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SO ORDERED.

Ynares-Santiago (Working Chairperson), Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

Panganiban, C.J., retired as of December 7, 2006.

FIRST DIVISION

[G.R. No. 166862. December 20, 2006]

MANILA METAL CONTAINER CORPORATION, *petitioner,* **REYNALDO C. TOLENTINO,** *intervenor, vs.* **PHILIPPINE NATIONAL BANK,** *respondent,* **DMCI-PROJECT DEVELOPERS, INC.,** *intervenor.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ELUCIDATED. — A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. Under Article 1318 of the New Civil Code, there is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. Contracts are perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Once perfected, they bind other contracting parties and the obligations arising therefrom have the form of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.

2. ID.; SPECIAL CONTRACTS; SALE; ABSENCE OF ANY OF ITS ESSENTIAL ELEMENTS WILL NEGATE EXISTENCE OF A PERFECTED CONTRACT. — By the contract of sale,

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one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. The absence of any of the essential elements will negate the existence of a perfected contract of sale. As the Court ruled in *Boston Bank of the Philippines v. Manalo:* A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale. A contract of sale is consensual in nature and is perfected upon mere meeting of the minds. When there is merely an offer by one party without acceptance of the other, there is no contract. When the contract of sale is not perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.

3. **ID.; ID.; ID.; STAGES OF A CONTRACT OF SALE.** — In *San Miguel Properties Philippines, Inc. v. Huang*, the Court ruled that the stages of a contract of sale are as follows: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale which are the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.

4. **ID.; ID.; ID.; ID.; NEGOTIATION AND PERFECTION; DISCUSSED.** — A negotiation is formally initiated by an offer, which, however, must be certain. At any time prior to the perfection of the contract, either negotiating party may stop the negotiation. At this stage, the offer may be withdrawn; the withdrawal is effective immediately after its manifestation. To convert the offer into a contract, the acceptance must be absolute and must not qualify the terms of the offer; it must be plain, unequivocal, unconditional and without variance of any sort from the proposal. In *Adelfa Properties, Inc. v. Court*

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of Appeals, the Court ruled that: x x x The rule is that except where a formal acceptance is so required, although the acceptance must be affirmatively and clearly made and must be evidenced by some acts or conduct communicated to the offeror, it may be shown by acts, conduct, or words of the accepting party that clearly manifest a present intention or determination to accept the offer to buy or sell. Thus, acceptance may be shown by the acts, conduct, or words of a party recognizing the existence of the contract of sale.

5. . **ID.; ID.; ID.; ID.; WHERE ACCEPTANCE IS QUALIFIED.** — A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer. The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.

6. **COMMERCIAL LAW; CORPORATION LAW; CORPORATE CONTRACTS; REQUIRES AUTHORITY FROM THE BOARD OF DIRECTORS.** — There is no evidence that the SAMD was authorized by respondent's Board of Directors to accept petitioner's offer and sell the property for ₱1,574,560.47. Any acceptance by the SAMD of petitioner's offer would not bind respondent. As this Court ruled in *AF Realty Development, Inc. vs. Diesehuan Freight Services, Inc.*: 'Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. 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.' Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/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 held

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not binding on the corporation. Thus, a corporation can only execute its powers and transact its business through its Board of Directors and through its officers and agents when authorized by a board resolution or its by-laws.

7. **CIVIL LAW; SPECIAL CONTRACTS; SALE; EARNEST MONEY; NOT PROOF OF A PERFECTED CONTRACT ABSENT CONCURRENCE OF ALL THE ESSENTIAL ELEMENTS OF A CONTRACT OF SALE; CASE AT BAR.** — We do not agree with petitioner's contention that the ₱725,000.00 it had remitted to respondent was "earnest money" which could be considered as proof of the perfection of a contract of sale under Article 1482 of the New Civil Code. The provision reads: 'ART. 1482. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.' This contention is likewise negated by the stipulation of facts which the parties entered into in the trial court: '8. On June 8, 1984, the Special Assets Management Department (SAMD) of PNB prepared an updated Statement of Account showing MMCC's total liability to PNB as of June 25, 1984 to be ₱1,574,560.47 and recommended this amount as the repurchase price of the subject property. 9. On June 25, 1984, MMCC paid ₱725,000.00 to PNB as deposit to repurchase the property. **The deposit of P725,000 was accepted by PNB on the condition that the purchase price is still subject to the approval of the PNB Board.** Thus, the ₱725,000.00 was merely a deposit to be applied as part of the purchase price of the property, in the event that respondent would approve the recommendation of SAMD for respondent to accept petitioner's offer to purchase the property for ₱1,574,560.47. Unless and until the respondent accepted the offer on these terms; no perfected contract of sale would arise. Absent proof of the concurrence of all the essential elements of a contract of sale, the giving of earnest money cannot establish the existence of a perfected contract of sale.

