



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY

*Wilfredo V. Lapitan*  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division

MAR 23 2018

**THIRD DIVISION**

**SPOUSES CIPRIANO  
 PAMPLONA and BIBIANA  
 INTAC,**

Petitioners,

- versus -

**SPOUSES LILIA I. CUETO  
 and VEDASTO CUETO,**  
 Respondents.

**G.R. No. 204735**

Present:

VELASCO, JR., J., *Chairperson*,  
 BERSAMIN,  
 LEONEN,  
 MARTIRES, and  
 GESMUNDO, JJ.

Promulgated:

February 19, 2018

*Wilfredo V. Lapitan*

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**DECISION**

**BERSAMIN, J.:**

This case involves conflicting claims between the parties involving their transaction over a parcel of land and its improvements, with the respondents claiming, on the one hand, that they had purchased the property on installment pursuant to an oral contract to sell, and the petitioners insisting, on the other, that the amounts paid by the respondents to them were in payment of the latter's indebtedness for a previous loan. The trial court sided with the petitioners but the appellate court reversed the trial court and ruled in favor of the respondents.

**The Case**

Under review is the decision promulgated on December 3, 2012,<sup>1</sup> whereby the Court of Appeals (CA) reversed the decision issued on June 21, 2011 by the Regional Trial Court (RTC), Branch 8, in Batangas City dismissing the respondents' complaint in Civil Case No. 5120, and ordering

<sup>1</sup> *Rollo*, pp. 39-55; penned by Associate Justice Celia C. Librea-Leagogo and concurred by Associate Justice Elihu A. Ybanez and Associate Justice Melchor Quirino C. Sadang.

the petitioners instead to execute a deed of sale on the property in favor of the respondents upon the release of the consigned amount.<sup>2</sup>

The CA further ordered the Register of Deeds of Batangas City to cancel the transfer certificate of title of the petitioners, and to issue a new one in favor of the respondents.

### Antecedents

The CA rendered the following factual and procedural antecedents:

An Amended Complaint dated 20 November 1998 was filed by plaintiffs Sps. Lilia I. Cueto (“Lilia”, for brevity) and Vedasto Cueto (“Vedasto”, for brevity) against defendants Sps. Cipriano Pamplona and Bibiana Intac (“Bibiana”, for brevity) for specific performance, conveyance, consignment and damages before the Regional Trial Court of Batangas City, docketed as *Civil Case No. 5120*.

It was alleged, *inter alia*, that: defendants are the registered owners of Lot No. 1419-C (LRC) Psd-66901 of the Cad. Survey of Batangas, Cadastral Case No. 41, LRC Cad. Record No. 1706, with improvements thereon (subject property), situated in Batangas City, containing an area of 476 sq. m., more or less, covered by Transfer Certificate of Title No. RT-1504 (34558) of the land records of Batangas City; on 10 January 1989, plaintiff Lilia and defendants mutually agreed that the former would buy and the latter would sell on installment, the aforementioned immovable including the house standing thereon for the total sum of US\$25,000.00 payable on a monthly installment of US\$300.00; the agreement was verbal considering that Lilia and defendants are sisters and brother-in-law, respectively, and completely trusted each other; however, a notebook with the personal inscription of defendant Bibiana was sent to Lilia at the latter’s address in Italy, affirming their oral agreement and wherein the list of all the remittances would be entered; on even date, defendants voluntarily transferred the peaceful possession of the subject property to Lilia and from the date of the agreement, the latter had remitted to the former her monthly instalments through registered mail, with a total payment of US\$14,000.00 to date, leaving a balance of US\$11,000.00; since January 1989, Lilia allowed her son Rolando (or Roilan) Cueto (“Rolando” or “Roilan”, for brevity) to reside at the subject property as Lilia had to leave for abroad due to her employment in Italy; since January 1989, Lilia through her son, has religiously paid the annual realty taxes on the premises, including electric and water bills; on 13 August 1997, defendants filed before the Municipal Trial Court in Cities, Batangas City, with malicious intent and to the prejudice of plaintiffs’ rights, a case for unlawful detainer, docketed as *Civil Case No. 3429* against plaintiff’s son Rolando and his wife Liza Cueto (“Liza”, for brevity); being indigent, spouses Rolando and Liza failed to defend themselves resulting in a judgment by default and they were finally evicted in January 1998; Lilia learned of the eviction case in June 1998 when she returned home from Italy; she executed an Affidavit of Adverse Claim dated 15 June 1998, and

