

## THIRD DIVISION

[ G.R. No. 157493, February 05, 2007 ]

**RIZALINO, SUBSTITUTED BY HIS HEIRS, JOSEFINA, ROLANDO AND FERNANDO, ERNESTO, LEONORA, BIBIANO, JR., LIBRADO AND ENRIQUETA, ALL SURNAMED OESMER, PETITIONERS, VS. PARAISO DEVELOPMENT CORPORATION, RESPONDENT.**

### DECISION

#### CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Court of Appeals Decision<sup>[1]</sup> dated 26 April 2002 in CA-G.R. CV No. 53130 entitled, *Rizalino, Ernesto, Leonora, Bibiano, Jr., Librado, Enriqueta, Adolfo, and Jesus, all surnamed Oesmer vs. Paraiso Development Corporation*, as modified by its Resolution<sup>[2]</sup> dated 4 March 2003, declaring the Contract to Sell valid and binding with respect to the undivided proportionate shares of the six signatories of the said document, herein petitioners, namely: Ernesto, Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora (all surnamed Oesmer); and ordering them to execute the Deed of Absolute Sale concerning their 6/8 share over the subject parcels of land in favor of herein respondent Paraiso Development Corporation, and to pay the latter the attorney's fees plus costs of the suit. The assailed Decision, as modified, likewise ordered the respondent to tender payment to the petitioners in the amount of P3,216,560.00 representing the balance of the purchase price of the subject parcels of land.

The facts of the case are as follows:

Petitioners Rizalino, Ernesto, Leonora, Bibiano, Jr., Librado, and Enriqueta, all surnamed Oesmer, together with Adolfo Oesmer (Adolfo) and Jesus Oesmer (Jesus), are brothers and sisters, and the co-owners of undivided shares of two parcels of agricultural and tenanted land situated in Barangay Ulong Tubig, Carmona, Cavite, identified as Lot 720 with an area of 40,507 square meters (sq. m.) and Lot 834 containing an area of 14,769 sq. m., or a total land area of 55,276 sq. m. Both lots are unregistered and originally owned by their parents, Bibiano Oesmer and Encarnacion Durumpili, who declared the lots for taxation purposes under Tax Declaration No. 3438<sup>[3]</sup> (cancelled by I.D. No. 6064-A) for Lot 720 and Tax Declaration No. 3437<sup>[4]</sup> (cancelled by I.D. No. 5629) for Lot 834. When the spouses Oesmer died, petitioners, together with Adolfo and Jesus, acquired the lots as heirs of the former by right of succession.

Respondent Paraiso Development Corporation is known to be engaged in the real estate business.

Sometime in March 1989, Rogelio Paular, a resident and former Municipal Secretary of Carmona, Cavite, brought along petitioner Ernesto to meet with a certain Sotero

Lee, President of respondent Paraiso Development Corporation, at Otani Hotel in Manila. The said meeting was for the purpose of brokering the sale of petitioners' properties to respondent corporation.

Pursuant to the said meeting, a Contract to Sell<sup>[5]</sup> was drafted by the Executive Assistant of Sotero Lee, Inocencia Almo. On 1 April 1989, petitioners Ernesto and Enriqueta signed the aforesaid Contract to Sell. A check in the amount of P100,000.00, payable to Ernesto, was given as option money. Sometime thereafter, Rizalino, Leonora, Bibiano, Jr., and Librado also signed the said Contract to Sell. However, two of the brothers, Adolfo and Jesus, did not sign the document.

On 5 April 1989, a duplicate copy of the instrument was returned to respondent corporation. On 21 April 1989, respondent brought the same to a notary public for notarization.

In a letter<sup>[6]</sup> dated 1 November 1989, addressed to respondent corporation, petitioners informed the former of their intention to rescind the Contract to Sell and to return the amount of P100,000.00 given by respondent as option money.

Respondent did not respond to the aforesaid letter. On 30 May 1991, herein petitioners, together with Adolfo and Jesus, filed a Complaint<sup>[7]</sup> for Declaration of Nullity or for Annulment of Option Agreement or Contract to Sell with Damages before the Regional Trial Court (RTC) of Bacoor, Cavite. The said case was docketed as Civil Case No. BCV-91-49.

During trial, petitioner Rizalino died. Upon motion of petitioners, the trial court issued an Order<sup>[8]</sup> dated 16 September 1992, to the effect that the deceased petitioner be substituted by his surviving spouse, Josefina O. Oesmer, and his children, Rolando O. Oesmer and Fernando O. Oesmer. However, the name of Rizalino was retained in the title of the case both in the RTC and the Court of Appeals.

