

## SECOND DIVISION

[ G.R. No. 155043, September 30, 2004 ]

**ARTURO R. ABALOS, PETITIONER, VS. DR. GALICANO S.  
MACATANGAY, JR., RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

The instant petition seeks a reversal of the *Decision* of the Court of Appeals in CA-G.R. CV No. 48355 entitled "*Dr. Galicano S. Macatangay, Jr. v. Arturo R. Abalos and Esther Palisoc-Abalos*," promulgated on March 14, 2002. The appellate court reversed the trial court's decision which dismissed the action for specific performance filed by respondent, and ordered petitioner and his wife to execute in favor of herein respondent a deed of sale over the subject property.

Spouses Arturo and Esther Abalos are the registered owners of a parcel of land with improvements located at Azucena St., Makati City consisting of about three hundred twenty-seven (327) square meters, covered by Transfer Certificate of Title (TCT) No. 145316 of the Registry of Deeds of Makati.

Armed with a Special Power of Attorney dated June 2, 1988, purportedly issued by his wife, Arturo executed a *Receipt and Memorandum of Agreement* (RMOA) dated October 17, 1989, in favor of respondent, binding himself to sell to respondent the subject property and not to offer the same to any other party within thirty (30) days from date. Arturo acknowledged receipt of a check from respondent in the amount of Five Thousand Pesos (P5,000.00), representing earnest money for the subject property, the amount of which would be deducted from the purchase price of One Million Three Hundred Three Hundred Thousand Pesos (P1,300,000.00). Further, the RMOA stated that full payment would be effected as soon as possession of the property shall have been turned over to respondent.

Subsequently, Arturo's wife, Esther, executed a Special Power of Attorney dated October 25, 1989, appointing her sister, Bernadette Ramos, to act for and in her behalf relative to the transfer of the property to respondent. Ostensibly, a marital squabble was brewing between Arturo and Esther at the time and to protect his interest, respondent caused the annotation of his adverse claim on the title of the spouses to the property on November 14, 1989.

On November 16, 1989, respondent sent a letter to Arturo and Esther informing them of his readiness and willingness to pay the full amount of the purchase price. The letter contained a demand upon the spouses to comply with their obligation to turn over possession of the property to him. On the same date, Esther, through her attorney-in-fact, executed in favor of respondent, a Contract to Sell the property to the extent of her conjugal interest therein for the sum of six hundred fifty thousand pesos (P650,000.00) less the sum already received by her and Arturo. Esther

agreed to surrender possession of the property to respondent within twenty (20) days from November 16, 1989, while the latter promised to pay the balance of the purchase price in the amount of one million two hundred ninety thousand pesos (P1,290,000.00) after being placed in possession of the property. Esther also obligated herself to execute and deliver to respondent a deed of absolute sale upon full payment.

In a letter dated December 7, 1989, respondent informed the spouses that he had set aside the amount of One Million Two Hundred Ninety Thousand Pesos (P1,290,000.00) as evidenced by Citibank Check No. 278107 as full payment of the purchase price. He reiterated his demand upon them to comply with their obligation to turn over possession of the property. Arturo and Esther failed to deliver the property which prompted respondent to cause the annotation of another adverse claim on TCT No. 145316. On January 12, 1990, respondent filed a complaint for specific performance with damages against petitioners. Arturo filed his answer to the complaint while his wife was declared in default.

The Regional Trial Court (RTC) dismissed the complaint for specific performance. It ruled that the *Special Power of Attorney* (SPA) ostensibly issued by Esther in favor of Arturo was void as it was falsified. Hence, the court concluded that the SPA could not have authorized Arturo to sell the property to respondent. The trial court also noted that the check issued by respondent to cover the earnest money was dishonored due to insufficiency of funds and while it was replaced with another check by respondent, there is no showing that the second check was issued as payment for the earnest money on the property.

On appeal taken by respondent, the Court of Appeals reversed the decision of the trial court. It ruled that the SPA in favor of Arturo, assuming that it was void, cannot affect the transaction between Esther and respondent. The appellate court ratiocinated that it was by virtue of the SPA executed by Esther, in favor of her sister, that the sale of the property to respondent was effected. On the other hand, the appellate court considered the RMOA executed by Arturo in favor of respondent valid to effect the sale of Arturo's conjugal share in the property.

