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THIRD DIVISION

[G.R. No. 203786. October 23, 2013]

AQUILES RIOSA, *petitioner, vs.* **TABACO LA SUERTE CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF THE COURT OF APPEALS, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE CONCLUSIVE ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTION.—** As a rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts and is not to review or calibrate the evidence on record. When supported by substantial evidence, the findings of fact by the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions. An acceptable exception is where there is a conflict between the factual determination of the trial court and that of the appellate court. In such a case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.

2. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; ELEMENTS.—** The elements of a contract of sale are: a] consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b] determinate subject matter; and c] price certain in money or its equivalent.

3. **ID.; ID.; ID.; PERFECTED AT THE MOMENT THERE IS A MEETING OF THE MINDS ON THE THING WHICH IS THE OBJECT OF THE CONTRACT AND ON THE PRICE.—** In this case, there was no clear and convincing evidence that Aquiles definitely sold the subject property to La Suerte, nor was there evidence that La Suerte authorized its chief executive officer, Sia Ko Pio, to negotiate and conclude a purchase of the property. Aquiles' narration in open court is clear that he did not intend to transfer ownership of his property. x x x The x x x testimony negates any intention on the part of Aquiles

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to sell the property in exchange for the amounts borrowed. Evidently, it was a series of transactions between Aquiles and Sia Ko Pio, but not between the parties. The transactions were between Aquiles, as borrower, and Sia Ko Pio, as lender. It was not a sale between Aquiles, as vendor, and La Suerte, as vendee. There was no agreement between the parties. As the first element was wanting, Aquiles correctly argued that there was no contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of the minds on the thing which is the object of the contract and on the price.

4. **ID.; ID.; ID.; THE EXISTENCE OF A SIGNED DOCUMENT PURPORTING TO BE A CONTRACT OF SALE DOES NOT PRECLUDE A FINDING THAT THE CONTRACT IS INVALID WHEN THE EVIDENCE SHOWS THAT THERE WAS NO MEETING OF THE MINDS BETWEEN THE SELLER AND BUYER.—** The fact that the alleged deed of sale indubitably bore Aquiles' signature deserves no evidentiary value there being no consent from him to part with his property. Had he known that the document presented to him was an instrument of sale, he would not have affixed his signature on the document. It has been held that the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer.

5. **REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIAL DOCUMENTS; AN ERROR IN THE NOTARIAL INSCRIPTION DOES NOT GENERALLY INVALIDATE A SALE BUT THE DOCUMENT WOULD BE TAKEN OUT OF THE REALM OF PUBLIC DOCUMENTS.—** [A] notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity. While it is true that an error in the notarial inscription does not generally invalidate a sale, if indeed it took place, the same error can only mean that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.

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6. LEGAL ETHICS; NOTARIES PUBLIC; NOTARIES PUBLIC *EX OFFICIO*; MAY PERFORM ANY ACT WITHIN THE COMPETENCY OF A REGULAR NOTARY PUBLIC PROVIDED THAT CERTIFICATION BE MADE IN THE NOTARIZED DOCUMENTS ATTESTING TO THE LACK OF ANY LAWYER OR NOTARY PUBLIC IN SUCH MUNICIPALITY OR CIRCUIT.— An even more substantial irregularity raised by Aquiles pertains to the capacity of the notary public, Judge Base, to notarize the deed of sale. Judge Base, who acted as *ex-officio* notary public, is not allowed under the law to notarize documents not connected with the exercise of his official duties. The case of *Tigno v. Aquino* is enlightening: "There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public *ex officio* to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies." x x x In this case, no such certification was attached to the alleged notarized document. Also, the Court takes note of Aquiles' averment that there were several lawyers commissioned as notary public in Tabaco City. With Judge Base not being authorized to notarize a deed of conveyance, the notarized document cannot be considered a valid registrable document in favor of La Suerte.

7. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIAL DOCUMENTS; AN IRREGULAR NOTARIZATION REDUCES THE EVIDENTIARY VALUE OF A DOCUMENT TO THAT OF A PRIVATE DOCUMENT.— Although it is true that the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein, yet an irregular notarization reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.

