



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**SPOUSES DELFIN O. TUMIBAY  
and AURORA T. TUMIBAY-deceased;  
GRACE JULIE ANN TUMIBAY  
MANUEL, legal representative,**  
*Petitioners,*

- versus -

**G.R. No. 171692**

Present:

BRION,\* *Acting Chairperson,*  
DEL CASTILLO,  
PEREZ,  
PERLAS-BERNABE, *and*  
LEONEN,\*\* *JJ.*

**SPOUSES MELVIN A. LOPEZ and  
ROWENA GAY T. VISITACION LOPEZ,**  
*Respondents.*

Promulgated:

JUN 03 2013

*Handwritten signature*

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DECISION

**DEL CASTILLO, J.:**

In a contract to sell, the seller retains ownership of the property until the buyer has paid the price in full. A buyer who covertly usurps the seller's ownership of the property prior to the full payment of the price is in breach of the contract and the seller is entitled to rescission because the breach is substantial and fundamental as it defeats the very object of the parties in entering into the contract to sell.

This Petition for Review on *Certiorari*<sup>1</sup> assails the May 19, 2005 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 79029, which reversed the January 6, 2003 Decision<sup>3</sup> of the Regional Trial Court (RTC) of Malaybalay City, Branch 9 in Civil Case No. 2759-98, and the February 10, 2006 Resolution<sup>4</sup>

\* Per Special Order No. 1460 dated May 29, 2013.

\*\* Per Special Order No. 1461 dated May 29, 2013.

<sup>1</sup> *Rollo*, pp. 6-41.

<sup>2</sup> *Id.* at 43-53; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

<sup>3</sup> *Id.* at 107-128; penned by Judge Rolando S. Venadas, Sr.

<sup>4</sup> *Id.* at 72-73; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello.

denying petitioner-spouses Delfin O. Tumibay and Aurora<sup>5</sup> T. Tumibay's Motion for Reconsideration.<sup>6</sup>

### ***Factual Antecedents***

On March 23, 1998, petitioners filed a Complaint<sup>7</sup> for declaration of nullity *ab initio* of sale, and recovery of ownership and possession of land with the RTC of Malaybalay City. The case was raffled to Branch 9 and docketed as Civil Case No. 2759-98.

In their Complaint, petitioners alleged that they are the owners of a parcel of land located in Sumpung, Malaybalay, Bukidnon covered by Transfer Certificate of Title (TCT) No. T-25334<sup>8</sup> (subject land) in the name of petitioner Aurora; that they are natural born Filipino citizens but petitioner Delfin acquired American citizenship while his wife, petitioner Aurora, remained a Filipino citizen; that petitioner Aurora is the sister of Reynalda Visitacion (Reynalda);<sup>9</sup> that on July 23, 1997, Reynalda sold the subject land to her daughter, Rowena Gay T. Visitacion Lopez (respondent Rowena), through a deed of sale<sup>10</sup> for an unconscionable amount of ₱95,000.00 although said property had a market value of more than ₱2,000,000.00; that the subject sale was done without the knowledge and consent of petitioners; and that, for these fraudulent acts, respondents should be held liable for damages. Petitioners prayed that (1) the deed of sale dated July 23, 1997 be declared void *ab initio*, (2) the subject land be reconveyed to petitioners, and (3) respondents be ordered to pay damages.

On May 19, 1998, respondents filed their Answer<sup>11</sup> with counterclaim. Respondents averred that on December 12, 1990, petitioners executed a special power of attorney (SPA)<sup>12</sup> in favor of Reynalda granting the latter the power to offer for sale the subject land; that sometime in 1994, respondent Rowena and petitioners agreed that the former would buy the subject land for the price of ₱800,000.00 to be paid on installment; that on January 25, 1995, respondent Rowena paid in cash to petitioners the sum of \$1,000.00; that from 1995 to 1997, respondent Rowena paid the monthly installments thereon as evidenced by money orders; that, in furtherance of the agreement, a deed of sale was executed and the corresponding title was issued in favor of respondent Rowena; that the subject sale was done with the knowledge and consent of the petitioners as evidenced by the receipt of payment by petitioners; and that petitioners should be held liable for damages for filing the subject Complaint in bad faith. Respondents prayed that the

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<sup>5</sup> Deceased and substituted by her daughter, Grace Julie Ann Tumibay-Manuel, and surviving spouse, petitioner Delfin, as per our Resolution dated February 15, 2012 (Id. at 251).

<sup>6</sup> CA *rollo*, pp. 98-124.

<sup>7</sup> Records, pp. 1-4.

<sup>8</sup> Folder of Exhibits, unpaginated.

<sup>9</sup> Deceased and substituted by her daughters, Blesilda V. Coruna and respondent Rowena, as per the trial court's Order dated August 19, 1999 (Records, p. 57).

<sup>10</sup> Folder of Exhibits, unpaginated.

<sup>11</sup> Records, pp. 9-14.

<sup>12</sup> Folder of Exhibits, unpaginated.

Complaint be dismissed and that petitioners be ordered to pay damages.

