



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

**ROGELIO M. FLORETE, SR.,
THE ESTATE OF THE LATE
TERESITA F. MENCHAVEZ,
represented by MARY ANN
THERESE F. MENCHAVEZ,
ROSIE JILL F. MENCHAVEZ,
MA. ROSARIO F. MENCHAVEZ,
CRISTINE JOY F. MENCHAVEZ,
and EPHRAIM MENCHAVEZ, and
DIANE GRACE F. MENCHAVEZ,**
Petitioners,

G.R. No. 223321

Presents:

CARPIO,* *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR.,** *JJ.*

- versus -

**MARCELINO M. FLORETE, JR.
and MA. ELENA F. MUYCO,**
Respondents.

Promulgated:

02 APR 2018

Marcelino M. Florete

x-----x

DECISION

PERALTA, J.:

Before us is a petition for review on *certiorari* seeking to nullify the Decision¹ dated August 3, 2015 of the Court of Appeals in CA- G.R. SP No. 07673, as well as the Resolution² dated February 19, 2016 denying the motion for reconsideration thereof.

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

** On wellness leave.

¹ Penned by Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. delos Santos and Renato C. Francisco; *rollo*, pp. 77-84.

² Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. delos Santos and Geraldine C. Fiel-Macaraig; *id.* at 85-86.

Or

On October 7, 1966, Marsal & Co., Inc. (*Marsal*) was organized as a close corporation by Marcelino Sr., Salome, Rogelio, Marcelino Jr., Ma. Elena, and Teresita (all surnamed Florete). Since its incorporation, the Articles of Incorporation (*AOI*) had been amended³ several times to increase its authorized capital stocks of ₱500,000.00 to ₱5,000,000.00. Notwithstanding the amendments, paragraph 7 of their *AOI* which provides for the procedure in the sale of the shares of stocks of a stockholder remained the same, to wit:

SEVENTH. - x x x Any stockholder who desires to sell his share of stock in the company must notify in writing the Board of Directors of the company of his intention to sell. The Board of Directors upon receipt of such notice must immediately notify all stockholders of record within five days upon receipt of the letter of said stockholder. Any stockholder of record has the preemptive right to buy any share offered for sale by any stockholder of the company on book value base[d] on the balance sheet approved by the Board of Directors. The aforementioned preemptive right must be exercised by any stockholder of the company within ten (10) days upon his receipt of the written notice sent to him by the Board of Directors of the offer to sell. Any sale or transfer in violation of the above terms and conditions shall be null and void. The above terms and conditions must be printed at the back of the stock certificate.⁴

And as of June 1, 1982, the capital profile of Marsal was as follows:

Name	Shareholdings
Marcelino M. Florete, Sr.	7,569 shares
Rogelio M. Florete	3,489 shares
Ma. Elena F. Muyco	3,489 shares
Marcelino M. Florete, Jr.	3,489 shares
Teresita F. Menchavez	3,464 shares ⁵

On September 19, 1989, Teresita Florete Menchavez died. In 1992, Ephraim Menchavez, Teresita's husband, filed a Petition for Issuance of Letters of Administration⁶ over her estate. An Amended Opposition was filed by petitioner Rogelio Florete, Sr. and Marsal, represented by petitioner as President thereof, with Atty. Raul A. Muyco, the husband of respondent Ma. Elena, as counsel, on the ground of Ephraim's incompetency. Ephraim, however, was later granted letters of administration. In 1995, Ephraim, the special administrator, entered into a Compromise Agreement and Deed of Assignment⁷ with petitioner Rogelio ceding all the shareholdings of Teresita in various corporations owned and controlled by the Florete family, which included the 3,464 shares in Marsal corporation, as well as her shares,

³ *Rallo*, pp. 99-135.

⁴ *Id.* at 132.

⁵ *Id.* at 140.

⁶ *Id.* at 142-144; Docketed as SPL. PROC. NO. 4855.

⁷ *Id.* at 154-155.

interests and participation as heir in all the real and personal properties of her parents to petitioner Rogelio. A Motion to Approve Compromise Agreement and Deed of Assignment was filed by respondent Ephraim, through counsel Atty. Henry Villegas, with the conformity of Atty. Raul Muyco, the oppositors' counsel. The motion was granted and approved by the Probate Court in its Order⁸ dated February 14, 1995.

