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SECOND DIVISION

[G.R. No. 176897. December 11, 2013]

ADVANCE PAPER CORPORATION and GEORGE HAW, in his capacity as President of Advance Paper Corporation, *petitioners, vs.* **ARMA TRADERS CORPORATION, MANUEL TING, CHENG GUI and BENJAMIN NG,** *respondents.* **ANTONIO TAN and UY SENG KEE WILLY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING; A DEFECTIVE *JURAT* THEREIN IS NOT A FATAL DEFECT BECAUSE IT IS ONLY A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT THAT THE COURT MAY WAIVE.— [T]he respondents correctly cited A.M. No. 02-8-13-SC dated February 19, 2008 which refer to the amendment of the 2004 Rules on Notarial Practice. It deleted the Community Tax Certificate among the accepted proof of identity of the affiant because of its inherent unreliability. The petitioners violated this when they used Community Tax Certificate No. 05730869 in their Petition for Review. Nevertheless, the defective *jurat* in the Verification/ Certification of Non-Forum Shopping is not a fatal defect because it is only a formal, not a jurisdictional, requirement that the Court may waive. Furthermore, we cannot simply ignore the millions of pesos at stake in this case. To do so might cause grave injustice to a party, a situation that this Court intends to avoid.

2. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; DOCTRINE OF APPARENT AUTHORITY; EXPLAINED.— The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts. The doctrine of apparent

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authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.

3. ID.; ID.; ID.; CORPORATE PRESIDENT; PRESUMED TO HAVE AUTHORITY TO ACT WITHIN THE DOMAIN OF THE GENERAL OBJECTIVES OF THE CORPORATION'S BUSINESS AND WITHIN THE SCOPE OF HIS USUAL DUTIES IN THE ABSENCE OF A CHARTER OR BY LAW PROVISION TO THE CONTRARY.— In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals,* we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation. "Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation." **"In the absence of a charter or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties."**

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; A PARTY'S FAILURE TO OBJECT TO THE OFFERED EVIDENCE RENDERS IT ADMISSIBLE; CASE AT BAR.— The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented. x x x We agree with

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the respondents that with respect to the identification of the sales invoices, Haw's testimony was hearsay because he was not present during its preparation and the secretaries who prepared them were not presented to identify them in court. Further, these sales invoices do not fall within the exceptions to the hearsay rule even under the "entries in the course of business" because the petitioners failed to show that the entrant was deceased or was unable to testify. But even though the sales invoices are hearsay, nonetheless, they form part of the records of the case for the respondents' failure to object as to the admissibility of the sales invoices on the ground that they are hearsay. Based on the records, the respondents through Ng objected to the offer "for the purpose [to] which they are being offered" only – not on the ground that they were hearsay.

5. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY NOT DISTURBED ON APPEAL.— [T]he issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses as it heard the testimonies and observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

APPEARANCES OF COUNSEL

Numeriano F. Rodriguez, Jr. for petitioners.
Ernest Ang, Jr. and *Ferrer Co* for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a Petition for Review[1] seeking to set aside the Decision of the Court of Appeals (*CA*) in CA-G.R. CV No. 71499

[1] Rule 45 of the Revised Rules of Court; *rollo,* pp. 8-44.

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dated March 31, 2006 and the Resolution dated March 7, 2007.[2] The Decision reversed and set aside the ruling of the Regional Trial Court (*RTC*) of Manila, Branch 18 in Civil Case No. 94-72526 which ordered Arma Traders Corporation (*Arma Traders*) to pay Advance Paper Corporation (*Advance Paper*) the sum of ₱15,321,798.25 with interest, and ₱1,500,000.00 for attorney's fees, plus the cost of the suit.[3]

Factual Antecedents

Petitioner Advance Paper is a domestic corporation engaged in the business of producing, printing, manufacturing, distributing and selling of various paper products.[4] Petitioner George Haw (*Haw*) is the President while his wife, Connie Haw, is the General Manager.[5]

Respondent Arma Traders is also a domestic corporation engaged in the wholesale and distribution of school and office supplies, and novelty products.[6] Respondent Antonio Tan (*Tan*) was formerly the President while respondent Uy Seng Kee Willy (*Uy*) is the Treasurer of Arma Traders.[7] They represented Arma Traders when dealing with its supplier, Advance Paper, for about 14 years.[8]

On the other hand, respondents Manuel Ting, Cheng Gui and Benjamin Ng worked for Arma Traders as Vice-President, General Manager and Corporate Secretary, respectively.[9]

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[2] Penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino; *id.* at 46-69.