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<sup>2</sup> Id. at 240-249; penned by Presiding Judge Ernesto L. Marajas.

registered the same with the land records of Batangas City; on 17 June 1998, through Lilia's lawyer, a written tender of payment of US\$11,000.00 was sent to defendants by registered mail and received by Bibiana on 30 June 1998; earnest efforts were resorted to compromise the present controversy between members of the same family as shown by the final demand letter dated 11 August 1998, sent by registered mail, to defendants; as a consequence of the latter's unreasonable refusal to recognize plaintiffs' just and valid demand, they were constrained to consign the US\$11,000.00 or its equivalent in Philippine currency, as final payment to defendants; after plaintiff's compliance with her contractual obligation, she demanded from defendants to immediately execute the necessary deed of conveyance and delivery of the owner's copy of TCT No. T-34558; due to defendants' act and omission, Lilia suffered actual damages for the reimbursement of her travelling expenses and loss of revenue due her from foreign job abandonment during the length of the proceeding; and plaintiffs are entitled to the payment of damages, attorney's fees and litigation expenses.

In their Answer with Counterclaim dated 25 August 2000, defendants alleged, *inter alia*, that: it was plaintiff Lilia who is indebted to her sister defendant Bibiana, as it was the latter whom she approached for money to be used in applying for a job in Italy; as promised by Lilia, she would pay Bibiana and remit the amount in instalment to the residence of defendants in the United States; but only few dollars were sent to them by Lilia, and as could be gleaned from the self-serving notations thereon, there exists no agreement duly signed by defendants, as in truth and in fact they never sold the said property to the plaintiffs; Article 1405 of the New Civil Code mandates that irrespective of who the parties are to agreement, if it involves more than Php500.00, it should be reduced into writing, mutually agreed upon by the parties thereto; plaintiff Vedasto, and Rolando married to Liza, were allowed by defendants to stay in the said house, by mere tolerance, subject to the condition that they would pay their electric and water consumption bills thereon, but realty tax payments were sent to them by defendants for payment to the Batangas City government; Vedasto, husband of Lilia, as early as 24 October 1996, had recognized the defendants' right of ownership over the property in question, when he undertook to vacate the same; they never sold the subject property to the plaintiffs' if the plaintiffs incurred expenses or suffer pecuniary damages including attorney's fees, they themselves are to be blamed and not defendants, for instituting a baseless and unfounded complaint.

Defendants filed their Manifestation and Urgent Motion for Inhibition dated 13 March 2001, to which plaintiffs filed their Counter-Manifestation dated 29 March 2001. On 05 April 2001, Judge Teodoro Tapia Riel inhibited himself. The case was re-raffled to Branch 8.

Intervenor Redima Baytown Development Corporation ("Redima", for brevity) filed its Manifestation and simultaneous filing of Answer-in-Intervention with attached Answer-in-Intervention dated 24 June 2001, and Manifestation and Urgent Motion to Admit Attached Answer-in-Intervention dated 25 July 2001. Plaintiffs filed their "Negation" dated 10 August 2001. On 31 March 2004, the trial court admitted the Answer-in-Intervention. Plaintiffs filed their Motion for Reconsideration dated 23 April 2004, which was denied by the trial court on 30 July 2004.

In the meantime, petitioners therein (herein plaintiffs) filed a Petition for *Certiorari* dated 20 September 2004 before this Court, docketed as *CA-G.R. No. 86541*. This Court (Seventeenth Division) rendered a Decision dated 28 June 2005, granting the Petition for *Certiorari*, reversing and setting aside the trial court's Orders dated 31 March 2004 and 30 July 2004, and entering a new one denying the Answer-in-Intervention. Private respondent Redima filed its Motion for Reconsideration *etc.* dated 19 July 2005, which was denied by this Court (Former Seventeenth Division) in its Resolution dated 03 November 2005. Redima filed with the Supreme Court a Petition for Review on *Certiorari* dated 19 December 2005, docketed as *G.R. No. 170315*. In a Resolution dated 16 January 2006, the Supreme Court (First Division) denied the Petition for Review on *Certiorari*. Redima filed its Motion for Reconsideration dated 24 February 2006, but the same was denied in the Supreme Court's Resolution dated 16 January 2006, which became final and executory and was recorded in the Book of Entries of Judgments.

