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WHEREFORE, respondent Vincent Horace Magalona, Sheriff IV of the Regional Trial Court, Branch 46, Bacolod City, is found *GUILTY* of violation of Section 9(b), Rule 39 of the Rules of Court. In view of respondent's previous dismissal from the service, a *FINE* of ₱20,000.00 is instead imposed on him, to be deducted from his accrued leave credits, if sufficient; otherwise, he is *ORDERED* to pay the amount of the fine directly to this Court.

The Employees Leave Division, Office of Administrative Services of the Office of the Court Administrator, is *DIRECTED* to compute respondent's accrued leave credits, if any, and deduct therefrom the amount representing the payment of the fine.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 154366. November 17, 2010]

CEBU BIONIC BUILDERS SUPPLY, INC. and LYDIA SIA, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES, JOSE TO CHIP, PATRICIO YAP and ROGER BALILA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; POWER TO SUE AND BE SUED IN ANY COURT IS LODGED WITH THE BOARD OF DIRECTORS WHILE PHYSICAL ACTS, LIKE THE SIGNING OF DOCUMENTS,

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CAN BE PERFORMED BY NATURAL PERSONS DULY AUTHORIZED FOR THE PURPOSE BY CORPORATE BY-LAWS OR BY A SPECIFIC ACT OF THE BOARD OF DIRECTORS.— Except for the powers which are expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence, a corporation has no powers. It exercises its powers through its board of directors and/or its duly authorized officers and agents. Thus, its power to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. In this case, respondents To Chip, Yap and Balila obviously overlooked the Secretary's Certificate attached to the instant petition, which was executed by the Corporate Secretary of Cebu Bionic. Unequivocally stated therein was the fact that the Board of Directors of Cebu Bionic held a special meeting on July 26, 2002 and they thereby approved a Resolution authorizing Lydia Sia to elevate the present case to this Court in behalf of Cebu Bionic x x x.

2. REMEDIAL LAW; APPEALS; SHALL RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS; PRESENT; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— Section 1, Rule 45 of the Rules of Court categorically states that the petition filed thereunder shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. The above rule, however, admits of certain exceptions, one of which is when the findings of the Court of Appeals are contrary to those of the trial court. x x x [T]his exception is attendant in the case at bar.

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3. ID.; MOTION FOR RECONSIDERATION; IF NOT SEASONABLY FILED, RENDERS THE DECISION FINAL AND EXECUTORY; PROCEDURAL RULES MAY BE RELAXED IN THE HIGHER INTEREST OF SUBSTANTIAL JUSTICE; APPLIED.— Indeed, the appellate court's Decision dated February 14, 2001 would have ordinarily attained finality for failure of respondents to seasonably file their Motion for Reconsideration thereon. However, we agree with the Court of Appeals that the higher interest of substantial justice will be better served if respondents' procedural lapse will be excused. Verily, we had occasion to apply this liberality in the application of procedural rules in *Barnes v. Padilla* where we aptly declared that – The failure of the petitioner to file his motion for reconsideration within the period fixed by law renders the decision final and executory. Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. In this case, what are involved are the property rights of the parties given that, ultimately, the fundamental issue to be determined is who among the petitioners and respondents To Chip, Yap and Balila has the better right to purchase the subject properties. More importantly, the merits of the case sufficiently called for the suspension of the rules in order to settle conclusively the rights and obligations of the parties herein.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; STAGES AND PERFECTION OF CONTRACT; NO PERFECTED CONTRACT OF LEASE ABSENT CONCURRENCE OF OFFER AND ACCEPTANCE ON THE TERMS OF THE PROPOSED LEASE AGREEMENT.— The Court rules that x x x no new contract of lease was ever perfected between petitioners and DBP. In *Metropolitan Manila Development Authority v.*

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JANCOM Environmental Corporation, we emphasized that: Under Article 1305 of the Civil Code, "[a] contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." A contract undergoes three distinct stages — preparation or negotiation, its perfection, and finally, its 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 the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof (*Bugatti vs. CA*, 343 SCRA 335 [2000]). Article 1315 of the Civil Code, provides that a contract is perfected by mere consent. Consent, on the other hand, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract (See Article 1319, Civil Code). x x x. In the case at bar, there was no concurrence of offer and acceptance *vis-à-vis* the terms of the proposed lease agreement.

5. ID.; ID.; LEASE; A LEASE FROM MONTH-TO-MONTH IS WITH A DEFINITE PERIOD AND EXPIRES AT THE END OF EACH MONTH UPON THE DEMAND TO VACATE BY THE LESSOR; APPLIED.— The contention that the lease contract between petitioners and Rudy Robles did not expire, given that it did not have a definite term and the parties thereto failed to terminate the same, deserves scant consideration. x x x Crystal clear from the [second paragraph of the terms and conditions of the contract of lease between petitioners and Rudy Robles] is that the lease is on a month-to-month basis. Relevantly, the well-entrenched principle is that a lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor. As held by the Court of Appeals in the assailed Amended Decision, the above-mentioned lease contract was duly terminated by DBP by virtue of its letter dated June 18, 1987. We reiterate that the letter explicitly directed the petitioners to come to the office of the DBP if they wished to enter into a new lease agreement with the said bank. Otherwise, if no contract of lease was executed within 30 days from the date

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of the letter, petitioners were to be considered uninterested in entering into a new contract and were thereby ordered to vacate the property. As no new contract was in fact executed between petitioners and DBP within the 30-day period, the directive to vacate, thus, took effect. DBP's letter dated June 18, 1987, therefore, constituted the written notice that was required to terminate the lease agreement between petitioners and Rudy Robles. From then on, the petitioners' continued possession of the subject property could be deemed to be without the consent of DBP.

6. ID.; ID.; ID.; ARTICLE 1670 OF THE CIVIL CODE, INAPPLICABLE TO THE CASE AT BAR; THE LESSOR'S DEMAND TO VACATE THE PREMISES IF NO NEW LEASE CONTRACT IS ENTERED INTO NEGATES THE CONSTITUTION OF AN IMPLIED NEW LEASE; LESSEE'S CONTINUED POSSESSION OF THE PREMISES DEEMED WITHOUT THE ACQUIESCENCE OF THE LESSOR.— [P]etitioners' assertion that Article 1670 of the Civil Code is not applicable to the instant case is correct. The reason, however, is not that the existing contract was continued by DBP, but because the lease was terminated by DBP, which termination was accompanied by a demand to petitioners to vacate the premises of the subject property. Article 1670 states that "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." In view of the order to vacate embodied in the letter of DBP dated June 18, 1987 in the event that no new lease contract is entered into, the petitioners' continued possession of the subject properties was without the acquiescence of DBP, thereby negating the constitution of an implied lease.

7. ID.; ID.; ID.; THE SUBSEQUENT ACCEPTANCE BY THE LESSOR OF RENTAL PAYMENTS DOES NOT, ABSENT ANY CIRCUMSTANCE THAT MAY DICTATE A CONTRARY CONCLUSION, LEGITIMIZE THE UNLAWFUL CHARACTER OF THE LESSEE'S

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POSSESSION, NOR GIVE RISE TO AN IMPLIED LEASE.— Contrary to the ruling of the RTC, DBP's acceptance of petitioners' rental payments of ₱5,000.00 for the period of November 1990 to March 1991 did not likewise give rise to an implied lease between petitioners and DBP. In *Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals*, we held that "the subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of their possession." In the present case, the petitioners' rental payments to DBP were made in lump sum on March 22, 1991. Significantly, said payments were remitted only after petitioners were notified of the sale of the subject properties to respondents To Chip, Yap and Balila and after the petitioners were given a final demand to vacate the properties.