On May 25, 1998, petitioners filed an Answer to Counterclaim.<sup>13</sup> Petitioners admitted the existence of the SPA but claimed that Reynalda violated the terms thereof when she (Reynalda) sold the subject land without seeking the approval of petitioners as to the selling price. Petitioners also claimed that the monthly payments from 1995 to 1997 were mere deposits as requested by respondent Rowena so that she (Rowena) would not spend the same pending their agreement as to the purchase price; and that Reynalda, acting with evident bad faith, executed the deed of sale in her favor but placed it in the name of her daughter, respondent Rowena, which sale is null and void because an agent cannot purchase for herself the property subject of the agency.

### ***Ruling of the Regional Trial Court***

On January 6, 2003, the RTC rendered a Decision in favor of petitioners, viz:

WHEREFORE, Decision is hereby rendered, as follows;

(1) Ordering the [petitioners], jointly and severally, to return the said amount of \$12,000.00 at the present rate of exchange less the expenses to be incurred for the transfer of the property in question under the name of the [petitioners];

(2) Ordering the Register of Deeds of Bukidnon to cancel TCT No. T-62674 in the name of the [respondent] Rowena Gay T. Visitacion-Lopez and to issue a new TCT in the name of the [petitioners];

(3) Ordering [respondents,] spouses Melvin and Rowena Gay Lopez[,] to execute a Deed of Reconveyance in favor of the [petitioners], or if said [respondents] should refuse to do so or [are] unable to do so, the Clerk of Court of the RTC and ex-officio Provincial Sheriff to execute such Deed of Reconveyance;

(4) No x x x damages are awarded. The respective parties must bear their own expenses except that [respondents], jointly and severally, must pay the costs of this suit.

SO ORDERED.<sup>14</sup>

In ruling in favor of petitioners, the trial court held: (1) the SPA merely authorized Reynalda to offer for sale the subject land for a price subject to the approval of the petitioners; (2) Reynalda violated the terms of the SPA when she sold the subject land to her daughter, respondent Rowena, without first seeking the approval of petitioners as to the selling price thereof; (3) the SPA does not sufficiently confer on Reynalda the authority to sell the subject land; (4) Reynalda, through fraud and

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<sup>13</sup> Records, pp. 40-42.

<sup>14</sup> Id. at 122.

with bad faith, connived with her daughter, respondent Rowena, to sell the subject land to the latter; and, (5) the sale contravenes Article 1491, paragraph 2, of the Civil Code which prohibits the agent from acquiring the property subject of the agency unless the consent of the principal has been given. The trial court held that Reynalda, as agent, acted outside the scope of her authority under the SPA. Thus, the sale is null and void and the subject land should be reconveyed to petitioners. The trial court further ruled that petitioners are not entirely free from liability because they received from respondent Rowena deposits totaling \$12,000.00. Under the principle of unjust enrichment, petitioners should, thus, be ordered to reimburse the same without interest.

Petitioners filed a partial motion for reconsideration<sup>15</sup> praying for the award of attorney's fees. In its January 14, 2003 Order<sup>16</sup> denying the aforesaid motion, the trial court clarified that the reimbursement of \$12,000.00 in favor of respondents was without interest because there was also no award of rental income in favor of petitioners. Both parties are deemed mutually compensated and must bear their own expenses.

From this Decision, respondents appealed to the CA.

### ***Ruling of the Court of Appeals***

On May 19, 2005, the CA rendered the assailed Decision reversing the judgment of the trial court, viz:

**WHEREFORE**, premises considered, the appealed Decision of the Court *a quo* is hereby **REVERSED** and **SET ASIDE**. Accordingly, title to the subject property shall remain in the name of the Appellant **ROWENA GAY VISITACION-LOPEZ**. The latter and her spouse **MELVIN LOPEZ** are directed to pay the balance of Four Hundred Eighty Eight Thousand Pesos (₱488,000.00) to the [petitioners] effective within 30 days from receipt of this Decision and in case of delay, to pay the legal rate of interests [sic] at 12% per annum until fully paid.

**SO ORDERED.**<sup>17</sup>

In reversing the trial court's Decision, the appellate court ruled that: (1) the SPA sufficiently conferred on Reynalda the authority to sell the subject land; (2) although there is no direct evidence of petitioners' approval of the selling price of the subject land, petitioner Aurora's acts of receiving two money orders and several dollar checks from respondent Rowena over the span of three years amount to the ratification of any defect in the authority of Reynalda under the

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<sup>15</sup> Id. at 124-126.

<sup>16</sup> Id. at 131.

<sup>17</sup> *Rollo*, pp. 52-53. Emphases in the original.

SPA; (3) petitioners are estopped from repudiating the sale after they had received the deposits totaling \$12,000.00; (4) the sale is not contrary to public policy because there is no rule or law which prohibits the sale of property subject of the agency between the agent and his children unless it would be in fraud of creditors which is not the case here; (5) petitioners impliedly ratified the subject SPA and contract of sale as well as its effects; and, (6) the selling price of ₱800,000.00 for the subject land is deemed reasonable based on the testimony of respondent Rowena as this was the selling price agreed upon by her and petitioner Delfin. Considering that respondent Rowena proved that she remitted a total of \$12,000.00 to petitioners and pegging the exchange rate at that time at ₱26.00 per dollar, the appellate court ruled that ₱312,000.00 of the ₱800,000.00 selling price was already received by petitioners. Thus, respondents are only liable for the balance of ₱488,000.00.