Pre-trial was held and the trial court issued an Order dated 25 April 2005.

Trial on the merits ensued. Plaintiff Lilia, Roilan and Emma Intac were presented as witnesses.

**Lilia Cueto** testified, *inter alia*, that: she started working in Italy in 1987 up to the present; Bibiana is her sister and Cipriano Pamplona is her brother-in-law who have been residing in the U.S.A. for 35 years; she bought the subject property in Kumintang Ibaba, Batangas City, covered by TCT No. RT-1504 from Sps. Pamplona on 10 January 1998; Bibiana called her by telephone and told her that she (Lilia) would pay by installment every month for US\$300.00; the total amount of said subject property is \$25,000.00; they agreed to the proposal and Bibiana sent her a booklet wherein she could write her payments and there was also a note above in the booklet before Bibiana sent the same; her sister has inscriptions on the front cover of Exhibit "B"; the figures 1-10-89 is the date of her first payment; US\$25,000.00 is the amount of the subject property she bought from defendants; US\$300.00 is her monthly payment; all in all, she sent Bibiana US\$14,000.00; her thirty-one (31) return cards show that she sent money to Bibiana; usually she sent Bibiana cash in US dollars; possession of the subject property was entrusted to her and her son Roilan resided in the said property since 10 January 1989; she paid realty taxes on the subject property as shown in the four (4) official receipts dated 22 November 1996, for the years 1991 to 1996; Roilan was ejected by Bibiana in November 1997 in relation to the complaint for unlawful detainer in *Civil Case No. 3429*; when she talked with Bibiana in the Philippines on 07 June 1998, she did not have with her the full payment for the balance amounting to US\$11,000.00 because she lost her job at that time; after she and Bibiana talked on 07 June 1998, they agreed that she would come back to the Philippines in order to pay the latter; she came back to the Philippines on 27 September 1999 and she had the money with her, but Bibiana already left for the USA; and Bibiana did not accept her tender of payment of US\$11,000.00. On cross-examination, she testified that: she and Bibiana verbally agreed that she was going to pay; Bibiana told her that after she has settled the payment, that would be the time that they would execute a deed of sale; her husband knew that she bought said property; and the yellow paper shows what was agreed upon by her and Bibiana.

**Roilan Cueto** testified, *inter alia*, that: his mother Lilia has been working in Italy since 1987; Sps. Pamplona are his uncle and aunt; Bibiana and Lilia are sisters; Lilia started paying defendants US\$300.00 a month since 10 January 1989; his parents authorized him to reside on the said property; since 10 January 1989, he occupied the house and paid the electric and water bills; he paid the taxes of the subject property, but it was his mother who sent money for the payment; he was ejected from the house because he was charged with unlawful detainer by his aunt; after the promulgation of the decision in the unlawful detainer case, he left the house; he did not inform his mother, and just waited for her to come home, because he did not want to give her a problem; and from the time he occupied the subject property on 10 January 1989 and up to the time he was ejected by the Court, he did not pay any rent. On cross-examination, he testified that: his father Vedasto is a co-plaintiff in this case; he thinks that his father was forced to sign the undertaking "*Pangako ng Pag-alis*" because his mother and father had a quarrel during that time and they were made to understand that it was a form of separation of property, which is why, they made that document; he did not appeal the Decision of Judge Francisco D. Sulit ("Sulit", for brevity); and he just left because his mother was still abroad and they did not have the financial capacity to hire the services of counsel. On redirect examination, he testified, that he informed his mother who was in Italy about the ejectment case filed against him by the Sps. Pamplona during the time when they were made to vacate by Sps. Pamplona.

**Emma Intac** testified, *inter alia*, that Lilia and Bibiana are her sisters; and that Lilia is the mother of Rolando who is the owner of the house.

Plaintiffs filed their Formal Offer dated 02 February 2009, to which defendants filed their "Legal & Factual Objections *etc.*" dated 27 March 2009. On 20 April 2009, the trial court admitted plaintiffs' Exhibits "A" to "T" with submarkings.

Wilfredo M. Panaligan and Atty. Dimayacyac testified for the defense.