[3] Civil Case No. 94-72526 dated August 20, 2011; penned by Judge Perfecto A.S. Laguio, Jr.; *id.* at 75-77.

[4] *Id.* at 48.

[5] *Id.* at 288.

[6] *Ibid.*

[7] *Id.* at 48.

[8] Records, Vol. 3, pp. 170-178; referring to the Sworn Statement of Haw dated November 18, 1996.

[9] *Id.* at 48.

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On various dates from September to December 1994, Arma Traders purchased on credit notebooks and other paper products amounting to ₱7,533,001.49 from Advance Paper.[10]

Upon the representation of Tan and Uy, Arma Traders also obtained three loans from Advance Paper in November 1994 in the amounts of ₱3,380,171.82, ₱1,000,000.00, and ₱3,408,623.94 or a total of ₱7,788,796.76.[11] Arma Traders needed the loan to settle its obligations to other suppliers because its own collectibles did not arrive on time.[12] Because of its good business relations with Arma Traders, Advance Paper extended the loans.[13]

As payment for the purchases on credit and the loan transactions, Arma Traders issued 82 postdated checks[14] payable to cash or to Advance Paper. Tan and Uy were Arma Traders' authorized bank signatories who signed and issued these checks which had the aggregate amount of ₱15,130,636.87.[15]

Advance Paper presented the checks to the drawee bank but these were dishonored either for "insufficiency of funds" or "account closed." Despite repeated demands, however, Arma Traders failed to settle its account with Advance Paper.[16]

On December 29, 1994, the petitioners filed a complaint[17] for collection of sum of money with application for preliminary attachment against Arma Traders, Tan, Uy, Ting, Gui, and Ng.

Claims of the petitioners

The petitioners claimed that the respondents fraudulently issued the postdated checks as payment for the purchases and loan

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[10] *Ibid*.

[11] *Ibid*.

[12] *Ibid*.

[13] *Id*. at 75.

[14] Marked as Exhibits "E-1" to "E-82". See Records, Vol. 2, pp. 418-445.

[15] *Rollo*, p. 48.

[16] *Id*. at 48-49.

[17] Amended on October 26, 1995.

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transactions knowing that they did not have sufficient funds with the drawee banks.[18]

To prove the **purchases on credit**, the petitioners presented the summary of the transactions and their corresponding sales invoices as their documentary evidence.[19]

During the trial, Haw also testified that within one or two weeks upon delivery of the paper products, Arma Traders paid the purchases in the form of postdated checks. Thus, he personally collected these checks on Saturdays and upon receiving the checks, he surrendered to Arma Traders the original of the sales invoices while he retained the duplicate of the invoices.[20]

To prove the **loan transactions**, the petitioners presented the copies of the checks[21] which Advance Paper issued in favor of Arma Traders. The petitioners also filed a manifestation[22] dated June 14, 1995, submitting a bank statement from Metrobank EDSA Kalookan Branch. This was to show that Advance Paper's credit line with Metrobank has been transferred to the account of Arma Traders as payee from October 1994 to December 1994.

Moreover, Haw testified to prove the loan transactions. When asked why he considered extending the loans without any collateral and loan agreement or promissory note, and only on the basis of the issuance of the postdated checks, he answered that it was because he trusted Arma Traders since it had been their customer for a long time and that none of the previous checks ever bounced.[23]

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[18] Records, Vol. 2, p. 283; referring to the Amended Complaint.

[19] Records, Vol. 1, pp. 12-109, and Vol. 2, pp. 290-417; Marked as Exhibits "A-1" to "A-32", "B-1" to "B-30", "C" to "C-31" and "D" to "D-3".

[20] *Rollo,* p. 193; Records, Vol. 3, pp. 170-178; referring to the Sworn Statement of Haw dated November 18, 1996.

[21] *Id.* at 48; marked as Exhibits "AA", "BB" and "CC".

[22] Records, Vol. 2, pp. 113-116.

[23] Records, Vol. 3, pp. 244-245.

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Claims of the respondents

The respondents argued that the **purchases on credit** were spurious, simulated and fraudulent since there was no delivery of the ₱7,000,000.00 worth of notebooks and other paper products.[24]

During the trial, Ng testified that Arma Traders did not purchase notebooks and other paper products from September to December 1994. He claimed that during this period, Arma Traders concentrated on Christmas items, not school and office supplies. He also narrated that upon learning about the complaint filed by the petitioners, he immediately looked for Arma Traders' records and found no receipts involving the purchases of notebooks and other paper products from Advance Paper.[25]

As to the **loan transactions**, the respondents countered that these were the personal obligations of Tan and Uy to Advance Paper. These loans were never intended to benefit the respondents.

