

FIRST DIVISION

[G.R. NO. 144805, June 08, 2006]

**EDUARDO V. LINTONJUA, JR. AND ANTONIO K. LITONJUA,
PETITIONERS, VS. ETERNIT CORPORATION (NOW ETERTON
MULTI- RESOURCES CORPORATION), ETEROUTREMER, S.A. AND
FAR EAST BANK & TRUST COMPANY, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

On appeal via a Petition for Review on *Certiorari* is the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 51022, which affirmed the Decision of the Regional Trial Court (RTC), Pasig City, Branch 165, in Civil Case No. 54887, as well as the Resolution^[2] of the CA denying the motion for reconsideration thereof.

The Eternit Corporation (EC) is a corporation duly organized and registered under Philippine laws. Since 1950, it had been engaged in the manufacture of roofing materials and pipe products. Its manufacturing operations were conducted on eight parcels of land with a total area of 47,233 square meters. The properties, located in Mandaluyong City, Metro Manila, were covered by Transfer Certificates of Title Nos. 451117, 451118, 451119, 451120, 451121, 451122, 451124 and 451125 under the name of Far East Bank & Trust Company, as trustee. Ninety (90%) percent of the shares of stocks of EC were owned by Eteroutremer S.A. Corporation (ESAC), a corporation organized and registered under the laws of Belgium.^[3] Jack Glanville, an Australian citizen, was the General Manager and President of EC, while Claude Frederick Delsaux was the Regional Director for Asia of ESAC. Both had their offices in Belgium.

In 1986, the management of ESAC grew concerned about the political situation in the Philippines and wanted to stop its operations in the country. The Committee for Asia of ESAC instructed Michael Adams, a member of EC's Board of Directors, to dispose of the eight parcels of land. Adams engaged the services of realtor/broker Lauro G. Marquez so that the properties could be offered for sale to prospective buyers. Glanville later showed the properties to Marquez.

Marquez thereafter offered the parcels of land and the improvements thereon to Eduardo B. Litonjua, Jr. of the Litonjua & Company, Inc. In a Letter dated September 12, 1986, Marquez declared that he was authorized to sell the properties for P27,000,000.00 and that the terms of the sale were subject to negotiation.^[4]

Eduardo Litonjua, Jr. responded to the offer. Marquez showed the property to Eduardo Litonjua, Jr., and his brother Antonio K. Litonjua. The Litonjua siblings offered to buy the property for P20,000,000.00 cash. Marquez apprised Glanville of the Litonjua siblings' offer and relayed the same to Delsaux in Belgium, but the latter did not respond. On October 28, 1986, Glanville telexed Delsaux in Belgium,

inquiring on his position/ counterproposal to the offer of the Litonjua siblings. It was only on February 12, 1987 that Delsaux sent a telex to Glanville stating that, based on the "Belgian/Swiss decision," the final offer was "US\$1,000,000.00 and P2,500,000.00 to cover all existing obligations prior to final liquidation."^[5]

Marquez furnished Eduardo Litonjua, Jr. with a copy of the telex sent by Delsaux. Litonjua, Jr. accepted the counterproposal of Delsaux. Marquez conferred with Glanville, and in a Letter dated February 26, 1987, confirmed that the Litonjua siblings had accepted the counter-proposal of Delsaux. He also stated that the Litonjua siblings would confirm full payment within 90 days after execution and preparation of all documents of sale, together with the necessary governmental clearances.^[6]

The Litonjua brothers deposited the amount of US\$1,000,000.00 with the Security Bank & Trust Company, Ermita Branch, and drafted an Escrow Agreement to expedite the sale.^[7]

Sometime later, Marquez and the Litonjua brothers inquired from Glanville when the sale would be implemented. In a telex dated April 22, 1987, Glanville informed Delsaux that he had met with the buyer, which had given him the impression that "he is prepared to press for a satisfactory conclusion to the sale."^[8] He also emphasized to Delsaux that the buyers were concerned because they would incur expenses in bank commitment fees as a consequence of prolonged period of inaction.^[9]

