

FIRST PHILIPPINE INTERNATIONAL BANK (FORMERLY PRODUCERS BANK OF THE PHILIPPINES) AND MERCURIO RIVERA, PETITIONERS, VS. COURT OF APPEALS, CARLOS EJERCITO, IN SUBSTITUTION OF DEME...

G.R. No. 115849. January 24, 1996

Ponente: PANGANIBAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-115849/>

PANGANIBAN, J.:

In the absence of a formal deed of sale, may commitments given by bank officers in an exchange of letters and/or in a meeting with the buyers constitute a perfected and enforceable contract of sale over 101 hectares of land in Sta. Rosa, Laguna? Does the doctrine of "apparent authority" apply in this case? If so, may the Central Bank-appointed conservator of Producers Bank (now First Philippine International Bank) repudiate such "apparent authority" after said contract has been deemed perfected? During the pendency of a suit for specific performance, does the filing of a "derivative suit" by the majority shareholders and directors of the distressed bank to prevent the enforcement or implementation of the sale violate the ban against forum-shopping?

Simply stated, these are the major questions brought before this Court in the instant Petition for review on certiorari under Rule 45 of the Rules of Court, to set aside the Decision promulgated January 14, 1994 of the respondent Court of Appeals[1] in CA-G.R. CV No. 35756 and the Resolution promulgated June 14, 1994 denying the motion for reconsideration. The dispositive portion of the said Decision reads:

"WHEREFORE, the decision of the lower court is MODIFIED by the elimination of the damages awarded under paragraphs 3, 4 and 6 of its dispositive portion and the reduction of the award in paragraph 5 thereof to P75,000.00, to be assessed against defendant bank. In all other aspects, said decision is hereby AFFIRMED.

"All references to the original plaintiffs in the decision and its dispositive portion are deemed, herein and hereafter, to legally refer to the plaintiff-appellee Carlos C. Ejercito.

"Costs against appellant bank."

The dispositive portion of the trial court's[2] decision dated July 10, 1991, on the other hand, is as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

"1. Declaring the existence of a perfected contract to buy and sell over the six (6) parcels of land situated at Don Jose, Sta. Rosa, Laguna with an area of 101 hectares, more or less, covered by and embraced in Transfer Certificates of Title Nos. T-106932 to T-106937, inclusive, of the Land Records of Laguna, between the plaintiffs as buyers and the defendant Producers Bank for an agreed price of Five and One Half Million (P5,500,000.00) Pesos;

"2. Ordering defendant Producers Bank of the Philippines, upon finality of this decision and receipt from the plaintiffs the amount of P5.5 Million, to execute in favor of said plaintiffs a deed of absolute sale over the

aforementioned six (6) parcels of land, and to immediately deliver to the plaintiffs the owner's copies of T.C.T. Nos. T-106932 to T-106937, inclusive, for purposes of registration of the same deed and transfer of the six (6) titles in the names of the plaintiffs;

"3. Ordering the defendants, jointly and severally, to pay plaintiffs Jose A. Janolo and Demetrio Demetria the sums of P 200,000.00 each in moral damages;

"4. Ordering the defendants, jointly and severally, to pay plaintiffs the sum of P 100,000.00 as exemplary damages;

"5. Ordering the defendants, jointly and severally, to pay the plaintiffs the amount of P400,000.00 for and by way of attorney's fees;

"6. Ordering the defendants to pay the plaintiffs, jointly and severally, actual and moderate damages in the amount of P20,000.00;

"With costs against the defendants."

After the parties filed their comment, reply, rejoinder, sur-rejoinder and reply to sur-rejoinder, the petition was given due course in a Resolution dated January 18, 1995. Thence, the parties filed their respective memoranda and reply memoranda. The First Division transferred this case to the Third Division per resolution dated October 23, 1995. After carefully deliberating on the aforesaid submissions, the Court assigned the case to the undersigned ponente for the writing of this Decision.

The Parties

Petitioner First Philippine International Bank (formerly Producers Bank of the Philippines; petitioner Bank, for brevity) is a banking institution organized and existing under the laws of the Republic of the Philippines. Petitioner Mercurio Rivera (petitioner Rivera, for brevity) is of legal age and was, at all times material to this case, Head Manager of the Property Management Department of the petitioner Bank.

Respondent Carlos Ejercito (respondent Ejercito, for brevity) is of legal age and is the assignee of original plaintiffs-appellees Demetrio Demetria and Jose Janolo.

Respondent Court of Appeals is the court which issued the Decision and Resolution sought to be set aside through this petition.

The Facts

The facts of this case are summarized in the respondent Court's Decision,[3] as follows:

"(1) In the course of its banking operations, the defendant Producer Bank of the Philippines acquired six parcels of land with a total area of 101 hectares located at Don Jose, Sta. Rosa, Laguna, and covered by Transfer Certificates of Title Nos. T-106932 to T-106937. The property used to be owned by BYME Investment and Development Corporation which had them mortgaged with the bank as collateral for a loan. The original plaintiffs, Demetrio Demetria and Jose O. Janolo, wanted to purchase the property and thus initiated negotiations for that purpose.

"(2) In the early part of August 1987 said plaintiffs, upon the suggestion of BYME Investment's legal counsel, Jose Fajardo, met with defendant Mercurio Rivera, Manager of the Property Management Department of the defendant bank. The meeting was held pursuant to plaintiffs' plan to buy the property (TSN of Jan. 16, 1990, pp. 7-10). After the meeting, plaintiff Janolo, following the advice of defendant Rivera, made a formal purchase offer to the bank through a letter dated August 30, 1987 (Exh. "B"), as follows:

August 30, 1987

The Producers Bank of the Philippines

Makati, Metro Manila

Attn.

Mr. Mercurio Q. Rivera

Manager, Property Management Dept.

Gentlemen:

I have the honor to submit my formal offer to purchase your properties covered by titles listed hereunder located at Sta. Rosa, Laguna, with a total area of 101 hectares, more or less.

TCT NO.

AREA

T-106932

113,580 sq.m.

T-106933

70,899 sq.m.

T-106934

52,246 sq.m.

T-106935

96,768 sq.m.

T-106936

187,114 sq.m.

T-106937

481,481 sq.m.

My offer is for PESOS: THREE MILLION FIVE HUNDRED THOUSAND (P3,500,000.00) PESOS, in cash.

Kindly contact me at Telephone Number 921-1344.

"(3) On September 1, 1987, defendant Rivera made on behalf of the bank a formal reply by letter which is hereunder quoted (Exh. "C"):

September 1, 1987

J-P M-P GUTIERREZ ENTERPRISES

142 Charisma St., Doña Andres II

Rosario, Pasig, Metro Manila

Attention: JOSE O. JANOLO Dear Sir:

Dear Sir:

Thank you for your letter-offer to buy our six (6) parcels of acquired lots at Sta. Rosa, Laguna (formerly

owned by Byrne industrial Corp.). Please be informed however that the bank's counter-offer is at P5.5 million for more than 101 hectares on lot basis.

We shall be very glad to hear your position on the matter.

Best regards.

"(4) On September 17, 1987, plaintiff Janolo, responding to Rivera's aforequoted reply, wrote (Exh.

September 17, 1987

Producers Bank

Paseo de Roxas

Makati, Metro Manila

Attention: Mr. Mercurio Rivera

Gentlemen:

In reply to your letter regarding my proposal to purchase your 101-hectare lot located at Sta. Rosa Laguna, I would like to amend my previous offer and I now propose to buy the said lot at P4.250 million in CASH.

Hoping that this proposal meets your satisfaction.

"(5) There was no reply to Janolo's foregoing letter of September 17, 1987. What took place was a meeting on September 28, 1987 between the plaintiffs and Luis Co, the Senior Vice-President of defendant bank. Rivera as well as Fajardo, the BYME lawyer, attended the meeting. Two days later, or on September 30, 1987, plaintiff Janolo sent to the bank, through Rivera, the following letter (Exh. "E"):

The Producers Bank of the Philippines

Paseo de Roxas, Makati

Metro Manila

Attention: Mr. Mercurio Rivera

Re: 101 Hectares of Land in Sta. Rosa, Laguna

Gentlemen:

Pursuant to our discussion last 28 September 1987, we are pleased to inform you that we are accepting your offer for us to purchase the property at Sta. Rosa, Laguna, formerly owned by Byrne Investment, for a total price of PESOS: FIVE MILLION FIVE HUNDRED THOUSAND (P5,500,000.00).

Thank you.

"(6) On October 12, 1987, the conservator of the bank (which has been placed under conservatorship by the Central Bank since 1984) was replaced by an Acting Conservator in the person of defendant Leonida T. Encarnacion. On November 4, 1987, defendant Rivera wrote plaintiff Demetria the following letter (Exh. "F"):

Attention: Atty. Demetrio Demetria

Dear Sir:

Your proposal to buy the properties the bank foreclosed from Byrne Investment Corp. located at Sta. Rosa, Laguna is under study yet as of this time by the newly created committee for submission to the newly

designated Acting Conservator of the bank.