APPEARANCES OF COUNSEL

Calleja Saulog Law Offices for petitioner.
Chief Legal Counsel (PNB) for PNB.
John R. Sadullo & Francis Allan A. Rubio for intervenor DMCI-PPI.

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DECISION

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. No. 46153 which affirmed the decision[2] of the Regional Trial Court (RTC), Branch 71, Pasig City, in Civil Case No. 58551, and its Resolution[3] denying the motion for reconsideration filed by petitioner Manila Metal Container Corporation (MMCC).

The Antecedents

Petitioner was the owner of a 8,015 square meter parcel of land located in Mandaluyong (now a City), Metro Manila. The property was covered by Transfer Certificate of Title (TCT) No. 332098 of the Registry of Deeds of Rizal. To secure a ₱900,000.00 loan it had obtained from respondent Philippine National Bank (PNB), petitioner executed a real estate mortgage over the lot. Respondent PNB later granted petitioner a new credit accommodation of ₱1,000,000.00; and, on November 16, 1973, petitioner executed an Amendment[4] of Real Estate Mortgage over its property. On March 31, 1981, petitioner secured another loan of ₱653,000.00 from respondent PNB, payable in quarterly installments of ₱32,650.00, plus interests and other charges.[5]

On August 5, 1982, respondent PNB filed a petition for extrajudicial foreclosure of the real estate mortgage and sought

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[1] Penned by Associate Justice Corona Ibay-Somera (retired) with Associate Justices Portia Aliño-Hormachuelos and Elvi-John S. Asuncion, concurring; *rollo*, pp. 47-60.

[2] Penned by Judge Celso D. Laviña; *id.* at 89-103.

[3] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman, concurring; *id.* at 62-64.

[4] Exhibit "A", *rollo*, p. 65.

[5] Exhibit "B", *id.* at 66.

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to have the property sold at public auction for ₱911,532.21, petitioner's outstanding obligation to respondent PNB as of June 30, 1982,[6] plus interests and attorney's fees.

After due notice and publication, the property was sold at public auction on September 28, 1982 where respondent PNB was declared the winning bidder for ₱1,000,000.00. The Certificate of Sale[7] issued in its favor was registered with the Office of the Register of Deeds of Rizal, and was annotated at the dorsal portion of the title on February 17, 1983. Thus, the period to redeem the property was to expire on February 17, 1984.

Petitioner sent a letter dated August 25, 1983 to respondent PNB, requesting that it be granted an extension of time to redeem/repurchase the property.[8] In its reply dated August 30, 1983, respondent PNB informed petitioner that the request had been referred to its Pasay City Branch for appropriate action and recommendation.[9]

In a letter[10] dated February 10, 1984, petitioner reiterated its request for a one year extension from February 17, 1984 within which to redeem/repurchase the property on installment basis. It reiterated its request to repurchase the property on installment.[11] Meanwhile, some PNB Pasay City Branch personnel informed petitioner that as a matter of policy, the bank does not accept "partial redemption."[12]

Since petitioner failed to redeem the property, the Register of Deeds cancelled TCT No. 32098 on June 1, 1984, and issued

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[6] Statement of Account, Exhibit "D", records, pp. 20-23.

[7] Exhibit "E", *id.* at 24.

[8] Exhibits "F" and "17", *rollo*, p. 69.

[9] Exhibit "F-1", *id.* at 68.

[10] Exhibits "F-2" and "18", *id.* at 70.

[11] Exhibit "F-3" and "20", *id.* at 71.

[12] Exhibit "F-4", *id.* at 72.