Meanwhile, with the assumption of Corazon C. Aquino as President of the Republic of the Philippines, the political situation in the Philippines had improved. Marquez received a telephone call from Glanville, advising that the sale would no longer proceed. Glanville followed it up with a Letter dated May 7, 1987, confirming that he had been instructed by his principal to inform Marquez that "the decision has been taken at a Board Meeting not to sell the properties on which Eternit Corporation is situated."^[10]

Delsaux himself later sent a letter dated May 22, 1987, confirming that the ESAC Regional Office had decided not to proceed with the sale of the subject land, to wit:

May 22, 1987
Mr. L.G. Marquez
L.G. Marquez, Inc.

334 Makati Stock Exchange Bldg.
6767 Ayala Avenue
Makati, Metro Manila
Philippines

Dear Sir:

Re: Land of Eternit Corporation

I would like to confirm officially that our Group has decided not to proceed with the sale of the land which was proposed to you.

The Committee for Asia of our Group met recently (meeting every six months) and examined the position as far as the Philippines are (*sic*) concerned. **Considering [the] new political situation since the departure of MR. MARCOS and a certain stabilization in the Philippines, the Committee has decided not to stop our operations in Manila. In fact, production has started again last week,** and (*sic*) to recognize the participation in the Corporation.

We regret that we could not make a deal with you this time, but in case the policy would change at a later state, we would consult you again.

xxx

Yours sincerely,
(Sgd.)
C.F. DELSAUX

cc. To: J. GLANVILLE (Eternit Corp.)^[11]

When apprised of this development, the Litonjuas, through counsel, wrote EC, demanding payment for damages they had suffered on account of the aborted sale. EC, however, rejected their demand.

The Litonjuas then filed a complaint for specific performance and damages against EC (now the Eterton Multi-Resources Corporation) and the Far East Bank & Trust Company, and ESAC in the RTC of Pasig City. An amended complaint was filed, in which defendant EC was substituted by Eterton Multi-Resources Corporation; Benito C. Tan, Ruperto V. Tan, Stock Ha T. Tan and Deogracias G. Eufemio were impleaded as additional defendants on account of their purchase of ESAC shares of stocks and were the controlling stockholders of EC.

In their answer to the complaint, EC and ESAC alleged that since Eteroutremer was not doing business in the Philippines, it cannot be subject to the jurisdiction of Philippine courts; the Board and stockholders of EC never approved any resolution to sell subject properties nor authorized Marquez to sell the same; and the telex dated October 28, 1986 of Jack Glanville was his own personal making which did not bind EC.

On July 3, 1995, the trial court rendered judgment in favor of defendants and dismissed the amended complaint.^[12] The *fallo* of the decision reads:

WHEREFORE, the complaint against Eternit Corporation now Eterton Multi-Resources Corporation and Eteroutremer, S.A. is dismissed on the ground that there is no valid and binding sale between the plaintiffs and said defendants.

The complaint as against Far East Bank and Trust Company is likewise dismissed for lack of cause of action.

The counterclaim of Eternit Corporation now Eterton Multi-Resources Corporation and Eteroutremer, S.A. is also dismissed for lack of merit.^[13]

The trial court declared that since the authority of the agents/realtors was not in writing, the sale is void and not merely unenforceable, and as such, could not have been ratified by the principal. In any event, such ratification cannot be given any retroactive effect. Plaintiffs could not assume that defendants had agreed to sell the property without a clear authorization from the corporation concerned, that is, through resolutions of the Board of Directors and stockholders. The trial court also pointed out that the supposed sale involves substantially all the assets of defendant EC which would result in the eventual total cessation of its operation.^[14]

The Litonjuas appealed the decision to the CA, alleging that "(1) the lower court erred in concluding that the real estate broker in the instant case needed a written authority from appellee corporation and/or that said broker had no such written authority; and (2) the lower court committed grave error of law in holding that appellee corporation is not legally bound for specific performance and/or damages in the absence of an enabling resolution of the board of directors."^[15] They averred that Marquez acted merely as a broker or go-between and not as agent of the corporation; hence, it was not necessary for him to be empowered as such by any written authority. They further claimed that an agency by estoppel was created when the corporation clothed Marquez with apparent authority to negotiate for the sale of the properties. However, since it was a bilateral contract to buy and sell, it was equivalent to a perfected contract of sale, which the corporation was obliged to consummate.