For your information.

"(7) What thereafter transpired was a series of demands by the plaintiffs for compliance by the bank with what plaintiff considered as a perfected contract of sale, which demands were in one form or another refused by the bank. As detailed by the trial court in its decision, on November 17, 1987, plaintiffs through a letter to defendant Rivera (Exhibit "G") tendered payment of the amount of P5.5 million "pursuant to (our) perfected sale agreement." Defendants refused to receive both the payment and the letter. Instead, the parcels of land involved in the transaction were advertised by the bank for sale to any interested buyer (Exhs. "H" and "H-1"). Plaintiffs demanded the execution by the bank of the documents on what was considered as a "perfected agreement." Thus:

Mr. Mercurio Rivera

Manager, Producers Bank

Paseo de Roxas, Makati

Metro Manila

Dear Mr. Rivera:

This is in connection with the offer of our client, Mr. Jose O. Janolo, to purchase your 101-hectare lot located in Sta. Rosa, Laguna, and which are covered by TCT No. T-106932 to 106937.

From the documents at hand, it appears that your counter-offer dated September 1, 1987 of this same lot in the amount of P5.5 million was accepted by our client thru a letter dated September 30, 1987 and was received by you on October 5, 1987.

In view of the above circumstances, we believe that an agreement has been perfected. We were also informed that despite repeated follow-up to consummate the purchase, you now refuse to honor your commitment. Instead, you have advertised for sale the same lot to others.

In behalf of our client, therefore, we are making this formal demand upon you to consummate and execute the necessary actions/documentation within three (3) days from your receipt hereof. We are ready to remit the agreed amount of P5.5 million at your advice. Otherwise, we shall be constrained to file the necessary court action to protect the interest of our client.

We trust that you will be guided accordingly.

"(8) Defendant bank, through defendant Rivera, acknowledged receipt of the foregoing letter and stated, in its communication of December 2, 1987 (Exh. "I"), that said letter has been "referred x x x to the office of our Conservator for proper disposition." However, no response came from the Acting Conservator. On December 14, 1987, the plaintiffs made a second tender of payment (Exhs. "L" and "L-1"), this time through the Acting Conservator, defendant Encarnacion. Plaintiffs' letter reads:

PRODUCERS BANK OF

THE PHILIPPINES

Paseo de Roxas,

Makati, Metro Manila

Attn.: Atty. NIDA ENCARNACION Central Bank Conservator

Gentlemen:

We are sending you herewith, in-behalf of our client, Mr. JOSE O. JANOLO, MBTC Check No. 258387 in the amount of P5.5 million as our agreed purchase price of the 101-hectare lot covered by TCT Nos. 106932, 106933, 106934, 106935, 106936 and 106937 and registered under Producers Bank.

This is in connection with the perfected agreement consequent from your offer of P5.5 Million as the purchase price of the said lots. Please inform us of the date of documentation of the sale immediately.

Kindly acknowledge receipt of our payment.

"(9) The foregoing letter drew no response for more than four months. Then, on May 3, 1988, plaintiff, through counsel, made a final demand for compliance by the bank with its obligations under the considered perfected contract of sale (Exhibit "N"). As recounted by the trial court (Original Record, p. 656), in a reply letter dated May 12, 1988 (Annex "4" of defendant's answer to amended complaint), the defendants through Acting Conservator Encarnacion repudiated the authority of defendant Rivera and claimed that his dealings with the plaintiffs, particularly his counter-offer of P5.5 Million are unauthorized or illegal. On that basis, the defendants justified the refusal of the tenders of payment and the non-compliance with the obligations under what the plaintiffs considered to be a perfected contract of sale.

"(10) On May 16, 1988, plaintiffs filed a suit for specific performance with damages against the bank, its Manager Rivera and Acting Conservator Encarnacion. The basis of the suit was that the transaction had with the bank resulted in a perfected contract of sale. The defendants took the position that there was no such perfected sale because the defendant Rivera is not authorized to sell the property, and that there was no meeting of the minds as to the price."

On March 14, 1991, Henry L. Co (the brother of Luis Co), through counsel Sycip Salazar Hernandez and Gatmaitan, filed a motion to intervene in the trial court, alleging that as owner of 80% of the Bank's outstanding shares of stock, he had a substantial interest in resisting the complaint. On July 8, 1991, the trial court issued an order denying the motion to intervene on the ground that it was filed after trial had already been concluded. It also denied a motion for reconsideration filed thereafter. From the trial court's decision, the Bank, petitioner Rivera and conservator Encarnacion appealed to the Court of Appeals which subsequently affirmed with modification the said judgment. Henry Co did not appeal the denial of his motion for intervention.

In the course of the proceedings in the respondent Court, Carlos Ejercito was substituted in place of Demetria and Janolo, in view of the assignment of the latters' rights in the matter in litigation to said private respondent.

On July 11, 1992, during the pendency of the proceedings in the Court of Appeals, Henry Co and several other stockholders of the Bank, through counsel Angara Abello Concepcion Regala and Cruz, filed an action (hereafter, the "Second Case") -purportedly a "derivative suit" - with the Regional Trial Court of Makati, Branch 134, docketed as Civil Case No. 92-1606, against Encarnacion, Demetria and Janolo "to declare any perfected sale of the property as unenforceable and to stop Ejercito from enforcing or implementing the sale." [4] In his answer, Janolo argued that the Second Case was barred by *litis pendentia* by virtue of the case then pending in the Court of Appeals. During the pre-trial conference in the Second Case, plaintiffs filed a Motion for Leave of Court to Dismiss the Case Without Prejudice. "Private respondent opposed this motion on the ground, among others, that plaintiff's act of forum shopping justifies the dismissal of both cases, with prejudice." [5] Private respondent, in his memorandum, averred that this motion is still pending in the Makati RTC.

In their Petition [6] and Memorandum, [7] petitioners summarized their position as follows:

I.

"The Court of Appeals erred in declaring that a contract of sale was perfected between Ejercito (in substitution of Demetria and Janolo) and the bank.

II.

"The Court of Appeals erred in declaring the existence of an enforceable contract of sale between the parties.

III.

"The Court of Appeals erred in declaring that the conservator does not have the power to overrule or revoke acts of previous management.

IV.

"The findings and conclusions of the Court of Appeals do not conform to the evidence on record."

On the other hand, private respondents prayed for dismissal of the instant suit on the ground[8] that:

I.

"Petitioners have engaged in forum shopping.

II.

"The factual findings and conclusions of the Court of Appeals are supported by the evidence on record and may no longer be questioned in this case.

III.

"The Court of Appeals correctly held that there was a perfected contract between Demetria and Janolo (substituted by respondent Ejercito) and the bank.

IV.

"The Court of Appeals has correctly held that the conservator, apart from being estopped from repudiating the agency and the contract, has no authority to revoke the contract of sale."

The Issues

From the foregoing positions of the parties, the issues in this case may be summed up as follows:

- 1) Was there forum-shopping on the part of petitioner Bank?
- 2) Was there a perfected contract of sale between the parties?
- 3) Assuming there was, was the said contract enforceable under the statute of frauds?
- 4) Did the bank conservator have the unilateral power to repudiate the authority of the bank officers and/or to revoke the said contract?
- 5) Did the respondent Court commit any reversible error in its findings of facts?

The First Issue: Was There Forum-Shopping?

In order to prevent the vexations of multiple petitions and actions, the Supreme Court promulgated Revised Circular No. 28-91 requiring that a party "must certify under oath x x x [that] (a) he has not (t)heretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) to the best of his knowledge, no such action or proceeding is pending" in said courts or agencies. A violation of the said circular entails sanctions that include the summary dismissal of the

multiple petitions or complaints. To be sure, petitioners have included a VERIFICATION/CERTIFICATION in their Petition stating "for the record(,) the pendency of Civil Case No. 92-1606 before the Regional Trial Court of Makati, Branch 134, involving a derivative suit filed by stockholders of petitioner Bank against the conservator and other defendants but which is the subject of a pending Motion to Dismiss Without Prejudice." [9]

Private respondent Ejercito vigorously argues that in spite of this verification, petitioners are guilty of actual forum shopping because the instant petition pending before this Court involves "identical parties or interests represented, rights asserted and reliefs sought (as that) currently pending before the Regional Trial Court, Makati Branch 134 in the Second Case. In fact, the issues in the two cases are so intertwined that a judgment or resolution in either case will constitute *res judicata* in the other." [10]

On the other hand, petitioners explain [11] that there is no forum-shopping because:

- 1) In the earlier or "First Case" from which this proceeding arose, the Bank was impleaded as a defendant, whereas in the "Second Case" (assuming the Bank is the real party in interest in a derivative suit), it was the plaintiff;
- 2) "The derivative suit is not properly a suit for and in behalf of the corporation under the circumstances";
- 3) Although the CERTIFICATION/VERIFICATION (*supra*) signed by the Bank president and attached to the Petition identifies the action as a "derivative suit," it "does not mean that it is one" and "(t)hat is a legal question for the courts to decide";
- 4) Petitioners did not hide the Second Case as they mentioned it in the said VERIFICATION/CERTIFICATION.

