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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE NATIONAL OIL COMPANY and PNOC DOCKYARD & ENGINEERING CORPORATION, Petitioners,	**G.R. No. 202050**
	Present:
	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
- versus -	
KEPPEL PHILIPPINES HOLDINGS, INC., Respondent.	Promulgated: 25 JUL 2016

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DECISION

BRION, *J.*:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, appealing the decision dated 19 December 2011[1] and resolution dated 14 May 2012[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 86830. These assailed CA rulings affirmed *in toto* the decision dated 12 January 2006[3] of the Regional Trial Court (*RTC*) of Batangas City, Branch 84, in Civil Case No. 7364.

THE FACTS

The 1976 Lease Agreement and Option to Purchase

Almost 40 years ago or on 6 August 1976, the respondent Keppel Philippines Holdings, Inc.[4] (*Keppel*) entered into a **lease agreement**[5] (*the agreement*) with Luzon Stevedoring Corporation (*Lusteveco*) covering 11 hectares of land located in Bauan, Batangas. The lease was for a period of

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1 Penned by CA Associate Justice Leoncia Real-Dimagiba, with CA Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring, *rollo*, pp. 38-63.

2 Id. at 64-65.

3 Penned by RTC Presiding Judge Paterno V. Tac-an, id. at 76-100.

4 Previously known as Keppel Philippines, Shipyard, Inc., id. at 76.

5 Copy of Agreement dated 6 August 1976, id. at 101-106.

25 years for a consideration of ₱2.1 million.[6] At the option of Lusteveco, the rental fee could be totally or partially converted into equity shares in Keppel.[7]

At the end of the 25-year lease period, Keppel was given the **"firm and absolute option to purchase"**[8] **the land** for ₱4.09 million, ***provided* that it had acquired the necessary qualification to own land under Philippine laws at the time the option is exercised**.[9] Apparently, when the lease agreement was executed, less than 60% of Keppel's shareholding was Filipino-owned, hence, it was not constitutionally qualified to acquire private lands in the country.[10]

If, at the end of the 25-year lease period (or in 2001), Keppel remained unqualified to own private lands, the agreement provided that the lease would be automatically renewed for another 25 years.[11] Keppel was further allowed to exercise the option to purchase the land up to the 30th year of the lease (or in 2006), also on the condition that, by then, it would have acquired the requisite qualification to own land in the Philippines.[12]

Together with Keppel's lease rights and option to purchase, Lusteveco warranted not to sell the land or assign its rights to the land for the duration of the lease unless with the prior written consent of Keppel.[13] Accordingly, when the petitioner Philippine National Oil Corporation[14] (*PNOC*) acquired the land from Lusteveco and took over the rights and obligations under the agreement, Keppel did not object to the assignment so long as the agreement was annotated on PNOC's title.[15] With PNOC's consent and cooperation, the agreement was recorded as Entry No. 65340 on PNOC's Transfer of Certificate of Title No. T-50724.[16]

The Case and the Lower Court Rulings

On 8 December 2000, Keppel wrote PNOC informing the latter that at least 60% of its shares were now owned by Filipinos.[17] Consequently, Keppel expressed its readiness to exercise its option to purchase the land. Keppel reiterated its demand to purchase the land several times, but on every occasion, PNOC did not favourably respond.[18]

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6 Agreement, par. 2, id. at 103.
7 Ibid.
8 Agreement, par. 5, id. at 104.
9 Ibid.
10 *See* 1973 Constitution, Article XIV, Section 14.
11 Agreement, par. 5, *rollo*, p. 104.
12 Id. at 105.
13 Agreement, par. 6, id. at 105.
14 Lusteveco's assets, including the land subject of the agreement, were originally acquired by PNOC's subsidiary, PNOC Shipyard Corporation, in 1979. PNOC Shipyard Corporation was renamed as PNOC Dockyard and Engineering Corporation (*PDEC*). PDEC's assets were thereafter turned over to PNOC for winding-up and liquidation, id. at 80, 84.
15 Id. at 85
16 Ibid.
17 Id. at 77.
18 Id. at 77-78.

