

**SPOUSES CARLOS VALENZUELA AND FELICITAS H. VALENZUELA,
PETITIONERS, VS. COURT OF APPEALS, AURELIA -ENRIQUEZ AND
SPOUSES BENJAMIN TIMBOL AND CELIA TIMBOL, RESPONDENTS.**

G.R. No. 85281. January 29, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

This is a petition to review on certiorari the decision of the Court of Appeals, dated March 23, 1988, in CA-G.R. No. CV-07548, entitled "Aurelia Enriquez, et al. vs. Spouses Carlos Valenzuela and Felicitas Valenzuela,"[1] the dispositive portion of which reads:

"WHEREFORE, the award of attorney's fees and costs in favor of plaintiff is hereby DELETED; the judgment appealed from is AFFIRMED in all other respects."[2]

The factual background of the controversy culminating in the petition at bar is sufficiently established by the evidence and narrated in the decision of respondent court,[3] which findings we approve and adopt.

The spouses Carlos and Felicitas Valenzuela (hereinafter referred to as "Valenzuelas") are the registered owners of real property consisting of a residential house and lot situated at Barrio Sto. Rosario, Angeles City, Pampanga, which is covered by Transfer Certificate of Title No. 4205.

It appears that sometime in July, 1979, the Valenzuelas wrote from their residence in Canada to respondent Aurelia Enriquez (hereinafter referred to as "Enriquez"), a licensed real estate agent, to look for buyers of the above-mentioned property for P500,000.00. Enriquez located the spouses Benjamin and Celia Timbol (herein referred to as "Timbols") who were willing to buy the property for P500,000.00 and who likewise expressed their willingness to take care of the taxes, agent's commission and other related expenses. This was communicated to the Valenzuelas in an overseas call on February 10, 1980. Thereafter, on March 6, 1980, the Valenzuelas wrote Enriquez stating their conformity to everything she said, that the Timbols will pay in cash and will answer for taxes, agent's commission and other expenses, and that they (Valenzuelas) shall prepare for their trip home to sign the necessary papers when everything is ready. The additional conditions were accepted, and the acceptance communicated by overseas phone call. On March 7, 1980, Enriquez executed a "Binding Receipt to the sale of Lot," acknowledging acceptance of the "earnest money" of P10,000.00 by personal check, issued by the Timbols in the name of Enriquez.

On April 8, 1980, the Valenzuelas arrived in Angeles City. Enriquez tendered the sum of P10,000.00 as initial down payment but the Valenzuelas instructed her to keep the money in the meantime. When the deed of sale was brought to them, the Valenzuelas refused to sign because the stated consideration was P120,000.00, the reduction being intended to reduce the capital gains tax and other fees. The Valenzuelas insisted on the stated price of P500,000.00 so they could repatriate the peso proceeds of the sale pursuant to Central Bank regulations.

After several postponements of the signing, the Timbols finally agreed to indicate the amount of P500,000.00 on

the deed of sale, and the signing of the document was set for May 8, 1980 at the Makati office of the Valenzuelas' relative, Atty. Antonio Abad. Enriquez was able to get the title and other papers only on the said date, but was not able to meet the Valenzuelas at the Makati office of Atty. Abad where the said spouses waited from 8:00 A.M. to 3:00 P.M. for the Timbols, who, however, did not show up. On May 10, 1980, the Valenzuelas left for Canada. Prior to their departure, the Valenzuelas promised to execute a power of attorney in favor of Atty. Antonio Abad or Mr. Henson, the caretaker, as their attorney-in-fact, to sign the deed of sale. The power of attorney, however, was not signed.

Consequently, the Timbols and Enriquez filed an action for specific performance and damages against the Valenzuelas on July 14, 1980 in the then Court of First Instance of Pampanga and Angeles, Branch IV. The trial court rendered judgment on April 15, 1985, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the VALENZUELAS to sign and execute, at their expense, a deed of absolute sale in proper and registerable form over the subject property and improvements thereon, as described in Exh. 'A', in favor of the TIMBOLS, the same to be delivered to the Clerk of this Court within thirty (30) days from the time this judgment becomes final. Within the same period, the TIMBOLS are ordered to deposit the amount of P490,000.00 with said Clerk, representing the price of the property less the P10,000.00 down payment, the same to be released to the DEFENDANTS or their duly authorized representative only after they shall have complied with the execution and delivery of the aforesaid deed of sale. In the event the DEFENDANTS fail to sign, execute and deliver the said deed of sale as herein ordered, the Clerk of this Court is hereby ordered and authorized to sign and execute the same in behalf of the DEFENDANTS. The TIMBOLS shall pay the capital gains tax, real property taxes accruing after the date of execution of the deed of absolute sale, transfer tax, registration fees, documentary stamps and other expenses incidental to the registration of said deed of sale. The DEFENDANTS are further ordered to pay to the TIMBOLS attorney's fees in the amount of P10,000.00 and the costs of this suit. The DEFENDANTS' counterclaim is hereby dismissed for lack of merit."[4]

As earlier stated, respondent Court of Appeals, on appeal of both parties, rendered the aforequoted modified decision now subject of the instant petition.

The basic issues posed by petitioners for resolution are (1) whether or not a contract of sale had been perfected when petitioners wanted a price of P500,000.00 plus capital gains tax and commissions, while respondent Timbols wanted to pay only P500,000.00 plus real estate taxes and commissions; and (2) whether or not, assuming there was a meeting of the minds with respect to the price, the contract of sale was enforceable under the Statute of Frauds for not having been reduced to writing.

A perfunctory perusal of the material allegations raised in the petition readily discloses that the real issue for determination is not whether or not the parties have agreed upon a consideration but actually one which calls for a proper interpretation of the real intention of the parties in fixing the price of the contract.

That the parties really intended a price of P500,000.00 net of real estate and capital gains taxes, commissions and expenses to be shouldered by the Timbols is best explained in the decision of respondent court, to wit:

"Plaintiff Enriquez herself testified that defendants' asking price was a net price of P500,000.00 (t.s.n., February 5, 1982, p. 19). Defendants' conformity of plaintiffs' acceptance of the plaintiffs (sic) offered price of P500,000.00 was net of 'the taxes, your commission and other expenses' (Exh. 'B'). Upon becoming aware of the implications on the transaction of the capital gains tax, defendants still expected a net consideration of P500,000.00, and plaintiff Enriquez confirms this assumption (t.s.n., February 5, 1982, p. 23). Defendants' reluctance to lower the stated price in the proposed deed of sale was due to their plan to repatriate the entire proceeds of the sale pursuant to extent (sic) Central Bank regulations, and the mere fact that plaintiffs were proposing a reduction in the stated price in order to reduce the capital gains tax (t.s.n., Timbol, February 24,

1983, pp. 33, 35; t.s.n., Henson, April 8, 1983, p. 23; t.s.n., A. Abad, May 20, 1983, pp. 16-17) belies the allegation that plaintiffs did not assume payment of the capital gains tax." [5]

On the basis of the foregoing circumstances, there is no reason to doubt that the Timbols agreed to pay the amount of P500,000.00 with the understanding that they shall be responsible for the taxes and other obligations attaching to the sale. This is further strengthened by the finding of respondent court that "(w)hile the matter of payment of capital gains tax was apparently not originally considered by defendants (the Valenzuelas), and some difficulty arose as to the amount to be stated in the deed of sale, the fact remains that after some exchange of communications, plaintiffs (the Timbols) finally agreed to have the amount of P500,000.00 stated in the deed of sale, and this removed any further obstacle to the consummation of the agreement." [6]

We, therefore, find no compelling reason to disturb, much less to reverse, the factual findings and legal conclusions of respondent court, there being no showing whatsoever that it acted with grave abuse of discretion or that there was a misappreciation of the evidence and the facts or a misapplication of the law and jurisprudential rules.

We likewise find, and so hold, that the Statute of Frauds, which is applicable only to executory contracts, cannot be properly raised as a defense in the present case considering that there has been partial performance on the part of the Timbols when they made a down payment of P10,000.00 to Enriquez, which fact was known to petitioners. The failure of the Valenzuelas to revoke the authority of Enriquez to receive said payment in their behalf is tantamount to both an admission and a ratification of such authority. On this score alone, said postulated fallback position of petitioners must be rejected.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.
Paras, J., no part.

[1] Justice Minerva P. Gonzaga-Reyes, ponente; Justices Serafin E. Camilon and Pedro A. Ramirez, concurring.

[2] Rollo, 50.

[3] Ibid., 37-39.

[4] Ibid., 58.

[5] Ibid., 86.

[6] Ibid., 79; words in parentheses supplied.

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