

SECOND DIVISION

[G.R. No. 202050, July 25, 2016]

**PHILIPPINE NATIONAL OIL COMPANY AND PNOC DOCKYARD &
ENGINEERING CORPORATION, PETITIONERS, VS. KEPPEL
PHILIPPINES HOLDINGS, INC., RESPONDENT.**

D E C I S I O N

BRION, J.:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, appealing the decision dated 19 December 2011^[1] and resolution dated 14 May 2012^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86830. These assailed CA rulings affirmed *in toto* the decision dated 12 January 2006^[3] of the Regional Trial Court (RTQ of Batangas City, Branch 84, in Civil Case No. 7364.

THE FACTS

The 1976 Lease Agreement and Option to Purchase

Almost 40 years ago or on 6 August 1976, the respondent Keppel Philippines Holdings, Inc.^[4] (Keppel) entered into a **lease agreement**^[5] (*the agreement*) with Luzon Stevedoring Corporation (*Lusteveco*) covering 11 hectares of land located in Bauan, Batangas. The lease was for a period of 25 years for a consideration of P2.1 million.^[6] At the option of Lusteveco, the rental fee could be totally or partially converted into equity shares in Keppel.^[7]

At the end of the 25-year lease period, Keppel was given the **"firm and absolute option to purchase**^[8] **the land for P4.09 million, provided that it had acquired the necessary qualification to own land under Philippine laws at the time the option is exercised.**^[9] Apparently, when the lease agreement was executed, less than 60% of Keppel's shareholding was Filipino-owned, hence, it was not constitutionally qualified to acquire private lands in the country.^[10]

If, at the end of the 25-year lease period (or in 2001), Keppel remained unqualified to own private lands, the agreement provided that the lease would be automatically renewed for another 25 years.^[11] Keppel was further allowed to exercise the option to purchase the land up to the 30th year of the lease (or in 2006), also on the condition that, by then, it would have acquired the requisite qualification to own land in the Philippines.^[12]

Together with Keppel's lease rights and option to purchase, Lusteveco warranted not to sell the land or assign its rights to the land for the duration of the lease unless with the prior written consent of Keppel.^[13] Accordingly, when the petitioner

Philippine National Oil Corporation^[14] (PNOC) acquired the land from Lusteveco and took over the rights and obligations under the agreement, Keppel did not object to the assignment so long as the agreement was annotated on PNOC's title.^[15] With PNOC's consent and cooperation, the agreement was recorded as Entry No. 65340 on PNOC's Transfer of Certificate of Title No. T-50724.^[16]

The Case and the Lower Court Rulings

On 8 December 2000, Keppel wrote PNOC informing the latter that at least 60% of its shares were now owned by Filipinos^[17] Consequently, Keppel expressed its readiness to exercise its option to purchase the land. Keppel reiterated its demand to purchase the land several times, but on every occasion, PNOC did not favourably respond.^[18]

To compel PNOC to comply with the Agreement, Keppel instituted a **complaint for specific performance** with the RTC on 26 September 2003 against PNOC.^[19] PNOC countered Keppel's claims by contending that the agreement was illegal for circumventing the constitutional prohibition against aliens holding lands in the Philippines.^[20] It further asserted that the option contract was void, as it was unsupported by a separate valuable consideration.^[21] It also claimed that it was not privy to the agreement.^[22]

After due proceedings, **the RTC rendered a decision^[23] in favour of Keppel and ordered PNOC to execute a deed of absolute sale** upon payment by Keppel of the purchase price of P4.09 million.^[24]

PNOC elevated the case to the CA to appeal the RTC decision.^[25] Affirming the RTC decision *in toto*, **the CA upheld Keppel's right to acquire the land.**^[26] It found that since the option contract was embodied in the agreement - a reciprocal contract - the consideration was the obligation that each of the contracting party assumed.^[27] Since Keppel was already a Filipino-owned corporation, it satisfied the condition that entitled it to purchase the land.^[28]

Failing to secure a reconsideration of the CA decision,^[29] PNOC filed the present Rule 45 petition before this Court to assail the CA rulings.