Dissatisfied with the appellate court's disposition of the case, petitioner seeks a reversal of its decision alleging that:

I.

The Court of Appeals committed serious and manifest error when it decided on the appeal without affording petitioner his right to due process.

II.

The Court of Appeals committed serious and manifest error in reversing and setting aside the findings of fact by the trial court.

III.

The Court of Appeals erred in ruling that a contract to sell is a contract of

sale, and in ordering petitioner to execute a registrable form of deed of sale over the property in favor of respondent.<sup>[1]</sup>

Petitioner contends that he was not personally served with copies of summons, pleadings, and processes in the appeal proceedings nor was he given an opportunity to submit an appellee's brief. He alleges that his counsel was in the United States from 1994 to June 2000, and he never received any news or communication from him after the proceedings in the trial court were terminated. Petitioner submits that he was denied due process because he was not informed of the appeal proceedings, nor given the chance to have legal representation before the appellate court.

We are not convinced. The essence of due process is an opportunity to be heard. Petitioner's failure to participate in the appeal proceedings is not due to a cause imputable to the appellate court but because of petitioner's own neglect in ascertaining the status of his case. Petitioner's counsel is equally negligent in failing to inform his client about the recent developments in the appeal proceedings. Settled is the rule that a party is bound by the conduct, negligence and mistakes of his counsel.<sup>[2]</sup> Thus, petitioner's plea of denial of due process is downright baseless.

Petitioner also blames the appellate court for setting aside the factual findings of the trial court and argues that factual findings of the trial court are given much weight and respect when supported by substantial evidence. He asserts that the sale between him and respondent is void for lack of consent because the SPA purportedly executed by his wife Esther is a forgery and therefore, he could not have validly sold the subject property to respondent.

Next, petitioner theorizes that the RMOA he executed in favor of respondent was not perfected because the check representing the earnest money was dishonored. He adds that there is no evidence on record that the second check issued by respondent was intended to replace the first check representing payment of earnest money.

Respondent admits that the subject property is co-owned by petitioner and his wife, but he objects to the allegations in the petition bearing a relation to the supposed date of the marriage of the vendors. He contends that the alleged date of marriage between petitioner and his wife is a new factual issue which was not raised nor established in the court *a quo*. Respondent claims that there is no basis to annul the sale freely and voluntarily entered into by the husband and the wife.

The focal issue in the instant petition is whether petitioner may be compelled to convey the property to respondent under the terms of the RMOA and the Contract to Sell. At bottom, the resolution of the issue entails the ascertainment of the contractual nature of the two documents and the status of the contracts contained therein.

Contracts, in general, require the presence of three essential elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.<sup>[3]</sup>

Until the contract is perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation.<sup>[4]</sup> In a contract of sale, the seller must consent

to transfer ownership in exchange for the price, the subject matter must be determinate, and the price must be certain in money or its equivalent.<sup>[5]</sup> Being essentially consensual, a contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.<sup>[6]</sup> However, ownership of the thing sold shall not be transferred to the vendee until actual or constructive delivery of the property.<sup>[7]</sup>

On the other hand, an accepted unilateral promise which specifies the thing to be sold and the price to be paid, when coupled with a valuable consideration distinct and separate from the price, is what may properly be termed a perfected contract of option.<sup>[8]</sup> An option merely grants a privilege to buy or sell within an agreed time and at a determined price. It is separate and distinct from that which the parties may enter into upon the consummation of the option.<sup>[9]</sup> A perfected contract of option does not result in the perfection or consummation of the sale; only when the option is exercised may a sale be perfected.<sup>[10]</sup> The option must, however, be supported by a consideration distinct from the price.<sup>[11]</sup>

Perusing the RMOA, it signifies a unilateral offer of Arturo to sell the property to respondent for a price certain within a period of thirty days. The RMOA does not impose upon respondent an obligation to buy petitioner's property, as in fact it does not even bear his signature thereon. It is quite clear that after the lapse of the thirty-day period, without respondent having exercised his option, Arturo is free to sell the property to another. This shows that the intent of Arturo is merely to grant respondent the privilege to buy the property within the period therein stated. There is nothing in the RMOA which indicates that Arturo agreed therein to transfer ownership of the land which is an essential element in a contract of sale. Unfortunately, the option is not binding upon the promissory since it is not supported by a consideration distinct from the price.<sup>[12]</sup>

