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SECOND DIVISION

[G.R. No. 140715. September 24, 2004]

JOSEFINA L. VALDEZ and CARLOS L. VALDEZ, JR., *petitioners, vs.* **COURT OF APPEALS and JOSE LAGON,** *respondents.*

SYNOPSIS

Josefina de Leon *Vda.* De Valdez executed a Special Power of Attorney authorizing her son, Atty. Carlos L. Valdez, Jr. to sell a portion of Lot No. 3-C and Lot No. 4-D of Pls – 208-D – 13 to Jose Lagon. She required as part of the transaction that Lagon cause the transfer of the Rural Bank of Isulan to the subject property and construct a commercial building beside the bank to be in full operation within a period of five (5) years. On May 9, 1979, a Deed of Absolute Sale was executed by the parties. Subsequent thereto, Carlos, Jr. prepared an affidavit that was signed by Lagon that incorporated the condition imposed by Josefina. However, Lagon failed to start the construction of a commercial building and to transfer the rural bank thereon. He likewise failed to pay the balance of the purchase price despite demands made by Carlos, Jr. Thus, Josefina and Carlos, Jr. refused to deliver to Lagon the Torrens title over the property. Later, portions of Lot No. 3-C-2 were sold to the Philippine Commercial Industrial Bank (PCIB), while Lot 3-D was sold to Engr. Rolendo Delfin. On September 24, 1990, Lagon filed a complaint against Josefina and Carlos, Jr. in his capacity as attorney-in-fact of Josefina, for specific performance and damages. The court *a quo* rendered judgment in favor of Lagon. The said judgment was affirmed by the Court of Appeals. The appellate court declared, among others, that the Special Power of Attorney executed by Josefina and the affidavit did not form part of the Deed of Absolute Sale. Hence, Josefina and Carlos, Jr. interposed this petition.

The Court ruled that the agreement of the parties may be embodied in only one contract or in two or more separate writings. In such event, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.

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Moreover, the intractable refusal of the respondent to pay the balance of the purchase price of the property despite the petitioners' demand had no legal basis. As such, petitioner Josefina's refusal to deliver the Torrens title over the subject property under the respondent's name was justified, precisely because of the respondent's refusal to comply with his obligation to pay the balance of the purchase price. Had the respondent paid the purchase price of the property, such failure on the part of petitioner Josefina to deliver the Torrens title to and under the name of the respondent would have warranted the suspension of the five-year period agreed upon for the construction of a fully operational commercial building, as well as the transfer of the aforesaid bank to the property. This is so because absent such Torrens title under the name of the respondent, no building permit for the construction of the buildings could be secured. Hence, the failure of the respondent to cause the construction of the commercial building and the transfer of the bank to the property sold under the deed of sale executed between him and petitioner Josefina was due to the respondent's own fault. In sum, then, the respondent had no cause for specific performance against the petitioners. However, the petitioners are obliged to refund to the respondent the latter's partial payments for the subject property. The Amended Decision of the Court of Appeals was reversed and set aside.

SYLLABUS

1. CIVIL LAW; PERSONS; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; THE PRESUMPTION THAT PROPERTY ACQUIRED DURING MARRIAGE IS CONJUGAL, DOES NOT APPLY WHERE THERE IS NO SHOWING AS TO WHEN THE PROPERTY ALLEGED TO BE CONJUGAL WAS ACQUIRED. — We note that TCT No. T-19529 (T-1902) covering the property was issued on August 18, 1967, during the marriage of the Spouses Carlos Valdez, Sr. and petitioner Josefina, under the name "Josefina L. Valdez married to Carlos Valdez, Sr." The issuance of the title in the name solely of one spouse is not determinative of the conjugal nature of the property, since there is no showing that it was acquired during the marriage of the Spouses Carlos Valdez, Sr. and Josefina L. Valdez. The presumption under Article 160 of the New Civil Code, that property acquired during marriage is conjugal, does not apply where there is no showing as to when the property alleged to be conjugal was acquired. The presumption cannot prevail when the title is in the name of only one spouse and

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the rights of innocent third parties are involved. Moreover, when the property is registered in the name of only one spouse and there is no showing as to when the property was acquired by same spouse, this is an indication that the property belongs exclusively to the said spouse.

2. ID.; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; WRITINGS OF THE PARTIES SHOULD BE READ AND INTERPRETED TOGETHER AS TO RENDER THEIR INTENTION EFFECTIVE. — The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the parties thereto. In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. If the contract appears to be contrary to the evident intentions of the parties, the latter shall prevail over the former. The denomination given by the parties in their contract is not conclusive of the nature of the contents. The agreement of the parties may be embodied in only one contract or in two or more separate writings. In such event, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.

3. ID.; ID.; SALES; ONCE PERFECTED THE PARTIES ARE BOUND TO ALL THE CONSEQUENCES. — A sale is at once perfected when a person (the seller) obligates himself, for a price certain, to deliver and to transfer ownership of a specified thing or right to another (the buyer) over which the latter agrees. From the time the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

4. ID.; ID.; ID.; TITLE TO THE PROPERTY PASSES TO THE VENDEE UPON THE CONSTRUCTIVE OR ACTUAL DELIVERY THEREOF. — In a contract of sale, the title to the property passes to the vendee upon the constructive or actual delivery thereof, as provided for in Article 1477 of the New Civil Code. The vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded by a notarial deed or by judicial action as provided for in Article 1540 of the New

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Civil Code. *A contract is one of sale, absent any stipulation therein reserving title over the property to the vendee until full payment of the purchase price nor giving the vendor the right to unilaterally rescind the contract in case of non-payment.*

5. ID.; ID.; CONTRACT OF SALE; DIFFERENTIATED FROM CONTRACT TO SELL. — In a contract of sale, the non-payment of the price is a resolutory condition which extinguishes the transaction that, for a time, existed and discharges the obligations created thereunder. In a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Such payment is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

6. ID.; ID.; ID.; VENDOR DID NOT RESERVE THE OWNERSHIP OVER THE PROPERTY AS WELL AS ANY RIGHT TO UNILATERALLY RESCIND THE CONTRACT; CASE AT BAR. — Irrefragably, the deed is one of sale, not a contract to sell. The deed specifically states that the property is sold and delivered to the respondent as vendee. Petitioner Josefina even warranted the peaceful possession and ownership of the respondent over the property subject of the transaction. She did not reserve the ownership over the property, as well as any right to unilaterally rescind the contract. There has been, by the execution of the said deed, a constructive delivery of the property to the respondent; hence, the latter acquired ownership over the same. Upon payment of the purchase price, petitioner Josefina was obliged to deliver the torrens title over the property to and under the name of the respondent as the new owner and place him, as vendee, in actual possession thereof; otherwise, the failure or inability to do so constitutes a breach of the contract sufficient to justify its rescission.