THE PARTIES' ARGUMENTS and THE ISSUES

PNOC argues that the CA failed to resolve the constitutionality of the agreement. It contends that the terms of the agreement amounted to a virtual sale of the land to Keppel who, at the time of the agreement's enactment, was a foreign corporation and, thus, violated the 1973 Constitution.

Specifically, PNOC refers to (a) the 25-year duration of the lease that was automatically renewable for another 25 years^[30]; (b) the option to purchase the land for a nominal consideration of P100.00 if the option is exercised anytime between the 25th and the 30th year of the lease^[31]; and (c) the prohibition imposed on Lusteveco to sell the land or assign its rights therein during the lifetime

of the lease.^[32] Taken together, PNOC submits that these provisions amounted to a virtual transfer of ownership of the land to an alien which act the 1973 Constitution prohibited.

PNOC claims that the agreement is no different from the lease contract in *Philippine Banking Corporation v. Lui She*,^[33] which the Court struck down as unconstitutional. In *Lui She*, the lease contract allowed the gradual divestment of ownership rights by the Filipino owner-lessor in favour of the foreigner-lessee.^[34] The arrangement in *Lui She* was declared as a scheme designed to enable the parties to circumvent the constitutional prohibition.^[35] PNOC posits that a similar intent is apparent from the terms of the agreement with Keppel and accordingly should also be nullified.^[36]

PNOC additionally contends the illegality of the option contract for lack of a separate consideration, as required by Article 1479 of the Civil Code.^[37] It claims that the option contract is distinct from the main contract of lease and must be supported by a consideration other than the rental fees provided in the agreement.^[38]

On the other hand, Keppel maintains the validity of both the agreement and the option contract it contains. It opposes the claim that there was "virtual sale" of the land, noting that the option is subject to the condition that Keppel becomes qualified to own private lands in the Philippines.^[39] This condition ripened in 2000, when at least 60% of Keppel's equity became Filipino-owned.

Keppel contends that the agreement is not a scheme designed to circumvent the constitutional prohibition. Lusteveco was not proscribed from alienating its ownership rights over the land but was simply required to secure Keppel's prior written consent.^[40] Indeed, Lusteveco was able to transfer its interest to PNOC without any objection from Keppel.^[41]

Keppel also posits that the requirement of a separate consideration for an option to purchase applies only when the option is granted in a separate contract.^[42] In the present case, the option is embodied in a reciprocal contract and, following the Court's ruling in *Vda. De Quirino v. Palarca*,^[43] the option is supported by the same consideration supporting the main contract.

From the parties' arguments, the following **ISSUES** emerge:

First, the constitutionality of the Agreement, i.e., whether the terms of the Agreement amounted to a virtual sale of the land to Keppel that was designed to circumvent the constitutional prohibition on aliens owning lands in the Philippines.

Second, the validity of the option contract, i.e., whether the option to purchase the land given to Keppel is supported by a separate valuable consideration.

If these issues are resolved in favour of Keppel, a *third* issue emerges - one that was not considered by the lower courts, but is critical in terms of determining Keppel's right to own and acquire full title to the land, i.e., whether Keppel's equity ownership meets the 60% Filipino-owned capital requirement of the Constitution, in

accordance with the Court's ruling in *Gamboa v. Teves*.^[44]

THE COURT'S RULING

I. The constitutionality of the Agreement

The Court **affirms** the constitutionality of the Agreement.

Preserving the ownership of land, whether public or private, in Filipino hands is the policy consistently adopted in all three of our constitutions.^[45] Under the 1935,^[46] 1973,^[47] and 1987^[48] Constitutions, no private land shall be transferred, assigned, or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Consequently, only Filipino citizens, or corporations or associations whose capital is 60% owned by Filipinos citizens, are constitutionally qualified to own private lands.

