Supreme Court E-Library

THIRD DIVISION

[G.R. No. 111448. January 16, 2002]

AF REALTY & DEVELOPMENT, INC. and ZENAIDA R. RANULLO, *petitioners, vs.* **DIESELMAN FREIGHT SERVICES, CO., MANUEL C. CRUZ, JR. and MIDAS DEVELOPMENT CORPORATION,** *respondents.*

SYNOPSIS

Dieselman Freight Services Co. is the registered owner of a commercial lot and Manuel C. Cruz, Jr. is a member of its board of directors. Although Cruz has no written authority from Dieselman to sell the lot, he issued a letter authorizing Cristeta N. Politan to look for a buyer at ₱3,000.00 per square meter or ₱6,282,000.00. Politan, in turn, authorized Felicisima Noble to sell the same lot. Noble then offered the lot to AF Realty & Development, Inc. at ₱2,500.00 per square meter. Zenaida Ranullo, a board member and vice-president of AF Realty, accepted the offer and issued a check in the amount of ₱330,000.00 payable to Dieselman. Cruz, as president of Dieselman, acknowledged receipt of the check only as earnest money and required AF Realty to finalize the sale at ₱4,000.00 per square meter. Later on, Cruz terminated the offer and demanded the return of the title of the lot earlier delivered. AF Realty, claiming that the contract was already perfected, filed a complaint for specific performance against Dieselman and Cruz. Meanwhile, Dieselman and Midas Development Corporation executed a deed of absolute sale of the same property at an agreed price of ₱2,800.00 per square meter and thereafter filed a motion for leave to intervene in the case. After trial, the lower court held that the acts of Cruz bound Dieselman in the sale of the lot to AF Realty. Consequently, the perfected contract of sale between Dieselman and AF Realty barred Midas's intervention. Dissatisfied, all parties appealed to the Court of Appeals. The Court of Appeals reversed the decision of the trial court. It held that since Cruz was not authorized in writing to sell the subject property to AF Realty, the sale was not perfected. It also held that the Deed of Absolute Sale between Dieselman and Midas is valid. Hence, petitioner filed the instant petition. The focal issue for

Supreme Court E-Library

consideration by the Supreme Court is who between petitioner AF Realty and respondent Midas has a right over the subject lot.

The decision of the Court of Appeals was affirmed by the Supreme Court. According to the Court, considering that respondent Cruz, Polintan and Noble were not authorized by respondent Dieselman to sell its lot, the supposed contract is void. Being a void contract, it is not susceptible of ratification by clear mandate of the Civil Code. On the other hand, the validity of the sale of the subject lot to respondent Midas was unquestionable. The sale was authorized by the board resolution of respondent Dieselman.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; CORPORATE POWERS OF ALL CORPORATIONS SHALL BE EXERCISED BY THE BOARD OF DIRECTORS; RATIONALE.** — Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.

2. **CIVIL LAW; AGENCY; SALE OF LAND THROUGH AN AGENT REQUIRES AUTHORITY TO BE IN WRITING; EFFECT OF ABSENCE THEREOF; CASE AT BAR.** — Involved in this case is a sale of land *through an agent.* Thus, the law on agency under the Civil Code takes precedence. This is well stressed in *Yao Ka Sin Trading vs. Court of Appeals:* "Since a corporation, such as the private respondent, can act only through its officers and agents, all acts within the powers of said corporation *may be performed by agents of its selection;* and, except so far as limitations or restrictions may be imposed

Supreme Court E-Library

by special charter, by-law, or statutory provisions, *the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities, and incapacities as are agents of individuals and private persons.*" Pertinently, Article 1874 of the same Code provides: "ART. 1874. When a *sale of piece of land* or any interest therein is *through an agent*, the *authority* of the latter *shall be in writing; otherwise, the sale shall be void.*" Considering that respondent Cruz, Jr., Cristeta Polintan and Felicisima Ranullo were not authorized by respondent Dieselman to sell its lot, the supposed contract is void. Being a void contract, it is not susceptible of ratification by clear mandate of Article 1409 of the Civil Code, thus: "ART. 1409. The following *contracts* are *inexistent and void from the very beginning:* x x x (7) Those *expressly prohibited or declared void by law. "These contracts cannot be ratified.* Neither can the right to set up the defense of illegality be waived." Upon the other hand, the validity of the sale of the subject lot to respondent Midas is unquestionable. As aptly noted by the Court of Appeals, the sale was authorized by a board resolution of respondent Dieselman dated May 27, 1988.

APPEARANCES OF COUNSEL

Benito Fabie for petitioners.

Abello Concepcion Regala & Cruz for private respondent Midas Development Corp.

Tagoc & Tagoc Law Office for private respondents Dieselman Freight Services, Co., and M.C. Cruz, Jr.