7. ID.; ID.; ID.; UNENFORCEABLE SINCE THE AGENT ACTED BEYOND THE SCOPE OF HIS AUTHORITY. — [W]e rule that the deed of absolute sale was unenforceable as of the date of its execution, May 9, 1979. This is so, because under the Special Power of Attorney petitioner Josefina executed in favor of her son, petitioner Carlos, Jr., the latter was authorized to sell the property on cash basis only; petitioner Josefina likewise

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required the construction of a commercial building and the transfer of the Rural Bank of Isulan, as part of the consideration of the sale to be incorporated in the said deed as part of the respondent's obligation as vendee[.] x x x Clearly, petitioner Carlos, Jr. acted beyond the scope of his authority when he executed the deed of absolute sale in contravention of petitioner Josefina's express instructions. Worse, he falsely declared in the said deed that the purchase price was ₱80,000.00 and that he had already received the said amount, when, in fact, the property was sold for ₱40.00 per square meter, or a total of ₱163,760.00, and that as of May 9, 1979, he had not yet received the said amount. Under Article 1317 of the New Civil Code, contracts executed by agents who have acted beyond their powers are unenforceable unless ratified by the principal either expressly or impliedly[.]

8. ID.; ID.; ID.; ID.; ITS EFFECTIVITY DEPENDS UPON THE RATIFICATION OF THE PRINCIPAL; PRESENT IN CASE AT BAR. — [T]he effectivity of the contract of sale in the case at bar depends upon the ratification thereof by petitioner Josefina as principal. If she ratifies the deed, the sale is validated from the moment of its commencement, and not merely from the time of its ratification. In such case, she can no longer maintain an action to annul the same based upon defects relating to its original validity. We find that petitioner Josefina ratified the said deed when she received, through her son and attorney-in-fact petitioner Carlos, Jr., partial payments of the purchase price of the property from the respondent on April 21, 1981. Such ratification retroacted to May 9, 1979, the date when petitioner Josefina, through her attorney-in-fact, executed the deed of sale covering the subject property in favor of the respondent.

9. ID.; ID.; ID.; VENDEE'S REFUSAL TO PAY THE BALANCE OF THE PURCHASE PRICE JUSTIFIES THE VENDOR'S REFUSAL TO DELIVER THE TORRENS TITLE OVER THE SUBJECT PROPERTY. — The intractable refusal of the respondent to pay the balance of the purchase price of the property despite the petitioners' demands had no legal basis. As such, petitioner Josefina's refusal to deliver the torrens title over the subject property under the respondent's name was justified, precisely because of the respondent's refusal to comply with his obligation to pay the balance of the purchase price. Had the respondent paid the purchase price of the property, such failure on the part of petitioner Josefina to deliver the torrens title to and

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under the name of the respondent would have warranted the suspension of the five-year period agreed upon for the construction of a fully operational commercial building, as well as the transfer of the aforesaid bank to the property. This is so because absent such torrens title under the name of the respondent, no building permit for the construction of the buildings could be secured. Considering all the foregoing, the failure of the respondent to cause the construction of the commercial building and the transfer of the bank to the property sold under the deed of sale executed between him and petitioner Josefina was due to the respondent's own fault.

10. **ID.; ID.; ID.; NO NEED TO MAKE DEMAND TO THE VENDEE OR FILE AN ACTION TO RESCIND THE DEED OF ABSOLUTE SALE TO RECOVER THE OWNERSHIP OF THE PROPERTY SINCE IT WAS STIPULATED UPON BY THE PARTIES; CASE AT BAR.** — There was no need for petitioner Josefina to make a notarized demand to the respondent or file an action to rescind the deed of absolute sale to enable her to recover the ownership of the property. This is so because the petitioner and the respondent had agreed that upon the latter's failure to construct a new and fully operational commercial building and to cause the transfer of the Rural Bank of Isulan to the property on or before May 9, 1984, the deed of absolute sale would be deemed null and void without need of any demand from the petitioners. Such agreement is evidenced by the affidavit executed by the respondent himself on April 27, 1981.

11. **ID.; ID.; AGENCY; AN AGENT CANNOT BIND THE PRINCIPAL FOR AN ACT OUTSIDE OF HIS AUTHORITY.** — We do not agree with the respondent's contentions that petitioner Josefina, through her son and attorney-in-fact petitioner Carlos, Jr., had agreed to the sale of a portion of the property, the construction of the PCIB branch office thereon, and the crediting of the amount paid by the PCIB to the respondent's account, and deducted from the balance of the purchase price. In the first place, the respondent failed to adduce a morsel of evidence that petitioner Josefina had knowledge of the said agreement and had agreed thereto. Furthermore, the respondent failed to adduce documentary evidence that petitioner Josefina authorized her son and attorney-in-fact to enter into such an agreement. It bears stressing that petitioner Josefina specifically and unequivocally required in the special power of attorney, as part of the consideration of the sale of

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the property to the respondent, the latter's obligation to construct a new and fully operational commercial building and transfer the Rural Bank of Isulan to the property. Had she agreed to modify the Special Power of Attorney she executed in favor of her son, petitioner Carlos, Jr., for sure, she would have executed a document to that effect. She did not do so. Petitioner Carlos, Jr. could not lawfully bind petitioner Josefina thereon because he was not so authorized to enter into such an agreement with the respondent; neither can such authority be implied from the Special Power of Attorney petitioner Josefina executed in favor of her son, petitioner Carlos, Jr.

APPEARANCES OF COUNSEL

Valdez Sales Law Office for petitioners.
Rico & Associates for private respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Amended Decision[1] of the Court of Appeals in CA-G.R. CV No. 49413 affirming on appeal the Decision of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19, in Civil Case No. 778.

The Antecedents

Carlos Valdez, Sr. and Josefina de Leon Valdez were the owners of a parcel of land with an area of 24,725 square meters located in the commercial district of Isulan, Sultan Kudarat. The property was designated as Lot No. 3 of Pls-208-D-13 and was covered by Transfer Certificate of Title (TCT) No. T-19529 (T-1902) issued on August 18, 1967.[2] When Carlos Valdez, Sr. died intestate on March 26, 1966, he was survived

[1] Penned by Associate Justice Demetrio G. Demetria (retired), with Associate Justices Ramon A. Barcelona (retired) and Godardo A. Jacinto, concurring.

[2] Exhibit "J".

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by Josefina and their children, including Carlos Valdez, Jr., a practicing lawyer.

On December 28, 1978, Josefina caused the subdivision survey of the property[3] into eight (8) lots, *i.e.*, Lots Nos. 3-A to 3-H, all fronting the national road. To enhance the value of the property, she decided to sell a portion thereof to Jose Lagon, a successful businessman in Sultan Kudarat who owned a construction firm as well as real estate and business enterprises: the Lagon Enterprises and the Rural Bank of Isulan. He was also one of the clients of her son, Carlos, Jr., a practicing lawyer.

