

THIRTEENTH DIVISION

[CA-G.R. CV. NO. 97682, March 19, 2014]

**FLORENTINA BAUTISTA-SPILLE, REP. BY HER ATTY-IN-FACT,
MANUEL B. FLORES, JR., PLAINTIFFS-APPELLEE, VS. NICORP
MANAGEMENT AND DEVELOPMENT, CORP., ET. AL.,
DEFENDANTS, NICORP MANAGEMENT AND DEVELOPMENT,
CORP., DEFENDANT-APPELLANT.**

D E C I S I O N

YBAÑEZ, J.:

Before Us is an appeal seeking to set aside the Decision^[1] dated 24 May 2010 rendered by Branch 90, Regional Trial Court of Dasmariñas, Cavite in CIVIL CASE NO. 0321-04, which nullified the contract to sell entered into by defendant-appellant and plaintiff-appellee's brother Benjamin Bautista.

The Facts

The factual antecedents as may be culled from the records:

Plaintiff-appellee is a resident of the United States. On 20 June 1996, plaintiff-appellee executed a document denominated as a General Power of Attorney (GPA)^[2] in favor of his brother Benjamin Bautista. The GPA includes, among others, the power to buy, sell and contract in behalf of the plaintiff-appellee.^[3]

On 13 October 2004, Benjamin Bautista and defendant-appellant NICORP Management and Development Corporation entered into a contract to sell.^[4] The contract to sell pertains to a parcel of land covered by TCT No. T-197 situated in Imus, Cavite containing an area of 33,052 square meters, more or less. The agreed amount of the parcel of land is Php15,000,000.00. The buyer agreed to make a down payment of 20% of the purchase price and the remaining balance payable in 8 months. It was also agreed that upon payment of the down payment, the Transfer Certificate of Title will be deposited and placed in ESCROW in International Exchange Bank and will only be released upon full payment.

On 14 October 2004, defendant-appellant issued check^[5] in favor of plaintiff-appellee Florentina Bautista-Spille representing the down payment of the property subject of the contract to sell. The Title was also deposited and placed in ESCROW at the International Exchange Bank.^[6]

However, on 27 October 2004, plaintiff-appellee, through counsel, sent defendant-appellant NICORP a demand letter^[7] informing the latter that Benjamin Bautista is not clothed with authority to enter into the contract to sell in behalf of the plaintiff-appellee. That it was Manuel Flores, Jr. is the one authorized to transact in behalf of plaintiff-appellee. On 17 November 2004, plaintiff-appellee filed a Complaint^[8] for

Declaration of Nullity of the Contract to Sell, Injunction, Recovery of Possession and Damages.

After the defendant bank filed its Answer^[9] with Counterclaim, trial ensued where the plaintiffs presented its lone witness, Manuel Flores, Jr., while the defendant presented as its witnesses Ma. Theresa Dominguez and Joseph Estigoy.

On 24 May 2010, the court a quo rendered Decision^[10] in favor of plaintiffs appellants, the dispositive portion of which reads :

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the Contract to Sell, dated October 13, 2004 between the defendant Bautista and NICORP to be null and void, and the writ of preliminary injunction is now made permanent, and further ordering the defendants NICORP and International Exchange Bank, as follows:

- (a) To return to the plaintiff the peaceful possession of the subject property covered by Transfer Certificate of Title No. T-197 of the Register of Deeds of the Province of Cavite;
- (b) To return to the plaintiff the Original Owner's Duplicate Title No. T-197 of the Register of Deeds of the Province of Cavite;
- (c) To pay to the plaintiff the amount of Php250,000.00 by way of attorney's fees; and
- (d) The Costs of Suit.

SO ORDERED.”

1.

Aggrieved, defendant-appellant NICORP interposed the instant appeal with the following assignment of errors:

ASSIGNMENT OF ERRORS

a) THE HONORABLE TRIAL COURT ERRED IN DECLARING THE CONTRACT TO SELL BETWEEN DEFENDANT BAUTISTA AND NICORP NULL AND VOID.

b) THE HONORABLE TRIAL COURT ERRED IN GRANTING THE WRIT OF PRELIMINARY INJUNCTION FILED BY PLAINTIFF-APPELLEE.

c) THE HONORABLE TRIAL COURT ERRED IN DISREGRADING THE FACT THAT DEFENDANT-APPELLANT IS A PURCHASER IN GOOD FAITH.

Our Ruling

Plainly, the focal issue in the instant case is whether or not Benjamin Bautista was authorized to enter into the Contract to Sell in behalf of his sister, Florentina Bautista-Spille.

The appeal is impressed with merit.

The assailed decision centers its stance with the posture that Benjamin Bautista was not authorized to sell the property. The court a quo was adamant that the general power of attorney is not sufficient to clothe Benjamin Bautista the power to enter into the purported Contract to Sell. It also posits that the general power of attorney issued in favor of Benjamin Bautista was couched in general terms which comprises only acts of administration, thus, a special power of attorney is still needed in order to authorize Benjamin Bautista to enter into such Contract to Sell.^[11]

We do not agree.

According to the provisions of Article 1874^[12] of the Civil Code on Agency, when the sale of a piece of land or any interest therein is made through an agent, the authority of the latter shall be in writing. Absent this requirement, the sale shall be void. Also, under Article 1878,^[13] a special power of attorney is necessary in order for an agent to enter into a contract by which the ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration.

However, a general power of attorney may include a special power if such special power is mentioned or referred to in the general power, e.g., "I authorize you to sell ALL my properties."^[14] **Where the power of attorney says that the agent can enter into any contract concerning a land, or can sell the land under any term or condition and condition he may think fit, the power granted is so broad that it practically covers the celebration of any contract and the conclusion of any covenant or stipulation, and it undoubtedly means that the agent can act in the same manner and with same breadth and latitude as the principal could concerning the property.**^[15] In the case of Estate of Lino Olaguer vs. Ongjoco,^[16] the Supreme Court held that:

"xxx While the law requires a special power of attorney, the general power of attorney was sufficient in this case, as Jose A. Olaguer was expressly **empowered to sell any** of Virgilio's properties; and **to sign, execute, acknowledge and deliver any agreement therefor**. Even if a document is designated as a general power of attorney, the