**Wilfredo M. Panaligan**, testified, *inter alia*, that: he was a member of the Batangas City Police Station in 1997, and he was assigned at the Intelligence Division, under Col. Pablo Panaligan; he and PO2 Hoberto Bagsit ("Bagsit", for brevity) were called by their Chief of Police for police assistance to Brgy. Kumintang Ibaba, Batangas City; he was told to get in touch with Sps. Pamplona for peace and order situation thereat; in his (Panaligan) presence, Roilan signed his written undertaking in relation to their manifestation to vacate the premises regarding the decision of Judge Sulit; Vedasto signed the "*Pangako ng Pag-alis*"; and he and Bagsit were present when Vedasto signed said specific undertaking; they were assisted by the sheriff of the court; there were typographical errors in the undertaking of Vedasto considering 24 October 1996 should be 1997, and 21 October 1996 should be 21 October 1997; he read the document marked at Exhibit "4-A" before affixing his signature thereon; and he was not able to call the attention of the court personnel or Vedasto regarding the discrepancy of the date stated on the document, as he just signed as a witness.

Atty. **Reynaldo P. Dimayacyac, Sr.**, defendants' counsel, filed his Judicial Affidavit dated 26 August 2010 (Exhibit "AA") and affirmed the same. He testified, *inter alia*, that: when the property was offered to him before and being well acquainted of the fact that as early as 1997, his assistance was solicited in conjunction with the assistance provided by the Batangas City PNP for the enforcement of the decision of Judge Sulit, ejecting Roilan or Rolando and Liza, the son and daughter-in-law of the plaintiffs, he was already aware of the legality of the ownership of Sps. Pamplona; he went to the trial court and made researches on the pleadings pending as well as the record of the proceedings, for that purpose; he realized that the case instituted by Sps. Cueto against Sps. Pamplona had no legal basis; and he noticed with respect to the other arguments advanced by Atty. Eugenio Mendoza, counsel of Sps. Pamplona therein, that the basis of the allegations in favor of Lilia, which has been denied by Sps. Pamplona, was that there was no document of sale which had been signed and they were not in possession because they were ejected, aside from the fact no appeal has been instituted by either Lilia or Vedasto; he was not the counsel of the defendants in the ejectment case decided by Judge Sulit; he examined the annotation on TCT No. RT-1504(34558) at the land records of Batangas City; he is not aware of the *lis pendens* per entry Entry No. 105392 that was annotated thereon in September 1998 because he never went to the Register of Deeds; he just depended on his copy of a clean title; he and his family corporation have never been disturbed in their possession; he is aware that when Redima executed the Memorandum of Agreement and Contract to Sell on 15 March 2001, there is a pending litigation between plaintiffs and defendants in this case; and Redima took possession of the property in litigation immediately after the execution of the Memorandum of Agreement and Contract to Sell; the permission of the trial court was not needed when they took possession of the property; and he participated by filing the necessary intervention.

Defendants filed their Motion to Admit attached Formal Offer of Evidence dated 10 January 2011, to which plaintiffs filed an Opposition dated 08 February 2011. On 28 March 2011, the trial court admitted Exhibit "AA" which was remarked by defendants' counsel as Exhibit "20". Plaintiffs filed their Memorandum dated 19 April 2011, to which defendants filed their Counter-Argument *etc.* dated 27 April 2011 xxx.<sup>3</sup>

### **Judgment of the RTC**

As stated, the RTC, holding that the respondents did not prove the existence of the partially executed contract to sell involving the property; that neither documentary nor object evidence confirmed the supposed partially executed contract to sell; and that the respondents accordingly failed to support their cause of action by preponderance of evidence, disposed:

**Wherefore**, the complaint filed against Spouses Cipriano Pamplona and Bibiana Intac for specific performance, reconveyance consignment and damages is **hereby dismissed for failure of the**

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<sup>3</sup> Id. at 40-47.

**Plaintiff to present preponderance of evidence to substantiate the theory of the case.** In like manner This Court will not award any damages in favor of the Defendants; however the cost of the suit is chargeable against the Plaintiff.

