



On March 7, 2012, the Court definitively decided this case by promulgating the resolution: <sup>1</sup> (1) noting the *Compromise Agreement* entered into by the parties; (2) granting the *Joint Motion to Dismiss and Withdraw* the petition for review on *certiorari*; and (3) denying the petitions for review on *certiorari* in these consolidated appeals on the ground of mootness.

Before Us now is the so-called *Urgent Motion to Recall or Reconsider the March 7, 2012 Resolution Giving Effect to the so-called "Compromise Agreement" submitted by Atty. Sergio Angeles and Primex President Ang and to Cite Them in Contempt of Court* <sup>2</sup> filed by the heirs of deceased Marcelino E. Lopez, one of the original petitioners herein, in order to oppose and object to the *Compromise Agreement* on the ground that Atty. Sergio Angeles, a counsel of the petitioners and also a petitioner himself, had entered into the same without valid authority.

### Antecedents

Involved herein is the sale of the 14-hectare property situated in Antipolo City between the petitioners (Lopez, *et al.*) and respondent Primex Corporation (Primex).

The Court of Appeals (CA) summarized the antecedents thusly:

On 29 April 1991, plaintiff-appellant Primex Corporation, hereinafter referred to as PRIMEX, filed against the herein defendants-appellees a complaint for injunction, specific performance and damages before the Regional Trial Court of Pasig.

In its complaint, PRIMEX alleged that it had, on 12 September 1989, as vendee, entered into a Deed of Conditional Sale (DCS) relative to a portion of land particularly designated as Lot 15 of subdivision plan, PSD-328610, containing more or less ONE HUNDRED FORTY THOUSAND and TWENTY NINE square meters (140,029 m<sup>2</sup>) from a mother parcel of land comprising an area of more or less 198,888 square meters located along Sumilong Highway, Barrio La Paz, Antipolo, Rizal, covered by an approved **Homestead Patent under Survey No. H-138612** and **Tax Declaration No. 04-04804**, with the herein defendants-appellees as vendors.

The parties agreed at a purchase price of TWO HUNDRED EIGHTY PESOS (₱280.00) per square meter, translating into a total land purchase value of THIRTY NINE MILLION TWO HUNDRED EIGHT THOUSAND AND ONE HUNDRED TWENTY PESOS (₱39,208,120.00).

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<sup>1</sup> *Rollo* (G.R. No. 177855), pp. 360-361.

<sup>2</sup> *Id.* at 427-430.

PRIMEX claimed that from the time of the execution of the DCS with the defendants-appellees, the company had dutifully complied with all its monetary obligations under the said contract and was again ready to pay another ₱2,000,000.00 upon presentation by the defendants-appellees, among others, of a valid certificate of title in the name of one or all of the vendors as sanctioned under paragraph II(d) of the DCS.

However, instead of delivering a valid title to PRIMEX, the defendants-appellees delivered to the former Transfer Certificate of Title **[TCT] No. 196256** of the Register of Deeds of Rizal. The problem with this certificate according to PRIMEX was that while it was indeed registered under the name of one of the vendors – Marcelino Lopez, among several others, the title was nonetheless derived from Original Certificate of Title **[OCT] No. 537**, which had been declared by the Supreme Court in G.R. No. 90380 dated 13 September 1990 as null and void together with all the other TCTs emanating from the said OCT.

Consequently, PRIMEX refused to accept delivery of **[TCT] No. 196256** as a valid and sufficient compliance with the terms of the DCS which would warrant the release of another P2,000,000.00 in accordance with the schedule of payments stipulated by the parties in their written covenant.

Despite its failure to deliver a valid title to PRIMEX, the latter averred that the defendants-appellees in their letter dated 06 March 1991, as well as verbal statements, threatened to sell or mortgage the subject property to other parties on account of PRIMEX's ostensible refusal to pay part of the purchase price as scheduled.

Hence, PRIMEX's a complaint for specific performance and preliminary injunction.

