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WHEREFORE, for reasons indicated, We find the accused GERRY CAÑETE guilty beyond reasonable doubt of the crime of Homicide and sentences him to a penalty of *Reclusion Temporal*. Applying the Indeterminate Sentence Law, the accused is hereby sentenced to a penalty of imprisonment the minimum of which is eight (8) years and one (1) day of *prision mayor* and a maximum of fourteen (14) years, eight (8) months and one (1) day of *Reclusion Temporal*, and to indemnify the heirs of the victim Renato Quijano in the amount of ₱50,000.00. For failure of the prosecution to establish the guilt of LUZ CARPIO *VDA. DE* QUIJANO for the crime of parricide, the decision with respect to her is *REVERSED*, said accused is *ACQUITTED* of the crime charged and is ordered immediately released unless she is being held for other legal causes.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, and *Nocon, JJ.*, concur.

SECOND DIVISION

[G.R. No. 102300. March 17, 1993]

CITIBANK, N.A., *petitioner, vs.* **HON. SEGUNDINO G. CHUA, SANTIAGO M. KAPUNAN and LUIS L. VICTOR, ASSOCIATE JUSTICES OF THE HON. COURT OF APPEALS, THIRD DIVISION, MANILA, HON. LEONARDO B. CANARES, Judge of Regional Trial Court of Cebu, Branch 10, and SPOUSES CRESENCIO AND ZENAIDA VELEZ,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; PRIVATE CORPORATIONS; LEVELS OF CONTROL IN CORPORATE HIERARCHY;

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BOARD OF DIRECTORS MAY VALIDLY DELEGATE SOME FUNCTIONS TO INDIVIDUAL OFFICERS OR AGENTS. — In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.

2. ID.; ID.; HOW CORPORATE POWERS CONFERRED UPON CORPORATE OFFICERS OR AGENTS; EXERCISE OF POWERS INCIDENTAL TO EXPRESS POWERS, CONFERRED. — Corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers. There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred. Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, the Executing Officer and the Secretary Pro-Tem, to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs.

3. ID.; ID.; ADOPTION OF BY-LAWS; PROVISION OF SECTION 46 OF CORPORATION CODE REFERRING

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TO EFFECTIVITY OF CORPORATE BY-LAWS APPLICABLE ONLY TO DOMESTIC CORPORATIONS. — A corporation can submit its by-laws, prior to incorporation, or within one month after receipt of official notice of the issuance of its certificate of incorporation by the SEC. When the third paragraph of the above provision mentions "*in all cases*," it can only refer to these two options; *i.e.*, whether adopted prior to incorporation or within one month after incorporation, the by-laws shall be effective only upon the approval of the SEC. But even more important, said provision starts with the phrase "Every corporation formed under this Code," which can only refer to corporations incorporated in the Philippines. Hence, Section 46, in so far as it refers to the effectivity of corporate by-laws, applies only to domestic corporations and not to foreign corporations.

4. ID.; FOREIGN CORPORATIONS; ISSUANCE OF LICENSE TO TRANSACT BUSINESS IN THE PHILIPPINES; REQUISITES; GRANT OF LICENSE IN EFFECT APPROVAL BY SEC OF FOREIGN CORPORATION'S BY-LAWS. — Section 125 of the same Code requires that a foreign corporation applying for a license to transact business in the Philippines must submit, among other documents, to the SEC, a copy of its articles of incorporation and *by-laws*, certified in accordance with law. Unless these documents are submitted, the application cannot be acted upon by the SEC. In the following section, the Code specifies when the SEC can grant the license applied for. Section 126 provides in part: "SEC. 126. *Issuance of a license*. — If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license x x x" Since the SEC will grant a license only when the foreign corporation has complied with all the requirements of law, it follows that when it decides to issue such license, it is satisfied that the applicant's by-laws, among the other documents, meet the legal requirements. This, in effect, is an approval of the foreign corporation's by-laws. It may not have been made in express terms, still it is clearly an approval. Therefore, petitioner bank's by-laws, though originating from a foreign jurisdiction, are valid and effective in the Philippines.

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5. CIVIL LAW; AGENCY; SPECIAL POWER OF ATTORNEY; WHEN POWER OF ATTORNEY COMPREHENSIVE ENOUGH TO INCLUDE AUTHORITY TO APPEAR AT PRE-TRIAL CONFERENCE. — It is also error on the part of the Court of Appeals to state that the power of attorney given to the four (4) Citibank employees is not a special power of attorney as required in paragraph 3, Article 1878 of the Civil Code and Section 1 (a), Rule 20 of the Rules of Court. In the case of *Tropical Homes, Inc. vs. Villaluz*, the special power of attorney executed by petitioner bank therein contained the following pertinent terms — "to appear for and in its behalf in the above-entitled case in all circumstances where its appearance is required and to bind it in all said instances." The court ruled that: "Although the power of attorney in question does not specifically mention the authority of petitioner's counsel to appear and bind the petitioner *at the pre-trial conference*, the terms of said power of attorney are comprehensive enough as to include the authority to appear for the petitioner at the pre-trial conference."

6. ID.; ID.; ID.; LEGAL COUNSEL APPOINTED TO REPRESENT BANK IN COURT PURSUANT TO BY-LAW PROVISION CONSIDERED AN EMPLOYEE FOR A SPECIAL PURPOSE. — Attorney was sufficient under the by-law provision authorizing Ferguson to delegate any of his functions to any one or more employees of the petitioner bank. A reasonable interpretation of this provision would include an appointment of a legal counsel to represent the bank in court, for, under the circumstances, such legal counsel can be considered, and in fact was considered by the petitioner bank, an employee for a special purpose. Furthermore, Ferguson, who heads the Philippine office thousands of miles away from its main office in the United States, must be understood to have sufficient powers to act promptly in order to protect the interests of his principal.

7. REMEDIAL LAW; CIVIL PROCEDURE; PRECIPITATE ORDERS OF DEFAULT FROWNED UPON BY SUPREME COURT; REASON THEREFOR; WHEN PARTY MAY BE PROPERLY DEFAULTED. — We reiterate the previous admonitions of this Court against "precipitate orders of default as these have the effect of denying the litigant the chance to be heard. While there are instances, to be sure, when a party

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may be properly defaulted, these should be the exceptions rather than the rule and should be allowed only in clear cases of an obstinate refusal or inordinate neglect to comply with the orders of the court. Absent such a showing, the party must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law".

8. LEGAL ETHICS; ATTORNEY-CLIENT RELATIONSHIP; AUTHORITY OF ATTORNEYS TO BIND CLIENTS. — Under Rule 138, Section 23 of the Rules of Court, an attorney has authority to bind his client in any case by an agreement in relation thereto made in writing, and this authority would include taking appeals and all matters of ordinary judicial procedure. But he cannot, without special authority, compromise his client's litigation or receive anything in discharge of a client's claim but the full amount in cash. The special powers of attorney separately executed by Florencia Tarriela and William W. Ferguson granted to J.P. Garcia & Associates are very explicit in their terms as to the counsel's authority in the case at bar.

D E C I S I O N

CAMPOS, JR., *J.*:

Petitioner is a foreign commercial banking corporation duly licensed to do business in the Philippines. Private respondents, spouses Cresencio and Zenaida Velez, were good clients of petitioner bank's branch in Cebu until March 14, 1986 when they filed a complaint for specific performance and damages against it in Civil Case No. CEB-4751 before the Regional Trial Court of Cebu, Branch 10.

Private respondents alleged in their complaint that the petitioner bank extended to them credit lines sufficiently secured with real estate and chattel mortgages on equipment. They claim that petitioner offered them special additional accommodation of Five Million Pesos (₱5,000,000.00) to be availed of in the following manner:

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"a. Defendant would and did purchase check or checks from the plaintiffs by exchanging it with defendant's manager's check on a regular daily basis as reflected in the defendant's own ledger furnished to plaintiffs;

b. It was further agreed that on the following day, defendant CITIBANK would again purchase from the plaintiffs, check or checks, by exchanging the same with defendant's manager's check, which check, however, will be deposited by the plaintiffs with their other banks to cover the check or checks previously issued by the plaintiffs mentioned above;

c. The same regular and agreed activity would be undertaken by the plaintiffs and defendant CITIBANK herein every banking day thereafter;"[1]

This arrangement started on September 4, 1985 until March 11, 1986, when private respondents tried to exchange with petitioner bank six checks amounting to ₱3,095,000.00 but petitioner bank allegedly refused to continue with the arrangement even after repeated demands. Instead, petitioner bank suggested to private respondents that the total amount covered by the "arrangement be restructured to thirty (30) months with prevailing interest rate on the diminishing balance."[2] Private respondents agreed to such a proposal. Then as a sign of good faith, they issued and delivered a check for ₱75,000.00 in favor of petitioner bank which was refused by the latter demanding instead full payment of the entire amount.

For the failure of petitioner bank to comply with this restructuring agreement private respondents sued for specific performance and damages.

Petitioner bank has a different version of the business relationship that existed between it and private respondents. Thus:

"x x x starting sometime on September 4 of 1985, he (private respondent Crescencio Velez) deposited his unfunded personal checks

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[1] Annex "C" of Petition, pp. 1-2; *Rollo*, pp. 46-47.

[2] *Ibid*., p. 48.

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with his current account with the petitioner. But prior to depositing said checks, he would present his personal checks to a bank officer asking the latter to have his personal checks immediately credited as if it were a cash deposit and at the same time assuring the bank officer that his personal checks were fully funded. Having already gained the trust and confidence of the officers of the bank because of his past transactions, the bank's officer would always accommodate his request. After his requests are granted which is done by way of the bank officer affixing his signature on the personal checks, private respondent Cresencio Velez would then deposit his priorly approved personal checks to his current account and at the same time withdraw sums of money from said current account by way of petitioner bank's manager's check. Private respondent would then deposit petitioner bank's manager's check to his various current accounts in other commercial banks to cover his previously deposited unfunded personal checks with petitioner bank. Naturally, petitioner bank and its officers never discovered that his personal check deposits were unfunded. On the contrary, it gave the petitioner bank the false impression that private respondent's construction business was doing very well and that he was one big client who could be trusted. This deceptive and criminal scheme he did every banking day without fail from September 4, 1985 up to March 11, 1986. The amounts that he was depositing and withdrawing during this period (September 4, 1985 to March 11, 1986) progressively became bigger. It started at ₱46,000.00 on September 4, 1985 and on March 11, 1986 the amount of deposit and withdrawal already reached over ₱3,000,000.00. At this point in time (March 11, 1986), the private respondent Cresencio Velez presumably already feeling that sooner or later he would be caught and that he already wanted to cash in on his evil scheme, decided to run away with petitioner's money. On March 11, 1986, he deposited various unfunded personal checks totalling ₱3,095,000.00 and requested a bank officer that the same be credited as cash and after securing the approval of said bank officer, deposited his various personal checks in the amount of ₱3,095,000.00 with his current account and at the same time withdrew the sum of ₱3,244,000.00 in the form of petitioner's manager's check. Instead of using the proceeds of his withdrawals to cover his unfunded personal checks, he ran away with petitioner bank's money. Thus, private respondent Cresencio Velez's personal checks deposited with petitioner bank on March 11, 1986 in the total aggregate amount of ₱3,095,000.00 bounced. The checks bounced after said personal checks were made

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the substantial basis of his withdrawing the sum of ₱3,244,000.00 from his current account with petitioner bank."[3]

Subsequently, on August 19, 1986, petitioner bank filed a criminal complaint against private respondents for violation of *Batas Pambansa Blg.* 22 (Bouncing Checks Law) and estafa (six counts) under Article 315 par. 2(d) of the Revised Penal Code. On April 28, 1988, the investigating fiscal recommended the filing of an information against private respondents for violations of the mentioned laws.

On June 13, 1989, petitioner bank submitted its answer to the complaint filed by private respondents. In the Order dated February 20, 1990, the case was set for pre-trial on March 30, 1990 and petitioner bank was directed to submit its pre-trial brief at least 3 days before the pre-trial conference. Petitioner bank only filed its pre-trial brief on March 30, 1990.

On March 30, 1990, the date of the pre-trial conference, counsel for petitioner bank appeared, presenting a special power of attorney executed by Citibank officer Florencia Tarriela in favor of petitioner bank's counsel, the J.P. Garcia & Associates, to represent and bind petitioner bank at the pre-trial conference of the case at bar.

Inspite of this special power of attorney, counsel for private respondents orally moved to declare petitioner bank as in default on the ground that the special power of attorney was not executed by the Board of Directors of Citibank. Petitioner bank was then required to file a written opposition to this oral motion to declare it as in default. In said opposition petitioner bank attached another special power of attorney made by William W. Ferguson, Vice President and highest ranking officer of Citibank, Philippines, constituting and appointing the J.P. Garcia & Associates to represent and bind the BANK at the pre-trial conference and/ or trial of the case of "*Cresencio Velez, et al. vs. Citibank, N.A.*"[4] In an Order dated April 23, 1990, respondent judge denied

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[3] Petition, pp. 2-4; *Rollo*, pp. 4-6.

[4] Annex "B" of Annex "F" of Petition, *Rollo*, p. 77.

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private respondents' oral motion to declare petitioner bank as in default and set the continuation of the pre-trial conference for May 2, 1990.

On the scheduled pre-trial conference, private respondents reiterated, by way of asking for reconsideration, their oral motion to declare petitioner bank as in default for its failure to appear through an authorized agent and that the documents presented are not in accordance with the requirements of the law. Petitioner bank again filed on May 14, 1990 its opposition thereto, stating as follows:

"x x x While it has been the practice of Citibank to appoint its counsels as its attorney-in-fact in civil cases because it considers said counsels equivalent to a Citibank employee, yet, in order to avoid further arguments on the matter, the defendant Citibank will secure another power of attorney from Mr. William W. Ferguson in favor of its employee/s who will represent the defendant Citibank in the pre-trial conferences of this case. As soon as the said special power of attorney is secured, the defendant will present it before this Honorable Court and in pursuance therewith, the defendant hereby makes a reservation to present such document as soon as available."[5]

In compliance with the above promise, petitioner bank filed a manifestation, dated May 23, 1990, attaching therewith a special power of attorney executed by William W. Ferguson in favor of Citibank employees to represent and bind Citibank on the pre-trial conference of the case at bar.[6]

On August 15, 1990, respondent judge issued an order declaring petitioner bank as in default. This order, received by petitioner bank on September 27, 1990, cited the following as reason for the declaration of default:

"Defendant-bank, although a foreign corporation, is bound by Philippine laws when doing and conducting business in the Philippines (Sec. 129, B.P. Blg. 68), and its corporate powers could only be

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[5] Annex "H" of Petition, pp. 3-4; *Rollo*, pp. 91-92.

[6] Roberto Reyes, Nemesio Solomon, Jr., Aimee Yu and Tomas Yap. Citibank employees duly constituted as attorneys-in-fact.

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exercised by its Board of Directors (Sec. 23, B.P. Blg. 68). The exercise by the Board of Directors of such power could only be valid if it bears the approval of the majority of the Board (Sec. 25, par. 2, Corporation Code). The records does not show the requisite document. The alleged authority (Special Power of Attorney, Annex "A") executed by Mr. William W. Ferguson in favor of the alleged Citibank employees, assuming the same to be a delegable authority, to represent the defendant in the pre-trial conference, made no mention of J.P. Garcia & Associates as one of the employees of the defendant.

It stands to reason therefore, that the defendant-bank has no proper representation during the pre-trial conference on May 2, 1990 for purposes of Sec. 2, Rule 20 of the Rules of Court."[7]

On October 1, 1990, petitioner bank filed a motion for reconsideration of the above order but it was denied on December 10, 1990.

Petitioner bank then filed a petition for *certiorari*, prohibition and *mandamus* with preliminary injunction and/or temporary restraining order with the Court of Appeals. On June 26, 1991, the Court of Appeals dismissed the petition on the following grounds:

"x x x In the first place, petitioner admitted that it did not and could not present a Board resolution from the bank's Board of Directors appointing its counsel, Atty. Julius Z. Neri, as its attorney-in-fact to represent and bind it during the pre-trial conference of this case. This admission is contained on pages 12 and 13 of the instant petition.

In the second place, the "By-Laws" of petitioner which on its face authorizes (sic) the appointment of an attorney-in-fact to represent it in any litigation, has not been approved by the Securities and Exchange Commission, as required by Section 46 of the Corporation Code of the Philippines. Apparently, the "By-Laws" in question was (sic) approved under the laws of the United States, but there is no showing that the same was given the required *imprimatur* by the Securities and Exchange Commission. Since petitioner is a foreign corporation doing business in the Philippines, it is bound by all laws, rules and regulations applicable to domestic corporations (Sec. 129, Corporation Code).

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[7] Order, Annex "J" of Petition, p. 2; *Rollo*, p. 98.

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In the third place, no special power of attorney was presented authorizing petitioner's counsel of record, Atty. Julius Neri and/or J.P. Garcia Associates, to appear for and in behalf of petitioner during the pre-trial.

What petitioner exhibited to the court *a quo* was a general power of attorney given to one William W. Ferguson who in turn executed a power of attorney in favor of five (5) (sic) Citibank employees to act as attorney-in-fact in Civil Case No. CEB-4751. Yet, during the pre-trial not one of said employees appeared, except counsel who is not even a bank employee.

Furthermore, even assuming the validity of the power of attorney issued by petitioner in favor of Ferguson as well as the power of attorney he issued to five (5) (sic) Citibank employees, said power of attorney has not been shown to be a *Special Power of Attorney* precisely intended not only to represent the bank at the pre-trial of the case on a certain date but also to enter into any compromise as required in paragraph 3, Article 1878 of the Civil Code and Section 1 (a), Rule 20, Rules of Court."[8]

Hence, this instant petition.

Petitioner bank contends that no board resolution was necessary for its legal counsel, Atty. Julius Z. Neri, or Citibank employees to act as its attorney-in-fact in the case at bar because petitioner bank's by-laws grant to its Executing Officer and Secretary Pro-Tem the power to delegate to a Citibank officer, in this case William W. Ferguson, the authority to represent and defend the bank and its interests.

Furthermore, it contends that the Court of Appeals erred in holding that the by-laws of petitioner bank cannot be given effect because it did not have the *imprimatur* of the Securities and Exchange Commission (SEC) as required by Section 46 of the Corporation Code of the Philippines.

Private respondents refute both contentions. They assail the authority of petitioner bank's legal counsel to appear at the pre-trial conference on two grounds, namely: first, that the

[8] CA Decision, Annex "A" of Petition, pp. 4-5; *Rollo*, pp. 42-43.

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authority did not come from the Board of Directors which has the exclusive right to exercise corporate powers; and second, that the authority granted to the Executing Officer in the by-laws was ineffective because the same were not submitted to, nor approved by, the SEC.

There are thus two issues in this case. First, whether a resolution of the board of directors of a corporation is always necessary for granting authority to an agent to represent the corporation in court cases. And second, whether the by-laws of the petitioner foreign corporation which has previously been granted a license to do business in the Philippines, are effective in this jurisdiction. If the by-laws are valid and a board resolution is not necessary as petitioner bank claims, then the declaration of default would have no basis.

In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.

Section 23 of the Corporation Code of the Philippines in part provides:

"SEC. 23. *The board of directors or trustees. Unless otherwise provided in this Code,* the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

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x x x x x x x x x"
(Italics supplied).

Thus, although as a general rule, all corporate powers are to be exercised by the board of directors, exceptions are made where the Code provides otherwise.

Section 25 of said Code provides that the directors of the corporation shall elect its corporate officers, and further provides as follows:

"SEC. 25. *Corporate officers; quorum.* — x x x. The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and by the by-laws of the corporation x x x."

Furthermore, Section 47 of the same Code enumerates what may be contained in the by-laws, among which is a provision for the "qualifications, duties and compensation of directors or trustees, *officers and employees.*" (Italics supplied.)

Taking all the above provisions of law together, it is clear that corporate powers may be directly conferred upon corporate officers or agents by statute, the articles of incorporation, the by-laws or by resolution or other act of the board of directors. In addition, an officer who is not a director may also appoint other agents when so authorized by the by-laws or by the board of directors. Such are referred to as express powers.[9] There are also powers incidental to express powers conferred. It is a fundamental principle in the law of agency that every delegation of authority, whether general or special, carries with it, unless the contrary be expressed, implied authority to do all of those acts, naturally and ordinarily done in such cases, which are reasonably necessary and proper to be done in order to carry into effect the main authority conferred.[10]

Since the by-laws are a source of authority for corporate officers and agents of the corporation, a resolution of the Board of Directors of Citibank appointing an attorney in fact to represent

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[9] FLETCHER, *CYCLOPEDIA OF CORPORATIONS* 320.

[10] *Id.*, p. 322.

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and bind it during the pre-trial conference of the case at bar is not necessary because its by-laws allow its officers, the Executing Officer and the Secretary Pro-Tem,[**] to execute a power of attorney to a designated bank officer, William W. Ferguson in this case, clothing him with authority to direct and manage corporate affairs. The relevant provision in the general power of attorney granted to him are as follows:

"A. That the Executing Officer and the Secretary Pro-Tem are of full age, competent to act in the premises, to me personally known, and *that they are authorized to execute this instrument by virtue of the powers granted to them pursuant to the By-Laws of the Bank and the laws of the United States of America*, and that the Executing Officer said that he, on the one hand, hereby revokes and cancels any instrument of power of attorney previously executed on behalf of the Bank for use in the PHILIPPINES, in favor of WILLIAM W. FERGUSON (hereinafter referred to as the "Attorney-in-fact"), of legal age, a Banker, and now residing in the PHILIPPINES, and that he (the Executing Officer), on the other hand, does hereby authorize and empower the Attorney-in-fact, acting in the name or on behalf of the Bank, or any of its Branches, or any interest it or they may have or represent, said revocation and authorization to be effective as of this date as follows:

x x x x x x x x x

XVII. *To represent and defend the Bank and its interest before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceeding in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever* x x x.

x x x x x x x x x

XXI. *To substitute or delegate this Power of Attorney in whole or in part in favor of such one or more employees of the Bank*, as he may deem advisable, but without divesting himself of any of the powers granted to him by this Power of Attorney; and to grant and

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[**] Jane Fuchs and Steinberg, respectively.

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execute in favor of any one or more such employees, powers of attorney containing all or such authorizations, as he may deem advisable x x x.[11]

Since paragraph XXI above specifically allows Ferguson to delegate his powers in whole or in part, there can be no doubt that the special power of attorney in favor, first, of J.P. Garcia & Associates and later, of the bank's employees, constitutes a valid delegation of Ferguson's express power (under paragraph XVII above) to represent petitioner bank in the pre-trial conference in the lower court.

This brings us to the second query: whether petitioner bank's by-laws, which constitute the basis for Ferguson's special power of attorney in favor of petitioner bank's legal counsel are effective, considering that petitioner bank has been previously granted a license to do business in the Philippines.

The Court of Appeals relied on Section 46 of the Corporation Code to support its conclusion that the by-laws in question are without effect because they were not approved by the SEC. Said section reads as follows:

"SEC. 46. A*doption of by-laws.* — Every corporation formed under this Code must, within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the members in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the inspection of the stockholders or members during office hours; and a copy thereof, duly certified to by a majority of the directors or trustees and countersigned by the secretary of the corporation, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation.

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[11] Annex "C" of Annex "F" of Petition, pp. 4-5; *Rollo*, pp. 177, 180-181.

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Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code."

A careful reading of the above provision would show that a corporation can submit its by-laws, prior to incorporation, or within one month after receipt of official notice of the issuance of its certificate of incorporation by the SEC. When the third paragraph of the above provision mentions "*in all cases,*" it can only refer to these two options; *i.e.*, whether adopted prior to incorporation or within one month after incorporation, the by-laws shall be effective only upon the approval of the SEC. But even more important, said provision starts with the phrase "Every corporation formed under this Code," which can only refer to corporations incorporated in the Philippines. Hence, Section 46, in so far as it refers to the effectivity of corporate by-laws, applies only to domestic corporations and not to foreign corporations.

On the other hand, Section 125 of the same Code requires that a foreign corporation applying for a license to transact business in the Philippines must submit, among other documents, to the SEC, a copy of its articles of incorporation and *by-laws*, certified in accordance with law. Unless these documents are submitted, the application cannot be acted upon by the SEC. In the following section, the Code specifies when the SEC can grant the license applied for. Section 126 provides in part:

"SEC. 126. *Issuance of a license.* — If the Securities and Exchange Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to the applicant to transact business in the Philippines for the purpose or purposes specified in such license. x x x."

Since the SEC will grant a license only when the foreign corporation has complied with all the requirements of law, it

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follows that when it decides to issue such license, it is satisfied that the applicant's by-laws, among the other documents, meet the legal requirements. This, in effect, is an approval of the foreign corporations by-laws. It may not have been made in express terms, still it is clearly an approval. Therefore, petitioner bank's by-laws, though originating from a foreign jurisdiction, are valid and effective in the Philippines.

In pursuance of the authority granted to him by petitioner bank's by-laws, its Executing Officer appointed William W. Ferguson, a resident of the Philippines, as its Attorney-in-Fact empowering the latter, among other things, to represent petitioner bank in court cases. In turn, William W. Ferguson executed a power of attorney in favor of J.P. Garcia & Associates (petitioner bank's counsel) to represent petitioner bank in the pre-trial conference before the lower court. This act of delegation is explicity authorized by paragraph XXI of his own appointment, which we have previously cited.

It is also error for the Court of Appeals to insist that the special power of attorney, presented by petitioner bank authorizing its counsel, Atty. Julius Neri and/or J.P. Garcia & Associates, to appear for and in behalf of petitioner bank during the pre-trial, is not valid. The records do not sustain this finding. We quote with approval the contention of petitioner bank as it is borne by the records, to wit:

"x x x The records of this case would show that at the start, the petitioner, thru counsel, presented a special power of attorney executed by then Citibank Officer Florencio (*sic*) J. Tarriela which was marked as Exhibit "1" in the pre-trial of this case x x x. This is precisely the reason why the court denied, in an Order dated April 23, 1990 x x x the private respondent's oral motion to declare the defendant in fault. The said special power of attorney executed by Florencio (*sic*) J. Tarriela was granted by Mr. Rafael B. Buenaventura, who was then the Senior Vice-President of Citibank and the highest ranking office of Citibank in the Philippines. Considering that at the time of the presentation of the said special power of attorney Rafael B. Buenaventura was no longer connected with Citibank, the petitioner again presented another special power of attorney executed by William W. Ferguson in favor of J.P. Garcia & Associates, x x x.

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Finding that the authority of William W. Ferguson to delegate his authority to act for and in behalf of the bank in any civil suit is limited to individuals who are employees of the bank the petitioner again on May 23, 1990 presented another special power of attorney dated May 16, 1990 wherein William W. Ferguson appointed as attorney-in-fact the following employees of petitioner, namely: Roberto Reyes, Nemesio Solomon, Aimee Yu and Tomas Yap. The said special power of attorney was filed and presented by the petitioner through its Manifestation filed in the Trial Court on May 23, 1990, x x x."[12]

Under Rule 138, Section 23 of the Rules of Court, an attorney has authority to bind his client in any case by an agreement in relation thereto made in writing, and this authority would include taking appeals and all matters of ordinary judicial procedure. But he cannot, without special authority, compromise his client's litigation or receive anything in discharge of a client's claim but the full amount in cash. The special powers of attorney separately executed by Florencia Tarriela and William W. Ferguson granted to J.P. Garcia & Associates are very explicit in their terms as to the counsel's authority in the case at bar. We quote the relevant provisions of the special powers of attorney showing sufficient compliance with the requirements of Section 23, Rule 138, to wit:

"That the BANK further authorized the said J.P. GARCIA & ASSOCIATES to enter into an amicable settlement, stipulation of facts and/or compromise agreement with the party or parties involved under such terms and conditions which the said J.P. GARCIA & ASSOCIATES may deem reasonable (under parameters previously defined by the principal) and execute and sign said documents as may be appropriate.

HEREBY GIVING AND GRANTING unto J.P. GARCIA & ASSOCIATES full power and authority whatsoever requisite necessary or proper to be done in or about the premises, as fully to all intents and purposes as the BANK might or could lawfully do or cause to be done under and by virtue of these presents."[13]

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[12] *Supra*, note 3 at pp. 22-23; *Rollo*, pp. 24-25.

[13] *Rollo*, pp. 69, 77.

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It is also error on the part of the Court of Appeals to state that the power of attorney given to the four (4) Citibank employees is not a special power of attorney as required in paragraph 3, Article 1878 of the Civil Code and Section 1 (a), Rule 20 of the Rules of Court. In the case of *Tropical Homes, Inc. vs. Villaluz*,[14] the special power of attorney executed by petitioner bank therein contained the following pertinent terms — "to appear for and in its behalf in the above-entitled case in all circumstances where its appearance is required and to bind it in all said instances." The court ruled that:

"Although the power of attorney in question does not specifically mention the authority of petitioner's counsel to appear and bind the petitioner *at the pre-trial conference*, the terms of said power of attorney are comprehensive enough as to include the authority to appear for the petitioner at the pre-trial conference."

In the same manner, the power of attorney granted to petitioner bank's employees should be considered a special power of attorney. The relevant portion reads:

"WHEREAS, the Bank is the Defendant in Civil Case No. CEB-4751, entitled "*Cresencio Velez, et al. vs. Citibank, N.A.*," pending before the Regional Trial Court of Cebu City, Branch X;

NOW, THEREFORE, under and by virtue of Article XXI of the Power of Attorney executed by the Bank in favor of the Attorney-in-Fact (Annex "A"), which provision is quoted above, the Attorney-in-Fact has nominated, designated and appointed, as by these presents he nominates, designates and appoints, as his substitutes and delegates, with respect to the said Power of Attorney, ROBERTO REYES, Vice President and/or NEMESIO SOLOMON, JR., Manager, AIMEE YU, Assistant Vice President and/or TOMAS YAP, Assistant Manager (hereinafter referred to as the "DELEGATES"), all of legal age, citizens of the Republic of the Philippines and with business address at Citibank Center, Paseo de Roxas, Makati, Metro Manila, Philippines, the Attorney-in-Fact hereby granting, conferring and delegating such authorities and binding the Bank in the Pre-Trial Conference and/or Trial of the abovementioned case, pursuant to

[14] 170 SCRA 577, 582 (1989).

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Rule 20 of the Revised Rules of Court, to the DELEGATES. The attorney-in-Fact furthermore hereby ratifying and confirming all that the DELEGATES shall lawfully do or cause to be done under and by virtue of these presents."[15]

From the outset, petitioner bank showed a willingness, if not zeal, in pursuing and defending this case. It even acceded to private respondent's insistence on the question of proper representation during the pre-trial by presenting not just one, but three, special powers of attorney. Initially, the special power of attorney was executed by Florencia Tarriela in favor of J.P. Garcia & Associates, petitioner bank's counsel. Private respondents insisted that this was not proper authority required by law. To avoid further argument, a second special power of attorney was presented by petitioner bank, executed by William W. Fersugon, the highest ranking officer of Citibank in the Philippines, in favor of its counsel, J.P. Garcia & Associates. But since the authority to delegate of William A. Fersugon in favor of an agent is limited to bank employees, another special power of attorney from Wiliam W. Fersugon in favor of the Citibank employees was presented. But the respondent trial court judge disregarded all these and issued the assailed default order. There is nothing to show that petitioner bank "miserably failed to oblige"; on the contrary, three special powers of attorney manifest prudence and diligence on petitioner bank's part.

In fact, there was no need for the third power of attorney because we believe that the second power of attorney was sufficient under the by-law provision authorizing Fersugon to delegate any of his functions to any one or more employees of the petitioner bank. A reasonable interpretation of this provision would include an appointment of a legal counsel to represent the bank in court, for, under the circumstances, such legal counsel can be considered, and in fact was considered by the petitioner bank, an employee for a special purpose. Furthermore, Fersugon, who heads the Philippine office thousands of miles away from its main office in the United States, must be understood to have

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[15] Annex "A" of Annex "I" of Petition, p. 2; *Rollo*, p. 95.

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sufficient powers to act promptly in order to protect the interests of his principal.

We reiterate the previous admonitions of this Court against "precipitate orders of default as these have the effect of denying the litigant the chance to be heard. While there are instances, to be sure, when a party may be properly defaulted, these should be the exceptions rather than the rule and should be allowed only in clear cases of an obstinate refusal or inordinate neglect to comply with the orders of the court. Absent such a showing, the party must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law."[16]

Considering further that petitioner bank has a meritorious defense and that the amount in contest is substantial, the litigants should be allowed to settle their claims on the arena of the court based on a trial on the merits rather than on mere technicalities.

WHEREFORE, in view of the foregoing, the petition is hereby *GRANTED*. The decision of the Court of Appeals dated June 26, 1991 and its resolution denying the motion for reconsideration of petitioner bank dated September 26, 1991 are both *REVERSED* and *SET ASIDE*. The order of default issued on August 15, 1990 in Civil Case CEB-4751 of the Regional Trial Court of Cebu is *ANNULLED* and *SET ASIDE* and the case is hereby *REMANDED* to the court of origin for further proceedings.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, and *Nocon, JJ.*, concur.

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[16] *Leyte vs. Cusi, Jr.*, 152 SCRA 496, 497 (1987), also cited in *Tropical Homes, Inc. vs. Villaluz, supra,* note 14.