



RECEIVED
NOV 29 2019

BY: XSG
TIME: 9:56

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PAZ MANDIN-TROTIN,
Petitioner,

G.R. No. 212840

Present:

- versus -

CARPIO, J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
ZALAMEDA, JJ.

FRANCISCO A. BONGO, SABINA
BONGO-BUNTAG and ARTEMIA
BONGO-LIQUIT,
Respondents.

Promulgated:

28 AUG 2019

X-----X

RESOLUTION

CAGUIOA, J.:

Before the Court is the petition for review on *certiorari*¹ (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner Paz Mandin-Trotin (intervenor Trotin) assailing the Decision² dated April 10, 2014 (CA Decision) of the Court of Appeals³ (CA) in CA-G.R. CV No. 04028, which dismissed the appeal filed by plaintiffs-appellants Heirs of Diosdado Bongo⁴ and affirmed the Decision⁵ dated February 28, 2011 (RTC Decision) of the Regional Trial Court, Branch 49, Tagbilaran City (RTC) in Civil Case No. 6311. The RTC Decision dismissed the complaint for lack of cause of action. The CA Decision also denied the intervention filed by intervenor Trotin.

The Facts and Antecedent Proceedings

The CA Decision narrates the following antecedent facts:

* Also appears as "Ma. Paz Mandin-Trotin" in some parts of the records.
¹ *Rollo*, pp. 26-49, excluding Annexes.
² *Id.* at 172-187. Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez concurring.
³ Nineteenth (19th) Division, Cebu City.
⁴ Flora Bongo-Arbillera, Sofronio Bongo, Celiana Bongo-Buntag, Vitaliano Bongo, Sebastian Bongo, Aurora Bongo, Bonifacia represented by Sabino Bongo, Eleuterio Iman for himself and as guardian-ad-litem of minor Raul Bongo.
⁵ *Rollo*, pp. 116-123. Penned by Presiding Judge Fernando G. Fuentes III.

The instant controversy involves a parcel of land x x x Lot No. 3982 situated in Danao, Panglao, Bohol, containing an area of 32,668 square meters, more or less. Lot No. 3982 is covered by Original Certificate of Title (OCT) No. 64051 registered in the name of Candido Bongo [(Candido)] and issued on November 27, 1990. Candido Bongo is the husband and father of the defendants-appellees [Irene Arbulo vda. de Bongo, Francisco Bongo, Sabina Bongo-Buntag and Artemia Bongo-Liquit (Heirs of Candido Bongo)]. Candido is also the only brother of Diosdado Bongo [(Diosdado)], the father of the plaintiff-appellants [Flora Bongo-Arbillera, Sofronio Bongo, Celiana Bongo-Buntag, Vitaliano Bongo, Sebastian Bongo, Aurora Bongo, Bonifacia represented by Sabino Bongo, Eleuterio Iman for himself and as guardian-ad-litem of minor Raul Bongo (Heirs of Diosdado Bongo)].

The [Heirs of Diosdado Bongo's] claim over the subject land is founded on the alleged acquisition of the land by their father Diosdado from its previous owner, Ancelma Bongcas, by virtue of the Escritura de Venta executed on March 9, 1929. According to the [Heirs of Diosdado Bongo], after Diosdado purchased the land, he took possession of the same and cultivated it with the help of Candido. When Candido got married to x x x Irene Arbulo, Diosdado allowed Candido to construct a house on the land and till the same while giving a share of the produce to Diosdado. The [Heirs of Candido Bongo] likewise constructed their own houses on the land when they got married. When Diosdado died and [his heirs] succeeded him, Candido continued to give them a share of the harvests. However, in 1997, the [Heirs of Diosdado Bongo] learned that Candido caused the Free Patent Application over Lot No. 3982 and the subsequent registration and issuance of title in his favor sometime in 1990. Hence on September 5, 1997, the [Heirs of Diosdado Bongo] caused the filing of an adverse claim.

Subsequently, on March 10, 1999, the [Heirs of Diosdado Bongo] filed an action seeking the annulment of [the Heirs of Candido Bongo's] title, recovery of ownership and possession of Lot No. 3982, and damages on the contention that the application of Candido for a free patent was surreptitious and spurious. Hence, the subsequent registration of the subject land before the Register of Deeds of Bohol is illegal and the issuance of title is baseless and therefore, null and void ab initio.