8. ID.; ID.; ID.; IMPLIED LEASE; ONLY THOSE TERMS WHICH ARE GERMANE TO THE LESSEE'S RIGHT OF CONTINUED ENJOYMENT OF THE PROPERTY LEASED ARE REVIVED IN THE IMPLIED NEW LEASE; SPECIAL AGREEMENTS IN THE PRIOR LEASE CONTRACT, WHICH BY NATURE ARE FOREIGN TO THE RIGHT OF OCCUPANCY OR ENJOYMENT OF THE PROPERTY LEASE, SUCH AS THE RIGHT OF FIRST REFUSAL, WAS NOT RENEWED THEREWITH.— [H]aving determined that the petitioners and DBP neither executed a new lease agreement, nor entered into an implied lease contract, it follows that petitioners' claim of entitlement to a right of first refusal has no leg to stand on. Furthermore, even if we were to grant, for the sake of argument, that an implied lease was constituted between petitioners and the DBP, the right of first refusal that was contained in the prior lease contract with Rudy Robles was not renewed therewith. This is in accordance with the ruling in *Dizon v. Magsaysay*, which involved the issue of whether a provision regarding a preferential right to purchase is revived in an implied lease under Article 1670, to wit: "[T]he other terms of the original contract" which are revived in the implied new lease under Article 1670 are only those terms which are germane to the lessee's right of continued enjoyment of the property leased. This is a reasonable construction of the provision, which is based on the presumption that when the lessor allows the lessee to continue enjoying possession

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of the property for fifteen days after the expiration of the contract he is willing that such enjoyment shall be for the entire period corresponding to the rent which is customarily paid – in this case up to the end of the month because the rent was paid monthly. Necessarily, if the presumed will of the parties refers to the enjoyment of possession the presumption covers the other terms of the contract related to such possession, such as the amount of rental, the date when it must be paid, the care of the property, the responsibility for repairs, *etc*. But no such presumption may be indulged in with respect to special agreements which by nature are foreign to the right of occupancy or enjoyment inherent in a contract of lease. DBP cannot, therefore, be accused of violating the rights of petitioners when it offered the subject properties for sale, and eventually sold the same to respondents To Chip, Yap and Balila, without first notifying petitioners. Neither were the said respondents bound by any right of first refusal in favor of petitioners. Consequently, the sale of the subject properties to respondents was valid. Petitioners' claim for rescission was properly dismissed.

APPEARANCES OF COUNSEL

Emmanuel R. Pacquiao for petitioners.
Malilong & Associates for DBP.
Zosa & Quijano Law Offices for Jose To Chip, *et al.*

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Resolution[2] dated February 5, 2002 and the Amended Decision[3] dated July 5, 2002 of the Court of Appeals in CA-G.R. CV No. 57216. In the Resolution dated February 5, 2002, the Court of Appeals admitted the

[1] *Rollo*, pp. 3-37.

[2] *Id.* at 38; penned by Associate Justice Bernardo P. Abesamis with Associate Justices Godardo A. Jacinto and Eliezer R. de los Santos, concurring.

[3] *Id.* at 39-45.

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Motion for Reconsideration[4] of herein respondents Development Bank of the Philippines (DBP), Jose To Chip, Patricio Yap and Roger Balila, notwithstanding the fact that the same was filed more than six months beyond the reglementary period. Said motion prayed for the reversal of the Court of Appeals Decision[5] dated February 14, 2001, which affirmed the Decision[6] dated April 25, 1997 of the Regional Trial Court (RTC) of Cebu, Branch 8, in Civil Case No. CEB-10104 that ruled in favor of petitioners. In the Amended Decision of July 5, 2002, the Court of Appeals reversed its previous Decision dated February 14, 2001 and dismissed the petitioners' complaint for lack of merit.

The facts leading to the instant petition are as follows:

On June 2, 1981, the spouses Rudy R. Robles, Jr. and Elizabeth R. Robles entered into a **mortgage contract**[7] with DBP in order to secure a loan from the said bank in the amount of ₱500,000.00. The properties mortgaged were a parcel of land situated in Tabunoc, Talisay, Cebu, which was then covered by Transfer Certificate of Title (TCT) No. T- 47783 of the Register of Deeds of Cebu, together with all the existing improvements, and the commercial building to be constructed thereon[8] (subject properties). Upon completion, the commercial building was named the State Theatre Building.

On October 28, 1981, Rudy Robles executed a **contract of lease** in favor of petitioner Cebu Bionic Builders Supply, Inc. (Cebu Bionic), a domestic corporation engaged in the construction business, as well as the sale of hardware materials. The contract pertinently provides:

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[4] CA *rollo*, pp. 220-225.

[5] *Id.* at 186-193.

[6] Records, pp. 348-365; penned by Presiding Judge Antonio T. Echavez.

[7] *Id.* at 294-295.

[8] *Id.*, back of p. 294.

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CONTRACT OF LEASE

KNOW ALL MEN BY THESE PRESENTS:

This Lease Contract made and entered into, by and between:

RUDY ROBLES, JR., Filipino, of legal age, married and resident of 173 Maria Cristina Ext., Cebu City, hereinafter referred to as the LESSOR,

- and -

CEBU BIONIC BUILDER SUPPLY, represented by LYDIA SIA, Filipino, of legal age, married and with address at 240 Magallanes St., Cebu City hereinafter known as the LESSEE;

WITNESSETH:

The LESSOR is the owner of a commercial building along Tabunok, Talisay, Cebu, known as the State Theatre Building.

The LESSOR agrees to lease unto the LESSEE and the LESSEE accepts the lease from the LESSOR, a portion of the ground floor thereof, consisting of one (1) unit/store space under the following terms and conditions:

1. The LESSEE shall pay a monthly rental of One Thousand (₱1,000.00) Pesos, Philippine Currency. The rental is payable in advance within the first five (5) days of the month, without need of demand;

2. **That the term of this agreement shall start on November 1, 1981 and shall terminate on the last day of every month thereafter; provided however that this contract shall be automatically renewed on a month to month basis if no notice, in writing, is sent to the other party to terminate this agreement after fifteen (15) days from receipt of said notice**;

xxx xxx xxx

9. **Should the LESSOR decide to sell the property during the term of this lease contract or immediately after the expiration of the lease, the LESSEE shall have the first option to buy and shall match offers from outside parties**.[9] (Emphases ours.)

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[9] *Rollo*, pp. 231-232.

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The above contract was not registered by the parties thereto with the Registry of Deeds of Cebu.

Subsequently, the spouses Robles failed to settle their loan obligation with DBP. The latter was, thus, prompted to effect extrajudicial foreclosure on the subject properties.[10] On February 6, 1987, DBP was the lone bidder in the foreclosure sale and thereby acquired ownership of the mortgaged subject properties.[11] On October 13, 1988, a final Deed of Sale[12] was issued in favor of DBP.

Meanwhile, on June 18, 1987, DBP sent a letter to Bonifacio Sia, the husband of petitioner Lydia Sia who was then President of Cebu Bionic, notifying the latter of DBP's acquisition of the State Theatre Building. Said letter reads:

June 18, 1987

Mr. Bonifacio Sia
Bionic Builders' Inc.
State Theatre Bldg.
Tabunok, Talisay, Cebu

Sir:

This refers to the commercial space you are occupying in the acquired property of the Bank, formerly owned by Rudy Robles, Jr.

Please be informed that said property has been acquired through foreclosure on February 6, 1987. Considering thereat, we require you to remit the rental due for June 1987.

If you wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:

1. The lease will be on month to month basis, for a maximum period of one (1) year;
2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one

[10] *Id.* at 234-235.

[11] *Id.* at 236.

[12] Records, p. 114.

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year period (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;

3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.

We consider, temporarily, the current monthly rental based on the six-month receipts, which we require you to submit, until such time when we will fix the amount accordingly.

If the contract of lease is not executed within thirty (30) days from date hereof, it is construed that you are not interested in leasing the premises and will vacate within the said period.

Please be guided accordingly.

Truly yours,

(SGD)LUCILO S. REVILLAS
Branch Head[13] (Emphases ours.)

On July 7, 1987, the counsel of Bonifacio Sia replied to the above letter, to wit:

July 7, 1987

Mr. Lucilo S. Revillas
Branch Head
Development Bank of the Philippines

Dear Mr. Revillas,

This has reference to your letter of 18 June 1987 which you sent to my client, Mr. Bonifacio Sia of Cebu Bionic Builders' Supply – the lessee of a commercial space of the State Theatre Bldg., located at Tabunok, Talisay, Cebu.

My client is amenable to the terms contained in your letter except the following:

1. In lieu of item no. 2 thereof, my client will deposit with your bank the amount of ₱10,000.00, as assigned time deposit;

[13] *Id.* at 56.

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2. The 30 days notice you mentioned in your letter, (3), is too short. My client is requesting for at least 60 days notice.

I sincerely hope that you will give due course to this request.

Thank you.

Truly yours,

(SGD) ANASTACIO T. MUNTUERTO, JR.[14]

Thereafter, on November 14, 1989, a Certificate of Time Deposit[15] for ₱11,395.64 was issued in the name of Bonifacio Sia and the same was allegedly remitted to DBP as advance rental deposit.

For reasons unclear, however, no written contract of lease was executed between DBP and Cebu Bionic.

In the meantime, subsequent to the acquisition of the subject properties, DBP offered the same for sale along with its other assets. Pursuant thereto, DBP published a series of invitations to bid on such properties, which were scheduled on January 19, 1989,[16] February 23, 1989,[17] April 13, 1989,[18] and November 15, 1990.[19] As no interested bidder came forward, DBP publicized an Invitation on Negotiated Sale/Offer, the relevant terms and conditions of which stated:

INVITATION ON NEGOTIATED SALE/OFFER

The DEVELOPMENT BANK OF THE PHILIPPINES, Cebu Branch, will receive SEALED NEGOTIATED OFFERS/PURCHASE PROPOSALS tendered at its Branch Office, DBP Building, Osmeña Boulevard, Cebu City for the sale of its acquired assets mentioned hereinunder **within the "15-Day-Acceptance-Period" starting from NOVEMBER 19, 1990 up to 12:00 o'clock noon of**

[14] *Rollo*, p. 247.

[15] Records, p. 58.

[16] *Id.* at 115.

[17] *Id.* at 116-117.

[18] *Id.* at 118-119.

[19] *Id.* at 61.

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DECEMBER 3, 1990. Sealed offers submitted shall be opened by the Committee on Negotiated Offers at exactly 2:00 o'clock in the afternoon of the last day of the acceptance period in order to determine the highest and/or most advantageous offer.

Item No.	Description/Location	Starting Price
	xxx xxx	xxx
II	Commercial land, Lot No. 3681-C-3, having an area of 396 sq. m., situated in Tabunok, Talisay, Cebu and covered by TCT No. T-65199 (DBP), including the commercial building thereon.	₱1,838,100.00
	xxx xxx	xxx

A pre-numbered Acknowledgment Receipt duly signed by at least two (2) of the Committee members shall be issued to the offeror acknowledging receipt of such offer.

Negotiated offers may be made in CASH or TERMS, the former requiring a deposit of 10% and the latter 20% of the starting price, either in the form of cash or cashier's/manager's check to be enclosed in the sealed offer.

xxx xxx xxx

Interested negotiated offerors are requested to see Atty. Apolinar K. Panal, Jr., Acquired Asset in Charge (Tel. No. 9-63-25), in order to secure copies of the Letter-Offer form and Negotiated Sale Rules and Procedures.

NOTE: **If no offer is received during the above stated acceptance period, the properties described above shall be sold to the first offeror who submits an acceptable proposal on a "First-Come-First-Served" basis**.

City of Cebu, Philippines, November 16, 1990.

(SGD.) TIMOTEO P. OLARTE
Branch Head[20] (Emphases ours.)

[20] *Id.* at 103.

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In the morning of December 3, 1990, the last day for the acceptance of negotiated offers, petitioners submitted through their representative, Judy Garces, a letter-offer form, offering to purchase the subject properties for ₱1,840,000.00. Attached to the letter-offer was a copy of the Negotiated Sale Rules and Procedures issued by DBP and a manager's check for the amount of ₱184,000.00, representing 10% of the offered purchase price. This offer of petitioners was not accepted by DBP, however, as the corresponding deposit therefor was allegedly insufficient.

After the lapse of the above-mentioned 15-day acceptance period, petitioners did not submit any other offer/proposal to purchase the subject properties.

On December 17, 1990, respondents To Chip, Yap and Balila presented their letter-offer[21] to purchase the subject properties on a cash basis for ₱1,838,100.00. Said offer was accompanied by a downpayment of 10% of the offered purchase price, amounting to ₱183,810.00. On even date, DBP acknowledged the receipt of and accepted their offer. On December 28, 1990, respondents To Chip, Yap and Balila paid the balance of the purchase price and DBP issued a Deed of Sale[22] over the subject properties in their favor.

On January 11, 1991, the counsel of respondents To Chip, Yap and Balila sent a letter[23] addressed to the proprietor of Cebu Bionic, informing the latter of the transfer of ownership of the subject properties. Cebu Bionic was ordered to vacate the premises within thirty (30) days from receipt of the letter and directed to pay the rentals from January 1, 1991 until the end of the said 30-day period.

The counsel of Cebu Bionic replied[24] that his client received the above letter on January 11, 1991. He stated that he has instructed Cebu Bionic to verify first the ownership of the subject

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[21] *Rollo*, pp. 240-241.

[22] Records, pp. 22-23.

[23] *Id.* at 93.

[24] *Id.* at 94.

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properties since it had the preferential right to purchase the same. He likewise requested that he be furnished a copy of the deed of sale executed by DBP in favor of respondents To Chip, Yap and Balila.

On February 15, 1991, respondent To Chip wrote a letter[25] to the counsel of Cebu Bionic, insisting that he and his co-respondents Yap and Balila urgently needed the subject properties to pursue their business plans. He also reiterated their demand for Cebu Bionic to vacate the premises.

Shortly thereafter, on February 27, 1991, the counsel of respondents To Chip, Yap and Balila sent its final demand letter[26] to Cebu Bionic, warning the latter to vacate the subject properties within seven (7) days from receipt of the letter, otherwise, a case for ejectment with damages will be filed against it.[27]

Despite the foregoing notice, Cebu Bionic still paid[28] to DBP, on March 22, 1991, the amount of ₱5,000.00 as monthly rentals on the unit of the State Theatre Building it was occupying for period of November 1990 to March 1991.

On April 10, 1991, petitioners filed against respondents DBP, To Chip, Yap and Balila a **complaint**[29] for specific performance, cancellation of deed of sale with damages, injunction with a

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[25] *Id.* at 95-96.

[26] *Id.* at 97.

[27] On April 2, 1991, respondents To Chip, Yap and Balila filed an action for ejectment against Cebu Bionic, which was docketed as Civil Case No. 616 before the Municipal Trial Court (MTC) of Talisay, Cebu, Branch 001. On April 13, 1993, the MTC ruled in favor of respondents, ordering Cebu Bionic to vacate the premises of the commercial space they were leasing in the subject properties and to pay respondents the fair rental value for the use of the property until such time that Cebu Bionic shall have vacated. (CA *rollo*, pp. 69-73.) On appeal by Cebu Bionic, the RTC affirmed the decision of the MTC in a Decision dated October 25, 1993. (CA *rollo*, pp. 74-78.) Cebu Bionic, thereafter, filed a petition for review before the Court of Appeals. On March 9, 1994, the Court of Appeals resolved to deny the petition as the same was filed out of time. (CA *rollo*, pp. 79-80.)

[28] Records, pp. 59-60.

[29] *Id.* at 1-13.

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prayer for the issuance of a writ of preliminary injunction.[30] The complaint was docketed as Civil Case No. CEB-10104 in the RTC.

Petitioners alleged, *inter alia*, that Cebu Bionic was the lessee and occupant of a commercial space in the State Theatre Building from October 1981 up to the time of the filing of the complaint. During the latter part of 1990, DBP advertised for sale the State Theatre Building and the commercial lot on which the same was situated. In the prior invitation to bid, the bidding was scheduled on November 15, 1990; while in the next, under the 15-day acceptance period, the submission of proposals was to be made from November 19, 1990 up to 12:00 noon of December 3, 1990. Petitioners claimed that, at about 10:00 a.m. on December 3, 1990, they duly submitted to Atty. Apolinar Panal, Jr., Chief of the Acquired Assets of DBP, the following documents, namely:

6.1 **Letter-offer form, offering to purchase the property advertised, for the price of ₱1,840,000,** which was higher than the starting price of ₱1,838,100.00 on **cash basis**. x x x;

6.2 Negotiated Sale Rules and Procedures, duly signed by plaintiff, x x x;

6.3 Manager's check for the amount of ₱184,000 representing 10% of the deposit dated December 3, 1990 and issued by Allied Banking Corp. in favor of the Development Bank of the Philippines. x x x.[31] (Emphasis ours.)

Petitioners asserted that the above documents were initially accepted but later returned. DBP allegedly advised petitioners that "there was no urgent need for the same x x x, considering that the property will necessarily be sold to [Cebu Bionic] for the reasons that there was no other interested party and that [Cebu Bionic] was a preferred party being the lessee and present

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[30] In the original complaint filed, only petitioners Cebu Bionic and Lydia Sia were named as plaintiffs. During trial, the complaint was amended to include Bonifacio Sia as one of the plaintiffs. (TSN, May 16, 1991, p. 2.)

[31] Records, p. 3.

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occupant of the property subject of the lease[.]"[32] Petitioners then related that, without their knowledge, DBP sold the subject properties to respondents To Chip, Yap and Balila. The sale was claimed to be simulated and fictitious, as DBP still received rentals from petitioners until March 1991. By acquiring the subject properties, petitioners contended that DBP was deemed to have assumed the contract of lease executed between them and Rudy Robles. As such, DBP was bound by the provision of the lease contract, which stated that:

> 9. Should the Lessor decide to sell the property during the term of this lease contract or immediately after the expiration of the lease, the Lessee shall have the first option to buy and shall match offers from outside parties.[33]

Petitioners sought the rescission of the contract of sale between DBP and respondents To Chip, Yap and Balila. Petitioners also prayed for the issuance of a writ of preliminary injunction, restraining respondents To Chip, Yap and Balila from registering the Deed of Sale in the latter's favor and from undertaking the ejectment of petitioners from the subject properties. Likewise, petitioners entreated that DBP be ordered to execute a deed of sale covering the subject properties in their name and to pay damages and attorney's fees.

In its answer,[34] DBP denied the existence of a contract of lease between itself and petitioners. DBP countered that the letter-offer of petitioners was actually not accepted as their offer to purchase was on a term basis, which therefore required a 20% deposit. The 10% deposit accompanying the petitioners' letter-offer was declared insufficient. DBP stated that the letter-offer form was not completely filled out as the "Term" and "Mode of Payment" fields were left blank. DBP then informed petitioner Lydia Sia of the inadequacy of her offer. After ascertaining that there was no other offeror as of that time, Lydia Sia allegedly summoned back her representative who did

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[32] *Id.* at 4.

[33] *Rollo,* p. 232.

[34] Records, pp. 40-49.

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not leave a copy of the letter-offer and the attached documents. DBP maintained that petitioners' documents did not show that the same were received and approved by any approving authority of the bank. The letter-offer attached to the complaint, which indicated that the mode of payment was on a cash basis, was allegedly not the document shown to DBP. In addition, DBP argued that there was no assumption of the lease contract between Rudy Robles and petitioners since it acquired the subject properties through the involuntary mode of extrajudicial foreclosure and its request to petitioners to sign a new lease contract was simply ignored. DBP, therefore, insisted that petitioners' occupancy of the unit in the State Theatre Building was merely upon its acquiescence. The petitioners' payment of rentals on March 22, 1991 was supposedly made in bad faith as they were made to a mere teller who had no knowledge of the sale of the subject properties to respondents To Chip, Yap and Balila. DBP, thus, prayed for the dismissal of the complaint and, by way of counterclaim, asked that petitioners be ordered to pay damages and attorney's fees.

Respondents To Chip, Yap and Balila no longer filed a separate answer, adopting instead the answer of DBP.[35]

In an Order[36] dated July 31, 1991, the RTC granted the prayer of petitioners for the issuance of a writ of preliminary injunction.[37]

On April 25, 1997, the RTC rendered judgment in Civil Case No. CEB-10104, finding meritorious the complaint of the petitioners. Explained the trial court:

It is a fact on record that [petitioners] complied with the requirements of deposit and advance rental as conditions for constitution of lease

[35] *Id.* at 50-51.

[36] *Id.* at 151-157.

[37] Respondents filed a Motion for Reconsideration of the RTC Order dated July 31, 1991 (Records, pp. 166-174), but the same was denied. Respondents filed a petition, elevating the matter to the Court of Appeals, which was docketed as CA-G.R. SP No. 26349. In a Resolution dated December 10, 1992, the Court of Appeals affirmed the order of the RTC, granting the issuance of a writ of preliminary injunction. (Records, pp. 224-232.)

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between the parties. [Petitioners] in complying with the requirements, issued a time deposit in the amount of ₱11,395.64 and remitted faithfully its monthly rentals until April, 1991, which monthly rental was no longer accepted by the DBP. **Although there was no formal written contract executed between [respondent] DBP and the [petitioners], it is very clear that DBP opted to continue the old and previous contract including the terms thereon by accepting the requirements contained in paragraph 2 of its letter dated June 18, 1987**. It is also a fact on record that under the lease contract continued by the DBP on the [petitioners], it is provided in paragraph 9 thereof that the lessee shall have the first option to buy and shall match offers from outside parties. **And yet, [respondent] DBP never gave [petitioners] the first option to buy or to match offers from outside parties, more specifically [respondents] To Chip, Balila and Yap.** It is also a fact on record that [respondent] DBP in its letter dated June 18, 1987 to [petitioners] wrote in paragraph 3 thereof, "that in case there is better offer or if a property will be subject of purchase offer, within the term, the lessee is given the option of first refusal, otherwise, he has to vacate the premises within thirty (30) days." **Yet, [respondent] DBP never informed [petitioners] that there was an interested party to buy the property, meaning, [respondents To Chip, Yap and Balila], thus depriving [petitioners] of the opportunity of first refusal promised to them in its letter dated June 18, 1987**. x x x.[38] (Emphases ours.)

As regards the offer of petitioners to purchase the subject properties from DBP, the RTC gave more credence to the petitioners' version of the facts, to wit:

It is also a fact on record that when [respondent] DBP offered the property for negotiated sale under the 15-day acceptance period[, which] ended at noon of December 3, 1991, [Cebu Bionic] submitted its offer, complete with [the required documents.] x x x.

xxx xxx xxx

These requirements, however, were unceremoniously returned by [respondent] bank with the assurance that since there was no other bidder of the said property, there was no urgency for the same and

[38] Records, p. 359.

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that [Cebu Bionic] also, in all events, is entitled to first option being the present lessee.

The declaration of Atty. Panal to the effect that Cebu Bionic wanted to buy the property on installment terms, such that the deposit of ₱184,000.00 was insufficient being only 10% of the offer, could not be given much credence as it is refuted by Exh. "H" which is the negotiated offer to purchase form under the 15-day acceptance period accomplished by [petitioners] which shows clearly the written word "Cash" after the printed words "Term" and "Mode of Payment," Exhibit "J", the Manager's check issued by Allied Banking Corporation dated December 3, 1990 in the amount of ₱184,000.00 representing 10% of the offer showing the mode of payment is for cash; Exhibit "K" which is the application for Manager's check in the amount of ₱184,000.00 dated December 3, 1990 showing the beneficiary as DBP. **If it is true that the offer of [petitioners] was for installment payments, then in the ordinary course of human behavior, it would not have wasted effort in securing a Manager's check in the amount of ₱184,000.00 which was insufficient for 20% deposit as required for installment payments. More credible is the explanation [given by] witness Judy Garces when she said that DBP through Atty. Panal returned the documents submitted by her, saying that there was no urgency for the same as there was no other bidder of [the said] property and that Cebu Bionic was entitled to a first option to buy being the present lessee.** In the letter also of [respondent] bank dated June 18, 1987, it is important to note that aside from requiring Cebu Bionic to comply with certain requirements of time deposit and advance rental, as condition for constitution of lease between the parties and which was complied by Cebu Bionic[,] said letter further states in paragraph 3 thereof that "in case there is [a] better offer or if the property will be subject of a purchase offer, within the term, the lessee is given the option of first refusal, otherwise, he has to vacate the premises within thirty days." In answer to the Court's question, however, Atty. Panal admitted that he did not tell [petitioners] that there was another party who was willing to purchase the property, in violation of [petitioners]' right of first refusal.[39] (Emphasis ours.)

Likewise, the RTC found that respondents To Chip, Yap and Balila were aware of the lease contract involving the subject properties before they purchased the same from DBP. Thus:

[39] *Id.* at 359-360.

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[Respondent] Jose To Chip lamely pretends ignorance that [petitioners] are lessees of the property, subject matter of this case. He states that he and his partners, the other [respondents], were given assurances by Atty. Panal of the DBP that [Lydia Sia] is not a lessee, although he knew that [petitioners] were presently occupying the property and that it was possessed by [petitioners] even before it was owned by the DBP. x x x.

xxx xxx xxx

[Respondent] Roger Balila, in his testimony, likewise pretended ignorance that he knew that [Lydia Sia] was a lessee of the property. x x x.

xxx xxx xxx

Upon further questioning by the Court, he admitted that [Lydia Sia] was not possessing the building freely; that she was a lessee of Rudy Robles, the former owner, but cleverly insisted in disowning knowledge that [Lydia Sia] was a lessee, denying knowledge that [Lydia Sia] was paying rentals to [respondent] bank. His pretended ignorance x x x was a way of evading [Cebu Bionic's] right of first priority to buy the property under the contract of lease. x x x The Court is convinced that [respondents To Chip, Yap and Balila] knew that [Cebu Bionic] was the present lessee of the property before they bought the same from [respondent] bank. Common observation, knowledge and experience dictates that as a prudent businessman, it was but natural that he ask Lydia Sia what her status was in occupying the property when he went to talk to her, that he ask her if she was a lessee. But he said, all he asked her was whether she was interested to buy the property. x x x.[40]

The trial court, therefore, concluded that:

From the foregoing facts on record, it is thus clear that [petitioner] Cebu Bionic is the present lessee of the property, the lease contract having been continued by [respondent] DBP when it received rental payments up to March of 1991 as well as the advance rental for one year represented by the assigned time deposit which is still in [respondent] bank's possession. The provision, therefore, in the lease contract, on the right of first option to buy and the right of first refusal contained in [respondent] bank's letter dated June 18,

[40] *Id.* at 361-364.

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1987, are still subsisting and binding up to the present, not only on [respondent] bank but also on [respondents To Chip, Yap and Balila]. x x x.

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WHEREFORE, THE FOREGOING PREMISES CONSIDERED, judgment is hereby rendered:

(1) Rescinding the Deed of Sale dated December 28, 1990 between [respondent] Development Bank of the Philippines and [respondents] Roger Balila, Jose To Chip and Patricio Yap;

(2) Ordering the [respondent] Development Bank of the Philippines to execute a Deed of Sale over the property, subject matter of this case upon payment by [petitioners] of the whole consideration involved and to complete all acts or documents necessary to have the title over said property transferred to the name of [petitioners];

(3) Costs against [respondents].[41]

DBP forthwith filed a Notice of Appeal.[42] Respondents To Chip, Yap and Balila filed a Motion for Reconsideration[43] of the above decision, but the RTC denied the same in an Order[44] dated July 4, 1997. Said respondents then filed their Notice of Appeal.[45]

On February 14, 2001, the Court of Appeals promulgated its Decision,[46] pronouncing that:

We find nothing erroneous with the judgment rendered by the trial court. Perforce, We sustain it and dismiss the [respondents'] submission.

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[41] *Id.* at 364-365.

[42] *Id.* at 386.

[43] *Id.* at 368-379.

[44] *Id.* at 403-405.

[45] *Id.* at 407.

[46] CA *rollo*, pp. 186-193.

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The RTC determined, upon evidence on record after a careful evaluation of the witnesses and their testimonies during the trial that indeed [petitioners'] right of first option was violated and thus, rescission of the sale made by DBP to [respondents To Chip, Yap and Balila] are in order.

xxx xxx xxx

Apparently, DBP accepted [the documents submitted by petitioners] and thereafter, through Atty. Panal (of DBP), returned all of it to the [petitioners] "with the assurance that since there was no other bidder of the said property, there was no urgency for the same and that [Cebu Bionic] also, in all events, is **entitled to first option being the present lessee**.

[DBP] maintains that the return of the documents [submitted by petitioners] was in order since the [petitioners] offered to buy the property in question on installment basis requiring a higher 20% deposit. This, however, was correctly rejected by the trial court[.] x x x

The binding effect of the lease agreement upon the [respondents To Chip, Yap and Balila] must be sustained since from existing jurisprudence cited by the lower court, it was determined during trial that:

> "... **[respondents To Chip, Yap and Balila] knew that [Cebu Bionic] was the present lessee** of the property before they bought the same from [respondent] bank. **Common observation, knowledge and experience dictates that as a prudent businessman, it was but natural that he ask Lydia Sia what her status was in occupying the property when he went to talk to her, that he ask her if she was a lessee. But he said, all he asked her was whether she was interested to buy the property**. x x x.

Moreover, We find that the submissions presented by the [respondents] in their respective briefs argue against questions of facts as found and determined by the lower court. The respondents' contentions consist of crude attempts to question the assessment and evaluation of testimonies and other evidence gathered by the trial court.

It must be remembered that findings of fact as determined by the trial court are entitled to great weight and respect from appellate

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courts and should not be disturbed on appeal unless for [strong] and cogent reasons. These findings generally, so long as supported by evidence on record, are not to be disturbed unless there are some facts or evidence which the trial court has misappreciated or overlooked, and which if considered would have altered the results of the entire case. Sad to say for the [respondents], We see no reason to depart from this well-settled legal principle.

WHEREFORE, in view of the foregoing, the judgment of the Regional Trial Court of Cebu City, Branch 8, in **Civil Case No. 10104** is hereby **AFFIRMED *in toto***.[47]

On October 1, 2001, petitioners filed a Motion for Issuance of Entry of Judgment.[48] Petitioners stressed that, based on the records of the case, respondents were served a copy of the Court of Appeals Decision dated February 14, 2001 sometime on March 7, 2001. However, petitioners discovered that respondents have not filed any motion for reconsideration of the said decision within the reglementary period therefor, nor was there any petition for *certiorari* or appeal filed before the Supreme Court.

In response to the above motion, respondents To Chip, Yap and Balila filed on October 8, 2001 a Motion to Admit Motion for Reconsideration.[49] Atty. Francis M. Zosa, the counsel for respondents To Chip, Yap and Balila, explained that he sent copies of the motion for reconsideration to petitioners and DBP *via* personal delivery. On the other hand, the copies of the motion to be filed with the Court of Appeals were purportedly sent to Mr. Domingo Tan, a friend of Atty. Zosa in Quezon City, who agreed to file the same personally with the appellate court in Manila. When Atty. Zosa inquired if the motion for reconsideration was accordingly filed, Mr. Tan allegedly answered in the affirmative. To his surprise, Atty. Zosa received a copy of petitioners' Motion for Issuance of Entry of Judgment. Atty. Zosa, thus, attributed the failure of his clients to file a motion

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[47] *Id.* at 189-193.

[48] *Id.* at 212-214.

[49] *Id.* at 215-225.

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for reconsideration on the mistake, excusable negligence and/or fraud committed by Mr. Tan.

In the assailed Resolution dated February 5, 2002, the Court of Appeals granted the motion of respondents To Chip, Yap and Balila and admitted the motion for reconsideration attached therewith "in the higher interest of substantial justice."[50]

On July 5, 2002, the Court of Appeals reversed its original Decision dated February 14, 2001, reasoning thus:

> After a judicious review and reevaluation of the evidence and facts on record, we are convinced that DBP had terminated the Robles lease contract. From its letter of June 18, 1987, DBP had expressly notified [petitioners] that *"(I)f they wish to continue on leasing the property x x x" "to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:*
>
> **'1. The lease will be on a month to month basis for a maximum period of one (1) year;**
>
> **'2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one year (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;**
>
> **'3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.'**
>
> *We consider, temporarily, the current monthly rental based on the six-month receipts, which we require you to submit, until such time when we will fix the amount accordingly."*
>
> Evidently, except for the remittance of the monthly rentals up to March 1991, the conditions imposed by DBP have never been complied with. [Petitioners] did not go to the Bank to sign any new written contract of lease with DBP. [Petitioners] also did not put up a surety bond nor cash bond nor assign a time deposit to secure the payment of rental for nine (9) months, although the [petitioners] opened a time deposit but did not assign it to DBP.

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[50] *Rollo*, p. 38.

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But even with the remittance and acceptance of the deposit made by [petitioners] equivalent to two (2) months rental and advance of one (1) month rental it does not necessarily follow that DBP opted to continue with the Robles lease. This is because the Robles contract provides:

> **"That the term of the agreement shall start on November 1, 1981 and shall terminate on the last day of every month thereafter, provided however, that this contract shall be automatically renewed on a month to month basis if no notice in writing is sent to the other party to determine to terminate this agreement after fifteen (15) days from the receipt of said notice."**

Here, a notice was sent to [petitioners] on June 18, 1987, informing them that if they "wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease x x x."

[Petitioners] failed to enter into the contract of lease required by DBP for it to continue occupying the leased premises.

Because of [petitioners'] failure to comply with the conditions embodied in the 18 June 1987 letter, it cannot be said that [petitioners] entered into a new contract with DBP where they were given the first option to buy the leased property and to match offers from outside parties.

xxx xxx xxx

Be that as it may, DBP continued to accept the monthly rentals based on the old Robles contract despite the fact that the [petitioners] failed to enter into a written lease contract with it. Corollarily, the relations between the parties is now governed by **Article 1670 of the New Civil Code**, thus:

> "Art. 1670. If at the end of contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived."

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x x x [T]he acceptance by DBP of the monthly rentals does not mean that the terms of the Robles contract were revived. In the case of ***Dizon vs. Court of Appeals***, the Supreme Court declared that:

> "The other terms of the original contract of lease which are revived in the implied new lease under Article 1670 of the New Civil Code are only those terms which are germane to the lessee's right [of] continued enjoyment of the property leased – an implied new lease does not *ipso facto* carry with it any implied revival of any option to purchase the leased premises."

In view of the foregoing, it is clear that [petitioners] had no right to file a case for **rescission of the deed of sale** executed by DBP in favor of [respondents To Chip, Yap and Balila] because said deed of sale did not violate their alleged first option to buy or match offers from outside parties which is legally non-existent and which was not impliedly renewed under **Article 1670 of the Civil Code**.

WHEREFORE, premises considered, the 14 February 2001 Decision is hereby **RECONSIDERED** and another one is **issued REVERSING** the 25 April 1997 Decision of the Regional Trial Court, Branch 8, Cebu City in **Civil Case No. CEB-10104** and the complaint of [petitioners] is **DISMISSED** for lack of merit.[51]

Without seeking a reconsideration of the above decision, petitioners filed the instant petition. In their Comment, respondents opposed the petition on both procedural and substantive grounds.

In petitioners' Memorandum, they summarized the issues to be resolved in the present case as follows:

A) PRELIMINARY ISSUES:

I

WHETHER OR NOT THE VERIFICATION (AND CERTIFICATION OF NON-FORUM SHOPPING) IN THE INSTANT PETITION WAS PROPER AND VALID DESPITE ITS BEING SIGNED BY ONLY ONE OF THE TWO PETITIONERS.

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[51] *Id.* at 40-45.

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II

WHETHER OR NOT ONLY QUESTIONS OF LAW AND NOT OF FACT CAN BE RAISED IN THE INSTANT PETITION BEFORE THIS HON. SUPREME COURT.

B) MAIN AND PRINCIPAL ISSUES IN THE INSTANT PETITION:

I

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN ADMITTING RESPONDENTS' MOTION FOR RECONSIDERATION DESPITE ITS BEING FILED OUT OF TIME

II

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN DECLARING THAT PETITIONERS DID NOT ENTER INTO CONTRACT WITH RESPONDENT DBP CONTINUING THE TERMS OF THE ROBLES CONTRACT

III

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT DECLARED THAT THE CONTINUATION BY RESPONDENT DBP OF THE LEASE CONTRACT DID NOT CONTAIN THE RIGHT OF FIRST REFUSAL

IV

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT DECLARED THAT THE LEASE CONTRACT IS GOVERNED BY ART. 1670 OF THE NEW CIVIL CODE

V

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT FAILED TO RECOGNIZE PETITIONERS' RIGHT OF FIRST REFUSAL TO WHICH RESPONDENTS WERE BOUND

VI

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED WHEN IT FAILED TO DECLARE THAT RESPONDENT DBP HAD VIOLATED PETITIONERS' RIGHTS

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VII

WHETHER OR NOT THE HON. COURT OF APPEALS ERRED IN REVERSING ITS OWN JUDGMENT AND DISMISSING PETITIONERS' CLAIM FOR RESCISSION[52]

We shall first resolve the preliminary issues.

Respondents To Chip, Yap and Balila argue that the instant petition should be dismissed outright as the verification and certification of non-forum shopping was executed only by petitioner Lydia Sia in her personal capacity, without the participation of Cebu Bionic.