On May 1, 1979, Josefina executed a Special Power of Attorney authorizing her son, Carlos, Jr. to sell a portion of Lot No. 3-C and Lot. No. 3-D to Lagon. The lots subject of the sale had an area of 4,094 square meters, with a frontage of 64.[3] square meters. Part of the consideration of the transaction was the condition that Lagon cause the transfer of the Rural Bank of Isulan to the subject property and construct a commercial building beside the bank.[4] On May 9, 1979, Josefina, through her son and attorney-in-fact, Carlos, Jr., executed a Deed of Absolute Sale of a portion of Lot No. 3 with a frontage of 64.3 square meters facing the national highway and the National Grains Authority office going towards the Buencamino Movie House starting from the corner.[5] However, the condition imposed by Josefina was not incorporated in the deed; what was appended thereto was the Special Power of Attorney executed by Josefina. It was indicated in the said deed that the property was to be sold for ₱80,000 cash and that Lagon had already paid the said amount to Carlos, Jr. In reality, however, Lagon purchased the 4,094-square-meter property at ₱40.00 per square meter, or for the amount of ₱163,760[6] inclusive of Carlos, Jr.'s personal account to Lagon in the amount of ₱73,760. Lagon had not yet remitted to Josefina the said amount of ₱163,760.

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[3] Exhibit "J-1".

[4] Exhibits "A-1".

[5] Exhibit "C".

[6] Exhibit "3".

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On April 21, 1981, Lagon gave to Carlos, Jr. PCIB Check No. 55007805 in the amount of ₱8,196.00 dated April 21, 1981, and PCIB Check No. 55007806 postdated June 15, 1981 in the amount of ₱81,880.00 both checks totaling ₱90,076.00 in full payment of the purchase price of the property, after deducting the account of Carlos, Jr. amounting to ₱73,684.00. Josefina acknowledged the checks, through Carlos, Jr., who signed a cash voucher for the same.[7] Carlos, Jr. was able to encash PCIB Check No. 55007805, but returned the other check to Lagon's wife, Nenita, after the latter paid him ₱20,000.00 thereby leaving a balance of ₱61,880.00 of the purchase price.[8]

Carlos, Jr. prepared an Affidavit dated April 27, 1981 signed by Lagon, where the latter undertook to transfer the Rural Bank of Isulan to the property and construct a commercial building thereon, to be in full operation within a period of five (5) years from May 9, 1979, the date of the deed of absolute sale, or until May 9, 1984,[9] as part of the condition of the sale; and that if Lagon failed to do so, the deed of absolute sale shall be declared null and void without need of demand therefor.[10] Lagon also made it clear in the said affidavit that the consideration of the said Deed of Absolute Sale was not only the ₱80,000.00 purchase price, but also that the subject property be commercialized.[11]

However, Lagon failed to start the construction of a commercial building and to transfer the rural bank thereon; he, likewise, failed to pay the balance of the purchase price amounting to ₱61,880.00. Consequently, Josefina and Carlos, Jr. refused to deliver to Lagon a torrens title over the purchased property. On September 4, 1981, Carlos, Jr. wrote Lagon demanding the payment of ₱61,800.00 within ten days from notice thereof, otherwise, the sale would be considered rescinded.[12] Still, Lagon

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[7] Exhibit "2".

[8] Exhibit "2-C", TSN. 8 July 1993, pp. 17-19.

[9] Exhibits "3".

[10] *Ibid.*

[11] *Id.*

[12] Exhibit "4".

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failed to pay or even respond to the letter. Carlos, Jr. again wrote Lagon on September 25, 1981, and this time proposed the reduction of the area of the property subject of the sale to correspond to the payment so far made by Lagon in the total amount of ₱90,676.00.[13] There was no response from Lagon.

In the meantime, TCT No. T-19529 was cancelled on October 9, 1981 by eight (8) titles bearing the following particulars:

TCT No.	Lot No.	Area
16436	3-A	2,586 sq. meters[14]
16437	3-B	2,802 sq. meters[15]
16438	3-C	2,534 sq. meters[16]
16439	3-D	3,198 sq. meters[17]
16440	3-E	3,359 sq. meters[18]
16441	3-F	2,952 sq. meters[19]
16442	3-G	3,650 sq. meters[20]
16443	3-H	3,644 sq. meters[21]

All the foregoing subdivision titles were under the name of "Josefina L. Valdez, married to Carlos Valdez, Sr."

On December 31, 1982, Josefina and her children executed a deed of extrajudicial settlement of the estate of Carlos Valdez, Sr. in which the heirs waived all their rights over the estate in favor of their mother, Josefina.

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[13] Exhibit "AA".
[14] Exhibit "K".
[15] Exhibit "L".
[16] Exhibit "M".
[17] Exhibit "N".
[18] Exhibit "O".
[19] Exhibit "P".
[20] Exhibit "Q".
[21] Exhibit "R".

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On December 1, 1983, Geodetic Engineer Santiago C. Alhambra conducted a subdivision survey of Lot No. 3-C, covered by TCT No. 16438 into three (3) subdivision lots with the following areas: Lot No. 3-C-1 with 449 square meters; Lot No. 3-C-2 consisting of 350 square meters; and, Lot No. 3-C-3, 1,735square meters. Engr. Alhambra prepared a subdivision plan on his survey which he submitted to the Bureau of Lands on December 12, 1983. Lagon paid for his professional services.

Porfirio L. Cubar, the Bank Manager of the Philippine Commercial Industrial Bank (PCIB) in Isulan talked to Carlos, Jr. and offered to buy, in behalf of the PCIB, Lot No. 3-C-2 for ₱100.00 per square meter. Carlos, Jr. agreed. Josefina executed a deed of absolute sale on May 8, 1984, over Lot No. 3-C-2 for ₱35,000.00 in favor of PCIB.[22] Carlos, Jr. later learned that Lagon had been saying that he was responsible for the sale of Lot No. 3-C-2 to the PCIB, but the latter informed Carlos, Jr. in a Letter dated September 13, 1984 that Lagon had nothing to do with the sale.[23]

On October 3, 1984, the Register of Deeds cancelled TCT No. 16438 and issued TCT No. 18817 over Lot No. 3-C-2 in the name of PCIB.[24] The expenses for the issuance of the said title under the name of the bank were for the account of Josefina.[25]

On June 11, 1987, the deed of extrajudicial settlement earlier executed by the heirs of Carlos Valdez, Sr. was filed and registered in the Office of the Register of Deeds.[26] On June 16, 1987, Josefina executed a Deed of Sale over Lot 3-D in favor of Engr. Rolendo Delfin, who was issued TCT No. 20380 for the property.[27]

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[22] Exhibit "C".