After trial on the merits, the lower court rendered a Decision<sup>[9]</sup> dated 27 March 1996 in favor of the respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of herein [respondent] Paraiso Development Corporation. The assailed Contract to Sell is valid and binding only to the undivided proportionate share of the signatory of this document and recipient of the check, [herein petitioner] co-owner Ernesto Durumpili Oesmer. The latter is hereby ordered to execute the Contract of Absolute Sale concerning his 1/8 share over the subject two parcels of land in favor of herein [respondent] corporation, and to pay the latter the attorney's fees in the sum of Ten Thousand (P10,000.00) Pesos plus costs of suit.

The counterclaim of [respondent] corporation is hereby Dismissed for lack of merit.<sup>[10]</sup>

Unsatisfied, respondent appealed the said Decision before the Court of Appeals. On 26 April 2002, the appellate court rendered a Decision modifying the Decision of the court *a quo* by declaring that the Contract to Sell is valid and binding with respect to

the undivided proportionate shares of the six signatories of the said document, herein petitioners, namely: Ernesto, Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora (all surnamed Oesmer). The decretal portion of the said Decision states that:

**WHEREFORE**, premises considered, the Decision of the court a quo is hereby **MODIFIED**. Judgment is hereby rendered in favor of herein [respondent] Paraiso Development Corporation. The assailed Contract to Sell is valid and binding with respect to the undivided proportionate share of the six (6) signatories of this document, [herein petitioners], namely, Ernesto, Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora (all surnamed Oesmer). The said [petitioners] are hereby ordered to execute the Deed of Absolute Sale concerning their 6/8 share over the subject two parcels of land and in favor of herein [respondent] corporation, and to pay the latter the attorney's fees in the sum of Ten Thousand Pesos (P10,000.00) plus costs of suit.<sup>[11]</sup>

Aggrieved by the above-mentioned Decision, petitioners filed a Motion for Reconsideration of the same on 2 July 2002. Acting on petitioners' Motion for Reconsideration, the Court of Appeals issued a Resolution dated 4 March 2003, maintaining its Decision dated 26 April 2002, with the modification that respondent tender payment to petitioners in the amount of P3,216,560.00, representing the balance of the purchase price of the subject parcels of land. The dispositive portion of the said Resolution reads:

**WHEREFORE**, premises considered, the assailed Decision is hereby modified. Judgment is hereby rendered in favor of herein [respondent] Paraiso Development Corporation. The assailed Contract to Sell is valid and binding with respect to the undivided proportionate shares of the six (6) signatories of this document, [herein petitioners], namely, Ernesto, Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora (all surnamed Oesmer). The said [petitioners] are hereby ordered to execute the Deed of Absolute Sale concerning their 6/8 share over the subject two parcels of land in favor of herein [respondent] corporation, and to pay the latter attorney's fees in the sum of Ten Thousand Pesos (P10,000.00) plus costs of suit. Respondent is likewise ordered to tender payment to the above-named [petitioners] in the amount of Three Million Two Hundred Sixteen Thousand Five Hundred Sixty Pesos (P3,216,560.00) representing the balance of the purchase price of the subject two parcels of land.<sup>[12]</sup>

Hence, this Petition for Review on *Certiorari*.

Petitioners come before this Court arguing that the Court of Appeals erred:

- I. On a question of law in not holding that, the supposed Contract to Sell (Exhibit D) is not binding upon petitioner Ernesto Oesmer's co-owners (herein petitioners Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora).
- II. On a question of law in not holding that, the supposed Contract to Sell (Exhibit D) is void altogether considering that respondent itself did not sign it as to indicate its consent to be bound by its terms.

Moreover, Exhibit D is really a unilateral promise to sell without consideration distinct from the price, and hence, void.

Petitioners assert that the signatures of five of them namely: Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora, on the margins of the supposed Contract to Sell did not confer authority on petitioner Ernesto as agent to sell their respective shares in the questioned properties, and hence, for lack of written authority from the above-named petitioners to sell their respective shares in the subject parcels of land, the supposed Contract to Sell is void as to them. Neither do their signatures signify their consent to directly sell their shares in the questioned properties. Assuming that the signatures indicate consent, such consent was merely conditional. The effectivity of the alleged Contract to Sell was subject to a suspensive condition, which is the approval of the sale by all the co-owners.