The Court is not persuaded.

Except for the powers which are expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence, a corporation has no powers. It exercises its powers through its board of directors and/or its duly authorized officers and agents. Thus, its power to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers.[53] Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[54]

In this case, respondents To Chip, Yap and Balila obviously overlooked the Secretary's Certificate[55] attached to the instant petition, which was executed by the Corporate Secretary of Cebu Bionic. Unequivocally stated therein was the fact that the Board of Directors of Cebu Bionic held a special meeting on July 26, 2002 and they thereby approved a Resolution authorizing Lydia Sia to elevate the present case to this Court in behalf of Cebu Bionic, to wit:

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[52] *Id.* at 136-138.

[53] *Pascual and Santos, Inc. v. The Members of the Tramo Wakas Neighborhood Association, Inc.*, G.R. No. 144880, November 17, 2004, 442 SCRA 438, 446.

[54] *Id.* at 446-447.

[55] *Rollo*, p. 56.

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Whereas, the board appointed LYDIA I. SIA to act and in behalf of the corporation to file the *CERTIORARI* with the Supreme Court in relations (sic) to the decision of the Court of Appeals dated July 5, 2002 which reversed its own judgment earlier promulgated on February 14, 2001 entitled CEBU BIONIC BUILDERS SUPPLY, INC. and LYDIA SIA, (Petitioners- Appellants) –versus – THE DEVELOPMENT BANK OF THE PHILIPPINES, JOSE TO CHIP, PATRICIO YAP and ROGER BALILA (Respondents- Appelles), docketed CA-G.R. NO. 57216.

Whereas, on mass unanimously motion of all members of directors present hereby approved the appointment of LYDIA I. SIA to act and sign all papers in connection of CA-G.R. NO. 57216.

Resolved and it is hereby resolve to appoint and authorized (sic)LYDIA I. SIA to sign and file with the SUPREME COURT in connection to decision of the Court of Appeals as above mention (sic).[56]

Respondents To Chip, Yap and Balila next argue that the instant petition raises questions of fact, which are not allowed in a petition for review on *certiorari*. They, therefore, submit that the factual findings of the Court of Appeals are binding on this Court.

Section 1, Rule 45 of the Rules of Court categorically states that the petition filed thereunder shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[57]

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[56] *Id.*

[57] *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

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The above rule, however, admits of certain exceptions,[58] one of which is when the findings of the Court of Appeals are contrary to those of the trial court. As will be discussed further, this exception is attendant in the case at bar.

We now determine the principal issues put forward by petitioners.

First off, petitioners fault the Court of Appeals for admitting the Motion for Reconsideration of its Decision dated February 14, 2001, which was filed by respondents To Chip, Yap and Balila more than six months after receipt of the said decision. The motion was eventually granted and the Court of Appeals issued its assailed Amended Decision, ruling in favor of respondents.

Indeed, the appellate court's Decision dated February 14, 2001 would have ordinarily attained finality for failure of respondents to seasonably file their Motion for Reconsideration thereon. However, we agree with the Court of Appeals that the higher interest of substantial justice will be better served if respondents' procedural lapse will be excused.

Verily, we had occasion to apply this liberality in the application of procedural rules in *Barnes v. Padilla*[59] where we aptly declared that —

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[58] The well-established exceptions are: (a) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) where there is a grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (g) when the findings of the Court of Appeals are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (j) when the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Geronimo v. Court of Appeals*, G.R. No. 105540, July 5, 1993, 224 SCRA 494, 498-499.)

[59] 482 Phil. 903 (2004).

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The failure of the petitioner to file his motion for reconsideration within the period fixed by law renders the decision final and executory. Such failure carries with it the result that no court can exercise appellate jurisdiction to review the case. Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[60]

In this case, what are involved are the property rights of the parties given that, ultimately, the fundamental issue to be determined is who among the petitioners and respondents To Chip, Yap and Balila has the better right to purchase the subject properties. More importantly, the merits of the case sufficiently called for the suspension of the rules in order to settle conclusively the rights and obligations of the parties herein.

In essence, the questions that must be resolved are: 1) whether or not there was a contract of lease between petitioners and DBP; 2) if in the affirmative, whether or not this contract contained a right of first refusal in favor of petitioners; and 3) whether or not respondents To Chip, Yap and Balila are likewise bound by such right of first refusal.

Petitioners contend that there was a contract of lease between them and DBP, considering that they had been allowed to occupy the premises of the subject property from 1987 up to 1991 and DBP received their rental payments corresponding to the said period. Petitioners claim that DBP were aware of their lease on the subject property when the latter foreclosed the same and the acquisition of the subject properties through foreclosure did not terminate the lease. Petitioners subscribe to the ruling

[60] *Id.* at 915.

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of the RTC that even if there was no written contract of lease, DBP chose to continue the existing contract of lease between petitioners and Rudy Robles by accepting the requirements set down by DBP on the letter dated June 18, 1987. Petitioners likewise posit that the contract of lease between them and Rudy Robles never expired, inasmuch as the contract did not have a definite term and none of the parties thereto terminated the same. In view of the continuation of the lease contract between petitioners and Rudy Robles, petitioners submit that Article 1670 of the Civil Code on implied lease is not applicable on the instant case.

We are not persuaded.

In *Uy v. Land Bank of the Philippines*,[61] the Court held that "[i]n respect of the lease on the foreclosed property, the buyer at the foreclosure sale merely succeeds to the rights and obligations of the pledgor-mortgagor subject to the provisions of Article 1676 of the Civil Code on its possible termination. This article provides that '[t]he purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.' In short, the buyer at the foreclosure sale, as a rule, may terminate an unregistered lease except when it knows of the existence of the lease."

In the instant case, the lease contract between petitioners and Rudy Robles was not registered.[62] During trial, DBP denied having any knowledge of the said lease contract.[63] It asserted that the lease was merely presumed in view of the existence of tenants in the subject property.[64] Nevertheless, DBP recognized and acknowledged this lease contract in its letter dated June 18, 1987, which was addressed to Bonifacio Sia, then President of Cebu Bionic. DBP even required Sia to pay the monthly rental

[61] 391 Phil. 303, 316 (2000).

[62] TSN, May 16, 1991, p. 14.

[63] *Id.*

[64] *Id.* at 16.

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for the month of June 1987, thereby exercising the right of the previous lessor, Rudy Robles, to collect the rental payments from the lessee. In the same letter, DBP extended an offer to Cebu Bionic to continue the lease on the subject property, outlining the provisions of the proposed contract and specifically instructing the latter to come to the bank for the execution of the same. DBP likewise gave Cebu Bionic a 30-day period within which to act on the said contract execution. Should Cebu Bionic fail to do so, it would be deemed uninterested in continuing with the lease. In that eventuality, the letter states that Cebu Bionic should vacate the premises within the said period.

Instead of acceding to the terms of the aforementioned letter, the counsel of Cebu Bionic sent a counter-offer to DBP dated July 7, 1987, suggesting a different mode of payment for the rentals and requesting for a 60-day period within which time the parties will execute a new contract of lease.

The parties, however, failed to execute a written contract of lease. Petitioners put the blame on DBP, asserting that no contract was signed because DBP did not prepare it for them. DBP, on the other hand, counters that it was petitioners who did not positively act on the conditions for the execution of the lease contract. In view of the counter-offer of petitioners, DBP and respondents To Chip, Yap and Balila argue that there was no meeting of minds between DBP and petitioners, which would have given rise to a new contract of lease.

The Court rules that, indeed, no new contract of lease was ever perfected between petitioners and DBP.

In *Metropolitan Manila Development Authority v. JANCOM Environmental Corporation*,[65] we emphasized that:

> Under Article 1305 of the Civil Code, "[a] contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." A contract undergoes three distinct stages — preparation or negotiation, its perfection, and finally, its consummation. Negotiation begins from the time the prospective contracting parties manifest

[65] 425 Phil. 961 (2002).

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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 the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof (*Bugatti vs. CA*, 343 SCRA 335 [2000]). Article 1315 of the Civil Code, provides that a contract is perfected by mere consent. Consent, on the other hand, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract (See Article 1319, Civil Code). x x x.[66]

In the case at bar, there was no concurrence of offer and acceptance *vis-à-vis* the terms of the proposed lease agreement. In fact, after the reply of petitioners' counsel dated July 7, 1987, there was no indication that the parties undertook any other action to pursue the execution of the intended lease contract. Petitioners even admitted that they merely waited for DBP to present the contract to them, despite being instructed to come to the bank for the execution of the same.[67]

Contrary to the ruling of the RTC, the Court is also not convinced that DBP opted to continue the existing lease contract between petitioners and Rudy Robles.

The findings of the RTC that DBP supposedly accepted the requirements the latter set forth in its letter dated June 18, 1987 is not well taken. To recapitulate, the third paragraph of the letter reads:

If you wish to continue on leasing the property, we request you to come to the Bank for the execution of a Contract of Lease, the salient conditions of which are as follows:

1. The lease will be on month to month basis, for a maximum period of one (1) year;
2. Deposit equivalent to two (2) months rental and advance of one (1) month rental, and the remaining amount for one

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[66] *Id.* at 975.

[67] TSN, May 16, 1991, p. 7.

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year period (equivalent to 9 months rental) shall be secured by either surety bond, cash bond or assigned time deposit;

3. That in case there is a better offer or if the property will be subject of a purchase offer, within the term, the lessor is given an option of first refusal, otherwise he has to vacate the premises within thirty (30) days from date of notice.[68]

The so-called "requirements" enumerated in the above paragraph are not really requirements to be complied with by the petitioners for the execution of the proposed lease contract, as apparently considered by the RTC and the petitioners. A close reading of the letter reveals that the items enumerated therein were in fact the salient terms and conditions of the proposed contract of lease, which the DBP and the petitioners were to execute if the latter were so willing. Also, the Certificate of Time Deposit in the amount of ₱11,395.64, which was allegedly paid to DBP as advance rental deposit pursuant to the said requirements, was not even clearly established as such since it was neither secured by a security bond or a cash bond, nor was it assigned to DBP.

The contention that the lease contract between petitioners and Rudy Robles did not expire, given that it did not have a definite term and the parties thereto failed to terminate the same, deserves scant consideration. To recall, the second paragraph of the terms and conditions of the contract of lease between petitioners and Rudy Robles reads:

2. That the term of this agreement shall start on November 1, 1981 and shall terminate on the **last day of every month** thereafter; provided however that **this contract shall be automatically renewed on a month to month basis if no notice, in writing, is sent to the other party to terminate this agreement after fifteen (15) days from receipt of said notice**.[69] (Emphases ours.)

Crystal clear from the above provision is that the lease is on a month-to-month basis. Relevantly, the well-entrenched principle

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[68] *Rollo*, p. 56.

[69] *Id.* at 231-232.

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is that a lease from month-to-month is with a definite period and expires at the end of each month upon the demand to vacate by the lessor.[70] As held by the Court of Appeals in the assailed Amended Decision, the above-mentioned lease contract was duly terminated by DBP by virtue of its letter dated June 18, 1987. We reiterate that the letter explicitly directed the petitioners to come to the office of the DBP if they wished to enter into a new lease agreement with the said bank. Otherwise, if no contract of lease was executed within 30 days from the date of the letter, petitioners were to be considered uninterested in entering into a new contract and were thereby ordered to vacate the property. As no new contract was in fact executed between petitioners and DBP within the 30-day period, the directive to vacate, thus, took effect. DBP's letter dated June 18, 1987, therefore, constituted the written notice that was required to terminate the lease agreement between petitioners and Rudy Robles. From then on, the petitioners' continued possession of the subject property could be deemed to be without the consent of DBP.

Thusly, petitioners' assertion that Article 1670 of the Civil Code is not applicable to the instant case is correct. The reason, however, is not that the existing contract was continued by DBP, but because the lease was terminated by DBP, which termination was accompanied by a demand to petitioners to vacate the premises of the subject property.

Article 1670 states that "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." In view of the order to vacate embodied in the letter of DBP dated June 18, 1987 in the event that no new lease contract is entered into, the petitioners' continued possession

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[70] *Paterno v. Court of Appeals*, 339 Phil. 154, 161 (1997).

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of the subject properties was without the acquiescence of DBP, thereby negating the constitution of an implied lease.

Contrary to the ruling of the RTC, DBP's acceptance of petitioners' rental payments of ₱5,000.00 for the period of November 1990 to March 1991 did not likewise give rise to an implied lease between petitioners and DBP. In *Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals*,[71] we held that "the subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of their possession." In the present case, the petitioners' rental payments to DBP were made in lump sum on March 22, 1991. Significantly, said payments were remitted only after petitioners were notified of the sale of the subject properties to respondents To Chip, Yap and Balila and after the petitioners were given a final demand to vacate the properties. These facts substantially weaken, if not controvert, the finding of the RTC and the argument of petitioners that the latter were faithfully remitting their rental payments to DBP until the year 1991.

Thus, having determined that the petitioners and DBP neither executed a new lease agreement, nor entered into an implied lease contract, it follows that petitioners' claim of entitlement to a right of first refusal has no leg to stand on. Furthermore, even if we were to grant, for the sake of argument, that an implied lease was constituted between petitioners and the DBP, the right of first refusal that was contained in the prior lease contract with Rudy Robles was not renewed therewith. This is in accordance with the ruling in *Dizon v. Magsaysay*,[72] which involved the issue of whether a provision regarding a preferential right to purchase is revived in an implied lease under Article 1670, to wit:

"[T]he other terms of the original contract" which are revived in the implied new lease under Article 1670 are only those terms which are germane to the lessee's right of continued enjoyment of the

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[71] G.R. No. 148562, November 25, 2004, 444 SCRA 193, 199.

[72] 156 Phil. 232 (1974).

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property leased. This is a reasonable construction of the provision, which is based on the presumption that when the lessor allows the lessee to continue enjoying possession of the property for fifteen days after the expiration of the contract he is willing that such enjoyment shall be for the entire period corresponding to the rent which is customarily paid – in this case up to the end of the month because the rent was paid monthly. Necessarily, if the presumed will of the parties refers to the enjoyment of possession the presumption covers the other terms of the contract related to such possession, such as the amount of rental, the date when it must be paid, the care of the property, the responsibility for repairs, *etc*. But no such presumption may be indulged in with respect to special agreements which by nature are foreign to the right of occupancy or enjoyment inherent in a contract of lease.[73]

DBP cannot, therefore, be accused of violating the rights of petitioners when it offered the subject properties for sale, and eventually sold the same to respondents To Chip, Yap and Balila, without first notifying petitioners. Neither were the said respondents bound by any right of first refusal in favor of petitioners. Consequently, the sale of the subject properties to respondents was valid. Petitioners' claim for rescission was properly dismissed.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is *DENIED*. The Resolution dated February 5, 2002 and the Amended Decision dated July 5, 2002 of the Court of Appeals in CA-G.R. CV No. 57216 are hereby *AFFIRMED*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Peralta,[*] and *Perez, JJ.,* concur.

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[73] *Id.* at 236.

[*] Per Special Order No. 913 dated November 2, 2010.