Hence, this Petition.

### **Issues**

Petitioners raise the following issues for our resolution:

- I. Whether the CA erred in [resolving] the issue in the case at bar.
- II. Whether under the SPA Reynalda had the power to sell the subject land.
- III. Whether the actuations of petitioner Aurora in receiving money from respondent Rowena amounted to the ratification of the breach in the exercise of the SPA.
- IV. Whether the CA erred in not declaring the sale void on grounds of public policy.
- V. Whether the CA erred in adopting the testimony of respondent Rowena as to the ₱800,000.00 selling price of the subject land.<sup>18</sup>

### ***Petitioners' Arguments***

Petitioners argue that the appellate court went beyond the issues of this case when it ruled that there was a contract of sale between respondent Rowena and petitioner Aurora because the issues before the trial court were limited to the validity of the deed of sale dated July 23, 1997 for being executed by Reynalda beyond the scope of her authority under the SPA. Further, the existence of the

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<sup>18</sup> Id. at 170-171.

alleged contract of sale was not proven because the parties failed to agree on the purchase price as stated by petitioner Aurora in her testimony. The money, in cash and checks, given to petitioners from 1995 to 1997 were mere deposits until the parties could agree to the purchase price. Moreover, Reynalda acted beyond the scope of her authority under the SPA because she was merely authorized to look for prospective buyers of the subject land. Even assuming that she had the power to sell the subject land under the SPA, she did not secure the approval as to the price from petitioners before executing the subject deed of sale, hence, the sale is null and void. Petitioners also contend that there was no ratification of the subject sale through petitioners' acceptance of the monthly checks from respondent Rowena because the sale occurred subsequent to the receipt of the aforesaid checks. They further claim that the sale was void because it was not only simulated but violates Article 1491 of the Civil Code which prohibits the agent from acquiring the property subject of the agency. Here, Reynalda merely used her daughter, respondent Rowena, as a dummy to acquire the subject land. Finally, petitioners question the determination by the appellate court that the fair market value of the subject land is ₱800,000.00 for lack of any factual and legal basis.

### ***Respondents' Arguments***

Respondents counter that the issue as to whether there was a perfected contract of sale between petitioners and respondent Rowena is inextricably related to the issue of whether the deed of sale dated July 23, 1997 is valid, hence, the appellate court properly ruled on the former. Furthermore, they reiterate the findings of the appellate court that the receipt of monthly installments constitutes an implied ratification of any defect in the SPA and deed of sale dated July 23, 1997. They emphasize that petitioners received a total of \$12,000.00 as consideration for the subject land.

### **Our Ruling**

The Petition is meritorious.

As a general rule, we do not disturb the factual findings of the appellate court. However, this case falls under one of the recognized exceptions thereto because the factual findings of the trial court and appellate court are conflicting.<sup>19</sup> Our review of the records leads us to conclude that the following are the relevant factual antecedents of this case.

Petitioners were the owners of the subject land covered by TCT No. T-25334 in the name of petitioner Aurora. On December 12, 1990, petitioners, as principals and sellers, executed an SPA in favor of Reynalda, as agent, to, among

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<sup>19</sup> *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333, 339 (1999).

others, offer for sale the subject land provided that the purchase price thereof should be approved by the former. Sometime in 1994, petitioners and respondent Rowena agreed to enter into an oral contract to sell over the subject land for the price of ₱800,000.00 to be paid in 10 years through monthly installments.

On January 25, 1995, respondent Rowena paid the first monthly installment of \$1,000.00 to petitioner Aurora which was followed by 22 intermittent monthly installments of \$500.00 spanning almost three years. Sometime in 1997, after having paid a total of \$10,000.00, respondent Rowena called her mother, Reynalda, claiming that she had already bought the subject land from petitioners. Using the aforesaid SPA, Reynalda then transferred the title to the subject land in respondent Rowena's name through a deed of sale dated July 23, 1997 without the knowledge and consent of petitioners. In the aforesaid deed, Reynalda appeared and signed as attorney-in-fact of petitioner Aurora, as seller, while respondent Rowena appeared as buyer. After which, a new title, *i.e.*, TCT No. 62674,<sup>20</sup> to the subject land was issued in the name of respondent Rowena.

We explain these factual findings and the consequences thereof below.

*Petitioners and respondent Rowena entered into a contract to sell over the subject land.*

Petitioners deny that they agreed to sell the subject land to respondent Rowena for the price of ₱800,000.00 payable in 10 years through monthly installments. They claim that the payments received from respondent Rowena were for safekeeping purposes only pending the final agreement as to the purchase price of the subject land.

We are inclined to give credence to the claim of the respondents for the following reasons.

First, the payment of monthly installments was duly established by the evidence on record consisting of money orders<sup>21</sup> and checks<sup>22</sup> payable to petitioner Aurora. Petitioners do not deny that they received 23 monthly installments over the span of almost three years. As of November 30, 1997 (*i.e.*, the date of the last monthly installment), the payments already totaled \$12,000.00, to wit:

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<sup>20</sup> Records, p. 5.