[23] Exhibit "7".

[24] Exhibit "M-4".

[25] Exhibits "5-C" and "5-D".

[26] Exhibit "X".

[27] Exhibit "M-3".

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In the meantime, in August 1987, a question ensued in connection with Lagon's failure to pay the balance of the purchase price of the property, to cause the construction of a commercial building and the transfer of the Rural Bank of Isulan to Lot No. 3, as undertaken by him in his Affidavit dated April 27, 1981. As a reminder, Carlos, Jr. furnished Lagon with a machine copy of the said affidavit on August 12, 1987. On August 13, 1987, Lagon's counsel, Atty. Ernesto I. Catedral, wrote Carlos, Jr., pointing out that he had earlier sought Lagon's consent for the construction of the PCIB Branch in Lot No. 3. Catedral posited that by consenting to the sale of the property to PCIB and the construction thereon of its branch office, Lagon thereby substantially complied with his undertaking under the deed of absolute sale. The lawyer asked Carlos, Jr. to set a conference to thresh out possibilities of an amicable settlement of the matter.[28]

On September 21, 1987, Carlos, Jr. furnished Atty. Catedral with copies of documents, including a Special Power of Attorney, executed by Josefina in favor of Carlos, Jr., the deed of absolute sale over Lot No. 3 in favor of Lagon and the deed of absolute sale executed by Josefina in favor of PCIB, among others.[29] Lagon, through his counsel, Atty. Rex G. Rico, reiterated his request for a conference on May 23, 1988.[30] However, Carlos, Jr. was not available on the said date.

On August 4, 1988, Josefina executed a real estate mortgage over Lot No. 3-C-3 covered by TCT No. 18818 in favor of the Development Bank of the Philippines (DBP) as security for a loan of ₱150,000.00.[31] Josefina executed a deed of absolute sale over Lot No. 3-C-1 in favor of her son, Carlos, Jr. on February 21, 1989. The Register of Deeds thereafter issued TCT No. 21943 in the latter's name on February 28, 1989.[32]

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[28] Exhibit "S".

[29] Exhibit "T".

[30] Exhibit "U".

[31] Exhibit "10".

[32] Exhibit "M-3-A".

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In the meantime, in 1984, Carlos, Jr. had an edifice constructed on the property where he put up his law office, a nipa hut behind the PCIB branch, the Ivy Pharmacy, the "K House" and the headquarters of the Nationalista Party.[33]

On September 24, 1990, Lagon filed a Complaint against Josefina, and Carlos, Jr., in his capacity as attorney-in-fact of Josefina, for specific performance and damages with a prayer for a temporary restraining order and writ of preliminary injunction. He prayed that, after due proceedings, judgment be rendered in his favor, thus:

> WHEREFORE, it is respectfully prayed that upon the filing of this complaint, a restraining order be issued enjoining defendants from selling, disposing or otherwise encumbering the property subject of this case; after due hearing, a writ of preliminary prohibitory injunction be issued in the same tenor as that of the restraining order; and after trial on the merits, judgment be rendered in favor of plaintiff and against the defendants:
>
> a) Making the writ of preliminary prohibitory injunction permanent;
>
> b) Ordering defendants to immediately and without delay, deliver to plaintiff the possession of and the transfer certificate of title over the remaining area of that parcel of land they sold to plaintiff;
>
> c) Ordering defendants to pay plaintiff, jointly and severally, the following sums:
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> i. ₱500,000.00 representing opportunity loss;
> ii. ₱50,000.00 for and as attorney's fees;
> iii. ₱20,000.00 for and as expenses of litigation; and
> iv. ₱50,000.00 for and as moral, exemplary, temperate and nominal damages.
>
> Other reliefs, just and equitable under the premises, are likewise prayed for.[34]

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[33] TSN, 9 July 1993, pp. 12–13.

[34] Records, pp. 4-5.

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Lagon testified that Josefina failed to deliver the title to the property he purchased from her, as well as the possession thereof; hence, he was not certain of the metes and bounds of the property and could not secure a building permit for the transfer and construction of the Rural Bank of Isulan, as well as the commercial building. Besides, Carlos, Jr. secured his permission for the construction of the PCIB commercial building on Lot No. 3-C-2 which was sold to him by Josefina, and even agreed to the deduction of the purchase price thereof; hence, the balance was only ₱26,880. Lagon demanded that the title to the property be turned over to him and the occupants thereof be evicted therefrom so that he could comply with the conditions of the sale for the construction of the commercial building and the transfer of the Isulan Rural Bank. However, Carlos, Jr. dilly-dallied, saying that the heirs of Carlos, Sr. needed time to execute the extrajudicial settlement of his estate, and thus failed to deliver said title to him. Lagon averred that his consent to the construction by the PCIB of its branch on a portion of the property he had purchased from Josefina constituted substantial compliance of his undertaking under the deed of absolute sale and the affidavit he executed in favor of Josefina. He also alleged that he signed the affidavit prepared by Carlos, Jr. without reading and understanding the same. He pointed out that although Lot No. 3 had already been sold to him by Josefina, she still sold Lot No. 3-C-3 to her son, Carlos, Jr.; Lot No. 3-D to Engr. Rolendo Delfin; and mortgaged Lot No. 3-D to DBP which acquired title over the property.

In their answer to the complaint, Josefina and her son, the defendants therein, alleged that Lagon had no cause of action against them because he failed to comply with the terms of the deed of absolute sale, his undertaking under his affidavit, and to pay the purchase price of the property in full. Carlos, Jr. denied securing Lagon's consent to the construction of the PCIB branch on Lot 3-C-2, and agreeing to deduct ₱35,000 from the balance of Lagon's account for the purchase price of the property. Josefina and Carlos, Jr. interposed counterclaims for damages and attorney's fees.

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Lagon withdrew his petition for the issuance of a writ of preliminary injunction which the trial court granted, per its Order dated February 24, 1993.