DECISION

SANDOVAL-GUTIERREZ, *J.*:

Petition for review on *certiorari* assailing the Decision dated December 10, 1992 and the Resolution (Amending Decision) dated August 5, 1993 of the Court of Appeals in CA-G.R. CV No. 30133.

Supreme Court E-Library

Dieselman Freight Service Co. (Dieselman for brevity) is a domestic corporation and a registered owner of a parcel of commercial lot consisting of 2,094 square meters, located at 104 E. Rodriguez Avenue, Barrio Ugong, Pasig City, Metro Manila. The property is covered by Transfer Certificate of Title No. 39849 issued by the Registry of Deeds of the Province of Rizal.[1]

On May 10, 1988, Manuel C. Cruz, Jr., a member of the board of directors of Dieselman, issued a letter denominated as "Authority To Sell Real Estate"[2] to Cristeta N. Polintan, a real estate broker of the CNP Real Estate Brokerage. Cruz, Jr. authorized Polintan "to look for a buyer/buyers and negotiate the sale" of the lot at ₱3,000.00 per square meter, or a total of ₱6,282,000.00. Cruz, Jr. has no written authority from Dieselman to sell the lot.

In turn, Cristeta Polintan, through a letter[3] dated May 19, 1988, authorized Felicisima ("Mimi") Noble[4] to sell the same lot.

Felicisima Noble then offered for sale the property to AF Realty & Development, Inc. (AF Realty) at ₱2,500.00 per square meter.[5] Zenaida Ranullo, board member and vice-president of AF Realty, accepted the offer and issued a check in the amount of ₱300,000.00 payable to the order of Dieselman. Polintan received the check and signed an "Acknowledgement Receipt"[6] indicating that the amount of ₱300,000.00 represents the partial payment of the property but refundable within two weeks should AF Realty disapprove Ranullo's action on the matter.

On June 29, 1988, AF Realty confirmed its intention to buy the lot. Hence, Ranullo asked Polintan for the board resolution

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[1] *Rollo*, p. 129.

[2] Exhibit "J", Records of RTC, p. 112.

[3] Exhibit "I", *Ibid*, p. 111.

[4] A real estate broker of Noblehaus Realty and Marketing.

[5] Exhibit "A", *Ibid.*, p. 102.

[6] Exhibit "C", *Ibid.*, p. 104.

Supreme Court E-Library

of Dieselman authorizing the sale of the property. However, Polintan could only give Ranullo the original copy of TCT No. 39849, the tax declaration and tax receipt for the lot, and a photocopy of the Articles of Incorporation of Dieselman.[7]

On August 2, 1988, Manuel F. Cruz, Sr., president of Dieselman, acknowledged receipt of the said ₱300,000.00 as "earnest money" but required AF Realty to finalize the sale at *₱4,000.00* per square meter.[8] AF Realty replied that it has paid an initial down payment of ₱300,000.00 and is willing to pay the balance.[9]

However, on August 13, 1988, Mr. Cruz, Sr. terminated the offer and demanded from AF Realty the return of the title of the lot earlier delivered by Polintan.[10]

Claiming that there was a perfected contract of sale between them, AF Realty filed with the Regional Trial Court, Branch 160, Pasig City a complaint for specific performance (Civil Case No. 56278) against Dieselman and Cruz, Jr.. The complaint prays that Dieselman be ordered to execute and deliver a final deed of sale in favor of AF Realty.[11] In its amended complaint,[12] AF Realty asked for payment of ₱1,500,000.00 as compensatory damages; ₱400,000.00 as attorney's fees; and ₱500,000.00 as exemplary damages.

In its answer, Dieselman alleged that there was no meeting of the minds between the parties in the sale of the property and that it did not authorize any person to enter into such transaction on its behalf.

Meanwhile, on July 30, 1988, Dieselman and Midas Development Corporation (Midas) executed a Deed of Absolute

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[7] Transcript of Stenographic Notes (TSN), December 7, 1988, p. 18.

[8] Exhibit "F", Records of RTC, p. 107.

[9] Exhibit "G", *Ibid.*, p.108.

[10] Exhibit "4", *Ibid.*, p. 242.

[11] Records of RTC, p. 6.

[12] *Ibid.*, pp. 11-17.

Supreme Court E-Library

Sale[13] of the same property. The agreed price was ₱2,800.00 per square meter. Midas delivered to Dieselman ₱500,000.00 as down payment and deposited the balance of ₱5,300,000.00 in escrow account with the PCIBank.

Constrained to protect its interest in the property, Midas filed on April 3, 1989 a Motion for Leave to Intervene in Civil Case No. 56278. Midas alleged that it has purchased the property and took possession thereof, hence Dieselman cannot be compelled to sell and convey it to AF Realty. The trial court granted Midas' motion.