As a rule, the holder of the option, after accepting the promise and before he exercises his option, is not bound to buy. He is free either to buy or not to buy later. In *Sanchez v. Rigos*<sup>[13]</sup> we ruled that in an accepted unilateral promise to sell, the promisor is not bound by his promise and may, accordingly, withdraw it, since there may be no valid contract without a cause or consideration. Pending notice of its withdrawal, his accepted promise partakes of the nature of an offer to sell which, if acceded or consented to, results in a perfected contract of sale.

Even conceding for the nonce that respondent had accepted the offer within the period stated and, as a consequence, a bilateral contract of purchase and sale was perfected, the outcome would be the same. To benefit from such situation, respondent would have to pay or at least make a valid tender of payment of the price for only then could he exact compliance with the undertaking of the other party.<sup>[14]</sup> This respondent failed to do. By his own admission, he merely informed respondent spouses of his readiness and willingness to pay. The fact that he had set aside a check in the amount of One Million Two Hundred Ninety Thousand Pesos (P1,290,000.00) representing the balance of the purchase price could not help his cause. Settled is the rule that tender of payment must be made in legal tender. A check is not legal tender, and therefore cannot constitute a valid tender of payment.<sup>[15]</sup> Not having made a valid tender of payment, respondent's action for specific performance must fail.

With regard to the payment of Five Thousand Pesos (P5,000.00), the Court is of the view that the amount is not earnest money as the term is understood in Article 1482 which signifies proof of the perfection of the contract of sale, but merely a guarantee that respondent is really interested to buy the property. It is not the giving of earnest money, but the proof of the concurrence of all the essential elements of the contract of sale which establishes the existence of a perfected sale.

[16] No reservation of ownership on the part of Arturo is necessary since, as previously stated, he has never agreed to transfer ownership of the property to respondent.

Granting for the sake of argument that the RMOA is a contract of sale, the same would still be void not only for want of consideration and absence of respondent's signature thereon, but also for lack of Esther's conformity thereto. Quite glaring is the absence of the signature of Esther in the RMOA, which proves that she did not give her consent to the transaction initiated by Arturo. The husband cannot alienate any real property of the conjugal partnership without the wife's consent.[17]

However, it was the Contract to Sell executed by Esther through her attorney-in-fact which the Court of Appeals made full use of. Holding that the contract is valid, the appellate court explained that while Esther did not authorize Arturo to sell the property, her execution of the SPA authorizing her sister to sell the land to respondent clearly shows her intention to convey her interest in favor of respondent. In effect, the court declared that the lack of Esther's consent to the sale made by Arturo was cured by her subsequent conveyance of her interest in the property through her attorney-in-fact.

We do not share the ruling.

The nullity of the RMOA as a contract of sale emanates not only from lack of Esther's consent thereto but also from want of consideration and absence of respondent's signature thereon. Such nullity cannot be obliterated by Esther's subsequent confirmation of the putative transaction as expressed in the Contract to Sell. Under the law, a void contract cannot be ratified[18] and the action or defense for the declaration of the inexistence of a contract does not prescribe.[19] A void contract produces no effect either against or in favor of anyone—it cannot create, modify or extinguish the juridical relation to which it refers.[20]

True, in the Contract to Sell, Esther made reference to the earlier RMOA executed by Arturo in favor of respondent. However, the RMOA which Arturo signed is different from the deed which Esther executed through her attorney-in-fact. For one, the first is sought to be enforced as a contract of sale while the second is purportedly a contract to sell only. For another, the terms and conditions as to the issuance of title and delivery of possession are divergent.

The congruence of the wills of the spouses is essential for the valid disposition of conjugal property. Where the conveyance is contained in the same document which bears the conformity of both husband and wife, there could be no question on the validity of the transaction. But when there are two documents on which the signatures of the spouses separately appear, textual concordance of the documents is indispensable. Hence, in this case where the wife's putative consent to the sale of