APPEARANCES OF COUNSEL

Brotamonte Law Office for petitioner.
Coderis Law Offices for respondent.

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D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 30, 2012 Decision[1] of the Court of Appeals *(CA)*, and its September 20, 2012 Resolution,[2] in CA-G.R. CV No. 96459, reversing the September 30, 2010 Decision[3] of the Regional Trial Court, Branch 15, Tabaco City, Albay *(RTC)*, which granted the complaint for annulment/declaration of nullity of the deed of absolute sale and transfer certificate of title, reconveyance and damages.

The Facts

On February 26, 2002, petitioner Aquiles Riosa *(Aquiles)* filed his Complaint for Annulment/Declaration of Nullity of Deed of Absolute Sale and Transfer Certificate of Title, Reconveyance and Damages against respondent Tabaco La Suerte Corporation *(La Suerte)* before the RTC.

In his complaint, Aquiles alleged that he was the owner and in actual possession of a 52-square meter commercial lot situated in *Barangay* Quinale, Tabaco City, Albay; that he acquired the said property through a deed of cession and quitclaim executed by his parents, Pablo Riosa, Sr. and Sabiniana Biron; that he declared the property in his name and had been religiously paying the realty tax on the said property; that thereafter, his daughter, Annie Lyn Riosa Zampelis, renovated the commercial building on the lot and introduced improvements costing no less than ₱300,000.00; that subsequently, on three (3) occasions, he obtained loans from Sia Ko Pio in the total amount of ₱50,000.00; that as a security for the payment of loans, Sia Ko Pio requested from him a photocopy of the deed of cession and quitclaim;

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[1] *Rollo*, pp. 35-55. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Franchito N. Diamante and Ramon A. Cruz, concurring.

[2] Annex "C" of Petition, *id.* at 71-72.

[3] *Id.* at 78-94.

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that Sia Ko Pio presented to him a document purportedly a receipt for the ₱50,000.00 loan with an undertaking to pay the total amount of ₱52,000.00 including the ₱2,000.00 attorney's fees; that without reading the document, he affixed his signature thereon; and that in September 2001, to his surprise, he received a letter from La Suerte informing him that the subject lot was already registered in its name.

Aquiles claimed that by means of fraud, misrepresentation and deceit employed by Sia Ko Pio, he was made to sign the document which he thought was a receipt and undertaking to pay the loan, only to find out later that it was a document of sale. Aquiles averred that he did not appear before the notary public to acknowledge the sale, and that the notary public, a municipal judge, was not authorized to notarize a deed of conveyance. He further claimed that he could not have sold the commercial building on the lot as he had no transmissible right over it, as it was not included in the deed of cession and quitclaim. He, thus, prayed for the nullification of the deed of sale and certificate of title in the name of La Suerte and the reconveyance of the subject property to him.[4]

In its Answer, La Suerte averred that it was the actual and lawful owner of the commercial property, after purchasing it from Aquiles on December 7, 1990; that it allowed Aquiles to remain in possession of the property to avoid the ire of his father from whom he had acquired the property *inter vivos*, subject to his obligation to vacate the premises anytime upon demand; that on February 13, 1991, the Register of Deeds of Albay issued Transfer Certificate of Title *(TCT)* No. T-80054 covering the subject property in its name; that Aquiles necessarily undertook the cost of repairs and did not pay rent for using the premises; that Aquiles transacted with it, through Sia Ko Pio, now deceased, who was then its Chief Executive Officer; that his opinion that only the land was sold was absurd because the sale of the principal included its accessories, not to mention that he did not make any reservation at the time the deed was executed; that it repeatedly asked Aquiles to vacate the premises

[4] *Id.* at 36-38.

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but to no avail; that, instead, he tried to renovate the building in 2001 which prompted it to lodge a complaint with the Office of the Mayor on the ground that the renovation work was without a building permit; and that Aquiles' complaint was barred by prescription, laches, estoppel and indefeasibility of La Suerte's title.[5]

During the trial, Aquiles and his daughter, Anita Riosa Cabanele, testified to prove his causes of action. To defend its rightful claim, La Suerte presented the testimony of Juan Pielago Sia *(Juan)*, the son of Sia Ko Pio and a member of the board. Aquiles also presented his wife, Erlinda, as rebuttal witness.

