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FIRST DIVISION

[G.R. No. 144805. June 8, 2006]

EDUARDO V. LITONJUA, JR. and ANTONIO K. LITONJUA, *petitioners, vs.* **ETERNIT CORPORATION (now ETERTON MULTI-RESOURCES CORPORATION), ETEROUTREMER, S.A. and FAR EAST BANK & TRUST COMPANY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS OF TRIAL COURT, AS AFFIRMED BY COURT OF APPEALS, CONCLUSIVE ON SUPREME COURT. — The petition has no merit. Anent the first issue, we agree with the contention of respondents that the issues raised by petitioner in this case are factual. Whether or not Marquez, Glanville, and Delsaux were authorized by respondent EC to act as its agents relative to the sale of the properties of respondent EC, and if so, the boundaries of their authority as agents, is a question of fact. In the absence of express written terms creating the relationship of an agency, the existence of an agency is a fact question. Whether an agency by estoppel was created or whether a person acted within the bounds of his apparent authority, and whether the principal is estopped to deny the apparent authority of its agent are, likewise, questions of fact to be resolved on the basis of the evidence on record. The findings of the trial court on such issues, as affirmed by the CA, are conclusive on the Court, absent evidence that the trial and appellate courts ignored, misconstrued, or misapplied facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.

2. ID.; ID.; ID.; SUPREME COURT NOT A TRIER OF FACTS; EXCEPTIONS; NOT ESTABLISHED IN CASE AT BAR. — It must be stressed that issues of facts may not be raised in the Court under Rule 45 of the Rules of Court because the Court is not a trier of facts. It is not to re-examine and assess the

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evidence on record, whether testimonial and documentary. There are, however, recognized exceptions where the Court may delve into and resolve factual issues, namely: (1) When the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) 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; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. We have reviewed the records thoroughly and find that the petitioners failed to establish that the instant case falls under any of the foregoing exceptions. Indeed, the assailed decision of the Court of Appeals is supported by the evidence on record and the law. It was the duty of the petitioners to prove that respondent EC had decided to sell its properties and that it had empowered Adams, Glanville and Delsaux or Marquez to offer the properties for sale to prospective buyers and to accept any counter-offer. Petitioners likewise failed to prove that their counter-offer had been accepted by respondent EC, through Glanville and Delsaux. It must be stressed that when specific performance is sought of a contract made with an agent, the agency must be established by clear, certain and specific proof.

3. **COMMERCIAL LAW; CORPORATIONS; SEPARATE AND DISTINCT JURIDICAL PERSON; POWERS OF THE BOARD OF DIRECTORS OR TRUSTEES. —** Section 23 of *Batas Pambansa Bilang 68*, otherwise known as the Corporation Code of the Philippines, 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

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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. Indeed, a corporation is a juridical person separate and distinct from its members or stockholders and is not affected by the personal rights, obligations and transactions of the latter. It may act only through its board of directors or, when authorized either by its by-laws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, by-laws, or relevant provisions of law.

4. ID.; ID.; **CORPORATE POWERS AND CAPACITY; SELLING OR CONVEYANCE OF REAL PROPERTIES, LIMITATIONS; CORPORATE PROPERTIES MAY NOT BE SOLD WITHOUT EXPRESS AUTHORITY OF BOARD OF DIRECTORS; LACK OF WRITTEN DELEGATION/AUTHORIZATION, EFFECT OF.** — Under Section 36 of the Corporation Code, a corporation may sell or convey its real properties, subject to the limitations prescribed by law and the Constitution, as follows: SEC. 36. *Corporate powers and capacity.* – Every corporation incorporated under this Code has the power and capacity: x x x x 7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution. The property of a corporation, however, is not the property of the stockholders or members, and as such, may not be sold without express authority from the board of directors. Physical acts, like the offering of the properties of the corporation for sale, or the acceptance of a counter-offer of prospective buyers of such properties and the execution of the deed of sale covering such property, can be performed by the corporation only by officers or agents duly authorized for the purpose by corporate by-laws or by specific acts of the board of directors. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are not

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binding on the corporation. While a corporation may appoint agents to negotiate for the sale of its real properties, the final say will have to be with the board of directors through its officers and agents as authorized by a board resolution or by its by-laws. An unauthorized act of an officer of the corporation is not binding on it unless the latter ratifies the same expressly or impliedly by its board of directors. Any sale of real property of a corporation by a person purporting to be an agent thereof but without written authority from the corporation is null and void. The declarations of the agent alone are generally insufficient to establish the fact or extent of his/her authority.

5. CIVIL LAW; AGENCY; DEFINED; AGENCY EXPRESSED OR IMPLIED FROM THE ACT OF THE PRINCIPAL; EXCEPTION; IN THE CONVEYANCE OF IMMOVABLE PROPERTY, AUTHORITY SHOULD BE IN WRITING OTHERWISE IT IS VOID; NO AUTHORITY FROM THE BOARD OF DIRECTORS OF RESPONDENT ETERNIT CORPORATION IN CASE AT BAR. — By the contract of agency, a person binds himself to render some service or to do something in representation on behalf of another, with the consent or authority of the latter. Consent of both principal and agent is necessary to create an agency. The principal must intend that the agent shall act for him; the agent must intend to accept the authority and act on it, and the intention of the parties must find expression either in words or conduct between them. An agency may be expressed or implied from the act of the principal, from his silence or lack of action, or his failure to repudiate the agency knowing that another person is acting on his behalf without authority. Acceptance by the agent may be expressed, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances. Agency may be oral unless the law requires a specific form. However, to create or convey real rights over immovable property, a special power of attorney is necessary. Thus, *when a sale of a piece of land or any portion thereof is through an agent, the authority of the latter shall be in writing, otherwise, the sale shall be void.* In this case, the petitioners as plaintiffs below, failed to adduce in evidence any resolution of the Board of Directors of respondent EC empowering Marquez, Glanville or Delsaux as its agents, to sell, let alone offer for sale, for and in its behalf, the eight

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parcels of land owned by respondent EC including the improvements thereon. The bare fact that Delsaux may have been authorized to sell to Ruperto Tan the shares of stock of respondent ESAC, on June 1, 1997, cannot be used as basis for petitioners' claim that he had likewise been authorized by respondent EC to sell the parcels of land. Moreover, the evidence of petitioners shows that Adams and Glanville acted on the authority of Delsaux, who, in turn, acted on the authority of respondent ESAC, through its Committee for Asia, the Board of Directors of respondent ESAC, and the Belgian/Swiss component of the management of respondent ESAC. As such, Adams and Glanville engaged the services of Marquez to offer to sell the properties to prospective buyers. Thus, on September 12, 1986, Marquez wrote the petitioner that he was authorized to offer for sale the property for ₱27,000,000.00 and the other terms of the sale subject to negotiations. When petitioners offered to purchase the property for ₱20,000,000.00, through Marquez, the latter relayed petitioners' offer to Glanville; Glanville had to send a telex to Delsaux to inquire the position of respondent ESAC to petitioners' offer. However, as admitted by petitioners in their Memorandum, Delsaux was unable to reply immediately to the telex of Glanville because Delsaux had to wait for confirmation from respondent ESAC. When Delsaux finally responded to Glanville on February 12, 1987, he made it clear that, based on the "Belgian/Swiss decision" the final offer of respondent ESAC was US$1,000,000.00 plus ₱2,500,000.00 to cover all existing obligations prior to final liquidation. The offer of Delsaux emanated only from the "Belgian/Swiss decision," and not the entire management or Board of Directors of respondent ESAC. While it is true that petitioners accepted the counter-offer of respondent ESAC, respondent EC was not a party to the transaction between them; hence, EC was not bound by such acceptance. While Glanville was the President and General Manager of respondent EC, and Adams and Delsaux were members of its Board of Directors, the three acted for and in behalf of respondent ESAC, *and not as duly authorized agents of respondent EC*; a board resolution evincing the grant of such authority is needed to bind EC to any agreement regarding the sale of the subject properties. Such board resolution is not a mere formality but is a condition *sine qua non* to bind respondent EC. Admittedly, respondent ESAC owned 90% of the shares of stocks of respondent EC; however, the mere fact

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that a corporation owns a majority of the shares of stocks of another, or even all of such shares of stocks, taken alone, will not justify their being treated as one corporation.

6. **ID.; ID.; AGENT-PRINCIPAL RELATIONSHIP, WHEN CONSTITUTED AND EFFECT OF; PERSONS DEALING WITH ASSUMED AGENT BOUND AT THEIR PERIL; REAL ESTATE BROKER, DISTINGUISHED FROM AGENT; AUTHORITY TO FIND PURCHASER OF REAL PROPERTY DOES NOT INCLUDE AUTHORITY TO SELL.** — It bears stressing that in an agent-principal relationship, the personality of the principal is extended through the facility of the agent. In so doing, the agent, by legal fiction, becomes the principal, authorized to perform all acts which the latter would have him do. Such a relationship can only be effected with the consent of the principal, which must not, in any way, be compelled by law or by any court. The petitioners cannot feign ignorance of the absence of any regular and valid authority of respondent EC empowering Adams, Glanville or Delsaux to offer the properties for sale and to sell the said properties to the petitioners. A person dealing with a known agent is not authorized, under any circumstances, blindly to trust the agents; statements as to the extent of his powers; such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority. The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it. In this case, the petitioners failed to discharge their burden; hence, petitioners are not entitled to damages from respondent EC. It appears that Marquez acted not only as real estate broker for the petitioners but also as their agent. As gleaned from the letter of Marquez to Glanville, on February 26, 1987, he confirmed, for and in behalf of the petitioners, that the latter had accepted such offer to sell the land and the improvements thereon. However, we agree with the ruling of the appellate court that Marquez had no authority to bind respondent EC to sell the subject properties. A real estate broker is one who negotiates the sale of real properties. His business, generally speaking, is only to find a

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purchaser who is willing to buy the land upon terms fixed by the owner. He has no authority to bind the principal by signing a contract of sale. Indeed, an authority to find a purchaser of real property does not include an authority to sell.

7. ID.; ID.; AGENCY BY ESTOPPEL; ELEMENTS OF; PROOF LACKING IN THIS CASE. — Equally barren of merit is petitioners' contention that respondent EC is estopped to deny the existence of a principal-agency relationship between it and Glanville or Delsaux. For an agency by estoppel to exist, the following must be established: (1) the principal manifested a representation of the agent's authority or knowingly allowed the agent to assume such authority; (2) the third person, in good faith, relied upon such representation; (3) relying upon such representation, such third person has changed his position to his detriment. An agency by estoppel, which is similar to the doctrine of apparent authority, requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance. Such proof is lacking in this case. In their communications to the petitioners, Glanville and Delsaux positively and unequivocally declared that they were acting for and in behalf of respondent ESAC.

8. ID.; ID.; NO RATIFICATION MADE IN CASE AT BAR. — Neither may respondent EC be deemed to have ratified the transactions between the petitioners and respondent ESAC, through Glanville, Delsaux and Marquez. The transactions and the various communications *inter se* were never submitted to the Board of Directors of respondent EC for ratification.

APPEARANCES OF COUNSEL

Jimenez Gonzalez Liwanag Belo, Valdez Caluya & Fernandez for petitioners.

Eufemio Law Offices for Eternit Corporation and Eteroutremer, S.A.

Benedicto Verzosa Gealogo & Burkley Law Offices for FEBTC.

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DECISION

CALLEJO, SR., *J.*:

On appeal *via* a Petition for Review on *Certiorari* is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 51022, which affirmed the Decision of the Regional Trial Court (RTC), Pasig City, Branch 165, in Civil Case No. 54887, as well as the Resolution[2] of the CA denying the motion for reconsideration thereof.

The Eternit Corporation (EC) is a corporation duly organized and registered under Philippine laws. Since 1950, it had been engaged in the manufacture of roofing materials and pipe products. Its manufacturing operations were conducted on eight parcels of land with a total area of 47,233 square meters. The properties, located in Mandaluyong City, Metro Manila, were covered by Transfer Certificates of Title Nos. 451117, 451118, 451119, 451120, 451121, 451122, 451124 and 451125 under the name of Far East Bank & Trust Company, as trustee. Ninety (90%) percent of the shares of stocks of EC were owned by Eteroutremer S.A. Corporation (ESAC), a corporation organized and registered under the laws of Belgium.[3] Jack Glanville, an Australian citizen, was the General Manager and President of EC, while Claude Frederick Delsaux was the Regional Director for Asia of ESAC. Both had their offices in Belgium.

In 1986, the management of ESAC grew concerned about the political situation in the Philippines and wanted to stop its operations in the country. The Committee for Asia of ESAC instructed Michael Adams, a member of EC's Board of Directors, to dispose of the eight parcels of land. Adams engaged the services of realtor/broker Lauro G. Marquez so that the properties could be offered for sale to prospective buyers. Glanville later showed the properties to Marquez.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Fermin A. Martin, Jr. and Salvador J. Valdez, Jr. (retired), concurring; *rollo*, pp. 40-53.

[2] *Rollo*, pp. 54-55.

[3] *Id.* at 11, 61.

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Marquez thereafter offered the parcels of land and the improvements thereon to Eduardo B. Litonjua, Jr. of the Litonjua & Company, Inc. In a Letter dated September 12, 1986, Marquez declared that he was authorized to sell the properties for ₱27,000,000.00 and that the terms of the sale were subject to negotiation.[4]

Eduardo Litonjua, Jr. responded to the offer. Marquez showed the property to Eduardo Litonjua, Jr., and his brother Antonio K. Litonjua. The Litonjua siblings offered to buy the property for ₱20,000,000.00 cash. Marquez apprised Glanville of the Litonjua siblings' offer and relayed the same to Delsaux in Belgium, but the latter did not respond. On October 28, 1986, Glanville telexed Delsaux in Belgium, inquiring on his position/ counterproposal to the offer of the Litonjua siblings. It was only on February 12, 1987 that Delsaux sent a telex to Glanville stating that, based on the "Belgian/Swiss decision," the final offer was US$1,000,000.00 and ₱2,500,000.00 to cover all existing obligations prior to final liquidation."[5]

Marquez furnished Eduardo Litonjua, Jr. with a copy of the telex sent by Delsaux. Litonjua, Jr. accepted the counterproposal of Delsaux. Marquez conferred with Glanville, and in a Letter dated February 26, 1987, confirmed that the Litonjua siblings had accepted the counter-proposal of Delsaux. He also stated that the Litonjua siblings would confirm full payment within 90 days after execution and preparation of all documents of sale, together with the necessary governmental clearances.[6]

The Litonjua brothers deposited the amount of US$1,000,000.00 with the Security Bank & Trust Company, Ermita Branch, and drafted an Escrow Agreement to expedite the sale.[7]

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[4] *Id.* at 394-395.