On October 3, 1990, Marcelino Florete Sr., patriarch of the Florete family, died. An intestate proceeding to settle his estate was filed by petitioner Rogelio, who was later appointed as administrator of the estate. Petitioner Rogelio filed a project of partition enumerating therein all the properties of the estate of Marcelino Sr. in accordance with the inventory earlier filed with the intestate court. In the Order⁹ dated May 16, 1995, the court approved the project of partition adjudicating to petitioner Rogelio one-half ($\frac{1}{2}$) share of the whole estate; and to respondents Ma. Elena and Marcelino Jr., the undivided one-fourth ($\frac{1}{4}$) share each of the enumerated properties. In the same Order, the Probate Court had noted the sale of all the shares of the late Teresita which she inherited from her deceased parents to petitioner Rogelio.¹⁰

On February 21, 2012, respondents Marcelino Jr. and Ma. Elena filed with the Regional Trial Court (RTC), Branch 39, Iloilo City, a case¹¹ for annulment/rescission of sale of shares of stocks and the exercise of their preemptive rights in Marsal corporation and damages against petitioners Rogelio Florete, Sr. and the estate of the late Teresita F. Menchavez, herein represented by her heirs, namely, Mary Ann Therese Menchavez, Christine Joy F. Menchavez, Ma. Rosario F. Menchavez, Diane Grace Menchavez, Rosie Jill F. Menchavez, and Ephraim Menchavez. Respondents claimed that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate to petitioner Rogelio was *void ab initio* as it violated paragraph 7 of Marsal's AOI, since the sale was made *sans* written notice to the Board of Directors who was not able to notify respondents in writing of the petitioner estate and heirs' intention to sell and convey the Marsal shares and depriving respondents of their preemptive rights.

On April 26, 2013, the RTC, as a Special Commercial Court, dismissed the complaint.¹² It found that the sale of Teresita's Marsal shares of stocks to petitioner Rogelio, being one of the incorporators and stockholders of Marsal at the time of sale, was not a sale to a third party or outsider as would justify the restriction on transfer of shares in the AOI. The RTC also found that *laches* and estoppel had already set in as respondents'

⁸ *Id.* at 156; Per Assisting Judge Lolita Contreras-Besana.

⁹ *Id.* at 173-179; Per Judge Jose G. Abdallah.

¹⁰ *Id.* at 174.

¹¹ *Id.* at 88-97.

¹² *Id.* at 265-277; per Presiding Judge Victorino Oliveros Maniba, Jr.

inaction for 17 years constituted a neglect for an unreasonable time to question the same; and that respondents could not feign ignorance of the transactions as they knew of the same and yet they did not do anything at that time.

Respondents filed with the CA a petition for review under, Rule 43 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. Petitioners filed their Comment thereto.

On August 3, 2015, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the instant appeal is GRANTED, the Decision dated April 26, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 39, Iloilo City, in SCC Case No. 12-049 for Annulment/Rescission of Sale of Shares of Stocks, Pre-Emptive Rights and Damages is hereby REVERSED and SET ASIDE. Let a new one be entered declaring the conveyance of 3,464 Marsal shares of respondents in favor of Rogelio M. Florete Sr., NULL and VOID, in violation of Paragraph 7 of Marsal's Articles of Incorporation.¹³

In so ruling, the CA found that Teresita's 3,464 Marsal shares of stocks were conveyed by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment without first offering them to the existing stockholders as provided under paragraph 7 of the AOI; that since the AOI is considered a contract between the corporation and its stockholders, the sale of Teresita's shares in favor of petitioner Rogelio constituted a breach of contract on the part of petitioner estate, hence, null and void; and that it is inconsequential whether the transfer was made to one of the existing stockholders of the closed corporation. Anent Atty. Muyco's acting as counsel of petitioner Rogelio and Marsal in Teresita's intestate proceedings and who was presumed to have transmitted to respondents his knowledge regarding the sale of Teresita's Marsal shares to petitioner Rogelio, the CA ruled that the notice acquired from a third person even if true was not the notice meant under paragraph 7 of the AOI; and that Atty. Muyco admitted that he did not know of petitioner Rogelio's plan of acquiring Teresita's shares. A void contract has no effect from the beginning, thus, the action for its nullity even if filed 17 years later after its execution, cannot be barred by prescription for it is imprescriptible; and the defense of *laches* is unavailing as it had been jurisprudentially provided that courts should never apply the doctrine of *laches* earlier than the expiration of time limited for the commencement of action at law.



¹³*Id.* at 84.

Petitioners filed a motion for reconsideration, which was denied by the CA in a Resolution dated February 19, 2016.

Hence, this petition filed by petitioners alleging the following assignment of errors:

I

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE VERY INVALIDATION CLAUSE IN THE SUBJECT SHARE TRANSFER RESTRICTION IS VOID FROM WHICH NO CAUSE OF ACTION MAY ORIGINATE.