On September 30, 2010, the RTC ruled in favor of Aquiles, disposing as follows:

> Wherefore, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant.
>
> 1. Ordering the annulment of sale of the subject lot purportedly executed by plaintiff Aquiles Riosa in favor of defendant corporation;
> 2. Annulling the Transfer Certificate of Title No. 80054 in the name of defendant corporation;
> 3. Ordering defendant corporation to pay plaintiff the amount of Twenty Thousand Pesos (₱20,000.00) as Attorney's fees;
> 4. Ordering defendant to pay plaintiff the amount of Twenty Thousand (₱20,000.00) as exemplary damages; and
> 5. Ordering defendant to pay plaintiff the amount of Twenty Thousand Pesos (₱20,000.00) as Attorney's fees.
>
> SO ORDERED.[6]

The RTC gave credence to the testimony of Aquiles that he was made to sign an instrument of sale without his knowledge because he trusted Sia Ko Pio and he was of the belief that what he had signed was merely an instrument of indebtedness.

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[5] *Id.* at 38-39.

[6] *Id.* at 94.

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It cited, as legal basis, Article 1330 of the Civil Code which provides that a contract where the consent is given thru violence, intimidation, undue influence or fraud is voidable. Inasmuch as the property was acquired thru fraud, the person who obtained it by force of law was considered a trustee of an implied trust for the benefit of the person from whom the property came. Thus, according to the RTC, La Suerte was bound to reconvey to Aquiles the subject property.

With its motion for reconsideration denied, La Suerte appealed to the CA. In its May 30, 2012 Decision, the CA *reversed* the RTC decision and upheld the validity of the subject deed of sale in favor of La Suerte. It declared La Suerte as the lawful owner of the subject lot and improvements thereon, subject to the right of reimbursement for the renovation expenses. The CA held that tax declarations or realty tax payments by Aquiles were not conclusive evidence of ownership, citing *Spouses Camara v. Spouses Malabao*,[7] where it was ruled that a party's declaration of real property and his payment of realty taxes could not defeat a certificate of title which was an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appeared thereon. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The September 30, 2010 Decision of the Regional Trial Court of Tabaco City, Albay, Branch 15, is **REVERSED and SET ASIDE** and a new one is rendered:

1. **DISMISSING** the complaint for annulment of deed of sale and transfer certificate of title, **without prejudice to the right of plaintiff-appellee's daughter to a reimbursement for the renovation works she made on the structure/building on the lot**; and

2. **GRANTING** defendant-appellant's counterclaim although in the **reduced** amount of ₱100,000.00.

SO ORDERED.[8]

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[7] 455 Phil. 385 (2003).

[8] *Rollo*, p. 54.

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Aquiles filed his Motion for Reconsideration[9] of the CA decision, but the same was denied by the CA in its September 20, 2012 Resolution.

Hence, Aquiles filed the present petition before this Court raising the following

ISSUES

1. Whether or not the Honorable Court of Appeals committed serious error in reversing the decision of the Trial Court disregarding the conclusion and findings of the Trial court;

2. Whether the Honorable Court of Appeals committed serious error of law in holding that the personal loan of petitioner obtained and granted by Sia Ko Pio is a consideration of sale of the property in favor of the respondent corporation La Suerte Corporation;

3. Whether the Honorable Court of Appeals erred in finding that there was a valid and perfected contract of sale of real property between petitioner and respondent corporation La Suerte Corporation;

4. Whether the Honorable Court of Appeals committed serious error of law and applicable jurisprudence in resolving petitioner's actual physical possession of the property in question; and

5. Whether the Honorable Court of Appeals committed serious error of law by awarding damages to the respondent.[10]

The primordial issue to be resolved is whether there was a perfected and valid contract of sale for the subject property between Aquiles and La Suerte, through its Chief Executive Officer, Sia Ko Pio.

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[9] Annex "B" of Petition, *id.* at 56-69.

[10] *Id.* at 19-20.