SO ORDERED.<sup>4</sup>

### Decision of the CA

On appeal, the CA reversed the RTC, and declared that the respondents presented sufficient evidence to establish that petitioner Bibiana and her sister, respondent Lilia, had entered into an oral contract to sell; that their oral contract, being partially executed by virtue of Lilia's partial payments to Bibiana, removed the contract from the application of the Statute of Frauds; that the transfer of the property in favor of Redima, represented by the petitioners' counsel, Atty. Dimayacyac, by virtue of the deed of transfer of rights, was null and void for being violative of Article 1491 of the *Civil Code*.

The *fallo* of the decision of the CA reads:

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated 21 June 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 8, Batangas City in *Civil Case* No. 5120 is **REVERSED** and **SET ASIDE**. Accordingly, plaintiff-appellant Lilia I. Cueto is recognized to have the right of ownership over subject property covered by Transfer Certificate of Title No. RT-1504 (34558) of the Registry of Deeds for Batangas City registered in the names of defendants-appellees Spouses Cipriano Pamplona and Babiana Intac. The Registrar of Deeds of Batangas City is hereby **ORDERED** to cancel said TCT No. RT-1504 (34558) and to issue a new one in the name of plaintiff-appellant Lilia I. Cueto. The judicially consigned amount of Php436,700.00 under Official Receipt No. 8789368 dated 24 November 1998, representing the full payment by plaintiff-appellant Lilia I. Cueto of the remaining balance of the subject property's purchase price, is **ORDERED** release[d] to defendants-appellees. Defendants-appellees are hereby **ORDERED** to immediately execute a Deed of Absolute Sale over the subject property in favor of plaintiff-appellant Lilia I. Cueto. Costs against defendants-appellees.

SO ORDERED.<sup>5</sup>

### Issues

The petitioners now assail the decision of the CA by stressing that the admissions of Lilia's son, Roilan, and of her husband, petitioner Vedasto, to

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<sup>4</sup> Id. at 249.

<sup>5</sup> Id. at 54.

the effect that the petitioners were the true owners of the property were contrary to the conclusions of the CA; that the CA's finding that there had been a partially executed contract to sell was unwarranted because nothing in the records established the same; that the decision of the MTCC of Batangas City against Roilan in the unlawful detainer case indicated that they were the true owners of the property; that the CA should not have nullified the deed of transfer of rights between Redima and the petitioners on the strength of Article 1491 of the *Civil Code* because it was Redima, the corporation, that acquired the property instead of Atty. Dimayacyac; and that there was no violation of Article 1491 because of the separate juridical personalities between the corporation and its shareholders.

On their part, the respondents object to the authority of Atty. Dimayacyac to sign the verification and certification against forum shopping for the petitioners, stating that the fact that the written authority for that purpose had been notarized before a notary public of the State of Washington did not convert the document into a public document in the context of the Philippine law; that the factual findings of the CA, being more consistent with the facts and the law of the case, should be respected; that the CA correctly voided the transfer of the property from the petitioners to Redima and Atty. Dimayacyac for having been in violation of Article 1491 of the *Civil Code*; and that although it may have appeared that it was Redima, it was really Atty. Dimayacyac who had purchased the property after piercing the corporate veil, which indicated that the transfer was both legally and ethically abhorrent.

In their reply, petitioners counter that the general power of authority was duly authenticated within the Consulate General of the Philippines in San Francisco, California, and was submitted to the RTC as Exhibit 5-b; and that any objection to the validity of the verification and certification against forum shopping would be misplaced.

Based on the foregoing, the issues to be resolved are: (a) whether or not there was sufficient evidence to show the existence of a partially executed contract to sell; and (b) whether or not the deed of transfer of rights from the respondents to Redima violated Article 1491 of the *Civil Code*.

### **Ruling of the Court**

The appeal lacks merit.

Generally, the Court cannot delve into questions of fact on appeal because it is not a trier of facts. Yet, this rule has not been iron-clad and rigid in view of several jurisprudentially recognized instances wherein the Court has opted to settle factual disputes duly raised by the parties. These



instances include situations: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence but the premise is contradicted by the evidence on record.<sup>6</sup>

The conflict in the factual findings and conclusions drawn by the RTC and the CA demands that the Court sift the records in order to settle the dispute between the parties.

