

**YAO KA SIN TRADING, OWNED AND OPERATED BY YAO KA SIN,
PETITIONER, VS. HONORABLE COURT OF APPEALS AND PRIME
WHITE CEMENT CORPORATION, REPRESENTED BY ITS
PRESIDENT-CHAIRMAN, CONST...**

G.R. No. 53820. June 15, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Assailed in this petition for review is the decision of the respondent Court of Appeals in C.A.-G.R. No. 61072-R,[1] promulgated on 21 December 1979, reversing the decision[2] of the then Court of First Instance (now Regional Trial Court) of Leyte dated 20 November 1975 in Civil Case No. 5064 entitled “Yao Ka Sin Trading versus Prime White Cement Corporation.”

The root of this controversy is the undated letter-offer of Constancio B. Maglana, President and Chairman of the Board of private respondent Prime White Cement Corporation, hereinafter referred to as PWCC, to Yao Ka Sin Trading, hereinafter referred to as YKS, which describes itself as “a business concern of single proprietorship,”[3] and is represented by its manager, Mr. Henry Yao; the letter reads as follows:

“PRIME WHITE CEMENT CORPORATION

602 Cardinal Life Building

Herran Street, Manila

Yao Ka Sin

Tacloban City

Gentlemen:

We have the pleasure to submit hereby our firm offer to you under the following quotations, terms, and conditions, to wit:

- 1) Commodity - Prime White Cement
- 2) Price - At your option: a) P24.30 per 94 lbs. bag net, FOB Cebu City; and b) P23.30 per 94 lbs. bag net, FOB Asturias Cebu.
- 3) Quality - As fully specified in certificate No. 224-73 by Bureau of Public Works, Republic of the Philippines.
- 4) Quantity - Forty-five Thousand (45,000) bags at 94 lbs. net per bag withdrawable in guaranteed monthly quantity of Fifteen Thousand (15,000) bags minimum effective from June, 1973 to August 1973.
- 5) Delivery Schedule - Shipment be made within four (4) days upon receipt of your shipping instruction.

6) Bag/Container - a) All be made of Standard Kraft (water resistant paper, 4 ply, with bursting strength of 220 pounds, and b) Breakage allowance - additional four percent (4%) over the quantity of each shipment.

7) Terms of Payment - Down payment of PESOS: TWO HUNDRED FORTY THREE THOUSAND (P243,000.00) payable on the signing of this contract and the balance to be paid upon presentation of corre-sponding shipping documents.

It is understood that in the event of a delay in our shipment, you hold the option to discount any price differential resulting from a lower market price vis-a-vis the contract price. In addition, grant (sic) you the option to extend this contract until the complete delivery of Forty Five Thousand (45,000) bags of 94 lbs. each is made by us. You are also hereby granted the option to renew this contract under the same price, terms and conditions.

Please countersign on the space provided for below as your acknowledgement and confirmation of the above transaction. Thank You.

Very truly yours,

PRIME WHITE CEMENT CORPORATION

BY: (SGD) CONSTANCIO B. MAGLANA

President & Chairman

CONFORME:

YAO KA SIN TRADING

BY: (SGD) HENRY YAO

WITNESSES:

(SGD) T. CATINDIG (SGD) ERNESTO LIM

RECEIVED from Mr. Henry Yao of Yao Ka Sin Trading, in pursuance of the above offer, the sum of Pesos: TWO HUNDRED FORTY THREE THOUSAND ONLY (P243,000.00) in the form of Producers' Bank of the Philippines Check No. C-153576 dated June 7, 1973.

PRIME WHITE CEMENT CORPORATION

BY:

(SGD) CONSTANCIO B. MAGLANA

President & Chairman"[4]

This letter-offer, hereinafter referred to as Exhibit "A", was prepared, typed and signed on 7 June 1973 in the office of Mr. Teodoro Catindig, Senior Vice-President of the Consolidated Bank and Trust Corporation (Solid Bank).[5]

The principal issue raised in this case is whether or not the aforesaid letter-offer, as accepted by YKS, is a contract that binds the PWCC. The trial court ruled in favor of the petitioner, but the respondent Court held otherwise.

The records disclose the following material operative facts:

In its meeting in Cebu City on 30 June 1973, or twenty-three (23) days after the signing of Exhibit "A", the Board of Directors of PWCC disapproved the same; the rejection is evidenced by the following Minutes (Exhibit "10"):

“the 10,000 bags of white cement sold to Yao Ka Sin Trading is sold not because of the alleged letter-contract adhered to by them, but must be understood as a new and separate contract, and has in no way to do with the letter-offer which they (sic) distinct consideration, as the letter-contract which they now hang on (sic) as consummated is by this resolution, totally disapproved and is unacceptable to the corporation.”