On January 20, 1995, the trial court rendered judgment in favor of Lagon. The *fallo* of the decision reads:

> WHEREFORE, upon all the foregoing considerations, judgment is hereby rendered:
>
> 1. ORDERING defendant Josefina L. Valdez, by herself, or through her duly authorized attorney-in-fact, defendant Carlos L. Valdez, Jr., to execute the necessary registrable document of deed of absolute sale in favor of the plaintiff over the remaining area of that parcel of land, the defendant sold to plaintiff on May 9, 1979, particularly Lot 3-C-3, Psd-12-005408 covered under Transfer Certificate of Title No. T-18816, in the name of defendant Josefina de Leon *Vda.* de Valdez, and for the latter to deliver to plaintiff the possession of and the transfer certificate of title thereof, and ORDERING further the defendants to pay, jointly and severally, plaintiff the current fair market value of the remaining area of the land sold to the latter which defendants may not be able to deliver and transfer ownership thereof to the plaintiff, minus the amount of ₱26,880.00 representing the unpaid balance of the agreed purchase price of the 4,094 square meter-portion of land sold to plaintiff in the total amount of ₱163,760.00;
>
> 2. ORDERING defendants to pay plaintiff, jointly and severally, the sums of:
>
> (a) ₱50,000.00 representing attorney's fees for the legal services of plaintiff's counsel, plus ₱5,000.00, as appearance fee for plaintiff's counsel, per hearing, for not less than ten (10) times;
>
> (b) ₱2,119.00 as filing fees (Exhibits "W", "W-1", "W-2", and "W-3") paid by plaintiff for the filing of this case;
>
> (c) ₱23,585.50 representing transportation expenses of plaintiff's counsel through PAL flights from Manila to attend court hearings in this Court, and in going back to Manila (Exhibits "FF", "FF-1", "GG", "HH", "II", "JJ", "KK", "LL", and "MM");
>
> (d) ₱50,000.00 for and as moral and exemplary damages; and, further

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ORDERING defendants, jointly and severally, to pay the costs of suit.

For lack of merit, the counterclaim interposed by defendants should be, as it is hereby, dismissed.

IT IS SO ORDERED.[35]

Josefina and Carlos, Jr. appealed the decision to the Court of Appeals, contending that —

I. THE LOWER COURT ERRED IN NOT UPHOLDING THE DEFENSE OF THE DEFENDANTS-APPELLANTS THAT THE PLAINTIFF-APPELLEE HAS NO VALID CAUSE OF ACTION AGAINST THEM CONSIDERING THAT HE FAILED TO COMPLY WITH THE TERMS AND CONDITIONS OF HIS WRITTEN CONTRACTS WITH THE DEFENDANTS-APPELLANTS.

II. THE COURT ERRED IN NOT UPHOLDING THAT EXHIBIT "3" WHICH IS THE AFFIDAVIT OF PLAINTIFF-APPELLEE, WAS PART OF THE AGREEMENTS OF THE PARTIES AS IT WAS ADMITTED BY HIM. IT MUST BE ENFORCED AND PLAINTIFF-APPELLEE IS LIABLE FOR BREACH OF HIS CONTRACT WITH THE DEFENDANTS-APPELLANTS.

III. THE LOWER COURT ERRED WHEN IT RULED THAT THE TERMS AND CONDITIONS IN THE SPECIAL POWER OF ATTORNEY (EXHIBITS "1-C" AND "A-1") WERE NOT PART OF THE DEED OF ABSOLUTE SALE (EXHIBITS "1" AND "A") EXECUTED BY THE PARTIES.

IV. THE LOWER COURT ERRED IN NOT DECLARING THAT THE ACT OF THE DEFENDANTS-APPELLANTS IN RESCINDING THEIR CONTRACT WITH THE PLAINTIFF-APPELLEE WAS PERFECTLY LEGAL, VALID, EFFECTIVE AND BINDING ON THE PLAINTIFF-APPELLEE.

V. THE LOWER COURT ERRED IN NOT RENDERING JUDGMENT IN FAVOR OF THE DEFENDANTS-APPELLANTS

[35] Records, pp. 766-768.

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DESPITE THE OVERWHELMING EVIDENCE OF THE MANIFEST INCREDULITY AND UNWORTHINESS OF THE EVIDENCE OF THE PLAINTIFF-APPELLEE.

VI. THE LOWER COURT ERRED IN NOT FINDING THAT THE PLAINTIFF-APPELLEE IS GUILTY OF LACHES OR ESTOPPEL.

VII. THE COURT ERRED IN AWARDING DAMAGES TO THE PLAINTIFF-APPELLEE AND DISMISSING THE COUNTERCLAIM OF THE DEFENDANTS-APPELLANTS.[36]

The appellate court rendered judgment on January 28, 1998 reversing the decision of the RTC. The *fallo* of the decision reads:

IN VIEW WHEREOF, the Decision of the Lower Court dated January 20, 1995 is hereby *REVERSED* and *SET ASIDE.* Appellants are hereby ordered to return to Appellee the sum of ₱101,880.00 together with 12% interest per annum from the finality of this decision. The case filed in the Court *a quo* is hereby ordered *DISMISSED.*[37]

The appellate court ruled that based on the deed of absolute sale, the Special Power of Attorney executed by Josefina, and the affidavit of the respondent, the parties had executed a contract to sell. The respondent filed a motion for the reconsideration thereof.

On February 4, 1999, the Court of Appeals reversed itself and rendered an Amended Decision, setting aside its decision and affirming that of the RTC. This time, the appellate court held that Josefina had, after all, executed a deed of absolute sale over the 4,094-square-meter portion of Lot No. 3. It declared that the Special Power of Attorney executed by Josefina and the affidavit did not form part of the deed of absolute sale. It further declared that Lagon's affidavit could not be considered

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[36] *Rollo*, pp. 103–104.

[37] *Id.* at 112.

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part of the said deed because it was merely an afterthought contrived by Carlos, Jr.

The appellate court also held that even if the Special Power of Attorney and affidavit formed integral parts of the deed of absolute sale, Lagon was justified in refusing to pay the balance of the purchase price of the property and to comply with his undertaking thereon, because Josefina's refusal to deliver the title to the property made it impossible to determine the metes and bounds thereof. According to the appellate court, under Article 1186 of the New Civil Code, the conditions of the sale are deemed fulfilled. Moreover, the Court of Appeals ruled, the appellants failed to comply with the procedure under Article 1592 of the New Civil Code in rescinding the sale.

Josefina and Carlos, Jr., now the petitioners, filed their petition for review on *certiorari* wherein they raised the following issues:

I. WHETHER OR NOT THE CONTRACT OF THE PARTIES BEING SUBJECT TO THE SUSPENSIVE CONDITIONS AGREED UPON WAS A *CONTRACT TO SELL OR A CONTRACT OF SALE?*

II. WHETHER OF (*SIC*) NOT THE PETITIONERS HAD THE RIGHT TO RESCIND THEIR CONTRACT WITH PRIVATE RESPONDENT?

III. WHETHER OF (*SIC*) NOT PRIVATE RESPONDENT IS ENTITLED TO HIS CLAIM FOR SPECIFIC PERFORMANCE AND DAMAGES CONSIDERING HIS FAILURE TO COMPLY WITH THE SUSPENSIVE CONDITIONS AGREED UPON?[38]

The petitioners assert that, the contract agreed upon by the parties was a contract to sell and not a contract of sale. The petitioners contend that the three documents, the deed of absolute sale, the special power of attorney executed by petitioner Josefina and the affidavit of the respondent dated April 27, 1981, formed integral parts containing the terms and conditions of one and the same transaction. They emphasize that the respondent knew that his contract with petitioner Josefina was a contract to sell because he did not acquire a torrens title over the property nor

[38] *Rollo*, p. 14.