On 15 May 1991, instead of filling an answer, defendants-appellees filed a Motion to Dismiss PRIMEX's complaint on the ground of improper venue and *litis pendencia*. As it turned out, the defendants-appellees had on 18 April 1991 earlier filed a complaint for Rescission of Conditional Sale and Damages against PRIMEX. The motion to dismiss was, however, subsequently denied by the trial court on 09 December 1991.

Defendants-appellees thereafter filed their Answer with Compulsory Counterclaim on 07 February 1992.

Defendants-appellees countered that they have fully complied with paragraph II (d) of the DCS. That contrary to PRIMEX's allegations, it was actually the latter who violated the terms of the DCS by obstinately refusing to pay the amount of one (1) million pesos pursuant to paragraph II (b) of the DCS despite fulfillment of the defendants-appellees of the conditions thereof. The defendants-appellees aver that PRIMEX's concern over the validity of **TCT No. 196256** was merely an imagined defect and a deliberate ploy to delay payments.

As compulsory counterclaim, the defendants-appellees on the basis of PRIMEX's allegedly serious and wanton breach of the terms of the DCS, sought for the rescission of the contract. The defendants-appellees also asked for damages and the dismissal of PRIMEX's complaint.

Meanwhile, during the pendency of the afore-mentioned case, the defendants-appellees delivered to PRIMEX **TCT No. 208538**. This certificate of title now contained the exact portion and area of the subject property sold to PRIMEX, and had already been allegedly acceptable to the latter, so much so that on 30 March 1992, the parties finally executed a Deed of Absolute Sale over the piece of property.

The defendants-appellees further acknowledged that in the interim, and as of 07 March 1993, PRIMEX already released several payments amounting to ₱24,892,805.85 for the subject property, excluding a separate ₱4,150,000.00 loan covered by a real estate mortgage it extended to the defendants-appellee, Rogelio Amurao for the purpose of funding additional expenses incurred in relation to the fulfillment of the defendants-appellees obligations under the DCS.

In light of these developments, defendants-appellees on 06 June 1993 again asked the court for the dismissal of the case.

On 14 June 1993, PRIMEX filed an Opposition to the afore-stated motion to dismiss and claimed that **TCT No. 208358** submitted by the defendants-appellees was insufficient to comply with their obligations considering that there were still pending claims against the defendants-appellees and the subject property.

In its Supplemental Opposition dated 18 February 1994, PRIMEX emphasized that despite the delivery of **TCT No. 208358**, and its subsequent transfer in the name of two of the defendants-appellees, Rogelio Amurao and Sergio Angeles under **TCT No. 216875**, which in turn had been thereafter successively and finally transferred in the name of PRIMEX under new **TCT No. 216876**, still, the defendants-appellees failed to comply with their obligation to deliver the title to the property free from any lien and encumbrance.

As a matter of fact, PRIMEX divulged that there were still two (2) pending cases involving the subject property – one before the Court of Appeals which arose from Civil Case No. 677-A in the Regional Trial Court of Antipolo, Rizal, and another one with the Bureau of Lands docketed as PLAN H-138612. In fact, the *lis pendens* evidencing the pendency of the court case was carried over to **TCT No. 216876** now under PRIMEX's name. The inscription of *lis pendens* had been annotated on **TCT No. 196256** (the precursor of PRIMEX's TCT No. 216876) as early as 08 February 1992.

On 17 May 1995, the trial court declared PRIMEX non-suited for failing to appear during the scheduled pre-trial hearing on even date. The defendants-appellees were therefore allowed to present their evidence *ex parte*.

On 11 August 1995, the trial court rendered a Decision in favor of the defendants-appellees and ordered PRIMEX to pay the balance of the purchase price of the subject property, plus interests, damages and costs of suit.

Aggrieved by the decision, PRIMEX timely appealed to the Court of Appeals.