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a new title in favor of respondent PNB.[13] Petitioner's offers had not yet been acted upon by respondent PNB.

Meanwhile, the Special Assets Management Department (SAMD) had prepared a statement of account, and as of June 25, 1984 petitioner's obligation amounted to ₱1,574,560.47. This included the bid price of ₱1,056,924.50, interest, advances of insurance premiums, advances on realty taxes, registration expenses, miscellaneous expenses and publication cost.[14] When apprised of the statement of account, petitioner remitted ₱725,000.00 to respondent PNB as "deposit to repurchase," and Official Receipt No. 978191 was issued to it.[15]

In the meantime, the SAMD recommended to the management of respondent PNB that petitioner be allowed to repurchase the property for ₱1,574,560.00. In a letter dated November 14, 1984, the PNB management informed petitioner that it was rejecting the offer and the recommendation of the SAMD. It was suggested that petitioner purchase the property for ₱2,660,000.00, its minimum market value. Respondent PNB gave petitioner until December 15, 1984 to act on the proposal; otherwise, its ₱725,000.00 deposit would be returned and the property would be sold to other interested buyers.[16]

Petitioner, however, did not agree to respondent PNB's proposal. Instead, it wrote another letter dated December 12, 1984 requesting for a reconsideration. Respondent PNB replied in a letter dated December 28, 1984, wherein it reiterated its proposal that petitioner purchase the property for ₱2,660,000.00. PNB again informed petitioner that it would return the deposit should petitioner desire to withdraw its offer to purchase the property.[17] On February 25, 1985, petitioner, through counsel, requested that PNB reconsider its letter dated December 28,

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[13] Exhibit "B", records, pp. 264-265.

[14] Exhibit "G", *rollo*, p. 73.

[15] Exhibit "G-1", *id.* at 75.

[16] Exhibit "H" and "22", *id.* at 76.

[17] Exhibit "H" and "24", *id.* at 74.

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1984. Petitioner declared that it had already agreed to the SAMD's offer to purchase the property for ₱1,574,560.47, and that was why it had paid ₱725,000.00. Petitioner warned respondent PNB that it would seek judicial recourse should PNB insist on the position.[18]

On June 4, 1985, respondent PNB informed petitioner that the PNB Board of Directors had accepted petitioner's offer to purchase the property, but for ₱1,931,389.53 in cash less the ₱725,000.00 already deposited with it.[19] On page two of the letter was a space above the typewritten name of petitioner's President, Pablo Gabriel, where he was to affix his signature. However, Pablo Gabriel did not conform to the letter but merely indicated therein that he had received it.[20] Petitioner did not respond, so PNB requested petitioner in a letter dated June 30, 1988 to submit an amended offer to repurchase.

Petitioner rejected respondent's proposal in a letter dated July 14, 1988. It maintained that respondent PNB had agreed to sell the property for ₱1,574,560.47, and that since its ₱725,000.00 downpayment had been accepted, respondent PNB was proscribed from increasing the purchase price of the property.[21] Petitioner averred that it had a net balance payable in the amount of ₱643,452.34. Respondent PNB, however, rejected petitioner's offer to pay the balance of ₱643,452.34 in a letter dated August 1, 1989.[22]

On August 28, 1989, petitioner filed a complaint against respondent PNB for "Annulment of Mortgage and Mortgage Foreclosure, Delivery of Title, or Specific Performance with Damages." To support its cause of action for specific performance, it alleged the following:

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[18] Exhibit "I" and "25", records, pp. 34-36.

[19] Exhibit "J" and "26", *rollo*, pp. 80-81, Exhibit "J-2" and "26-B", *rollo*, p. 82.

[20] Exhibit "J-1" and "26-A", *id.* at p. 81.

[21] Exhibit "K" to "K-4", *id.* at 84-88.

[22] Exhibit "M" and "30", records, p. 46.

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34. As early as June 25, 1984, PNB had accepted the down payment from Manila Metal in the substantial amount of ₱725,000.00 for the redemption/repurchase price of ₱1,574,560.47 as approved by its SMAD and considering the reliance made by Manila Metal and the long time that has elapsed, the approval of the higher management of the Bank to confirm the agreement of its SMAD is clearly a potestative condition which cannot legally prejudice Manila Metal which has acted and relied on the approval of SMAD. The Bank cannot take advantage of a condition which is entirely dependent upon its own will after accepting and benefiting from the substantial payment made by Manila Metal.