On 5 July 1973, PWCC wrote a letter (Exhibit “1”) to YKS informing it of the disapproval of Exhibit “A”. Pursuant, however, to its decision with respect to the 10,000 bags of cement, it issued the corresponding Delivery Order (Exhibit “4”) and Official Receipt No. 0394 (Exhibit “5”) for the payment of the same in the amount of P243,000.00. This is the same amount received and acknowledged by Maglana in Exhibit “A”.

YKS accepted without protest both the Delivery and Official Receipts.

While YKS denied having received a copy of Exhibit “1”, it was established that the original thereof was shown to Mr. Henry Yao; since no one would sign a receipt for it, the original was left at the latter's office and this fact was duly noted in Exhibit “1” (Exhibit “1-A”).

On 4 August 1973, PWCC wrote a letter (Exhibit “2”) to YKS in answer to the latter's 4 August 1973 letter stating that it is “withdrawing or taking delivery of not less than 10,000 bags of white cement on August 6-7, 1973 at Asturias, Cebu, thru M/V Taurus.” In said reply, PWCC reminded YKS of its (PWCC's) 5 July 1973 letter (Exhibit “1”) and told the latter that PWCC “only committed to you and which you correspondingly paid 10,000 bags of white cement of which 4,150 bags were already delivered to you as of August 1, 1973.”[6] Unfortunately, no copy of the said 4 August 1973 letter of YKS was presented in evidence.

On 21 August 1973, PWCC wrote another letter (Exhibit “3”)[7] to YKS in reply to the latter's letter of 15 August 1973. Enclosed in the reply was a copy of Exhibit “2”. While the records reveal that YKS received this reply also on 21 August 1973 (Exhibit “3-A”),[8] it still denied having received it. Likewise, no copy of the so-called 15 August 1973 letter was presented in evidence.

On 10 September 1973, YKS, through Henry Yao, wrote a letter[9] to PWCC as a follow-up to the letter of 15 August 1973; YKS insisted on the delivery of 45,000 bags of white cement.[10]

On 12 September 1973, Henry Yao sent a letter (Exhibit “G”) to PWCC calling the latter's attention to the statement of delivery dated 24 August 1973, particularly the price change from P23.30 to P24.30 per 94 lbs. bag net FOB Asturias, Cebu.[11]

On 2 November 1973, YKS sent a telegram (Exhibit “C”)[12] to PWCC insisting on the full compliance with the terms of Exhibit “A” and informing the latter that it is exercising the option therein stipulated.

On 3 November 1973, YKS sent to PWCC a letter (Exhibit “D”) as a follow-up to the 2 November 1973 telegram, but this was returned to sender as unclaimed.[13]

As of 7 December 1973, PWCC had delivered only 9,775 bags of white cement.

On 9 February 1974, YKS wrote PWCC a letter (Exhibit “H”) requesting, for the last time, compliance by the latter with its obligation under Exhibit “A”.[14]

On 27 February 1974, PWCC sent an answer (Exhibit “7”) to the aforementioned letter of 9 February 1974; PWCC reiterated the unenforceability of Exhibit “A”.[15]

On 4 March 1974, YKS filed with the then Court of First Instance of Leyte a complaint for Specific Performance with Damages against PWCC. The complaint[16] was based on Exhibit “A” and was docketed as Civil Case No. 5064.

In its Answer with Counterclaim[17] filed on 1 July 1974, PWCC denied under oath the material averments in the complaint and alleged that: (a) YKS “has no legal personality to sue having no legal personality even by fiction to represent itself;” (b) Mr. Maglana, its President and Chairman, was lured into signing Exhibit “A”; (c) such signing was subject to the condition that Exhibit “A” be approved by the Board of Directors of PWCC, as corporate commitments are made through it; (d) the latter disapproved it, hence Exhibit “A” was never consummated and is not enforceable against PWCC; (e) it agreed to sell 10,000 bags of white cement, not under Exhibit “A”, but under a separate contract prepared by the Board; (f) the rejection by the Board of Exhibit “A” was made known to YKS through various letters sent to it, copies of which were attached to the Answer as Annexes 1, 2 and 3;[18] (g) YKS knew, per Delivery Order[19] and Official Receipt[20] issued by PWCC, that only 10,000 bags were sold to it, without any terms or conditions, at P24.30 per bag FOB Asturias, Cebu; (h) YKS is solely to blame for the failure to take complete delivery of 10,000 bags for it did not send its boat or truck to PWCC's plant; and (i) YKS has, therefore, no cause of action.