On 08 April 1999, this Court through its then Special Sixth Division promulgated a Decision setting aside, among others, the trial court's appealed decision dated 11 August 1995, and remanding the case for trial *de novo*.

After trial, the court *a quo* rendered anew a decision in favor of the herein defendants-appellees, which in gist, dismissed the herein plaintiff-appellant's complaint, declared the parties' Deed of Conditional Sale and Deed of Sale covering the subject property rescinded, and ordered the mutual restitution between the parties and the payment of damages and interests to the winning party.<sup>3</sup>

After the Regional Trial Court (RTC) rendered judgment on January 30, 2004,<sup>4</sup> the petitioners as the plaintiffs filed a *Motion for Execution of Judgment Pending Appeal on Possession and Compensatory Damages*.<sup>5</sup> The RTC granted their motion through the special order dated March 15, 2004.<sup>6</sup>

Aggrieved, the respondents assailed the special order in the CA through a petition for *certiorari*, prohibition and *mandamus* with prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction on the ground of the RTC thereby gravely abusing its discretion amounting to lack or excess of jurisdiction (G.R. No. 163959). Nonetheless, on May 31, 2004, the CA granted the petition, and annulled the special order.<sup>7</sup>

The petitioners then brought their own petition for *certiorari* in this Court to annul the resolution issued by the CA in G.R. No. 163959.

Meanwhile, on January 23, 2007, the CA promulgated its assailed decision resolving the appeal of the judgment of the RTC in Pasig City (G.R. No. 177855) by reversing and setting aside the judgment, and ordering the respondent to pay the petitioners the full balance of the purchase price of the property with legal interest of 6% *per annum*.<sup>8</sup>

It is noted at this juncture that because the petitioners had engaged the services of two different attorneys, Atty. Sergio Angeles and Atty. Martin Pantaleon, another issue concerning the timeliness of the *Motion for*

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<sup>3</sup> Id. at 18-26.

<sup>4</sup> *Rollo* (G.R. No. 163959), pp. 88-112; penned by Judge Celso D. Laviña.

<sup>5</sup> Id. at 113-119.

<sup>6</sup> Id. at 133-140.

<sup>7</sup> Id. at 38-39.

<sup>8</sup> *Rollo* (G.R. No. 177855), pp. 88-114; penned by Associate Justice Andres B. Reyes, Jr. (now a Member of the Court), with the concurrence of Associate Justice Noel G. Tijam (now a Member of the Court) and Associate Justice Sesinando E. Villon.

*Reconsideration* filed by the petitioners arose. Atty. Pantaleon received a copy of the CA decision in G.R. No. 177855 on January 30, 2007, while Atty. Angeles received it on February 23, 2007. Atty. Pantaleon would have had until February 14, 2007 within which to file the petitioners' *Motion for Reconsideration* but failed to do so. On his part, Atty. Angeles had until March 10, 2007, and filed a *Motion for Reconsideration* on March 6, 2007.

The CA denied the *Motion for Reconsideration* for having been filed out of time, and declared its decision dated January 23, 2007 final and executory as of February 14, 2007.<sup>9</sup>

The respondent moved to declare the decision of January 23, 2007 as final and executory, and to remand the case to the RTC for execution.

The petitioners appealed to the Court for the review of the adverse decision dated January 23, 2007. In its resolution promulgated on April 16, 2008, the Court gave due course to the appeal, and required the parties to submit their memoranda.

On February 21, 2012, the parties submitted the *Compromise Agreement with Joint Motion to Dismiss and Withdrawal of Petition*.<sup>10</sup>

On March 7, 2012, the Court issued the resolution being challenged by the heirs of the late Marcelino Lopez: (1) noting the *Compromise Agreement with Joint Motion to Dismiss and Withdrawal of Petition*; (2) granting the *Joint Motion to Dismiss and Withdrawal of Petition*; and (3) denying the petitions for review on *certiorari* on the ground of mootness.