II

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE SUBJECT SHARE TRANSFER RESTRICTION CAN BE ENFORCED IN LIGHT OF THE CORPORATION CODE PROVISION WHICH RECOGNIZES AS VALID ONLY SUCH RESTRICTIONS IN A CLOSE CORPORATION AS DEFINED IN THE CODE, WHICH SUBJECT CORPORATION IS NOT.

III

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT ASSUMING *ARGUENDO* THE SUBJECT SHARE TRANSFER RESTRICTIONS ARE VALID, THE SAME CANNOT BE APPLIED TO THE QUESTIONED TRANSFER OR SALE OF STOCK. IT NOT BEING A SALE TO OUTSIDERS, AMONG OTHER MATTERS.

IV

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY PRESCRIPTION.

V

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY LACHES.

VI

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS ARE ESTOPPED BY THEIR DEEDS OR CONDUCT FROM PURSUING THEIR CLAIM.

VII

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY *RES JUDICATA*.¹⁴

¹⁴*Id.* at 40-41.

The pivotal issue for resolution is whether the CA erred in ruling that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate of Teresita to petitioner Rogelio was in violation of paragraph 7 of Marsal's Article of Incorporation and hence null and void and must be annulled or rescinded.

We rule in the affirmative.

The issue raised is factual. As a rule, the re-examination of the evidence proffered by the contending parties during the trial of the case is not a function that this Court normally undertakes inasmuch as the findings of fact of the Court of Appeals are generally binding and conclusive on the Supreme Court.¹⁵ The jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. A reevaluation of factual issues by this Court is justified when the findings of fact complained of are devoid of support by the evidence on record, or when the assailed judgment is based on misapprehension of facts, which we find in the case at bar.

Preliminarily, petitioners' claim that Marsal is not a close corporation deserves scant consideration as they had already admitted that it is. In his Affidavit¹⁶ filed in this case, petitioner Rogelio alleged, among others:

10. That MARSAL & CO., INC. is a close family corporation, the stockholder of which are now three, since Teresita Menchavez is already dead, and so is our father Marcelino Florete, Sr. x x x.

and in his Answer with Compulsory Counterclaim,¹⁷ he stated:

2. That answering defendant admits the allegations set forth in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 of the complaint;¹⁸

x x x x

16. That MARSAL & CO., INC., being a close family corporation, the presence of the said provision of pre-emptive right did not invalidate the acquisition by one stockholder of the share of another stockholder who exercised his pre-emptive right in view of the knowledge of the same by the other stockholders and their inaction which is equivalent to consent and acquiescence to the said acquisition.¹⁹

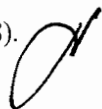
¹⁵ *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475, 490 (1998).

¹⁶ *Rollo*, pp. 180-184.

¹⁷ *Id.* at 157-166.

¹⁸ *Id.* at 157.

¹⁹ *Id.* at 162.



The allegations under paragraph 6 of the complaint which petitioner Rogelio admitted stated:

6. MARSAL is a close corporation duly organized and registered with the Securities and Exchange Commission (SEC) on 07 October 1966 with the authorized capital stock of Five Hundred Thousand Pesos (P500,000.00).
x x x.

7. As close corporation, all stocks issued by MARSAL are subject to restrictions on transfer. x x x²⁰

Petitioners judicially admitted that Marsal is a close corporation. Section 4, Rule 129 of the Revised Rules of Court provides:

Sec. 4. *Judicial admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.²¹ In *Alfelor v. Halasan*,²² we held that:

A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.²³

As Marsal is a close corporation, it is allowed under the Corporation Code to provide for restrictions on the transfer of its stocks. We quote the pertinent provisions of the Code as follows:

Sec. 97. *Articles of incorporation.* - The articles of incorporation of a close corporation may provide:

²⁰ *Id.* at 89-90.

²¹ *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 365 (2006), citing Regalado, Remedial Law Compendium, Volume Two, Seventh Revised Edition, p. 650.

²² 520 Phil. 982 (2006).

²³ *Id.* at 991. (Citations omitted)

1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;

x x x x

Sec. 98. *Validity of restrictions on transfer of shares.* - Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith. Said restrictions shall not be more onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person.