To compel PNOC to comply with the Agreement, Keppel instituted a **complaint for specific performance** with the RTC on 26 September 2003 against PNOC.[19] PNOC countered Keppel's claims by contending that the agreement was illegal for circumventing the constitutional prohibition against aliens holding lands in the Philippines.[20] It further asserted that the option contract was void, as it was unsupported by a separate valuable consideration.[21] It also claimed that it was not privy to the agreement.[22]

After due proceedings, **the RTC rendered a decision**[23] **in favour of Keppel and ordered PNOC to execute a deed of absolute sale** upon payment by Keppel of the purchase price of ₱4.09 million.[24]

PNOC elevated the case to the CA to appeal the RTC decision.[25] Affirming the RTC decision *in toto*, **the CA upheld Keppel's right to acquire the land**.[26] It found that since the option contract was embodied in the agreement – a reciprocal contract – the consideration was the obligation that each of the contracting party assumed.[27] Since Keppel was already a Filipino-owned corporation, it satisfied the condition that entitled it to purchase the land.[28]

Failing to secure a reconsideration of the CA decision,[29] PNOC filed the present Rule 45 petition before this Court to assail the CA rulings.

THE PARTIES' ARGUMENTS and THE ISSUES

PNOC argues that the CA failed to resolve the constitutionality of the agreement. It contends that the terms of the agreement amounted to a virtual sale of the land to Keppel who, at the time of the agreement's enactment, was a foreign corporation and, thus, violated the 1973 Constitution.

Specifically, PNOC refers to (a) the 25-year duration of the lease that was automatically renewable for another 25 years[30]; (b) the option to purchase the land for a nominal consideration of ₱100.00 if the option is exercised anytime between the 25th and the 30th year of the lease[31]; and (c) the prohibition imposed on Lusteveco to sell the land or assign its rights therein during the lifetime of the lease.[32] Taken together, PNOC submits

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19 Id. at 76.
20 Id. at 94.
21 Id. at 95.
22 Id. at 94.
23 *Supra* note 3.
24 *Rollo,* p. 99.
25 Id. at 38.
26 *Supra* note 1.
27 *Rollo,* pp. 60-61.
28 Id. at 61.
29 CA Resolution of 14 May 2012 denying PNOC's motion for reconsideration, *supra* note 2.
30 *Rollo*, pp. 22-23.
31 Ibid.
32 Id.

that these provisions amounted to a virtual transfer of ownership of the land to an alien which act the 1973 Constitution prohibited.

PNOC claims that the agreement is no different from the lease contract in *Philippine Banking Corporation v. Lui She*,[33] which the Court struck down as unconstitutional. In *Lui She*, the lease contract allowed the gradual divestment of ownership rights by the Filipino owner-lessor in favour of the foreigner-lessee.[34] The arrangement in *Lui She* was declared as a scheme designed to enable the parties to circumvent the constitutional prohibition.[35] PNOC posits that a similar intent is apparent from the terms of the agreement with Keppel and accordingly should also be nullified.[36]

PNOC additionally contends the illegality of the option contract for lack of a separate consideration, as required by Article 1479 of the Civil Code.[37] It claims that the option contract is distinct from the main contract of lease and must be supported by a consideration other than the rental fees provided in the agreement.[38]

On the other hand, Keppel maintains the validity of both the agreement and the option contract it contains. It opposes the claim that there was "virtual sale" of the land, noting that the option is subject to the condition that Keppel becomes qualified to own private lands in the Philippines.[39] This condition ripened in 2000, when at least 60% of Keppel's equity became Filipino-owned.

Keppel contends that the agreement is not a scheme designed to circumvent the constitutional prohibition. Lusteveco was not proscribed from alienating its ownership rights over the land but was simply required to secure Keppel's prior written consent.[40] Indeed, Lusteveco was able to transfer its interest to PNOC without any objection from Keppel.[41]

Keppel also posits that the requirement of a separate consideration for an option to purchase applies only when the option is granted in a separate contract.[42] In the present case, the option is embodied in a reciprocal contract and, following the Court's ruling in *Vda. De Quirino v. Palarca*,[43]

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33 128 Phil. 53 (1967).
34 Id. at 66-68.
35 Ibid.
36 *Rollo*, pp. 25-27.
37 Article 1479 of the Civil Code states:

A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

38 *Rollo*, pp. 27-33
39 Id. at 163.
40 Id. at 161.
41 Id. at 161-162.
42 Id. at 164-165.
43 139 Phil. 488 (1969).

the option is supported by the same consideration supporting the main contract.

