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THIRD DIVISION

[G.R. No. 119310. February 3, 1997]

JULIETA V. ESGUERRA, *petitioner, vs.* **COURT OF APPEALS and SURESTE PROPERTIES, INC.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; UNENFORCEABLE CONTRACT; DEFINED.**— The Civil Code provides that a contract is unenforceable when it is "x x x entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers." (Article 1403, paragraph 1, Civil Code.) And that "(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." (Article 1317, paragraph 2, Civil Code.)

2. **REMEDIAL LAW; CIVIL PROCEDURE; COMPROMISE AGREEMENT; EFFECT THEREOF; CASE AT BAR.**— As far as private respondent Sureste Properties, Inc. is concerned, the sale to it by VECCI was completely valid and legal because it was executed in accordance with the compromise agreement, authorized not only by the parties thereto, who became co-principals in a contract of agency created thereby, but by the approving court, as well. Consequently, the sale of Sureste Properties, Inc. of Esguerra Building II cannot in any manner or guise be deemed unenforceable, as contended by petitioner. The mere fact that petitioner Julieta Esguerra was consulted by VECCI in a sale of Esguerra Building I did not affect nor vary the terms of the authority to sell granted the former as expressly spelled out in the judicially-approved compromise agreement because "a compromise once approved by final orders of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery." (*Republic vs. Sandiganbayan*, 226 SCRA 314, 328, September 10, 1993). Hence, "a decision on a compromise agreement is final and executory, x x x." (*Casal vs. Concepcion, Jr.*, 243 SCRA 369, 372, April 6, 1995) "It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or

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disastrous contract, entered into with all the required formalities and with full awareness of what he was doing. Courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments." It is a truism that "a compromise agreement entered into by party-litigants, when not contrary to law, public order, public policy, morals, or good custom is a valid contract which is the law, between the parties themselves. It follows, therefore, that a compromise agreement, not tainted with infirmity, irregularity, fraud, or illegality is the law between the parties who are duty bound to abide by it and observe strictly its terms and conditions" as in this case.

3. **CIVIL LAW; PROPERTY; RIGHT OF FIRST REFUSAL; WHEN DEEMED WAIVED.—** The right of first refusal like other rights, may be waived as petitioner did waive it upon entering into the compromise agreement. Corollarily, the execution of the spouses' judicial compromise agreement necessitated the sale of the spouses' co-owned properties and its proceeds distributed fifty percent to each of them which, therefor, resulted in its partition. (Article 496 of the Civil Code provides that: "Partition may be made by agreement between the parties or by judicial proceedings. x x x" Article 498 of the Civil Code reads: "Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.") If petitioner wanted to keep such right of first refusal, she should have expressly reserved it in the compromise agreement. For her failure to do so, she must live with its consequences.

4. **COMMERCIAL LAW; CORPORATION CODE; SALE OR OTHER DISPOSITION OF ASSETS (Sec. 40); REQUIREMENTS; COMPLIED WITH IN CASE AT BAR.—** - VECCI's sale of all the properties mentioned in the judicially-approved compromise agreement was done on the basis of its *Corporate Secretary's Certification* of these two resolutions. The partial decision did not require any further board or stockholder resolutions to make VECCI's sale of these properties valid. Being regular on its face, the Secretary's Certification was sufficient for private respondent Sureste Properties, Inc., to rely on. It did not have to investigate the truth of the facts contained in such certification. Otherwise, business transactions of corporations would become tortuously slow and unnecessarily hampered.

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Ineluctably, VECCI's sale of Esguerra Building II to private respondent was not *ultra vires* but a valid execution of the trial court's partial decision. Based on the foregoing, the sale is also deemed to have satisfied the requirements of Section 40 of the Corporation Code.