We rule for private respondent.

To begin with, forum-shopping originated as a concept in private international law, [12] where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

In this light, Black's Law Dictionary [13] says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, [14] "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

In the Philippines, forum-shopping has acquired a connotation encompassing not only a choice of venues, as it was originally understood in conflicts of laws, but also to a choice of remedies. As to the first (choice of venues), the Rules of Court, for example, allow a plaintiff to commence personal actions "where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff" (Rule 4, Sec. 2 [b]). As to remedies, aggrieved parties, for example, are given a choice of pursuing civil liabilities independently of the criminal, arising from the same set of facts. A passenger of a public utility vehicle involved in a vehicular accident may sue on culpa contractual, culpa aquiliana or culpa criminal - each remedy being available independently of the others - although he cannot recover more than once.

"In either of these situations (choice of venue or choice of remedy), the litigant actually shops for a forum of his action. This was the original concept of the term forum shopping.

"Eventually, however, instead of actually making a choice of the forum of their actions, litigants, through the encouragement of their lawyers, file their actions in all available courts, or invoke all relevant remedies simultaneously. This practice had not only resulted to (sic) conflicting adjudications among different courts and consequent confusion inimical (sic) to an orderly administration of justice. It had created extreme inconvenience to some of the parties to the action.

"Thus, 'forum-shopping' had acquired a different concept - which is unethical professional legal practice. And this necessitated or had given rise to the formulation of rules and canons discouraging or altogether prohibiting the practice." [15]

What therefore originally started both in conflicts of laws and in our domestic law as a legitimate device for solving problems has been abused and misused to assure scheming litigants of dubious reliefs.

To avoid or minimize this unethical practice of subverting justice, the Supreme Court, as already mentioned, promulgated Circular 28-91. And even before that, the Court had proscribed it in the Interim Rules and Guidelines issued on January 11, 1983 and had struck down in several cases [16] the inveterate use of this insidious malpractice. Forum-shopping as "the filing of repetitious suits in different courts" has been condemned by Justice Andres R. Narvasa (now Chief Justice) in *Minister of Natural Resources, et al. vs. Heirs of Orval Hughes, et al.*, "as a reprehensible manipulation of court processes and proceedings x x x." [17] When does forum-shopping take place?

"There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction" [18]

The test for determining whether a party violated the rule against forum-shopping has been laid down in the 1986 case of *Buan vs. Lopez*, [19] also by Chief Justice Narvasa, and that is, forum-shopping exists where the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other, as follows:

"There thus exists between the action before this Court and RTC Case No. 86-36563 identity of parties, or at least such parties as represent the same interests in both actions, as well as identity of rights asserted and relief prayed for, the relief being founded on the same facts, and the identity on the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant*."

xxx xxx xxx

"As already observed, there is between the action at bar and RTC Case No. 86-36563, an identity as regards parties, or interests represented, rights asserted and relief sought, as well as basis thereof, to a degree sufficient to give rise to the ground for dismissal known as *auter action pendant* or *lis pendens*. That same identity puts into operation the sanction of twin dismissals just mentioned. The application of this sanction will prevent any further delay in the settlement of the controversy which might ensue from attempts to seek reconsideration of or to appeal from the Order of the Regional Trial Court in Civil Case No. 86-36563 promulgated on July 15, 1986, which dismissed the petition upon grounds which appear persuasive."

Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom

another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendencia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. In either case, forum shopping could be cited by the other party as a ground to ask for summary dismissal of the two[20] (or more) complaints or petitions, and for the imposition of the other sanctions, which are direct contempt of court, criminal prosecution, and disciplinary action against the erring lawyer.

Applying the foregoing principles in the case before us and comparing it with the Second Case, it is obvious that there exist identity of parties or interests represented, identity of rights or causes and identity of reliefs sought.

Very simply stated, the original complaint in the court *a quo* which gave rise to the instant petition was filed by the buyer (herein private respondent and his predecessors-in-interest) against the seller (herein petitioners) to enforce the alleged perfected sale of real estate. On the other hand, the complaint[21] in the Second Case seeks to declare such purported sale involving the same real property "as unenforceable as against the Bank," which is the petitioner herein. In other words, in the Second Case, the majority stockholders, in representation of the Bank, are seeking to accomplish what the Bank itself failed to do in the original case in the trial court. In brief, the objective or the relief being sought, though worded differently, is the same, namely, to enable the petitioner Bank to escape from the obligation to sell the property to respondent. In *Danville Maritime, Inc. vs. Commission on Audit*,[22] this Court ruled that the filing by a party of two apparently different actions, but with the same objective, constituted forum shopping:

"In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein - PNOC in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside the questioned letter-directive of the COA dated October 10, 1988 and to direct said body to approve the Memorandum of Agreement entered into by and between the PNOC and petitioner, while in the complaint before the lower court petitioner seeks to enjoin the PNOC from conducting a rebidding and from selling to other parties the vessel "T/T Andres Bonifacio," and for an extension of time for it to comply with the paragraph 1 of the memorandum of agreement and damages. One can see that although the relief prayed for in the two (2) actions are ostensibly different, the ultimate objective in both actions is the same, that is, the approval of the sale of vessel in favor of petitioner, and to overturn the letter-directive of the COA of October 10, 1988 disapproving the sale." (italics supplied)

In an earlier case,[23] but with the same logic and vigor, we held:

"In other words, the filing by the petitioners of the instant special civil action for certiorari and prohibition in this Court despite the pendency of their action in the Makati Regional Trial Court, is a species of forum-shopping. Both actions unquestionably involve the same transactions, the same essential facts and circumstances. The petitioners' claim of absence of identity simply because the PCGG had not been impleaded in the RTC suit, and the suit did not involve certain acts which transpired after its commencement, is specious. In the RTC action, as in the action before this Court, the validity of the contract to purchase and sell of September 1, 1986, i.e., whether or not it had been efficaciously rescinded, and the propriety of implementing the same (by paying the pledgee banks the amount of their loans, obtaining the release of the pledged shares, etc.) were the basic issues. So, too, the relief was the same: the prevention of such implementation and/or the restoration of the status quo ante. When the acts sought to be restrained took place anyway despite the issuance by the Trial Court of a temporary restraining order, the RTC suit did not become *functus officio*. It remained an effective vehicle for obtention of relief; and petitioners' remedy in the premises was plain and patent: the filing of an amended and supplemental pleading in the RTC suit, so as to include the PCGG as defendant and seek nullification of the acts sought to be enjoined but nonetheless done. The remedy was certainly not the institution of another action in another forum based on essentially the same facts. The adoption of this latter recourse renders the petitioners amenable to disciplinary action and both their actions, in this Court as well as

in the Court a quo, dismissible."

In the instant case before us, there is also identity of parties, or at least, of interests represented. Although the plaintiffs in the Second Case (Henry L. Co. et al.) are not name parties in the First Case, they represent the same interest and entity, namely, petitioner Bank, because:

Firstly, they are not suing in their personal capacities, for they have no direct personal interest in the matter in controversy. They are not principally or even subsidiarily liable; much less are they direct parties in the assailed contract of sale; and

Secondly, the allegations of the complaint in the Second Case show that the stockholders are bringing a "derivative suit." In the caption itself, petitioners claim to have brought suit "for and in behalf of the Producers Bank of the Philippines." [24] Indeed, this is the very essence of a derivative suit:

"An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. (*Gamboa v. Victoriano*, 90 SCRA 40, 47 [1979]; italics supplied).

In the face of the damaging admissions taken from the complaint in the Second Case, petitioners, quite strangely, sought to deny that the Second Case was a derivative suit, reasoning that it was brought, not by the minority shareholders, but by Henry Co et al., who not only own, hold or control over 80% of the outstanding capital stock, but also constitute the majority in the Board of Directors of petitioner Bank. That being so, then they really represent the Bank. So, whether they sued "derivatively" or directly, there is undeniably an identity of interests/entity represented.

Petitioner also tried to seek refuge in the corporate fiction that the personality of the Bank is separate and distinct from its shareholders. But the rulings of this Court are consistent: "When the fiction is urged as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals." [25]

In addition to the many cases [26] where the corporate fiction has been disregarded, we now add the instant case, and declare herewith that the corporate veil cannot be used to shield an otherwise blatant violation of the prohibition against forum-shopping. Shareholders, whether suing as the majority in direct actions or as the minority in a derivative suit, cannot be allowed to trifle with court processes, particularly where, as in this case, the corporation itself has not been remiss in vigorously prosecuting or defending corporate causes and in using and applying remedies available to it. To rule otherwise would be to encourage corporate litigants to use their shareholders as fronts to circumvent the stringent rules against forum shopping.

Finally, petitioner Bank argued that there cannot be any forum shopping, even assuming *arguendo* that there is identity of parties, causes of action and reliefs sought, "because it (the Bank) was the defendant in the (first) case while it was the plaintiff in the other (Second Case)," citing as authority *Victronics Computers, Inc. vs. Regional Trial Court, Branch 63, Makati, etc. et al.*, [27] where the Court held:

"The rule has not been extended to a defendant who, for reasons known only to him, commences a new action against the plaintiff - instead of filing a responsive pleading in the other case - setting forth therein, as causes of action, specific denials, special and affirmative defenses or even counterclaims. Thus, *Velhagen's and King's*

motion to dismiss Civil Case No. 91-2069 by no means negates the charge of forum-shopping as such did not exist in the first place.” (italics supplied)

Petitioner pointed out that since it was merely the defendant in the original case, it could not have chosen the forum in said case.

Respondent, on the other hand, replied that there is a difference in factual setting between Victronics and the present suit. In the former, as underscored in the above-quoted Court ruling, the defendants did not file any responsive pleading in the first case. In other words, they did not make any denial or raise any defense or counter-claim therein. In the case before us however, petitioners filed a responsive pleading to the complaint - as a result of which, the issues were joined.

Indeed, by praying for affirmative reliefs and interposing counter-claims in their responsive pleadings, the petitioners became plaintiffs themselves in the original case, giving unto themselves the very remedies they repeated in the Second Case.

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue. In this case, this is exactly the problem: a decision recognizing the perfection and directing the enforcement of the contract of sale will directly conflict with a possible decision in the Second Case barring the parties from enforcing or implementing the said sale. Indeed, a final decision in one would constitute *res judicata* in the other.[28]

The foregoing conclusion finding the existence of forum-shopping notwithstanding, the only sanction possible now is the dismissal of both cases with prejudice, as the other sanctions cannot be imposed because petitioners’ present counsel entered their appearance only during the proceedings in this Court, and the Petition’s VERIFICATION/CERTIFICATION contained sufficient allegations as to the pendency of the Second Case to show good faith in observing Circular 28-91. The lawyers who filed the Second Case are not before us; thus the rudiments of due process prevent us from *motu proprio* imposing disciplinary measures against them in this Decision. However, petitioners themselves (and particularly Henry Co, et al.) as litigants are admonished to strictly follow the rules against forum-shopping and not to trifle with court proceedings and processes. They are warned that a repetition of the same will be dealt with more severely.

Having said that, let it be emphasized that this petition should be dismissed not merely because of forum-shopping but also because of the substantive issues raised, as will be discussed shortly.

The Second Issue: Was The Contract Perfected?

The respondent Court correctly treated the question of whether or not there was, on the basis of the facts established, a perfected contract of sale as the ultimate issue. Holding that a valid contract has been established, respondent Court stated:

“There is no dispute that the object of the transaction is that property owned by the defendant bank as acquired assets consisting of six (6) parcels of land specifically identified under Transfer Certificates of Title Nos. T-106932 to T-106937. It is likewise beyond cavil that the bank intended to sell the property. As testified to by the Bank’s Deputy Conservator, Jose Entereso, the bank was looking for buyers of the property. It is definite that the plaintiffs wanted to purchase the property and it was precisely for this purpose that they met with defendant Rivera, Manager of the Property Management Department of the defendant bank, in early August 1987. The procedure in the sale of acquired assets as well as the nature and scope of the authority of Rivera on

the matter is clearly delineated in the testimony of Rivera himself, which testimony was relied upon by both the bank and by Rivera in their appeal briefs. Thus (TSN of July 30, 1990, pp. 19-20):

A: The procedure runs this way: Acquired assets was turned over to me and then I published it in the form of an inter-office memorandum distributed to all branches that these are acquired assets for sale. I was instructed to advertise acquired assets for sale so on that basis, I have to entertain offer; to accept offer, formal offer and upon having been offered, I present it to the Committee. I provide the Committee with necessary information about the property such as original loan of the borrower, bid price during the foreclosure, total claim of the bank, the appraised value at the time the property is being offered for sale and then the information which are relative to the evaluation of the bank to buy which the Committee considers and it is the Committee that evaluate as against the exposure of the bank and it is also the Committee that submit to the Conservator for final approval and once approved, we have to execute the deed of sale and it is the Conservator that sign the deed of sale, sir.

"The plaintiffs, therefore, at that meeting of August 1987 regarding their purpose of buying the property, dealt with and talked to the right person. Necessarily, the agenda was the price of the property, and plaintiffs were dealing with the bank official authorized to entertain offers, to accept offers and to present the offer to the Committee before which the said official is authorized to discuss information relative to price determination. Necessarily, too, it being inherent in his authority, Rivera is the officer from whom official information regarding the price, as determined by the Committee and approved by the Conservator, can be had. And Rivera confirmed his authority when he talked with the plaintiff in August 1987. The testimony of plaintiff Demetria is clear on this point (TSN of May 31, 1990, pp. 27-28):

Q: When you went to the Producers Bank and talked with Mr. Mercurio Rivera, did you ask him point-blank his authority to sell any property?

A: No, sir. Not point blank although it came from him. (W)hen I asked him how long it would take because he was saying that the matter of pricing will be passed upon by the committee. And when I asked him how long it will take for the committee to decide and he said the committee meets every week. If I am not mistaken Wednesday and in about two week's (sic) time, in effect what he was saying he was not the one who was to decide. But he would refer it to the committee and he would relay the decision of the committee to me.

Q: Please answer the question.

A: He did not say that he had the authority(.) But he said he would refer the matter to the committee and he would relay the decision to me and he did just like that.

"Parenthetically, the Committee referred to was the Past Due Committee of which Luis Co was the Head, with Jose Entereso as one of the members.

"What transpired after the meeting of early August 1987 are consistent with the authority and the duties of Rivera and the bank's internal procedure in the matter of the sale of bank's assets. As advised by Rivera, the plaintiffs made a formal offer by a letter dated August 20, 1987 stating that they would buy at the price of P3.5 Million in cash. The letter was for the attention of Mercurio Rivera who was tasked to convey and accept such offers. Considering an aspect of the official duty of Rivera as some sort of intermediary between the plaintiffs-buyers with their proposed buying price on one hand, and the bank Committee, the Conservator and ultimately the bank itself with the set price on the other, and considering further the discussion of price at the meeting of August resulting in a formal offer of P3.5 Million in cash, there can be no other logical conclusion than that when, on September 1, 1987, Rivera informed plaintiffs by letter that "the bank's counter-offer is at P5.5 Million for more than 101 hectares on lot basis," such counter-offer price had been determined by the Past Due Committee and approved by the Conservator after Rivera had duly presented plaintiffs' offer for discussion by the Committee of such matters as original loan of borrower, bid price during foreclosure, total claim of the bank, and market value. Tersely put, under the established facts, the price of P5.5 Million was, as

clearly worded in Rivera's letter (Exh. "E"), the official and definitive price at which the bank was selling the property.

"There were averments by defendants below, as well as before this Court, that the P5.5 Million price was not discussed by the Committee and that it was merely quoted to start negotiations regarding the price. As correctly characterized by the trial court, this is not credible. The testimonies of Luis Co and Jose Entereso on this point are at best equivocal and considering the gratuitous and self-serving character of these declarations, the bank's submission on this point does not inspire belief. Both Co and Entereso, as members of the Past Due Committee of the bank, claim that the offer of the plaintiff was never discussed by the Committee. In the same vein, both Co and Entereso openly admit that they seldom attend the meetings of the Committee. It is important to note that negotiations on the price had started in early August and the plaintiffs had already offered an amount as purchase price, having been made to understand by Rivera, the official in charge of the negotiation, that the price will be submitted for approval by the bank and that the bank's decision will be relayed to plaintiffs. From the facts, the amount of P5.5 Million has a definite significance. It is the official bank price. At any rate, the bank placed its official, Rivera, in a position of authority to accept offers to buy and negotiate the sale by having the offer officially acted upon by the bank. The bank cannot turn around and later say, as it now does, that what Rivera states as the bank's action on the matter is not in fact so. It is a familiar doctrine, the doctrine of ostensible authority, that if a corporation knowingly permits one of its officers, or any other agent, to do acts within the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against any one who has in good faith dealt with the corporation through such agent, be estopped from denying his authority (*Francisco v. GSIS*, 7 SCRA 577, 583-584; *PNB v. Court of Appeals*, 94 SCRA 357, 369-370; *Prudential Bank v. Court of Appeals*, G.R. No. 103957, June 14, 1993)."[29]

Article 1318 of the Civil Code enumerates the requisites of a valid and perfected contract as follows: "(1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established."

There is no dispute on requisite no. 2. The object of the questioned contract consists of the six (6) parcels of land in Sta. Rosa, Laguna with an aggregate area of about 101 hectares, more or less, and covered by Transfer Certificates of Title Nos. T-106932 to T-106937. There is, however, a dispute on the first and third requisites.

Petitioners allege that "there is no counter-offer made by the Bank, and any supposed counter-offer which Rivera (or Co) may have made is unauthorized. Since there was no counter-offer by the Bank, there was nothing for Ejercito (in substitution of Demetria and Janolo) to accept." [30] They disputed the factual basis of the respondent Court's findings that there was an offer made by Janolo for P3.5 million, to which the Bank counter-offered P5.5 million. We have perused the evidence but cannot find fault with the said Court's findings of fact. Verily, in a petition under Rule 45 such as this, errors of fact -if there be any - are, as a rule, not reviewable. The mere fact that respondent Court (and the trial court as well) chose to believe the evidence presented by respondent more than that presented by petitioners is not by itself a reversible error. In fact, such findings merit serious consideration by this Court, particularly where, as in this case, said courts carefully and meticulously discussed their findings. This is basic.

Be that as it may, and in addition to the foregoing disquisitions by the Court of Appeals, let us review the question of Rivera's authority to act and petitioner's allegations that the P5.5 million counter-offer was extinguished by the P4.25 million revised offer of Janolo. Here, there are questions of law which could be drawn from the factual findings of the respondent Court. They also delve into the contractual elements of consent and cause.

The authority of a corporate officer in dealing with third persons may be actual or apparent. The doctrine of "apparent authority," with special reference to banks, was laid out in *Prudential Bank vs. Court of Appeals*, [31]

where it was held that:

"Conformably, we have declared in countless decisions that the principal is liable for obligations contracted by the agent. The agent's apparent representation yields to the principal's true representation and the contract is considered as entered into between the principal and the third person (citing *National Food Authority vs. Intermediate Appellate Court*, 184 SCRA 166).

"A bank is liable for wrongful acts of its officers done in the interests of the bank or in the course of dealings of the officers in their representative capacity but not for acts outside the scope of their authority (9 C.J.S., p. 417). A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom (10 Am Jur 2d, p. 114). Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit (*McIntosh v. Dakota Trust Co.*, 52 ND 752, 204 NW 818, 40 ALR 1021).

"Application of these principles is especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency. Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors."

From the evidence found by respondent Court, it is obvious that petitioner Rivera has apparent or implied authority to act for the Bank in the matter of selling its acquired assets. This evidence includes the following:

(a) The petition itself in par. II-1 (p. 3) states that Rivera was "at all times material to this case, Manager of the Property Management Department of the Bank." By his own admission, Rivera was already the person in charge of the Bank's acquired assets (TSN, August 6, 1990, pp. 8-9);

(b) As observed by respondent Court, the land was definitely being sold by the Bank. And during the initial meeting between the buyers and Rivera, the latter suggested that the buyers' offer should be no less than P3.3 million (TSN, April 26, 1990, pp. 16-17);

(c) Rivera received the buyers' letter dated August 30, 1987 offering P3.5 million (TSN, 30 July 1990, p. 11);

(d) Rivera signed the letter dated September 1, 1987 offering to sell the property for P5.5 million (TSN, July 30, p. 11);

(e) Rivera received the letter dated September 17, 1987 containing the buyers' proposal to buy the property for P4.25 million (TSN, July 30, 1990, p. 12);

(f) Rivera, in a telephone conversation, confirmed that the P5.5 million was the final price of the Bank (TSN, January 16, 1990, p. 18);

(g) Rivera arranged the meeting between the buyers and Luis Co on September 28, 1987, during which the Bank's offer of P5.5 million was confirmed by Rivera (TSN, April 26, 1990, pp. 34-35). At said meeting, Co, a major shareholder and officer of the Bank, confirmed Rivera's statement as to the finality of the Bank's counter-offer of P5.5 million (TSN, January 16, 1990, p. 21; TSN, April 26, 1990, p. 35);

(h) In its newspaper advertisements and announcements, the Bank referred to Rivera as the officer acting for the Bank in relation to parties interested in buying assets owned/acquired by the Bank. In fact, Rivera was the officer mentioned in the Bank's advertisements offering for sale the property in question (cf. Exhs. "S" and "S-I").

In the very recent case of *Limketkai Sons Milling, Inc. vs. Court of Appeals, et al.*,^[32] the Court, through Justice Jose A. R. Melo, affirmed the doctrine of apparent authority as it held that the apparent authority of the officer of the Bank of P.I. in charge of acquired assets is borne out by similar circumstances surrounding his dealings with buyers.

To be sure, petitioners attempted to repudiate Rivera's apparent authority through documents and testimony which seek to establish Rivera's actual authority. These pieces of evidence, however, are inherently weak as they consist of Rivera's self-serving testimony and various inter-office memoranda that purport to show his limited actual authority, of which private respondent cannot be charged with knowledge. In any event, since the issue is apparent authority, the existence of which is borne out by the respondent Court's findings, the evidence of actual authority is immaterial insofar as the liability of a corporation is concerned.^[33]

Petitioners also argued that since Demetria and Janolo were experienced lawyers and their "law firm" had once acted for the Bank in three criminal cases, they should be charged with actual knowledge of Rivera's limited authority. But the Court of Appeals in its Decision (p. 12) had already made a factual finding that the buyers had no notice of Rivera's actual authority prior to the sale. In fact, the Bank has not shown that they acted as its counsel in respect to any acquired assets; on the other hand, respondent has proven that Demetria and Janolo merely associated with a loose aggrupation of lawyers (not a professional partnership), one of whose members (Atty. Susana Parker) acted in said criminal cases.

Petitioners also alleged that Demetria's and Janolo's P4.25 million counter-offer in the letter dated September 17, 1987 extinguished the Bank's offer of P5.5 million.^[34] They disputed the respondent Court's finding that "there was a meeting of minds when on 30 September 1987 Demetria and Janolo through Annex 'L' (letter dated September 30, 1987) 'accepted' Rivera's counter offer of P5.5 million under Annex 'J' (letter dated September 17, 1987)," citing the late Justice Paras,^[35] Art. 1319 of the Civil Code^[36] and related Supreme Court rulings starting with *Beaumont vs. Prieto*.^[37]

However, the above-cited authorities and precedents cannot apply in the instant case because, as found by the respondent Court which reviewed the testimonies on this point, what was "accepted" by Janolo in his letter dated September 30, 1987 was the Bank's offer of P5.5 million as confirmed and reiterated to Demetria and Atty. Jose Fajardo by Rivera and Co during their meeting on September 28, 1987. Note that the said letter of September 30, 1987 begins with "(p)ursuant to our discussion last 28 September 1987 x x x."

Petitioners insist that the respondent Court should have believed the testimonies of Rivera and Co that the September 28, 1987 meeting "was meant to have the offerors improve on their position of P5.5 million."^[38] However, both the trial court and the Court of Appeals found petitioners' testimonial evidence "not credible," and we find no basis for changing this finding of fact.

Indeed, we see no reason to disturb the lower courts' (both the RTC and the CA) common finding that private respondents' evidence is more in keeping with truth and logic - that during the meeting on September 28, 1987, Luis Co and Rivera "confirmed that the P5.5 million price has been passed upon by the Committee and could no longer be lowered (TSN of April 27, 1990, pp. 34-35)."^[39] Hence, assuming *arguendo* that the counter-offer of P4.25 million extinguished the offer of P5.5 million, Luis Co's reiteration of the said P5.5 million price during the September 28, 1987 meeting revived the said offer. And by virtue of the September 30, 1987 letter accepting this revived offer, there was a meeting of the minds, as the acceptance in said letter was absolute and unqualified.

We note that the Bank's repudiation, through Conservator Encarnacion, of Rivera's authority and action, particularly the latter's counter-offer of P5.5 million, as being "unauthorized and illegal" came only on May 12, 1988 or more than seven (7) months after Janolo's acceptance. Such delay, and the absence of any circumstance

which might have justifiably prevented the Bank from acting earlier, clearly characterizes the repudiation as nothing more than a last-minute attempt on the Bank's part to get out of a binding contractual obligation.

Taken together, the factual findings of the respondent Court point to an implied admission on the part of the petitioners that the written offer made on September 1, 1987 was carried through during the meeting of September 28, 1987. This is the conclusion consistent with human experience, truth and good faith.