Upholding this nationalization policy, the Court has voided not only outright conveyances of land to foreigners,^[49] but also arrangements where the rights of ownership were gradually transferred to foreigners.^[50] In *Lui Shui*,^[51] we considered a 99-year lease agreement, which gave the foreigner-lessee the option to buy the land and prohibited the Filipino owner-lessor from selling or otherwise disposing the land, amounted to -

a **virtual transfer of ownership** whereby the owner divests himself in stages not only of the right to enjoy the land (*Jus possidendi, jus utendi, jus fruendi, and jus abutendi*) but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership.^[52]
[emphasis supplied]

In the present case, PNOC submits that a similar scheme is apparent from the agreement's terms, but a review of the overall circumstances leads us to reject PNOC's claim.

The agreement was executed to enable Keppel to use the land for its **shipbuilding and ship repair business**.^[53] The industrial/commercial purpose behind the agreement differentiates the present case from *Lui She* where the leased property was primarily devoted to residential use.^[54] Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel's uncontested testimony showed that it incurred P60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth P177 million.^[55] Taking these investments into account and the nature of the business that Keppel conducts on the land, we find it reasonable that the agreement's terms provided for an extended duration of the lease and a restriction on the rights of Lusteveco.

We observe that, unlike in *Lui She*,^[56] Lusteveco was not completely denied its ownership rights during the course of the lease. It could dispose of the lands or assign its rights thereto, provided it secured Keppel's prior written consent.^[57] That Lusteveco was able to convey the land in favour of PNOC during the pendency of the lease^[58] should negate a finding that the agreement's terms amounted to a virtual

transfer of ownership of the land to Keppel.

II. The validity of the option contract

II.AAn option contract must be supported by a separate consideration that is either clearly specified as such in the contract or duly proven by the offeree/promisee.

An option contract is defined in the second paragraph of Article 1479 of the Civil Code:

Article 1479¹ x x x An accepted promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

An **option contract** is a contract where one person (the offeror/promissor) grants to another person (the offeree/promisee) the right or privilege to buy (or to sell) a determinate thing at a fixed price, if he or she chooses to do so within an agreed period.^[59]

As a contract, it must necessarily have the essential elements of subject matter, consent, and consideration.^[60] Although an option contract is deemed a preparatory contract to the principal contract of sale,^[61] it is separate and distinct therefrom,^[62] thus, its essential elements should be distinguished from those of a sale.^[63]

In an option contract, the **subject matter** is the *right or privilege* to buy (or to sell) a determinate thing for a price certain,^[64] while in a sales contract, the subject matter is the determinate thing itself.^[65] The **consent** in an option contract is the acceptance by the offeree of the offerer's *promise to sell (or to buy)* the determinate thing, *i.e.*, the offeree agrees to hold the *right or privilege to buy (or to sell)* within a specified period. This acceptance is different from the acceptance of the offer itself whereby the offeree asserts his or her right or privilege to buy (or to sell), which constitutes as his or her consent to the sales contract. The **consideration** in an option contract may be anything of value, unlike in a sale where the purchase price must be in money or its equivalent.^[66] There is sufficient consideration for a promise if there is any benefit to the offeree or any detriment to the offeror.^[67]

In the present case, PNOC claims the option contract is void for want of consideration distinct from the purchase price for the land.^[68] The option is incorporated as paragraph 5 of the Agreement and reads as

5. If within the period of the first [25] years [Keppel] becomes qualified to own land under the laws of the Philippines, it has the firm and absolute option to purchase the above property for a total price of [P-4,090,000.00] at the end of the 25th year, discounted at 16% annual for every year before the end of the 25th year, which amount may be converted into equity of [Keppel] at book value prevailing at the time of sale, or paid in cash at Lusteveco's option.

However, if after the first [25] years, [Keppel] is still not qualified to own land under the laws of the Republic of the Philippines, [Keppel's] lease of the above stated property shall be automatically renewed for another