35. PNB approved the repurchase price of ₱1,574,560.47 for which it accepted ₱725,000.00 from Manila Metal. PNB cannot take advantage of its own delay and long inaction in demanding a higher amount based on unilateral computation of interest rate without the consent of Manila Metal.

Petitioner later filed an amended complaint and supported its claim for damages with the following arguments:

36. That in order to protect itself against the wrongful and malicious acts of the defendant Bank, plaintiff is constrained to engage the services of counsel at an agreed fee of ₱50,000.00 and to incur litigation expenses of at least ₱30,000.00, which the defendant PNB should be condemned to pay the plaintiff Manila Metal.

37. That by reason of the wrongful and malicious actuations of defendant PNB, plaintiff Manila Metal suffered besmirched reputation for which defendant PNB is liable for moral damages of at least ₱50,000.00.

38. That for the wrongful and malicious act of defendant PNB which are highly reprehensible, exemplary damages should be awarded in favor of the plaintiff by way of example or correction for the public good of at least ₱30,000.00.[23]

Petitioner prayed that, after due proceedings, judgment be rendered in its favor, thus:

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[23] Records, pp. 63-67.

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a) Declaring the Amended Real Estate Mortgage (Annex "A") null and void and without any legal force and effect.

b) Declaring defendant's acts of extra-judicially foreclosing the mortgage over plaintiff's property and setting it for auction sale null and void.

c) Ordering the defendant Register of Deeds to cancel the new title issued in the name of PNB (**TCT NO. 43792**) covering the property described in paragraph 4 of the Complaint, to reinstate TCT No. 37025 in the name of Manila Metal and to cancel the annotation of the mortgage in question at the back of the TCT No. 37025 described in paragraph 4 of this Complaint.

d) Ordering the defendant PNB to return and/or deliver physical possession of the TCT **No. 37025** described in paragraph 4 of this Complaint to the plaintiff Manila Metal.

e) Ordering the defendant PNB to pay the plaintiff Manila Metal's actual damages, moral and exemplary damages in the aggregate amount of not less than ₱80,000.00 as may be warranted by the evidence and fixed by this Honorable Court in the exercise of its sound discretion, and attorney's fees of ₱50,000.00 and litigation expenses of at least ₱30,000.00 as may be proved during the trial, and costs of suit.

Plaintiff likewise prays for such further reliefs which may be deemed just and equitable in the premises.[24]

In its Answer to the complaint, respondent PNB averred, as a special and affirmative defense, that it had acquired ownership over the property after the period to redeem had elapsed. It claimed that no contract of sale was perfected between it and petitioner after the period to redeem the property had expired.

During pre-trial, the parties agreed to submit the case for decision, based on their stipulation of facts.[25] The parties agreed to limit the issues to the following:

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[24] *Id.* at 67-68.

[25] 1. The subject property is an eight thousand fifteen (8,015) square meter land located at Dansalan St., Barrio Barranca, Mandaluyong, Metro

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1. Whether or not the June 4, 1985 letter of the defendant approving/accepting plaintiff's offer to purchase the property is still valid and legally enforceable.

Manila, originally registered in the name of Manila Metal Container Corporation (MMCC) under Transfer Certificate of Title No. 332098 of the Registry of Deeds for the Province of Rizal.

2. On August 5, 1982, the Philippine National Bank (PNB) filed with the Provincial Sheriff of Rizal a petition for extrajudicial foreclosure and sale of the subject property under Act No. 3135, as amended, and Presidential Decree No. 385 to satisfy the mortgage indebtedness of MMCC in the amount of ₱911,532.21 plus interest at the rate of 21% per annum on the amount of ₱679,768.29 and 3% penalty charge as well as 10% attorney's fees on the total amount due and the Sheriff's fees.

3. At the public auction sale held on September 28, 1982, the Provincial Sheriff of Rizal sold the subject property to PNB as the sole and highest bidder for ₱1,056,924.40.