5. **REMEDIAL LAW; CIVIL PROCEDURE; NOTICE OF *LIS PENDENS*; EFFECT THEREOF.**— "Once a notice of lis pendens has been duly registered, any cancellation or issuance of the title of the land involved as well as any subsequent transaction affecting the same, would have to be subject to the outcome" of the suit. In other words, "a purchaser who buys registered land with full notice of the fact that it is in litigation between the vendor and a third party x x x stands in the shoes of his vendor and his title is subject to the incidents and results of the pending litigation x x x."

6. **ID.; ID.; WITHOUT JURISDICTION AND GRAVE ABUSE OF DISCRETION; CONSTRUED.**— In the case of *Alafriz vs. Nable,* 72 Phil. 278, p. 280 (1941), this Court defined the phrases "without jurisdiction" and "grave abuse of discretion" as follows: 'without jurisdiction' means that the court acted with absolute want of jurisdiction. x x x Grave abuse of discretion' implies such capricious and a whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."

7. **ID.; ID.; APPEAL; WHEN RULE 45 AVAILABLE; CASE AT BAR.**— Let it be emphasized that Rule 45 of the Rules of Court, under which the present petition was filed, authorizes only reversible errors of the appellate court as grounds for review, and not "grave abuse of discretion" which is provided for by Rule 65. It is basic that where Rule 45 is available and in fact availed of as a remedy — as in this case— recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Bautista Picazo Buyco Tan & Fider for private respondent.

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DECISION

PANGANIBAN, *J.*:

May a co-owner contest as unenforceable a sale of a real property listed in and sold pursuant to the terms of a judicially-approved compromise agreement but without the knowledge of such co-owner? Is the corporate secretary's certification of the shareholders' and directors' resolution authorizing such sale sufficient, or does the buyer need to go behind such certification and investigate further the truth and veracity thereof?

These questions are answered by this Court as it resolves the instant petition challenging the Decision[1] in CA-G.R. SP No. 33307 promulgated May 31, 1994 by the respondent Court,[2] reversing the judgment of the trial court.

The Antecedent Facts

The facts as found by the respondent Court of Appeals are as follows:

"On 29 June 1984, (now herein Petitioner) Julieta Esguerra filed a complaint for administration of conjugal partnership or separation of property against her husband Vicente Esguerra, Jr. before (the trial) court. The said complaint was later amended on 31 October 1985 impleading V. Esguerra Construction Co., Inc. (VECCI for brevity) and other family corporations as defendants (Annex 'C', p. 23, *Rollo*).

The parties entered into a compromise agreement which was submitted to the court. On the basis of the said agreement, the court on 11 January 1990 rendered two partial judgments: one between Vicente and (herein petitioner) and the other as between the latter and VECCI (Annex 'F' and 'G', pp. 26-27, *Rollo*). The compromise agreement between (herein petitioner) and VECCI provides in part:

> 'Plaintiff Julieta V. Esguerra and defendant V. Esguerra Construction Co., Inc., as assisted by their respective counsels, submitted to this Court on January 11, 1990 a 'Joint Motion for

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[1] *Rollo*, pp. 44-51.

[2] Second Division, composed of *J.* Antonio M. Martinez, *ponente*, and *JJ.* Quirino D. Abad Santos, Jr. and Godardo A. Jacinto.

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Partial Judgment Based on Compromise Agreement," pertinent provisions of which reads as follows:

'1. Defendant V. Esguerra Construction Co., Inc., (VECCI) shall sell/alienate/transfer or dispose of in any lawful and convenient manner, and under the terms and conditions recited in the enabling resolutions of its Board of Directors and stockholders, all the following properties:

* real estate and building located at 140 Amorsolo Street, Legaspi Village, Makati, Metro Manila;

* real estate and building located at 104 Amorsolo Street, Legaspi Village, Makati, Metro Manila:

* real estate and improvements located at Barangay San Jose, Antipolo, Rizal;

* real estate and improvements located at Barangay San Jose, Antipolo, Rizal;

* real estate and improvements located at Kamagong Street, St. Anthony Subdivision, Cainta, Rizal; and

* real estate and improvements located at Barangay Malaatis, San Mateo, Rizal.

