

**SWEDISH MATCH, AB, JUAN ENRIQUEZ, RENE DIZON, FRANCISCO RAPACON, FIEL SANTOS, BETH FLORES, LAMBRTO DE LA EVA, GLORIA REYES, RODRIGO ORTIZ, NICANOR ESCALANTE, PETER HODGSON, SAMU...***G.R. No. 128120. October 20, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128120/>**TINGA, J.:**

Petitioners seek a reversal of the twin Orders[1] of the Court of Appeals dated 15 November 1996[2] and 31 January 1997,[3] in CA-G.R. CV No. 35886, entitled “ALS Management et al., v. Swedish Match, AB et al.” The appellate court overturned the trial court’s Order[4] dismissing the respondents’ complaint for specific performance and remanded the case to the trial court for further proceedings.

Swedish Match, AB (hereinafter SMAB) is a corporation organized under the laws of Sweden not doing business in the Philippines. SMAB, however, had three subsidiary corporations in the Philippines, all organized under Philippine laws, to wit: Phimco Industries, Inc. (Phimco), Provident Tree Farms, Inc., and OTT/Louie (Phils.), Inc.

Sometime in 1988, STORA, the then parent company of SMAB, decided to sell SMAB of Sweden and the latter’s worldwide match, lighter and shaving products operation to Eemland Management Services, now known as Swedish Match NV of Netherlands, (SMNV), a corporation organized and existing under the laws of Netherlands. STORA, however, retained for itself the packaging business.

SMNV initiated steps to sell the worldwide match and lighter businesses while retaining for itself the shaving business. SMNV adopted a two-pronged strategy, the first being to sell its shares in Phimco Industries, Inc. and a match company in Brazil, which proposed sale would stave-off defaults in the loan covenants of SMNV with its syndicate of lenders. The other move was to sell at once or in one package all the SMNV companies worldwide which were engaged in match and lighter operations thru a global deal (hereinafter, global deal).

Ed Enriquez (Enriquez), Vice-President of Swedish Match Sociedad Anonimas (SMSA)—the management company of the Swedish Match group—was commissioned and granted full powers to negotiate by SMNV, with the resulting transaction, however, made subject to final approval by the board. Enriquez was held under strict instructions that the sale of Phimco shares should be executed on or before 30 June 1990, in view of the tight loan covenants of SMNV. Enriquez came to the Philippines in November 1989 and informed the Philippine financial and business circles that the Phimco shares were for sale.

Several interested parties tendered offers to acquire the Phimco shares, among whom were the AFP Retirement and Separation Benefits System, herein respondent ALS Management & Development Corporation and respondent Antonio Litonjua (Litonjua), the president and general manager of ALS.

In his letter dated 3 November 1989, Litonjua submitted to SMAB a firm offer to buy all of the latter’s shares in Phimco and all of Phimco’s shares in Provident Tree Farm, Inc. and OTT/Louie (Phils.), Inc. for the sum of

P750,000,000.00.[5]

Through its Chief Executive Officer, Massimo Rossi (Rossi), SMAB, in its letter dated 1 December 1989, thanked respondents for their interest in the Phimco shares. Rossi informed respondents that their price offer was below their expectations but urged them to undertake a comprehensive review and analysis of the value and profit potentials of the Phimco shares, with the assurance that respondents would enjoy a certain priority although several parties had indicated their interest to buy the shares.[6]

Thereafter, an exchange of correspondence ensued between petitioners and respondents regarding the projected sale of the Phimco shares. In his letter dated 21 May 1990, Litonjua offered to buy the disputed shares, excluding the lighter division for US\$30.6 million, which per another letter of the same date was increased to US\$36 million.[7] Litonjua stressed that the bid amount could be adjusted subject to availability of additional information and audit verification of the company finances.

Responding to Litonjua's offer, Rossi sent his letter dated 11 June 1990, informing the former that ALS should undertake a due diligence process or pre-acquisition audit and review of the draft contract for the Match and Forestry activities of Phimco at ALS' convenience. However, Rossi made it clear that at the completion of the due diligence process, ALS should submit its final offer in US dollar terms not later than 30 June 1990, for the shares of SMAB corresponding to ninety-six percent (96%) of the Match and Forestry activities of Phimco. Rossi added that in case the "global deal" presently under negotiation for the Swedish Match Lights Group would materialize, SMAB would reimburse up to US\$20,000.00 of ALS' costs related to the due diligence process.[8]

Litonjua in a letter dated 18 June 1990, expressed disappointment at the apparent change in SMAB's approach to the bidding process. He pointed out that in their 4 June 1990 meeting, he was advised that one final bidder would be selected from among the four contending groups as of that date and that the decision would be made by 6 June 1990. He criticized SMAB's decision to accept a new bidder who was not among those who participated in the 25 May 1990 bidding. He informed Rossi that it may not be possible for them to submit their final bid on 30 June 1990, citing the advice to him of the auditing firm that the financial statements would not be completed until the end of July. Litonjua added that he would indicate in their final offer more specific details of the payment mechanics and consider the possibility of signing a conditional sale at that time.[9]

Two days prior to the deadline for submission of the final bid, Litonjua again advised Rossi that they would be unable to submit the final offer by 30 June 1990, considering that the acquisition audit of Phimco and the review of the draft agreements had not yet been completed. He said, however, that they would be able to finalize their bid on 17 July 1990 and that in case their bid would turn out better than any other proponent, they would remit payment within ten (10) days from the execution of the contracts.[10]

Enriquez sent notice to Litonjua that they would be constrained to entertain bids from other parties in view of Litonjua's failure to make a firm commitment for the shares of Swedish Match in Phimco by 30 June 1990.[11]

In a letter dated 3 July 1990, Rossi informed Litonjua that on 2 July 1990, they signed a conditional contract with a local group for the disposal of Phimco. He told Litonjua that his bid would no longer be considered unless the local group would fail to consummate the transaction on or before 15 September 1990.[12]

Apparently irked by SMAB's decision to junk his bid, Litonjua promptly responded by letter dated 4 July 1990. Contrary to his prior manifestations, he asserted that, for all intents and purposes, the US\$36 million bid which he submitted on 21 May 1990 was their final bid based on the financial statements for the year 1989. He pointed out that they submitted the best bid and they were already finalizing the terms of the sale. He stressed that they were firmly committed to their bid of US\$36 million and if ever there would be adjustments in the bid amount, the

adjustments were brought about by SMAB's subsequent disclosures and validated accounts, such as the aspect that only ninety-six percent (96%) of Phimco shares was actually being sold and not one-hundred percent (100%).<sup>[13]</sup>

More than two months from receipt of Litonjua's last letter, Enriquez sent a fax communication to the former, advising him that the proposed sale of SMAB's shares in Phimco with local buyers did not materialize. Enriquez then invited Litonjua to resume negotiations with SMAB for the sale of Phimco shares. He indicated that SMAB would be prepared to negotiate with ALS on an exclusive basis for a period of fifteen (15) days from 26 September 1990 subject to the terms contained in the letter. Additionally, Enriquez clarified that if the sale would not be completed at the end of the fifteen (15)-day period, SMAB would enter into negotiations with other buyers.<sup>[14]</sup>

Shortly thereafter, Litonjua sent a letter expressing his objections to the totally new set of terms and conditions for the sale of the Phimco shares. He emphasized that the new offer constituted an attempt to reopen the already perfected contract of sale of the shares in his favor. He intimated that he could not accept the new terms and conditions contained therein.<sup>[15]</sup>

On 14 December 1990, respondents, as plaintiffs, filed before the Regional Trial Court (RTC) of Pasig a complaint for specific performance with damages, with a prayer for the issuance of a writ of preliminary injunction, against defendants, now petitioners. The individual defendants were sued in their respective capacities as officers of the corporations or entities involved in the aborted transaction.

Aside from the averments related to their principal cause of action for specific performance, respondents alleged that the Phimco management, in utter bad faith, induced SMAB to violate its contract with respondents. They contended that the Phimco management took an interest in acquiring for itself the Phimco shares and that petitioners conspired to thwart the closing of such sale by interposing various obstacles to the completion of the acquisition audit.<sup>[16]</sup> Respondents claimed that the Phimco management maliciously and deliberately delayed the delivery of documents to Laya Manabat Salgado & Co. which prevented them from completing the acquisition audit in time for the deadline on 30 June 1990 set by petitioners.<sup>[17]</sup> Respondents added that SMAB's refusal to consummate the perfected sale of the Phimco shares amounted to an abuse of right and constituted conduct which is contrary to law, morals, good customs and public policy.<sup>[18]</sup>

Respondents prayed that petitioners be enjoined from selling or transferring the Phimco shares, or otherwise implementing the sale or transfer thereof, in favor of any person or entity other than respondents, and that any such sale to third parties be annulled and set aside. Respondents also asked that petitioners be ordered to execute all documents or instruments and perform all acts necessary to consummate the sales agreement in their favor.

Traversing the complaint, petitioners alleged that respondents have no cause of action, contending that no perfected contract, whether verbal or written, existed between them. Petitioners added that respondents' cause of action, if any, was barred by the Statute of Frauds since there was no written instrument or document evidencing the alleged sale of the Phimco shares to respondents.

Petitioners filed a motion for a preliminary hearing of their defense of bar by the Statute of Frauds, which the trial court granted. Both parties agreed to adopt as their evidence in support of or against the motion to dismiss, as the case may be, the evidence which they adduced in support of their respective positions on the writ of preliminary injunction incident.

In its Order dated 17 April 1991, the RTC dismissed respondents' complaint.<sup>[19]</sup> It ruled that there was no perfected contract of sale between petitioners and respondents. The court *a quo* said that the letter dated 11 June

1990, relied upon by respondents, showed that petitioners did not accept the bid offer of respondents as the letter was a mere invitation for respondents to conduct a due diligence process or pre-acquisition audit of Phimco's match and forestry operations to enable them to submit their final offer on 30 June 1990. Assuming that respondent's bid was favored by an oral acceptance made in private by officers of SMAB, the trial court noted, such acceptance was merely preparatory to a formal acceptance by the SMAB—the acceptance that would eventually lead to the execution and signing of the contract of sale. Moreover, the court noted that respondents failed to submit their final bid on the deadline set by petitioners.

Respondents appealed to the Court of Appeals, assigning the following errors:

- THE TRIAL COURT EXCEEDED ITS AUTHORITY AND JURISDICTION WHEN IT ERRED PROCEDURALLY IN MOTU PROPIO (sic) DISMISSING THE COMPLAINT IN ITS ENTIRETY FOR "LACK OF A VALID CAUSE OF ACTION" WITHOUT THE BENEFIT OF A FULL-BLOWN TRIAL AND ON THE MERE MOTION TO DISMISS.
- THE TRIAL COURT ERRED IN IGNORING PLAINTIFF-APPELLANTS' CAUSE OF ACTION BASED ON TORT WHICH, HAVING BEEN SUFFICIENTLY PLEADED, INDEPENDENTLY WARRANTED A FULL-BLOWN TRIAL.
- THE TRIAL COURT ERRED IN IGNORING PLAINTIFFS-APPELLANTS' CAUSE OF ACTION BASED ON PROMISSORY ESTOPPEL WHICH, HAVING BEEN SUFFICIENTLY PLEADED, WARRANTED A FULL-BLOWN TRIAL, INDEPENDENTLY FOR THE OTHER CAUSES OF ACTION.
- THE TRIAL COURT JUDGE ERRED IN FORSWEARING JUDICIAL OBJECTIVITY TO FAVOR DEFENDANTS-APPELLEES BY MAKING UNFOUNDED FINDINGS, ALL IN VIOLATION OF PLAINTIFFS-APPELLANTS' RIGHT TO DUE PROCESS.[20]

After assessing the respective arguments of the parties, the Court of Appeals reversed the trial court's decision. It ruled that the series of written communications between petitioners and respondents collectively constitute a sufficient memorandum of their agreement under Article 1403 of the Civil Code; thus, respondents' complaint should not have been dismissed on the ground that it was unenforceable under the Statute of Frauds. The appellate court opined that any document or writing, whether formal or informal, written either for the purpose of furnishing evidence of the contract or for another purpose which satisfies all the Statute's requirements as to contents and signature would be sufficient; and, that two or more writings properly connected could be considered together. The appellate court concluded that the letters exchanged by and between the parties, taken together, were sufficient to establish that an agreement to sell the disputed shares to respondents was reached.

The Court of Appeals clarified, however, that by reversing the appealed decision it was not thereby declaring that respondents are entitled to the reliefs prayed for in their complaint, but only that the case should not have been dismissed on the ground of unenforceability under the Statute of Frauds. It ordered the remand of the case to the trial court for further proceedings.

Hence, this petition.

Petitioners argue that the Court of Appeals erred in failing to consider that the Statute of Frauds requires not just the existence of any note or memorandum but that such note or memorandum should evidence an agreement to sell; and, that in this case, there was no word, phrase, or statement in the letters exchanged between the two parties to show or even imply that an agreement had been reached for the sale of the shares to respondent.

Petitioners stress that respondent Litonjua made it clear in his letters that the quoted prices were merely tentative and still subject to further negotiations between him and the seller. They point out that there was no meeting of

the minds on the essential terms and conditions of the sale because SMAB did not accept respondents' offer that consideration would be paid in Philippine pesos. Moreover, Litonjua signified their inability to submit their final bid on 30 June 1990, at the same time stating that the broad terms and conditions described in their meeting were inadequate for them to make a response at that time so much so that he would have to await the corresponding specifics. Petitioners argue that the foregoing circumstances prove that they failed to reach an agreement on the sale of the Phimco shares.

In their Comment, respondents maintain that the Court of Appeals correctly ruled that the Statute of Frauds does not apply to the instant case. Respondents assert that the sale of the subject shares to them was perfected as shown by the following circumstances, namely: petitioners assured them that should they increase their bid, the sale would be awarded to them and that they did in fact increase their previous bid of US\$30.6 million to US\$36 million; petitioners orally accepted their revised offer and the acceptance was relayed to them by Rene Dizon; petitioners directed them to proceed with the acquisition audit and to submit a comfort letter from the United Coconut Planters' Bank (UCPB); petitioner corporation confirmed its previous verbal acceptance of their offer in a letter dated 11 June 1990; with the prior approval of petitioners, respondents engaged the services of Laya, Manabat, Salgado & Co., an independent auditing firm, to immediately proceed with the acquisition audit; and, petitioner corporation reiterated its commitment to be bound by the result of the acquisition audit and promised to reimburse respondents' cost to the extent of US\$20,000.00. All these incidents, according to respondents, overwhelmingly prove that the contract of sale of the Phimco shares was perfected.

Further, respondents argued that there was partial performance of the perfected contract on their part. They alleged that with the prior approval of petitioners, they engaged the services of Laya, Manabat, Salgado & Co. to conduct the acquisition audit. They averred that petitioners agreed to be bound by the results of the audit and offered to reimburse the costs thereof to the extent of US\$20,000.00. Respondents added that in compliance with their obligations under the contract, they have submitted a comfort letter from UCPB to show petitioners that the bank was willing to finance the acquisition of the Phimco shares.[21]

The basic issues to be resolved are: (1) whether the appellate court erred in reversing the trial court's decision dismissing the complaint for being unenforceable under the Statute of Frauds; and (2) whether there was a perfected contract of sale between petitioners and respondents with respect to the Phimco shares.

The Statute of Frauds embodied in Article 1403, paragraph (2), of the Civil Code[22] requires certain contracts enumerated therein to be evidenced by some note or memorandum in order to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable.[23] Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents.

The Statute, however, simply provides the method by which the contracts enumerated therein may be proved but does not declare them invalid because they are not reduced to writing. By law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable.[24] Consequently, the effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with.[25] Clearly, the form required is for evidentiary purposes only. Hence, if the parties permit a contract to be proved, without any objection, it is then just as binding as if the Statute has been complied with.[26]

The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[27]

However, for a note or memorandum to satisfy the Statute, it must be complete in itself and cannot rest partly in writing and partly in parol. The note or memorandum must contain the names of the parties, the terms and conditions of the contract, and a description of the property sufficient to render it capable of identification.[28] Such note or memorandum must contain the essential elements of the contract expressed with certainty that may be ascertained from the note or memorandum itself, or some other writing to which it refers or within which it is connected, without resorting to parol evidence.[29]

Contrary to the Court of Appeals' conclusion, the exchange of correspondence between the parties hardly constitutes the note or memorandum within the context of Article 1403 of the Civil Code. Rossi's letter dated 11 June 1990, heavily relied upon by respondents, is not complete in itself. First, it does not indicate at what price the shares were being sold. In paragraph (5) of the letter, respondents were supposed to submit their final offer in U.S. dollar terms, at that after the completion of the due diligence process. The paragraph undoubtedly proves that there was as yet no definite agreement as to the price. Second, the letter does not state the mode of payment of the price. In fact, Litonjua was supposed to indicate in his final offer how and where payment for the shares was planned to be made.[30]

Evidently, the trial court's dismissal of the complaint on the ground of unenforceability under the Statute of Frauds is warranted.[31]

Even if we were to consider the letters between the parties as a sufficient memorandum for purposes of taking the case out of the operation of the Statute the action for specific performance would still fail.

A contract is defined as a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another, or others, or reciprocally, to the fulfillment of a prestation to give, to do, or not to do.[32] There can be no contract unless the following requisites concur: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; (c) cause of the obligation which is established.[33] Contracts are perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[34]

Specifically, in the case of a contract of sale, required is the concurrence of three elements, to wit: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter, and (c) price certain in money or its equivalent.[35] Such contract is born from the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[36]

In general, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[37]

A negotiation is formally initiated by an offer. A perfected promise merely tends to insure and pave the way for the celebration of a future contract. An imperfect promise (*policitacion*), on the other hand, is a mere unaccepted offer.[38] Public advertisements or solicitations and the like are ordinarily construed as mere invitations to make offers or only as proposals. At any time prior to the perfection of the contract, either negotiating party may stop the negotiation.[39] The offer, at this stage, may be withdrawn; the withdrawal is effective immediately after its

manifestation, such as by its mailing and not necessarily when the offeree learns of the withdrawal.[40]

An offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. Consent in a contract of sale should be 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.[41]

Quite obviously, Litonjua's letter dated 21 May 1990, proposing the acquisition of the Phimco shares for US\$36 million was merely an offer. This offer, however, in Litonjua's own words, "is understood to be subject to adjustment on the basis of an audit of the assets, liabilities and net worth of Phimco and its subsidiaries and on the final negotiation between ourselves." [42]

Was the offer certain enough to satisfy the requirements of the Statute of Frauds? Definitely not.

Litonjua repeatedly stressed in his letters that they would not be able to submit their final bid by 30 June 1990.[43] With indubitable inconsistency, respondents later claimed that for all intents and purposes, the US\$36 million was their final bid. If this were so, it would be inane for Litonjua to state, as he did, in his letter dated 28 June 1990 that they would be in a position to submit their final bid only on 17 July 1990. The lack of a definite offer on the part of respondents could not possibly serve as the basis of their claim that the sale of the Phimco shares in their favor was perfected, for one essential element of a contract of sale was obviously wanting—the price certain in money or its equivalent. The price must be certain, otherwise there is no true consent between the parties.[44] There can be no sale without a price.[45] Quite recently, this Court reiterated the long-standing doctrine that the manner of payment of the purchase price is an essential element before a valid and binding contract of sale can exist since the agreement on the manner of payment goes into the price such that a disagreement on the manner of payment is tantamount to a failure to agree on the price.[46]

Granting *arguendo*, that the amount of US\$36 million was a definite offer, it would remain as a mere offer in the absence of evidence of its acceptance. To produce a contract, there must be acceptance, which may be express or implied, but it must not qualify the terms of the offer.[47] The acceptance of an offer must be unqualified and absolute to perfect the contract.[48] In other words, it must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.[49]

Respondents' attempt to prove the alleged verbal acceptance of their US\$36 million bid becomes futile in the face of the overwhelming evidence on record that there was in the first place no meeting of the minds with respect to the price. It is dramatically clear that the US\$36 million was not the actual price agreed upon but merely a preliminary offer which was subject to adjustment after the conclusion of the audit of the company finances. Respondents' failure to submit their final bid on the deadline set by petitioners prevented the perfection of the contract of sale. It was not perfected due to the absence of one essential element which was the price certain in money or its equivalent.

At any rate, from the procedural stand point, the continuing objections raised by petitioners to the admission of parol evidence[50] on the alleged verbal acceptance of the offer rendered any evidence of acceptance inadmissible.

Respondents' plea of partial performance should likewise fail. The acquisition audit and submission of a comfort letter, even if considered together, failed to prove the perfection of the contract. Quite the contrary, they indicated that the sale was far from concluded. Respondents conducted the audit as part of the due diligence process to help them arrive at and make their final offer. On the other hand, the submission of the comfort letter was merely a guarantee that respondents had the financial capacity to pay the price in the event that their bid was accepted by

petitioners.

The Statute of Frauds is applicable only to contracts which are executory and not to those which have been consummated either totally or partially.[51] If a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.[52] This rule, however, is predicated on the fact of ratification of the contract within the meaning of Article 1405 of the Civil Code either (1) by failure to object to the presentation of oral evidence to prove the same, or (2) by the acceptance of benefits under them. In the instant case, respondents failed to prove that there was partial performance of the contract within the purview of the Statute.

Respondents insist that even on the assumption that the Statute of Frauds is applicable in this case, the trial court erred in dismissing the complaint altogether. They point out that the complaint presents several causes of action.

A close examination of the complaint reveals that it alleges two distinct causes of action, the first is for specific performance[53] premised on the existence of the contract of sale, while the other is solely for damages, predicated on the purported dilatory maneuvers executed by the Phimco management.[54]

With respect to the first cause of action for specific performance, apart from petitioners' alleged refusal to honor the contract of sale—which has never been perfected in the first place—respondents made a number of averments in their complaint all in support of said cause of action. Respondents claimed that petitioners were guilty of promissory estoppel,[55] warranty breaches[56] and tortious conduct[57] in refusing to honor the alleged contract of sale. These averments are predicated on or at least interwoven with the existence or perfection of the contract of sale. As there was no such perfected contract, the trial court properly rejected the averments in conjunction with the dismissal of the complaint for specific performance.

However, respondents' second cause of action due to the alleged malicious and deliberate delay of the Phimco management in the delivery of documents necessary for the completion of the audit on time, not being based on the existence of the contract of sale, could stand independently of the action for specific performance and should not be deemed barred by the dismissal of the cause of action predicated on the failed contract. If substantiated, this cause of action would entitle respondents to the recovery of damages against the officers of the corporation responsible for the acts complained of.

Thus, the Court cannot forthwith order dismissal of the complaint without affording respondents an opportunity to substantiate their allegations with respect to its cause of action for damages against the officers of Phimco based on the latter's alleged self-serving dilatory maneuvers.

WHEREFORE, the petition is in part GRANTED. The appealed Decision is hereby MODIFIED insofar as it declared the agreement between the parties enforceable under the Statute of Frauds. The complaint before the trial court is ordered DISMISSED insofar as the cause of action for specific performance is concerned. The case is ordered REMANDED to the trial court for further proceedings with respect to the cause of action for damages as above specified.

### **SO ORDERED.**

Puno, J., (Chairman), Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

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[1] Penned by Justice Pedro A. Ramirez, concurred in by Justices Pacita Cañizares-Nye and Romeo J. Callejo, Sr.(now Associate Justice of this Court)

[2] Rollo, pp.74-99.

[3] Id. at 103.

[4] Issued by Judge Armie E. Elma of the Regional Trial Court of Pasig.

[5] Annex "A," Rollo, p. 101.

[6] Annex "B," Id. at 104.

[7] Annex "D," Id. at 110.

[8] Id. at 114-115.

[9] Id. at 116-117.

[10] Id. at 121.

[11] Id. at 123.

[12] Annex "K," Rollo, p. 125.

[13] Annex "L," Id. at 126.

[14] Annex "M," Id. at 128.

[15] Rollo, p. 130.

[16] RTC Rollo, p. 17

[17] Id. at 19.

[18] Id. at 23.

[19] The dispositive portion of the trial court's decision reads:

"WHEREFORE, in view of all the foregoing considerations, this Court gives due course to defendants' (except Rene Dizon) affirmative defense of bar by the statute of frauds. This case is ordered DISMISSED for lack of a valid cause of action with costs against plaintiffs. The writ of preliminary injunction issued on January 14, 1991 is hereby dissolved."

[20] Rollo, pp. 81-82.

[21] Id. at 164.

[22] Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

[23] Rosencor Development Corporation v. Court of Appeals, G.R. No. 140479, March 8, 2001, 354 SCRA 119.

[24] Article 1356, Civil Code.

[25] Gallemitt v. Tabilaran, 20 Phil. 241 (1911).

[26] Domalagan v. Bolifer, 33 Phil. 471 (1915-1916).

[27] Asia Productions Co., Inc. v. Pano, et. al., G.R. No. 51058, January 27, 1992, 205 SCRA 458.

[28] Litonjua v. Fernandez, et.al., G.R. No. 148116, April 14, 2004, citing Holsz v. Stephen, 200 N.E. 601(1936).

[29] Ibid., citing Franklin Sugar Refining Co. v. Egerton, 288 Fed. Rep. 698(1923); Williams v. Morris, 95 U.S. 360 (1877).

[30] Annex “E,” Rollo, p. 114.

[31] Rule 16, par. (i), Rules of Civil Procedure.

[32] 4 Sanchez Roman 146.

[33] Article 1318, Civil Code.

[34] Gomez v. Court of Appeals, G. R. No. 120747, September 21, 2000, 340 SCRA 720.

[35] Roble v. Arbasa, 414 Phil. 434 (2001).

[36] Laforteza v. Machuca, 389 Phil. 167 (2000); Katipunan v. Katipunan, Jr., 425 Phil. 818 (2002); Londres v. Court of Appeals, G.R. No. 136427, December 17, 2002, 394 SCRA 133.

[37] Bugatti v. Court of Appeals, G.R. No. 138113, October 17, 2000, 343 SCRA 335.

[38] 8 Manresa, 5th Ed., Bk. 2, pp. 268-270 cited in Jurado, Comments and Jurisprudence on Obligations and Contracts, 1993 Ed., p. 354.

[39] Ang Yu v. Asuncion, G.R. No. 109125, December 2, 1994, 238 SCRA 1994.

[40] Laudico v. Arias, 43 Phil. 270 (1922).

[41] Article 1319, Civil Code.

[42] Annex “D,” Rollo, p. 111.

[43] Annexes “D” & “F,” Id. at 111; 116.

[44] See 10 Manresa 45-46.

- [45] Villanueva v. Court of Appeals, 334 Phil. 750 (1997).
- [46] Montecillo v. Reynes, 434 Phil. 456 (2002), citing San Miguel Properties Philippines, Inc. v. Huang, G.R. No. 137290, July 31, 2000, 336 SCRA 737; Navarro v. Sugar Producers Cooperative Marketing Association, Inc., 1 SCRA 1181 (1961); Toyota Shaw, Inc. v. Court of Appeals, 244 SCRA 320 (1995).
- [47] Jardine Davies, Inc. v. Court of Appeals, 389 Phil. 204 (2000).
- [48] Metropolitan Bank and Trust Company v. Tonda, 392 Phil. 797 (2000).
- [49] Limketkai Sons Milling, Inc. v. Court of Appeals, 325 Phil. 967 (1996).
- [50] TSN, January 3, 1991, pp. 12, 47-48, 80-81.
- [51] Arroyo vs. Azur, 76 Phil. 493 (1946); Almirol v. Monserrat, 48 Phil. 67 (1925); Asturias Sugar Central, Inc. v. Montinola, 69 Phil. 725 (1940).
- [52] Carbonnel v. Poncio, 103 Phil. 655 (1958).
- [53] See e.g., par. 3.2, Complaint; Vide, RTC Records, p. 21.
- [54] See e.g., pars. 2.11, 2.11.1, Complaint; Vide, RTC Records, p. 17.
- [55] See e.g., par. 4.1, Complaint; Vide, RTC Records, p. 22.
- [56] See e.g., par. 2.8.1.3, 2.9, Complaint; Vide, RTC Records, pp. 16 & 18.
- [57] See e.g., par. 5.1.1, 5.1.2, Complaint; Vide, RTC Records, p. 23.

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