<sup>21</sup> Id. at 17.

<sup>22</sup> Id. at 18-38.

Date	Amount Paid (in dollars)
January 25, 1995	1,000.00 <sup>23</sup>
February 21, 1995	500.00
March 27, 1995	500.00
April 25, 1995	500.00
June 1, 1995	500.00
June 30, 1995	500.00
July 31, 1995	500.00
May 29, 1996	500.00
June 30, 1996	500.00
July 31, 1996	500.00
August 31, 1996	500.00
September 30, 1996	500.00
October 29, 1996	500.00
December 31, 1996	500.00
January 31, 1997	500.00
February 28, 1997	500.00
March 31, 1997	500.00
May 31, 1997	500.00
July 19, 1997	500.00
August 31, 1997	500.00
September 30, 1997	500.00
October 31, 1997	500.00
November 30, 1997	500.00
Total	12,000.00

Second, in her testimony, petitioner Aurora claimed that the \$1,000.00 in cash that she received from respondent Rowena on January 25, 1995 was a mere deposit until the purchase price of the subject land would have been finally agreed upon by both parties.<sup>24</sup> However, petitioner Aurora failed to explain why, after receiving this initial sum of \$1,000.00, she thereafter accepted from respondent Rowena 22 intermittent monthly installments in the amount of \$500.00. No attempt was made on the part of petitioners to return these amounts and it is fair to assume that petitioners benefited therefrom.

Third, it strains credulity that respondent Rowena would make such monthly installments for a substantial amount of money and for a long period of time had there been no agreement between the parties as to the purchase price of the subject land.

We are, thus, inclined to rule that there was, indeed, a contractual agreement between the parties for the purchase of the subject land and that this agreement partook of an oral contract to sell for the sum of ₱800,000.00. A

<sup>23</sup> The \$1,000.00 was received in cash by petitioner Aurora from respondent Rowena. The rest of the monthly installments were paid either through money orders or checks payable to petitioner Aurora.

<sup>24</sup> TSN, February 3, 2000, pp.17-18.



contract to sell has been defined as “a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price.”<sup>25</sup> In a contract to sell, “ownership is retained by the seller and is not to pass until the full payment of the price x x x.”<sup>26</sup> It is “commonly entered into so as to protect the seller against a buyer who intends to buy the property in installment[s] by withholding ownership over the property until the buyer effects full payment therefor.”<sup>27</sup>

In the case at bar, while there was no written agreement evincing the intention of the parties to enter into a contract to sell, its existence and partial execution were sufficiently established by, and may be reasonably inferred from the actuations of the parties, to wit: (1) the title to the subject land was not immediately transferred, through a formal deed of conveyance, in the name of respondent Rowena prior to or at the time of the first payment of \$1,000.00 by respondent Rowena to petitioner Aurora on January 25, 1995;<sup>28</sup> (2) after this initial payment, petitioners received 22 intermittent monthly installments from respondent Rowena in the sum of \$500.00; and, (3) in her testimony, respondent Rowena admitted that she had the title to the subject land transferred in her name only later on or on July 23, 1997, through a deed of sale, because she believed that she had substantially paid the purchase price thereof,<sup>29</sup> and that she was entitled thereto as a form of security for the installments she had already paid.<sup>30</sup>

*Respondent Rowena was in breach of the contract to sell.*

Although we rule that there was a contract to sell over the subject land between petitioners and respondent Rowena, we find that respondent Rowena was in breach thereof because, at the time the aforesaid deed of sale was executed on July 23, 1997, the full price of the subject land was yet to be paid. In arriving at this conclusion, we take judicial notice<sup>31</sup> of the prevailing exchange rates at the time, as published by the *Bangko Sentral ng Pilipinas*,<sup>32</sup> and multiply the same with the monthly installments respondent Rowena paid to petitioners, as supported

<sup>25</sup> *Coronel v. Court of Appeals*, 331 Phil. 294, 310 (1996).

<sup>26</sup> *Manuel v. Rodriguez*, 109 Phil. 1, 10 (1960).

<sup>27</sup> *Coronel v. Court of Appeals*, supra at 314.

<sup>28</sup> See *Roque v. Lapuz* [185 Phil. 525, 540-541 (1980)] where we ruled that the absence of a formal deed of conveyance is a very strong indication that the parties did not intend immediate transfer of ownership and title but only a transfer after full payment of the price so that the nature of the agreement is a contract to sell.

<sup>29</sup> TSN, January 11, 2002, p. 12.

<sup>30</sup> Id. at 16.

<sup>31</sup> We are constrained to rely on these published historical exchange rates because respondent Rowena testified that the parties did not agree on the exchange rate that will be used in computing the value in pesos of the monthly installments. (TSN, January 11, 2002, p. 13) Due to the peculiar circumstances of this case, we deem these published historical exchange rates as reasonable and fair basis for the aforesaid purpose because they constitute the actual exchange rates at the time.