The AOI of Marsal provides for the procedure for the sale of shares of stock of a stockholder which we quote again for easy reference, to wit:

SEVENTH. x x x Any stockholder who desires to sell his share of stock in the company must notify in writing the Board of Directors of the company of his intention to sell. The Board of Directors upon receipt of such notice must immediately notify all stockholders of record within five days upon receipt of the letter of said stockholder. Any stockholder of record has the preemptive right to buy any share offered for sale by any stockholder of the company on book value based on the balance sheet approved by the Board of Directors. The aforementioned preemptive right must be exercised by any stockholder of the company within 10 days upon his receipt of the written notice sent to him by the Board of Directors of the offer to sell. Any sale or transfer in violation of the above terms and conditions shall be null and void. The above terms and conditions must be printed at the back of the stock certificate.²⁴

Thus, the stockholder seller must notify in writing the Board of Directors of his intention to sell, who, in turn, must notify all the stockholders of records within 5 days upon receipt of such letter, and the stockholder must exercise the preemptive right within ten days from notice of the Board, otherwise, the sale shall be null and void. Here, Teresita's 3,464 Marsal shares were sold by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment they entered into which was approved by the Probate Court. The CA found that such sale of stocks was null and void as it violated Paragraph 7 of their AOI.

We do not agree.

²⁴

Supra note 4.

While it would appear that petitioner estate of Teresita, through its administrator Ephraim and petitioner Rogelio, did not comply with the procedure on the sale of Teresita's Marsal shares as stated under paragraph 7 of the AOI, however, it appeared in the records that respondents had nonetheless been informed of such sale to which they had already given their consent thereto as shown by the following circumstances:

First. Teresita died on September 19, 1989. Her husband Ephraim filed a petition for letters of administration of her estate in 1992, and alleged the following:

X X X X

6. That the herein petitioner, as one of the legal heirs of the deceased, Teresita Florete Menchavez, had on several occasions, requested decedent's brothers and sisters to make a settlement and liquidation of the estate left by the said deceased Teresita Florete Menchavez and to deliver it to all the legal heirs what is due to each and every one of them, but this has not been done. x x x²⁵

Petitioner Rogelio filed an Opposition thereto which was later amended to include MARSAL & CO., INC. as represented by its President, herein petitioner. Notably, Atty. Raul A. Muyco was the oppositors' counsel and he is also the husband of respondent Ma. Elena. Subsequently, a Compromise Agreement and Deed of Assignment was entered into between petitioner estate through Ephraim and petitioner Rogelio with respect to Teresita's shares of stocks in various corporations which included the 3,464 shares in Marsal. A Motion to Approve Compromise Agreement and Deed of Assignment was filed by administrator Ephraim, through counsel, with the conformity of Atty. Muyco which was approved by the probate court. It bears stressing that Atty. Muyco was not only acting as counsel of petitioner Rogelio but also of Marsal. Thus, it would be impossible for Atty. Muyco, who had the duty to protect Marsal's interest in the intestate proceedings of Teresita's estate, not to have informed respondents of such compromise agreement since they are the stockholders and Board of Directors of Marsal who would be deprived of their preemptive right to the Marsal shares.

Second. The sale of all of Teresita's shares which she inherited from her deceased parents which were sold to petitioner Rogelio, and which included the 3,464 Marsal shares, had also been made known to respondents in the intestate proceedings to settle the estate of Marcelino Florete, Sr., who died on October 3, 1990. Petitioner Rogelio was later

²⁵

Rollo, p. 142-A.



appointed as the administrator of the estate. In the Order dated May 16, 1995, the probate court stated, among others, that:

x x x The said deceased left the following heirs, namely :

Rogelio M. Florete, Ma. Elena Florete Muyco and Marcelino Florete Jr.

Further the deceased had a daughter by the name of Teresita Florete-Menchavez who predeceased him, having died on September 8, 1989 in the City of Iloilo leaving the following heirs;

x x x x

On February 24, 1995, this Court has noted, as prayed by the counsel for the petitioner, of the sale by Ephraim Menchavez, the special administrator of the intestate estate of the late Teresita F. Menchavez, of all the shares of the late Teresita F. Menchavez inherited from her deceased parents Marcelino and Salome Florete, to Rogelio M. Florete.

x x x x

On May 5, 1995, no other heirs aside from those mentioned earlier have appeared in court to file their claim with regard to the property owned by the late Marcelino Florete, Sr. This Court, therefore, declared that Marcelino Florete, Sr. who died intestate in the City of Iloilo on October 3, 1990 had left only the following heirs, namely; 1. Rogelio M. Florete, 2. Ma. Elena Florete Muyco; 3. Marcelino Florete Jr.; 4. Teresita Florete-Menchavez. The last named heir predeceased the decedent and left the following children, namely; 1. Mary Ann Therese Menchavez; 2. Christine Joy Menchavez; 3. Rosie Jill Menchavez; 4. Diane Grace Menchavez; and 5. Ma. Rosario Menchavez.

All the shares of Teresita F. Menchavez, however, which she inherited from her parents were sold by Ephraim Menchavez, the special administrator of the estate of Teresita Menchavez, to petitioner Rogelio M. Florete. The sale was duly approved by the intestate court.