At the start, the Court reiterates the general proposition that is true in all civil litigations that the burden of proof lies in the party who asserts, not in the party who denies because the latter, by the nature of things, cannot produce any proof of the assertion denied.<sup>7</sup> Equally true is the dictum that mere allegations cannot take the place of evidence.<sup>8</sup> The party making an allegation in a civil case has the burden of proving the allegation by preponderance of evidence.<sup>9</sup> In this connection, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of evidence” or “greater weight of credible evidence.”<sup>10</sup>

A careful review of the records calls for us to affirm the CA. In our view, the existence of the partially executed contract to sell between Bibiana and Lilia was sufficiently established.

It is uncontested that Lilia sent money to Bibiana. The latter did not deny her receipt of the money. Moreover, the records showed that the parties further agreed for Vedasto and Roilan to occupy the property during the period when Lilia was remitting money to Bibiana; and that Lilia immediately took steps to protect her interests in the property once the petitioners started to deny the existence of the oral contract to sell by annotating her adverse claim on the petitioners’ title and instituting this

<sup>6</sup> *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585.

<sup>7</sup> *MOF Company, Inc., v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009, 608 SCRA 521, 533.

<sup>8</sup> *Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119, 133.

<sup>9</sup> *Salas, Jr. v. Aguila*, G.R. No. 202370, September 23, 2013, 706 SCRA 252, 259.

<sup>10</sup> *Ogawa v. Menigishi*, G.R. No. 193089, July 9, 2012, 676 SCRA 14, 22.

action against the latter. We concur with the CA's holding that the respondents adduced enough evidence to establish the existence of the partially executed contract to sell between Lilia and Bibiana.

The petitioners have contended that the sums of money received from Lilia were payments of the latter's obligations incurred in the past; that the admission by Roilan and his wife that the petitioners owned the property negated the absence of the contract to sell; and that the admission by Vedasto that the petitioners owned the property was an admission against interest that likewise belied the contract to sell between Lilia and Bibiana.

The contentions of the petitioners are factually and legally unwarranted.

To start with, it was incumbent upon Bibiana to prove her allegation in the answer that the money sent to her by Lilia was in payment of past debts. This conforms to the principle that each party must prove her affirmative allegations.<sup>11</sup> Yet, the petitioners presented nothing to establish the allegation. They ought to be reminded that allegations could not substitute for evidence. Without proof of the allegation, therefore, the inference to be properly drawn from Bibiana's receipt of the sums of money was that the sums of money were for the purchase of the property, as claimed by the respondents.

Secondly, the admissions by Roilan and Vedasto of the petitioners' ownership of the property could not be appreciated in favor of the petitioners. That Bibiana and Lilia had entered into a contract to sell instead of a contract of sale must be well-noted. The distinctions between these kinds of contracts are settled. In *Serrano v. Caguiat*,<sup>12</sup> the Court has explained:

A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. **The suspensive condition is commonly full payment of the purchase price.**

The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in *Sing Yee v. Santos*, we held that:

x x x [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x x x where by agreement the ownership

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<sup>11</sup> *G & M (Phils.) Inc., v. Cruz*, G.R. No. 140495, April 15, 2004, 456 SCRA 215, 221.

<sup>12</sup> G.R. No. 139173, February 28, 2007, 517 SCRA 57, 64-65.

is reserved in the seller and is not to pass until the full payment, of the purchase price is made. In the first case, non-payment of the price is a negative resolutive condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.

In other words, in a contract to sell, ownership is retained by the seller and is not to pass to the buyer until full payment of the price. xxxx

The distinctions delineate why the admissions by Roilan and Vedasto were consistent with the existence of the oral contract to sell between Lilia and Bibiana. Under the oral contract to sell, the ownership had yet to pass to Lilia, and Bibiana retained ownership pending the full payment of the purchase price agreed upon.

Thirdly, the failure of Roilan to raise as a defense in the unlawful detainer suit against him the existence of the contract to sell between Bibiana and Lilia could not be properly construed as an admission by silence on the part of Lilia. It is basic that the rights of a party cannot be prejudiced by an act, declaration, or omission of another.<sup>13</sup> *Res inter alios acta alteri nocere non debet*. As an exception to the rule, the act or declaration made in the presence and within the hearing or observation of a party who does or says nothing may be admitted as evidence against a party who fails to refute or reject it. This is known as admission by silence, and is covered by Section 32, Rule 130 of the *Rules of Court*, which provides:

Section 32. *Admission by silence*. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

For an act or declaration to be admissible against a party as an admission by silence, the following requirements must be present, namely: (a) the party must have heard or observed the act or declaration of the other person; (b) he must have had the opportunity to deny it; (c) he must have understood the act or declaration; (d) he must have an interest to object as he would naturally have done if the act or declaration was not true; (e) the facts are within his knowledge; and (f) the fact admitted or the inference to be drawn from his silence is material to the issue.<sup>14</sup>

<sup>13</sup> Section 28, Rule 130 of the *Rules of Court*.