Thereafter, the heirs of Marcelino Lopez filed their oppositions arguing that Atty. Angeles no longer had the authority to enter into and submit the *Compromise Agreement* because the special power of attorney in his favor had ceased to have force and effect upon the death of Marcelino Lopez.<sup>11</sup>

## **Ruling of the Court**

### **1.**

#### **The authority of Atty. Angeles was terminated upon the death of Marcelino Lopez**

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<sup>9</sup> Id. at 116-124.

<sup>10</sup> *Rollo* (G.R. No. 163959), pp. 294-297.

<sup>11</sup> *Rollo* (G.R. No. 177855), pp. 362-365.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the consent or authority of the latter.<sup>12</sup> For a contract of agency to exist, therefore, the following requisites must concur, namely: (1) there must be consent coming from persons or entities having the juridical capacity and capacity to act to enter into such contract; (2) there must exist an object in the form of services to be undertaken by the agent in favor of the principal; and (3) there must be a cause or consideration for the agency.<sup>13</sup>

One of the modes of extinguishing a contract of agency is by the death of either the principal or the agent.<sup>14</sup> In *Rallos v. Felix Go Chan & Sons Realty Corporation*,<sup>15</sup> the Court declared that because death of the principal extinguished the agency, it should follow *a fortiori* that any act of the agent *after* the death of his principal should be held *void ab initio* unless the act fell under the exceptions established under Article 1930<sup>16</sup> and Article 1931<sup>17</sup> of the *Civil Code*. The exceptions should be strictly construed. In other words, the general rule is that the death of the principal or, by analogy, the agent extinguishes the contract of agency, unless any of the circumstances provided for under Article 1930 or Article 1931 obtains; in which case, notwithstanding the death of either principal or agent, the contract of agency continues to exist.

Atty. Angeles asserted that he had been authorized by the Lopezes to enter into the *Compromise Agreement*; and that his authority had formed part of the original pre-trial records of the RTC.

Marcelino Lopez died on December 3, 2009, as borne out by the Certificate of Death<sup>18</sup> submitted by his heirs. As such, the *Compromise Agreement*, which was filed on February 2, 2012, was entered into more than two years after the death of Marcelino Lopez. Considering that Atty. Angeles had ceased to be the agent upon the death of Marcelino Lopez, Atty.

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<sup>12</sup> Article 1868, *Civil Code*.

<sup>13</sup> Vitug, *Civil Law*, Vol. IV, Rex Printing Co., Inc., Quezon City, 2006, pp. 182-184.

<sup>14</sup> Article 1919 of the *Civil Code* provides:

Art. 1919. Agency is extinguished:

(1) By its revocation;

(2) By the withdrawal of the agent;

**(3) By the death, civil interdiction, insanity or insolvency of the principal or of the agent;**

(4) By the dissolution of the firm or corporation which entrusted or accepted the agency;

(5) By the accomplishment of the object or purpose of the agency;

(6) By the expiration of the period for which the agency was constituted. (1732a)

<sup>15</sup> G.R. No. L-24332, January 31, 1978, 81 SCRA 251.

<sup>16</sup> Art. 1930. The agency shall remain in full force and effect even after the death of the principal, if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor. (n)

<sup>17</sup> Art. 1931. Anything done by the agent, without knowledge of the death of the principal or of any other cause which extinguishes the agency, is valid and shall be fully effective with respect to third persons who may have contracted with him in good faith. (1738).

<sup>18</sup> *Rollo* (G.R. No. 177855), p. 368.

Angeles' execution and submission of the *Compromise Agreement* in behalf of the Lopezes by virtue of the special power of attorney executed in his favor by Marcelino Lopez were void *ab initio* and of no effect. The special power of attorney executed by Marcelino Lopez in favor of Atty. Angeles had by then become *functus officio*. For the same reason, Atty. Angeles had no authority to withdraw the petition for review on *certiorari* as far as the interest in the suit of the now-deceased principal and his successors-in-interest was concerned.