The respondents also claimed that the loan transactions were *ultra vires* because the board of directors of Arma Traders did not issue a board resolution authorizing Tan and Uy to obtain the loans from Advance Paper. They claimed that the borrowing of money must be done only with the prior approval of the board of directors because without the approval, the corporate officers are acting in excess of their authority or *ultra vires*. When the acts of the corporate officers are *ultra vires,* the corporation is not liable for whatever acts that these officers committed in excess of their authority. Further, the respondents claimed that Advance Paper failed to verify Tan and Uy's authority to transact business with them. Hence, Advance Paper should suffer the consequences.[26]

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[24] Records, Vol. 3, pp. 71-80; referring to par. 7, page 2 of Arma Traders, Ting, Gui and Ng's Answer with Compulsory Counterclaim and Crossclaim dated February 23, 1996.

[25] Records, Vol. 4, pp. 141-147; referring to Ng's Direct Testimony dated February 4, 1999.

[26] *Id*. at 241; referring to the Memorandum of the Defendants.

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The respondents accused Tan and Uy for conspiring with the petitioners to defraud Arma Traders through a series of transactions known as rediscounting of postdated checks. In rediscounting, the respondents explained that Tan and Uy would issue Arma Traders' postdated checks to the petitioners in exchange for cash, discounted by as much as 7% to 10% depending on how long were the terms of repayment. The rediscounted percentage represented the interest or profit earned by the petitioners in these transactions.[27]

Tan did not file his Answer and was eventually declared in default.

On the other hand, Uy filed his Answer[28] dated January 20, 1995 but was subsequently declared in default upon his failure to appear during the pre-trial. In his Answer, he admitted that Arma Traders together with its corporate officers have been transacting business with Advance Paper.[29] He claimed that he and Tan have been authorized by the board of directors for the past 13 years to issue checks in behalf of Arma Traders to pay its obligations with Advance Paper.[30] **Furthermore, he admitted that Arma Traders' checks were issued to pay its contractual obligations with Advance Paper.**[31] However, according to him, Advance Paper was informed beforehand that Arma Traders' checks were funded out of the ₱20,000,000.00 worth of collectibles coming from the provinces. Unfortunately, the expected collectibles did not materialize for unknown reasons.[32]

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[27] Records, Vol. 3, pp. 71-80; referring to par. 8-9.5, page 2 of Arma Traders, Ting, Gui and Ng's Answer with Compulsory Counterclaim and Crossclaim dated February 23, 1996.

[28] Records, Vol. 1, pp. 146-154.

[29] Page 2 of Uy's Answer dated January 20, 1995.

[30] *Ibid*.

[31] *Ibid*.

[32] *Id*. at 3.

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Ng filed his Answer[33] and claimed that the management of Arma Traders was left entirely to Tan and Uy. Thus, he never participated in the company's daily transactions.[34]

Atty. Ernest S. Ang, Jr. (*Atty. Ang*), Arma Traders' Vice-President for Legal Affairs and Credit and Collection, testified that he investigated the transactions involving Tan and Uy and discovered that they were financing their own business using Arma Traders' resources. He also accused Haw for conniving with Tan and Uy in fraudulently making Arma Traders liable for their personal debts. He based this conclusion from the following: *First,* basic human experience and common sense tell us that a lender will not agree to extend additional loan to another person who already owes a substantial sum from the lender – in this case, petitioner Advance Paper. *Second,* there was no other document proving the existence of the loan other than the postdated checks. *Third,* the total of the purchase and loan transactions *vis-à-vis* the total amount of the postdated checks did not tally. *Fourth,* he found out that the certified true copy of Advance Paper's report with the Securities and Exchange Commission (*SEC report*) did not reflect the ₱15,000,000.00 collectibles it had with Arma Traders.[35]

Atty. Ang also testified that he already filed several cases of estafa and qualified theft[36] against Tan and Uy and that several warrants of arrest had been issued against them.

In their pre-trial brief,[37] the respondents named Sharow Ong, the secretary of Tan and Uy, to testify on how Tan and Uy conspired with the petitioners to defraud Arma Traders. However, the respondents did not present her on the witness stand.

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[33] Records, Vol. 3, pp. 64-68.

[34] Page 3 of Ng's Answer dated February 19, 1996.

[35] Records, Vol. 4, pp. 169-176; referring to the Direct Testimony of Atty. Ernest S. Ang, Jr. dated May 12, 2000.

[36] Records, Vol. 3, pp. 208-209; as supported by the Information in Criminal Case No. 145888 dated September 11, 1995 which was marked as Exhibit "2".

[37] *Id.* at 123-126.