<sup>32</sup> [http://www.bsp.gov.ph/statistics/statistics\\_online.asp](http://www.bsp.gov.ph/statistics/statistics_online.asp), last visited 27 February 2013.

by the evidence on record, to wit:

Date	Amount Paid (in dollars)	Exchange Rate (peso per dollar)	Peso Equivalent
January 25, 1995	1,000.00	24.7700	24,770.00
February 21, 1995	500.00	25.1140	12,557.00
March 27, 1995	500.00	25.9670	12,983.50
April 25, 1995	500.00	26.0270	13,013.50
June 1, 1995	500.00	25.8040	12,902.00
June 30, 1995	500.00	25.5750	12,787.50
July 31, 1995	500.00	25.5850	12,792.50
May 29, 1996	500.00	26.1880	13,094.00
June 30, 1996	500.00	26.2030 <sup>33</sup>	13,101.50
July 31, 1996	500.00	26.2280	13,114.00
August 31, 1996	500.00	26.2020 <sup>34</sup>	13,101.00
September 30, 1996	500.00	26.2570	13,128.50
October 29, 1996	500.00	26.2830	13,141.50
December 31, 1996	500.00	26.2880 <sup>35</sup>	13,144.00
January 31, 1997	500.00	26.3440	13,172.00
February 28, 1997	500.00	26.3330	13,166.50
March 31, 1997	500.00	26.3670	13,183.50
May 31, 1997	500.00	26.3740 <sup>36</sup>	13,187.00
July 19, 1997	500.00	28.5740 <sup>37</sup>	14,287.00
		Total	260,626.50

Thus, as of July 19, 1997 or prior to the execution of the deed of sale dated July 23, 1997, the total amount of monthly installments paid by respondent Rowena to petitioners was only ₱260,626.50 or 32.58%<sup>38</sup> of the ₱800,000.00 purchase price. That the full price was yet to be paid at the time of the subject transfer of title was admitted by respondent Rowena on cross-examination, viz:

ATTY. OKIT:

Q - Let us make this clear. You now admit that x x x you agreed to buy the lot at eight hundred thousand, [to] which the Plaintiff x x x agreed. Now [based] on the dollar rate, [your total payment did not] reach x x x eight hundred thousand pesos? Is that correct? [sic]

A - Yes.

<sup>33</sup> The June 28, 1996 exchange rate was used because it is the nearest prior transacting day to June 30, 1996. There is no published exchange rate value for June 30, 1996 because it was a non-transacting day.

<sup>34</sup> The August 30, 1996 exchange rate was used because it is the nearest prior transacting day to August 31, 1996. There is no published exchange rate value for August 30, 1996 because it was a non-transacting day.

<sup>35</sup> The December 27, 1996 exchange rate was used because it is the nearest prior transacting day to December 31, 1996. There is no published exchange rate value for December 31, 1996 because it was a non-transacting day.

<sup>36</sup> The May 30, 1997 exchange rate was used because it is the nearest prior transacting day to May 31, 1997. There is no published exchange rate value for May 31, 1997 because it was a non-transacting day.

<sup>37</sup> The July 18, 1997 exchange rate was used because it is the nearest prior transacting day to July 19, 1997. There is no published exchange rate value for July 19, 1997 because it was a non-transacting day.

<sup>38</sup> 260,626.50/800,000 x 100 = 32.58%

- Q - Since notwithstanding the fact this eight hundred thousand which you have agreed is not fully paid why did your mother [finalize] the deed of sale?
- A - My mother is equipped with the SPA to transfer the lot to me only for security purposes **but actually there is no full payment.**<sup>39</sup> (Emphasis supplied)

Respondent Rowena tried to justify the premature transfer of title by stating that she had substantially paid the full amount of the purchase price and that this was necessary as a security for the installments she had already paid. However, her own evidence clearly showed that she had, by that time, paid only 32.58% thereof. Neither can we accept her justification that the premature transfer of title was necessary as a security for the installments she had already paid absent proof that petitioners agreed to this new arrangement. Verily, she failed to prove that petitioners agreed to amend or novate the contract to sell in order to allow her to acquire title over the subject land even if she had not paid the price in full.

Significantly, the evidence on record indicates that the premature transfer of title in the name of respondent Rowena was done without the knowledge and consent of petitioners. In particular, respondent Rowena's narration of the events leading to the transfer of title showed that she and her mother, Reynalda, never sought the consent of petitioners prior to said transfer of title, viz:

COURT:

Q- Why is this check (in the amount of \$1,000.00) in your possession now?

A- This is the check I paid to her (referring to petitioner Aurora) which is in cash. [sic]

ATTY. BARROSO:

Q - Now did you continue x x x paying the \$500.00 dollar to him (referring to petitioner Delfin)?

A - Yes.

x x x x

Q - Now having stated substantially paid, what did you do with the land subject of this case? [sic]

A - I called my mother who has equipped with SPA to my Uncle that **I have already bought the land.** [sic]

Q - And you called your mother?

A - Yes.

x x x x

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<sup>39</sup> TSN, January 11, 2002, p. 16.

Q - Then what transpired next?

A - After two years my mother called me if how much I have paid the land and being equipped with SPA, **so she transferred the land to me.** [sic]<sup>40</sup> (Emphases supplied)

Respondent Rowena's reliance on the SPA as the authority or consent to effect the premature transfer of title in her name is plainly misplaced. The terms of the SPA are clear. It merely authorized Reynalda to sell the subject land at a price approved by petitioners. The SPA could not have amended or novated the contract to sell to allow respondent Rowena to acquire the title over the subject land despite non-payment of the price in full for the reason that the SPA was executed four years prior to the contract to sell. In fine, the tenor of her testimony indicates that respondent Rowena made a unilateral determination that she had substantially paid the purchase price and that she is entitled to the transfer of title as a form of security for the installments she had already paid, reasons, we previously noted, as unjustified.

*The contract to sell is rescissible.*

Article 1191 of the Civil Code provides:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. x x x

As a general rule, "rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement."<sup>41</sup>

In the case at bar, we find that respondent Rowena's act of transferring the title to the subject land in her name, without the knowledge and consent of petitioners and despite non-payment of the full price thereof, constitutes a substantial and fundamental breach of the contract to sell. As previously noted, the main object or purpose of a seller in entering into a contract to sell is to protect himself against a buyer who intends to buy the property in installments by withholding ownership over the property until the buyer effects full payment

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<sup>40</sup> Id. at 10-12.

<sup>41</sup> *Song Fo and Company v. Hawaiian-Philippine Co.*, 47 Phil. 821, 827 (1925).

therefor.<sup>42</sup> As a result, the seller's obligation to convey and the buyer's right to conveyance of the property arise only upon full payment of the price. Thus, a buyer who willfully contravenes this fundamental object or purpose of the contract, by covertly transferring the ownership of the property in his name at a time when the full purchase price has yet to be paid, commits a substantial and fundamental breach which entitles the seller to rescission of the contract.<sup>43</sup>

Indeed, it would be highly iniquitous for us to rule that petitioners, as sellers, should continue with the contract to sell even after the discovery of the aforesaid breach committed by respondent Rowena, as buyer, considering that these acts betrayed in no small measure the trust reposed by petitioners in her and her mother, Reynalda. Put simply, respondent Rowena took advantage of the SPA, in the name of her mother and executed four years prior to the contract to sell, to effect the transfer of title to the subject land in her (Rowena's) name without the knowledge and consent of petitioners and despite non-payment of the full price.

We, thus, rule that petitioners are entitled to the rescission of the subject contract to sell.

*Petitioners are entitled to moral damages and attorney's fees while respondent Rowena is entitled to the reimbursement of the monthly installments with legal interest.*

Article 1170 of the Civil Code provides:

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Fraud or malice (*dolo*) has been defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" and is, thus, incompatible with good faith.<sup>44</sup> In the case at bar, we find that respondent Rowena was guilty of fraud in the performance of her obligation under the subject contract to sell

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<sup>42</sup> *Coronel v. Court of Appeals*, supra note 25 at 314.

<sup>43</sup> Parenthetically, we distinguish the present case from a long line of cases, starting with *Manuel v. Rodriguez* (supra note 26), where we have consistently ruled that the failure of the buyer to pay the price in full under a contract to sell is not a breach, casual or serious, but simply an event that prevents the obligation of the seller to convey the title to the buyer from acquiring binding force. In the case at bar, the breach is not due to the non-payment of the purchase price but results from the premature transfer of the title of the property by the buyer in her name without the knowledge and consent of the seller.

<sup>44</sup> *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, 150 Phil. 114, 125 (1972).

because (1) she knew that she had not yet paid the full price (having paid only 32.58% thereof) when she had the title to the subject land transferred to her name, and (2) she orchestrated the aforesaid transfer of title without the knowledge and consent of petitioners. Her own testimony and documentary evidence established this fact. Where fraud and bad faith have been established, the award of moral damages is proper.<sup>45</sup> Further, under Article 2208(2)<sup>46</sup> of the Civil Code, the award of attorney's fees is proper where the plaintiff is compelled to litigate with third persons or incur expenses to protect his interest because of the defendant's act or omission. Here, respondent Rowena's aforesaid acts caused petitioners to incur expenses in litigating their just claims. We, thus, find respondent Rowena liable for moral damages and attorney's fees which we fix at ₱100,000.00 and ₱50,000.00, respectively.<sup>47</sup>

Anent the monthly installments respondent Rowena paid to petitioners, our review of the records leads us to conclude that respondent Rowena is entitled to the reimbursement of the same with legal interest. Although respondent Rowena was clearly unjustified in prematurely and covertly transferring the title to the subject land in her name, we deplore petitioners' lack of candor in prosecuting their claims before the trial court and intent to evade recognition of the monthly installments that they received from respondent Rowena. The records indicate that, in their Complaint, petitioners made no mention of the fact that they had entered into a contract to sell with respondent Rowena and that they had received 23 monthly installments from the latter. The Complaint merely alleged that the subject sale was done without the knowledge and consent of petitioners. It was only later on, when respondent Rowena presented the proof of payment of the monthly installments in her Answer to the Complaint, that this was brought to light to which petitioners readily admitted. Further, no evidence was presented to prove that respondent Rowena occupied the subject land or benefited from the use thereof upon commencement of the contract to sell which would have justified the setting off of rental income against the monthly installments paid by respondent Rowena to petitioners.

In view of the foregoing, the sums paid by respondent Rowena as monthly installments to petitioners should, thus, be returned to her with legal interest. The total amount to be reimbursed by petitioners to respondent Rowena is computed as follows:

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<sup>45</sup> *Titong v. Court of Appeals*, 350 Phil. 544, 559 (1998).

<sup>46</sup> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; x x x

<sup>47</sup> As to the liability of Reynalda for damages, the evidence did not sufficiently establish that Reynalda was similarly guilty of fraud. It appears that respondent Rowena was solely responsible for the premature transfer of title of the subject land when she misrepresented to Reynalda that she (Rowena) had already bought the land. (TSN, January 11, 2002, pp. 10-12)

Date	Amount Paid (in dollars)	Exchange Rate (peso per dollar)	Peso Equivalent
January 25, 1995	1,000.00	24.7700	24,770.00
February 21, 1995	500.00	25.1140	12,557.00
March 27, 1995	500.00	25.9670	12,983.50
April 25, 1995	500.00	26.0270	13,013.50
June 1, 1995	500.00	25.8040	12,902.00
June 30, 1995	500.00	25.5750	12,787.50
July 31, 1995	500.00	25.5850	12,792.50
May 29, 1996	500.00	26.1880	13,094.00
June 30, 1996	500.00	26.2030	13,101.50
July 31, 1996	500.00	26.2280	13,114.00
August 31, 1996	500.00	26.2020	13,101.00
September 30, 1996	500.00	26.2570	13,128.50
October 29, 1996	500.00	26.2830	13,141.50
December 31, 1996	500.00	26.2880	13,144.00
January 31, 1997	500.00	26.3440	13,172.00
February 28, 1997	500.00	26.3330	13,166.50
March 31, 1997	500.00	26.3670	13,183.50
May 31, 1997	500.00	26.3740	13,187.00
July 19, 1997	500.00	28.5740	14,287.00
August 31, 1997	500.00	30.1650	15,082.50
September 30, 1997	500.00	33.8730	16,936.50
October 31, 1997	500.00	34.9380	17,469.00
November 30, 1997	500.00	34.6550	17,327.50
		<b>Total</b>	<b>327,442.00</b>

Since this amount is neither a loan nor forbearance of money, we set the interest rate at 6% *per annum* computed from the time of the filing of the Answer<sup>48</sup> to the Complaint on May 19, 1998<sup>49</sup> until finality of judgment and thereafter at 12% per annum until fully paid in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.<sup>50</sup> Petitioners are, thus, ordered to pay respondent Rowena the sum of ₱327,442.00 with an interest of 6% *per annum* computed from May 19, 1998 until finality of judgment and thereafter of 12% *per annum* until fully paid.

*The sale of the subject land, effected through the deed of sale dated July 23, 1997, is void.*

Having ruled that respondent Rowena was in substantial breach of the contract to sell because she had the title to the subject land transferred in her name without the knowledge and consent of petitioners and despite lack of full payment

<sup>48</sup> This is deemed to be the time when the demand was established with reasonable certainty because the documents evincing the monthly installments paid by respondent Rowena to petitioners were appended to the Answer to the Complaint.

<sup>49</sup> Records, p. 9.

<sup>50</sup> G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96.

of the purchase price, we now rule on the validity of the deed of sale dated July 23, 1997 which was used to effect the aforesaid transfer of ownership.

It will be recalled that on December 12, 1990, petitioners, as principals and sellers, executed an SPA in favor of Reynalda, as agent. The SPA stated in part:

That we spouses, AURORA TUMIBAY and DELFIN TUMIBAY, of legal age and presently residing at 36 Armstrong Drive, Clark, New Jersey, 07066 name, constitute and appoint REYNALDA VISITACION, widow, of legal age and residing at Don Carlos, Bukidnon, Philippines, to be our true and lawful Attorney-in-fact, for us and in our name, place and stead and for our use and benefit to do and perform the following acts and deed:

To administer our real property located in the Province of Bukidnon, Town of Malaybalay, Barrio of Bantaunon, Towns of Maramag, Paradise, Maramag and Barrio of Kiburiao, Town of Quezon.

To offer for sale said properties, the selling price of which will be subject to our approval.

x x x x

To sign all papers and documents on our behalf in a contract of sale x x x.<sup>51</sup>

As can be seen, the SPA gave Reynalda the power and duty to, among others, (1) offer for sale the subject land to prospective buyers, (2) seek the approval of petitioners as to the selling price thereof, and (3) sign the contract of sale on behalf of petitioners upon locating a buyer willing and able to purchase the subject land at the price approved by petitioners. Although the SPA was executed four years prior to the contract to sell, there would have been no obstacle to its use by Reynalda had the ensuing sale been consummated according to its terms. However, as previously discussed, when Reynalda, as attorney-in-fact of petitioner Aurora, signed the subject deed of sale dated July 23, 1997, the agreed price of ₱800,000.00 (which may be treated as the approved price) was not yet fully paid because respondent Rowena at the time had paid only ₱260,262.50.<sup>52</sup> Reynalda, therefore, acted beyond the scope of her authority because she signed the subject deed of sale, on behalf of petitioners, at a price of ₱95,000.00 which was not approved by the latter. For her part, respondent Rowena cannot deny that she was aware of the limits of Reynalda's power under the SPA because she (Rowena) was the one who testified that the agreed price for the subject land was ₱800,000.00.