From the parties' arguments, the following **ISSUES** emerge:

First, the constitutionality of the Agreement, *i.e.*, whether the terms of the Agreement amounted to a virtual sale of the land to Keppel that was designed to circumvent the constitutional prohibition on aliens owning lands in the Philippines.

Second, the validity of the option contract, *i.e.,* whether the option to purchase the land given to Keppel is supported by a separate valuable consideration.

If these issues are resolved in favour of Keppel, a *third* issue emerges – one that was not considered by the lower courts, but is critical in terms of determining Keppel's right to own and acquire full title to the land, *i.e.*, whether Keppel's equity ownership meets the 60% Filipino-owned capital requirement of the Constitution, in accordance with the Court's ruling in *Gamboa v. Teves*.[44]

THE COURT'S RULING

I. The constitutionality of the Agreement

The Court **affirms** the constitutionality of the Agreement.

Preserving the ownership of land, whether public or private, in Filipino hands is the policy consistently adopted in all three of our constitutions.[45] Under the 1935,[46] 1973,[47] and 1987[48] Constitutions, no private land shall be transferred, assigned, or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Consequently, only Filipino citizens, or corporations or associations whose capital is 60% owned by Filipinos citizens, are constitutionally qualified to own private lands.

Upholding this nationalization policy, the Court has voided not only outright conveyances of land to foreigners,[49] but also arrangements where the rights of ownership were gradually transferred to foreigners.[50] In *Lui Shui*,[51] we considered a 99-year lease agreement, which gave the foreigner-lessee the option to buy the land and prohibited the Filipino owner-lessor from selling or otherwise disposing the land, amounted to –

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44 696 Phil. 276, 341 (2012).
45 See *Krivenko v. Register of Deeds*, 79 Phil. 461, 473 (1947).
46 1935 Constitution, Article XIII, Section 5.
47 1973 Constitution, Article XIV, Section 14.
48 1987 Constitution, Article XII, Section 7.
49 *Supra* note 45, at 481.
50 *Supra* note 33.
51 Id. at 66-68.

> 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.[52] [emphasis supplied]

In the present case, PNOC submits that a similar scheme is apparent from the agreement's terms, but a review of the overall circumstances leads us to reject PNOC's claim.

The agreement was executed to enable Keppel to use the land for its **shipbuilding and ship repair business**.[53] The industrial/commercial purpose behind the agreement differentiates the present case from *Lui She* where the leased property was primarily devoted to residential use.[54] Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel's uncontested testimony showed that it incurred ₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth ₱177 million.[55] 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.

We observe that, unlike in *Lui She*,[56] Lusteveco was not completely denied its ownership rights during the course of the lease. It could dispose of the lands or assign its rights thereto, provided it secured Keppel's prior written consent.[57] That Lusteveco was able to convey the land in favour of PNOC during the pendency of the lease[58] should negate a finding that the agreement's terms amounted to a virtual transfer of ownership of the land to Keppel.

II. The validity of the option contract

II.A An option contract must be supported by a separate consideration that is either clearly specified as such in the contract or duly proven by the offeree/promisee.

An option contract is defined in the second paragraph of Article 1479 of the Civil Code:

> Article 1479. x x x An accepted promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

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52 Id. at 68.
53 *Rollo*, p. 101.
54 *Supra* note 33, at 51. The leased property in *Lui She* was used as the home/restaurant of the lessor.
55 *Rollo*, pp. 140-141.
56 *Supra* note 33, at 67-68.
57 Agreement, par. 6, *rollo*, p. 105.
58 Id. at 80.