In reply, EC alleged that Marquez had no written authority from the Board of Directors to bind it; neither were Glanville and Delsaux authorized by its board of directors to offer the property for sale. Since the sale involved substantially all of the corporation's assets, it would necessarily need the authority from the stockholders.

On June 16, 2000, the CA rendered judgment affirming the decision of the RTC. ^[16] The Litonjuas filed a motion for reconsideration, which was also denied by the appellate court.

The CA ruled that Marquez, who was a real estate broker, was a special agent within the purview of Article 1874 of the New Civil Code. Under Section 23 of the Corporation Code, he needed a special authority from EC's board of directors to bind such corporation to the sale of its properties. Delsaux, who was merely the representative of ESAC (the majority stockholder of EC) had no authority to bind the latter. The CA pointed out that Delsaux was not even a member of the board of directors of EC. Moreover, the Litonjuas failed to prove that an agency by estoppel had been created between the parties.

In the instant petition for review, petitioners aver that

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE.

II

THE APPELLATE COURT COMMITTED GRAVE ERROR OF LAW IN HOLDING THAT MARQUEZ NEEDED A WRITTEN AUTHORITY FROM RESPONDENT

ETERNIT BEFORE THE SALE CAN BE PERFECTED.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT GLANVILLE AND DELSAUX HAVE THE NECESSARY AUTHORITY TO SELL THE SUBJECT PROPERTIES, OR AT THE VERY LEAST, WERE KNOWINGLY PERMITTED BY RESPONDENT ETERNIT TO DO ACTS WITHIN THE SCOPE OF AN APPARENT AUTHORITY, AND THUS HELD THEM OUT TO THE PUBLIC AS POSSESSING POWER TO SELL THE SAID PROPERTIES.^[17]

Petitioners maintain that, based on the facts of the case, there was a perfected contract of sale of the parcels of land and the improvements thereon for "US\$1,000,000.00 plus P2,500,000.00 to cover obligations prior to final liquidation." Petitioners insist that they had accepted the counter-offer of respondent EC and that before the counter-offer was withdrawn by respondents, the acceptance was made known to them through real estate broker Marquez.

Petitioners assert that there was no need for a written authority from the Board of Directors of EC for Marquez to validly act as broker/middleman/intermediary. As broker, Marquez was not an ordinary agent because his authority was of a special and limited character in most respects. His only job as a broker was to look for a buyer and to bring together the parties to the transaction. He was not authorized to sell the properties or to make a binding contract to respondent EC; hence, petitioners argue, Article 1874 of the New Civil Code does not apply.

In any event, petitioners aver, what is important and decisive was that Marquez was able to communicate both the offer and counter-offer and their acceptance of respondent EC's counter-offer, resulting in a perfected contract of sale.

Petitioners posit that the testimonial and documentary evidence on record amply shows that Glanville, who was the President and General Manager of respondent EC, and Delsaux, who was the Managing Director for ESAC Asia, had the necessary authority to sell the subject property or, at least, had been allowed by respondent EC to hold themselves out in the public as having the power to sell the subject properties. Petitioners identified such evidence, thus:

1. The **testimony of Marquez** that he was chosen by Glanville as the then President and General Manager of Eternit, to sell the properties of said corporation to any interested party, which authority, as hereinabove discussed, need not be in writing.
2. The fact that the NEGOTIATIONS for the sale of the subject properties spanned **SEVERAL MONTHS**, from 1986 to 1987;
3. The **COUNTER-OFFER** made by Eternit through GLANVILLE to sell its properties to the Petitioners;
4. The **GOOD FAITH** of Petitioners in believing Eternit's offer to sell the properties as evidenced by the Petitioners' ACCEPTANCE of the counter-offer;