The want of authority in favor of Atty. Angeles was aggravated by the fact that he did not disclose the death of the late Marcelino Lopez to the Court. His omission reflected the height of unprofessionalism on his part, for it engendered the suspicion that he thereby tried to pass off the *Compromise Agreement* as genuine and valid despite his authority under the special power of attorney having terminated for all legal purposes.

Accordingly, the March 7, 2012 resolution granting the *Joint Motion to Dismiss and Withdrawal of Petition* is set aside, and, consequently, the appeal of the petitioners is reinstated.

## 2.

### **The CA did not err in declaring its decision final and executory on the ground of non-appeal**

By their petition for review on *certiorari* dated June 25, 2007,<sup>19</sup> the Lopezes seek the review and reversal of the decision of the CA promulgated on January 23, 2007 in CA-G.R. CV No. 83159, and the nullification of the resolution promulgated on May 17, 2007.<sup>20</sup>

We note that the CA thereby reversed and set aside the judgment of the RTC rescinding the parties' *Deed of Conditional Sale* and *Deed of Sale* covering the property *in litis* and ordering mutual restitution between the parties; and instead directed Primex to pay the petitioners the full balance of the purchase price of the property plus legal interest of 6% *per annum*.

In the assailed resolution, the CA denied the petitioners' *Motion for Reconsideration* for having been filed out of time; and declared its decision dated January 23, 2007 final and executory as of February 14, 2007.

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<sup>19</sup> *Rollo* (G.R. No. 177855), pp. 56-84.

<sup>20</sup> *Id.* at 116-124.

The petitioners submit that the CA thereby erred considering that Atty. Angeles had until March 10, 2007 within which to file the *Motion for Reconsideration*, which he did on March 6, 2007.

We find and hold that the CA correctly acted in issuing the assailed decision and resolution.

Section 2, Rule 13 of the *Rules of Court* expressly states that if a party has appeared by counsel, service shall be made upon his counsel or one of them. Considering that there is no question that the petitioners had engaged the services of two counsels, namely: Atty. Angeles and Atty. Pantaleon, notice to either of them was effective notice to the petitioners.<sup>21</sup> Considering that there was no notice of withdrawal or substitution of counsel shown to have been made, the notice of the decision to either Atty. Angeles and Atty. Pantaleon was, for all purposes, notice to the petitioners.<sup>22</sup> This is because the CA could not be expected to itself ascertain whether the counsel of record had been changed.<sup>23</sup>

Atty. Pantaleon received the CA's decision on January 30, 2007, while Atty. Angeles received it on February 23, 2007. The service of the decision on Atty. Pantaleon started the running of the period for seeking the reconsideration of the decision or for perfecting an appeal notwithstanding that Atty. Angeles had yet to receive the copy of the decision. Under the circumstances, the petitioners effectively had until February 14, 2007 within which to seek the reconsideration or to perfect their appeal, but they failed to do either. They appear to have filed their *Motion for Reconsideration* only on March 6, 2007, which was too late for being already 35 days from notice of the decision.

It is axiomatic that a party who fails to assail an adverse decision through the proper remedy within the period prescribed by law for the purpose loses the right to do so; hence, the decision becomes final and binding as to such party.<sup>24</sup> Similarly, where the motion for reconsideration is filed out of time, the order or decision sought to be thereby reconsidered

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<sup>21</sup> *Damasco v. Arrieta*, No. L-18879, January 31, 1963, 7 SCRA 224, 226.

<sup>22</sup> *Arambulo v. Court of Appeals*, G.R. No. 105818, September 17, 1993, 226 SCRA 589, 597; *Rinconada Telephone Company, Inc. v. Buenviaje*, G.R. Nos. 49241-42, April 27, 1990, 184 SCRA 701, 704-705; *UERM Employees Union-FFW v. Minister of Labor and Employment*, G.R. No. 75838, August 21, 1989, 177 SCRA 165, 177; *Tumbagahan v. Court of Appeals*, G.R. No. L-32684, September 20, 1988, 165 SCRA 485, 488-489; *Lee v. Romillo, Jr.*, G.R. No. L-60937, May 28, 1988, 161 SCRA 589, 599-600.