An **option contract** is a contract where one person (the offeror/promissor) grants to another person (the offeree/promisee) the right or privilege to buy (or to sell) a determinate thing at a fixed price, if he or she chooses to do so within an agreed period.[59]

As a contract, it must necessarily have the essential elements of subject matter, consent, and consideration.[60] Although an option contract is deemed a preparatory contract to the principal contract of sale,[61] it is separate and distinct therefrom,[62] thus, its essential elements should be distinguished from those of a sale.[63]

In an option contract, the **subject matter** is the *right or privilege* to buy (or to sell) a determinate thing for a price certain,[64] while in a sales contract, the subject matter is the determinate thing itself.[65] The **consent** in an option contract is the acceptance by the offeree of the offeror's *promise to sell (or to buy)* the determinate thing, *i.e.*, the offeree agrees to hold the *right or privilege to buy (or to sell)* within a specified period. This acceptance is different from the acceptance of the offer itself whereby the offeree asserts his or her right or privilege to buy (or to sell), which constitutes as his or her consent to the sales contract. The **consideration** in an option contract may be anything of value, unlike in a sale where the purchase price must be in money or its equivalent.[66] There is sufficient consideration for a promise if there is any benefit to the offeree or any detriment to the offeror.[67]

In the present case, PNOC claims the option contract is void for want of consideration distinct from the purchase price for the land.[68] The option is incorporated as paragraph 5 of the Agreement and reads as

> 5. If within the period of the first [25] years [Keppel] 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 [₱4,090,000.00] at the end of the 25th year, discounted at 16% annual for every year before the end of the 25th year, which amount may be converted into equity of [Keppel] at book value prevailing at the time of sale, or paid in cash at Lusteveco's option.
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> However, if after the first [25] years, [Keppel] is still not qualified to own land under the laws of the Republic of the Philippines, [Keppel's] lease of the above stated property shall be automatically renewed for another [25] years, under the same terms and conditions save for the rental

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59 See *Equatorial v Mayfair*, 332 Phil. 525 (1996) and *Tuason v Del Rosario-Suarez*, 652 Phil. 274, 283 (2010), both citing *Beaumont v Prieto*, 41 Phil 670, 686-687 (1916).

60 CIVIL CODE, Article 1318.

61 *Carceller v. CA*, 362 Phil. 332,338-339 (1999).

62 *Asuncion v. CA*, G.R. No. 109125, December 2, 1994, 238 SCRA 602, 613; *Equatorial v. Mayfair*, *supra* note 59.

63 The essential elements of a contract of sale are enumerated in Article 1458 of the Civil Code.

64 *JMA House Inc. v. Sta Monica Industrial and Development Corporation,* 532 Phil. 233, 263 (2006).

65 CIVIL CODE, Articles 1458 and 1460.

66 *San Miguel Properties Philippines v. Spouses Huang*, 391 Phil. 636, 645 (2000).

67 *Supra* note 64, at 264.

68 *Rollo*, pp. 27-33.

> price which shall be for the sum of ₱4,090,000.00... and which sum may be totally converted into equity of [Keppel] at book value prevailing at the time of conversion, or paid in cash at Lusteveco's option.
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> If anytime within the second [25] years up to the [30th] year from the date of this agreement, [Keppel] becomes qualified to own land under the laws of the Republic of the Philippines, [Keppel] has the firm and absolute option to buy and Lusteveco hereby undertakes to sell the above stated property for the nominal consideration of [₱100.00.00]...[69]

Keppel counters that a separate consideration is not necessary to support its option to buy because the option is one of the stipulations of the lease contract. It claims that a separate consideration is required only when an option to buy is embodied in an independent contract.[70] It relies on *Vda. de Quirino v. Palarca*,[71] where the Court declared that the option to buy the leased property is supported by the same consideration as that of the lease itself: "in reciprocal contracts [such as lease], the obligation or promise of each party is the consideration for that of the other."[72]

In considering Keppel's submission, we note that the Court's ruling in 1969 in *Vda. de Quirino v. Palarca* has been taken out of context and erroneously applied in subsequent cases. In 2004, through *Bible Baptist Church v. CA*,[73] we revisited *Vda. de Quirino v. Palarca* and observed that the option to buy given to the lessee Palarca by the lessor Quirino was in fact supported by a separate consideration: Palarca paid a higher amount of rent and, in the event that he does not exercise the option to buy the leased property, gave Quirino the option to buy the improvements he introduced thereon. These additional concessions were separate from the purchase price and deemed by the Court as sufficient consideration to support the option contract.