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The RTC Ruling

On June 18, 2001, the RTC ruled that the purchases on credit and loans were sufficiently proven by the petitioners. Hence, the RTC ordered Arma Traders to pay Advance Paper the sum of ₱15,321,798.25 with interest, and ₱1,500,000.00 for attorney's fees, plus the cost of the suit.

The RTC held that the respondents failed to present hard, admissible and credible evidence to prove that the sale invoices were forged or fictitious, and that the loan transactions were personal obligations of Tan and Uy. Nonetheless, the RTC dismissed the complaint against Tan, Uy, Ting, Gui and Ng due to the lack of evidence showing that they bound themselves, either jointly or solidarily, with Arma Traders for the payment of its account.[38]

Arma Traders appealed the RTC decision to the CA.

The CA Ruling

The CA held that the petitioners failed to prove by preponderance of evidence the existence of the purchases on credit and loans based on the following grounds:

First, Arma Traders was not liable for the loan in the absence of a board resolution authorizing Tan and Uy to obtain the loan from Advance Paper.[39] The CA acknowledged that Tan and Uy were Arma Traders' authorized bank signatories. However, the CA explained that this is not sufficient because the authority to sign the checks is different from the required authority to contract a loan.[40]

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[38] *Rollo*, pp. 49, 76.

[39] *Id.* at 63, citing Sec. 23 of the Corporation Code, and *AF Realty & Development, Inc. v. Dieselman Freight Services, Co*., G.R. No. 111448, January 16, 2002, 373 SCRA 385, 391, which held: "[C]ontracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation or authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation x x x are x x x not binding on the corporation."

[40] *Id.* at 64.

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Second, the CA also held that the petitioners presented incompetent and inadmissible evidence to prove the purchases on credit since the sales invoices were hearsay.[41] The CA pointed out that Haw's testimony as to the identification of the sales invoices was not an exception to the hearsay rule because there was no showing that the secretaries who prepared the sales invoices are already dead or unable to testify as required by the Rules of Court.[42] Further, the CA noted that the secretaries were not identified or presented in court.[43]

Third, the CA ruling heavily relied on Ng's Appellant's Brief[44] which made the detailed description of the "badges of fraud." The CA averred that the petitioners failed to satisfactorily rebut the badges of fraud[45] which include the inconsistencies in:

(1) "Exhibit E-26," a postdated check, which was allegedly issued in favor of Advance Paper but turned out to be a check payable to Top Line, Advance Paper's sister company;[46]

(2) "Sale Invoice No. 8946," an evidence to prove the existence of the purchases on credit, whose photocopy failed to reflect the amount stated in the duplicate copy,[47] and;

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[41] *Id.* at 61.

[42] *Id.* at 62-63, citing Section 43, Rule 130 of the Rules of Court:

"*Entries in the course of business.* – Entries made at, or near the time of the transactions to which they refer, **by a person deceased, or unable to testify,** who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty." (italics and emphasis supplied)

[43] *Id.* at 61-62.

[44] *Id.* at 52-61.

[45] *Id.* at 60.

[46] *Id.* at 64-65.

[47] *Id.* at 65.

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(3) The SEC report of Advance Paper for the year ended 1994 reflected its account receivables amounting to ₱219,705.19 only – an amount far from the claimed ₱15,321,798.25 receivables from Arma Traders.[48]

Hence, the CA **set aside** the RTC's order for Arma Traders to pay Advance Paper the sum of ₱15,321,798.25, ₱1,500,000.00 for attorney's fees, plus cost of suit.[49] It **affirmed** the RTC decision dismissing the complaint against respondents Tan, Uy, Ting, Gui and Ng.[50] The CA also directed the petitioners to solidarily pay each of the respondents their counterclaims of ₱250,000.00 as moral damages, ₱250,000.00 as exemplary damages, and ₱250,000.00 as attorney's fees.[51]

The Petition

The petitioners raise the following arguments.

First, Arma Traders led the petitioners to believe that Tan and Uy had the authority to obtain loans since the respondents left the active and sole management of the company to Tan and Uy since 1984. In fact, Ng testified that Arma Traders' stockholders and board of directors never conducted a meeting from 1984 to 1995. Therefore, if the respondents' position will be sustained, they will have the absurd power to question all the business transactions of Arma Traders.[52] Citing *Lipat v. Pacific Banking Corporation,*[53] the petitioners said that if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good

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[48] *Ibid.*

[49] *Id.* at 68.

[50] *Ibid.*

[51] *Id.* at 69.

[52] *Id.* at 207-208.

[53] G.R. No. 142435, April 30, 2003, 402 SCRA 339.

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faith dealt with it through such agent, be estopped from denying the agent's authority.

Second, the petitioners argue that Haw's testimony is not hearsay. They emphasize that Haw has personal knowledge of the assailed purchases and loan transactions because he dealt with the customers, and supervised and directed the preparation of the sales invoices and the deliveries of the goods.[54] Moreover, the petitioners stress that the respondents never objected to the admissibility of the sales invoices on the ground that they were hearsay.[55]

Third, the petitioners dispute the CA's findings on the existence of the badges of fraud. The petitioners countered:

(1) The discrepancies between the figures in the 15 out of the 96 photocopies and duplicate originals of the sales invoices amounting to **₱4,624.80 – an insignificant amount compared to the total purchases of ₱7,533,001.49** – may have been caused by the failure to put the carbon paper.[56] Besides, **the remaining 81 sales invoices are uncontroverted.** The petitioners also raise the point that this discrepancy is a nonissue because the duplicate originals **were surrendered in the RTC**.[57]

(2) The respondents misled Haw during the cross-examination and took his answer out of context.[58] The petitioners

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[54] *Rollo*, p. 254.

[55] *Id.* at 194.

[56] *Id.* at 258.

[57] *Id.* at 257.

[58] *Id.* at 259. The petitioners explained:

By perusing the transcripts, it is obvious that the questions preceding the one cited by the respondents referred to transactions **which created obligations on the part of Arma Traders.** So, when Haw was asked: "Aside from this, there were no other transaction (sic) between you x x x," he answered, "No other transaction," believing that he was being asked if there were other transactions that could be added to those he mentioned already, meaning, those UNPAID transactions. He truthfully said there were no other.

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argue that this maneuver is insufficient to discredit Haw's entire testimony.[59]

(3) Arma Traders should be faulted for indicating Top Line as the payee in Exhibit E-26 or PBC check no. 091014. Moreover, Exhibit E-26 does not refer to PBC check no. 091014 but to PBC check no. 091032 payable to the order of cash.[60]

(4) The discrepancy in the total amount of the checks which is **₱15,130,363.87** as against the total obligation of **₱15,321,798.25** does not necessarily prove that the transactions are spurious.[61]

(5) The difference in Advance Paper's accounts receivables in the SEC report and in Arma Traders' obligation with Advance Paper was based on non-existent evidence because Exhibit 294-NG does not pertain to any balance sheet.[62] Moreover, the term "accounts receivable" is not synonymous with "cause of action." The respondents cannot escape their liability by simply pointing the SEC report because the petitioners have established their cause of action – that the purchases on credit and loan transactions took place, the respondents issued the dishonored checks to cover their debts, and they refused to settle their obligation with Advance Paper.[63]

The Case for the Respondents

The respondents argue that the Petition for Review should be dismissed summarily because of the following procedural grounds: *first,* for failure to comply with A.M. No. 02-8-13-

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[59] *Id.* at 259.

[60] *Id.* at 260.

[61] *Ibid.*

[62] *Id.* at 261.

[63] *Id.* at 262.

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SC;[64] and *second*, the CA decision is already final and executory since the petitioners filed their Motion for Reconsideration out of time. They explain that under the rules of the CA, if the last day for filing of any pleading falls on a Saturday not a holiday, the same must be filed on said Saturday, as the Docket and Receiving Section of the CA is open on a Saturday.[65]

The respondents argue that while as a general rule, a corporation is estopped from denying the authority of its agents which it allowed to deal with the general public; this is only true if the person dealing with the agent dealt in good faith.[66] In the present case, the respondents claim that the petitioners are in bad faith because the petitioners connived with Tan and Uy to make Arma Traders liable for the non-existent deliveries of notebooks and other paper products.[67] They also insist that the sales invoices are manufactured evidence.[68]

As to the loans, the respondents aver that these were Tan and Uy's personal obligations with Advance Paper.[69] Moreover, while the three cashier's checks were deposited in the account of Arma Traders, it is likewise true that Tan and Uy issued Arma Traders' checks in favor of Advance Paper. All these checks are evidence of Tan, Uy and Haw's systematic conspiracy to siphon Arma Traders corporate funds.[70]

The respondents also seek to discredit Haw's testimony on the basis of the following. *First,* his testimony as regards the sales invoices is hearsay because he did not personally prepare

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[64] Directing notary publics to no longer use the community tax certificate as proof of the affiant's identity because of its inherent unreliability; effective August 1, 2004.

[65] *Rollo*, p. 292.

[66] *Id*. at 310, Memorandum for Respondents, citing *Lipat v. Pacific Banking Corporation, supra* note 53, at 350.

[67] *Id*. at 289, 311.

[68] *Id.* at 311.

[69] *Id.* at 289.

[70] *Supra* note 68.