[The Heirs of Candido Bongo] traversed the allegations of [the Heirs of Diosdado Bongo] contending that Candido applied for a Free Patent over Lot No. 3982 in good faith and in the belief that it is his own exclusive property. According to [them], their father Candido went to the US to work leaving behind his father and brother Diosdado. While in the US, he sent money back home, including money to purchase lands in Panglao. When Candido returned in 1956, he occupied the disputed land, built his house thereon, and took possession of the same in the concept of an owner for a period of more than 30 years until his death. That there is no truth to the allegation that Candido worked on the disputed land and gave shares of the harvest to Diosdado because long before the death of Diosdado, he and Candido had agreed that Lot No. 3982 would belong to Candido while Diosdado would be given other parcels of land.

[The Heirs of Candido Bongo] further contended that with the issuance of the title over Lot No. 3982 in favor of Candido, there was no longer any question as to the ownership of the property. Moreover, [the

Heirs of Diosdado Bongo's] claim over the disputed land had long prescribed and that they are already estopped by laches.

Subsequently, on March 14, 2000, intervenor/cross-claimant Paz Mandin-Trotin filed an Urgent Motion for Intervention. [Intervenor] Trotin alleged that x x x Francisco Bongo, Sabina Bongo-Buntag and Artemia Bongo-Liquit [(herein respondents)] executed in her favor a Deed of Conditional Sale⁶ on August 21, 1997 over a portion of one hectare of Lot No. 3982 and pursuant thereof she had already paid the sum of P100,000.00 [(out of the P1,000,000.00 consideration, with the balance of P900,000.00 "to be paid not later than two (2) months and on or before October 31, 1997")⁷]. [Intervenor Trotin alleged in the Answer in Intervention with Cross-Claim Against Three Original Defendants⁸ dated March 13, 2000 that herein respondents delivered such portion to her and she was about to develop the 1-hectare portion, when one Celiana Buntag who asserted to be a direct heir of Diosdado claimed ownership and possession of the land in dispute.⁹] However, after learning that the [H]eirs of Diosdado Bongo x x x filed an Affidavit of Adverse Claim over Lot No. 3982, [intervenor] Trotin suspended payment of the balance of the stipulated price in the Deed of Conditional Sale to protect her interests. [Intervenor] Trotin prayed that judgment be rendered in favor of the [Heirs of Candido Bongo] and as a consequence, the [Heirs of Candido Bongo] be ordered to execute and deliver to her the one-hectare portion of Lot No. 3982 upon full payment of the purchase price as stipulated. [The Urgent Motion for Intervention was granted in the RTC's Order¹⁰ dated March 21, 2000.]

On February 28, 2011, the [RTC] rendered [a Decision] in favor of [the Heirs of Candido Bongo]. Citing jurisprudence, the [RTC] held that an Original Certificate of Title issued on the strength of the Free Patent being in the nature of a certificate issued in a judicial proceeding becomes indefeasible and incontrovertible upon the expiration of one year from the date of issuance thereof. Verily, the complaint filed by [the Heirs of Diosdado Bongo] nine years from the issuance of title over Lot No. [3982] in favor of Candido was out of time. Hence, the [Heirs of Diosdado Bongo's] claim of possession and ownership over Lot No. 3982 has already been barred by prescription and the Statute of Limitations.

The [RTC] did not give weight to the Escritura de Venta ruling that the ancient document not being recorded and registered in the Registry of Property, the same is only valid between and among parties to the instrument and does not bind the [Heirs of Candido Bongo] or third parties who are not privy to the execution of the document which happened more than seventy years ago. Moreover, the area mentioned in the Escritura de Venta which is 7,080 square meters does not coincide to the area of Lot No. 3982 which is more or less 32,668 square meters.

Lastly, as to the matter raised by the intervenor and cross-claimant [Trotin], the [RTC] left the settlement of the same to [intervenor] Trotin and the [Heirs of Candido Bongo], who, according to the [RTC], have appeared to join their actions together.

⁶ Id. at 85-86.

⁷ Id. at 85.

⁸ Id. at 78-82.

⁹ Id. at 79-80.

¹⁰ Id. at 87.

Aggrieved, the [Heirs of Diosdado Bongo appealed to the CA].¹¹

The Ruling of the CA

The CA in its Decision¹² dated April 10, 2014 dismissed the appeal and affirmed the RTC Decision.