Vda. de Quirino v. Palarca, therefore, should not be regarded as authority that the mere inclusion of an option contract in a reciprocal lease contract provides it with the requisite separate consideration for its validity. **The reciprocal contract should be closely scrutinized and assessed whether it contains additional concessions that the parties intended to constitute as a consideration for the option contract, separate from that of the purchase price.**

In the present case, paragraph 5 of the agreement provided that should Keppel exercise its option to buy, Lusteveco could opt to convert the purchase price into equity in Keppel. *May Lusteveco's option to convert the price for shares be deemed as a sufficient separate consideration for Keppel's option to buy?*

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69 *Rollo*, pp. 194-195.
70 Id. at 164-167.
71 *Supra* note 43.
72 Ibid.
73 486 Phil. 625, 634-634 (2004).

As earlier mentioned, the consideration for an option contract does not need to be monetary and may be anything of value.[74] However, **when the consideration is not monetary, the consideration must be clearly specified *as such* in the option contract or clause**.[75]

In *Villamor v. CA*,[76] the parties executed a deed expressly acknowledging that the purchase price of ₱70.00 per square meter "was greatly higher than the actual reasonable prevailing value of lands in that place at that time."[77] The difference between the purchase price and the prevailing value constituted as the consideration for the option contract. Although the actual amount of the consideration was not stated, it was ascertainable from the contract whose terms evinced the parties' intent to constitute this amount as consideration for the option contract.[78] Thus, the Court upheld the validity of the option contract.[79] In the light of the offeree's acceptance of the option, the Court further declared that a bilateral contract to sell and buy was created and that the parties' respective obligations became reciprocally demandable.[80]

When the written agreement itself does not state the consideration for the option contract, the offeree or promisee bears the burden of proving the existence of a separate consideration for the option.[81] The offeree cannot rely on Article 1354 of the Civil Code,[82] which presumes the existence of consideration, since Article 1479 of the Civil Code is a specific provision on option contracts that explicitly requires the existence of a consideration distinct from the purchase price.[83]

In the present case, none of the above rules were observed. We find nothing in paragraph 5 of the Agreement indicating that the grant to Lusteveco of the option to convert the purchase price for Keppel shares was intended by the parties as the consideration for Keppel's option to buy the land; Keppel itself as the offeree presented no evidence to support this finding. On the contrary, the option to convert the purchase price for shares should be deemed part of the consideration for the contract of sale itself, since the shares are merely an alternative to the actual cash price.

There are, however cases where, despite the absence of an express intent in the parties' agreements, the Court considered the additional

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74 *Supra* note 66.

75 *Bible Baptist Church v. CA, supra* note 73, at 635, and *Navotas Industrial Corporation v. Cruz*, 506 Phil. 511, 530 (2005).

76 279 Phil. 664 (1991).

77 Id. at 668.

78 Id. at 675-676.

79 Ibid. However, the contract could no longer be enforced due to the unreasonable delay in enforcing the right, id. at 676.

80 Id.

81 *Supra* note 64, at 26.

82 CIVIL CODE, Article 1354, which states:

> Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary.

83 *Sanchez v. Rigos,* 150-A Phil. 714, 720 (1972).

concessions stipulated in an agreement to constitute a sufficient separate consideration for the option contract.

In *Teodoro v. CA*,[84] the sub-lessee (*Teodoro*) who was given the option to buy the land assumed the obligation to pay not only her rent as sub-lessee, but also the rent of the sub-lessor (*Ariola*) to the primary lessor (*Manila Railroad Company*).[85] In other words, Teodoro paid an amount over and above the amount due for her own occupation of the property, and this amount was found by the Court as sufficient consideration for the option contract.[86]

