

SECOND DIVISION

[G.R. No. 159971, March 25, 2004]

SALOME M. CASTILLO, REPRESENTED BY HER ATTORNEY-IN-FACT ATTY. JOSE M. CASTILLO, PETITIONER, VS. HON. COURT OF APPEALS, AND SPS. RUBEN AND ERLINDA ASEDILLO, RESPONDENTS.

R E S O L U T I O N

TINGA, J,:

Petitioner Salome M. Castillo ("Castillo") seeks to set aside the *Resolution*, dated 17 March 2003, of the Court of Appeals First Division,^[1] dismissing her *Petition for Review* on procedural grounds, as well as the *Resolution*, dated 17 September 2003, of the Court of Appeals Former First Division, denying her *Motion for Reconsideration* of the earlier resolution. Hence, the present *Petition for Review*.

Salome Castillo is a resident of Long Beach, California, and the registered owner of a duly titled^[2] parcel of land with improvements, located at 960 Adelina Street, Sampaloc, Manila. On 5 June 1989, Salome Castillo executed a *Special Power of Attorney* ("SPA") in favor of her son, Jose M. Castillo ("Jose Castillo"), authorizing the latter, among others things, to sell the property. Jose Castillo caused the publication of an advertisement that the property was for sale for the sum of Two Million Eight Hundred Pesos (P2,800,000.00). The advertisement caught the attention of defendant Erlinda Asedillo, who promptly approached Jose Castillo about purchasing the property. Allegedly, Asedillo agreed to purchase the property for the amount of Two Million Four Hundred Thirty Seven Thousand Five Hundred Pesos (P2,437,500.00). Asedillo issued to Jose Castillo City Trust Check No. 1544262^[3] dated 13 June 1995, for One Hundred Thousand Pesos (P100,000.00). However, on the same day, Asedillo instructed City Trust Bank to stop payment of the check. Asedillo also refused to give further payment to Jose Castillo, citing as basis the fact that a notice of *lis pendens* was annotated on the title of the property. Still, Jose Castillo insisted that Asedillo pay what according to him was the stipulated purchase price. When Asedillo refused to proceed with the sale and give further payment, Jose Castillo, representing Salome Castillo, filed against her a complaint with the Quezon City Metropolitan Trial Court (MTC), Branch 32.^[4] In the complaint, captioned "Salome M. Castillo represented by her attorney-in fact, Atty. Jose M. Castillo, Plaintiff, versus Spouses Ruben and Erlinda Asedillo, Defendants", the plaintiff prayed, among others, that the "earnest money" of One Hundred Thousand Pesos (P100,000.00) covered by the City Trust Check "be forfeited" in her favor.^[5]

Jose Castillo, as attorney-in-fact of his mother, alleged that Asedillo had agreed to purchase the property, and that the amount of One Hundred Thousand Pesos (P100,000.00) represented "earnest money" in relation to the sale.^[6] In support of the allegation, Jose Castillo presented a receipt^[7] which he himself signed, stating

that he received the amount from Asedillo as “earnest money” in connection with the sale of the property.

On the other hand, Asedillo denied that there was a definite agreement to purchase the property. She claimed that her negotiations with Jose Castillo were merely preliminary, with the final agreement to purchase, if any, subject to verification, confirmation and eventual documentation by her husband.^[8] She further alleged that Jose Castillo had initially demanded a large amount for deposit, but she agreed to give as deposit only the token amount of One Hundred Thousand Pesos (P100,000.00). On 14 June 1995, Asedillo’s husband, Atty. Ruben Asedillo, confronted Jose Castillo, inquiring whether the SPA signed by Salome Castillo in 1989 was still good; whether Salome Castillo was still alive considering that her son Jose appeared to be already in his sixties; and whether the property was paraphernal.^[9] Jose Castillo allegedly evaded the questions and instead demanded that the sale push through, since the contract of sale was already perfected.

The MTC dismissed the complaint, holding that no contract of sale was perfected but only a contract to sell which depended on the conditions laid down by Asedillo.^[10] On appeal, the Quezon City Regional Trial Court (RTC), Branch 99,^[11] initially reversed the MTC,^[12] but on Asedillo’s *Motion for Reconsideration* later upheld the MTC *Decision*.^[13] Salome Castillo, represented by Jose Castillo, then filed a *Petition for Review* with the Court of Appeals.

The assailed *Resolution* of the Court of Appeals First Division dated 17 March 2003 dismissed the petition on the following grounds, *viz*: the certification of non-forum shopping was not signed by Atty. Jose M. Castillo as attorney-in-fact of the petitioner, and even if duly signed, the certification could be properly repudiated since the attached SPA executed by Salome Castillo is merely a photocopy and does not bear the acknowledgement page; the petitioner failed to submit the mandatory written explanation on why copies of the petition were served upon respondents by way of registered mail rather than through personal service; and the attached RTC decision was only a photocopy while the MTC decision was not even attached.^[14] Castillo moved to reconsider the ruling of the Court of Appeals, citing substantial compliance and resort to a liberal application of procedural rules. The Court of Appeals denied the *Motion for Reconsideration*.^[15]

Before this Court, Castillo claims that the omissions “are all within the tolerable limit, a matter of sound discretion xxx to overlook.”^[16] This submission is contrary to procedural law and jurisprudence.

Jose Castillo failed to sign the “Certification on Non-Forum Shopping.” Thus, he failed to comply with the requirement ordained by Section 2, Rule 42 and made mandatory by Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides that failure to comply with the certification on non-forum shopping requirement is not curable by mere amendment, but shall be cause for the dismissal of the case without prejudice. Moreover, the second page of the SPA which is the page containing the acknowledgement was not attached to the *Petition* filed with the Court of Appeals and it is only a mere photocopy. As noted in the assailed *Resolution*, the Court of Appeals could very well repudiate the certification on that ground.^[17] Likewise the failure to provide a written explanation on why copies of