<sup>14</sup> *People v. Ciobal*, G.R. No. 86220, April 20, 1990, 184 SCRA 464, 471.

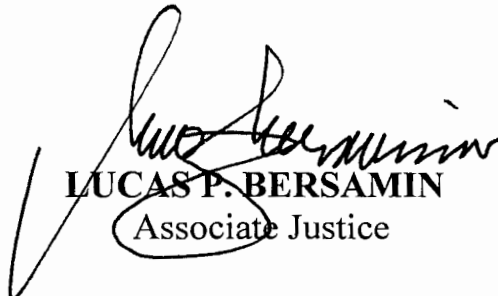
The first two requirements are lacking in the case of Lilia. She was not shown to have heard or seen the admissions by Vedasto and Roilan that were in writing because she was then abroad. Also, she was not shown to have had the opportunity to deny their written admissions simply because she was not a party to the written admissions. The rule on admission by silence applies to adverse statements in writing only when the party to be thereby bound was carrying on a mutual correspondence with the declarant. Without such mutual correspondence, the rule is relaxed on the theory that although the party would have immediately reacted had the statements been orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.<sup>15</sup>

In the context of the norms set by jurisprudence for the application of the rule on admission by silence, Lilia could not be properly held to have admitted by her silence her lack of interest in the property. On the contrary, the records reveal otherwise. Upon her return to the country, she communicated with Bibiana on the terms of payment, and immediately took steps to preserve her interest in the property by annotating the adverse claim in the land records, and by commencing this suit against the petitioners. Such affirmative acts definitively belied any claim of her being silent in the face of the assault to her interest.

The Court avoids discussing and resolving the issue regarding the validity of the deed of transfer of interest between Redima and the petitioners because this case would not be the proper occasion to do so without violating the right to due process of Redima and Atty. Dimayacyac. We note that Redima's attempt to intervene herein in order to protect its right was earlier denied.

**WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on December 3, 2012; and **ORDERS** the petitioners to pay the cost of suit.

**SO ORDERED.**

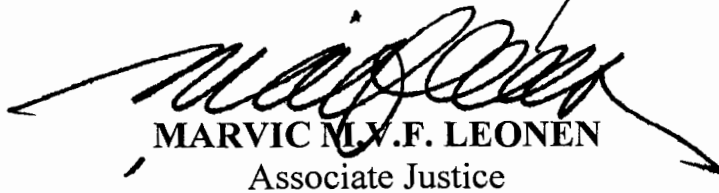
  
LUCAS P. BERSAMIN  
Associate Justice

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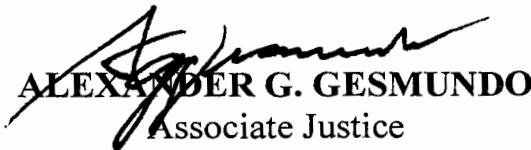
<sup>15</sup> *Villamueva v. Balaguer*, G.R. No. 180197, June 23, 2009, 590 SCRA 661, 672.

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**  
Associate Justice

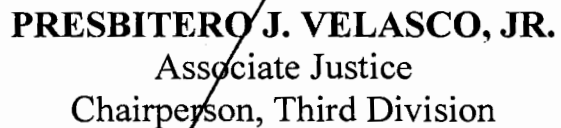
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**SAMUEL B. MARTIRES**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

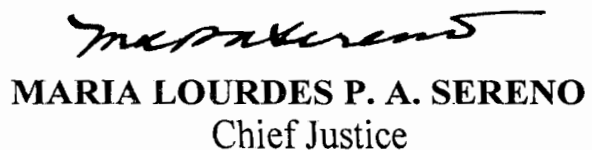
**ATTESTATION**

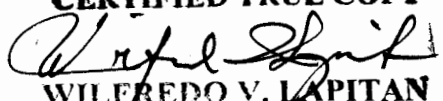
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division  
MAR 23 2018