAD MUTUA DE CONSTRUCCION Y PRESTAMOS,
PLAINTIFF AND APPELLANT, VS. SUSANA VILLASOR AND HER
HUSBAND, EUGENIO VILLANUEVA, DEFENDANTS AND APPELLEES.**

G. R. No. 39806. March 10, 1934

Ponente: HULL, J.

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HULL, J.:

On or about the 4th of January, 1932, the defendant Susana Villasor offered to buy from plaintiff a house and lot situated in the Province of Cavite for the price of P11,000, of which P2,000 was to be paid down and the balance to be paid in monthly installments of P100 a month, all without interest.

At the time that defendant Villasor made this offer, her husband, defendant Eugenio Villanueva, was absent from the Islands. Upon his return his wife told him of the proposition, which, after he had looked into it, did not meet with his approval. There were a number of interviews between Villasor and the agent of plaintiff, La Urbana, the exact character thereof being in some doubt due to the conflicting testimony of the parties, but on January 22, defendant Villasor wrote to plaintiff that the contract should be placed in the name of her mother-in-law, who was the real party in interest. On the same date plaintiff wrote a letter formally accepting the offer and calling upon her to make the deposit and sign the necessary mortgage.

No payment was made, the property remained in the possession of plaintiff, and defendants declined to go ahead with the purchase. Whereupon, plaintiff brought suit in the Court of First Instance of Cavite demanding specific performance.

After trial, judgment was given in favor of the defendants, and plaintiff brings this appeal and asserts that the lower court was in error in holding that the contract was not enforceable due to lack of marital consent on the part of the husband.

There can be no question that at the time the wife made the offer the husband was out of the Islands and the wife did not have that consent. Plaintiff, although it knew that the party with whom it was dealing was under the disability of coverture, made no attempt to secure the consent of the husband. Its contention is virtually that such contracts are only voidable, that the husband's consent need not be expressed but may be implied from the circumstances, and that in the absence of a prompt disavowal on the part of the husband, his consent must be presumed.

Such a contention overlooks the fact that the consent must be an affirmative act on the part of the husband. The law does not provide that all the contracts of the wife shall be valid unless promptly disapproved by the husband. His affirmative act, provided by law, is concurrence not disapproval. Concurrence may well be presumed when by his conduct he has led other parties to believe that his wife was acting with his authority and consent. But such a case is not here presented.

Plaintiff-appellant has therefore no right to specific performance against defendants, and the judgment appealed

from denying that alleged right, is affirmed. Costs against appellant. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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