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took possession thereof after the execution of the deed of absolute sale; the respondent even failed to register the said deed with the Office of the Register of Deeds and to declare the same for taxation purposes under his name. They aver that the requirements under Article 1592 of the New Civil Code do not apply to a contract to sell but only to a contract of sale.

The petitioners insist that the Court of Appeals erred in declaring that the conditions of the sale were deemed fulfilled by their failure to deliver the torrens title to the property to the respondent, on its finding that notwithstanding such failure, the respondent continued making partial payments of the purchase price of the property to the petitioners.

In his comment on the petition, the respondent reiterates that based on the evidence on record, the admissions of the petitioners, as well as the special power of attorney executed by petitioner Josefina, a deed of absolute sale was executed between him and petitioner Josefina, not merely a contract to sell of the portions of Lots 3-C and 3-D. He alleges that under Articles 1477 and 1498 of the New Civil Code, he acquired title and possession of the property upon the execution of the said deed.

The Ruling of the Court

The Subject Property is the Exclusive Property of Josefina de Leon Valdez

Intricately interwoven with the threshold issue raised by the petitioners is the issue of the nature of Lot No. 3 of Pls-208-D-13 covered by TCT No. T-19529 (T-1902).

In the deed of absolute sale executed by petitioner Josefina in favor of the respondent, she declared that she was the absolute owner of the said property.[39] However, in the deed of extrajudicial settlement of the estate of Carlos Valdez, Sr. executed by petitioner Josefina and her children on December 31, 1982, the

[39] Exhibits "A" and "5".

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subject property was declared as part of the estate of the deceased.[40] The Court of Appeals, under its Amended Decision, affirmed the finding of the RTC that it was only after the execution of the said deed of extrajudicial settlement that petitioner Josefina became the absolute owner of the property.[41] However, we find that both the trial and appellate courts erred in so ruling.

We note that TCT No. T-19529 (T-1902) covering the property was issued on August 18, 1967, during the marriage of the Spouses Carlos Valdez, Sr. and petitioner Josefina, under the name "Josefina L. Valdez married to Carlos Valdez, Sr." The issuance of the title in the name solely of one spouse is not determinative of the conjugal nature of the property, since there is no showing that it was acquired during the marriage of the Spouses Carlos Valdez, Sr. and Josefina L. Valdez.[42] The presumption under Article 160 of the New Civil Code, that property acquired during marriage is conjugal, does not apply where there is no showing as to when the property alleged to be conjugal was acquired. The presumption cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved.[43] Moreover, when the property is registered in the name of only one spouse and there is no showing as to when the property was acquired by same spouse, this is an indication that the property belongs exclusively to the said spouse.[44]

In this case, there is no evidence to indicate when the property was acquired by petitioner Josefina. Thus, we agree with petitioner Josefina's declaration in the deed of absolute sale she executed in favor of the respondent that she was the absolute and sole owner of the property. We are convinced that the declaration in the deed of extrajudicial settlement of the estate of the late Carlos Valdez, Sr., that the property formed part of

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[40] Exhibit "X".

[41] *Rollo*, p. 185.

[42] *Cuenca vs. Cuenca*, 168 SCRA 335 (1988).

[43] *Philippine National Bank v. Court of Appeals*, 153 SCRA 435 (1987).

[44] *Id.* at 442.

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his estate and that his children waived their rights and claims over the property in favor of their mother, was done merely to facilitate the issuance of a torrens title over the property in petitioner Josefina's name with her marital status as widow.

Petitioner Josefina Valdez and the Respondent entered into a Contract of Sale over the Subject Property

The RTC, as well as the Court of Appeals in its Amended Decision, held that petitioner Josefina and the respondent entered into a contract of sale, not a contract to sell, over the subject property, relying solely on the deed of absolute sale executed by her on May 9, 1979. Although it was expressly stated in the Affidavit executed by the respondent on April 27, 1981 appended to the deed, the appellate court affirmed the ruling of the RTC that such Special Power of Attorney executed by petitioner Josefina in favor of her son, petitioner Carlos, Jr., did not form part of the said deed. Both tribunals ratiocinated that, indeed, under the Special Power of Attorney, part of the consideration of the sale of the subject property was the construction of a commercial building and the transfer of the Isulan Rural Bank thereto within five (5) years from the execution of the deed. However, since such condition was not actually incorporated in the said deed, the affidavit prepared by petitioner Carlos, Jr. and signed by the respondent was but an afterthought contrived by petitioner Carlos, Jr., thus enabling him to surreptitiously insert a provision or condition in the deed of absolute sale.

We agree with the trial and appellate courts that petitioner Josefina and the respondent entered into a contract of sale over the subject property and not merely a contract to sell the same.

It is not disputed by the parties that petitioner Josefina executed a Special Power of Attorney in favor of her son, petitioner Carlos, Jr., as her attorney-in-fact, authorizing the latter to sell the subject property, and petitioner Josefina, through her son, executed the deed of absolute sale over the subject property. She also acknowledged receipt of partial payments of the

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purchase price of the property on April 21, 1981 through her attorney-in-fact; the balance of the purchase price thus stood at ₱61,880.00 There is, likewise, no dispute that the respondent signed the affidavit on April 27, 1981. The parties, however, differ on the real nature of their transaction and on whether the said affidavit formed an integral part of the deed of absolute sale executed by petitioner Josefina in favor of the respondent.

The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the parties thereto.[45]

In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued.[46] If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[47] If the contract appears to be contrary to the evident intentions of the parties, the latter shall prevail over the former.[48] The denomination given by the parties in their contract is not conclusive of the nature of the contents.[49]

The agreement of the parties may be embodied in only one contract or in two or more separate writings. In such event, the writings of the parties should be read and interpreted together in such a way as to render their intention effective.[50]

A sale is at once perfected when a person (the seller) obligates himself, for a price certain, to deliver and to transfer ownership of a specified thing or right to another (the buyer) over which the latter agrees.[51] From the time the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which,

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[45] *Velasquez v. Court of Appeals*, 345 SCRA 468 (2000).

[46] *Golden Diamond, Inc. v. Court of Appeals*, 332 SCRA 605 (2000).

[47] Article 1370, New Civil Code.

[48] *Ibid.*

[49] *Romero v. Court of Appeals*, 250 SCRA 223 (1995).

[50] *Constantino v. Desierto*, 288 SCRA 654 (1998).