It also bears noting that this issue of extinguishment of the Bank's offer 'of P5.5 million was raised for the first time on appeal and should thus be disregarded.

"This Court in several decisions has repeatedly adhered to the principle that points of law, theories, issues of fact and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal (Santos vs. IAC, No. 74243, November 14, 1986, 145 SCRA 592)."[40]

"xxx It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process (Dihiansan vs. CA, 153 SCRA 713 [1987]; Anchuelo vs. IAC, 147 SCRA 434 [1987]; Dulos Realty & Development Corp. vs. CA, 157 SCRA 425 [1988]; Ramos vs. IAC, 175 SCRA 70 [1989]; Gevero vs. IAC, G.R. 77029, August 30, 1990)."[41]

Since the issue was not raised in the pleadings as an affirmative defense, private respondent was not given an opportunity in the trial court to controvert the same through opposing evidence. Indeed, this is a matter of due process. But we passed upon the issue anyway, if only to avoid deciding the case on purely procedural grounds, and we repeat that, on the basis of the evidence already in the record and as appreciated by the lower courts, the inevitable conclusion is simply that there was a perfected contract of sale.

The Third Issue: Is the Contract Enforceable?

The petition alleged:[42]

"Even assuming that Luis Co or Rivera did relay a verbal offer to sell at P5.5 million during the meeting of 28 September 1987, and it was this verbal offer that Demetria and Janolo accepted with their letter of 30 September 1987, the contract produced thereby would be unenforceable by action - there being no note, memorandum or writing subscribed by the Bank to evidence such contract. (Please see Article 1403[2], Civil Code.)"

Upon the other hand, the respondent Court in its Decision (p. 14) stated:

"x x x Of course, the bank's letter of September 1, 1987 on the official price and the plaintiffs' acceptance of the price on September 30, 1987, are not, in themselves, formal contracts of sale. They are however clear embodiments of the fact that a contract of sale was perfected between the parties, such contract being binding in whatever form it may have been entered into (case citations omitted). Stated simply, the banks' letter of September 1, 1987, taken together with plaintiffs' letter dated September 30, 1987, constitute in law a sufficient memorandum of a perfected contract of sale."

The respondent Court could have added that the written communications commenced not only from September 1, 1987 but from Janolo's August 20, 1987 letter. We agree that, taken together, these letters constitute sufficient memoranda - since they include the names of the parties, the terms and conditions of the contract, the price and a description of the property as the object of the contract.

But let it be assumed *arguendo* that the counter-offer during the meeting on September 28, 1987 did constitute a "new" offer which was accepted by Janolo on September 30, 1987. Still, the statute of frauds will not apply by

reason of the failure of petitioners to object to oral testimony proving petitioner Bank's counter-offer of P5.5 million. Hence, petitioners - by such utter failure to object - are deemed to have waived any defects of the contract under the statute of frauds, pursuant to Article 1405 of the Civil Code:

"Art. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them."

As private respondent pointed out in his Memorandum, oral testimony on the reaffirmation of the counter-offer of P5.5 million is aplenty -and the silence of petitioners all throughout the presentation makes the evidence binding on them thus:

A -

Yes, sir. I think it was September 28, 1987 and I was again present because Atty. Demetria told me to accompany him and we were able to meet Luis Co at the Bank.

xxx xxx xxx

Q -

Now, what transpired during this meeting with Luis Co of the Producers Bank?

A -

Atty. Demetria asked Mr. Luis Co whether the price could be reduced, sir.

Q -

What price?

A -

The 5.5 million pesos and Mr. Luis Co said that the amount cited by Mr. Mercurio Rivera is the final price and that is the price they intends (sic) to have, sir.

Q -

What do you mean?

A -

That is the amount they want, sir.

Q -

What is the reaction of the plaintiff Demetria to Luis Co's statment (sic) that the defendant Rivera's counter-offer of 5.5 million was the defendant's bank (sic) final offer?

A -

He said in a day or two, he will make final acceptance, sir.

Q -

What is the response of Mr. Luis Co?

A -

He said he will wait for the position of Atty. Demetria, sir.

[Direct testimony of Atty. Jose Fajardo, TSN, January 16, 1990, at pp. 18-21.]

----0----

Q -

What transpired during that meeting between you and Mr. Luis Co of the defendant Bank?

A -

We went straight to the point because he being a busy person, I told him if the amount of P5.5 million could still be reduced and he said that was already passed upon by the committee. What the bank expects which was contrary to what Mr. Rivera stated. And he told me that is the final offer of the bank P5.5 million and we should indicate our position as soon as possible.

Q -

What was your response to the answer of Mr. Luis Co?

A -

I said that we are going to give him our answer in a few days and he said that was it. Atty. Fajardo and I and Mr. Mercurio [Rivera] was with us at the time at his office.

Q -

For the record, your Honor please, will you tell this Court who was with Mr. Co in his Office in Producers Bank Building during this meeting?

A -

Mr. Co himself, Mr. Rivera, Atty. Fajardo and I.

Q -

By Mr. Co you are referring to?

A -

Mr. Luis Co.

Q -

After this meeting with Mr. Luis Co, did you and your partner accede on (sic) the counter offer by the bank?

A -

Yes, sir, we did. Two days thereafter we sent our acceptance to the bank which offer we accepted, the offer of the bank which is P5.5 million."

[Direct testimony of Atty. Demetria, TSN, 26 April 1990, at pp. 34-36.]

---- 0 ----

Q -

According to Atty. Demetrio Demetria, the amount of P5.5 million was reached by the Committee and it is not within his power to reduce this amount. What can you say to that statement that the amount of P5.5 million was reached by the Committee?

A -

It was not discussed by the Committee but it was discussed initially by Luis Co and the group of Atty. Demetrio Demetria and Atty. Pajardo (sic), in that September 28, 1987 meeting, sir."

[Direct testimony of Mercurio Rivera, TSN, 30 July 1990, pp. 14-15.]

The Fourth Issue: May the Conservator Revoke the Perfected and Enforceable Contract?

It is not disputed that the petitioner Bank was under a conservator placed by the Central Bank of the Philippines during the time that the negotiation and perfection of the contract of sale took place. Petitioners energetically contended that the conservator has the power to revoke or overrule actions of the management or the board of directors of a bank, under Section 28-A of Republic Act No. 265 (otherwise known as the Central Bank Act) as follows:

"Whenever, on the basis of a report submitted by the appropriate supervising or examining department, the Monetary Board finds that a bank or a non-bank financial intermediary performing quasi - banking functions is in a state of continuing inability or unwillingness to maintain a state of liquidity deemed adequate to protect the interest of depositors and creditors, the Monetary Board may appoint a conservator to take charge of the assets, liabilities, and the management of that institution, collect all monies and debts due said institution and exercise all powers necessary to preserve the assets of the institution, reorganize the management thereof, and restore its viability. He shall have the power to overrule or revoke the actions of the previous management and board of directors of the bank or non-bank financial intermediary performing quasi-banking functions, any provision of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary."

In the first place, this issue of the Conservator's alleged authority to revoke or repudiate the perfected contract of sale was raised for the first time in this Petition - as this was not litigated in the trial court or Court of Appeals. As already stated earlier, issues not raised and/or ventilated in the trial court, let alone in the Court of Appeals, "cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process." [43]

In the second place, there is absolutely no evidence that the Conservator, at the time the contract was perfected, actually repudiated or overruled said contract of sale. The Bank's acting conservator at the time, Rodolfo Romey,

never objected to the sale of the property to Demetria and Janolo. What petitioners are really referring to is the letter of Conservator Encarnacion, who took over from Romey after the sale was perfected on September 30, 1987 (Annex V, petition) which unilaterally repudiated - not the contract - but the authority of Rivera to make a binding offer - and which unarguably came months after the perfection of the contract. Said letter dated May 12, 1988 is reproduced hereunder:

"May 12, 1988

"Atty. Noe C. Zarate

Zarate Carandang Perlas & Ass.

Suite 323 Rufino Building

Ayala Avenue, Makati, Metro Manila

Dear Atty. Zarate:

This pertains to your letter dated May 5, 1988 on behalf of Attys. Janolo and Demetria regarding the six (6) parcels of land located at Sta. Rosa, Laguna.

We deny that Producers Bank has ever made a legal counter-offer to any of your clients nor perfected a 'contract to sell and buy' with any of them for the following reasons.

In the 'Inter-Office Memorandum' dated April 25, 1986 addressed to and approved by former Acting Conservator Mr. Andres I. Rustia, Producers Bank Senior Manager Perfecto M. Pascua detailed the functions of Property Management Department (PMD) staff and officers (Annex A), you will immediately read that Manager Mr. Mercurio Rivera or any of his subordinates has no authority, power or right to make any alleged counter-offer. In short, your lawyer-clients did not deal with the authorized officers of the bank.

Moreover, under Secs. 23 and 36 of the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and Sec. 28-A of the Central Bank Act (Rep. Act No. 265, as amended), only the Board of Directors/Conservator may authorize the sale of any property of the corporation/bank.

Our records do not show that Mr. Rivera was authorized by the old board or by any of the bank conservators (starting January, 1984) to sell the aforesaid property to any of your clients. Apparently, what took place were just preliminary discussions/ consultations between him and your clients, which everyone knows cannot bind the Bank's Board or Conservator.

We are, therefore, constrained to refuse any tender of payment by your clients, as the same is patently violative of corporate and banking laws. We believe that this is more than sufficient legal justification for refusing said alleged tender.

Rest assured that we have nothing personal against your clients. All our acts are official, legal and in accordance with law. We also have no personal interest in any of the properties of the Bank.

Please be advised accordingly.

Very truly yours,

(Sgd.) Leonida T. Encarnacion

LEONIDA T. ENCARNACION

Acting Conservator"

In the third place, while admittedly, the Central Bank law gives vast and far-reaching powers to the conservator of a bank, it must be pointed out that such powers must be related to the "(preservation of) the assets of the bank, (the reorganization of) the management thereof and (the restoration of) its viability." Such powers, enormous and extensive as they are, cannot extend to the post-facto repudiation of perfected transactions, otherwise they would

infringe against the non-impairment clause of the Constitution.[44] If the legislature itself cannot revoke an existing valid contract, how can it delegate such non-existent powers to the conservator under Section 28-A of said law?

Obviously, therefore, Section 28-A merely gives the conservator power to revoke contracts that are, under existing law, deemed to be defective - i.e., void, voidable, unenforceable or rescissible. Hence, the conservator merely takes the place of a bank's board of directors. What the said board cannot do - such as repudiating a contract validly entered into under the doctrine of implied authority - the conservator cannot do either. Ineluctably, his power is not unilateral and he cannot simply repudiate valid obligations of the Bank. His authority would be only to bring court actions to assail such contracts - as he has already done so in the instant case. A contrary understanding of the law would simply not be permitted by the Constitution. Neither by common sense. To rule otherwise would be to enable a failing bank to become solvent, at the expense of third parties, by simply getting the conservator to unilaterally revoke all previous dealings which had one way or another come to be considered unfavorable to the Bank, yielding nothing to perfected contractual rights nor vested interests of the third parties who had dealt with the Bank.

The Fifth Issue: Were There Reversible Errors of Fact?

Basic is the doctrine that in petitions for review under Rule 45 of the Rules of Court, findings of fact by the Court of Appeals are not reviewable by the Supreme Court. In *Andres vs. Manufacturers Hanover & Trust Corporation*,[45] we held:

"x x x. The rule regarding questions of fact being raised with this Court in a petition for certiorari under Rule 45 of the Revised Rules of Court has been stated in *Remalante vs. Tibe*, G.R. No. 59514, February 25, 1988, 158 SCRA 138, thus:

'The rule in this jurisdiction is that only questions of law may be raised in a petition for certiorari under Rule 45 of the Revised Rules of Court.' 'The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of the fact being conclusive' '[*Chan vs. Court of Appeals*, G.R. No. L-27488, June 30, 1970, 33 SCRA 737, reiterating a long line of decisions]. This Court has emphatically declared that' 'it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court' (*Tiongco v. De la Merced*, G.R. No. L-24426, July 25, 1974, 58 SCRA 89; *Corona vs. Court of Appeals*, G.R. No. L-62482, April 28, 1983, 121 SCRA 865; *Baniqued vs. Court of Appeals*, G.R. No. L-47531, February 20, 1984, 127 SCRA 596).' 'Barring, therefore, a showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this Court is not expected or required to examine or contrast the oral and documentary evidence submitted by the parties' '[*Santa Ana, Jr. vs. Hernandez*, G.R. No. L-16394, December 17, 1966, 18 SCRA 973] [at pp. 144-145.]"

Likewise, in *Bernardo vs. Court of Appeals*,[46] we held:

"The resolution of this petition invites us to closely scrutinize the facts of the case, relating to the sufficiency of evidence and the credibility of witnesses presented. This Court so held that it is not the function of the Supreme Court to analyze or weigh such evidence all over again. The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts. x x x"

As held in the recent case of *Chua Tiong Tay vs. Court of Appeals and Goldrock Construction and Development Corp.*: [47]

"The Court has consistently held that the factual findings of the trial court, as well as the Court of Appeals, are

final and conclusive and may not be reviewed on appeal. Among the exceptional circumstances where a reassessment of facts found by the lower courts is allowed are when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; when the inference made is manifestly absurd, mistaken or impossible; when there is grave abuse of discretion in the appreciation of facts; when the judgment is premised on a misapprehension of facts; when the findings went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee. After a careful study of the case at bench, we find none of the above grounds present to justify the re-evaluation of the findings of fact made by the courts below."

In the same vein, the ruling of this Court in the recent case of *South Sea Surety and Insurance Company, Inc. vs. Hon. Court of Appeals, et al.*[48] is equally applicable to the present case:

"We see no valid reason to discard the factual conclusions of the appellate court. x x x (I)t is not the function of this Court to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties, particularly where, such as here, the findings of both the trial court and the appellate court on the matter coincide." (italics supplied)

Petitioners, however, assailed the respondent Court's Decision as "fraught with findings and conclusions which were not only contrary to the evidence on record but have no bases at all," specifically the findings that (1) the "Bank's counter-offer price of P5.5 million had been determined by the past due committee and approved by conservator Romey, after Rivera presented the same for discussion" and (2) "the meeting with Co was not to scale down the price and start negotiations anew, but a meeting on the already determined price of P5.5 million." Hence, citing *Philippine National Bank vs. Court of Appeals*,[49] petitioners are asking us to review and reverse such factual findings.

The first point was clearly passed upon by the Court of Appeals,[50] thus:

"There can be no other logical conclusion than that when, on September 1, 1987, Rivera informed plaintiffs by letter that 'the bank's counter-offer is at P5.5 Million for more than 101 hectares on lot basis,' such counter-offer price had been determined by the Past Due Committee and approved by the Conservator after Rivera had duly presented plaintiffs' offer for discussion by the Committee x x x. Tersely put, under the established fact, the price of P5.5 Million was, as clearly worded in Rivera's letter (Exh. 'E'), the official and definitive price at which the bank was selling the property." (p. 11, CA Decision)

xxx xxx xxx

"xxx. The argument deserves scant consideration. As pointed out by plaintiff, during the meeting of September 28, 1987 between the plaintiffs, Rivera and Luis Co, the senior vice-president of the bank, where the topic was the possible lowering of the price, the bank official refused it and confirmed that the P5.5 Million price had been passed upon by the Committee and could no longer be lowered (TSN of April 27, 1990, pp. 34-35)" (p. 15, CA Decision).

The respondent Court did not believe the evidence of the petitioners on this point, characterizing it as "not credible" and "at best equivocal, and considering the gratuitous and self-serving character of these declarations, the bank's submissions on this point do not inspire belief."

To become credible and unequivocal, petitioners should have presented then Conservator Rodolfo Romey to testify on their behalf, as he would have been in the best position to establish their thesis. Under the rules on evidence,[51] such suppression gives rise to the presumption that his testimony would have been adverse, if produced.

The second point was squarely raised in the Court of Appeals, but petitioners' evidence was deemed insufficient by both the trial court and the respondent Court, and instead, it was respondent's submissions that were believed

and became bases of the conclusions arrived at.

In fine, it is quite evident that the legal conclusions arrived at from the findings of fact by the lower courts are valid and correct. But the petitioners are now asking this Court to disturb these findings to fit the conclusion they are espousing. This we cannot do.

To be sure, there are settled exceptions where the Supreme Court may disregard findings of fact by the Court of Appeals.[52] We have studied both the records and the CA Decision and we find no such exceptions in this case. On the contrary, the findings of the said Court are supported by a preponderance of competent and credible evidence. The inferences and conclusions are reasonably based on evidence duly identified in the Decision. Indeed, the appellate court patiently traversed and dissected the issues presented before it, lending credibility and dependability to its findings. The best that can be said in favor of petitioners on this point is that the factual findings of respondent Court did not correspond to petitioners' claims, but were closer to the evidence as presented in the trial court by private respondent. But this alone is no reason to reverse or ignore such factual findings, particularly where, as in this case, the trial court and the appellate court were in common agreement thereon. Indeed, conclusions of fact of a trial judge - as affirmed by the Court of Appeals - are conclusive upon this Court, absent any serious abuse or evident lack of basis or capriciousness of any kind, because the trial court is in a better position to observe the demeanor of the witnesses and their courtroom manner as well as to examine the real evidence presented.

Epilogue

In summary, there are two procedural issues involved - forum-shopping and the raising of issues for the first time on appeal [viz., the extinguishment of the Bank's offer of P5.5 million and the conservator's powers to repudiate contracts entered into by the Bank's officers] - which per se could justify the dismissal of the present case. We did not limit ourselves thereto, but delved as well into the substantive issues - the perfection of the contract of sale and its enforceability, which required the determination of questions of fact. While the Supreme Court is not a trier of facts and as a rule we are not required to look into the factual bases of respondent Court's decisions and resolutions, we did so just the same, if only to find out whether there is reason to disturb any of its factual findings, for we are only too aware of the depth, magnitude and vigor by which the parties, through their respective eloquent counsel, argued their positions before this Court.

We are not unmindful of the tenacious plea that the petitioner Bank is operating abnormally under a government-appointed conservator and "there is need to rehabilitate the Bank in order to get it back on its feet x x x as many people depend on (it) for investments, deposits and well as employment. As of June 1987, the Bank's overdraft with the Central Bank had already reached P1.023 billion x x x and there were (other) offers to buy the subject properties for a substantial amount of money." [53]

While we do not deny our sympathy for this distressed bank, at the same time, the Court cannot emotionally close its eyes to overriding considerations of substantive and procedural law, like respect for perfected contracts, non-impairment of obligations and sanctions against forum-shopping, which must be upheld under the rule of law and blind justice.

This Court cannot just gloss over private respondent's submission that, while the subject properties may currently command a much higher price, it is equally true that at the time of the transaction in 1987, the price agreed upon of P5.5 million was reasonable, considering that the Bank acquired these properties at a foreclosure sale for no more than P 3.5 million.[54] That the Bank procrastinated and refused to honor its commitment to sell cannot now be used by it to promote its own advantage, to enable it to escape its binding obligation and to reap the benefits of the increase in land values. To rule in favor of the Bank simply because the property in question has algebraically

accelerated in price during the long period of litigation is to reward lawlessness and delays in the fulfillment of binding contracts. Certainly, the Court cannot stamp its imprimatur on such outrageous proposition.

WHEREFORE, finding no reversible error in the questioned Decision and Resolution, the Court hereby DENIES the petition. The assailed Decision is AFFIRMED. Moreover, petitioner Bank is REPRIMANDED for engaging in forum-shopping and WARNED that a repetition of the same or similar acts will be dealt with more severely. Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Eleventh Division, J. Emeterio C. Cui, Chairman and ponente, and JJ. Quirino D. Abad Santos, Jr. and Buenaventura J. Guerrero, members.

[2] Regional Trial Court, National Capital Region, Branch 59, Makati City, Hon. Lucia Violago-Isnani, presiding judge.

[3] Rollo, pp. 101-107.

[4] Memorandum for Petitioners, p. 30; Rollo, p. 997.

[5] Memorandum for Respondent, p. 18; Rollo, p. 1074.

[6] Rollo, p. 43.

[7] Rollo, pp. 995-996.

[8] Rollo, pp. 1094-1095.

[9] Rollo, p. 96.

[10] Memorandum for Respondent, pp. 21-22; Rollo, pp. 1077-1078.

[11] Memorandum for Petitioners, pp. 31-36; Rollo, pp. 998-1003.

[12] Cf. Salonga, *Private International Law*, 1995 ed., p. 56 et seq.

[13] Fifth edition, 1979, p. 590.

[14] Permanent edition, Vol. 17, p. 646.

[15] Annotation on Forum Shopping, by David G. Nitafan, 179 SCRA 157-162.

[16] See "Annotation" referred to in footnote No. 15, *supra*, for a summary of these cases.

[17] 155 SCRA 566, at pp. 568 and 575 (November 12, 1987).

[18] Villanueva vs. Adre, 178 SCRA 876, at p. 882 (April 27, 1989). Also cited in Crisostomo vs. Securities and Exchange Commission, 179 SCRA 146 (November 6, 1989), and Earth Minerals Exploration, Inc. vs. Macaraig, Jr., 194 SCRA 1 (February 11, 1991).

[19] 145 SCRA 34 (October 13, 1986).

[20] In Buan vs. Lopez, *supra*, the Court expressly ruled: "That same identity puts into operation the sanction of twin dismissals just mentioned."

[21] Rollo, pp. 534-541.

[22] 175 SCRA 701 (July 28, 1989). In this case, petitioner filed with the Supreme Court a petition for certiorari questioning a letter-directive of the Commission on Audit ordering the re-bidding of a vessel, the "T/T Andres Bonifacio," being sold by the Philippine National Oil Company (PNOC). Simultaneously, a separate complaint for injunction and damages was filed by the same petitioner before the Makati RTC to enjoin PNOC from conducting such a re-bidding.

[23] Palm Avenue Realty Development Corporation, et al. vs. PCGG, et al., 153 SCRA 579 (August 31, 1987); at pp. 591-592.

[24] See Footnote 21, supra.

[25] Villa-Rey Transit, Inc. vs. Ferrer, 25 SCRA 845, (October 29, 1968), at pp. 857-858.

[26] This Court has pierced the veil of corporate fiction in numerous cases where it was used, among others, to avoid a judgment credit (Sibagat Timber Corp. vs. Garcia, 216 SCRA 470 [December 11, 1992]; Tan Boon Bee & Co., Inc. vs. Jarencio, 163 SCRA 205 [June 30, 1988]); to avoid inclusion of corporate assets as part of the estate of a decedent (Cease vs. CA, 93 SCRA 483 [October 18, 1979]); to avoid liability arising from debt (Arcilla vs. CA, 215 SCRA 120 [October 23, 1992]; Philippine Bank of Communications vs. CA, 195 SCRA 567 [March 22, 1991]); or when made use of as a shield to perpetrate fraud and/or confuse legitimate issues (Jacinto vs. CA, 198 SCRA 211 [June 6, 1991]); or to promote unfair objectives or otherwise to shield them (Villanueva vs. Adre, 172 SCRA 876 [April 27, 1989]).

[27] 217 SCRA 517 (Jan. 25, 1993).

[28] See footnote 15 for further discussion on forum shopping.

[29] Rollo, pp. 108-111.

[30] Memorandum for Petitioners, p. 42; Rollo, p. 1009.

[31] 223 SCRA 350 (June 14, 1993).

[32] G.R. No. 118509 (December 1, 1995).

[33] 2 Fletcher 351.

[34] Petition, p. 56 et seq.; Rollo, p. 64 et seq. Memorandum, p. 54 et seq.; Rollo, p. 1021 et seq.

[35] IV E. Paras, Civil Code of the Philippines (1971 ed.), pp. 462-463.

[36] Art. 1319 of Civil Code reads as follows:

"Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

"Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made."

[37] 41 Phil. 670 (March 30, 1916); see also Batañgan vs. Cojuangco, 78 Phil. 481.

[38] Memorandum, p. 64; Rollo, p. 1031.

[39] CA Decision, p. 15; Rollo, p. 114.

[40] *Berin vs. Court of Appeals*, 194 SCRA 508, 512 (February 27, 1991).

[41] *The Reparations Commission vs. The Visayan Packing Corporation*, 193 SCRA 531, 539-540 (February 6, 1991).

[42] At p.75; Rollo, p. 83.

[43] *Dihiansan vs. CA*, 153 SCRA 713 (September 14, 1987); *Anchuelo vs. IAC*, 147 SCRA 434 (January 29, 1987); *Dulos Realty & Development Corp. vs. CA*, 157 SCRA 425 (January 28, 1988); *Ramos vs. IAC*, 175 SCRA 70 (July 5, 1989), *Gevero vs. IAC*, 89 SCRA 201 (August 30, 1990); *The Reparations Commission vs. The Visayan Packing Corporation*, 193 SCRA 531, 540 (February 6, 1991).

[44] Section 10 of Art. III of the Constitution reads as follows:

"Sec. 10. No law impairing the obligation of contracts shall be passed."

[45] 177 SCRA 618, 624 (September 15, 1989).

[46] 216 SCRA 224, 232 (December 7, 1992).

[47] G.R.No. 112130 (March 31, 1995).

[48] G.R.No. 102253 (June 2, 1995).

[49] 187 SCRA 735, 739 (July 24, 1990).

[50] CA Decision, pp. 11 and 15.

[51] Sec. 3(e), Rule 131, Rules of Court.

[52] Vide Regalado, *Remedial Law Compendium*, 1988 ed., Vol. I, pp. 352-353. See also *Chua Tiong Tay vs. Court of Appeals*, et al., *supra*.

[53] Memorandum for Petitioners, p.76; Rollo, p. 1043

[54] In his Memorandum, private respondent alleged (and petitioners have not denied) that (a) the property was sold at foreclosure for only P3,033,264.00 and (b) in a suit for deficiency judgment against the property's former owner and mortgage debtor, the petitioner Bank maintained that the value of the property was only P3 million.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.