In its Counterclaim, PWCC asks for moral damages in the amount of not less than P10,000.00, exemplary damages in the sum of P500,000.00 and attorney's fees in the sum of P10,000.00.

On 24 July 1974, YKS filed its Answer to the Counterclaim.[21]

Issues having been joined, the trial court conducted a pre-trial.[22] On that occasion, the parties admitted that according to the By-Laws of PWCC, the Chairman of the Board, who is also the President of the corporation, “has the power to execute and sign, for and in behalf of the corporation, all contracts or agreements which the corporation enters into,” subject to the qualification that “all the president's actuations, prior to and after he had signed and executed said contracts, shall be given to the board of directors of defendant Corporation.” Furthermore, it was likewise stated for the record “that the corporation is a semi-subsidary of the government because of the NIDC participation in the same, and that all contracts of the corporation should meet the approval of the NIDC and/or the PNB Board because of an exposure and financial involvement of around P10 million therein.”[23]

During the trial, PWCC presented evidence to prove that Exhibit “A” is not binding upon it because Mr. Maglana was not authorized to make the offer and sign the contract in behalf of the corporation. Per its By-Laws (Exhibit “8”), only the Board of Directors has the power “x x x (7) To enter into (sic) agreement or contract of any kind with any person in the name and for and in behalf of the corporation through its President, subject only to the declared objects and purpose of the corporation and the existing provisions of law.”[24] Among the powers of the President is “to operate and conduct the business of the corporation according to his own judgment and discretion, whenever the same is not expressly limited by such orders, directives or resolutions.”[25] Per standard practice of the corporation, contracts should first pass through the marketing and intelligence unit before they are finalized. Because of its interest in the PWCC, the NIDC, through its comptroller, goes over contracts involving funds of and white cement produced by the PWCC. Finally, among the duties of its legal counsel is to review proposed contracts before they are submitted to the Board. While the president may be tasked with the preparation of a contract, it must first pass through the legal counsel and the comptroller of the corporation.[26]

On 20 November 1975, after trial on the merits, the court handed down its decision in favor of herein petitioner, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered:

(1) Ordering defendant to complete the delivery of 45,000 bags of prime white cement at 94 lbs. net per bag at the price agreed, with a breakage allowance of empty bags at 4% over the quantity agreed;

(2) Ordering defendant to pay P50,000.00 as moral damages; P5,000.00 as exemplary damages; P3,000.00 as attorney's fees; and the costs of these proceedings.

SO ORDERED.”[27]

In disregarding PWCC's theory, the trial court interpreted the provision of the By-Laws -- granting its Board of Directors the power to enter into an agreement or contract of any kind with any person through the President -- to mean that the latter may enter into such contract or agreement at any time and that the same is not subject to the ratification of the board of directors but “subject only to the declared objects and purpose of the corporation and existing laws.” It then concluded:

“It is obvious therefore, that it is not the whole membership of the board of directors who actually enters into any contract with any person in the name and for and in behalf of the corporation, but only its president. It is likewise crystal clear that this automatic representation of the board by the president is limited only by the 'declared objects and purpose of the corporation and existing provisions of law.’”[28]

It likewise interpreted the provision on the power of the president to “operate and conduct the business of the corporation according to the orders, directives or resolutions of the board of directors and according to his own judgment and discretion whenever the same is not expressly limited by such orders, directives and resolutions,” to mean that the president can operate and conduct the business of the corporation according to his own judgment and discretion as long as it is not expressly limited by the orders, directives or resolutions of the board of directors.[29] The trial court found no evidence that the board had set a prior limitation upon the exercise of such judgment and discretion; it further ruled that the By-Laws does not require that Exhibit “A” be approved by the Board of Directors. Finally, in the light of the Chairman's power to “execute and sign for and in behalf of the corporation all contracts or agreements which the corporation may enter into” (Exhibit “I-1”), it concluded that Mr. Maglana merely followed the By-Laws “presumably both as president and chairman of the board thereof.”[30] Hence, Exhibit “A” was validly entered into by Maglana and thus binds the corporation.

The trial court, however, ruled that the option to sell is not valid because it is not supported by any consideration distinct from the price; it was exercised before compliance with the original contract by PWCC; and the repudiation of the original contract by PWCC was deemed a withdrawal of the option before acceptance by the petitioner.