<sup>23</sup> *Lee v. Romillo, Jr.*, G.R. No. L-60937, May 28, 1988, 161 SCRA 589, 600.

<sup>24</sup> *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 650, citing *Ocampo v. Court of Appeals (Former Second Division)*, G.R. No. 150334, March 20, 2009, 582 SCRA 43, 49.

attains finality.<sup>25</sup> The failure of the petitioners' counsel to timely file the *Motion for Reconsideration* or to appeal rendered the judgment of the CA final and executory.

We reiterate that the right to appeal is neither a natural nor a constitutional right, but is a mere statutory right. The party seeking to avail himself of the right to appeal must comply with the procedures and rules governing appeals set by law; otherwise, the right may be lost or squandered.<sup>26</sup> In other words, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional, and the failure to perfect the same renders the judgment final and executory.<sup>27</sup> Execution of the judgment then follows, for just as a losing party has the privilege to appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.<sup>28</sup>

In view of the foregoing, the CA did not err in denying the *Motion for Reconsideration* and in declaring its decision as final and executory.

**WHEREFORE, the COURT:**

- (1) **DECLARES** the *Compromise Agreement* **VOID**;
- (2) **SETS ASIDE** the resolution granting the *Joint Motion to Dismiss and Withdrawal of Petition* promulgated on March 7, 2012; and
- (3) **AFFIRMS** the decision of the Court of Appeals promulgated on January 23, 2007.

The petitioners shall pay the costs of suit.

**SO ORDERED.**

  
LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**

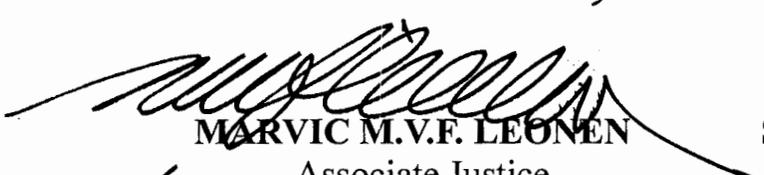
<sup>25</sup> *Pangasinan Employees, Laborers and Tenants Assn. and Tuliao v. Hon. Martinez, etc. et al.*, 108 Phil 89, 92 (1960).

<sup>26</sup> *Lebin v. Mirasol*, G.R. No. 164255, September 7, 2011, 657 SCRA 35, 44.

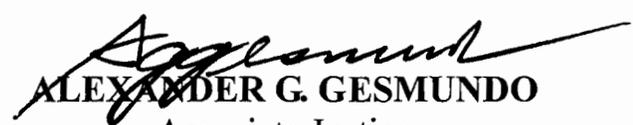
<sup>27</sup> *Prieto v. Court of Appeals*, G.R. No. 158597, June 18, 2012, 673 SCRA 371, 377.

<sup>28</sup> *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, July 23, 2008, 559 SCRA 550, 563.

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

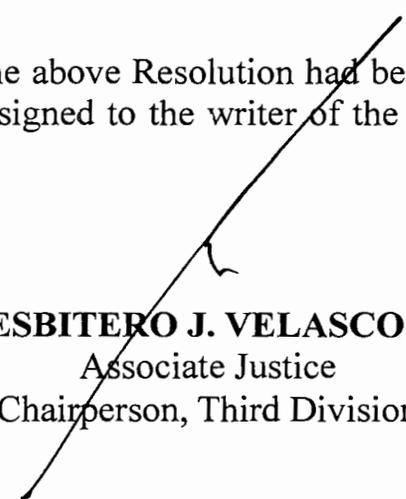
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

(On Leave)  
**SAMUEL R. MARTIRES**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution 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 Resolution 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