In *Dijamco v. CA*,[87] the spouses Dijamco failed to pay their loan with the bank, allowing the latter to foreclose the mortgage.[88] Since the spouses Dijamco did not exercise their right to redeem, the bank consolidated its ownership over the mortgaged property.[89] The spouses Dijamco later proposed to purchase the same property by paying a purchase price of ₱622,095.00 (equivalent to their principal loan) and a monthly amount of ₱13,478.00 payable for 12 months (equivalent to the interest on their principal loan). They further stated that should they fail to make a monthly payment, the proposal should be automatically revoked and all payments be treated as rentals for their continued use of the property.[90] The Court treated the spouses Dijamco's proposal to purchase the property as an option contract, and the consideration for which was the monthly interest payments.[91] Interestingly, this ruling was made despite the categorical stipulation that the monthly interest payments should be treated as rent for the spouses Dijamco's continued possession and use of the foreclosed property.

At the other end of the jurisprudential spectrum are cases where the Court refused to consider the additional concessions stipulated in agreements as separate consideration for the option contract.

In *Bible Baptist Church v. CA*,[92] the lessee (Bible Baptist Church) paid in advance ₱84,000.00 to the lessor in order to free the property from an encumbrance. The lessee claimed that the advance payment constituted as the separate consideration for its option to buy the property.[93] The Court, however, disagreed noting that the ₱84,000.00 paid in advance was eventually offset against the rent due for the first year of the lease, "such that for the entire year from 1985 to 1986 the [Bible Baptist Church] did not pay

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84 239 Phil. 533 (1987).
85 Id. at 547.
86 Id. at 547-548.
87 483 Phil. 203 (2004).
88 Id. at 208-209.
89 Ibid.
90 Id. at 210.
91 Id. at 213-214.
92 *Supra* note 73, at 631.
93 Ibid.

monthly rent."[94] Hence, the Court refused to recognize the existence of a valid option contract.[95]

What *Teodoro*, *Dijamco*, and *Bible Baptist Church* show is that the determination of whether the additional concessions in agreements are sufficient to support an option contract, is fraught with danger; in ascertaining the parties' intent on this matter, a court may read too much or too little from the facts before it.

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 failure to present evidence in this regard, we cannot uphold the existence of an option contract in this case.

II.B. An option, though unsupported by a separate consideration, remains an offer that, if duly accepted, generates into a contract to sell where the parties' respective obligations become reciprocally demandable

The absence of a consideration supporting the option contract, however, does not invalidate an offer to buy (or to sell). **An option unsupported by a separate consideration stands as an unaccepted offer to buy (or to sell) which, when properly accepted, ripens into a contract to sell.** This is the rule established by the Court en banc as early as 1958 in *Atkins v. Cua Hian Tek*,[96] and upheld in 1972 in *Sanchez v. Rigos*.[97]

Sanchez v. Rigos reconciled the apparent conflict between Articles 1324 and 1479 of the Civil Code, which are quoted below:

> Article 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, **except when the option is founded upon a consideration, as something paid or promised.**
>
> Article 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

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94 Id. at 632. The same rationale was adopted in *Navotas Industrial Corporation v. Cruz*, 506 Phil. 511, 540 (2005).

95 *Bible Baptist Church v. CA*, *supra* note 73, at 636-637.

96 102 Phil. 948 (1958).

97 *Supra* note 83.

> **An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price**. [emphases supplied]

The Court en banc declared that there is no distinction between these two provisions because the scenario contemplated in the second paragraph of Article 1479 is the same as that in the last clause of Article 1324.[98] Instead of finding a conflict, *Sanchez v. Rigos* harmonised the two provisions, consistent with the established rules of statutory construction.[99]

Thus, when an offer is supported by a separate consideration, a valid option *contract* exists, *i.e.*, there is a **contracted offer**[100] which the offeror cannot withdraw from without incurring liability in damages.