2. After the above-mentioned properties shall have been sold/alienated/transferred or disposed of and funds are realized therefrom, and after all the financial obligations of defendant VECCI (those specified in the enabling resolutions and such other obligations determined to be due and will become due) are completely paid and/or settled, defendant VECCI shall cause to be paid and/or remitted to the plaintiff such amount/sum equivalent to fifty percent (50%) of the (net) resulting balance of such funds.'

By virtue of said agreement, Esguerra Bldg. I located at 140 Amorsolo St., Legaspi Village was sold and the net proceeds distributed according to the agreement. The controversy arose with respect to Esguerra Building II located at 104 Amorsolo St., Legaspi Village, Makati. (Herein petitioner) started claiming one-half of the rentals of the said building which VECCI refused. Thus, on 7 August 1990, (herein petitioner) filed a motion with respondent court praying that VECCI be ordered to remit one-half of the rentals to her effective January 1990 until the same be sold (p. 28, *Id.*). VECCI opposed said motion (p. 31, *Rollo*).

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On October 30, 1990 respondent (trial) court ruled in favor of (herein petitioner) (p. 34, *Rollo*) which was affirmed by this court in a decision dated 17 May 1991 in CA-G.R. SP. No. 2380. VECCI resorted to the Supreme Court which on 4 May 1992 in G.R. No. 100441 affirmed this court's decision the fallo of which reads:

> 'The petition is without merit. As correctly found by the respondent Court of Appeals, it can be deduced from the terms of the Compromise Agreement and from the nature of the action in the court *a quo* that the basis of the equal division of the proceeds of any sale or disposition of any of the subject properties is the acknowledged ownership of private respondent over one-half of the said assets. Considering that the other building has yet to be sold. it is but logical that pending its disposition and conformably with her one-half interest therein, private respondent should be entitled to half of its rentals which forms part of her share in the fruits of the assets. To accord a different interpretation of the Compromise Agreement would be prejudicial to the established rights of private respondent.' (p. 36, *Rollo*).

Meanwhile, Esguerra Bldg. II was sold to (herein private respondent Sureste Properties, Inc.) for P150,000,000.00 (sic). On 17 June 1993, (Julieta V. Esguerra) filed a motion seeking the nullification of the sale before respondent (trial) court on the ground that VECCI is not the lawful and absolute owner thereof and that she has not been notified nor consulted as to the terms and conditions of the sale (p. 37, *Rollo*).

Not being a party to the civil case, (private respondent Sureste) on 23 June 1993 filed a Manifestation concerning (herein petitioner's) motion to declare the sale *void ab initio*. In its Manifestation (Sureste) points out that in the compromise agreement executed by VECCI and (Julieta V. Esguerra), she gave her express consent to the sale of the said building (p. 38, *Rollo*).

On 05 August 1993, respondent judge (who took over the case from Judge Buenaventura Guerrero, now Associate Justice of this court) issued an Omnibus Order denying among others, (Sureste's) motion, to which a motion for reconsideration was filed.[3]

After trial on the merits, the Regional Trial Court of Makati, Branch 133,[4] rendered its order, the dispositive portion of which reads:

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[3] *Rollo*, pp. 45-48.

[4] Presided by Judge Ruben A. Mendiola.

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"WHEREFORE, the Court resolves as it is resolved that:

1. The Omnibus Order of the Court issued on August 5, 1993 is hereby reconsidered and modified to the effect that:

a. The Notice of *Lis Pendens* is annotated at the back of the Certificate of Title of Esguerra Bldg. II located at Amorsolo St., Legaspi Village, Makati, Metro Manila is delivered to be valid and subsisting, the cancellation of the same is hereby set aside; and,

b. The sale of Esguerra Bldg. II to Sureste Properties, Inc. is declared valid with respect to one-half of the value thereof but ineffectual and unenforceable with respect to the other half as the acknowledged owner of said portion was not consulted as to the terms and conditions of the sale.