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Aquiles argues that there was no perfected contract to sell because (1) there was no transaction between La Suerte and Aquiles for the sale of the property in question; (2) there was no board resolution authorizing Sia Ko Pio to purchase the property; (3) there was no evidence that the money received by Aquiles from Sia Ko Pio came from La Suerte; and (4) he did not appear before the notary public for notarization of the instrument of sale. Moreover, there was a discrepancy in the date appearing in the deed of sale and the date in the acknowledgment and the notarial reference.

La Suerte, in its Comment,[11] argued that Aquiles' petition should be dismissed because it raised only questions of fact as only pure question of law is allowed in a petition for *certiorari* under Rule 45. It counters that the notarized deed of sale was the very evidence of the agreement between them. According to it, said deed of sale was binding and enforceable between them, albeit there was a discrepancy in the dates, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effect between the parties. La Suerte adds that the absence of a board resolution for the purchase of the property has no controlling consequence as La Suerte had ratified the act of Sia Ko Pio.

The Court's Ruling

Notably, the issues raised in the petition are factual in nature. Essentially, Aquiles asks the Court to review the factual determination of the CA. As a rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts and is not to review or calibrate the evidence on record.[12] When supported by substantial evidence, the findings of fact by the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions.[13]

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[11] Dated February 12, 2013. *rollo*, pp. 126-138.

[12] Section 1, Rule 45 of the 1997 Rules of Civil Procedure.

[13] *David v. Misamis Occidental II Electric Cooperative, Inc.*, G.R. No. 194785, July 11, 2012, 676 SCRA 367, 373.

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An acceptable exception is where there is a conflict between the factual determination of the trial court and that of the appellate court. In such a case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.[14]

In this case, although the RTC and the CA were one in ruling that the prescriptive period of reconveyance did not run against Aquiles because he remained in possession of the subject property, they differred in their findings of fact and conclusions on the question of whether there was a perfected and valid contract of sale.

The RTC annulled the sale of the subject properties on the ground of fraud as Aquiles was made to sign an instrument which he believed to be a receipt of indebtedness. On the contrary, the CA ruled that the contract of sale was valid. The CA wrote:

> Nevertheless, We rule that the subject deed of sale is valid. We are not convinced of [Aquiles'] bare assertion that the said document was executed through fraud, misrepresentation or deceit, and that his wife's signature thereon was forged. The rule is that for an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud. It must be stressed that mere allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner, injure him, must be specifically alleged and proved.[15]

After an assiduous assessment of the evidentiary records, the Court holds otherwise.

The Court agrees with the finding of the RTC that there was no perfected contract of sale. It is a hornbook doctrine that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong

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[14] *Ogawa v. Menigishi*, G.R. No. 193089, July 9, 2012, 676 SCRA 14, 19, citing *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

[15] *Rollo*, p. 47.

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and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[16]

The elements of a contract of sale are: a] consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b] determinate subject matter; and c] price certain in money or its equivalent.[17]

In this case, there was no clear and convincing evidence that Aquiles definitely sold the subject property to La Suerte, nor was there evidence that La Suerte authorized its chief executive officer, Sia Ko Pio, to negotiate and conclude a purchase of the property. Aquiles' narration in open court is clear that he did not intend to transfer ownership of his property. The pertinent parts of his testimony read:

Q – How much is your debt [to] the father of Jhony known as Pia Wo?

ATTY. GONZAGA:
The question refers to Sia Ko Pio?

ATTY. BROTAMONTE:
Pia Wa.

A – At first I borrowed ₱3,000.00.

Q – Thereafter is there any additional amount?
A – Then, he give me ₱10,000.00.

Q – Thereafter, is there any additional amount?
A– After the money was exhausted, I borrowed ₱10,000.00.

Q – After that ₱10,000.00, did you borrow another loan?
A – The next amount I borrowed from him is ₱20,000.00.

Q – Now did you sign any document showing receipt of that amount you received from Pia Wa?

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[16] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 750, citing *Arangote v. Maglunob*, G.R. No. 178906, February 18, 2009, 579 SCRA 620, 632.

[17] *David v. Misamis Occidental II Electric Cooperative, Inc.*, *supra* note 13, at 375, citing *Reyes v. Turapan*, G.R. No. 188064, June 01, 2011, 650 SCRA 283, 297, citing *Nabus v. Joaquin & Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 348-353.