[51] *Romero v. Court of Appeals, supra.*

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according to their nature, may be in keeping with good faith, usage and law.[52]

In a contract of sale, the title to the property passes to the vendee upon the constructive or actual delivery thereof, as provided for in Article 1477 of the New Civil Code. The vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded by a notarial deed or by judicial action as provided for in Article 1540 of the New Civil Code. *A contract is one of sale, absent any stipulation therein reserving title over the property to the vendee until full payment of the purchase price nor giving the vendor the right to unilaterally rescind the contract in case of non-payment.*[53] In a contract of sale, the non-payment of the price is a resolutory condition which extinguishes the transaction that, for a time, existed and discharges the obligations created thereunder.[54] In a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Such payment is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[55]

In this case, the deed of absolute sale executed by petitioner Josefina reads:

> That the Vendor is the registered owner of Lot 3 Allah Valley Pls-208-D-3, located at Isulan, Sultan Kudarat, covered by Transfer Certificate of Title No. (T-19529) T-1902 of the Register of Deeds of Cotabato, with eight (8) lots subdivision duly approved pursuant to R.A. 440 on March 27, 1979.
>
> That for and in consideration of the sum of EIGHTY THOUSAND PESOS (₱80,000.00), Philippine Currency, in hand paid by the VENDEE, receipt of which amount in Full is hereby acknowledged by the

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[52] *Id.* at 234.

[53] *Babasa v. Court of Appeals*, 290 SCRA 532 (1998).

[54] *Heirs of Pedro Escanlar v. Court of Appeals*, 281 SCRA 176 (1997).

[55] *Salazar v. Court of Appeals*, 258 SCRA 317 (1996).

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VENDOR, to the ENTIRE and full satisfaction of the VENDOR, and who by these presents do hereby sell, cede, deliver and convey unto the said VENDEE, his heirs, assigns and successors in interests, a portion of the above-mentioned lot, more particularly described as follows:

> TOTAL AREA: FOUR THOUSAND AND NINETY-FOUR (4,094) SQUARE METERS, WITH SIXTY-FOUR POINT THREE (64.3) METERS, FRONTAGE, FACING THE NATIONAL HIGHWAY and the NGA Office, going towards the BUENCAMINO MOVIE HOUSE, starting from the corner.

That the Vendor hereby warrants the peaceful possession and ownership of said vendee against any adverse claim.[56]

Irrefragably, the deed is one of sale, not a contract to sell. The deed specifically states that the property is sold and delivered to the respondent as vendee. Petitioner Josefina even warranted the peaceful possession and ownership of the respondent over the property subject of the transaction. She did not reserve the ownership over the property, as well as any right to unilaterally rescind the contract. There has been, by the execution of the said deed, a constructive delivery of the property to the respondent; hence, the latter acquired ownership over the same.[57] Upon payment of the purchase price, petitioner Josefina was obliged to deliver the torrens title over the property to and under the name of the respondent as the new owner and place him, as vendee, in actual possession thereof; otherwise, the failure or inability to do so constitutes a breach of the contract sufficient to justify its rescission.[58]

However, we rule that the deed of absolute sale was unenforceable as of the date of its execution, May 9, 1979. This is so, because under the Special Power of Attorney petitioner Josefina executed in favor of her son, petitioner Carlos, Jr., the latter was authorized to sell the property on cash basis only; petitioner Josefina likewise required the construction of

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[56] Records, p. 7.

[57] *Babasa v. Court of Appeals, supra.*

[58] *Gonzales v. Haberer.* 47 Phil. 380 (1925).

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a commercial building and the transfer of the Rural Bank of Isulan, as part of the consideration of the sale to be incorporated in the said deed as part of the respondent's obligation as vendee, thus:

(a) To sell sixty four point three meters FRONTAGE and the full length of Lot 3, ALLAH VALLEY, Pls-208-D-13 described in TCT No. T-(19529) T-1902, somewhere in the 3rd and 4th lots of the 8 lots subdivision, located at Poblacion, Isulan, Sultan Kudarat, registered in my name, consisting of Four Thousand Ninety-Four (4,094) Square Meters;

(b) To RECEIVE and SIGN documents and papers necessary in the CONTRACT OF SALE with Mr. JOSE LAGON, and to RECEIVE the full PRICE in CASH, to be determined by my son, CARLOS L. CARLOS, JR.;

(c) To IMPOSE in the Contract that aside from the PRICE, another consideration would be for Mr. JOSE LAGON to transfer the RURAL BANK OF ISULAN to the above-mentioned lot and to put a commercial building, different from the building of the Rural Bank of Isulan on the same lot.[59]

Clearly, petitioner Carlos, Jr. acted beyond the scope of his authority when he executed the deed of absolute sale in contravention of petitioner Josefina's express instructions. Worse, he falsely declared in the said deed that the purchase price was ₱80,000.00 and that he had already received the said amount, when, in fact, the property was sold for ₱40.00 per square meter, or a total of ₱163,760.00, and that as of May 9, 1979, he had not yet received the said amount. Under Article 1317 of the New Civil Code, contracts executed by agents who have acted beyond their powers are unenforceable unless ratified by the principal either expressly or impliedly:

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

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[59] Exhibit "A-1", Records, p. 9.

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A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Thus, the effectivity of the contract of sale in the case at bar depends upon the ratification thereof by petitioner Josefina as principal. If she ratifies the deed, the sale is validated from the moment of its commencement, and not merely from the time of its ratification.[60] In such case, she can no longer maintain an action to annul the same based upon defects relating to its original validity.[61]

We find that petitioner Josefina ratified the said deed when she received, through her son and attorney-in-fact petitioner Carlos, Jr., partial payments of the purchase price of the property from the respondent on April 21, 1981.[62] Such ratification retroacted to *May 9, 1979,* the date when petitioner Josefina, through her attorney-in-fact, executed the deed of sale covering the subject property in favor of the respondent. Moreover, we rule that the respondent agreed on to transfer the Rural Bank of Isulan to the subject property, and to cause the construction of a commercial building within five (5) years reckoned from May 9, 1979 or until May 9, 1984, as evidenced by his affidavit.

We reject the findings of the RTC as affirmed by the CA that the affidavit signed by the respondent on April 27, 1981 was merely an afterthought contrived by petitioner Carlos, Jr., and their conclusion that the said affidavit had no binding effect on petitioner Josefina. The affidavit of the respondent reads:

1. That I am the Vendee of a Deed of Absolute Sale where the Vendor is Mrs. Josefina L. Valdez, represented by CARLOS L. CARLOS, JR., through a Special Power of Attorney;

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[60] Article 1396. New Civil Code.

Art. 1396. Ratification cleanses the from all its defects from the moment it was constituted.

