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In fine, the appellate court committed no reversible error in upholding respondent Alcala's Resolution of June 3, 1999 finding the petitioner guilty of grave misconduct and conduct prejudicial to the best interest of the service and dismissing him therefrom.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision dated September 10, 2001 of the Court of Appeals in CA-G.R. SP No. 61477 is *AFFIRMED in toto*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 150308. November 26, 2004]

VIVE EAGLE LAND, INC. and VIRGILIO O. CERVANTES, *petitioners, vs.* **COURT OF APPEALS and GENUINO ICE CO., INC.,** *respondents*.

SYNOPSIS

Three separate deeds of absolute sale were executed on the subject property, to wit: first, the April 13, 1988 deed of absolute sale executed by Sps. Flores and Tatic; second, the April 14, 1988 deed of absolute sale executed by Tatic in favor of petitioner Veli; and third, the November 11, 1988 deed of absolute sale between petitioner Veli and the respondent.

The Supreme Court affirmed the CA ruling that under Article 1487 of the New Civil Code, petitioner Veli, as vendor, is liable for the expenses for the registration of the third deed of sale in favor of the respondent as vendee; to secure a torrens title over the property to and under the name of the latter; and

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to cause the eviction of the tenants/occupants from the property. Respondent was not privy to the deeds of sale executed by the parties before the third absolute deed of sale and as such is not bound by said deeds; neither could respondent enforce the terms and conditions of the said deeds. The Supreme Court, however, deleted the portion of the CA decision which mandated petitioner to pay capital gains tax for the November 11, 1988 sale of the property to the respondent based on the applicable law governing their contract at the time of execution.

SYLLABUS

1. **CIVIL LAW; SALES; OBLIGATIONS OF VENDOR OF REAL PROPERTY TO THE VENDEE. –** [U]nder Article 1487 of the New Civil Code, the expenses for the registration of the sale should be shouldered by the vendor unless there is a stipulation to the contrary. In the absence of any stipulation of the parties relating to the expenses for the registration of the sale and the transfer of the title to the vendee. Article 1487 shall be applied in a supplementary manner. Under Article 1495 of the New Civil Code, petitioner VELI, as the vendor is obliged to transfer title over the property and deliver the same to the vendee. While Article 1498 of the New Civil Code provides that the execution of a notarized deed of absolute sale shall be equivalent to the delivery of the property subject of the contract, the same shall not apply if, from the deed, the contrary does not appear or cannot clearly be inferred.

2. **ID.; ID.; ASSIGNMENT OF RIGHTS; CANNOT BE ENFORCED UNLESS PARTIES CONFORMED TO SAID DEED OR SAME WAS REGISTERED IN THE REGISTRY OF DEEDS; CASE AT BAR. –** While it is true that the respondent acquired the rights and interests of TATIC under the first deed of sale and that of petitioner VELI under the second deed of sale by virtue of the deed of assignment of rights executed by the petitioners and the respondent, the latter cannot enforce the terms and conditions of the said deeds. It must be stressed that there is no showing in the records that the Spouses Flores, Tobias and TATIC conformed to the said deed of assignment of rights or that the same was registered in the office of the Register of Deeds in accordance with Article 1625 of the New Civil Code.

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APPEARANCES OF COUNSEL

Counsellors Circle Law Firm for petitioners.
Advocates Circle Lawyers for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition filed by Vive Eagle Land, Inc. (VELI) and Virgilio Cervantes for the review of the July 19, 2001 Decision[1] and October 4, 2001 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 51933.

The Antecedents

The Spouses Raul and Rosalie Flores were the owners of two parcels of land situated along Aurora Boulevard, Cubao, Quezon City, covered by Transfer Certificates of Title (TCT) Nos. 241845 and 241846, with an area of 1,026 and 2,963 square meters, respectively. On October 10, 1987, the Spouses Flores and Tatic Square International Corporation (TATIC) executed an Agreement to Sell in which the said spouses bound and obliged themselves to sell the properties to TATIC. The latter then applied for a loan with the Capital Rural Bank of Makati, Inc. (Bank) to finance its purchase of the said lots. The Bank agreed to grant the application of TATIC in the amount of ₱5,757,827.63 provided that the torrens titles over the subject properties would be registered under the name of the latter as the subject lots would be used as collateral for the payment of the said loan.[2]

On April 13, 1988, the Spouses Flores, TATIC, Isidro S. Tobias (who acted as broker), and the Bank executed a Memorandum of Agreement (MOA), wherein the Spouses Flores,

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[1] Penned by Associate Justice Cancio C. Garcia (now an Associate Justice of the Supreme Court), with Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole, concurring.

[2] Records, pp. 37-38.

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as vendees-owners, warranted that "the titles of the two properties were free and clear from any and all obligations and claims, whether past or present, from any creditors or third persons." Tobias, as broker, undertook to pay any and all the taxes and assessments imposed and/or charged over the lots, including the payment of capital gains tax; and to secure tax clearances from the proper government agencies within thirty days from April 12, 1988. Tobias also undertook to remove any and all tenants/occupants on the lots within sixty days from April 12, 1988 with the assistance and cooperation of the Spouses Flores. The parties agreed that the expenses to be incurred by Tobias and TATIC would be deducted from the purchase price of the property, which was estimated at ₱790,000.00:

6. The BROKER undertakes to clear the titles covering the two (2) parcels of land from any and all liens and encumbrances, including future claims and/or liability from any person or entity within thirty (30) days from April 12, 1988. Towards this end, the OWNER shall endeavor to provide the BROKER the documents/papers, which are necessary and proper to carry out this objective;

The OWNERS warrant that the titles of the two properties are free and clear from any and all obligations and claims, whether past or present, from any bank or financial institution or any other creditor, or third persons;

7. The BROKER shall undertake to pay any and all taxes and assessments imposed and/or charged over the two (2) parcels of land including the payment of capital gains tax and secure tax clearance from the proper government agency/ies within thirty (30) days from April 12, 1988. Official receipts of payments thereof shall be presented and delivered to CAPITAL BANK;

The payment of any taxes and assessments on the two parcels of land may be advanced by CAPITAL BANK provided that TATIC SQUARE will execute a Promissory Note in favor of CAPITAL BANK in the amount corresponding thereto. The amount covered by this Promissory Note shall be deducted from the balance of the purchase price payable by TATIC SQUARE to the OWNERS;

8. The BROKER and TATIC SQUARE shall undertake to remove any and all occupants/tenants of the two (2) parcels of land whether

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legally or illegally residing thereat within sixty (60) days from April 12, 1988 with the assistance and cooperation of the OWNERS;

9. Any and all expenses to be incurred in complying with the undertakings mentioned in paragraphs 6, 7 and 8 shall be deducted from the purchase price of the two parcels of land, the expenses of which is estimated to be SEVEN HUNDRED NINETY THOUSAND PESOS (₱790,000.00). If the said amount of ₱790,000.00 would not be sufficient, the other expenses connected therewith shall be taken and/or deducted from the amount due the BROKER.[3]

On the same day, the Spouses Flores executed a deed of absolute sale over the two parcels of land for the price of ₱5,700,000.00 in favor of TATIC.[4] The Spouses Flores, thereafter, turned over the custody of the owner's copy of their titles to the Bank.[5]

Although the torrens titles over the lots were still in the custody of the Bank, TATIC, as vendor, and petitioner VELI, as vendee, executed a deed of absolute sale[6] on April 14, 1988, in which TATIC sold the properties to the petitioner for ₱6,295,224.88, receipt of which was acknowledged in the said deed by TATIC. The latter warranted in the said deed that there were valid titles to the property and that it would deliver possession thereof to the petitioner. The parties executed a deed entitled "Addendum" in which they agreed on the following:

1. TATIC SQUARE represents and warrants that the titles covering the two (2) parcels of land are free from any and all liens and encumbrances except the mortgage which may be subsisting in favor of CAPITAL BANK. TATIC SQUARE shall cause the registration and transfer of the titles covering the two (2) parcels of land in its name;

TATIC SQUARE undertakes to remove all the occupants/tenants whether legally or illegally residing thereat within sixty (60) days

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

[4] *Id*. at 31-33.

[5] *Id*. at 201-202.

[6] *Id*. at 204-205.

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from April 12, 1988. Otherwise, VELI shall have the right and authority to withhold payment of the remaining balance of the purchase price of the sale of the entire project;

2. In consideration of the execution of the Deed of Sale over the two (2) parcels of land (Annex "A" hereof), VELI hereby absorbs and assumes to pay the loan obligations of TATIC SQUARE with CAPITAL BANK in the principal amount of FIVE MILLION SEVEN HUNDRED FIFTY-SEVEN THOUSAND EIGHT HUNDRED TWENTY-SEVEN & 63/100 (P5,757,827.63) plus whatever interests and other charges that may be imposed thereon by CAPITAL BANK including the release of the mortgage constituted over the property upon full payment of the loan;

3. TATIC SQUARE, likewise, represents and warrants that it is the absolute owner of the entire project known as TATIC WALK-UP CONDOMINIUM including its accessories and appurtenance thereto;

4. In accordance with the Deed of Sale of the entire project (Annex "B" hereof), VELI shall promptly pay on its due date TATIC SQUARE, the remaining balance of the purchase price in the amount of ₱400,000.00 subject to adjustment set forth in the next preceding paragraph.[7]

On November 11, 1988, VELI, as vendor, through its president, petitioner Virgilio Cervantes, and respondent Genuino Ice Co., Inc., as vendee, executed a deed of absolute sale[8] over the parcel of land covered by TCT No. 241846 for the price of ₱4,000,000.00, receipt of which was acknowledged by petitioner VELI. On the same day, the respondent and petitioner VELI executed a deed of assignment of rights in which the latter assigned in favor of the respondent, for and in consideration of ₱4,000,000.00, all its rights and interests under the Deed of Absolute Sale executed on April 13, 1988 by the Spouses Flores and the deed of absolute sale executed by TATIC in its favor, insofar as that lot covered by TCT No. 241846 only was concerned.[9]

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[7] *Id*. at 213.

[8] *Id*. at 7-8.

[9] WHEREAS, on April 13, 1988, Sps. Raul S. Flores and Rosalie P. Flores executed a Deed of Absolute Sale in favor of Tatic Square International

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In the meantime, the respondent, through counsel, wrote petitioner VELI and made the following demands:

In view of the foregoing facts, demand is hereby made upon you to pay to the BIR the capital gains tax amounting to ₱285,000.00 and deliver to us the receipt and/or clearance thereof, plus the interests for all registration fees on account of delay in the payment of the capital gains tax and the 1% documentary stamp tax for the sale of the property from your company to our client or to give them a BIR clearance regarding payment of all said taxes within five (5) days from receipt hereof; otherwise, much to our regret, we will be constrained to file legal action for specific

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Corporation covering two (2) parcels of land located in Aurora Blvd., Cubao, Quezon City, covered by Transfer Certificate of Title No. 241845 which contains an area of 1,026 sq.m. (Parcel "A") and Transfer Certificate of Title No. 241846 which contains an area of 2,963 sq.m. (Parcel "B") which Deed of Absolute Sale was acknowledged before Atty. Antonio A. Sarcida, Notary Public in and for Makati, Metro Manila, and entered in his Notarial Register as Doc. No. 502; Page No. 101; Book II; Series of 1988;

WHEREAS, on April 14, 1988, Tatic Square International Corporation, in turn, executed a Deed of Absolute Sale in favor of Vive Eagle Land, Inc. covering the same two (2) parcels of land, which Deed of Absolute Sale was acknowledged before Atty. Antonio A. Sarcida, Notary Public in and for Makati, Metro Manila, and entered in his Notarial Register as Doc. No. 513; Page No. 103; Book II; Series of 1988;

WHEREAS, the TRANSFEREE is interested to acquire any purchase that parcel of land identified above as Parcel "B" and covered by Transfer Certificate of Title No. 241846 and has offered to pay the TRANSFEROR for whatever rights and interests the two (2) instruments mentioned above, have vested on said TRANSFEROR regarding the said parcel of land, and the TRANSFEROR is agreeable to said offer under terms and conditions stated below.

NOW THEREFORE, for and in consideration of the foregoing premises, the parties have agreed, as they hereby agree, as follows:

That for and in consideration of the sum of FOUR MILLION & 00/100 PESOS (₱4,000,000.00), Philippine Currency, the TRANSFEROR hereby transfers and assigns unto and in favor of the TRANSFEREE any and all rights and interests that have vested on the TRANSFEROR under and by virtue of the two (2) Deeds of Absolute Sale mentioned above affecting that parcel of land identified above as Parcel "B" covered by Transfer Certificate of Title No. 241846 containing an area of 2,963 sq.m., more or less. (Records, pp. 10-11.)

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performance and damages against your company in order to protect the interest of our client.[10]

In a letter to the respondent, petitioner VELI, through counsel, rejected the former's demand.[11]

On June 24, 1990, the respondent filed a Complaint against petitioner VELI and its president, Virgilio Cervantes, for specific performance and damages in the Regional Trial Court (RTC) of Quezon City. The respondent alleged, *inter alia*, that petitioner VELI failed (a) to transfer title to and in the name of the respondent over the property covered by TCT No. 241846 despite the lapse of a reasonable time; (b) to cause the eviction/removal of the squatters/occupants on the property; and (c) to pay the capital gains tax and other assessments due to effectuate the transfer of the titles of the property to and in its name. The respondent prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, premises considered, it is most respectfully prayed that, after trial, judgment be rendered against defendants to, jointly and severally, indemnify plaintiff as follows:

I. FIRST CAUSE OF ACTION

a) To effect or cause the transfer of title in favor of the plaintiff;

b) To pay the capital gains tax and other requirements or expenses necessary to effect said transfer.

II. SECOND CAUSE OF ACTION

a) To direct defendants to cause the removal or eviction of the squatters or unlawful occupants for (*sic*) the area;

b) In the alternative, if eviction is not accomplished to forfeit the amount of ₱300,000 in favor of plaintiff.

III. THIRD CAUSE OF ACTION

a) To pay actual damages in the amount of no less than FIVE HUNDRED THOUSAND PESOS;

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[10] Records, p. 15.

[11] *Id*. at 199-200.

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b) To pay exemplary damages in the amount of FIVE HUNDRED THOUSAND PESOS;

c) Attorney's fees in the amount of ₱250,000;

d) Costs of suits.

Plaintiff further prays for such relief or reliefs as may be just and equitable under the premises.[12]

In their answer[13] to the complaint, the petitioners alleged that the respondent had no cause of action against them because (a) petitioner VELI was exempt from the payment of capital gains tax; (b) the Spouses Flores and Tobias were liable for the payment of capital gains tax; and (c) the Spouses Flores and Tobias were responsible for the eviction of the occupants/squatters from the property.

The trial court rendered judgment, amended per its Order dated April 17, 1995, in favor of the respondent. The *fallo* of the decision, as amended, reads:

WHEREFORE, foregoing considered, judgment is hereby rendered in favor of plaintiff ordering defendants to cause the transfer of the title to the plaintiff. The *payment of the capital gains tax shall be paid by the defendants.* Further, defendants are hereby ordered to remove or evict or cause the removal or eviction of the squatters or unlawful occupants of the area, otherwise, the amount of ₱300,000.00 shall be deemed forfeited in favor of plaintiff; to pay attorney's fees of ₱20,000.00 and to pay the costs.

SO ORDERED.[14]

The trial court held that the petitioners were liable for the payment of the capital gains tax, and that the respondent was not privy to the deeds of absolute sale executed by the Spouses Flores and TATIC, and TATIC and petitioner VELI, and as such is not bound by the said deeds; neither could the respondent

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[12] *Id*. at 5.

[13] *Id*. at 23-28.

[14] *Id*. at 279.

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enforce the same against the Spouses Flores, TATIC and petitioner VELI.

In due course, the petitioners appealed to the CA which rendered judgment, on July 19, 2001, affirming, with modification, the appealed decision. The CA held that the petitioners were liable for the expenses for the registration of the sale. It also ruled that the respondent was not bound by the deed of absolute sale executed by TATIC and the petitioners because it was not a party thereto, and that the latter were obliged to cause the eviction of the squatters from the property.[15]

The petitioners, in the instant petition for review, raise the following issues for resolution: (a) whether or not petitioner VELI is obliged to pay for the expenses for transfer of the property and the issuance of the titles to and under the name of the respondent; (b) whether or not the petitioners are liable for the capital gains tax for the sale between petitioner VELI and the respondent; and (c) whether or not the petitioners are obliged to evict the remaining squatters from the land.

Petitioner VELI is Obliged to Cause the Registration of the November 11, 1988 Deed of Absolute Sale in Favor of Respondent, the Issuance of a Torrens Title in the Name of Respondent and the Eviction of the Tenants/Occupants from the Property at the Expense of the Petitioner.

The petitioners assail the ruling of the CA that, under Article 1487 of the New Civil Code, petitioner VELI, as vendor, is liable for the expenses for the registration of the third deed of sale in favor of the respondent, as vendee, and to secure a torrens title over the property to and under the name of the latter. The petitioners contend that, under the MOA executed by the Spouses Flores, Tobias (the broker), the Bank and TATIC, the April 14, 1988 agreement and the first deed of sale executed by the Spouses Flores and Tobias, the latter obliged themselves

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[15] *Rollo*, pp. 33-54.

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to spend for the registration of the said deed of absolute sale and for the issuance of torrens titles over the properties in the name of the vendees; and further obliged themselves to cause the eviction of the tenants/occupants from the property within sixty days from April 12, 1988. The petitioners, likewise, emphasize that, under the April 14, 1988 agreement of the petitioners and TATIC, the latter obliged itself to cause and spend for the registration of the second deed of sale between petitioner VELI and TATIC, and the issuance of the titles over the property in favor of petitioner VELI; and to cause the eviction of the tenants/occupants from the property within sixty days from April 12, 1988. Also, under the deed of assignment of rights executed by petitioner VELI and the respondent, the latter acquired the rights and interests of petitioner VELI under the deeds of sale executed by the Spouses Flores in favor of TATIC, and by TATIC in favor of petitioner VELI.

The petitioners aver that, under the deed of sale they executed in favor of the respondent, as well as the acts of the parties before, contemporaneous with and subsequent to the execution of the said deed, they cannot be held liable for the expenses for the registration of the third deed of sale, the transfer of titles to and under the name of the respondent, for payment of the capital gains tax and the eviction of the tenants/occupants on the property. Such acts include the execution of the following: the addendum to the said deed of sale; the deed of assignment of rights executed by petitioner VELI in favor of the respondent; and the deeds executed by the Spouses Flores, TATIC and Tobias.

The petitioners contend that the CA erred in ruling that the respondent is not bound by the deeds executed by the Spouses Flores, TATIC and Tobias, and by TATIC and petitioner VELI simply because the respondent was not a party to the said deeds. The petitioners insist that the respondent acquired the rights and interests of its predecessors; and, being the vendee/owner of the property covered by TCT No. 241846, the petitioners had the right to enforce the said contracts against its predecessors.

We are not in full accord with the petitioners. It bears stressing that there are three separate deeds of absolute sale on record,

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to wit: first, the April 13, 1988 deed of absolute sale executed by the Spouses Flores and TATIC; second, the April 14, 1988 deed of absolute sale executed by TATIC in favor of petitioner VELI; and third, the November 11, 1988 deed of absolute sale between petitioner VELI, as vendor, and the respondent, as vendee, over the property covered by TCT No. 241846. Under the April 13, 1988 MOA executed by the Spouses Flores, Tobias, TATIC and the Bank, the Spouses Flores and Tobias obliged themselves to spend for and cause the registration of the first deed of absolute sale, to cause the issuance of the torrens titles over the property to and under the name of TATIC, as vendee, and to pay the capital gains tax on the said sales. Tobias and TATIC bound and obliged themselves to cause the eviction of the tenants/occupants on the property within sixty days from April 12, 1988, with the assistance of the Spouses Flores. On the other hand, under the April 14, 1988 agreement of TATIC and petitioner VELI, TATIC obliged itself to spend for the registration of the second deed of absolute sale and the issuance of the titles over the property to and under the name of petitioner VELI, and to cause the eviction of the tenants/occupants from the property within sixty days from April 12, 1988. TATIC did not bind itself to pay the capital gains tax for the said sale.

Indeed, under the third deed of absolute sale, petitioner VELI did not oblige itself to spend for the registration of the said deed; to secure a torrens title over the property to and under the name of the respondent; or to cause the eviction of the tenants/occupants on the property. Nevertheless, petitioner VELI is liable for the said expenses because, under Article 1487[16] of the New Civil Code, the expenses for the registration of the sale should be shouldered by the vendor unless there is a stipulation to the contrary. In the absence of any stipulation of the parties relating to the expenses for the registration of the sale and the transfer of the title to the vendee, Article 1487 shall be applied in a supplementary manner.[17]

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[16] ART. 1487. The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary.

[17] See *Rural Bank of Milaor (Camarines Sur) v. Ocfemia, et al. and concurring opinion of Justice Jose Vitug,* 325 SCRA 99 (2000).

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Under Article 1495[18] of the New Civil Code, petitioner VELI, as the vendor, is obliged to transfer title over the property and deliver the same to the vendee. While Article 1498[19] of the New Civil Code provides that the execution of a notarized deed of absolute sale shall be equivalent to the delivery of the property subject of the contract, the same shall not apply if, from the deed, the contrary does not appear or cannot clearly be inferred. In the present case, the respondent and petitioner VELI agreed that the latter would cause the eviction of the tenants/occupants and deliver possession of the property. It is clear that at the time the petitioner executed the deed of sale in favor of the respondent, there were tenants/occupants in the property. It cannot, thus, be concluded that, through the execution of the third deed of sale, the property was thereby delivered to the respondent.

Petitioner VELI is obliged to cause the eviction of the tenants/occupants unless there is a contrary agreement of the parties. Indeed, under the addendum executed by petitioner VELI and the respondent, the latter was given the right to withhold ₱300,000.00 of the purchase price until after petitioner VELI cleared the property of squatters.

While it is true that the respondent acquired the rights and interests of TATIC under the first deed of sale and that of petitioner VELI under the second deed of sale by virtue of the deed of assignment of rights executed by the petitioners and the respondent, the latter cannot enforce the terms and conditions of the said deeds. It must be stressed that there is no showing in the records that the Spouses Flores, Tobias and TATIC conformed to the said deed of assignment of rights or that the

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[18] ART. 1495. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale.

[19] ART. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

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same was registered in the office of the Register of Deeds in accordance with Article 1625[20] of the New Civil Code.

Moreover, the execution, by petitioner VELI and the respondent, of such deed of assignment of rights did not relieve the said petitioner of its obligation to clear the property of tenants/ occupants. This is because the following agreement was embodied in their addendum:

> NOW THEREFORE, for and in consideration of the foregoing premises, the Transferee hereby retains and holds from the Transferor the amount of Three Hundred Thousand & 00/100 Pesos (₱300,000.00), from the purchase price due the Transferor until after the premises have been rid of and cleared from squatters occupying therein.
>
> That after the said parcel of land has been cleared of squatters, the Transferee shall immediately remit to the Transferor the aforesaid sum of Three Hundred Thousand & 00/100 Pesos (₱300,000.00) without need of further act or deed.[21]

Petitioner VELI is Not Liable for Payment of the Capital Gains Tax for the Third Sale

We agree with the petitioners' contention that petitioner VELI is not liable for the payment of capital gains tax for the third deed of sale. A capital gains tax is a final tax assessed on the presumed gain derived by citizens and resident aliens, as well as estates and trusts, from the sale or exchange of real property.[22] Under the first sale, per the agreement of the Spouses Flores, TATIC, and Tobias, the said spouses were obliged to pay the capital gains tax. However, under the deed of absolute sale for

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[20] ART. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

[21] Records, p. 12.

[22] Section 24(D) of the National Internal Revenue Code; "Tax Law and Jurisprudence," Justice Jose C. Vitug and Judge Ernesto D. Acosta, 2nd ed., Manila, Philippines, p. 74.

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the second sale, TATIC was not obliged to pay the said tax. The Court notes that in answer to the respondent's demand letter, petitioner VELI claimed that such tax could not be assessed against it or against TATIC for the reason that they are corporations and, therefore, exempt from the payment of capital gains tax for any sale or exchange or disposition of property.

It is settled that only laws existing at the time of the execution of a contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect.[23] When the first and second deeds of absolute sale took place in 1988, the 1977 National Internal Revenue Code (NIRC), as amended by *Batas Pambansa Blg.* 37 and Executive Order No. 237 was still in effect. Under Sections 21(e)[24] and 34(h)[25] of

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[23] *Valencia v. Locquiao*, 412 SCRA 600 (2003).

[24] Section 21. Tax on citizen or resident. —

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(e) *Capital Gains Tax from sales of real property* — The provisions of Section 33(b) notwithstanding, capital gains presumed to have been realized from the sale, exchange or other disposition of real property located in the Philippines classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trust, shall be taxed at the rate of 5% based on the gross selling price of the fair market value prevailing at the time of sale, whichever is higher. *Provided,* That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 21(a) or under subsection, at the option of the taxpayer.

[25] (h) The provision of paragraph (b) of this Section to the contrary notwithstanding, net capital gains from the sale or other disposition of real property by ***citizens of the Philippines or resident alien individuals*** shall be subject to the final income tax rates prescribed as follows:

NET CAPITAL GAINS	RATES
On the first ₱100,000 or less	10%
On any amount over ₱100,000	20%

Such tax shall be in lieu of the tax imposed under Section 21 of this Code; *Provided, however,* That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned and controlled corporations shall be determined either under Section 21 hereof or under this Section, at the option

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the 1977 NIRC, as amended, the Spouses Flores, as vendors, were liable for the payment of capital gains tax. In the second sale, however, TATIC was not similarly liable because while Article 1487 of the Civil Code provides that the seller is obliged to pay the capital gains tax based on its obligation to transfer title over the property to the vendee under Sections 21(e) and 34(h) of the 1977 NIRC, the payment of capital gains tax from the sale, exchange of disposition of real property devolved only upon *individual taxpayers*. In fact, the Bureau of Internal Revenue (BIR), in response to the queries of several corporations which had sold, exchanged or disposed of their real properties, more particularly in BIR Ruling Nos. 159 (September 13, 1985), 127 (July 12, 1983), 191 (November 15, 1983), 195 (November 15, 1983), 60 (May 12, 1986), 177 (September 17, 1986), and 415-87 (December 23, 1987), definitely ruled that the corporations were exempt from the payment of capital gains tax. Their income from the sale or exchange or disposition of real property was treated as ordinary income, and was taxed as such. One of the opinions of the BIR Commissioner reads:

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of the taxpayer; *Provided, further,* That if the taxpayer elects to report such gains in accordance with the provisions of Section 43(b), the amount of the tax which shall be paid on each installment shall be the proportion of the tax herein imposed, which the installment payment received bears to the total selling price; *Provided, finally,* That failure on the part of the seller to pay tax imposed herein on any gains returnable under the installment method will automatically disqualify the seller-taxpayer from paying the tax in installments and the unpaid portion of the tax shall immediately be due and demandable. The tax herein imposed shall be returned and paid in accordance with Sections 45(c) and 51(a)(4) of this Code.

No registration of any document transferring real property shall be effected by Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported and the tax herein imposed, if any, has been paid; in case of deferred-payment sales of real property where the vendor retains title to the property, the vendee shall furnish the Commissioner with a copy of the instrument of sale within the same period prescribed for payment of the tax herein imposed.

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Ruling No. 159
September 13, 1985

Gentlemen:

In reply to your letter dated September 11, 1985, I have the honor to inform you that Revenue Regulations No. 8-79 implementing Section 34(h) of the Tax Code, as amended by Batas Pambansa Blg. 37 is explicit that only natural persons or individuals are liable to the final capital gains tax prescribed therein. Such being the case, the gains derived by your client, the Religious of the Virgin Mary from the sale of its real property in Balanga, Bataan, is not subject to the final capital gains tax prescribed by Section 34(h) of the Tax Code, as amended by Batas Pambansa Blg. 37 but to the ordinary corporate income tax prescribed under Section 24(a) of the same Code, as amended.

Very truly yours,

(Sgd.)
RUBEN B. ANCHETA
Acting Commissioner

This is the reason why, in the second sale, neither TATIC nor petitioner VELI paid any capital gains tax. Similarly, in the third sale, *i.e.,* between petitioner VELI and the respondent, petitioner VELI, being a corporation, was not obliged to pay the capital gains tax. However, petitioner VELI, as seller, should have included in its ordinary income tax return, whatever gain or loss it incurred with respect to the sale of the property in dispute, pursuant to Section 24(a)[26] of the 1977 NIRC, as amended.

We do not agree with the ruling of the CA that, under Section 24(d) of the 1997 NIRC, previously Section 34(h) of the 1977 NIRC, petitioner VELI is obliged to pay capital gains tax for its

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[26] Section 24. *Rates of tax on domestic corporations*. —

(a) *In general*. — Unless otherwise provided, a tax of 35% is hereby imposed upon the taxable income received during each taxable year from all sources within the Philippines by every corporation organized in, or existing under the laws of the Philippines, and partnerships, no matter how created or organized, but not including general professional partnerships.

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sale of the property to the respondent. Section 34(h) of the 1977 NIRC, as amended by B.P. Blg. 37 reads as follows:

(h) The provision of paragraph (b) of this Section to the contrary notwithstanding, net capital gains from the sale or other disposition of real property by ***citizens of the Philippines or resident alien individuals*** shall be subject to the final income tax rates prescribed as follows:

NET CAPITAL GAINS	RATES
On the first ₱100,000 or less	10%
On any amount over ₱100,000	20%

Such tax shall be in lieu of the tax imposed under Section 21 of this Code; *Provided, however,* That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned and controlled corporations shall be determined either under Section 21 hereof or under this Section, at the option of the taxpayer; *Provided, further,* That if the taxpayer elects to report such gains in accordance with the provisions of Section 43(b), the amount of the tax which shall be paid on each installment shall be the proportion of the tax herein imposed, which the installment payment received bears to the total selling price; *Provided, finally,* That failure on the part of the seller to pay tax imposed herein on any gains returnable under the installment method will automatically disqualify the seller-taxpayer from paying the tax in installments and the unpaid portion of the tax shall immediately be due and demandable. The tax herein imposed shall be returned and paid in accordance with Sections 45(c)[27] and 51(a)(4) of this Code.

No registration of any document transferring real property shall be effected by Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported and the tax herein imposed, if any, has been paid; in case of deferred-payment sales of real property where the vendor retains title to the property, the vendee shall furnish the Commissioner with a copy of the instrument of sale within the same period prescribed for payment of the tax herein imposed.

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[27] B.P. Blg. 37 was approved on September 7, 1979. By reason of Executive Order No. 237, decreed on July 25, 1987, Section 45 of the 1977 NIRC was renumbered Section 44.

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Section 24(D) of the 1997 NIRC, which refers to the capital gains from sale of real property, is found in the Title "Chapter III Tax on Individuals," and is herein quoted:

(D) Capital Gains from Sale of Real Property. —

(1) *In General.* — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by ***individuals, including estates and trusts: Provided,*** That the tax liability, if any, on gains from sales or other disposition of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A)or under this Subsection, at the option of the taxpayer.

As pointed out earlier, the sale between petitioner VELI and the respondent occurred in November 11, 1988. At that point in time, it was the 1977 NIRC as amended, which was in effect. Hence, the applicable law is Section 34(h). Section 24(d) of the 1997 NIRC, which requires corporations to pay capital gains tax at rates provided for in Chapter IV, Section 27 thereof, cannot be applied retroactively.[28] The latter provision reads:

CHAPTER IV — Tax on Corporations

Section 27. Rates of Income Tax on Domestic Corporations. —

x x x x x x x x x

(D) Rates of Tax on Certain Passive Incomes. —

x x x x x x x x x

(5) Capital Gains Realized from the Sale, Exchange or Disposition of Lands and/or Buildings. A final tax of six percent (6%) is hereby imposed on the gain presumed to have been realized

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[28] Section 8. *Effectivity*. — This Act shall take effect on January 1, 1998. Title XIV of Republic Act No. 8424, otherwise known as the "THE TAX REFORM ACT OF 1997."

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on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets, based on the gross selling price or fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, of such lands and/or buildings.

The gains that a corporation earned in the sale, exchange or disposition of the real properties it made should be included in the Corporation' return, pursuant to Sections 24(a) and 45 of the 1977 NIRC, as amended.[29]

IN LIGHT OF ALL THE FOREGOING, the petition is *PARTIALLY GRANTED*. The decision of the Court of Appeals in CA-G.R. CV No. 51933 is hereby *AFFIRMED WITH MODIFICATION*. That portion of the Decision of the Court of Appeals mandating petitioner Vive Eagle Land, Inc. to pay capital gains tax for the November 11, 1988 sale of the property covered by TCT No. 241846 to respondent Genuino Ice Co., Inc. is *DELETED*. No costs.

SO ORDERED.

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

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[29] Sec. 45. *Corporations returns*. — (a) *Requirements*. — Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.