4. The period of redemption of the property was until February 17, 1984.

5. On August 25, 1983, MMCC requested PNB by its latter of even date for the opportunity to redeem/repurchase the property by giving them more time to do so under terms and conditions which may be agreed upon.

6. On August 30, 1983, MMCC's said letter was referred by PNB to its Pasay City Branch for appropriate action.

7. On March 1, 1984, TCT No. 332078 in the name of MMCC was cancelled. In its stead, the Register of Deeds of Mandaluyong issued TCT No. 43792 in the name of PNB.

8. On June 8, 1984, the Special Assets Management Department (SAMD) of PNB prepared an updated Statement of Account showing MMCC's total liability to PNB as of June 25, 1984 to be ₱1,574,560.47 and recommended this amount as the repurchase price of the subject property.

9. On June 25, 1984, MMCC paid ₱725,000.00 to PNB as deposit to repurchase the property. The deposit of ₱725,000 was accepted by PNB on the condition that the purchase price is still subject to the approval of the PNB Board.

10. In its letters dated November 14, 1984 and December 28, 1984, Special Assets Management Department formally informed MMCC President Pablo Gabriel that MMCC's offer to repurchase the bank acquired Mandaluyong property was returned by top management as the offered price was too low. PNB then proposed that the offered repurchase price be increased to at least the then minimum market value of the property that it is ₱2,660,000.00.

11. On June 4, 1985, PNB's SAMD informed MMCC by letter that its offer to purchase the subject property has been approved by the PNB Board, subject to the condition among others, that the selling price shall be the total

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2. Whether or not the plaintiff has waived its right to purchase the property when it failed to conform with the conditions set forth by the defendant in its letter dated June 4, 1985.

3. Whether or not there is a perfected contract of sale between the parties.[26]

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banks claim as of documentation date payable within sixty (60) days from notice of approval.

12. MMCC did not signify its conformity to the terms contained in PNB's June 4, 1985 letter.

13. By letter dated June 30, 1988, PNB's SAMD gave MMCC fifteen (15) days from receipt thereof to submit its amended repurchase offer. Otherwise, PNB will be constrained to cancel the approved sale in favor of MMCC and advertise the property for sale.

14. On July 14, 1988, MMCC reiterated its request to PNB to reduce the balance of the repurchase price to ₱643,452.34, which request was denied by PNB in its letter dated August 1, 1989. PNB then informed MMCC that it is refunding the deposit of ₱725,000 at any time during banking hours and that it will advertise the property for sale thru public bidding.

15. In a letter dated September 20, 1989, PNB demanded MMCC to vacate the premises.

16. In a letter dated May 3, 1992, Mr. Bayani Gabriel and Magtanggol Gabriel children of MMCC President Mr. Pablo Gabriel requested once again to buy back the subject property. In reply, PNB informed the Gabriels in a letter dated June 18, 1992 that it can recommend the sale of the property for ₱25 M subject to the approval of the PNB Board and to other terms and conditions.

17. In a letter dated March 18, 1993, MMCC proposed to repurchase the property for ₱3.5 M but PNB informed MMCC in its letter dated April 13, 1993 that, as a matter of policy, all assets acquired by the bank thru foreclosure sale can only be disposed of at market value or banks claim whichever is higher and that PNB cannot accommodate MMCC's request to repurchase the property for ₱3.5 Million which as of the bank's latest appraisal has a market value of ₱30 Million.

18. The latest offer of MMCC per letter dated June 21, 1993 is ₱4.250 Million which offer was denied by PNB in its letter dated September 13, 1993, reiterating PNB's policy that sale of foreclosed assets shall be based on the current market value of the property, and that the offer is too low.

19. The claims for annulment of mortgage and mortgage foreclosure in the amended complaint are already waived, cancelled and/or withdrawn thereby leaving the claims for specific performance and damages as the remaining issues to be resolved in the instant case.

[26] Records, p. 267.

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While the case was pending, respondent PNB demanded, on September 20, 1989, that petitioner vacate the property within 15 days from notice,[27] but petitioners refused to do so.