As stated earlier, on April 27, 1995, the administrator, through counsel, filed a Project of Partition enumerating therein all the properties of the estate in accordance with the inventory filed before this Court on March 3, 1995, which properties are enumerated as follows:

I. REAL PROPERTIES

x x x x

II. PERSONAL PROPERTIES

x x x x

This court hereby adjudicates the above-mentioned properties to the following heirs:

1. Rogelio M. Florete, married to Imelda Florete, the one half share of the whole estate;

2. Ma. Elena Florete Muyco, married to Raul Muyco, the undivided $\frac{1}{4}$ share of the above-enumerated properties;

3. Marcelino M. Florete, Jr., married to Susan Florete, the undivided $\frac{1}{4}$ share of all the properties as above enumerated.

This proceeding is hereby considered closed and terminated.

Furnish the Register of Deeds of the province of Iloilo and the province of Rizal with copies of this Order.²⁶

There was already substantial compliance with paragraph 7 of the AOI when respondents obtained actual knowledge of the sale of Teresita's 3,464 Marsal shares to petitioner Rogelio as early as 1995. In fact, respondents had already given their consent and conformity to such sale by their inaction for 17 years despite knowledge of the sale. Moreover, they had already waived the procedure of the stockholder's sale of stocks as provided under Paragraph 7 of the AOI. In *People v. Judge Donato*,²⁷ We explained the doctrine of waiver as follows:

Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it."

As to what rights and privileges may be waived, the authority is settled:

x x x the doctrine of waiver extends to rights and privileges of any character, and, since the word "waiver" covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not

²⁶ *Id.* at 173-179.

²⁷ 275 Phil 145 (1991).

forbidden by law, and does not contravene public policy; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large x x x.²⁸

Moreover, Section 99 of the Corporation Code provides for the effects of transfer of stock in breach of qualifying conditions, to wit:

Sec. 99. Effects of issuance or transfer of stock in breach of qualifying conditions. -

x x x x

3. If a stock certificate of any close corporation conspicuously shows a restriction on transfer of stock of the corporation, the transferee of the stock is conclusively presumed to have notice of the fact that he has acquired stock in violation of the restriction, if such acquisition violates the restriction.

4. Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (a) that he is a person not eligible to be a holder of stock of the corporation, or (b) that transfer of stock to him would cause the stock of the corporation to be held by more than the number of persons permitted by its articles of incorporation to hold stock of the corporation, or (c) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation may, at its option, refuse to register the transfer of stock in the name of the transferee.

5. The provisions of subsection (4) shall not applicable if the transfer of stock, though contrary to subsections (1), (2) of (3), has been consented to by all the stockholders of the close corporation, or if the close corporation has amended its articles of incorporation in accordance with this Title.

Clearly, under the above-quoted provision, even if the transfer of stocks is made in violation of the restrictions enumerated under Section 99, such transfer is still valid if it has been consented to by all the stockholders of the close corporation and the corporation cannot refuse to register the transfer of stock in the name of the transferee. In this case, We find that the sale of Teresita's 3,464 Marsal shares had already been consented to by

²⁸

Id. at 173.



respondents as We have discussed, and may be registered in the name of petitioner Rogelio.

We find that there is indeed no violation of paragraph 7 of Marsal's Articles of Incorporation. We need not discuss the other issues raised in the petition.

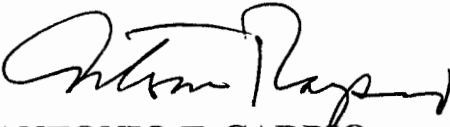
WHEREFORE, premises considered, the petition for review is **GRANTED**. The Decision dated August 3, 2015 and the Resolution dated February 19, 2016 rendered by the Court of Appeals in CA-G.R. SP No. 07673 are hereby **REVERSED** and **SET ASIDE**.

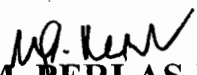
SO ORDERED.

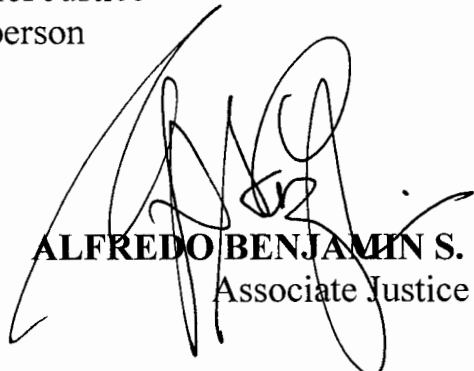


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Acting Chief Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On wellness leave
ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice