

JOSE R. MORENO, JR., PETITIONER, VS. PRIVATE MANAGEMENT OFFICE (FORMERLY, ASSET PRIVATIZATION TRUST), RESPONDENT.

G.R. NO. 159373. November 16, 2006

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-159373/>

PUNO, J.:

At bar is a Petition for Review on Certiorari of the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 49227 dated January 30, 2003 and July 31, 2003, respectively, reversing the decision of the Regional Trial Court of Makati, Branch 62, in Civil Case No. 93-2756 dated August 10, 1994.

The bare facts are stated in the Joint Motion and Stipulation[1] dated March 11, 1994, viz.:

COME NOW the parties, through the undersigned counsel, to this Honorable Court respectfully make the following agreed statement of facts and issues:

- The parties hereto hereby confirm the allegations contained in paragraphs 1, 2, 3 and 4 of the Complaint, to wit:
- Plaintiff is of legal age, with residence at No. 700 Gen. Malvar St., Malate, Manila; while defendant is a juridical entity with powers to sue and be sued under Proclamation No. 50 with offices at the 10[th] floor, BA Lepanto Building, 8747 Paseo de Roxas, Makati, Metro Manila, where it may be served with summons, thru its Trustees.
- The subject-matter (sic) of this complaint is the J. Moreno Building (formerly known as the North Davao Mining Building) – or more specifically, the 2[nd], 3[rd], 4[th], 5[th] and 6[th] floors of the building.
- Plaintiff is the owner of the Ground Floor, the 7[th] Floor and the Penthouse of the J. Moreno Building and the lot on which it stands.
- Defendant is the owner of the 2[nd], 3[rd], 4[th], 5[th] and 6[th] floors of the building, the subject-matter (sic) of this suit.

which were admitted in the Answer dated October 29, 1993;

- On February 13, 1993, the defendant called for a conference for the purpose of discussing plaintiff's right of first refusal over the floors of the building owned by defendant. At said meeting, defendant informed plaintiff that the proposed purchase price for said floors was TWENTY[-]ONE MILLION PESOS (P21,000,000.00);
- On February 22, 1993, defendant, in a letter signed by its Trustee, Juan W. Moran, informed plaintiff thru Atty. Jose Feria, Jr., that the Board of Trustees (BOT) of APT "is in agreement that Mr. Jose Moreno, Jr. has the right of first refusal" and requested plaintiff to deposit 10% of the "suggested indicative price" of P21.0 million on or before February 26, 1993 – which letter is attached hereto as Annex "A" and made an integral part of this pleading;
- Plaintiff paid the P2.1 million on February 26, 1993. A copy of the Official Receipt issued by defendant to

plaintiff is attached hereto as Annex "B" and made an integral part of this pleading;

- Then on March 12, 1993, defendant wrote plaintiff that its Legal Department has questioned the basis for the computation of the indicative price for the said floors. A copy of the letter is attached hereto as Annex "C" and made an integral part of this pleading;

- On April 2, 1993, defendant wrote plaintiff that the APT BOT has "tentatively agreed on a settlement price of P42,274,702.17" for the said floors. A copy of this communication is attached hereto as Annex "D" and made an integral part hereof;

- The questions to be resolved by this Honorable Court are:

7.01. Whether or not there was a perfected contract of sale over the said floors for the amount of P21.0 million, which will give rise to a right on the part of the plaintiff to demand that the said floors be sold to him for said amount;

7.02. Assuming that there was a perfected contract, whether or not defendant can be bound by the price of P21.0 million;

- Both parties hereto hereby waive their respective claims for damages, attorney's fees and costs;

- Rule 30 of the Revised Rules of Court provides that:

"SEC. 2. Agreed statement of facts. The parties to any action may agree, in writing, upon the facts involved in the litigation, and require the judgment of the court upon the facts agreed upon, without the introduction of evidence."

- Both parties have agreed to submit this stipulation and to request that a decision of this Honorable Court be rendered on the basis of the foregoing stipulation of facts and issues, and after both parties have submitted their respective memoranda.

P R A Y E R

WHEREFORE, it is respectfully prayed that judgment be rendered on the basis of the agreed stipulation of facts and issues, without the introduction of evidence in accordance with Section 2, Rule 30 of the Revised Rules of Court, and after the submission of the parties of their respective Memoranda.

x x x

On August 10, 1994, the trial court ruled in favor of petitioner Moreno, viz.:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant, ordering defendant to sell the 2nd, 3rd, 4th, 5th and 6th floors of the J. Moreno Building to plaintiff at the price of TWENTY[-]ONE MILLION (P21,000,000.00) PESOS; and ordering defendant to endorse the transaction to the Committee on Privatization, without costs.[2]

Respondent filed a Motion for Reconsideration.[3] On November 16, 1994, the trial court denied the motion for lack of merit.[4]

Respondent appealed with the Court of Appeals. From the time respondent filed its Notice of Appeal with the trial court, the parties submitted numerous motions, including petitioner's Motion to Dismiss[5] dated July 8, 1996. Petitioner moved that the case be dismissed due to the failure of respondent to file its brief within the reglementary period.

On December 18, 1997, the Eighth Division of the appellate court granted[6] the motion to dismiss and denied[7] respondent's motion for reconsideration. Respondent then filed a Petition for Review on Certiorari[8] with this Court to reverse the dismissal of the appeal. On July 5, 1999, this Court, through a Resolution[9] of the Third Division, reversed the resolution dismissing the appeal on the ground that the appeal raises substantial issues justifying a review of the case on the merits.

On January 30, 2003, the appellate court found that there was no perfected contract of sale over the subject floors and reversed the ruling of the trial court, viz.:

WHEREFORE, the appeal is hereby GRANTED. The assailed decision of the Regional Trial Court of Makati, Metro Manila, Branch 62, rendered in Civil Case No. 93-2756 is hereby REVERSED and SET ASIDE and a new one is entered DISMISSING the instant complaint.[10]

Petitioner moved for reconsideration but the motion was denied by the appellate court in its questioned Resolution[11] dated July 31, 2003. Hence, this Petition contending that:

IN REVERSING THE TRIAL COURT'S DECISION DATED 10 AUGUST 1994, THE COURT OF APPEALS DECIDED ISSUES NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT CONSIDERING THAT:

I

GIVEN THE UNDISPUTED FACTS OF THE INSTANT CASE, IT IS CLEAR THAT THERE WAS A PERFECTED, VALID AND BINDING CONTRACT OF SALE BETWEEN PETITIONER MORENO AND RESPONDENT APT (NOW PMO) WITH RESPECT TO THE SUBJECT PROPERTY.

II

THE PRINCIPLE OF ESTOPPEL SHOULD HAVE BEEN APPLIED BY THE COURT OF APPEALS TO HOLD RESPONDENT APT (NOW PMO) TO ITS CONTRACT OF SALE WITH PETITIONER MORENO CONSIDERING THAT:

A. THERE IS NOTHING IRREGULAR OR UNCONSCIONABLE IN THE ACTS OF THE AGENTS OF RESPONDENT APT (NOW PMO) IN CONNECTION WITH THE PERFECTED AND PARTIALLY EXECUTED CONTRACT OF SALE.

B. RESPONDENT APT (NOW PMO) HAS DESCENDED TO THE LEVEL OF A PRIVATE INDIVIDUAL OR ENTITY BOUND BY VALID CONTRACTUAL OBLIGATIONS WHEN IT ENGAGED IN PROPRIETARY AND/OR COMMERCIAL FUNCTIONS.

III

THE COURT OF APPEALS ERRED WHEN IT RULED THAT RESPONDENT APT (NOW PMO) TIMELY RAISED THE ISSUES ON THE ALLEGED REQUIREMENT OF APPROVAL FOR THE "INDICATED PRICE" AND THE ALLEGED UNCONSCIONABLY LOW PRICE FOR THE SALE OF THE SUBJECT PROPERTY, CONSIDERING THAT SAID ISSUES WERE NEVER RAISED IN THE PROCEEDINGS BEFORE THE TRIAL COURT AND DO NOT BEAR RELEVANCE OR CLOSE RELATION TO THE ISSUES RAISED IN THE PROCEEDINGS BEFORE THE COURT OF APPEALS.

IV

THE COURT OF APPEALS ERRED IN RULING THAT THE BRIEF FILED BY RESPONDENT APT (NOW PMO) DID NOT VIOLATE SECTION 1(F) OF THE RULES OF COURT WHICH SHOULD HAVE WARRANTED A DISMISSAL OF RESPONDENT APT'S (NOW PMO) APPEAL.[12]

The hinge issue is whether there was a perfected contract of sale over the subject floors at the price of P21,000,000.00.