The CA noted that the Heirs of Diosdado Bongo alleged that on March 9, 1929, their predecessor Diosdado purchased from one Ancelma Bongcas (Bongcas) by virtue of a document denominated as *Escritura de Venta* five parcels of land situated in Danao and Tawala, Panglao, Bohol and covered by tax declarations (TD), which included TD No. 11900.¹³ According to them, when Candido married Irene Arbulo, he constructed his house on the land covered by TD No. 11900, with the consent of Diosdado. Thereafter, TD No. 11900 was cancelled by TD No. 14356, and when the cadastral survey of Panglao, Bohol was conducted, the land covered by TD No. 14356 was surveyed and identified as Cadastral Lot No. 3982, CAD 705-D, Case No. 5, which is referred to simply as Lot No. 3982.¹⁴

Given such observations, the CA agreed with the RTC that the incompatibility of the areas appearing in the *Escritura de Venta* of 7,080 square meters and in Original Certificate of Title (OCT) No. 64051, which covers Lot No. 3982, of 32,668 square meters, is too great not to raise a serious doubt as to the real identity of the land claimed by the Heirs of Diosdado Bongo and substantially negates their claim of ownership over Lot No. 3982 altogether.¹⁵

The CA was not persuaded by the contention of the Heirs of Diosdado Bongo that they are merely seeking a reconveyance of a portion of Lot No. 3982 because the same is inconsistent with their claim that Lot No. 3982 is the same land covered by TD No. 11900, which their predecessor Diosdado purportedly purchased from Bongcas.¹⁶ Also, the CA refused to entertain the said contention on appeal because it was a newly adopted argument, which was not brought to the attention of the lower court and any issue raised for the first time on appeal is barred by estoppel.¹⁷

Further, the CA found that the Heirs of Diosdado Bongo have not proven their title to Lot No. 3982 on the ground that the *Escritura de Venta* appeared to be wanting in evidentiary weight.¹⁸ Citing the pertinent provisions¹⁹ of Presidential Decree No. 1529, the said document is not valid, except as between the parties thereto, unless it is recorded in the office of the

¹¹ Id. at 173 to 175-A.

¹² Id. at 172-187.

¹³ Id. at 181.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 181-182.

¹⁷ Id. at 182.

¹⁸ Id.

¹⁹ Sections 113 and 51.

Register of Deeds for the province or city where the land lies since the act of registration is the operative act to convey or affect the land insofar as third persons are concerned.²⁰ The CA likewise found suspect Diosdado's, or even his heirs', lack of action to have the conveyance recorded within the period of 61 years from the time of execution of the *Escritura de Venta* in 1929 up to the time of the issuance of the OCT in the name of Candido in 1990.²¹ The CA concluded that in the face of a Torrens title which carries with it the presumption to have been regularly issued by the government, the evidence presented by the Heirs of Diosdado Bongo was clearly insufficient.²²

Anent the claim of intervenor Trotin, the CA stated that a prior determination as to whether the Deed of Conditional Sale (DCS) that she and the Heirs of Candido Bongo executed was a contract of sale or a contract to sell was necessary.²³ After citing the pertinent provisions of the DCS, the CA determined that it was only a contract to sell because based on the stipulations therein, the vendors reserved title to the subject property until full payment of the purchase price.²⁴

The CA ruled that intervenor Trotin could not anymore compel the Heirs of Candido Bongo to fulfill their contracted obligation because her failure to pay the balance of the purchase price amounting to ₱900,000.00 "not later than two (2) months and on or before October 31, 1997" relieved the vendors of any obligation to hold the property in reserve for her, there being no more contract to speak of.²⁵

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision of the Regional Trial Court, Branch 49, Tagbilaran City, Bohol dated February 28, 2011 is hereby AFFIRMED.

SO ORDERED.²⁶

Without filing a motion for reconsideration, intervenor Trotin filed the instant Rule 45 Petition against Francisco Bongo, Sabina Bongo-Buntag and Artemia Bongo-Liquit²⁷ (respondents). Respondents filed their Comments to the Petition for Review on Certiorari²⁸ dated July 10, 2015. Intervenor Trotin filed her Rejoinder²⁹ dated July 21, 2015.

²⁰ *Rollo*, p. 182.

²¹ *Id.* at 183.

²² *Id.*

²³ *Id.* at 184.

²⁴ *Id.* at 184-185.

²⁵ *Id.* at 186.

²⁶ *Id.*

²⁷ Irene Arbulo vda. de Bongo is not included as respondent and was not impleaded by intervenor Trotin as cross-defendant in her Answer in Intervention with Cross-Claim Against Three Original Defendants (Answer in Intervention) dated March 13, 2000. *Id.* at 78-82.