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<sup>51</sup> Folder of Exhibits, unpaginated.

<sup>52</sup> The price stated in the deed of sale dated July 23, 1997 is ₱95,000.00 but, as previously discussed, at the time the aforesaid deed was executed, respondent Rowena had already paid a total of ₱260,262.50 to petitioners.



Article 1898 of the Civil Code provides:

Art. 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

It should be noted that, under Article 1898 of the Civil Code, the principal's ratification of the acts of the agent, done beyond the scope of the latter's authority, may cure the defect in the contract entered into between the agent and a third person. This seems to be the line of reasoning adopted by the appellate court in upholding the validity of the subject sale. The appellate court conceded that there was no evidence that respondents sought the approval of petitioners for the subject sale but it, nonetheless, ruled that whatever defect attended the sale of the subject land should be deemed impliedly ratified by petitioners' acceptance of the monthly installments paid by respondent Rowena. Though not clearly stated in its Decision, the appellate court seemed to rely on the four monthly installments (*i.e.*, August 31, September 30, October 31, and November 30, 1997) respondent Rowena paid to petitioners which the latter presumably received and accepted even after the execution of the deed of sale dated July 23, 1997.

We disagree.

That petitioners continued to receive four monthly installments even after the premature titling of the subject land in the name of respondent Rowena, through the deed of sale dated July 23, 1997, did not, by itself, establish that petitioners ratified such sale. On the contrary, the fact that petitioners continued to receive the aforesaid monthly installments tended to establish that they had yet to discover the covert transfer of title in the name of respondent Rowena. As stated earlier, the evidence on record established that the subject sale was done without petitioners' knowledge and consent which would explain why receipt or acceptance by petitioners of the aforementioned four monthly installments still occurred. Further, it runs contrary to common human experience and reason that petitioners, as sellers, would forego the reservation or retention of the ownership over the subject land, which was intended to guarantee the full payment of the price under the contract to sell, especially so in this case where respondent Rowena, as buyer, had paid only 32.58% of the purchase price. In a contract to sell, it would be unusual for the seller to consent to the transfer of ownership of the property to the buyer prior to the full payment of the purchase price because the reservation of the ownership in the seller is precisely intended to protect the seller from the buyer. We, therefore, find that petitioners' claim that they did not ratify the subject sale, which was done without their knowledge and consent, and that the subsequent discovery of the aforesaid fraudulent sale led them to promptly file this case with the courts to be more credible and in accord with the evidence on

record. To rule otherwise would be to reward respondent Rowena for the fraud that she committed on petitioners.

Based on the foregoing, we rule that (1) Reynalda, as agent, acted beyond the scope of her authority under the SPA when she executed the deed of sale dated July 23, 1997 in favor of respondent Rowena, as buyer, without the knowledge and consent of petitioners, and conveyed the subject land to respondent Rowena at a price not approved by petitioners, as principals and sellers, (2) respondent Rowena was aware of the limits of the authority of Reynalda under the SPA, and (3) petitioners did not ratify, impliedly or expressly, the acts of Reynalda. Under Article 1898 of the Civil Code, the sale is void and petitioners are, thus, entitled to the reconveyance of the subject land.

**WHEREFORE**, the Petition is **GRANTED**. The May 19, 2005 Decision and February 10, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 79029 are **ANNULLED** and **SET ASIDE**. The January 6, 2003 Decision of the Regional Trial Court of Malaybalay City, Branch 9 in Civil Case No. 2759-98 is **REINSTATED** and **MODIFIED** to read as follows:

1. The deed of sale dated July 23, 1997 over the subject land, covered by TCT No. T-62674, between petitioner Aurora, represented by Reynalda as her attorney-in-fact, and respondent Rowena is declared void.

2. The contract to sell over the subject land, covered by TCT No. T-25334, between petitioners, as sellers, and respondent Rowena, as buyer, is declared rescinded.

3. The Register of Deeds of Malaybalay City is ordered to cancel TCT No. T-62674 in the name of respondent Rowena and to reinstate TCT No. T-25334 in the name of petitioner Aurora.

4. Respondent Rowena is ordered to pay petitioners the sum of ₱100,000.00 as moral damages and ₱50,000.00 as attorney's fees.

5. Petitioners are ordered to pay respondent Rowena the sum of ₱327,442.00 with legal interest of 6% *per annum* from May 19, 1998 until finality of this Decision. In case petitioners fail to pay the amount due upon finality of this Decision, they shall pay legal interest thereon at the rate of 12% *per annum* until fully paid.

No costs.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ARTURO D. BRION**  
*Associate Justice*  
*Acting Chairperson*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC MARIO VICTOR F. LEONEN**  
*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.

  
**ARTURO D. BRION**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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*