On the other hand, when the offer is not supported by a separate consideration, the offer stands but, in the absence of a binding contract, the offeror may withdraw it any time.[101] In either case, once the acceptance of the offer is duly communicated *before* the withdrawal of the offer, a bilateral contract to buy and sell is generated which, in accordance with the first paragraph of Article 1479 of the Civil Code, becomes reciprocally demandable.[102]

Sanchez v. Rigos expressly overturned the 1955 case of *Southwestern Sugar v. AGPC*,[103] which declared that

> a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration... In other words**, an accepted unilateral promise can only have a binding effect if supported by a consideration,** which means that **the option can still be withdrawn, even if accepted, if the same is not supported by any consideration**.[104] [emphasis supplied]

The *Southwestern Sugar* doctrine was based on the reasoning that Article 1479 of the Civil Code is distinct from Article 1324 of the Civil Code and is a provision that specifically governs options to buy (or to sell).[105] As mentioned, *Sanchez v. Rigos* found no conflict between these two provisions and accordingly abandoned the *Southwestern Sugar* doctrine.

Unfortunately, without expressly overturning or abandoning the *Sanchez* ruling, subsequent cases reverted back to the *Southwestern Sugar* doctrine.[106] In 2009, *Eulogio v. Apeles*[107] referred to *Southwestern Sugar v.*

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98 Id. at 722-724.
99 Ibid.
100 C. Villanueva, *Law on Sales* (2004 ed.) at 154.
101 *Sanchez v. Rigos*, *supra* note 97, at 723.
102 *Adelfa Properties, Inc. v. CA*, 310 Phil. 623, 641 (1995).
103 97 Phil. 249 (1955).
104 Id. at 251-252.
105 Id. at 252.
106 *See Rural Bank of Parañaque v. Remolado*, 220 Phil. 95, 97 (1985) and *Natino v. IAC*, 274 Phil. 602, 613 (1991). *See* also *Nool v. CA*, 340 Phil. 106. In contrast, *Carceller v. CA*, 362 Phil. 332, 338-339 (1999) adopted the ruling in *Sanchez v. Rigos*.
107 596 Phil. 613 (2009).

AGPC as the controlling doctrine[108] and, due to the lack of a separate consideration, refused to recognize the option to buy as an offer that would have resulted in a sale given its timely acceptance by the offeree. In 2010, *Tuazon v. Del Rosario-Suarez*[109] referred to *Sanchez v. Rigos* but erroneously cited as part of its *ratio decidendi* that portion of the *Southwestern Sugar* doctrine that *Sanchez* had expressly abandoned.[110]

Given that the issue raised in the present case involves the application of Article 1324 and 1479 of the Civil Code, it becomes imperative for the Court [*en banc*] to clarify and declare here which between *Sanchez* and *Southwestern Sugar* is the controlling doctrine.

The Constitution itself declares that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."[111] *Sanchez v. Rigos* was an *en banc* decision which was affirmed in 1994 in *Asuncion v. CA*,[112] also an *en banc* decision, while the decisions citing the *Southwestern Sugar* doctrine are all division cases.[113] Based on the constitutional rule (as well as the inherent logic in reconciling Civil Code provisions), there should be no doubt that ***Sanchez v. Rigos* remains as the controlling doctrine**.

Accordingly, when an option to buy or to sell is not supported by a consideration separate from the purchase price, the option constitutes as an offer to buy or to sell, which may be withdrawn by the offeror at any time prior to the communication of the offeree's acceptance. When the offer is duly accepted, a mutual promise to buy and to sell under the first paragraph of Article 1479 of the Civil Code ensues and the parties' respective obligations become reciprocally demandable.

Applied to the present case, we find that **the offer to buy the land was timely accepted by Keppel**.

As early as 1994, Keppel expressed its desire to exercise its option to buy the land. Instead of rejecting outright Keppel's acceptance, PNOC referred the matter to the Office of the Government Corporate Counsel (*OGCC*). In its Opinion No. 160, series of 1994, the OGCC opined that Keppel "did not yet have the right to purchase the Bauan lands."[114] On account of the OGCC opinion, the PNOC did not agree with Keppel's attempt to buy the land;[115] nonetheless, the PNOC made no categorical withdrawal of the offer to sell provided under the Agreement.

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108 Id. at 628.
109 652 Phil. 274 (2010).
110 Id. at 286-287.
111 CONSTITUTION, Article VIII, Section 4(3). See also 1973 Constitution, Article X, Section 2(3).
112 *Supra* note 62.
113 *Eulogio v. Apeles* was from the Third Division, while *Tuazon v. Del Rosario-Suarez* was from the First Division.
114 *Rollo*, p. 35.
115 Ibid.

By 2000, Keppel had met the required Filipino equity proportion and duly communicated its acceptance of the offer to buy to PNOC.[116] Keppel met with the board of directors and officials of PNOC who interposed no objection to the sale.[117] It was only when the amount of purchase price was raised that the conflict between the parties arose,[118] with PNOC backtracking in its position and questioning the validity of the option.[119]

Thus, when Keppel communicated its acceptance, the offer to purchase the Bauan land stood, not having been withdrawn by PNOC. **The offer having been duly accepted, a contract to sell the land ensued which Keppel can rightfully demand PNOC to comply with.**

III. Keppel's constitutional right to acquire full title to the land

Filipinization is the spirit that pervades the constitutional provisions on national patrimony and economy. The Constitution has reserved the ownership of public and private lands,[120] the ownership and operation of public utilities,[121] and certain areas of investment[122] to Filipino citizens, associations, and corporations. To qualify, sixty per cent (60%) of the association or corporation's capital must be owned by Filipino citizens. Although the 60% Filipino equity proportion has been adopted in our Constitution since 1935, it was only in 2011 that the Court interpreted what the term *capital* constituted.

In *Gamboa v. Teves*,[123] the Court declared that the "**legal and beneficial ownership** of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals." [124] Clarifying the ruling, the Court decreed that the 60% Filipino ownership requirement **applies separately to each class of shares**, whether with or without voting rights, [125] thus:

> Applying uniformly the 60-40 ownership requirement in favour of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.[126]

Although the ruling was made in the context of ownership and operation of public utilities, the same should be applied to the ownership of public and private lands, since the same proportion of Filipino ownership is required and the same nationalist policy pervades.

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116 Id. at 35-36.
117 Ibid.
118 Keppel claimed that PNOC demanded an additional amount on top of the purchase price stated in the agreement, id. at 36.
119 Ibid.
120 CONSTITUTION, Article XII, Sections 2, 3, and 7.
121 Id., Section 11.
122 Id., Section 10.
123 668 Phil. 1 (2011)
124 Id. at 57.
125 696 Phil. 276, 341(2012).
126 Ibid.

The uncontested fact is that, as of November 2000, Keppel's capital is 60% Filipino-owned.[127] However, there is nothing in the records showing the nature and composition of Keppel's shareholdings, *i.e.*, whether its shareholdings are divided into different classes, and 60% of each share class is legally and beneficially owned by Filipinos – understandably because when Keppel exercised its option to buy the land in 2000, the *Gamboa* ruling had not yet been promulgated. The Court cannot deny Keppel its option to buy the land by retroactively applying the *Gamboa* ruling without violating Keppel's vested right. Thus, Keppel's failure to prove the nature and composition of its shareholdings in 2000 could not prevent it from validly exercising its option to buy the land.

Nonetheless, the Court cannot completely disregard the effect of the *Gamboa* ruling; the 60% Filipino equity proportion is a continuing requirement to hold land in the Philippines. Even in *Gamboa*, the Court prospectively applied its ruling, thus enabling the public utilities to meet the nationality requirement before the Securities and Exchange Commission commences administrative investigation and cases, and imposes sanctions for noncompliance on erring corporations.[128] In this case, Keppel must be allowed to prove whether it meets the required Filipino equity ownership and proportion in accordance with the *Gamboa* ruling before it can acquire full title to the land.

In view of the foregoing, the Court **AFFIRMS** the decision dated 19 December 2011 and the resolution dated 14 May 2012 of the CA in CA-G.R. CV No. 86830 insofar as these rulings uphold the respondent Keppel Philippines Holdings, Inc.'s option to buy the land, and **REMANDS** the case to the Regional Trial Court of Batangas City, Branch 84, for the determination of whether the respondent Keppel Philippines Holdings, Inc. meets the required Filipino equity ownership and proportion in accordance with the Court's ruling in *Gamboa v. Teves,* to allow it to acquire full title to the land.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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127 *Rollo*, p. 81.

128 *Supra* note 124, at 360-361.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

see separate dissent

MARVIC M.V.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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice