

[SYLLABUS]

[G.R. No. 118509, March 29, 1996]

LIMKETKAI SONS MILLING INC., PETITIONER, VS. COURT OF APPEALS, ET AL., RESPONDENTS.

R E S O L U T I O N

FRANCISCO, J.:

In this motion for reconsideration, the Court^[*] is called upon to take a second hard look on its December 1, 1995 decision reversing and setting aside respondent Court of Appeals' judgment of August 12, 1994 that dismissed petitioner Limketkai Sons Milling Inc.'s complaint for specific performance and damages against private respondents Bank of the Philippine Islands (BPI) and National Book Store (NBS). Petitioner Limketkai Sons Milling, Inc., opposed the motion and filed its Consolidated Comment, to which private respondent NBS filed a Reply. Thereafter, petitioner filed its Manifestation and Motion for the voluntary inhibition of Chief Justice Andres R. Narvasa from taking part in any "subsequent deliberations in this case." The Honorable Chief Justice declined.^[1]

The Court is swayed to reconsider.

The bottomline issue is whether or not a contract of sale of the subject parcel of land existed between the petitioner and respondent BPI. A re-evaluation of the attendant facts and the evidence on record, specifically petitioner's **Exhibits "A" to "I"**, yields the negative. To elaborate:

Exhibit "A"^[2] is a Deed of Trust dated May 14, 1976, entered into between Philippine Remnants Co. Inc., as grantor, and respondent BPI, as trustee, stating that subject property covered by TCT 493122 (formerly TCT No. 27324)^[3] "has [been] assigned, transferred, conveyed and set over unto the Trustee"^[4] expressly authorizing and empowering the same "in its own name to sell and dispose of said trust property or any lot or parcel thereof"^[5] and "to facilitate [the] sale of the trust property, the Trustee may engage the services of real estate broker or brokers, under such terms and conditions which the Trustee may deem proper, to sell the Trust property or any lot or parcel thereof."^[6]

Exhibit "B" is a Letter of Authority for the petitioner issued by respondent BPI to Pedro A. Revilla, Jr., a real estate broker, to sell the property pursuant to the Deed of Trust. The full text of Exhibit "B" is hereby quoted:

"Trust Account No. 75-09

ASSETRADE CO.
70 San Francisco St.
Capitol Subdivision
Pasig, Metro Manila

Attention: Mr. Pedro P. Revilla, Jr.
Managing Partner

Gentlemen:

This will serve as your authority to sell on an "as is" "where is" basis the property located at Pasig Blvd., Bagong Ilog, Pasig, Metro Manila, under the following details and basic terms and conditions:

TCT No. :	493122 in the name of BPI as trustee of Philippine Remnants Co., Inc.
Area :	33,056.0 square meters (net of 890 sq. m. sold to the Republic of the Philippines due to the widening of Pasig Blvd.)
Price :	P1,100.00 per sq. m. or P36,361,600.000.
Terms :	Cash
Broker's Commission :	2%
Others :	a) Docuemntary (sic) stamps to be affixed to Deed of Absolute Sale, transfer tax, registration expenses, and other titling expenses for account of the Buyer. b) Capital gains tax, if payable, and real estate taxes up to 30 June 1988 shall be for the account of the Seller.

This authority which is good for thirty (30) days only from date hereof is non-exclusive and on a "first come" "first-serve" basis.

truly yours,

Very

**BANK OF THE PHILIPPINE
ISLANDS**

as trustee of

**Philippine Remnants Co.,
Inc.**

(Sgd.)

(Sgd)

FERNANDO J. SISON, III

Assistant Vice-President

ALFONSO R. ZAMORA

Vice President"

[Note: Italics supplied]

security guard on duty at subject property to allow him (Revilla, Jr.) and his companion to conduct an ocular inspection of the premises.^[7]

Exhibit "D" is a letter addressed by Pedro Revilla, Jr. to respondent BPI informing the latter that he has procured a prospective buyer.^[8]

Exhibit "E" is the written proposal submitted by Alfonso Y. Lim in behalf of petitioner Limketkai Sons Milling, Inc., offering to buy the subject property at P1,000.00/sq. m.^[9]

Exhibit "F" is respondent BPI's letter addressed to petitioner pointing out that petitioner's proposal embodied in its Letter (Exhibit "E") has been rejected by the respondent BPI's Trust Committee.^[10]

Exhibit "G" is petitioner's letter dated July 22, 1988 reiterating its offer to buy the subject property at P1,000/sq. m. but now on cash basis.^[11]

Exhibit "H" refers to respondent BPI's another rejection of petitioner's offer to buy the property at P1,000/sq. m.^[12]

And finally, **Exhibit "I"** is a letter by petitioner addressed to respondent BPI claiming the existence of a perfected contract of sale of the subject property between them.^[13]

These exhibits, either scrutinized singly or collectively, do not reveal a perfection of the purported contract of sale. Article 1458 of the Civil Code defines a contract of sale as follows:

"ART. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional."