²⁸ *Rollo*, pp. 239-242.

²⁹ *Id.* at 244-250.



The Issues

The Petition raises the following issues:

1. whether the RTC erred in its Decision when it left the settlement of the matter between intervenor Trotin and respondents since, in the course of the proceedings, they had appeared to have joined their actions together; and
2. whether the CA erred when it ruled that intervenor Trotin, having failed to pay the balance of the purchase price within the period provided in the DCS, relieved respondents of any obligation to hold the property subject of the DCS in reserve for her because there was no more contract to speak of.³⁰

The Court's Ruling

On the first issue, intervenor Trotin argues that the RTC "should have decided to grant [her,] the claimant[,] such relief as her cross-claim may warrant, since it did not also require the claimant to submit evidence to the clerk of court"³¹ and not left the settlement of the cross-claim to be reached between her and respondents.³²

Intervenor Trotin invokes Section 3, Rule 9 of the Rules, which provides:

SEC. 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court. (1a, R18)

x x x x

Since respondents failed to file any pleading relative to the cross-claim of intervenor Trotin, the RTC granted her motion to declare them in default as to her cross-claim raised in her Answer in Intervention with Cross-Claim Against Three Original Defendants³³ dated March 13, 2000 (Answer in Intervention). Thus, according to her, the RTC should have granted such relief as her cross-claim might have warranted.³⁴

³⁰ See id. at 39.

³¹ Id. 40. Emphasis omitted.

³² Id.

³³ Id. at 78-82.

³⁴ Id. at 39-40.

The first issue is, as evident, already superfluous in view of the fact that the CA has already ruled on the merits of intervenor Trotin's cross-claim against respondents.

Regarding the second issue, intervenor Trotin states that the CA "failed to consider that [respondents] were already declared in **default**, and they designated herein counsel [(Atty. Oscar B. Glovasa, counsel for intervenor Trotin)], as their **additional counsel**, while the instant case was [being] tried by [the RTC] wherein herein counsel had already informed [Intervenor Trotin] that she would no longer testify in [the RTC]."³⁵ She then proceeds with these allegations:

The **Intervenor**, if had she been required by [the RTC] to submit evidence to the Clerk of Court, **would have testified on all and every relevant facts as stated in her Affidavit of Merit**, herewith quoted and respectfully prayed for to be incorporated in this Petition x x x:

"x x x x

AFFIDAVIT OF MERIT

I, **PAZ MANDIN-TROTIN**, x x x, after having been sworn in accordance with law, hereby depose and say that:

x x x x

5. x x x I was duly informed that the Heirs of Diosdado Bongo (brother of Candido Bongo) filed with the Register of Deeds of Bohol an **Adverse Claim** over the lot covered by OCT No. 64051 on **September 5, 1997** x x x, thus, I immediately called the three (3) Vendors – Francisco, Sabina and Artemia, as well as their mother, Irene Arbulo vda. de Bongo to an urgent meeting where I informed them of such Adverse Claim;

6. After a thorough discussion of such Adverse Claim and the balance of P900,000.00 still payable within two (2) months from execution of the Deed [(DCS)], the three (3) Vendors-Heirs of Candido Bongo, with the conformity of their mother, proposed to go on with the Sale of the one-hectare lot/portion **without the two (2) months limit anymore to pay the balance, but for them to receive any sum as instalment payments, on account of their family necessities, and the medical and other needs of their mother, Irene, who was sickly, about 75 years old already, with no visible means of livelihood and living with Francisco A. Bongo, and they would execute a final Deed of Sale when such adverse claim would be resolved, and I, Paz Mandin-Trotin would pay the remaining balance, and thereafter, I agreed to those proposals;**

³⁵ Id. at 40.



7. Thereafter, I gave them various amounts as their needs arose to the three (3) vendors, and after they and their mother were impleaded as defendants in **Civil Case No. 6311** which was filed on **March 10, 1999**, the "new" defendants requested and were given by me a bigger sum for attorney's fees and appearance fees for their legal counsel, even without any receipt, they being close friends and neighbors of mine;

8. I personally informed Irene Arbulo vda. de Bongo and her three (3) children that I filed on **March 14, 2000** an **Urgent Motion for Intervention with the Answer in Intervention with Cross-Claim** against the three (3) defendants-vendors in Civil Case No. 64051 x x x;