A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[13] 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.[14]

To reach that moment of perfection, the parties must agree on the same thing in the same sense,[15] so that their minds meet as to all the terms.[16] They must have a distinct intention common to both and without doubt or difference; until all understand alike, there can be no assent, and therefore no contract.[17] The minds of parties must meet at every point; nothing can be left open for further arrangement.[18] So long as there is any uncertainty or indefiniteness, or future negotiations or considerations to be had between the parties, there is not a completed contract, and in fact, there is no contract at all.[19]

Contract formation undergoes three distinct stages – preparation or 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. The perfection or birth of the contract takes place when the parties agree upon all the essential elements thereof. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon, culminating in its extinguishment.[20] Once there is concurrence of the offer and acceptance of the object and cause, the stage of negotiation is finished. This situation does not obtain in the case at bar. The letter of February 22, 1993 and the surrounding circumstances clearly show that the parties are not past the stage of negotiation, hence there could not have been a perfected contract of sale.

The letter[21] is clear evidence that respondent did not intend to sell the subject floors at the price certain of P21,000,000.00, viz.:

22 February 1993

ATTY. JOSE FERIA, JR.
FERIA, FERIA, LUGTU & LAO
Ferlaw Building, 336 Cabildo Street
Intramuros, Manila

Dear Atty. Feria:

During its meeting on February 19, 1993, our Board reviewed your letter of February 18, 1993.

We are pleased to inform you that the Board is in agreement that Mr. Jose Moreno, Jr. has the right of first refusal. This will be confirmed by our Board during the next board meeting on February 26, 1993. In the meantime, please advise Mr. Moreno that the suggested indicative price for APT's five (5) floors of the building in question is P21 Million.

If Mr. Moreno is in agreement, he should deposit with APT the amount of P2.1 Million equivalent to 10% of the price on or before February 26, 1993. The balance will be due within fifteen (15) days after Mr. Moreno receives the formal notice of approval of the indicative price.

If you or Mr. Moreno have (sic) any question, please let me know.

Very truly yours,

(Signed)
JUAN W. MORAN

Associate Executive Trustee

The letter clearly states that P21,000,000.00 is merely a "suggested indicative price" of the subject floors as it was yet to be approved by the Board of Trustees. Before the Board could confirm the suggested indicative price, the Committee on Privatization must first approve the terms of the sale or disposition. The imposition of this suspensive condition finds basis under Proclamation No. 50[22] which vests in the Committee the power to approve the sale of government assets, including the price of the asset to be sold, viz.:

ARTICLE II. COMMITTEE ON PRIVATIZATION

x x x

SECTION 5. POWERS AND FUNCTIONS. The Committee shall have the following powers and functions:

(1) x x x x Provided, further, that any such independent disposition shall be undertaken with the prior approval of the Committee and in accordance with the general disposition guidelines as the Committee may provide; Provided, finally, that in every case the sale or disposition shall be approved by the Committee with respect to the buyer and price only;

x x x

(4) To approve or disapprove, on behalf of the National Government and without need of any further approval or other action from any other government institution or agency, the sale or disposition of such assets, in each case on terms and to purchasers recommended by the Trust or the government institution, as the case may be, to whom the disposition of such assets may have been delegated; Provided that, the Committee shall not itself undertake the marketing of any such assets, or participate in the negotiation of their sale;

x x x

ARTICLE III. ASSET PRIVATIZATION TRUST

x x x

SECTION 12. POWERS. The Trust shall, in the discharge of its responsibilities, have the following powers:

x x x

(2) Subject to its having received the prior written approval of the Committee to sell such asset at a price and on terms of payment and to a party disclosed to the Committee, to sell each asset referred to it by the Committee to such party and on such terms as in its discretion are in the best interest of the National Government, and for such purpose to execute and deliver, on behalf and in the name of the National Government. Such deeds of sale, contracts and other instruments as may be necessary or appropriate to convey title to such assets;

Petitioner construes Section 12, Article III of the Proclamation differently. He argues that what the law says is that even before respondent sells or offers for sale a government asset, the terms thereof have already been previously approved by the Committee,[23] i.e., "[s]ubject to its having received the prior written approval of the Committee to sell such an asset at a price and on terms of payment and to a party disclosed to the Committee, to sell each asset referred to it by the Committee to such party and on such terms as in its discretion are in the best interest of the National Government." [24] Thus, the Committee's approval of the suggested indicative price of P21,000,000.00 is not necessary.

We are not persuaded.

If we adopt the argument of petitioner, Section 12, Article III would nullify the power granted to the Committee

under Section 5 (4), Article II of the same Proclamation. Under Section 5 (4), the Committee has the power "to approve or disapprove, on behalf of the National Government and without need of any further approval or other action from any other government institution or agency, the sale or disposition of such assets, in each case on terms and to purchasers recommended by the Trust or the government institution, as the case may be, to whom the disposition of such assets may have been delegated; Provided that, the Committee shall not itself undertake the marketing of any such assets, or participate in the negotiation of their sale." [25] The law is clear that the Trust shall recommend the terms for the Committee's approval or disapproval, and not the other way around.

It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole. [26]

To bolster the argument that the Committee's approval may be dispensed with, petitioner also cites Opinion No. 27, Series of 1989, of the Secretary of Justice which recognizes a case where the Committee may delegate to respondent the power to approve the sale or disposition of assets with a transfer price not exceeding P60,000,000.00. [27]

The argument fails to impress. The Opinion involves a case where "no material discretion is involved in the disposition of assets pursuant to the subject proposal" and the act which could be delegated, as opined, is ministerial. The Opinion further notes that "the criteria and guidelines stated therein are concrete and definite enough that once these criteria and guidelines are present in a particular case, the APT is practically left with no choice in the disposition of the assets involved and that all that the APT shall do in disposing off an asset thereunder is ascertain whether a prospective buyer and the price he offers satisfy such conditions." Petitioner failed to show that the case at bar is of the same nature – that is, that the disposition of the subject floors "partakes of the nature of a ministerial act which has been defined as one performed under a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to the exercise of judgment upon the propriety or impropriety of the act done."

Petitioner further argues that the "suggested indicative price" of P21,000,000.00 is not a proposed price, but the selling price indicative of the value at which respondent was willing to sell. [28] Petitioner posits that under Section 14, Rule 130 of the Revised Rules of Court, the term should be taken in its ordinary and usual acceptation and should be taken to mean as a price which is "indicated" or "specified" which, if accepted, gives rise to a meeting of minds. [29] This was the same construction adopted by the trial court, viz.:

Going to defendant's main defense that P21 Million was a "suggested indicative price" – we have to find out exactly what "indicative" means. Webster Comprehensive Dictionary, International Edition, gives us a graphic meaning that everybody can understand, when it says that "to indicate" is [t]o point out; direct attention[;] to indicate the correct page[.] "Indicative" is merely the adjective of the verb to indicate. x x x when the price of P21 [M]illion was indicated – then it becomes the "indicative" price – the correct price, no ifs[,] no buts. [30] (emphases in the original)

We do not agree.

Under the same section and rule invoked by petitioner, the terms of a writing are presumed to have been used in their primary and general acceptance, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly. [31]

The reliance of the trial court in the Webster definition of the term "indicative," as also adopted by petitioner, is misplaced. The transaction at bar involves the sale of an asset under a privatization scheme which attaches a peculiar meaning or signification to the term "indicative price." Under No. 6.1 of the General Bidding Procedures and Rules[32] of respondent, "an indicative price is a ball-park figure and [respondent] supplies such a figure purely to define the ball-park." [33] The plain contention of petitioner that the transaction involves an "ordinary armslength sale of property" is unsubstantiated and leaves much to be desired. This case sprung from a case of specific performance initiated by petitioner who has the burden to prove that the case should be spared from the application of the technical terms in the sale and disposition of assets under privatization. Petitioner failed to discharge the burden.