On March 18, 1993, petitioner offered to repurchase the property for ₱3,500,000.00.[28] The offer was however rejected by respondent PNB, in a letter dated April 13, 1993. According to it, the prevailing market value of the property was approximately ₱30,000,000.00, and as a matter of policy, it could not sell the property for less than its market value.[29] On June 21, 1993, petitioner offered to purchase the property for ₱4,250,000.00 in cash.[30] The offer was again rejected by respondent PNB on September 13, 1993.[31]

On May 31, 1994, the trial court rendered judgment dismissing the amended complaint and respondent PNB's counterclaim. It ordered respondent PNB to refund the ₱725,000.00 deposit petitioner had made.[32] The trial court ruled that there was no perfected contract of sale between the parties; hence, petitioner had no cause of action for specific performance against respondent. The trial court declared that respondent had rejected petitioner's offer to repurchase the property. Petitioner, in turn, rejected the terms and conditions contained in the June 4, 1985 letter of the SAMD. While petitioner had offered to repurchase the property per its letter of July 14, 1988, the amount of ₱643,422.34 was way below the ₱1,206,389.53 which respondent PNB had demanded. It further declared that the ₱725,000.00 remitted by petitioner to respondent PNB on June 4, 1985 was a "deposit," and not a downpayment or earnest money.

On appeal to the CA, petitioner made the following allegations:

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[27] Exhibit "L", *id.* at 281.

[28] Exhibit "O", *id.* at 286-289.

[29] Exhibit "P", *id.* at 290.

[30] Exhibit "Q", *id.* at 291.

[31] Exhibit "R", *id.* at 292.

[32] Records, pp. 371-381.

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I

THE LOWER COURT ERRED IN RULING THAT DEFENDANT-APPELLEE'S LETTER DATED 4 JUNE 1985 APPROVING/ ACCEPTING PLAINTIFF-APPELLANT'S OFFER TO PURCHASE THE SUBJECT PROPERTY IS NOT VALID AND ENFORCEABLE.

II

THE LOWER COURT ERRED IN RULING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN PLAINTIFF-APPELLANT AND DEFENDANT-APPELLEE.

III

THE LOWER COURT ERRED IN RULING THAT PLAINTIFF-APPELLLANT WAIVED ITS RIGHT TO PURCHASE THE SUBJECT PROPERTY WHEN IT FAILED TO CONFORM WITH CONDITIONS SET FORTH BY DEFENDANT-APPELLEE IN ITS LETTER DATED 4 JUNE 1985.

IV

THE LOWER COURT ERRED IN DISREGARDING THE FACT THAT IT WAS THE DEFENDANT-APPELLEE WHICH RENDERED IT DIFFICULT IF NOT IMPOSSIBLE FOR PLAINTIFF-APPELLANT TO COMPLETE THE BALANCE OF THEIR PURCHASE PRICE.

V

THE LOWER COURT ERRED IN DISREGARDING THE FACT THAT THERE WAS NO VALID RESCISSION OR CANCELLATION OF SUBJECT CONTRACT OF REPURCHASE.

VI

THE LOWER COURT ERRED IN DECLARING THAT PLAINTIFF FAILED AND REFUSED TO SUBMIT THE AMENDED REPURCHASE OFFER.

VII

THE LOWER COURT ERRED IN DISMISSING THE AMENDED COMPLAINT OF PLAINTIFF-APPELLANT.

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VIII

THE LOWER COURT ERRED IN NOT AWARDING PLAINTIFF-APPELLANT ACTUAL, MORAL AND EXEMPLARY DAMAGES, ATTOTRNEY'S FEES AND LITIGATION EXPENSES.[33]

Meanwhile, on June 17, 1993, petitioner's Board of Directors approved Resolution No. 3-004, where it waived, assigned and transferred its rights over the property covered by TCT No. 33099 and TCT No. 37025 in favor of Bayani Gabriel, one of its Directors.[34] Thereafter, Bayani Gabriel executed a Deed of Assignment over 51% of the ownership and management of the property in favor of Reynaldo Tolentino, who later moved for leave to intervene as plaintiff-appellant. On July 14, 1993, the CA issued a resolution granting the motion,[35] and likewise granted the motion of Reynaldo Tolentino substituting petitioner MMCC, as plaintiff-appellant, and his motion to withdraw as intervenor.[36]

The CA rendered judgment on May 11, 2000 affirming the decision of the RTC.[37] It declared that petitioner obviously never agreed to the selling price proposed by respondent PNB (₱1,931,389.53) since petitioner had kept on insisting that the selling price should be lowered to ₱1,574,560.47. Clearly therefore, there was no meeting of the minds between the parties as to the price or consideration of the sale.