9. With the knowledge of Francisco A. Bongo, Sabina Bongo-Buntag requested me in **June 2000** the sum of P25,000.00, and later, Artemia Bongo-Liquit also requested me on **February 2001** the sum of P50,000.00; respectively, I, Paz Mandin-Trotin, gave them those amounts, and both of them, Sabina and Artemia, signed with me, the written **Agreements with Acknowledgement of Receipt of Additional Payment**, the certified true copies of the only original documents are in my possession, are herewith attached as Annexes "5" and "6" x x x:

x x x x

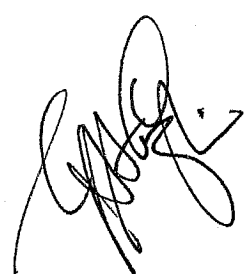
10. After diligent search last month, **June 2014**, I found these two (2) **Agreements**, each signed by Sabina Bongo-Buntag and Artemia Bongo-Liquit, which were inserted among the voluminous documents in my own personal files and the files of the Bohol Divers Resort, and I turned over these Agreements to my legal counsel;

11. The defendants/cross defendants **promised to me that they would not contest my Cross-Claim**, since we have already agreed to go on with the Sale without the two-months limit to pay the balance and to execute a final Deed of Sale after the civil case is terminated x x x.

x x x x

15. x x x I am now appealing this matter to the x x x Supreme Court, in view [of] the afore-stated **AGREEMENTS** with the three (3) private defendants, to go on with our sale without the two (2) months limit anymore, and to execute the final Deed of Sale after the civil case is terminated in favor of the Vendors, as manifested in my approval to their subsequent requests for partial payments on that sale, and their stand not to contest my Cross-Claim against them, and that [the RTC] declared the three (3) private defendants/cross-defendants in **DEFAULT** as to the Cross-Claim.

x x x x



*IN WITNESS WHEREOF, I hereunto set my hand
this 8th day of July, 2014 at Tagbilaran City, Bohol,
Philippines.*

*(SGD) PAZ MANDIN-TROTIN
x x x*³⁶

Intervenor Trotin further states that while the Court is not a trier of facts, the relevant facts and documents stated in her Affidavit of Merit are most determinative on the contractual relations between her and respondents.³⁷ Thus, she “commends” to the Court the application of Article 1291 of the Civil Code, which provides that obligations may be modified by changing their principal conditions, and by virtue of the subsequent Agreements executed by Sabina Bongo-Buntag and Artemia Bongo-Liquit separately with intervenor Trotin, the parties clearly manifested their novation of the DCS wherein the condition to pay the balance of ₱900,000.00 within the two months limitation was later changed to when the Adverse Claim would be resolved.³⁸

As part of her Prayer, she seeks the remand to the RTC for the consideration and resolution of intervenor Trotin’s cross-claim by allowing her to testify on the contents of her Affidavit of Merit and other witnesses who might be presented by her.³⁹

In their Comment, respondents seek the dismissal of the Petition for lack of merit on the following grounds:

1. The Petition calls for a review of evidence and it is prayed therein that new evidence, the Affidavit of Merit, be allowed to be introduced. These are all prohibited in a Rule 45 petition for *certiorari*, which allows only questions of law.⁴⁰

2. In her Answer in Intervention, intervenor Trotin alleged that her claim was anchored on the DCS and such claim was already decided against her and to consider again the probative value of the DCS is a clear question of fact prohibited by Rule 45.⁴¹

3. Intervenor Trotin attempts to introduce new evidence, which is the Affidavit of Merit, alleging for the first time the existence of the Agreements that were allegedly executed by Sabina Bongo-Buntag in June, 2000 and Artemia Bongo-Liquit in February, 2001 wherein respondents allegedly promised to go on with the sale at the price earlier stipulated. The existence of such documents is very doubtful considering that they were purportedly

³⁶ Id. at 40-44.

³⁷ Id. at 44-45.

³⁸ Id. at 45-46.

³⁹ Id. at 46.

⁴⁰ Id. at 240.