The other provisions of said Omnibus Order remain undisturbed and are now deemed final and executory.

2. Sureste Properties, Inc. is hereby enjoined from pursuing further whatever Court action it has filed against plaintiff as well as plaintiff's tenants at Esguerra Bldg. II;

3. Plaintiff's Urgent *Ex-parte* Motion dated December 14, 1993 is hereby DENIED for being moot and academic.

4. Plaintiff is hereby directed to bring to Court, personally or through counsel, the subject shares of stocks on February 15, 1994 at 10:30 in the morning for the physical examination of defendant or counsel.

SO ORDERED."[5]

From the foregoing order, herein private respondent Sureste Properties, Inc. interposed an appeal with the Court of Appeals which ruled in its favor, *viz.*:

"From the foregoing, it is clear that respondent judge abused his discretion when he rendered the sale of the property unenforceable with respect to one-half.

WHEREFORE, the petition is hereby GRANTED. The assailed order dated 1 February 1994 is hereby SET ASIDE. No pronouncement as to cost.

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[5] *Rollo*, p. 117.

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SO ORDERED."[6]

Julieta Esguerra's Motion for Reconsideration[7] dated June 15, 1994 was denied by the respondent Court in the second assailed Resolution[8] promulgated on February 23, 1995.

Hence this petition.

The Issues

Petitioner submits the following assignment of errors:

"x x x (I)n issuing the Decision (Annex 'A' of the petition) and the Resolution (Annex 'B' of the petition), the Court of Appeals decided questions of substance contrary to law and applicable jurisprudence and acted without jurisdiction and/or with grave abuse of discretion when:

It validated the sale by VECCI to Sureste of the subject property without the knowledge and consent of the acknowledged co-owner thereof and in contravention of the terms of the compromise agreement as well as the Resolution of this Honorable Court in G.R. No. 100441 wherein this Honorable Court recognized herein petitioner's 'acknowledged ownership of — one-half of the subject property; and,

It held that the trial court acted without jurisdiction and/or abused its discretion when it held that the questioned sale of the property is ineffectual and unenforceable as to herein petitioner's one-half (1/2) ownership/interest in the property since the sale was made without her knowledge and consent.

B E C A U S E:

A. No proper corporate action of VECCI was made to effect such sale as required under the compromise agreement;

B. The sale of the subject property was made in violation of the terms of the compromise agreement in that it was not made with the approval/consent of the acknowledged owner of ½ of the said asset;

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[6] *Ibid.*, p. 51.

[7] *Ibid.*, pp. 178-195.

[8] *Ibid.*, pp. 53-55.

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C. The prior sale of another property (the Esguerra Building I as distinguished from the subject property which is the Esguerra Building II) included in the said compromise agreement was made only after the prior approval/consent of petitioner and this procedure established a precedent that applied in the subsequent sale of the Esguerra Building II; and

D. Respondent Sureste as purchaser *pendente lite* of the subject property covered by a notice of *lis pendens* was in law-deemed to have been duly notified of the aforesaid conditions required for a valid sale of the subject property as well as of petitioner's 'acknowledged ownership — over one-half' of the Esguerra Building II."[9]

Simply put, petitioner (1) assails VECCI's sale of Esguerra Building II to private respondent as unenforceable to the extent of her one-half share, and (2) accuses the appellate court of "acting without jurisdiction or with grave abuse of discretion" in reversing the trial court's finding to that effect.

The Court's Ruling

The petition has no merit.

First Issue: Is the Contract of Sale Unenforceable?

The Civil Code provides that a contract is unenforceable when it is "x x x entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers."[10] And that "(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, x x x."[11] After a thorough review of the case at bench, the Court finds the sale of Esguerra Building II by VECCI to private respondent Sureste Properties, Inc. valid. The sale was expressly and clearly authorized under the judicially-approved compromise agreement freely consented to and voluntarily signed by petitioner Julieta Esguerra. Thus, petitioner's contention that the sale is unenforceable as to her share for being unauthorized is plainly incongruous with the express authority granted by the

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[9] Memorandum for the Petitioner, pp. 11-12; *Rollo*, pp. 292-293.

[10] Article 1403, paragraph 1, Civil Code.

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compromise agreement to VECCI, which specified no condition that the latter shall first consult with the former prior to selling any of the properties listed there. As astutely and correctly found by the appellate Court:

"The compromise agreement entered between private respondent (Julieta Esguerra) and VECCI, which was approved by the court, expressly provides, among others, that the latter shall sell or otherwise dispose of certain properties, among them, Esguerra Bldgs. I and II, and fifty (50%) percent of the net proceeds thereof to be given to the former. Pursuant to said agreement, VECCI sold the buildings. x x x

xxx xxx xxx

x x x The compromise agreement expressly authorizes VECCI to sell the subject properties, with the only condition that the sale be in a lawful and convenient manner and under the terms and conditions recited in the enabling resolutions of its Board of Directors and stockholders. There is nothing in the said agreement requiring VECCI to consult the private respondent (Julieta Esguerra) before any sale (can be concluded). Thus, when VECCI sold the property to (Sureste Properties, Inc.) as agreed upon, it need not consult the private respondent."[12]

Moreover, petitioner's contention runs counter to Article 1900 of the Civil Code which provides that:

"So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent."

Thus, as far as private respondent Sureste Properties, Inc. is concerned, the sale to it by VECCI was completely valid and legal because it was executed in accordance with the compromise agreement, authorized not only by the parties thereto, who became co-principals in a contract of agency created thereby, but by the approving court as well. Consequently, the sale to Sureste Properties, Inc. of Esguerra Building II cannot in any manner or guise be deemed unenforceable, as contended by petitioner.

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[11] Article 1317, paragraph 2, *Supra*.

[12] *Rollo*, pp. 49-50.

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Consultation in the Sale of Esguerra Building I Not a Binding Precedent

The petitioner further argues that VECCI's consulting her on the terms and conditions of its sale of Esguerra Building I set a binding precedent to be followed by the latter on subsequent sales. She adds that in failing to consult her on the sale of Esguerra Building II, VECCI "acted unfairly and unjustly" as evidenced by (a) the sale of said building for only P160,000,000.00 instead of P200,000,000.00, which is "the best price obtainable in the market," (b) payment of real estate broker's commission of 5% instead of just 2% as in the sale of Esguerra 1 building, and (c) the denial of petitioner's right of first refusal when her offer to purchase her one-half share for P80,000,000.00 as ordered by the trial court was totally ignored.[13]

The Court is not persuaded. Petitioner's argument is debunked by the very nature of a compromise agreement. The mere fact that petitioner Julieta Esguerra was consulted by VECCI in the sale of Esguerra Building I did not affect nor vary the terms of the authority to sell granted the former as expressly spelled out in the judicially-approved compromise agreement because "a compromise once approved by final orders of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery."[14] Hence, "a decision on a compromise agreement is final and executory, x x x."[15]

Petitioner insists that had she been consulted in the sale of Esguerra Building II, better terms could have been obtained. This is plainly without legal basis since she already consented to the compromise agreement which authorized VECCI to sell the

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[13] Memorandum for the Petitioner, p. 25; *Rollo*, p. 306.

[14] *Republic vs. Sandiganbayan*, 226 SCRA 314, 328, September 10, 1993; citing *Araneta vs. Perez*, 7 SCRA 923, April 30, 1963.

[15] *Casal vs. Concepcion, Jr.*, 243 SCRA 369, 372, April 6, 1995; Citing *Master Tours and Travel Corporation vs. Court of Appeals*, 219 SCRA 321, March 1, 1993, and *Mobil Oil Philippines, Inc. vs. Court of First Instance of Rizal, Branch VI*, 208 SCRA 523, May 8, 1992.

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properties without the requirement of prior consultation with her. "It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing. Courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous deals or unwise investments."[16] It is a truism that "a compromise agreement entered into by party-litigants, when not contrary to law, public order, public policy, morals, or good custom is a valid contract which is the law between the parties themselves. It follows, therefore, that a compromise agreement, not tainted with infirmity, irregularity, fraud or illegality is the law between the parties who are duty bound to abide by it and observe strictly its terms and conditions"[17] as in this case. Incidentally, private respondent Sureste Properties, Inc. submits that the petitioner offered to buy her one-half share for only P75,000,000.00, not P80,000,000.00.[18] She therefore valued the whole building only at P150,000,000.00 which amount is P10,000,000.00 less than the price of P160,000,000.00 paid by private respondent, the highest offer the market has produced in two and a half years the building was offered for sale. Even the 5% real estate broker's commission was not disparate with the standard practice in the real estate industry. Thus, the respondent Court aptly stated that:

"x x x In affixing her signature on the compromise agreement, private respondent (Julieta Esguerra) has demonstrated her agreement to all the terms and conditions therein and have (sic) given expressly her consent to all acts that may be performed pursuant thereto. She can not later on repudiate the effects of her voluntary acts simply because it does not fit her. Her contention that she was not consulted as to the terms of the sale has no leg to stand on."[19]

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[16] *Republic vs. Sandiganbayan, Supra*; citing *Tanda vs. Aldaya*, 89 Phil. 497, (1951), and *Villacorte vs. Mariano*, 89 Phil. 341, (1951).

[17] *Municipal Board of Cabanatuan City vs. Samahang Magsasaka, Inc.*, 62 SCRA 435, 438, February 25, 1975; citing *Juan-Marcelo vs. Go Kim Pah*, 22 SCRA 309, January 29, 1968.

[18] *Rollo*, pp. 212 and 274; Comment, p. 8; Memorandum for Private Respondent, p. 13.

[19] *Rollo*, pp. 49-50.

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Parenthetically, the previous consultation can be deemed as no more than a mere courtesy extended voluntarily by VECCI. Besides, such previous consultation — even assuming *arguendo* that it was a binding precedent — cannot bind private respondent Sureste which was not a party thereto. To declare the sale as infirm or unenforceable is to heap unfairness upon Sureste Properties, Inc. and to undermine public faith in court decisions approving compromise agreements.

Right of First Refusal Waived

The argument of petitioner that she was denied her right of first refusal is puerile. This alleged right, like other rights, may be waived[20] as petitioner did waive it upon entering into the compromise agreement. Corollarily, the execution of the spouses' judicial compromise agreement necessitated the sale of the spouses' co-owned properties and its proceeds distributed fifty percent to each of them which, therefor, resulted in its partition.[21] If petitioner wanted to keep such right of first refusal, she should have expressly reserved it in the compromise agreement. For her failure to do so, she must live with its consequences.

VECCI'S Sale of Esguerra Building II A Valid Exercise of Corporate Power

Petitioner contends that VECCI violated the condition in the compromise agreement requiring that the sale be made "under the terms and conditions recited in the enabling resolutions of its Board of Directors and stockholders."[22] She rues that no shareholders' or directors' meeting, wherein these resolutions were

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[20] Article 6, Civil Code.

[21] Article 496 of the Civil Code provides that:

"Partition may be made by agreement between the parties or by judicial proceedings. x x x"

Article 498 of the Civil Code reads:

"Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed."

[22] *Rollo*, p. 293.

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passed, was actually held. She thus bewails this sale as improper for not having complied with the requirements mandated by Section 40 of the Corporation Code.[23]

Petitioner's contention is plainly unmeritorious. The trial court's partial decision *dated January 11, 1990* approving the compromise agreement clearly showed that the "enabling resolutions of its (VECCI's) board of directors and stockholders" referred to were those then already existing; to wit: (1) "the resolution of the stockholders of VECCI *dated November 9, 1989*, (where) the stockholders authorized VECCI to sell and/or disposed all or substantially all its property and assets upon such terms and conditions and for such consideration *as the board of directors may deem expedient*."[24] (2) the "resolution dated *9 November 1989*, (where) the board of directors of VECCI authorized VECCI to sell and/or dispose all or substantially all the property and assets of the corporation, *at the highest available price/s* they could be sold or disposed of in cash, and in such manner *as may be held convenient* under the circumstances, and *authorized the President Vicente B. Esguerra, Jr. to negotiate, contract, execute and sign*

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[23] *Ibid.*, p. 294. Section 40 of the Corporation Code provides:

"*Sale or other disposition of assets.* — Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors, or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage pre-paid, or served personally; *Provided*, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code. x x x"

[24] *Ibid.*, p. 107.

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such sale for and in behalf of the corporation."[25] VECCI's sale of all the properties mentioned in the judicially-approved compromise agreement was done on the basis of its *Corporate Secretary's Certification* of these two resolutions. The partial decision did not require any further board or stockholder resolutions to make VECCI's sale of these properties valid. Being regular on its face, the Secretary's Certification was sufficient for private respondent Sureste Properties, Inc. to rely on. It did not have to investigate the truth of the facts contained in such certification. Otherwise, business transactions of corporations would become tortuously slow and unnecessarily hampered. Ineluctably, VECCI's sale of Esguerra Building II to private respondent was not *ultra vires* but a valid execution of the trial court's partial decision. Based on the foregoing, the sale is also deemed to have satisfied the requirements of Section 40 of the Corporation Code.

Furthermore, petitioner Julieta Esguerra is estopped from contesting the validity of VECCI's corporate action in selling Esguerra Building II on the basis of said resolutions and certification because she never raised this issue in VECCI's prior sales of the other properties sold including the Esguerra Building I.[26] The same identical resolutions and certification were used in such prior sales.

Notice of Lis Pendens

"Once a notice of *lis pendens* has been duly registered, any cancellation or issuance of the title of the land involved as well as any subsequent transaction affecting the same, would have to be subject to the outcome"[27] of the suit. In other words, "a purchaser who buys registered land with full notice of the fact that it is in litigation between the vendor and a third party x x x stands

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[25] *Ibid.*; Comment to the Motion for Reconsideration, dated 2 September 1993, filed by Sureste before the trial court.

[26] *Ibid.*

[27] Peña, *Registration of Land Titles and Deeds*, p. 391, 1994; citing J.P. Pellicer & Co., Inc. *vs.* Philippine Realty Corp., 87 Phil. 302 (1950).

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in the shoes of his vendor and his title is subject to the incidents and result of the pending litigation x x x."[28] In the present case, the purchase made by private respondent Sureste Properties, Inc. of the property in controversy is subject to the notice of *lis pendens* annotated on its title. Thus, the private respondent's purchase remains subject to our decision in the instant case. The former is likewise deemed notified of all the incidents of this case including the terms and conditions for the sale contained in the compromise agreement. However, petitioner's inference that the private respondent is also deemed to have been notified that the manner of the sale of the properties contained in the compromise agreement should be "made only upon prior consent/conformity of the herein petitioner" is *non sequitur*. Nowhere in the compromise agreement was this inference expressly or impliedly stated. In the final analysis, the determination of this issue ultimately depends on this Court's disposition of this case.

Appealed Decision Consistent with Previous Court of Appeals and Supreme Court Decisions

Petitioner maintains that the trial court's ruling that "the sale of Esguerra Building II to Sureste is unenforceable to the extent of one-half share of petitioner in the property" is based on the Court of Appeals' decision in G.R. SP No. 23780 dated May 17, 1991, and the Supreme Court's decision in G.R. No. 100441 dated May 4, 1992 which both acknowledged petitioner's one-half ownership of said building.[29] She reasons that "(a)s co-owner her consent or conformity to the sale was necessary for the validity or effectivity thereof insofar as her ½ share/ownership was concerned."[30] The Court disagrees. As discussed previously, this repetitive contention is negated by her consent to the compromise agreement that authorized VECCI to sell the building without need of further consultation with her. Her co-ownership in the building

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[28] *Ibid.*; citing *Director of Lands vs. Reyes*, 68 SCRA 177, November 28, 1975, and *Alinsunurin vs. Director of Lands*, 69 SCRA 415, February 27, 1976.

[29] *Rollo*, p. 300.

[30] *Ibid.*

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was not inconsistent with her authorizing another, specifically VECCI, to sell her share in this property via an agency arrangement. As correctly stated by the respondent Court of Appeals, the only import of this Court's ruling in G.R. No. 100441 was as follows:

"the only issue involved is whether or not private respondent is entitled to one-half of the rentals of the subject property pending its sale. The rulings of the courts is (sic) therefore limited only to the issue of rental, there being no provision in the compromise agreement approved by the court for the rentals earned from the building pending its sale. Nowhere in the said rulings did it question nor assail the authority granted to VECCI to sell the said building. In fact, the decisions affirmed the authority granted to VECCI to sell the said building which invoked the compromise agreement of the parties as a basis of the decision (Manifestation, p. 38, *Rollo*)."[31]

Second Issue: Did the Appellate Court Act Without Jurisdiction or With Grave Abuse of Discretion?

In the case of *Alafriz vs. Nable,*[32] this Court defined the phrases "without jurisdiction" and "grave abuse of discretion" as follows:

"'Without jurisdiction' means that the court acted with absolute want of jurisdiction. x x x 'Grave abuse of discretion' implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."

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[31] *Rollo*, p. 50.

[32] 72 Phil. 278, p. 280 (1941); citing *Leung Ben vs. O'Brien*, 38 Phil. 182 (1918), *Salvador Campos y Cia vs. Del Rosario*, 41 Phil. 45 (1920), *Abad Santos vs. Province of Tarlac*, 38 Off. Gaz. 830, and *Tavera-Luna, Inc. vs. Nable*, 38 Off. Gaz. 62. See also *San Sebastian College vs. Court of Appeals*, 197 SCRA 444, 458, March 20, 1991; *Sinon vs. Civil Service Commission*, 215 SCRA 410, November 5, 1992; *Bustamante vs. Commission on Audit*, 216 SCRA 134, 136, November 27, 1992; *Zarate vs. Olegario*, G.R. No. 90655, October 7, 1966.

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Contrary to petitioner's asseverations, the Court finds that the respondent Court of Appeals judiciously, correctly and certainly acted within its jurisdiction in reversing the trial court's decision. As discussed, its decision is consistent with law and existing jurisprudence.

Let it be emphasized that Rule 45 of the Rules of Court, under which the present petition was filed, authorizes only reversible errors of the appellate court as grounds for review, and not "grave abuse of discretion" which is provided for by Rule 65. It is basic that where Rule 45 is available, and in fact availed of as a remedy — as in this case — recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.

Finally, "(c)ourts as a rule may not impose upon the parties a judgment different from their compromise agreement. It would be an abuse of discretion."[33] Hence, in this case, it is the trial court's decision which is tainted with grave abuse of discretion for having injudiciously added "prior consultation" to VECCI's authority to sell the properties, a condition not contained in the judicially-approved compromise agreement.

WHEREFORE, the petition is hereby *DENIED* for lack of merit, no reversible error having been committed by respondent Court. The assailed Decision is *AFFIRMED in toto*. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and *Francisco, JJ.,* concur.

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[33] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, p. 485, 1992; citing *Municipal Board vs. Samahang Magsasaka, Supra, International Hotel vs. Asuncion*, 63 SCRA 77, March 10, 1975, and *Tac-an Dano vs. Court of Appeals*, 137 SCRA 803, July 29, 1985.