Petitioners also assert that the supposed Contract to Sell (Exhibit D), contrary to the findings of the Court of Appeals, is not couched in simple language.

They further claim that the supposed Contract to Sell does not bind the respondent because the latter did not sign the said contract as to indicate its consent to be bound by its terms. Furthermore, they maintain that the supposed Contract to Sell is really a unilateral promise to sell and the option money does not bind petitioners for lack of cause or consideration distinct from the purchase price.

The Petition is bereft of merit.

It is true that the signatures of the five petitioners, namely: Enriqueta, Librado, Rizalino, Bibiano, Jr., and Leonora, on the Contract to Sell did not confer authority on petitioner Ernesto as agent authorized to sell their respective shares in the questioned properties because of Article 1874 of the Civil Code, which expressly provides that:

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.

The law itself explicitly requires a written authority before an agent can sell an immovable. The conferment of such an authority should be in writing, in as clear and precise terms as possible. It is worth noting that petitioners' signatures are found in the Contract to Sell. The Contract is absolutely silent on the establishment of any principal-agent relationship between the five petitioners and their brother and co-petitioner Ernesto as to the sale of the subject parcels of land. Thus, the Contract to Sell, although signed on the margin by the five petitioners, is not sufficient to confer authority on petitioner Ernesto to act as their agent in selling their shares in the properties in question.

However, despite petitioner Ernesto's lack of written authority from the five petitioners to sell their shares in the subject parcels of land, the supposed Contract to Sell remains valid and binding upon the latter.

As can be clearly gleaned from the contract itself, it is not only petitioner Ernesto who signed the said Contract to Sell; the other five petitioners also personally affixed their signatures thereon. Therefore, a written authority is no longer necessary in order to sell their shares in the subject parcels of land because, by

affixing their signatures on the Contract to Sell, they were not selling their shares through an agent but, rather, they were selling the same directly and in their own right.

The Court also finds untenable the following arguments raised by petitioners to the effect that the Contract to Sell is not binding upon them, except to Ernesto, because: (1) the signatures of five of the petitioners do not signify their consent to sell their shares in the questioned properties since petitioner Enriqueta merely signed as a witness to the said Contract to Sell, and that the other petitioners, namely: Librado, Rizalino, Leonora, and Bibiano, Jr., did not understand the importance and consequences of their action because of their low degree of education and the contents of the aforesaid contract were not read nor explained to them; and (2) assuming that the signatures indicate consent, such consent was merely conditional, thus, the effectivity of the alleged Contract to Sell was subject to a suspensive condition, which is the approval by all the co-owners of the sale.

It is well-settled that contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror. From that moment, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. To produce a contract, the acceptance must not qualify the terms of the offer. However, the acceptance may be express or implied. For a contract to arise, the acceptance must be made known to the offeror. Accordingly, the acceptance can be withdrawn or revoked before it is made known to the offeror.

[13]

In the case at bar, the Contract to Sell was perfected when the petitioners consented to the sale to the respondent of their shares in the subject parcels of land by affixing their signatures on the said contract. Such signatures show their acceptance of what has been stipulated in the Contract to Sell and such acceptance was made known to respondent corporation when the duplicate copy of the Contract to Sell was returned to the latter bearing petitioners' signatures.

As to petitioner Enriqueta's claim that she merely signed as a witness to the said contract, the contract itself does not say so. There was no single indication in the said contract that she signed the same merely as a witness. The fact that her signature appears on the right-hand margin of the Contract to Sell is insignificant. The contract indisputably referred to the "Heirs of Bibiano and Encarnacion Oesmer," and since there is no showing that Enriqueta signed the document in some other capacity, it can be safely assumed that she did so as one of the parties to the sale.

Emphasis should also be given to the fact that petitioners Ernesto and Enriqueta concurrently signed the Contract to Sell. As the Court of Appeals mentioned in its Decision,<sup>[14]</sup> the records of the case speak of the fact that petitioner Ernesto, together with petitioner Enriqueta, met with the representatives of the respondent in order to finalize the terms and conditions of the Contract to Sell. Enriqueta affixed her signature on the said contract when the same was drafted. She even admitted that she understood the undertaking that she and petitioner Ernesto made in connection with the contract. She likewise disclosed that pursuant to the terms embodied in the Contract to Sell, she updated the payment of the real property taxes and transferred the Tax Declarations of the questioned properties in her name.