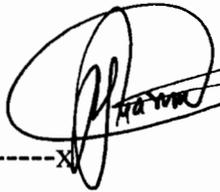


SECOND DIVISION

**G.R. No. 202050 – PHILIPPINE NATIONAL OIL COMPANY and
PNOC DOCKYARD & ENGINEERING CORPORATION, Petitioners,
v. KEPPEL PHILIPPINES HOLDINGS, INC., Respondent.**

**Promulgated:
25 JUL 2016**



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DISSENTING OPINION

LEONEN, J:

I am unable to join the ponencia in its ruling affirming the constitutionality of the Agreement between Luzon Stevedoring Corporation (LUSTEVECO)—the rights and obligations of which were later acquired by its successor-in-interest, petitioners Philippine National Oil Company (PNOC) and PNOC Dockyard & Engineering Corporation—and respondent Keppel Philippines Holdings, Inc. (KPHI).

The Constitution has consistently adopted a policy aligned with the conservation of national patrimony. In Article XIII, Section 5 of the 1935 Constitution:

ARTICLE XIII

Conservation and Utilization of Natural Resources

....

Section 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

The prohibition on alien ownership of private lands was carried over in Article XIV, Section 14 of the 1973 Constitution:

ARTICLE XIV

**THE NATIONAL ECONOMY AND THE PATRIMONY OF THE
NATION**

....



Section 14. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The absolute prohibition was likewise included in the 1987 Constitution:

ARTICLE XII
National Economy and Patrimony

. . . .

SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The law is categorical that no private land shall be transferred, assigned, or conveyed except to Filipino citizens or former natural-born citizens,¹ as well as to corporations with at least 60% of the capital owned by Filipino citizens.²

Although the sale of private land to an alien is absolutely prohibited, this is not true with the lease of private land. This Court has upheld the validity of a lease to an alien for a reasonable period of time.³ Rather, what this Court frowns upon is when the circumstances attendant to a lease contract are used as a scheme to circumvent the constitutional prohibition.⁴ In *Llantino v. Co Liong Chong*,⁵ this Court emphasized how seemingly innocuous acts, when put together, can have the nefarious effect of disregarding the law in place:

If an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, just utendi, jus fruendi, and just abutendi*) — rights, the sum of which make up ownership. It is just as if today the possession is transferred, tomorrow the use, the next day disposition, and so on, until ultimately all the rights of which ownership is made up of are consolidated in an alien.⁶ (Citations omitted)

¹ CONST., art. XII, sec. 8 provides:

SECTION 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

² CONST., art. XII, sec. 2.

³ *Krivenko v. Register of Deeds*, 79 Phil. 461, 480–481 (1947) [Per C.J. Moran, Second Division].

⁴ *Llantino v. Co Liong Chong*, 266 Phil. 645, 651 (1990) [Per J. Paras, Second Division].

⁵ 266 Phil. 645 (1990) [Per J. Paras, Second Division].

⁶ *Id.* at 651.

This echoes this Court's pronouncements in *Philippine Banking Corporation v. Lui She*:⁷

Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits. To be sure, a lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship. . . .

....

But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi* and *jus abutendi*) but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. And yet this is just exactly what the parties in this case did within this pace of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko v. Register of Deeds*, is indeed in grave peril.⁸ (Emphasis supplied)

In this case, petitioners insist that the Lease Agreement between LUSTEVECO and respondent is a virtual sale and, thus, violates the constitutional prohibition against alien ownership of private lands.⁹

Seen individually, the rights granted to respondent under paragraphs 2, 5, and 6 of the Agreement seem like standard fare in a typical lease agreement. However, when these rights are taken collectively, it becomes clear that the Agreement is a sale masquerading as a lease. Paragraphs 2 and 5 of the Agreement read:

2. The lease shall be for a term of twenty-five (25) years from and after the execution of this agreement, for a consideration of P2.1 million, Philippine currency, for 11 hectares, subject to a proportionate adjustment on the total area leased on the basis of the final survey. The rental may be totally or partially converted into equity of KPSI at par of P100.00 per share at such time of intervals and for such amounts as may be opted by LUSTEVECO, subject to two (2) months prior notice being given in

⁷ 128 Phil. 53 (1967) [Per J. Castro, En Banc].

⁸ Id. at 67–68, citing *Krivenko v. Register of Deeds*, 79 Phil. 461, 480–481 (1947) [Per C.J. Moran, Second Division].

⁹ *Rollo*, pp. 21–27, Petition.

writing to KPSI within a period of four (4) years from date of this agreement.

....

5. [I]f within the *period of the first twenty-five (25) years* KPSI becomes qualified to own land under the laws of the Philippines, it has the firm and absolute option to purchase the above property for a total price of four million and ninety thousand (P4,090,000.00) pesos, Philippine currency, at the end of the 25th year, *discounted at 16% annually for every year before the end of the 25th year*, which amount may be converted into equity of KPSI at the book value prevailing at the time of the sale, or paid in cash at LUSTEVECO's option.

However, if after the first twenty-five (25) years, KPSI is still not qualified to own land under the laws of the Republic of the Philippines, KPSI's lease of the above stated property shall be *automatically renewed for another twenty five (25) years*, under the same terms and conditions save for the rental price which sum shall be for the sum of P4,090,000.00, Philippine Currency, and which may be totally converted into equity of KPSI at book value prevailing at the time of conversion, or paid in cash at LUSTEVECO's option.

If anytime within the second twenty five (25) years up to the thirtieth (30th) year from the date of this agreement KPSI becomes qualified to own land under the laws of the Republic of the Philippines, KPSI has the firm and absolute option to buy and LUSTEVECO hereby undertakes to sell the stated property for the *nominal consideration of One Hundred Pesos (P100.00) Philippine Currency*.¹⁰ (Emphasis supplied)

Paragraph 6 of the Agreement reads:

6. LUSTEVECO warrants that it shall not sell the properties hereunder leased, nor assign its rights herein, to third parties during the lifetime of the lease, *without the prior consent of KPSI*.¹¹ (Emphasis supplied)

Respondent did not just lease the land for 25 years. If respondent still failed to qualify to own private land under Philippine law, its lease would be automatically renewed for another 25 years. The total purchase price of P4,090,000.00 was discounted at the rate of 16% annually for the first 25 years, and was even due to drop down to an absurd P100.00 for the following 25 years.

Thus, this Court is led to believe that the lease amounts paid were applied to the total purchase price of P4,090,000.00, which is a peculiar feature in an agreement that purports to be a lease, but is a common practice in sales on installment basis.

¹⁰ Id. at 40-41.

¹¹ Id. at 22.

Finally, LUSTEVECO had to obtain the consent of respondent before it could sell or transfer its rights to the property to third parties.

Applying *Lui She*, if an alien is given a 50-year lease and an option to buy, under which the Filipino owner can neither sell nor dispose of the property, then the arrangement is a virtual transfer of ownership where the owner slowly divests himself or herself not only of the right to enjoy the land but also of the right to dispose of it.

As the prohibition against alien landholding stems from the Constitution itself, that the lower courts did not deem it necessary to pass upon the issue is questionable. The Regional Trial Court of Batangas City, in its January 12, 2006 Decision,¹² summarized its findings to two paragraphs and effectively declared the constitutionality of the Agreement by calling it a “valid agreement”:¹³

APPRECIATION OF EVIDENCE

The findings of the Court are:

1. The Agreement of Lease/Purchase between the plaintiff and the defendant PNOC’s predecessor LUSTEVECO dated August 6, 1976, Exhibit “A” on the Bauan Lands is a *valid agreement* that was subject to a suspensive condition, that is, the turn-over of the real properties would be subject of the fulfillment of the condition that plaintiff would have attained the status of a 60% Filipino-owned corporation;
2. That plaintiff has substantially complied with its obligation, under which the said agreement, including the payment of Four Million Ninety Thousands [sic] pesos (P4,090,000.00) which was effected by consignment with the Clerk of Court on April 29, 2005.¹⁴ (Emphasis supplied)

The Court of Appeals likewise declared the Agreement valid in its December 19, 2011 Decision.¹⁵ However, instead of discussing the constitutionality of the lease, it chose to focus on the option contract that emanated from the lease. The Court of Appeals held:

Succinctly, this Court is of the opinion that it is with no doubt that paragraph 5 of the “Agreement” fits squarely into the definition of an option contract, nonetheless We find that the provision of Article 1479 of

¹² Id. at 76–100. The Decision, docketed as Civil Case No. 7364, was penned by Presiding Judge Paterno V. Tac-An of Branch 84.

¹³ Id. at 99.

¹⁴ Id.

¹⁵ Id. at 38–63. The Decision, docketed as CA-G.R. CV No. 86830, was penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison of the Eighth Division, Court of Appeals, Manila.

the Civil Code is not applicable. As the option to purchase was integrated in the agreement, the parties have reciprocal obligations to each other. Applying *Consuelo Vda. De Quirino* case, there is no need for a separate consideration in the aforementioned agreement between KPHI and PNOC, PDEC as their obligation to each other constitutes the consideration.¹⁶

The ponencia puts much emphasis on the improvements that respondent made on the property for it to be suitable for its shipyard business.¹⁷ It points out that respondent incurred “P60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth P177 million.”¹⁸ It likewise notes, with approval, that the terms of the Agreement were reasonable, in light of the nature of business conducted by respondent:

The agreement was executed to enable Keppel to use the land for its shipbuilding and ship repair business. The industrial/commercial purpose behind the agreement differentiates the present case from *Lui Shei [sic]* where the leased property was primarily devoted to residential use. Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel’s uncontested testimony showed that it incurred P60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth P177 million. Taking these investments into account and the nature of the business that Keppel conducts on the land, *we find it reasonable that the agreement’s terms provided for an extended duration of the lease and a restriction on the rights of Lusteveco.*¹⁹ (Emphasis supplied)

However, no matter how reasonable its terms may be from a business perspective, the long-term lease between LUSTEVECO and respondent still is a virtual transfer of ownership to an alien and, thus, a circumvention of the constitutional prohibition on foreign ownership of private land. To allow the Agreement to stand would effectively render the ownership of property a hollow concept. It would make a mockery of our fundamental law.

As for the validity of the option contract, I concur with the ponencia’s finding that no option contract was created in this case:

For uniformity and consistency in contract interpretation, the better rule to follow is that *the consideration for the option contract should be clearly specified as such in the option contract or clause. Otherwise, the offeree must bear the burden of proving that a separate consideration for the option contract exists.*

Given our finding that the Agreement did not categorically refer to any consideration to support Keppel’s option to buy and for Keppel’s

¹⁶ Id. at 60–61.

¹⁷ Ponencia, p. 6.

¹⁸ Id.

¹⁹ Id.

failure to present evidence in this regard, we cannot uphold the existence of an option contract in this case.²⁰ (Emphasis in the original)

Considering the unconstitutionality of the Agreement and the lack of an option contract, petitioners cannot be bound to sell the parcel of land to respondent.

ACCORDINGLY, I vote to **REVERSE** the December 19, 2011 Decision and the May 14, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 86830. The Lease Agreement between Luzon Stevedoring Corporation and respondent Keppel Philippines Holdings, Inc. must be declared void ab initio for violating the constitutional prohibition on alien landholding.



MARVIC M.V.F. LEONEN
Associate Justice

²⁰ Id. at 11.