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these documentary evidence.[71] *Second*, Haw suspiciously never had any written authority from his own Board of Directors to lend money. *Third,* the respondents also questioned why Advance Paper granted the ₱7,000,000.00 loan without requiring Arma Traders to present any collateral or guarantees.[72]

The Issues

The main procedural and substantive issues are:

I. Whether the petition for review should be dismissed for failure to comply with A.M. No. 02-8-13-SC.

II. Whether the petition for review should be dismissed on the ground of failure to file the motion for reconsideration with the CA on time.

III. Whether Arma Traders is liable to pay the loans applying the doctrine of apparent authority.

IV. Whether the petitioners proved Arma Traders' liability on the purchases on credit by preponderance of evidence.

The Court's Ruling

We grant the petition.

The procedural issues.

First, the respondents correctly cited A.M. No. 02-8-13-SC dated February 19, 2008 which refer to the amendment of the 2004 Rules on Notarial Practice. It deleted the Community Tax Certificate among the accepted proof of identity of the affiant because of its inherent unreliability. The petitioners violated this when they used Community Tax Certificate No. 05730869 in their Petition for Review.[73] Nevertheless, the defective *jurat* in the Verification/Certification of Non-Forum Shopping is not a fatal defect because it is only a formal, not a jurisdictional,

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[71] *Rollo*, p. 293.

[72] *Id.* at 169, 303.

[73] *Id.* at 43.

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requirement that the Court may waive.[74] Furthermore, we cannot simply ignore the millions of pesos at stake in this case. To do so might cause grave injustice to a party, a situation that this Court intends to avoid.

Second, no less than the CA itself waived the rules on the period to file the motion for reconsideration. A review of the CA Resolution[75] dated March 7, 2007, reveals that the petitioners' Motion for Reconsideration was denied because the allegations were a mere rehash of what the petitioners earlier argued – *not because the motion for reconsideration was filed out of time.*

The substantive issues.

Arma Traders is liable to pay the loans on the basis of the doctrine of apparent authority.

The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts.[76] The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment.[77]

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[74] *Galicto v. Aquino III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 175.

[75] *Rollo*, p. 139.

[76] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 184-185, citing *Francisco v. Government Service Insurance System*, Nos. L-18287 and L-18155, March 30, 1963, 7 SCRA 577, 583; and *Maharlika Publishing Corporation v. Tagle*, No. 65594, July 9, 1986, 142 SCRA 553, 566.

[77] *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, G.R. No. 163825, July 13, 2010, 625 SCRA 21, 34, citing *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation,* G.R. No. 163553, December 11, 2009, 608 SCRA 107, 132.

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In *Inter-Asia Investment Industries v. Court of Appeals,*[78] we explained:

> Under this provision [referring to Sec. 23 of the Corporation Code], the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, by laws, or relevant provisions of law. **However, just as a natural person who may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, *viz.*:**
>
> > A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes 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 person dealing with the officer or agent to believe that it has conferred.
>
> **[A]pparent authority is derived not merely from practice. Its existence may be ascertained through** (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.** [emphases and underscores ours]

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[78] G.R. No. 125778, June 10, 2003, 403 SCRA 452, 456-457, citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, *supra* note 76.

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In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals,*[79] we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation.

"Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation."[80] **In the absence of a charter or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.**"[81]

In the present petition, we do not agree with the CA's findings that Arma Traders is not liable to pay the loans due to the lack of board resolution authorizing Tan and Uy to obtain the loans. To begin with, Arma Traders' Articles of Incorporation[82] provides that the corporation **may borrow or raise money to meet the financial requirements of its business** by the issuance of bonds,

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[79] *Supra* note 76.

[80] *Id*. at 185, citing *Western American Life Ins. Co. v. Hicks*, 217 SE 2d 323, 324, May 19, 1975; and *Cooper v. G.E. Construction Co*., 158 SE 2d 305, 308, October 30, 1967.

[81] *Ibid.*, citing 19 AmJur 2d 595; citing *Pegram-West, Inc. v. Winston Mut. Life Ins. Co*., 56 SE 2d 607, 612, December 14, 1949; *Cushman v. Cloverland Coal & Mining Co*., 84 NE 759, 760, May 15, 1908; *Ceedeer v. H.M. Loud & Son's Lumber Co*., 49 NW 575, 575, July 28, 1891, *Memorial Hospital Asso. v. Pacific Grape*, 50 ALR 2d 442, 445, November 29, 1955; *Lloyd & Co. v. Matthews & Rice*, 79 NE 172, 173, December 5, 1906, and *National State Bank v. Vigo County National Bank*, 40 NE 799, 800, May 28, 1895.

[82] Records, Vol. 1, pp. 399-407. Arma Traders was formerly known as Divisoria Advance Products Corp.

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promissory notes and ***other evidence of indebtedness***. Likewise, it states that Tan and Uy are not just ordinary corporate officers and authorized bank signatories because they are also Arma Traders' **incorporators** along with respondents Ng and Ting, and Pedro Chao. Furthermore, the respondents, through Ng who is Arma Traders' corporate secretary, incorporator, stockholder and director, testified that ***the sole management of Arma Traders was left to Tan and Uy and that he and the other officers never dealt with the business and management of Arma Traders for 14 years. He also confirmed that since 1984 up to the filing of the complaint against Arma Traders, its stockholders and board of directors never had its meeting.***[83]

Thus, Arma Traders bestowed upon Tan and Uy broad powers by allowing them to transact with third persons without the necessary written authority from its non-performing board of directors. Arma Traders failed to take precautions to prevent its own corporate officers from abusing their powers. Because of its own laxity in its business dealings, Arma Traders is now estopped from denying Tan and Uy's authority to obtain loan from Advance Paper.

We also reject the respondents' claim that Advance Paper, through Haw, connived with Tan and Uy. The records do not contain any evidence to prove that the loan transactions were personal to Tan and Uy. A different conclusion might have been inferred had the cashier's checks been issued in favor of Tan and Uy, and had the postdated checks in favor of Advance Paper been either Tan and/or Uy's, or had the respondents presented convincing evidence to show how Tan and Uy conspired with the petitioners to defraud Arma Traders.[84] We

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[83] *Rollo,* pp. 207-208.

[84] *Id.* at 264. The petitioners argued:

"Significantly, in the Pre-Trial Brief filed by Respondents (citation omitted), a certain Sharow Ong was supposed to testify on 'how Antonio Tan and Uy Seng Kee Willy conspired with plaintiffs to defraud Arma Traders Corporation.' No such witness or substitute was produced. No explanation for such failure was ever made either."

note that the respondents initially intended to present Sharow Ong, the secretary of Tan and Uy, to testify on how Advance Paper connived with Tan and Uy. As mentioned, the respondents failed to present her on the witness stand.

The respondents failed to object to the admissibility of the sales invoices on the ground that they are hearsay

The rule is that failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[85] When a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal. Because of a party's failure to timely object, the evidence becomes part of the evidence in the case. Thereafter, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[86]

In *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta,*[87] however, we held:

> [H]earsay evidence whether objected to or not cannot be given credence for having no probative value. This principle, however, has been relaxed in cases where, in addition to the failure to object to the admissibility of the subject evidence, **there were other pieces of evidence presented or there were other circumstances prevailing to support the fact in issue.** (emphasis and underscore ours; citation omitted)

We agree with the respondents that with respect to the identification of the sales invoices, Haw's testimony was hearsay

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[85] *Malayan Insurance Co., Inc. v. Alberto*, G.R. No. 194320, February 1, 2012, 664 SCRA 791, 805.

[86] *Ibid.,* citing *Asian Construction and Development Corporation v. COMFAC Corporation*, G.R. No. 163915, October 16, 2006, 504 SCRA 519, 524.

[87] G.R. No. 165748, September 14, 2011, 657 SCRA 555, 568. See also *Top-Weld Manufacturing, Inc. v. ECED, IRTI, S.A., Eutectic Corp.*, 222 Phil. 424, 347 (1985).

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because he was not present during its preparation[88] and the secretaries who prepared them were not presented to identify them in court. Further, these sales invoices do not fall within the exceptions to the hearsay rule even under the "entries in the course of business" because the petitioners failed to show that the entrant was deceased or was unable to testify.[89]

But even though the sales invoices are hearsay, nonetheless, they form part of the records of the case for the respondents' failure to object as to the admissibility of the sales invoices on the ground that they are hearsay.[90] Based on the records, the respondents through Ng objected to the offer "for the purpose [to] which they are being offered" only – not on the ground that they were hearsay.[91]

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[88] During the cross-examination, Haw testified:

"Q: Where were you when these sales invoices, Exhibits 'A-1' and its submarkings, 'B-1' and its submarkings, "C-1" and its submarkings, and "D-1" and its submarkings, were prepared?

A: Well, I was in the office also but the secretaries were the ones who prepared the invoices. **I am not the one who saw to it the secretaries writing these invoices."** (TSN, December 9, 1996, p. 5)

[89] Section 43, Rule 130 of the Rules of Court provides: "Entries made at, or near the time of transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty." (italics supplied)

In several cases, the following were the established requisites for the admissibility of entries made in the course of business:

(a) Entries must have been made at or near the time of the transaction to which they refer.
(b) Entrant must have been in a position to know the facts stated in the entries.
(c) Entries must have been made by entrant in his professional capacity or in the performance of his duty.
(d) Entries were made in the ordinary or regular course of business or duty.
(e) **Entrant must be deceased or unable to testify**.

[90] *Rollo,* pp. 194, 105-106.

[91] *Id.* at 106.

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The petitioners have proven their claims for the unpaid purchases on credit by preponderance of evidence.

We are not convinced by the respondents' argument that the purchases are spurious because no less than Uy **admitted that all the checks issued were in payments of the contractual obligations of the Arma Traders with Advance Paper.**[92] Moreover, there are other pieces of evidence to prove the existence of the purchases other than the sales invoices themselves. For one, Arma Traders' postdated checks evince the existence of the purchases on credit. Moreover, Haw testified that within one or two weeks, Arma Traders paid the purchases in the form of postdated checks. He personally collected these checks on Saturdays and upon receiving the checks, he surrendered to Arma Traders the original of the sales invoices while he retained the duplicate of the invoices.[93]

The respondents attempted to impugn the credibility of Haw by pointing to the inconsistencies they can find from the transcript of stenographic notes. However, we are not persuaded that these inconsistencies are sufficiently pervasive to affect the totality of evidence showing the general relationship between Advance Paper and Arma Traders.

Additionally, the issue of credibility of witnesses is to be resolved primarily by the trial court because it is in the better position to assess the credibility of witnesses as it heard the testimonies and observed the deportment and manner of testifying of the witnesses. Accordingly, its findings are entitled to great respect and will not be disturbed on appeal in the absence of any showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.[94]

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[92] Par. 9, page 2 of Answer dated January 20, 1995.

[93] *Rollo,* p. 193.

[94] *People v. Sagarino, Jr.*, G.R. Nos. 135356-58, September 4, 2001, 364 SCRA 438, 445.

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In the present case, the RTC judge took into consideration the substance and the manner by which Haw answered each propounded questions to him in the witness stand. Hence, the minor inconsistencies in Haw's testimony notwithstanding, the RTC held that the respondents claim that the purchase and loan transactions were spurious is "not worthy of serious consideration." Besides, the respondents failed to convince us that the RTC judge overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case.

On the other hand, we agree with the petitioners that the discrepancies in the photocopy of the sales invoices and its duplicate copy have been sufficiently explained. Besides, this is already a non-issue since the duplicate copies were surrendered in the RTC.[95] Furthermore, the fact that the value of Arma Traders' checks does not tally with the total amount of their obligation with Advance Paper is not inconsistent with the existence of the purchases and loan transactions.

As against the case and the evidence Advance Paper presented, the respondents relied on the core theory of an alleged conspiracy between Tan, Uy and Haw to defraud Arma Traders. However, the records are bereft of supporting evidence to prove the alleged conspiracy. Instead, the respondents simply dwelled on the minor inconsistencies from the petitioners' evidence that the respondents appear to have magnified. From these perspectives, the preponderance of evidence thus lies

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[95] TSN, p. 18, Hearing on December 9, 1996; Testimony of George Haw – Continuation of the cross-examination:
ATTY. RODRIGUEZ, JR.:
Your Honor, we will surrender its custody to the Court the sales invoice no. 8946.
ATTY. CO:
May we make it on record that the counsel is detaching the same from the booklet.
ATTY. RODRIGUEZ, JR.:
And surrender it to the custody of the court.
THE COURT:
Alright. Attach that to the record. [Emphasis and underscore ours]

heavily in the petitioners' favor as the RTC found. For this reason, we find the petition meritorious.

WHEREFORE, premises considered, we **GRANT** the petition. The decision dated March 31, 2006 and the resolution dated March 7, 2007 of the Court of Appeals in CA-G.R. CV No. 71499 are **REVERSED** and **SET ASIDE**. The Regional Trial Court decision in Civil Case No. 94-72526 dated June 18, 2001 is **REINSTATED**. No costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 180661. December 11, 2013]

GEORGE ANTIQUERA *Y* CODES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; ARREST *IN FLAGRANTE DELICTO;* IN AN ARREST *IN FLAGRANTE DELICTO*, THE OVERT ACT CONSTITUTING THE CRIME IS DONE IN THE PRESENCE OR WITHIN THE VIEW OF THE ARRESTING OFFICER.— Section 5(a), Rule 113 of the Rules of Criminal Procedure provides that a "peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." This is an

[*] Designated as Acting Member in lieu of Associate Justice Jose P. Perez per Special Order No. 1627 dated December 6, 2013.