⁴¹ Id. at 241.



executed in 2000 and 2001 while the trial of the case was on going and they are surprisingly being introduced only for the first time on appeal. Section 15, Rule 44 of the Rules prohibits the raising of new issues on appeal not raised during the trial.⁴²

4. Evidence not formally offered during the trial is a mere scrap of paper and cannot be considered for the first time on appeal.⁴³

In her Rejoinder, intervenor Trotin cites the exceptions to the rule that only questions of law may be raised in a Rule 45 *certiorari* petition, but she does not identify which exception obtains in respect of her Petition.⁴⁴ She also contends that since respondents were declared in default, the RTC should have immediately granted her relief without need of presenting evidence because the material averments in the Answer in Intervention were deemed admitted by respondents.⁴⁵

On the second issue, the CA ruled that the DCS between intervenor Trotin and respondents is a contract to sell and not a contract of sale based on prevailing jurisprudence. Citing *Heirs of Paulino Atienza v. Espidol*,⁴⁶ the CA stated that in a contract to sell, the ownership is, by agreement, retained by the seller and is not to pass to the buyer until full payment of the purchase price; the buyer's full payment of the price is a positive suspensive condition to the coming into effect of the agreement; and the title simply remains in the seller if the buyer does not comply with the condition precedent of making payment at the time specified in the contract.⁴⁷

The CA based its ruling on the provisions of the DCS. Firstly, the DCS dated August 21, 1997 provided that of the ₱1,000,000.00 consideration, ₱100,000.00 was to be paid upon the signing and execution of the contract and the balance of ₱900,000.00 "to be paid not later than two (2) months and on or before October 31, 1997".⁴⁸ Secondly, the DCS provided that a definite or absolute sale would be executed by the vendors only upon full payment of the purchase price and in case of non-payment of the purchase price or breach of any term or condition of the DCS, the latter would become automatically null and void, without need of any formality:

It is hereby agreed, covenanted and stipulated by and between the parties hereto that the VENDORS will execute and deliver to the VENDEE a definite or absolute deed of sale upon full payment by the VENDEE of the unpaid balance of the purchase price herein-above stipulated; that should the VENDEE [fail] to pay the balance when due, or otherwise fail to comply with any of the terms and conditions herein stipulated, then this Deed of Conditional [S]ale shall automatically and

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 245.

⁴⁵ Id. at 246.

⁴⁶ 642 Phil. 408, 416 (2010), cited in *Reyes v. Tuparan*, 665 Phil. 425, 443 (2011).

⁴⁷ *Rollo*, p. 185.

⁴⁸ Id. at 85.

without any fur[th]er formality, become null and void, and all sums so paid by the VENDEE by reason thereof, shall be returned by the VENDORS once the property involved be sold to any other party.⁴⁹

Lastly, the DCS provided that upon rescission, the vendee would peacefully deliver the property to the vendors:

It is also hereby agreed, covenanted and stipulated by and between the [pa]rties hereto that should the VENDORS rescind this Deed of Conditional Sale for [non-]payment of the balance, the VENDEE by these presents obligates herself to peacefully deliver the property subject of this contract to the VENDORS.⁵⁰

Rather than questioning the correctness of the CA's ruling on its finding that the DCS is a contract to sell and not a contract of sale, intervenor Trotin wants the Court to consider the "relevant facts and documents" referred to and cited in her Affidavit of Merit in support of her argument that the DCS was novated when the condition to pay the ₱900,000.00 balance within two months was changed to when the Adverse Claim of the Heirs of Diosdado Bongo would be resolved and finally to after the civil case against respondents was terminated.

Intervenor Trotin is precluded in a Rule 45 *certiorari* petition to raise factual issues. Section 1 of Rule 45 is unmistakable: "The petition x x x shall raise only questions of law, which must be distinctly set forth." For her novation theory to be sustained, the Court will have to do a factual review. While certain exceptions are allowed, intervenor Trotin unfortunately fails to cite the relevant exceptions to sustain her plea for the Court to make a factual review.

Also, her theory of novation cannot be entertained for the first time on appeal.

In her Answer in Intervention, intervenor Trotin only mentioned that: (1) respondents "had earlier executed a Deed of Conditional Sale on August 21, 1997 in [her] favor x x x, over a **one-hectare portion** of a parcel of land covered by **Original Certificate of Title No. 64051** x x x, and [she] had already paid the sum of One Hundred Thousand (P100,000.00) Pesos to [respondents];"⁵¹ and (2) she "suspended payment of the balance of the stipulated price in the Deed of Conditional Sale" when she came to know the Affidavit of Adverse Claim filed on September 5, 1997 by the Heirs of Diosdado Bongo with the Register of Deeds.⁵²

In the "Brief for Intervenor/Cross-Claimant"⁵³ dated **May 20, 2013**, intervenor Trotin only mentioned the DCS as the basis of her prayer to the

⁴⁹ Id.

⁵⁰ Id. at 85-86.

⁵¹ Id. at 79.

⁵² Id. at 80.

⁵³ Id. at 155-161.

CA to include in its judgment on appeal, the grant of the relief as prayed for in the Answer In Intervention that respondents be ordered to execute and deliver to her, a Deed of Absolute Sale over the one-hectare portion of the land covered by OCT No. 64051 “upon full payment of the purchase price as stipulated.”⁵⁴ Intervenor Trotin utterly fails to allege her novation theory and the purported facts surrounding it in her appeal Brief before the CA.

It is only in her present Petition that intervenor Trotin now claims that in **June 2000**, she and respondent Sabina Bongo-Buntag allegedly executed an unnotarized “Agreement with Acknowledgement of Receipt of Additional Payment” wherein intervenor Trotin gave to said respondent ₱25,000.00 “as additional payment to the Vendees who by their signature hereunder, hereby acknowledge receipt of such amount.”⁵⁵ Only the name of respondent Sabina Bongo-Buntag (with a signature above it) appears below together with that of intervenor Trotin and her signature over her name. She also now claims that in **February 2001**, she and respondent Artemia Bongo-Liquit allegedly executed an unnotarized “Agreement with Acknowledgement of Receipt of Additional Payment” wherein intervenor Trotin gave to said respondent ₱50,000.00 “as additional payment to the Vendors who by their signature hereunder, hereby acknowledge receipt of such amount.”⁵⁶ Only the name of respondent Artemia Bongo-Liquit (with a signature above it) appears below together with that of intervenor Trotin and her signature over her name. Both Agreements contain the following provision:

That the Vendors and the Vendee hereby agree to go on with such sale at the price earlier stipulated, and they would execute the corresponding document after the civil case [(Civil Case No. 6311)] is terminated in favor of the Vendor x x x[.]⁵⁷

Given the purported execution dates of the Agreements (June 2000 and February 2001), the “Formal Offer of Exhibits”⁵⁸ dated March 22, 2006 of the Heirs of Diosdado Bongo in relation to the “Formal Offer of Exhibits for Private Defendants [(Heirs of Candido Bongo)]”⁵⁹ dated June 11, 2009, which intervenor Trotin adopted *in toto* in her “Urgent Manifestation (Corrected)”⁶⁰ dated June 30, 2009, the RTC Decision dated February 28, 2011, the Motion for Reconsideration⁶¹ dated March 25, 2011 filed by the Heirs of Diosdado Bongo, the RTC Order⁶² dated May 16, 2011, denying the said Motion for Reconsideration, and the Notice of Appeal⁶³ dated June 22, 2011 filed by the Heirs of Diosdado Bongo, intervenor Trotin could have invoked her novation theory prior to the filing of her instant Petition dated July 8, 2014.

⁵⁴ Id. at 160.

⁵⁵ Id. at 208.

⁵⁶ Id. at 209.

⁵⁷ Id. at 208 and 209.

⁵⁸ Id. at 103-109.

⁵⁹ Id. at 110-111.

⁶⁰ Id. at 114.

⁶¹ Id. at 124-139.

⁶² Id. at 140.

⁶³ Id. at 141-142.



The Court wholly agrees with respondents' observation that the existence of such documents (the two Agreements) is very doubtful considering that they were purportedly executed in 2000 and 2001 while the trial of the case was on going, but they are surprisingly being introduced only for the first time on appeal.⁶⁴

Lastly, the Agreements cannot even qualify as newly discovered evidence.

Newly discovered evidence may be raised as a ground in a motion for new trial or reconsideration pursuant to Section 1, Rule 37 of the Rules, which provides:

SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.* – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

x x x x

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

x x x x

Section 2 of Rule 37 requires that a motion for the cause mentioned in paragraph (b) of the said Section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence. The affidavit required is an affidavit of merit which states the facts constituting the movant's good and substantial defense, which he may prove if the motion is granted.⁶⁵

The requisites for the introduction of newly discovered evidence are: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.⁶⁶ If the alleged evidence could have very well been presented during the trial with the exercise of reasonable diligence, the same could not be considered newly discovered evidence.⁶⁷

The Court finds the explanation of intervenor Trotin: "*After diligent search last month, June 2014, I found these two (2) Agreements, each*

⁶⁴ Id. at 241.

⁶⁵ See *Uy v. First Metro Integrated Steel Corporation*, 534 Phil. 839, 848 (2006).

⁶⁶ *Ybiernas v. Tanco-Gabaldon*, 665 Phil. 297, 311 (2011).

⁶⁷ Id. at 311.



signed by Sabina Bongo-Buntag and Artemia Bongo-Liquit, which were inserted among the voluminous documents in my own personal files and the files of the Bohol Divers Resort, and I turned over these Agreements to my legal counsel"⁶⁸ highly suspicious. Intervenor Trotin had all the opportunity to introduce them as evidence during the trial given her assertion that the Agreements were executed in 2000 and 2001. It is incredulous that she only remembered the Agreements when she prepared her Petition sometime in 2014, or over a decade when they were executed.

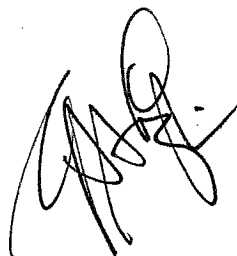
The said evidence, if indeed the Agreements were executed in 2000 and 2001, as claimed by intervenor Trotin, were available during the trial and could have been presented during that time. Therefore, the requisite that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence is wanting. The evidence that intervenor Trotin seeks to introduce at this late stage of the proceedings is NOT newly discovered evidence.

Inasmuch as intervenor Trotin does not question before the Court the legal conclusion of the CA that the DCS is a contract to sell and pursuant to its provision that in case she failed to pay the balance of the purchase price when due or to comply with any of its terms and conditions, the DCS would automatically and without further formality become null and void, the DCS became ineffective on October 31, 1997 upon the failure of intervenor Trotin to pay the balance of ₱900,000.00 to respondents. The CA's ruling on this legal matter, rightly or wrongly, has already attained finality. Consequently, intervenor Trotin should vacate the subject one-hectare portion since she no longer has any right to possess the same.

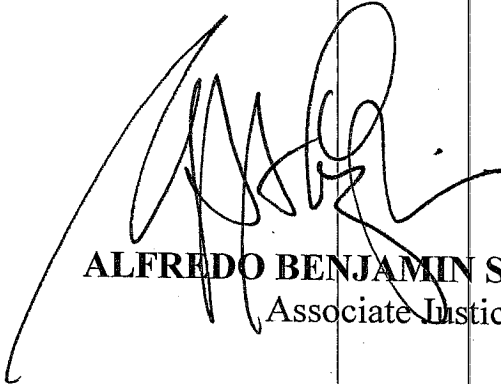
While the DCS also provides that all sums so paid by intervenor Trotin should be returned by respondents in case the DCS is rescinded for non-payment of the balance, the Court deems it just and equitable that the ₱100,000.00 which she had paid to them upon its execution be considered as the rental of the one-hectare portion subject of the DCS from October 31, 1997 to the date when she vacates the said portion, which is over a decade long.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated April 10, 2014 of the Court of Appeals in CA-G.R. CV No. 04028 and the Decision dated February 28, 2011 of the Regional Trial Court, Branch 49, Tagbilaran City, Bohol in Civil Case No. 6311 are **AFFIRMED** with **MODIFICATION**. The cross-claim of petitioner Paz Mandin-Trotin against respondents Francisco A. Bongo, Sabina Bongo-Buntag and Artemia Bongo-Liquit is **DISMISSED** and the former is **ORDERED** to immediately **VACATE** the one-hectare portion of Lot No. 3982, subject matter of the Deed of Conditional Sale dated August 21, 1997, and **TURN OVER** its possession to the latter.

⁶⁸ Rollo, pp. 42-43.



SO ORDERED.

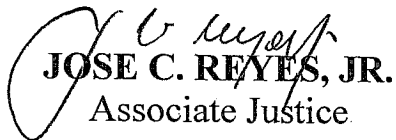


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



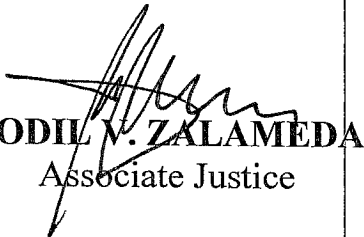
ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice



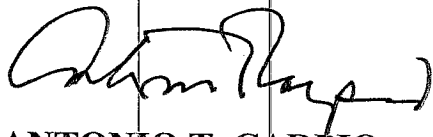
AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

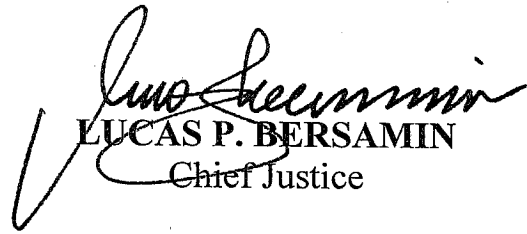
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.


LUCAS P. BERSAMIN
Chief Justice