[61] *Tang Ah Chan v. Gonzales,* 52 Phil. 180 (1928).

[62] *Francisco v. GSIS,* 7 SCRA 586 (1963).

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2. That the above-mentioned Deed of Absolute Sale is dated May 9, 1979 and the Special Power of Attorney also above-mentioned was dated May 1, 1979, both duly notarized by Notary Public Atty. Bienvenido Noveno under Doc. No. 77; Page No. 16; Book No. XIX; Series of 1979, and Doc. No. 73; Page No. 15; Book No. XIX; Series of 1979; respectively;

3. That the subject of the above-mentioned Deed of Absolute Sale is a lot consisting of 4,094 square meters, covered by Transfer Certificate of Title No. T-19529 of the Register of Deeds for the Province of Cotabato, facing the National Highway and the Isulan NGA Office going towards the Buencamino Movie House, starting from the corner;

4. That the consideration of the above-mentioned Deed of Absolute Sale is EIGHTY THOUSAND PESOS (₱80,000.00) and in addition thereto, I hereby declare and manifest that the above-mentioned 4,094 square meters be commercialized by putting up at least one (1) bank and any other commercial building in the said 4,094 square meters within a period of five (5) years from the time of the execution of the above-mentioned Deed of Absolute Sale, in full operation;

5. That should I fail to commercialize the said 4,094 square meters in full operation within a period of five (5) years as stated above, I hereby declare and manifest that said Deed of Absolute Sale shall be declared null and void, without need of demand addressed to me;

6. That the purpose of this Affidavit is to make it clear that the consideration of the said Deed of Absolute Sale is not only ₱80,000.00 cash but also the fact that the said 4,094 square meters be commercialized.[63]

The respondent admitted in his complaint that he undertook to construct the said building and transfer the Rural Bank of Isulan to the property he had purchased from petitioner Josefina.[64] The respondent affirmed the authenticity and due execution of his affidavit and his obligations therein, and testified, thus:

ATTY. VALDEZ:

Q Mr. Lagon, you testified that according to you the construction of the same, the PCIB Isulan was a compliance

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[63] Exhibit "B", Records, p. 11.

[64] *Id.* at 2-3.

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of your obligation under your contract with the Valdezes, do you recall having testified on that?

A Yes, Sir.

Q With in (*sic*) how many years, by the say (*sic*), were you supposed to comply with that condition by putting up a bank or a commercial building in that area?

A Supposed to be five years, Sir.

Q From when?

A According to the affidavit, from the time I purchased the property up to or from May 9, 1979 to 1984, Sir.[65]

In his letter to petitioner Carlos, Jr., the respondent, through counsel, admitted the binding effect of his affidavit as follows:

It is hereby submitted therefore that there is in effect substantial compliance on the part of Mr. Lagon with regards to the additional condition laid down in his affidavit herein-referred to. If you deem it that Mr. Lagon has not satisfactorily complied with all the obligations you imposed upon him to do thereunder, it is made to reasons not of his own making but due to factors brought about by circumstances then prevailing, and elaboration on the same can only be properly stated on the proper time to come.[66]

Far from being a mere affidavit, the document embodies the unequivocal undertaking of the respondent to construct a fully operational commercial building and to transfer the Rural Bank of Isulan to the subject property as part of the consideration of the sale within five (5) years from the execution of the deed of sale, or until May 9, 1984.

The intractable refusal of the respondent to pay the balance of the purchase price of the property despite the petitioners' demands had no legal basis. As such, petitioner Josefina's refusal to deliver the torrens title over the subject property under the respondent's name was justified, precisely because of the respondent's refusal to comply with his obligation to pay the

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[65] TSN, 5 July 1993, p. 3.

[66] Exhibit "S".

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balance of the purchase price. Had the respondent paid the purchase price of the property, such failure on the part of petitioner Josefina to deliver the torrens title to and under the name of the respondent would have warranted the suspension of the five-year period agreed upon for the construction of a fully operational commercial building, as well as the transfer of the aforesaid bank to the property. This is so because absent such torrens title under the name of the respondent, no building permit for the construction of the buildings could be secured.

Considering all the foregoing, the failure of the respondent to cause the construction of the commercial building and the transfer of the bank to the property sold under the deed of sale executed between him and petitioner Josefina was due to the respondent's own fault.

There was no need for petitioner Josefina to make a notarized demand to the respondent or file an action to rescind the deed of absolute sale to enable her to recover the ownership of the property. This is so because the petitioner and the respondent had agreed that upon the latter's failure to construct a new and fully operational commercial building and to cause the transfer of the Rural Bank of Isulan to the property on or before May 9, 1984, the deed of absolute sale would be deemed null and void without need of any demand from the petitioners. Such agreement is evidenced by the affidavit executed by the respondent himself on April 27, 1981.

We do not agree with the respondent's contentions that petitioner Josefina, through her son and attorney-in-fact petitioner Carlos, Jr., had agreed to the sale of a portion of the property, the construction of the PCIB branch office thereon, and the crediting of the amount paid by the PCIB to the respondent's account, and deducted from the balance of the purchase price. In the first place, the respondent failed to adduce a morsel of evidence that petitioner Josefina had knowledge of the said agreement and had agreed thereto. Furthermore, the respondent failed to adduce documentary evidence that petitioner Josefina authorized her son and attorney-in-fact to enter into such an agreement.

It bears stressing that petitioner Josefina specifically and unequivocally required in the special power of attorney, as part of the consideration of the sale of the property to the respondent, the

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latter's obligation to construct a new and fully operational commercial building and transfer the Rural Bank of Isulan to the property. Had she agreed to modify the Special Power of Attorney she executed in favor of her son, petitioner Carlos, Jr., for sure, she would have executed a document to that effect. She did not do so. Petitioner Carlos, Jr. could not lawfully bind petitioner Josefina thereon because he was not so authorized to enter into such an agreement with the respondent; neither can such authority be implied from the Special Power of Attorney petitioner Josefina executed in favor of her son, petitioner Carlos, Jr.

In sum, then, the respondent had no cause for specific performance against the petitioners. However, the petitioners are obliged to refund to the respondent the latter's partial payments for the subject property.[67]

The petitioners failed to adduce sufficient evidence to prove their counterclaims, and, as such, the counterclaims must forthwith be dismissed.

IN LIGHT OF ALL THE FOREGOING, the Amended Decision of the Court of Appeals dated February 4, 1999 is *REVERSED* and *SET ASIDE*. The complaint of the respondent is *DISMISSED*. The petitioners are directed to refund to the respondent the amount of ₱101,880.00 with interest thereon at the rate of 12% per annum from the finality of this decision. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, and *Tinga, JJ.*, concur.

Chico-Nazario, J., on leave.

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[67] Article 1398 of the New Civil.

Art. 1398. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages.