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**THIRD DIVISION**

[G.R. No. 125778. June 10, 2003]

**INTER-ASIA INVESTMENTS INDUSTRIES, INC.,** *petitioner, vs.* **COURT OF APPEALS and ASIA INDUSTRIES, INC.,** *respondents.*

**SYNOPSIS**

Petitioner corporation assailed the decision of the CA and the lower court, holding it liable to pay a sum of money plus interest to private respondent corporation, as a consequence of a Letter-Proposal dated January 24, 1980 signed by its president, with regard to the sale of petitioner's shares of stock of FARMACOR, INC., to the private respondent corporation. Petitioner argued that the letter-proposal of its president has no legal force and effect against it as it was not authorized by its board of directors.

On appeal, the Supreme Court held petitioner liable to pay a sum of money plus interest to the private respondent because the January 24, 1980 letter signed by petitioner's president is valid and binding. An officer of a corporation authorized to purchase the stock of another corporation has the implied power to perform all other obligations arising therefrom, such as payment of the shares of stock. By allowing its president to sign the Agreement on its behalf, petitioner clothed him with apparent capacity to perform all acts which are expressly, impliedly and inherently stated therein. The Court, however, deleted the award of attorney's fees because it was bereft of factual, legal and equitable basis.

**SYLLABUS**

**1. CORPORATION LAW; CORPORATION CODE; CORPORATE OFFICERS; *ULTRA VIRES* ACT; CORPORATE OFFICER AUTHORIZED TO PURCHASE STOCK HAD IMPLIED POWER TO PERFORM ALL ACTS ARISING THEREFROM; CASE AT BAR.** – An officer of a corporation who is authorized to purchase the stock of another corporation has the implied power to perform all other obligations arising therefrom, such as payment of the shares of stock. By allowing its president to sign the Agreement on its behalf, petitioner clothed him with

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apparent capacity to perform all acts which are expressly, impliedly and inherently stated therein.

**2. CIVIL LAW; DAMAGES; AWARD OF ATTORNEY'S FEES MUST HAVE FACTUAL, LEGAL AND EQUITABLE BASIS; CASE AT BAR.** – The Court finds well-taken the petitioner's assigned error on the award of attorney's fees which, it argues, is bereft of factual, legal and equitable justification.

**APPEARANCES OF COUNSEL**

*People's Law Office* for petitioner.

*Castillo Laman Tan Pantaleon & San Jose* for private respondent.

## DECISION

**CARPIO MORALES, *J.*:**

The present petition for review on *certiorari* assails the Court of Appeals Decision[1] of January 25, 1996 and Resolution[2] of July 11, 1996.

The material facts of the case are as follows:

On September 1, 1978, Inter-Asia Industries, Inc. (petitioner), by a Stock Purchase Agreement[3] (the Agreement), sold to Asia Industries, Inc. (private respondent) for and in consideration of the sum of ₱19,500,000.00 all its right, title and interest in and to all the outstanding shares of stock of FARMACOR, INC. (FARMACOR).[4] The Agreement was signed by Leonides P. Gonzales and Jesus J. Vergara, presidents of petitioner and private respondent, respectively.[5]

Under paragraph 7 of the Agreement, petitioner as seller made warranties and representations among which were "(iv.) [t]he

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[1] *Rollo* at 29-42.

[2] *Id.* at 44-45.

[3] Records at 9-23.

[4] *Id.* at 10-11.

[5] *Id.* at 22.

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audited financial statements of FARMACOR at and for the year ended December 31, 1977 . . . and the audited financial statements of FARMACOR as of September 30, 1978 being prepared by S[ycip,] G[orres,] V[elayo and Co.] . . . fairly present or will present the financial position of FARMACOR and the results of its operations as of said respective dates; said financial statements show or will show all liabilities and commitments of FARMACOR, direct or contingent, as of said respective dates . . .;" and "(v.) [t]he Minimum Guaranteed Net Worth of FARMACOR as of September 30, 1978 shall be Twelve Million Pesos (₱12,000,000.00)."[6]

The Agreement was later amended with respect to the "Closing Date," originally set up at 10:00 a.m. of September 30, 1978, which was moved to October 31, 1978, and to the mode of payment of the purchase price.[7]

The Agreement, as amended, provided that pending submission by SGV of FARMACOR's audited financial statements as of October 31, 1978, private respondent may retain the sum of ₱7,500,000.00 out of the stipulated purchase price of ₱19,500,000.00; that from this retained amount of ₱7,500,000.00, private respondent may deduct any shortfall on the Minimum Guaranteed Net Worth of ₱12,000,000.00;[8] and that if the amount retained is not sufficient to make up for the deficiency in the Minimum Guaranteed Net Worth, petitioner shall pay the difference within 5 days from date of receipt of the audited financial statements.[9]

Respondent paid petitioner a total amount of ₱12,000,000.00: ₱5,000,000.00 upon the signing of the Agreement, and ₱7,000,000.00 on November 2, 1978.[10]

From the STATEMENT OF INCOME AND DEFICIT attached to the financial report[11] dated November 28, 1978 submitted by

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[6] *Id.* at 16-17.

[7] Exhibits "G-1", "G-2", "G-3"; Records at 586-593.

[8] *Ibid.*

[9] Records at 12.

[10] *Rollo* at 12 and 82.

[11] Records at 322-327.

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SGV, it appears that FARMACOR had, for the ten months ended October 31, 1978, a deficit of ₱11,244,225.00.[12] Since the stockholder's equity amounted to ₱10,000,000.00, FARMACOR had a net worth deficiency of ₱1,244,225.00. The guaranteed net worth shortfall thus amounted to ₱13,244,225.00 after adding the net worth deficiency of ₱1,244,225.00 to the Minimum Guaranteed Net Worth of ₱12,000,000.00.

The adjusted contract price, therefore, amounted to ₱6,225,775.00 which is the difference between the contract price of ₱19,500,000.00 and the shortfall in the guaranteed net worth of ₱13,224,225.00. Private respondent having already paid petitioner ₱12,000,000.00, it was entitled to a refund of ₱5,744,225.00.

Petitioner thereafter proposed, by letter[13] of January 24, 1980, signed by its president, that private respondent's claim for refund be reduced to ₱4,093,993.00, it promising to pay the cost of the Northern Cotabato Industries, Inc. (NOCOSII) superstructures in the amount of ₱759,570.00. To the proposal respondent agreed. Petitioner, however, welched on its promise. Petitioner's total liability thus stood at ₱4,853,503.00 (₱4,093,993.00 plus ₱759,570.00)[14] exclusive of interest.[15]

On April 5, 1983, private respondent filed a complaint[16] against petitioner with the Regional Trial Court of Makati, one of two causes of action of which was for the recovery of above-said amount of ₱4,853,503.00[17] plus interest.

Denying private respondent's claim, petitioner countered that private respondent failed to pay the balance of the purchase price and accordingly set up a counterclaim.

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[12] *Id.* at 324-325.

[13] Exhibit "G-6"; Records at 598-604.

[14] ₱4,853,503.00 is the amount prayed for in the complaint but it is noted that the total amount of these figures is ₱4,853,563.00.

[15] *Id.* at 13; Records at 4.

[16] Records at 1-25.

[17] See footnote 14.

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Finding for private respondent, the trial court rendered on November 27, 1991 a Decision,[18] the dispositive portion of which reads:

WHEREFORE, judgment is rendered in favor of plaintiff and against defendant (a) ordering the latter to pay to the former the sum of ₱4,853,503.00[19] plus interest thereon at the legal rate from the filing of the complaint until fully paid, the sum of ₱30,000.00 as attorney's fees and the costs of suit; and (b) dismissing the counterclaim.

SO ORDERED.

On appeal to the Court of Appeals, petitioner raised the following errors:

THE TRIAL COURT ERRED IN HOLDING THE DEFENDANT LIABLE UNDER THE FIRST CAUSE OF ACTION PLEADED BY THE PLAINTIFF.

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AND IN DISMISSING THE COUNTERCLAIM.

THE TRIAL COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF THE PLAINTIFF, THE ALLEGED BREACH OF WARRANTIES AND REPRESENTATION NOT HAVING BEEN SHOWN, MUCH LESS ESTABLISHED BY THE PLAINTIFF.[20]

By Decision of January 25, 1996, the Court of Appeals affirmed the trial court's decision. Petitioner's motion for reconsideration of the decision having been denied by the Court of Appeals by Resolution of July 11, 1996, the present petition for review on *certiorari* was filed, assigning the following errors:

I

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE LETTER OF THE PRESIDENT OF THE PETITIONER IS NOT BINDING ON THE PETITIONER BEING *ULTRA VIRES.*

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[18] *Id.* at 757-760.

[19] See footnote 14. Plaintiff did not move to reconsider the amount adjudged to it.

[20] *Rollo* at 14.

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II

THE LETTER CAN NOT BE AN ADMISSION AND WAIVER OF THE PETITIONER AS A CORPORATION.

III

THE RESPONDENT COURT ERRED IN NOT DECLARING THAT THERE IS NO BREACH OF WARRANTIES AND REPRESENTATION AS ALLEGED BY THE PRIVATE RESPONDENT.

IV

THE RESPONDENT COURT ERRED IN ORDERING THE PETITIONER TO PAY ATTORNEY'S FEES AND IN SUSTAINING THE DISMISSAL OF THE COUNTERCLAIM. [21](Italics in the original)

Petitioner argues that the January 24, 1980 letter-proposal (for the reduction of private respondent's claim for refund upon petitioner's promise to pay the cost of NOCOSII superstructures in the amount of ₱759,570.00) which was signed by its president has no legal force and effect against it as it was not authorized by its board of directors, it citing the Corporation Law which provides that unless the act of the president is authorized by the board of directors, the same is not binding on it.

This Court is not persuaded.

The January 24, 1980 letter signed by petitioner's president is valid and binding. The case of *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*[22] instructs:

*The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.* A corporation is a juridical person, separate and distinct from its stockholders and members, "having x x x powers, attributes and properties expressly authorized by law or incident to its existence."

Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:

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[21] *Id.* at 15.

[22] 297 SCRA 170 (1998).

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> 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 x x x.

Under this provision, the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. *However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from* law, corporate bylaws or *authorization from the board, either expressly or impliedly by* habit, custom or *acquiescence in the general course of business, viz:*

> A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.
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> xxx xxx xxx

*[A]pparent authority is derived not merely from practice. Its existence may be ascertained through* (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) *the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.* **It requires presentation of evidence of similar acts executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.**

xxx xxx x x x (Italics and underscoring supplied)

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As correctly argued by private respondent, an officer of a corporation who is authorized to purchase the stock of another corporation has the implied power to perform all other obligations arising therefrom, such as payment of the shares of stock. By allowing its president to sign the Agreement on its behalf, petitioner clothed him with apparent capacity to perform all acts which are expressly, impliedly and inherently stated therein.[23]

Petitioner further argues that when the Agreement was executed on September 1, 1978, its financial statements were extensively examined and accepted as correct by private respondent, hence, it cannot later be disproved "by resorting to some scheme such as future financial auditing";[24]and that it should not be bound by the SGV Report because it is self-serving and biased, SGV having been hired solely by private respondent, and the alleged shortfall of FARMACOR occurred only after the execution of the Agreement.

This Court is not persuaded either.

The pertinent provisions of the Agreement read:

> 7. *Warranties and Representations* — (a) *SELLER warrants and represents as follows*:
>
> x x x x x x x x x
>
> (iv) The audited financial statements of FARMACOR as at and for the year ended December 31, 1977 and the **audited financial statements of FARMACOR as at September 30, 1978 being prepared by SGV pursuant to paragraph 6(b) fairly present or will present the financial position of FARMACOR** *and the results of its operations as of said respective dates; said financial statements show or will show all liabilities and commitments of FARMACOR, direct or contingent, as of said respective dates;* and the receivables set forth in said financial statements are fully due and collectible, free and clear of any set-offs, defenses, claims and other impediments to their collectibility.

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[23] *Rollo* at 92-93.

[24] *Id.* at 21.

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(v) *The Minimum Guaranteed Net Worth of FARMACOR as of September 30, 1978 shall be Twelve Million Pesos (₱12,000,000.00), Philippine Currency.*

xxx xxx x x x (Underscoring in the original; italics supplied)[25]

True, private respondent accepted as correct the financial statements submitted to it when the Agreement was executed on September 1, 1978. But petitioner *expressly* warranted that the SGV Reports "fairly present or will present the financial position of FARMACOR." By such warranty, petitioner is estopped from claiming that the SGV Reports are self-serving and biased.

As to the claim that the shortfall occurred after the execution of the Agreement, the declaration of Emmanuel de Asis, supervisor in the Accounting Division of SGV and head of the team which conducted the auditing of FARMACOR, that the period covered by the audit was from January to October 1978 shows that the period *before* the Agreement was entered into (on September 1, 1978) was covered.[26]

As to petitioner's assigned error on the award of attorney's fees which, it argues, is bereft of factual, legal and equitable justification, this Court finds the same well-taken.

On the matter of attorney's fees, it is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees are not to be awarded every time a party wins a suit. **The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.** *In all events, the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of attorney's fees.*[27]

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[25] Records at 17-18.

[26] Transcript of Stenographic Notes, July 27, 1988 at 5.

[27] *Central Azucarera de Bais v. CA*, 188 SCRA 328 (1990).

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(Underscoring and italics supplied; citations omitted)

**WHEREFORE,** the instant petition is *PARTLY GRANTED.* The assailed decision of the Court of Appeals affirming that of the trial court is modified in that the award of attorney's fees in favor of private respondent is deleted. The decision is affirmed in other respects.

**SO ORDERED.**

*Puno (Chairman), Panganiban, Sandoval-Gutierrez* and *Corona, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 125838. June 10, 2003]

**DEVELOPMENT BANK OF THE PHILIPPINES,** *petitioner, vs.* **COURT OF APPEALS and EMERALD RESORT HOTEL CORPORATION,** *respondents.*

**SYNOPSIS**

Petition for review on *certiorari* seeking to reverse the CA and RTC decisions declaring the sale of the mortgaged properties void for failure to comply with the statutory requisites.

The Supreme Court found the petition partly meritorious. While the foreclosing sheriffs failed to execute the certificate of posting of the auction sale notices, such fact alone did not prove lack of posting. DBP presented sufficient evidence to prove that the sheriffs posted the notices of the extrajudicial sale. However, the extrajudicial foreclosure of the real estate mortgage was void because there was no compliance with the publication requirement of Act No. 3135 of the notice of sale. While DBP published the notice of auction sale scheduled on 12 August 1986, no such auction sale took place thereon because DBP, at the instance of respondent Emerald Resort Hotel