Article 1475 of the same code specifically provides when a contract of sale is deemed perfected, to wit:

"ART. 1475. The contract of sale is perfected at the moment there is meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts."

The Court in *Toyota Shaw, Inc. v. Court of Appeals*^[14] had already ruled that a definite agreement on the manner of payment of the price is an essential element in the formation of a binding and enforceable contract of sale. Petitioner's exhibits did not establish any definitive agreement or meeting of the minds between the concerned parties as regards the price or term of payment. Instead, what merely appears therefrom is respondent BPI's repeated rejection of the petitioner's proposal to buy the property at P1,000/ sq.m.^[15] In addition, even on the assumption that Exhibit "E" reflects that respondent BPI offered to sell the disputed property for P1,000/sq. m., petitioner's acceptance of the offer is conditioned upon or qualified by its proposed terms^[16] to which respondent BPI must first agree with.

On the subject of consent as an essential element of contracts, Article 1319 of the Civil Code has this to say:

"ART. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

"xxx xxx xxx."

The acceptance of an offer must therefor be unqualified and absolute. In other words, it must be identical in all respects with that of the offer so as to produce consent or meeting of the minds. This was not the case herein considering that petitioner's acceptance of the offer was qualified, which amounts to a rejection of the original offer.^[17] And contrary to petitioner's assertion that its offer was accepted by respondent BPI, there was no showing that petitioner complied with the terms and conditions explicitly laid down by respondent BPI for prospective buyers.^[18] Neither was the petitioner able to prove that its offer to buy the subject property was formally approved by the beneficial owner of the property and the Trust Committee of the Bank, an essential requirement for the acceptance of the offer which was clearly specified in Exhibits F and H. Even more telling is petitioner's unexplained failure to reduce in writing the alleged acceptance of its offer to buy the property at P1,000/sq. m.

The Court also finds as unconvincing petitioner's representation under Exhibits "E", "G", and "I" that its proposal to buy the subject property for P 1,000/ sq. m. has been accepted by respondent BPI, considering that none of the said Exhibits contained the signature of any responsible official of respondent bank.

It is therefore evident from the foregoing that petitioner's documentary evidence floundered in establishing its claim of a perfected contract of sale.

Moreover, petitioner's case failed to hurdle the strict requirements of the Statute of Frauds. Article 1403 of the Civil Code states:

"ART. 1403. - The following contracts are unenforceable, unless they are ratified:

(1) xxx

(2) Those that do not comply with the Statute of Frauds as set forth in

this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

xxx xxx xxx

(e) An agreement for the leasing for a long period than one year, or for the sale of real property or of an interest therein.

"xxx xxx xxx."

In this case there is a patent absence of any deed of sale categorically conveying the subject property from respondent BPI to petitioner. Exhibits "E", "G", "I" which petitioner claims as proof of perfected contract of sale between it and respondent BPI were not subscribed by the party charged, i.e., BPI, and did not constitute the memoranda or notes that the law speaks of.^[19] To consider them sufficient compliance with the Statute of Frauds is to betray the avowed purpose of the law to prevent fraud and perjury in the enforcement of obligations. We share, in this connection, respondent Court of Appeal's observation when it said:

"xxx. The requirement that the notes or memoranda be subscribed by BPI or its agents, as the party charged, is very vital for the strict compliance with the avowed purpose of the Statute of Frauds which is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged (*Asia Production Co., Inc. vs. Pano*, 205 SCRA 458). It cannot be gainsaid that a shrewd person could easily concoct a story in his letters addressed to the other party and present the letters to the court as notes to prove the existence of a perfected oral contract of sale when in truth there is none.

"In adherence to the provisions of the Statute of Frauds, the examination and evaluation of the notes or memoranda adduced by the appellee was confined and limited to within the four corners of the documents. To go beyond what appears on the face of the documents constituting the notes or memoranda, stretching their import beyond what is written in black and white, would certainly be uncalled for, if not violative of the Statute of Frauds and opening the doors to fraud, the very evil sought to be avoided by the statute. In fine, considering that the documents adduced by the appellee do not embody the essentials of the contract of sale aside from not having been subscribed by the party charged or its agent, the transaction involved definitely falls within the ambit of the Statute of Frauds."^[20]

[Note: Italics added]

Corrolarily, as the petitioner's exhibits failed to establish the perfection of the contract of sale, oral testimony cannot take their place without violating the parol evidence rule.^[21] It was therefore irregular for the trial court to have admitted in