It appears in the case at bar that petitioner's construction of the letter of February 22, 1993 – that his assent to the "suggested indicative price" of P21,000,000.00 converted it as the price certain, thus giving rise to a perfected contract of sale[34] – is petitioner's own subjective understanding. As such, it is not shared by respondent. Under American jurisprudence, mutual assent is judged by an objective standard, looking to the express words the parties used in the contract.[35] Under the objective theory of contract, understandings and beliefs are effective only if shared.[36] Based on the objective manifestations of the parties in the case at bar, there was no meeting of the minds. That the letter constituted a definite, complete and certain offer is the subjective belief of petitioner alone. The letter in question is a mere evidence of a memorialization of inconclusive negotiations, or a mere agreement to agree, in which material term is left for future negotiations.[37] It is a mere evidence of the parties' preliminary transactions which did not crystallize into a perfected contract. Preliminary negotiations or an agreement still involving future negotiations is not the functional equivalent of a valid, subsisting agreement.[38] For a valid contract to have been created, the parties must have progressed beyond this stage of imperfect negotiation. But as the records would show, the parties are yet undergoing the preliminary steps towards the formation of a valid contract. Having thus established that there is no perfected contract of sale in the case at bar, the issue on estoppel is now moot and academic.

Finally, petitioner contends that the appellate court should have dismissed the appeal of respondent on the procedural technicality that the Appellant's Brief does not have page references to the record in its Statement of Facts, Statement of the Case and Arguments in the Appellant's Brief.[39]

We find no reason to reverse the ruling of the appellate court which has judiciously explained why the appeal should not be dismissed on this ground, viz.:

x x x x Procedural rules are required to be followed as a general rule, but they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his noncompliance with the procedure required. In this case, [respondent's] brief does not substantially violate our procedural rules. Besides, the merits of its arguments will show that the trial court seriously erred in issuing its assailed decision.[40]

IN VIEW WHEREOF, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 49227 dated January 30, 2003 and July 31, 2003, respectively, are AFFIRMED.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

[1] Joint Motion and Stipulation, 1-5; Rollo, 106-110.

[2] RTC Decision, 1-5; Original Records (OR), 84-88.

- [3] Motion for Reconsideration, 1-9; Rollo, 126-144.
- [4] Order, 1-4; Rollo, 155-158.
- [5] Motion to Dismiss, 1-3; Rollo, 159-161.
- [6] Resolution, 1-5; Rollo, 168-172.
- [7] Resolution, 1; Rollo, 194.
- [8] Petition for Review on Certiorari, 1-29; Rollo, 195-224.
- [9] Resolution, 1-3; Rollo, 332-334.
- [10] CA Decision, 1-11; Rollo, 71-81.
- [11] Resolution, 1-2; Rollo, 84-85.
- [12] Petition for Review on Certiorari, 17-18; Rollo, 27-28.
- [13] Art. 1475, Civil Code.
- [14] Art. 1319, Civil Code. Emphasis supplied.
- [15] *National Environmental Service Co. v. Ronan Engineering Co.*, 256 F.3d 995, 45 U.C.C. Rep. Serv. 2d 430 (10th Cir. 2001).
- [16] *Homestead Golf Club, Inc. v. Pride Stables*, 224 F.3d 1195 (10th Cir. 2000).
- [17] *Leone Hall Price Foundation v. Baker*, 276 Ga. 318, 577 S.E.2d 779 (2003).
- [18] *Marten v. Staab*, 249 Neb. 299, 543 N.W.2d 436 (1996).
- [19] *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, 2004 WL 612823 (Utah 2004).
- [20] *Bugatti v. CA*, G.R. No. 138113, October 17, 2000, 343 SCRA 335.
- [21] Annex A; OR, 37.
- [22] Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust.
- [23] Petition, 23; Rollo, 33.
- [24] Emphasis supplied.
- [25] Emphases supplied.
- [26] *Oil and Natural Gas Commission v. CA*, G.R. No. 114323, July 23, 1998, 293 SCRA 26, citing *JMM Promotions & Management, Inc. v. NLRC*, 228 SCRA 129, 134 (1993).
- [27] Petition, 24-25; Rollo, 34-35.
- [28] Memorandum, 15; Rollo, 733.
- [29] *Ibid.*
- [30] RTC Decision, 4; OR, 87.

[31] Section 13, Rule 130, Revised Rules of Court. Emphasis supplied.

[32] Rollo, 446-450.

[33] Id. at 448.

[34] Id. at 31.

[35] Deputy v. Lehman Bros., Inc., 345 F.3d 494, 62 Fed. R. Evid. Serv. 965 (7th Cir. 2003).

[36] J.F. McKinney & Associates, Ltd. v. General Elec. Inv. Corp., 183 F.3d 619 (7th Cir. 1999).

[37] Ibid.

[38] Ibid.

[39] Petition, 48; Rollo, 55.

[40] CA Decision, 5; Rollo, 75. Citations omitted.

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.