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A – The last time that I borrowed from him **he wants to buy the property but I told him that I will not sell it.**

ATTY. BROTAMONTE:
Q – What happened when you did not like to sell the property?
A – **He did not say anything but he made me sign a paper evidencing my debt from him.**

Q – Were you able to read the papers you signed if there is wording or statement?
A – **I did not read it anymore because I trust him.**

Q – What happened thereafter?
A – After several years we come to know that our property is already in their name.[18] [Emphases supplied]

The foregoing testimony negates any intention on the part of Aquiles to sell the property in exchange for the amounts borrowed. Evidently, it was a series of transactions between Aquiles and Sia Ko Pio, but not between the parties. The transactions were between Aquiles, as borrower, and Sia Ko Pio, as lender. It was not a sale between Aquiles, as vendor, and La Suerte, as vendee. There was no agreement between the parties. As the first element was wanting, Aquiles correctly argued that there was no contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds on the thing which is the object of the contract and on the price.

Aquiles acknowledged that he signed the receipt for the total loan amount of ₱50,000.00 plus ₱2,000.00 as attorney's fees. There is, however, no proof that it came from La Suerte as the consideration of the sale. Accordingly, there is no basis for a holding that the personal loan of Aquiles from Sia Ko Pio was the consideration for the sale of his property in favor of La Suerte.

As to La Suerte's contention that a deed of absolute sale was purportedly executed by Aquiles in its favor, it failed to adduce convincing evidence to effectively rebut his consistent claim that he was not aware that what he had signed was already

[18] TSN, pp. 11-13, January 25, 2006.

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an instrument of sale, considering his trust and confidence on Sia Ko Pio who was his long-time friend and former employer.

The fact that the alleged deed of sale indubitably bore Aquiles' signature deserves no evidentiary value there being no consent from him to part with his property. Had he known that the document presented to him was an instrument of sale, he would not have affixed his signature on the document. It has been held that the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer.[19]

Indeed, if Aquiles sold the property in favor of La Suerte, he would not have religiously and continuously **paid the real property taxes**. Also of note is the fact that his **daughter spent ₱300,000.00 for the renovation** of improvements. More important, **La Suerte did not earlier ask him to transfer the possession thereof** to the company. These uncontroverted attendant circumstances bolster Aquiles' positive testimony that he did not sell the property.

And for said reasons, the CA should not have favorably considered the validity of the deed of absolute sale absent any written authority from La Suerte's board of directors for Sia Ko Pio to negotiate and purchase Aquiles property on its behalf and to use its money to pay the purchase price. The Court notes that when Sia Ko Pio's son, Juan was presented as an officer of La Suerte, he admitted that he could not find in the records of the corporation any board resolution authorizing his father to purchase the disputed property.[20] In *Spouses Firme v. Bukal Enterprises and Development Corporation*,[21] it was written:

> It is the board of directors or trustees which exercises almost all the corporate powers in a corporation. Thus, the Corporation Code provides:

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[19] *Spouses Firme v. Bukal Enterprises and Development Corporation*, 460 Phil. 321, 344 (2003), citing *Santos v. Heirs of Mariano*, 398 Phil. 174 (2000).

[20] *Rollo*, p. 86.

[21] 460 Phil. 321 (2003).

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SEC. 23. The board of directors or trustees. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stock, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. x x x

SEC. 36. Corporate powers and capacity. — Every corporation incorporated under this Code has the power and capacity:

x x x x x x x x x

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution.

x x x x x x x x x

Under these provisions, **the power to purchase real property is vested in the board of directors or trustees.** While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction. A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws. As held in *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.:*

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**

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not binding on the corporation.[22] [Emphases supplied]

In the case at bench, Sia Ko Pio, although an officer of La Suerte, had no authority from its Board of Directors to enter into a contract of sale of Aquiles' property. It is, thus, clear that the loan obtained by Aquiles from Sia Ko Pio was a personal loan from the latter, not a transaction between Aquiles and La Suerte. There was no evidence to show that Sia Ko Pio was clothed with authority to use his personal fund for the benefit of La Suerte. Evidently, La Suerte was never in the picture.

The CA also failed to consider the glaring material discrepancies on the dates appearing in the purported deed of absolute sale notarized by Judge Arsenio Base, Municipal Court Presiding Judge of Tabaco City (Judge Base).

An examination of the alleged contract of sale shows three (3) dates:

1. In witness whereof, I have hereunto affixed my signature this **8th day of December 1999** in Tabaco, Albay, Philippines;
2. Before me, this **7th day of December, 1990** in Tabaco, Albay; and
3. Doc. No. 587;
   Page No. 12;
   Book No. 4;
   Series of **1990**.

The document was dated 1999, but the date in the acknowledgment and notarial reference was an earlier date, 1990. The *ex-officio* notary public, Judge Base, was not presented to explain the apparent material discrepancy of the dates appearing on the questioned document. This only confirms the claim of Aquiles that he signed the receipt representing his loan at the bodega of Sia Ko Pio sometime in 1990, and not at the office of Judge Base in 1999.

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[22] *Id.* at 344-346.

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La Suerte insists that the discrepancy on the dates was a mere clerical error that did not invalidate the deed of sale. It is worthy to stress that a notarial document is evidence of the facts in the clear unequivocal manner therein expressed and has in its favor the presumption of regularity. While it is true that an error in the notarial inscription does not generally invalidate a sale, if indeed it took place, the same error can only mean that the document cannot be treated as a notarial document and thus, not entitled to the presumption of regularity. The document would be taken out of the realm of public documents whose genuineness and due execution need not be proved.[23]

An even more substantial irregularity raised by Aquiles pertains to the capacity of the notary public, Judge Base, to notarize the deed of sale. Judge Base, who acted as *ex-officio* notary public, is not allowed under the law to notarize documents not connected with the exercise of his official duties. The case of *Tigno v. Aquino*[24] is enlightening:

> There are possible grounds for leniency in connection with this matter, as Supreme Court Circular No. I-90 permits notaries public *ex officio* to perform any act within the competency of a regular notary public provided that certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit. Indeed, it is only when there are no lawyers or notaries public that the exception applies. The facts of this case do not warrant a relaxed attitude towards Judge Cariño's improper notarial activity. There was no such certification in the Deed of Sale. Even if one was produced, we would be hard put to accept the veracity of its contents, considering that Alaminos, Pangasinan, now a city, was even then not an isolated backwater town and had its fair share of practicing lawyers.[25]

In this case, no such certification was attached to the alleged notarized document. Also, the Court takes note of Aquiles' averment that there were several lawyers commissioned as notary public in Tabaco City. With Judge Base not being authorized to

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[23] *Abadiano v. Spouses Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 692-693.

[24] 486 Phil. 254 (2004).

[25] *Id.* at 266.

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notarize a deed of conveyance, the notarized document cannot be considered a valid registrable document in favor of La Suerte.

Moreover, Aquiles' wife, Erlinda, who appeared to have affixed her signature as a witness to the purported document of sale, categorically stated that she never signed such an instrument and never appeared before a notary public.

Although it is true that the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein,[26] yet an irregular notarization reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence.[27]

It should be noted that the deed of sale was offered in evidence as authentic by La Suerte, hence, the burden was upon it to prove its authenticity and due execution. La Suerte unfortunately failed to discharge this burden. Accordingly, the preponderance of evidence is in favor of Aquiles.

In fine, considering the irregularities or defects in the execution and notarization of the deed of sale, the Court finds Itself unable to stamp its seal of approval on it. The RTC was correct in ordering its annulment.

WHEREFORE, the petition is **GRANTED.** The May 30, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 96459 is **REVERSED** and **SET ASIDE**. The September 30, 2010 Decision of the Regional Trial Court, Branch 15, Tabaco City, Albay, is **REINSTATED**.

This disposition is without prejudice to any valid claim of the heirs of Sia Ko Pio against Aquiles.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

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[26] *Id.* at 268.

[27] *Camcam v. Court of Appeals*, G.R. No. 142977, September 30, 2008, 567 SCRA 151, 160, citing Rules of Court, Rule 132, Section 20, *Vide Soriano v. Atty. Basco*, 507 Phil. 410 (2005).