[5] *Id.* at 396.

[6] *Id.* at 397-398.

[7] *Id.* at 240.

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Sometime later, Marquez and the Litonjua brothers inquired from Glanville when the sale would be implemented. In a telex dated April 22, 1987, Glanville informed Delsaux that he had met with the buyer, which had given him the impression that "he is prepared to press for a satisfactory conclusion to the sale."[8] He also emphasized to Delsaux that the buyers were concerned because they would incur expenses in bank commitment fees as a consequence of prolonged period of inaction.[9]

Meanwhile, with the assumption of Corazon C. Aquino as President of the Republic of the Philippines, the political situation in the Philippines had improved. Marquez received a telephone call from Glanville, advising that the sale would no longer proceed. Glanville followed it up with a Letter dated May 7, 1987, confirming that he had been instructed by his principal to inform Marquez that "the decision has been taken at a Board Meeting not to sell the properties on which Eternit Corporation is situated."[10]

Delsaux himself later sent a letter dated May 22, 1987, confirming that the ESAC Regional Office had decided not to proceed with the sale of the subject land, to wit:

May 22, 1987
Mr. L.G. Marquez
L.G. Marquez, Inc.

334 Makati Stock Exchange Bldg.
6767 Ayala Avenue
Makati, Metro Manila
Philippines

Dear Sir:

Re: Land of Eternit Corporation

I would like to confirm officially that our Group has decided not to proceed with the sale of the land which was proposed to you.

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[8] *Id.* at 241.
[9] *Id.*
[10] *Id.* at 399.

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The Committee for Asia of our Group met recently (meeting every six months) and examined the position as far as the Philippines are (*sic*) concerned. **Considering [the] new political situation since the departure of MR. MARCOS and a certain stabilization in the Philippines, the Committee has decided not to stop our operations in Manila. In fact, production has started again last week**, and (*sic*) to recognize the participation in the Corporation.

We regret that we could not make a deal with you this time, but in case the policy would change at a later state, we would consult you again.

x x x x x x x x x

Yours sincerely,
(Sgd.)
C.F. DELSAUX

cc. To: J. GLANVILLE (Eternit Corp.)[11]

When apprised of this development, the Litonjuas, through counsel, wrote EC, demanding payment for damages they had suffered on account of the aborted sale. EC, however, rejected their demand.

The Litonjuas then filed a complaint for specific performance and damages against EC (now the Eterton Multi-Resources Corporation) and the Far East Bank & Trust Company, and ESAC in the RTC of Pasig City. An amended complaint was filed, in which defendant EC was substituted by Eterton Multi-Resources Corporation; Benito C. Tan, Ruperto V. Tan, Stock Ha T. Tan and Deogracias G. Eufemio were impleaded as additional defendants on account of their purchase of ESAC shares of stocks and were the controlling stockholders of EC.

In their answer to the complaint, EC and ESAC alleged that since Eteroutremer was not doing business in the Philippines, it cannot be subject to the jurisdiction of Philippine courts; the Board and stockholders of EC never approved any resolution

[11] *Id.* at 349-400.

to sell subject properties nor authorized Marquez to sell the same; and the telex dated October 28, 1986 of Jack Glanville was his own personal making which did not bind EC.

On July 3, 1995, the trial court rendered judgment in favor of defendants and dismissed the amended complaint.[12] The *fallo* of the decision reads:

> WHEREFORE, the complaint against Eternit Corporation now Eterton Multi-Resources Corporation and Eteroutremer, S.A. is dismissed on the ground that there is no valid and binding sale between the plaintiffs and said defendants.
>
> The complaint as against Far East Bank and Trust Company is likewise dismissed for lack of cause of action.
>
> The counterclaim of Eternit Corporation now Eterton Multi-Resources Corporation and Eteroutremer, S.A. is also dismissed for lack of merit.[13]

The trial court declared that since the authority of the agents/realtors was not in writing, the sale is void and not merely unenforceable, and as such, could not have been ratified by the principal. In any event, such ratification cannot be given any retroactive effect. Plaintiffs could not assume that defendants had agreed to sell the property without a clear authorization from the corporation concerned, that is, through resolutions of the Board of Directors and stockholders. The trial court also pointed out that the supposed sale involves substantially all the assets of defendant EC which would result in the eventual total cessation of its operation.[14]

The Litonjuas appealed the decision to the CA, alleging that "(1) the lower court erred in concluding that the real estate broker in the instant case needed a written authority from appellee corporation and/or that said broker had no such written authority; and (2) the lower court committed grave error of

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[12] *Id.* at 163-175.

[13] *Id.* at 174-175.

[14] *Id.* at 173-174.

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law in holding that appellee corporation is not legally bound for specific performance and/or damages in the absence of an enabling resolution of the board of directors."[15] They averred that Marquez acted merely as a broker or go-between and not as agent of the corporation; hence, it was not necessary for him to be empowered as such by any written authority. They further claimed that an agency by estoppel was created when the corporation clothed Marquez with apparent authority to negotiate for the sale of the properties. However, since it was a bilateral contract to buy and sell, it was equivalent to a perfected contract of sale, which the corporation was obliged to consummate.

In reply, EC alleged that Marquez had no written authority from the Board of Directors to bind it; neither were Glanville and Delsaux authorized by its board of directors to offer the property for sale. Since the sale involved substantially all of the corporation's assets, it would necessarily need the authority from the stockholders.

On June 16, 2000, the CA rendered judgment affirming the decision of the RTC.[16] The Litonjuas filed a motion for reconsideration, which was also denied by the appellate court.

The CA ruled that Marquez, who was a real estate broker, was a special agent within the purview of Article 1874 of the New Civil Code. Under Section 23 of the Corporation Code, he needed a special authority from EC's board of directors to bind such corporation to the sale of its properties. Delsaux, who was merely the representative of ESAC (the majority stockholder of EC) had no authority to bind the latter. The CA pointed out that Delsaux was not even a member of the board of directors of EC. Moreover, the Litonjuas failed to prove that an agency by estoppel had been created between the parties.

In the instant petition for review, petitioners aver that

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[15] *Id.* at 47-48.

[16] *Id.* at 40-53.

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I

THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE.

II

THE APPELLATE COURT COMMITTED GRAVE ERROR OF LAW IN HOLDING THAT MARQUEZ NEEDED A WRITTEN AUTHORITY FROM RESPONDENT ETERNIT BEFORE THE SALE CAN BE PERFECTED.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT GLANVILLE AND DELSAUX HAVE THE NECESSARY AUTHORITY TO SELL THE SUBJECT PROPERTIES, OR AT THE VERY LEAST, WERE KNOWINGLY PERMITTED BY RESPONDENT ETERNIT TO DO ACTS WITHIN THE SCOPE OF AN APPARENT AUTHORITY, AND THUS HELD THEM OUT TO THE PUBLIC AS POSSESSING POWER TO SELL THE SAID PROPERTIES.[17]

Petitioners maintain that, based on the facts of the case, there was a perfected contract of sale of the parcels of land and the improvements thereon for "US$1,000,000.00 plus ₱2,500,000.00 to cover obligations prior to final liquidation." Petitioners insist that they had accepted the counter-offer of respondent EC and that before the counter-offer was withdrawn by respondents, the acceptance was made known to them through real estate broker Marquez.

Petitioners assert that there was no need for a written authority from the Board of Directors of EC for Marquez to validly act as broker/middleman/intermediary. As broker, Marquez was not an ordinary agent because his authority was of a special and limited character in most respects. His only job as a broker was to look for a buyer and to bring together the parties to the transaction. He was not authorized to sell the properties or to make a binding contract to respondent EC; hence, petitioners argue, Article 1874 of the New Civil Code does not apply.

[17] *Id.* at 15.

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In any event, petitioners aver, what is important and decisive was that Marquez was able to communicate both the offer and counter-offer and their acceptance of respondent EC's counter-offer, resulting in a perfected contract of sale.

Petitioners posit that the testimonial and documentary evidence on record amply shows that Glanville, who was the President and General Manager of respondent EC, and Delsaux, who was the Managing Director for ESAC Asia, had the necessary authority to sell the subject property or, at least, had been allowed by respondent EC to hold themselves out in the public as having the power to sell the subject properties. Petitioners identified such evidence, thus:

1. The **testimony of Marquez** that he was chosen by Glanville as the then President and General Manager of Eternit, to sell the properties of said corporation to any interested party, which authority, as hereinabove discussed, need not be in writing;

2. The fact that the NEGOTIATIONS for the sale of the subject properties spanned **SEVERAL MONTHS**, from 1986 to 1987;

3. The **COUNTER-OFFER** made by Eternit through GLANVILLE to sell its properties to the Petitioners;

4. The **GOOD FAITH** of Petitioners in believing Eternit's offer to sell the properties as evidenced by the Petitioners' ACCEPTANCE of the counter-offer;

5. The fact that Petitioners **DEPOSITED** the price of [US]$1,000,000.00 with the Security Bank and that an ESCROW agreement was drafted over the subject properties;

6. Glanville's telex to Delsaux inquiring "WHEN **WE** (Respondents) WILL IMPLEMENT ACTION TO BUY AND SELL";

7. *More importantly,* Exhibits "G" and "H" of the Respondents, which evidenced the fact that Petitioners' offer was allegedly **REJECTED** by both Glanville and Delsaux.[18]

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[18] *Id.* at 29-30.

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Petitioners insist that it is incongruous for Glanville and Delsaux to make a counter-offer to petitioners' offer and thereafter reject such offer unless they were authorized to do so by respondent EC. Petitioners insist that Delsaux confirmed his authority to sell the properties in his letter to Marquez, to wit:

Dear Sir,

Re: Land of Eternit Corporation

I would like to confirm officially that our Group has decided not to proceed with the sale of the land which was proposed to you.

The Committee for Asia of our Group met recently (meeting every six months) and examined the position as far as the Philippines are (*sic*) concerned. Considering the new political situation since the departure of MR. MARCOS and a certain stabilization in the Philippines, the Committee has decided not to stop our operations in Manila[.] [I]n fact production started again last week, and (*sic*) to reorganize the participation in the Corporation.

We regret that we could not make a deal with you this time, but in case the policy would change at a later stage we would consult you again.

In the meantime, I remain

Yours sincerely,

C.F. DELSAUX[19]

Petitioners further emphasize that they acted in good faith when Glanville and Delsaux were knowingly permitted by respondent EC to sell the properties within the scope of an apparent authority. Petitioners insist that respondents held themselves to the public as possessing power to sell the subject properties.

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[19] *Id.* at 30-31.

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By way of comment, respondents aver that the issues raised by the petitioners are factual, hence, are proscribed by Rule 45 of the Rules of Court. On the merits of the petition, respondents EC (now EMC) and ESAC reiterate their submissions in the CA. They maintain that Glanville, Delsaux and Marquez had no authority from the stockholders of respondent EC and its Board of Directors to offer the properties for sale to the petitioners, or to any other person or entity for that matter. They assert that the decision and resolution of the CA are in accord with law and the evidence on record, and should be affirmed *in toto.*

Petitioners aver in their subsequent pleadings that respondent EC, through Glanville and Delsaux, conformed to the written authority of Marquez to sell the properties. The authority of Glanville and Delsaux to bind respondent EC is evidenced by the fact that Glanville and Delsaux negotiated for the sale of 90% of stocks of respondent EC to Ruperto Tan on June 1, 1997. Given the significance of their positions and their duties in respondent EC at the time of the transaction, and the fact that respondent ESAC owns 90% of the shares of stock of respondent EC, a formal resolution of the Board of Directors would be a mere ceremonial formality. What is important, petitioners maintain, is that Marquez was able to communicate the offer of respondent EC and the petitioners' acceptance thereof. There was no time that they acted without the knowledge of respondents. In fact, respondent EC never repudiated the acts of Glanville, Marquez and Delsaux.

The petition has no merit.

Anent the first issue, we agree with the contention of respondents that the issues raised by petitioner in this case are factual. Whether or not Marquez, Glanville, and Delsaux were authorized by respondent EC to act as its agents relative to the sale of the properties of respondent EC, and if so, the boundaries of their authority as agents, is a question of fact. In the absence of express written terms creating the relationship of an agency, the existence of an agency is a fact question.[20] Whether an agency by estoppel was created or whether a person acted within the bounds of

[20] *Weathersby v. Gore,* 556 F.2d 1247 (1977).

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his apparent authority, and whether the principal is estopped to deny the apparent authority of its agent are, likewise, questions of fact to be resolved on the basis of the evidence on record.[21] The findings of the trial court on such issues, as affirmed by the CA, are conclusive on the Court, absent evidence that the trial and appellate courts ignored, misconstrued, or misapplied facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.[22]

It must be stressed that issues of facts may not be raised in the Court under Rule 45 of the Rules of Court because the Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial and documentary. There are, however, recognized exceptions where the Court may delve into and resolve factual issues, namely:

(1) When the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) 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; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[23]

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[21] *Cavic v. Grand Bahama Development Co., Ltd.*, 701 F.2d 879 (1983).

[22] *Culaba v. Court of Appeals*, G.R. No. 125862, April 15, 2004, 427 SCRA 721, 729; *Litonjua v. Fernandez*, G.R. No. 148116, April 14, 2004, 427 SCRA 478, 489.

[23] *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1242-1243 (2000). (citations omitted)

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We have reviewed the records thoroughly and find that the petitioners failed to establish that the instant case falls under any of the foregoing exceptions. Indeed, the assailed decision of the Court of Appeals is supported by the evidence on record and the law.

It was the duty of the petitioners to prove that respondent EC had decided to sell its properties and that it had empowered Adams, Glanville and Delsaux or Marquez to offer the properties for sale to prospective buyers and to accept any counter-offer. Petitioners likewise failed to prove that their counter-offer had been accepted by respondent EC, through Glanville and Delsaux. It must be stressed that when specific performance is sought of a contract made with an agent, the agency must be established by clear, certain and specific proof.[24]

Section 23 of *Batas Pambansa Bilang* 68, otherwise known as the Corporation Code of the Philippines, 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.

Indeed, a corporation is a juridical person separate and distinct from its members or stockholders and is not affected by the personal rights, obligations and transactions of the latter.[25] It may act only through its board of directors or, when authorized either by its by-laws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, by-laws, or relevant provisions of law.[26]

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[24] *Blair v. Sheridan*, 10 S.E. 414 (1889).

[25] *Philippine National Bank v. Ritratto Group, Inc.*, 414 Phil. 494, 503 (2001).

[26] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, 357 Phil. 631, 644 (1998).

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Under Section 36 of the Corporation Code, a corporation may sell or convey its real properties, subject to the limitations prescribed by law and the Constitution, as follows:

SEC. 36. *Corporate powers and capacity.* – Every corporation incorporated under this Code has the power and capacity:

xxx xxx xxx

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution.

The property of a corporation, however, is not the property of the stockholders or members, and as such, may not be sold without express authority from the board of directors.[27] Physical acts, like the offering of the properties of the corporation for sale, or the acceptance of a counter-offer of prospective buyers of such properties and the execution of the deed of sale covering such property, can be performed by the corporation only by officers or agents duly authorized for the purpose by corporate by-laws or by specific acts of the board of directors.[28] Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are not binding on the corporation.[29]

While a corporation may appoint agents to negotiate for the sale of its real properties, the final say will have to be with the board of directors through its officers and agents as authorized by

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[27] *Traders Royal Bank v. Court of Appeals,* G.R. No. 78412, September 26, 1989, 177 SCRA 788, 792.

[28] *BPI Leasing Corporation v. Court of Appeals,* G.R. No. 127624, November 18, 2003, 416 SCRA 4, 11.

[29] *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.,* 424 Phil. 446, 454 (2002).

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a board resolution or by its by-laws.[30] An unauthorized act of an officer of the corporation is not binding on it unless the latter ratifies the same expressly or impliedly by its board of directors. Any sale of real property of a corporation by a person purporting to be an agent thereof but without written authority from the corporation is null and void. The declarations of the agent alone are generally insufficient to establish the fact or extent of his/her authority.[31]

By the contract of agency, a person binds himself to render some service or to do something in representation on behalf of another, with the consent or authority of the latter.[32] Consent of both principal and agent is necessary to create an agency. The principal must intend that the agent shall act for him; the agent must intend to accept the authority and act on it, and the intention of the parties must find expression either in words or conduct between them.[33]

An agency may be expressed or implied from the act of the principal, from his silence or lack of action, or his failure to repudiate the agency knowing that another person is acting on his behalf without authority. Acceptance by the agent may be expressed, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances.[34] Agency may be oral unless the law requires a specific form.[35] However, to create or convey real rights over immovable property, a special power of attorney is necessary.[36] Thus, *when a sale of a piece of land or any portion thereof is through an agent, the*

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[30] *De Liano v. Court of Appeals,* 421 Phil. 1033, 1052 (2001).

[31] *Litonjua v. Fernandez, supra* note 22, at 493.

[32] Article 1868, NEW CIVIL CODE.

[33] *Ellison v. Hunsinger,* 75 S.E. 2d. 884 (1953); *Dominion Insurance Corporation v. Court of Appeals,* 426 Phil. 620, 626 (2002).

[34] CIVIL CODE, Art. 1870.

[35] CIVIL CODE, Art. 1869, paragraph 2.

[36] CIVIL CODE, Art. 1878(12)

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authority of the latter shall be in writing, otherwise, the sale shall be void.[37]

In this case, the petitioners as plaintiffs below, failed to adduce in evidence any resolution of the Board of Directors of respondent EC empowering Marquez, Glanville or Delsaux as its agents, to sell, let alone offer for sale, for and in its behalf, the eight parcels of land owned by respondent EC including the improvements thereon. The bare fact that Delsaux may have been authorized to sell to Ruperto Tan the shares of stock of respondent ESAC, on June 1, 1997, cannot be used as basis for petitioners' claim that he had likewise been authorized by respondent EC to sell the parcels of land.

Moreover, the evidence of petitioners shows that Adams and Glanville acted on the authority of Delsaux, who, in turn, acted on the authority of respondent ESAC, through its Committee for Asia,[38] the Board of Directors of respondent ESAC,[39] and the Belgian/Swiss component of the management of respondent ESAC.[40] As such, Adams and Glanville engaged the services of Marquez to offer to sell the properties to prospective buyers. Thus, on September 12, 1986, Marquez wrote the petitioner that he was authorized to offer for sale the property for ₱27,000,000.00 and the other terms of the sale subject to negotiations. When petitioners offered to purchase the property for ₱20,000,000.00, through Marquez, the latter relayed petitioners' offer to Glanville; Glanville had to send a telex to Delsaux to inquire the position of respondent ESAC to petitioners' offer. However, as admitted by petitioners in their Memorandum, Delsaux was unable to reply immediately to the telex of Glanville because Delsaux had to wait for confirmation from respondent ESAC.[41] When Delsaux finally responded to Glanville on February 12, 1987, he made it clear

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[37] CIVIL CODE, Art. 1874.

[38] Exhibits "H" and "H-1", *rollo*, p. 166.

[39] Exhibits "G" and "G-1", *id.*

[40] Exhibits "C" and "C-1", *id.* at 165.

[41] *Rollo*, p. 396.

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that, based on the "Belgian/Swiss decision" the final offer of respondent ESAC was US$1,000,000.00 plus ₱2,500,000.00 to cover all existing obligations prior to final liquidation.[42] The offer of Delsaux emanated only from the "Belgian/Swiss decision," and not the entire management or Board of Directors of respondent ESAC. While it is true that petitioners accepted the counter-offer of respondent ESAC, respondent EC was not a party to the transaction between them; hence, EC was not bound by such acceptance.

While Glanville was the President and General Manager of respondent EC, and Adams and Delsaux were members of its Board of Directors, the three acted for and in behalf of respondent ESAC, *and not as duly authorized agents of respondent EC*; a board resolution evincing the grant of such authority is needed to bind EC to any agreement regarding the sale of the subject properties. Such board resolution is not a mere formality but is a condition *sine qua non* to bind respondent EC. Admittedly, respondent ESAC owned 90% of the shares of stocks of respondent EC; however, the mere fact that a corporation owns a majority of the shares of stocks of another, or even all of such shares of stocks, taken alone, will not justify their being treated as one corporation.[43]

It bears stressing that in an agent-principal relationship, the personality of the principal is extended through the facility of the agent. In so doing, the agent, by legal fiction, becomes the principal, authorized to perform all acts which the latter would have him do. Such a relationship can only be effected with the consent of the principal, which must not, in any way, be compelled by law or by any court.[44]

The petitioners cannot feign ignorance of the absence of any regular and valid authority of respondent EC empowering Adams,

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[42] Exhibits "C" and "C-1", *rollo*, p. 165.

[43] *Philippine National Bank v. Ritratto Group, Inc.*, *supra* note 25, at 503.

[44] *Orient Air Services and Hotel Representatives v. Court of Appeals*, 274 Phil. 927, 939 (1991).

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Glanville or Delsaux to offer the properties for sale and to sell the said properties to the petitioners. A person dealing with a known agent is not authorized, under any circumstances, blindly to trust the agents; statements as to the extent of his powers; such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority.[45] The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it.[46] In this case, the petitioners failed to discharge their burden; hence, petitioners are not entitled to damages from respondent EC.

It appears that Marquez acted not only as real estate broker for the petitioners but also as their agent. As gleaned from the letter of Marquez to Glanville, on February 26, 1987, he confirmed, for and in behalf of the petitioners, that the latter had accepted such offer to sell the land and the improvements thereon. However, we agree with the ruling of the appellate court that Marquez had no authority to bind respondent EC to sell the subject properties. A real estate broker is one who negotiates the sale of real properties. His business, generally speaking, is only to find a purchaser who is willing to buy the land upon terms fixed by the owner. He has no authority to bind the principal by signing a contract of sale. Indeed, an authority to find a purchaser of real property does not include an authority to sell.[47]

Equally barren of merit is petitioners' contention that respondent EC is estopped to deny the existence of a principal-agency relationship between it and Glanville or Delsaux. For an agency

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[45] *Hill v. Delta Loan and Finance Company,* 277 S.W. 2d 63, 65.

[46] *Litonjua v. Fernandez, supra* note 22, at 494; *Culaba v. Court of Appeals, supra* note 22, at 730; *BA Finance Corporation v. Court of Appeals,* G.R. No. 94566, July 3, 1992, 211 SCRA 112, 116.

[47] *Donnan v. Adams,* 71 S.W. 580.

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by estoppel to exist, the following must be established: (1) the principal manifested a representation of the agent's authority or knowlingly allowed the agent to assume such authority; (2) the third person, in good faith, relied upon such representation; (3) relying upon such representation, such third person has changed his position to his detriment.[48] An agency by estoppel, which is similar to the doctrine of apparent authority, requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance.[49] Such proof is lacking in this case. In their communications to the petitioners, Glanville and Delsaux positively and unequivocally declared that they were acting for and in behalf of respondent ESAC.

Neither may respondent EC be deemed to have ratified the transactions between the petitioners and respondent ESAC, through Glanville, Delsaux and Marquez. The transactions and the various communications *inter se* were never submitted to the Board of Directors of respondent EC for ratification.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED* for lack of merit. Costs against the petitioners.

SO ORDERED.

Panganiban, C.J. (Chairperson), Austria-Martinez, and *Chico-Nazario, JJ.*, concur.

Ynares-Santiago, J., on leave.

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[48] *Carolina-Georgia Carpet and Textiles, Inc. v. Pelloni*, 370 So. 2d 450 (1979).

[49] *Id.*