Both parties appealed from the said decision to the respondent Court of Appeals before which petitioner presented the following Assignment of Errors:

“I

THE TRIAL COURT ERRED IN HOLDING THAT THE OPTION TO RENEW THE CONTRACT OF SALE IS NOT ENFORCEABLE BECAUSE THE OPTION WAS MADE EVEN BEFORE THE COMPLIANCE OF (sic) THE ORIGINAL CONTRACT BY DEFENDANT AND THAT DEFENDANT'S PROMISE TO SELL IS NOT SUPPORTED BY ANY CONSIDERATION DISTINCT FROM THE PRICE.

II

THE TRIAL COURT ERRED IN NOT AWARDING TO THE PLAINTIFF ACTUAL DAMAGES, SUFFICIENT EXEMPLARY DAMAGES AND ATTORNEY'S FEES AS ALLEGED IN THE COMPLAINT AND PROVEN DURING THE TRIAL.”[31]

while the private respondent cited the following errors:

“I

THE TRIAL COURT ERRED IN HOLDING THAT EXHIBIT “A” IS A VALID CONTRACT OR PLAINTIFF CAN CLAIM THAT THE PROPOSED LETTER-CONTRACT, EXHIBIT “A” IS LEGALLY ENFORCEABLE, AS THE SAME IS A MERE UNACCEPTED PROPOSAL, NOT HAVING BEEN PREVIOUSLY AUTHORIZED TO BE ENTERED INTO OR LATER ON RATIFIED BY THE DEFENDANT'S BOARD OF DIRECTORS; IN FACT EXHIBIT “A” WAS TOTALLY REJECTED AND DISAPPROVED IN TOTO BY THE DEFENDANT'S BOARD OF DIRECTORS IN CLEAR, PLAIN LANGUAGE AND DULY INFORMED AND TRANSMITTED TO PLAINTIFF.

II

THE TRIAL COURT ERRED IN HOLDING THAT PLAINTIFF CAN LEGALLY UTILIZE THE COURTS AS THE FORUM TO GIVE LIFE AND VALIDITY TO A TOTALLY UNENFORCEABLE OR NON-EXISTING CONTRACT.

III

THE TRIAL COURT ERRED IN ALLOWING YAO KA SIN TO IMPUGN AND CONTRADICT HIS VERY OWN ACTUATIONS AND REPUDIATE HIS ACCEPTANCE AND RECEIPTS OF BENEFITS FROM THE COUNTER-OFFER OF DEFENDANT FOR 10,000 BAGS OF CEMENT ONLY, UNDER THE PRICE, TERMS AND CONDITIONS TOTALLY FOREIGN TO AND WHOLLY DIFFERENT FROM THOSE WHICH APPEAR IN EXHIBIT “A”.

IV

THE TRIAL COURT ERRED IN DISMISSING DEFENDANT'S COUNTER-CLAIMS AS THE SAME ARE DULY SUPPORTED BY CLEAR AND INDUBITABLE EVIDENCE.”[32]

In its decision[33] promulgated on 21 December 1979, the respondent Court reversed the decision of the trial court, thus:

“WHEREFORE, the judgment appealed from is REVERSED and set aside, Plaintiff's complaint is dismissed with costs. Plaintiff is ordered to pay defendant corporation P25,000.00 exemplary damages, and P10,000.00 attorney's fees.

SO ORDERED.”

Such conclusion is based on its findings, to wit:

“Before resolving the issue, it is helpful to bring out some preliminary facts. First, the defendant corporation is supervised and principally financed by the National Investment and Development Corporation (NIDC), a subsidiary investment of the Philippine National Bank (PNB), with cash financial exposure of some P10,000,000.00. PNB is a government financial institution whose Board is chairmaned (sic) by the Minister of National Defense. This fact is very material to the issue of whether defendant corporation's president can bind the corporation with his own act.

Second, for failure to deny under oath the following actionable documents in support of defendant's counterclaim:

1. The resolution contained in defendant's letter to plaintiff dated July 5, 1973, on the 10,000 bags of white cement delivered to plaintiff was not by reason of the letter contract, Exhibit “A”, which was totally disapproved by defendant corporation's board of directors, clearly stating that ‘If within ten (10) days from date hereof, we

will not hear from you but you will withdraw cement at P24.30 per bag from our plant, then we will deposit your check of P243,000.00 dated June 7, 1973 issued by the Producers Bank of the Philippines, per instruction of the Board.' (Annex "1" to defendant's Answer).

2. Letter of defendant to plaintiff dated August 4, 1973 that defendant 'only committed to you and which you accordingly paid 10,000 bags of white cement of which 4,150 bags were already delivered to you as of August 1, 1973' (Annex "2" of defendant's Answer).

3. Letter dated August 21, 1973 to plaintiff reiterating defendant's letter of August 4, 1973 (Annex "3" to defendant's Answer).

4. Letter to stores dated August 21, 1973,

5. Receipt from plaintiff (sic) P243,000.00 in payment of 10,000 bags of white cement at 24.30 per bag (Annex "5" to defendant's Answer).

plaintiff is deemed to have admitted, not only the due execution and genuineness (sic) of said documents, (Rule 8, Sec. 8, Rules of Court) but also the allegations therein (Rule 9, Sec. 1, Rules of Court). All of the foregoing documents tend to prove that the letter-offer, Exhibit "A", was rejected by defendant corporation's Board of Directors and plaintiff was duly notified thereof and that the P243,000.00 check was considered by both parties as payment of the 10,000 bags of cement under a separate transaction. As proof of which plaintiff did not complain nor protest until February 9, 1974, when he threatened legal action.

Third. Maglana's signing the letter?offer prepared for him in the Solidbank was made clearly upon the condition that it was subject to the approval of the board of directors of defendant corporation. We find consistency herein because according to the Corporation Law, and the By-Laws of defendant corporation, all corporate commitments and business are conducted by, and contracts entered into through, the express authority of the Board of Directors (Sec. 28, Corp. Law, Exh "I" or "8").

Fourth. What Henry Yao and Maglana agreed upon as embodied in Exhibit "A", insofar as defendant corporation is concerned, was an unauthorized contract (Arts. 1317 and 1403 (1), Civil Code). And because Maglana was not authorized by the Board of Directors of defendant corporation nor was his actuation ratified by the Board, the agreement is unenforceable (Art. 1403 (1), Civil Code; Raquiza et al. vs. Lilles et al., 13 CA Rep. 343; Gana vs. Archbishop of Manila, 43 O.G. 3224).

While it may be true that Maglana is President of defendant corporation nowhere in the Articles of Incorporation nor in the By-Laws of said corporation was he empowered to enter into any contract all by himself and bind the corporation without first securing the authority and consent of the Board of Directors. Whatever authority Maglana may have must be derived from the Board of Directors of defendant corporation. A corporate officer's power as an agent must be sought from the law, the articles of incorporation and the By-Laws or from a resolution of the Board (Vicente vs. Geraldez, 52 SCRA 227, Board of Liquidators vs. Kalaw, 20 SCRA 987).

It clearly results from the foregoing that the judgment appealed from is untenable. Having no cause of action against defendant corporation, plaintiff is not entitled to any relief. We see no justification, therefore, for the court a quo's awards in its favor. x x x"[34]

Its motion for reconsideration having been denied by the respondent Court in its resolution[35] dated 15 April 1980, petitioner filed the instant petition based on the following grounds:

"1. That the contract (Exh. "A") entered into by the President and Chairman of the Board of Directors Constancio B. Maglana in behalf of the respondent corporation binds the said corporation.

2. That the contract (Exh. "A") was never novated nor superceded (sic) by a subsequent contract.

3. That the option to renew the contract as contained in Exhibit “A” is enforceable.

4. That Sec. 8, Rule 8 of the Rules of Court only applies when the adverse party appear (sic) to be a party to the instrument but not to one who is not a party to the instrument and Sec. 1, Rule 9 of the said Rules with regards (sic) to denying under oath refers only to allegations of usury.”[36]

We gave due course[37] to the petition after private respondent filed its Comment[38] and required the parties to submit simultaneously their Memoranda, which the parties subsequently complied with.[39]

Before going any further, this Court must first resolve an issue which, although raised in the Answer of private respondent, was neither pursued in its appeal before the respondent Court nor in its Comment and Memorandum in this case. It also eluded the attention of the trial court and the respondent Court. The issue, which is of paramount importance, concerns the lack of capacity of plaintiff/petitioner to sue. In the caption of both the complaint and the instant petition, the plaintiff and the petitioner, respectively, is:

YAO KA SIN TRADING,

owned and operated by

YAO KA SIN.[40]

and is described in the body thereof as “a business concern of single proprietorship owned and operated by Yao Ka Sin.”[41] In the body of the petition, it is described as “a single proprietorship business concern.”[42] It also appears that, as gathered from the decision of the trial court, no Yao Ka Sin testified. Instead, one Henry Yao took the witness stand and testified that he is the “manager of Yao Ka Sin Trading” and “it was in representation of the plaintiff” that he signed Exhibit “A”.[43] Under Section 1, Rule 3 of the Rules of Court, only natural or juridical persons or entities authorized by law may be parties in a civil action. In *Juasing Hardware vs. Mendoza*,[44] this Court held that a single proprietorship is neither a natural person nor a juridical person under Article 44 of the Civil Code; it is not an entity authorized by law to bring suit in court:

“The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof to secure licenses and permits, register the business name, and pay taxes to the national government. It does not vest juridical or legal personality upon the sole proprietorship nor empower it to file or defend an action in court.”[45]

Accordingly, the proper party plaintiff/petitioner should be YAO KA SIN.[46]

The complaint then should have been amended to implead Yao Ka Sin as plaintiff in substitution of Yao Ka Sin Trading. However, it is now too late in the history of this case to dismiss this petition and, in effect, nullify all proceedings had before the trial court and the respondent Court on the sole ground of petitioner's lack of capacity to sue. Considering that private respondent did not pursue this issue before the respondent Court and this Court; that, as We held in *Juasing*, the defect is merely formal and not substantial, and an amendment to cure such defect is expressly authorized by Section 4, Rule 10 of the Rules of Court which provides that “[a] defect in the designation of the parties may be summarily corrected at any stage of the action provided no prejudice is caused thereby to the adverse party;” and that “[a] sole proprietorship does not, of course, possess any juridical personality separate and apart from the personality of the owner of the enterprise and the personality of the persons acting in the name of such proprietorship,”[47] We hold and declare that Yao Ka Sin should be deemed as the plaintiff in Civil Case No. 5064 and the petitioner in the instant case. As this Court stated nearly eighty (80) years ago in *Alonso vs. Villamor*: [48]

“No one has been misled by the error in the name of the party plaintiff. If we should by reason of this error

send this case back for amendment and new trial, there would be on the retrial the same complaint, the same answer, the same defense, the same interests, the same witnesses, and the same evidence. The name of the plaintiff would constitute the only difference between the old trial and the new. In our judgment there is not enough in a name to justify such action.”

And now to the merits of the petition.

The respondent Court correctly ruled that Exhibit “A” is not binding upon the private respondent. Mr. Maglana, its President and Chairman, was not empowered to execute it. Petitioner, on the other hand, maintains that it is a valid contract because Mr. Maglana has the power to enter into contracts for the corporation as implied from the following provisions of the By-Laws of private respondent:

- a) The power of the Board of Directors to “... enter into (sic) agreement or contract of any kind with any person in the name and for and in behalf of the corporation through its President, subject only to the declared objects and purpose of the corporation and the existing provisions of law” (Exhibit “8- A”); and
- b) The power of the Chairman of the Board of Directors to “execute and sign, for and in behalf of the corporation, all contracts or agreements which the corporation may enter into”. (Exhibit “I?1”).

And even admitting, for the sake of argument, that Mr. Maglana was not so authorized under the By-Laws, the private respondent, pursuant to the doctrine laid down by this Court in *Francisco vs. Government Service Insurance System*[49] and *Board of Liquidators vs. Kalaw*,[50] is still bound by his act for clothing him with apparent authority.

We are not persuaded.

Since a corporation, such as the private respondent, can act only through its officers and agents, “all acts within the powers of said corporation may be performed by agents of its selection; and, except so far as limitations or restrictions may be imposed by special charter, by-law, or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agent of a corporation, of whatever status or rank, in respect to his power to act for the corporation; and agents when once appointed, or members acting in their stead, are subject to the same rules, liabilities and incapacities as are agents of individuals and private persons.”[51] Moreover, “x x x a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally, conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.”[52]

While there can be no question that Mr. Maglana was an officer -- the President and Chairman -- of private respondent corporation at the time he signed Exhibit “A”, the above provisions of said private respondent's By-Laws do not in any way confer upon the President the authority to enter into contracts for the corporation independently of the Board of Directors. That power is exclusively lodged in the latter. Nevertheless, to expedite or facilitate the execution of the contract, only the President -- and not all the members of the Board, or so much thereof as are required for the act -- shall sign it for the corporation. This is the import of the words through the president in Exhibit “8-A” and the clear intent of the power of the chairman “to execute and sign for and in behalf of the corporation all contracts and agreements which the corporation may enter into” in Exhibit “I-1”. Both powers presuppose a prior act of the corporation exercised through the Board of Directors. No greater power can be implied from such express, but limited, delegated authority. Neither can it be logically claimed that any power greater than that expressly conferred is inherent in Mr. Maglana's position as president and chairman of the

corporation.

Although there is authority “that if the president is given general control and supervision over the affairs of the corporation, it will be presumed that he has authority to make contracts and do acts within the course of its ordinary business,”[53] We find such inapplicable in this case. We note that the private corporation has a general manager who, under its By-Laws has, inter alia, the following powers: “(a) to have the active and direct management of the business and operation of the corporation, conducting the same according to the order, directives or resolutions of the Board of Directors or of the president.” It goes without saying then that Mr. Maglana did not have a direct and active hand in the management of the business and operations of the corporation. Besides, no evidence was adduced to show that Mr. Maglana had, in the past, entered into contracts similar to that of Exhibit “A” either with the petitioner or with other parties.

Petitioner's last refuge then is his alternative proposition, namely, that private respondent had clothed Mr. Maglana with the apparent power to act for it and had caused persons dealing with it to believe that he was conferred with such power. The rule is of course settled that “[a]lthough an officer or agent acts without, or in excess of, his actual authority if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on such apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time.”[54] Also, “if a private corporation intentionally or negligently clothes its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents.”[55] This “apparent authority may result from (1) the general manner by which the corporation holds out an officer or agent as having power to act or, in other words, the apparent authority with which it clothes him to act in general, or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers.”[56]

It was incumbent upon the petitioner to prove that indeed the private respondent had clothed Mr. Maglana with the apparent power to execute Exhibit “A” or any similar contract. This could have been easily done by evidence of similar acts executed either in its favor or in favor of other parties. Petitioner miserably failed to do that. Upon the other hand, private respondent's evidence overwhelmingly shows that no contract can be signed by the president without first being approved by the Board of Directors; such approval may only be given after the contract passes through, at least, the comptroller, who is the NIDC representative, and the legal counsel.

The cases then of *Francisco vs. GSIS* and *Board of Liquidators vs. Kalaw* are hopelessly unavailing to the petitioner. In said cases, this Court found sufficient evidence, based on the conduct and actuations of the corporations concerned, of apparent authority conferred upon the officer involved which bound the corporations on the basis of ratification. In the first case, it was established that the offer of compromise made by plaintiff in the letter, Exhibit “A”, was validly accepted by the GSIS. The terms of the offer were clear, and over the signature of defendant's general manager, Rodolfo Andal, plaintiff was informed telegraphically that her proposal had been accepted. It was sent by the GSIS' Board Secretary and defendant did not disown the same. Moreover, in a letter remitting the payment of P30,000 advanced by her father, plaintiff quoted verbatim the telegram of acceptance. This was in itself notice to the corporation of the terms of the allegedly unauthorized telegram. Notwithstanding this notice, GSIS pocketed the amount and kept silent about the telegram. This Court then ruled that:

“This silence, taken together with the unconditional acceptance of three other subsequent remittances from plaintiff, constitutes in itself a binding ratification of the original agreement (Civil Code, Art. 1393).

‘ART. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.’”

In the second case, this Court found:

“In the case at bar, the practice of the corporation has been to allow its general manager to negotiate and execute contracts in its copra trading activities for and in NACOCO's behalf without prior board approval. If the by-laws were to be literally followed, the board should give its stamp of prior approval on all corporate contracts. But that board itself, by its acts and through acquiescence, practically laid aside the by-law requirement of prior approval.

Under the given circumstances, the Kalaw contracts are valid corporate acts.”

The inevitable conclusion then is that Exhibit “A” is an unenforceable contract under Article 1317 of the Civil Code which provides as follows:

“ARTICLE 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.”

The second ground is based on a wrong premise. It assumes, contrary to Our conclusion above, that Exhibit “A” is a valid contract binding upon the private respondent. It was effectively disapproved and rejected by the Board of Directors which, at the same time, considered the amount of P243,000.00 received by Maglana as payment for 10,000 bags of white cement, treated as an entirely different contract, and forthwith notified petitioner of its decision that “If within ten (10) days from date hereof we will not hear from you but you will withdraw cement at P24.30 per bag from our plant, then we will deposit your check of P243,000.00 dated June 7, 1973 issued by the Producers Bank of the Philippines, per instruction of the Board.”[57] Petitioner received a copy of this notification and thereafter accepted without any protest the Delivery Receipt covering the 10,000 bags and the Official Receipt for the P243,000.00. The respondent Court thus correctly ruled that petitioner had in fact agreed to a new transaction involving only 10,000 bags of white cement.

The third ground must likewise fail. Exhibit “A” being unenforceable, the option to renew it would have no leg to stand on. The river cannot rise higher than its source. In any event, the option granted in this case is without any consideration. Article 1324 of the Civil Code expressly provides that:

“When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon, a consideration, as something paid or promised.”

while Article 1749 of the same Code provides:

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

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

Accordingly, even if it were accepted, it can not validly bind the private respondent.[58]

The fourth ground is, however, meritorious.

Section 8, Rule 8 of the Rules of Court provides:

“SECTION 8. How to contest genuineness of such documents. -- When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.”

It is clear that the petitioner is not a party to any of the documents attached to the private respondent's Answer. Thus, the above quoted rule is not applicable.[59] While the respondent Court erred in holding otherwise, the challenged decision must, nevertheless, stand in view of the above disquisitions on the first to the third grounds of the petition.

WHEREFORE, judgment is hereby rendered AFFIRMING the decision of respondent Court of Appeals in C.A.-G.R. No. 61072-R promulgated on 21 December 1979.

Costs against petitioner.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Rollo, 114, et seq. Per Acting Presiding Justice Lourdes P. San Diego, concurred in by Associate Justices Samuel F. Reyes and Lino H. Patajo.

[2] Id., 73.

[3] Paragraph 1 of Complaint in Civil Case No. 5064, 2; Record on Appeal (Annex "A" of Petition); Rollo, 18.

[4] Court of Appeals Decision, 2; Rollo, 115-117. This was marked and offered in evidence as Exhibit "A".

[5] Record on Appeal, 76; Rollo, 92.

[6] Record on Appeal, 77; Rollo, 93.

[7] Id.

[8] Id.

[9] Rollo, 94.

[10] Id.

[11] Record on Appeal, 78.

[12] Id.

[13] Id.

[14] Rollo, op. cit.

[15] Record on Appeal, 78.

[16] Id., 1-7.

- [17] Id., 7-20.
- [18] Marked as Exhibits "1", "2" and "3".
- [19] Annex "4" to Answer; also Exhibit "4".
- [20] Annex "5" to Answer; also Exhibit "5".
- [21] Record on Appeal, 20-21; Rollo, 36-37.
- [22] Id., 21-30.
- [23] Paragraph 13, Pre-Trial Order, Id., 24; Id., 40.
- [24] Exhibit "8-A".
- [25] Exhibit "8-B".
- [26] The trial court's summation of the testimonies of witnesses for PWCC, Record on Appeal, 81-82; Rollo, 97-98.
- [27] Record on Appeal, 92; Rollo, 107.
- [28] Id., 87; Id., 102.
- [29] Record on Appeal, 88; Rollo, 103.
- [30] Id., 90; Id., 105.
- [31] Brief for Plaintiff-Appellee, Annex "B" of Petition; Rollo, 111.
- [32] Brief for Defendant-Appellant, Annex "C" of Petition; Rollo, 112.
- [33] Annex "E" of Petition; Id., 114-122.
- [34] Rollo, 118-120.
- [35] Rollo, 143.
- [36] Id., 6.
- [37] Id., 56.
- [38] Id., 145, et seq.
- [39] Id., 170, et seq.; 188, et seq.
- [40] Rollo, 17; 2.
- [41] Id., 18.
- [42] Id., 2.
- [43] Id., 81.

[44] 115 SCRA 783 [1982].

- [45] At page 786.
- [46] Conformably with the instruction in the Juasing case, the descriptive words "doing business as 'Yao Ka Sin

Trading” may be added in the title of the case.

[47] Jariol, Jr. vs. Sandiganbayan, 188 SCRA 475 [1990].

[48] 16 Phil. 315 [1910].

[49] 7 SCRA 577 [1963].

[50] 20 SCRA 987 [1967].

[51] 19 C.J.S. 455.

[52] 19 C.J.S. 456.

[53] Fletcher, Cyclopedia of the Law of Private Corporations, vol. 2 (Perm. Ed.), 1969 Revised Volume, 614.

[54] 19 C.J.S. 458.

[55] Fletcher, op. cit., 340.

[56] Id., 354.

[57] Exhibit “1”.

[58] TOLENTINO, A., Civil Code of the Philippines, vol. IV, 1985 ed., 467.

[59] Gaw vs. Court of Appeals, 191 SCRA 77 [1990].

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