After trial, the lower court rendered the challenged Decision holding that the acts of Cruz, Jr. bound Dieselman in the sale of the lot to AF Realty.[14] Consequently, the perfected contract of sale between Dieselman and AF Realty bars Midas' intervention. The trial court also held that Midas acted in bad faith when it initially paid Dieselman ₱500,000.00 even without seeing the latter's title to the property. Moreover, the notarial report of the sale was not submitted to the Clerk of Court of the Quezon City RTC and the balance of ₱5,300,000.00 purportedly deposited in escrow by Midas with a bank was not established.

The dispositive portion of the trial court's Decision reads:

"WHEREFORE, foregoing considered, judgment is hereby rendered ordering defendant to execute and deliver to plaintiffs the final deed of sale of the property covered by the Transfer Certificate of Title No. 39849 of the Registry of Deed of Rizal, Metro Manila District II, including the improvements thereon, and ordering defendants to pay plaintiffs attorney's fees in the amount of ₱50,000.00 and to pay the costs.

"The counterclaim of defendants is necessarily dismissed.

"The counterclaim and/or the complaint in intervention are likewise dismissed

"SO ORDERED."[15]

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[13] Exhibit "M", *Ibid.*, p. 193.

[14] *Rollo*, pp. 13-15.

[15] *Ibid.*, pp. 17-18.

Supreme Court E-Library

Dissatisfied, all the parties appealed to the Court of Appeals.

AF Realty alleged that the trial court erred in not holding Dieselman liable for moral, compensatory and exemplary damages, and in dismissing its counterclaim against Midas.

Upon the other hand, Dieselman and Midas claimed that the trial court erred in finding that a contract of sale between Dieselman and AF Realty was perfected. Midas further averred that there was no bad faith on its part when it purchased the lot from Dieselman.

In its Decision dated December 10, 1992, the Court of Appeals reversed the judgment of the trial court holding that since Cruz, Jr. was not authorized in writing by Dieselman to sell the subject property to AF Realty, the sale was not perfected; and that the Deed of Absolute Sale between Dieselman and Midas is valid, there being no bad faith on the part of the latter. The Court of Appeals then declared Dieselman and Cruz, Jr. jointly and severally liable to AF Realty for ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱100,000.00 as attorney's fees.[16]

On August 5, 1993, the Court of Appeals, upon motions for reconsideration filed by the parties, promulgated an Amending Decision, the dispositive portion of which reads:

"WHEREFORE, The Decision promulgated on October 10, 1992, is hereby AMENDED in the sense that only defendant Mr. Manuel Cruz, Jr. should be made liable to pay the plaintiffs the damages and attorney's fees awarded therein, plus the amount of ₱300,000.00 unless, in the case of the said ₱300,000.00, the same is still deposited with the Court which should be restituted to plaintiffs.

"SO ORDERED."[17]

AF Realty now comes to this Court via the instant petition alleging that the Court of Appeals committed errors of law.

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[16] *Rollo*, pp. 51-71.

[17] *Ibid.*, pp.15-16.

Supreme Court E-Library

The focal issue for consideration by this Court is who between petitioner AF Realty and respondent Midas has a right over the subject lot.

The Court of Appeals, in reversing the judgment of the trial court, made the following ratiocination:

"From the foregoing scenario, the fact that the board of directors of Dieselman never authorized, verbally and in writing, Cruz, Jr. to sell the property in question or to look for buyers and negotiate the sale of the subject property is undeniable.

"While Cristeta Polintan was actually authorized by Cruz, Jr. to look for buyers and negotiate the sale of the subject property, it should be noted that Cruz, Jr. could not confer on Polintan any authority which he himself did not have. *Nemo dat quod non habet.* In the same manner, Felicisima Noble could not have possessed authority broader in scope, being a mere extension of Polintan's purported authority, for it is a legal truism in our jurisdiction that a spring cannot rise higher than its source. Succinctly stated, the alleged sale of the subject property was effected through persons who were absolutely without any authority whatsoever from Dieselman.

"The argument that Dieselman ratified the contract by accepting the ₱300,000.00 as partial payment of the purchase price of the subject property is equally untenable. The sale of land through an agent without any written authority is void.

xxx xxx xxx

"On the contrary, anent the sale of the subject property by Dieselman to intervenor Midas, the records bear out that Midas purchased the same from Dieselman on 30 July 1988. The notice of *lis pendens* was subsequently annotated on the title of the property by plaintiffs on 15 August 1988. However, this subsequent annotation of the notice of *lis pendens* certainly operated prospectively and did not retroact to make the previous sale of the property to Midas a conveyance in bad faith. A subsequently registered notice of *lis pendens* surely is not proof of bad faith. It must therefore be borne in mind that the 30 July 1988 deed of sale between Midas and Dieselman is a document duly certified by notary public under his hand and seal. x x x. Such a deed of sale being public document acknowledged before a notary public is admissible as to the date and fact of its execution without further proof of its due execution and delivery (*Bael*

Supreme Court E-Library

vs. Intermediate Appellate Court, 169 SCRA 617; *Joson vs. Baltazar,* 194 SCRA 114) and to prove the defects and lack of consent in the execution thereof, the evidence must be strong and not merely preponderant x x x."[18]

We agree with the Court of Appeals.

Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.[19] Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board.[20] Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.[21]

In the instant case, it is undisputed that respondent Cruz, Jr. has no written authority from the board of directors of respondent Dieselman to sell or to negotiate the sale of the lot, much less to appoint other persons for the same purpose. Respondent Cruz, Jr.'s lack of such authority precludes him from conferring any authority to Polintan involving the subject realty. Necessarily, neither could Polintan authorize Felicisima Noble. Clearly, the collective acts of respondent Cruz, Jr., Polintan and Noble cannot bind Dieselman in the purported contract of sale.

Petitioner AF Realty maintains that the sale of land by an unauthorized agent may be ratified where, as here, there is acceptance of the benefits involved. In this case the receipt by

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[18] *Ibid.*, pp. 12-13.

[19] *Citibank, N.A. vs. Chua*, 220 SCRA 75 (1993).

[20] *Baretto vs. La Previsora Filipina*, 57 Phil. 649 (1932).

[21] *Mendezona vs. Philippine Sugar Estates Development Co.*, 41 Phil. 475 (1921).

Supreme Court E-Library

respondent Cruz, Jr. from AF Realty of the ₱300,000.00 as partial payment of the lot effectively binds respondent Dieselman.[22]

We are not persuaded.

Involved in this case is a sale of land *through an agent*. Thus, the law on agency under the Civil Code takes precedence. This is well stressed in *Yao Ka Sin Trading vs. Court of Appeals*:[23]

"Since a corporation, such as the private respondent, can act only through its officers and agents, all acts within the powers of said corporation *may be performed by agents of its selection;* and, except so far as limitations or restrictions may be imposed by special charter, by-law, or statutory provisions, *the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation, and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities, and incapacities as are agents of individuals and private persons.*" (Italics supplied)

Pertinently, Article 1874 of the same Code provides:

"ART. 1874. When a *sale of piece of land* or any interest therein is *through an agent*, the *authority* of the latter *shall be in writing; otherwise, the sale shall be void.*" (Italics supplied)

Considering that respondent Cruz, Jr., Cristeta Polintan and Felicisima Ranullo were not authorized by respondent Dieselman to sell its lot, the supposed contract is void. Being a void contract, it is not susceptible of ratification by clear mandate of Article 1409 of the Civil Code, thus:

"ART. 1409. The following *contracts* are *inexistent and void from the very beginning:*

xxx xxx xxx

(7) Those *expressly prohibited* or *declared void by law.*

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[22] *Rollo*, pp. 22 and 24.

[23] 209 SCRA 763 (1992).

Supreme Court E-Library

"*These contracts cannot be ratified.* Neither can the right to set up the defense of illegality be waived." (Italics supplied)

Upon the other hand, the validity of the sale of the subject lot to respondent Midas is unquestionable. As aptly noted by the Court of Appeals,[24] the sale was authorized by a board resolution of respondent Dieselman dated May 27, 1988.

The Court of Appeals awarded attorney's fees and moral and exemplary damages in favor of petitioner AF Realty and against respondent Cruz, Jr.. The award was made by reason of a breach of contract imputable to respondent Cruz, Jr. for having acted in bad faith. We are no persuaded. It bears stressing that petitioner Zenaida Ranullo, board member and vice-president of petitioner AF Realty who accepted the offer to sell the property, admitted in her testimony[25] that a board resolution from respondent Dieselman authorizing the sale is necessary to bind the latter in the transaction; and that respondent Cruz, Jr. has no such written authority. In fact, despite demand, such written authority was not presented to her.[26] This notwithstanding, petitioner Ranullo tendered a partial payment for the unauthorized transaction. Clearly, respondent Cruz, Jr. should not be held liable for damages and attorney's fees.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are hereby *AFFIRMED* with *MODIFICATION* in the sense that the award of damages and attorney's fees is deleted. Respondent Dieselman is ordered to return to petitioner AF Realty its partial payment of ₱300,000.00. Costs against petitioners.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Carpio, JJ.,* concur.

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[24] See assailed Resolution (Amending Decision) dated August 5, 1993, p. 12; *Rollo*, p. 84.

[25] TSN, December 7, 1988, pp. 18-20; pp. 53-54.

[26] *Ibid.*