The CA ratiocinated that petitioner's original offer to purchase the subject property had not been accepted by respondent PNB. In fact, it made a counter-offer through its June 4, 1985 letter specifically on the selling price; petitioner did not agree to the counter-offer; and the negotiations did not prosper. Moreover,

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[33] *Rollo*, pp. 52-53.

[34] CA *rollo*, pp. 158-159.

[35] *Id.* at 263-266.

[36] *Id.* at 360-364.

[37] *Rollo*, pp. 47-60.

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petitioner did not pay the balance of the purchase price within the sixty-day period set in the June 4, 1985 letter of respondent PNB. Consequently, there was no perfected contract of sale, and as such, there was no contract to rescind.

According to the appellate court, the claim for damages and the counterclaim were correctly dismissed by the court *a quo* for no evidence was presented to support it. Respondent PNB's letter dated June 30, 1988 cannot revive the failed negotiations between the parties. Respondent PNB merely asked petitioner to submit an amended offer to repurchase. While petitioner reiterated its request for a lower selling price and that the balance of the repurchase be reduced, however, respondent rejected the proposal in a letter dated August 1, 1989.

Petitioner filed a motion for reconsideration, which the CA likewise denied.

Thus, petitioner filed the instant petition for review on *certiorari,* alleging that:

I. THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THERE IS NO PERFECTED CONTRACT OF SALE BETWEEN THE PETITIONER AND RESPONDENT.

II. THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE AMOUNT OF PHP725,000.00 PAID BY THE PETITIONER IS NOT AN EARNEST MONEY.

III. THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE FAILURE OF THE PETITIONER-APPELLANT TO SIGNIFY ITS CONFORMITY TO THE TERMS CONTAINED IN PNB'S JUNE 4, 1985 LETTER MEANS THAT THERE WAS NO VALID AND LEGALLY ENFORCEABLE CONTRACT OF SALE BETWEEN THE PARTIES.

IV. THE COURT OF APPEALS ERRED ON A QUESTION OF LAW THAT NON-PAYMENT OF THE PETITIONER-APPELLANT OF THE BALANCE OF THE OFFERED PRICE IN THE LETTER OF PNB DATED JUNE 4, 1985, WITHIN SIXTY (60) DAYS FROM NOTICE OF APPROVAL

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CONSTITUTES NO VALID AND LEGALLY ENFORCEABLE CONTRACT OF SALE BETWEEN THE PARTIES.

V. THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THE LETTERS OF PETITIONER-APPELLANT DATED MARCH 18, 1993 AND JUNE 21, 1993, OFFERING TO BUY THE SUBJECT PROPERTY AT DIFFERENT AMOUNT WERE PROOF THAT THERE IS NO PERFECTED CONTRACT OF SALE.[38]

The threshold issue is whether or not petitioner and respondent PNB had entered into a perfected contract for petitioner to repurchase the property from respondent.

Petitioner maintains that it had accepted respondent's offer made through the SAMD, to sell the property for ₱1,574,560.00. When the acceptance was made in its letter dated June 25, 1984; it then deposited ₱725,000.00 with the SAMD as partial payment, evidenced by Receipt No. 978194 which respondent had issued. Petitioner avers that the SAMD's acceptance of the deposit amounted to an acceptance of its offer to repurchase. Moreover, as gleaned from the letter of SAMD dated June 4, 1985, the PNB Board of Directors had approved petitioner's offer to purchase the property. It claims that this was the suspensive condition, the fulfillment of which gave rise to the contract. Respondent could no longer unilaterally withdraw its offer to sell the property for ₱1,574,560.47, since the acceptance of the offer resulted in a perfected contract of sale; it was obliged to remit to respondent the balance of the original purchase price of ₱1,574,560.47, while respondent was obliged to transfer ownership and deliver the property to petitioner, conformably with Article 1159 of the New Civil Code.

Petitioner posits that respondent was proscribed from increasing the interest rate after it had accepted respondent's offer to sell the property for ₱1,574,560.00. Consequently, respondent could no longer validly make a counter-offer of ₱1,931,789.88 for

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[38] *Id.* at 25.

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the purchase of the property. It likewise maintains that, although the ₱725,000.00 was considered as "deposit for the repurchase of the property" in the receipt issued by the SAMD, the amount constitutes earnest money as contemplated in Article 1482 of the New Civil Code. Petitioner cites the rulings of this Court in *Villonco v. Bormaheco*[39] and *Topacio v. Court of Appeals.*[40]

Petitioner avers that its failure to append its conformity to the June 4, 1984 letter of respondent and its failure to pay the balance of the price as fixed by respondent within the 60-day period from notice was to protest respondent's breach of its obligation to petitioner. It did not amount to a rejection of respondent's offer to sell the property since respondent was merely seeking to enforce its right to pay the balance of ₱1,570,564.47. In any event, respondent had the option either to accept the balance of the offered price or to cause the rescission of the contract.

Petitioner's letters dated March 18, 1993 and June 21, 1993 to respondent during the pendency of the case in the RTC were merely to compromise the pending lawsuit, they did not constitute separate offers to repurchase the property. Such offer to compromise should not be taken against it, in accordance with Section 27, Rule 130 of the Revised Rules of Court.

For its part, respondent contends that the parties never graduated from the "negotiation stage" as they could not agree on the amount of the repurchase price of the property. All that transpired was an exchange of proposals and counter-proposals, nothing more. It insists that a definite agreement on the amount and manner of payment of the price are essential elements in the formation of a binding and enforceable contract of sale. There was no such agreement in this case. Primarily, the concept of "suspensive condition" signifies a future and uncertain event upon the fulfillment of which the obligation becomes effective. It clearly presupposes the existence of a valid and binding agreement, the effectivity of which is subordinated to its

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[39] G.R. No. L-26872, July 25, 1975, 65 SCRA 352.

[40] G.R. No. 102606, July 3, 1992, 211 SCRA 291, 295.

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fulfillment. Since there is no perfected contract in the first place, there is no basis for the application of the principles governing "suspensive conditions."

According to respondent, the Statement of Account prepared by SAMD as of June 25, 1984 cannot be classified as a counter-offer; it is simply a recital of its total monetary claims against petitioner. Moreover, the amount stated therein could not likewise be considered as the counter-offer since as admitted by petitioner, it was only recommendation which was subject to approval of the PNB Board of Directors.

Neither can the receipt by the SAMD of ₱725,000.00 be regarded as evidence of a perfected sale contract. As gleaned from the parties' *Stipulation of Facts* during the proceedings in the court *a quo*, the amount is merely an acknowledgment of the receipt of ₱725,000.00 as deposit to repurchase the property. The deposit of ₱725,000.00 was accepted by respondent on the condition that the purchase price would still be approved by its Board of Directors. Respondent maintains that its acceptance of the amount was qualified by that condition, thus not absolute. Pending such approval, it cannot be legally claimed that respondent is already bound by any contract of sale with petitioner.

According to respondent, petitioner knew that the SAMD has no capacity to bind respondent and that its authority is limited to administering, managing and preserving the properties and other special assets of PNB. The SAMD does not have the power to sell, encumber, dispose of, or otherwise alienate the assets, since the power to do so must emanate from its Board of Directors. The SAMD was not authorized by respondent's Board to enter into contracts of sale with third persons involving corporate assets. There is absolutely nothing on record that respondent authorized the SAMD, or made it appear to petitioner that it represented itself as having such authority.

Respondent reiterates that SAMD had informed petitioner that its offer to repurchase had been approved by the Board subject to the condition, among others, "that the selling price

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shall be the total bank's claim as of documentation date x x x payable in cash (₱725,000.00 already deposited) within 60 days from notice of approval." A new Statement of Account was attached therein indicating the total bank's claim to be ₱1,931,389.53 less deposit of ₱725,000.00, or ₱1,206,389.00. Furthermore, while respondent's Board of Directors accepted petitioner's offer to repurchase the property, the acceptance was qualified, in that it required a higher sale price and subject to specified terms and conditions enumerated therein. This qualified acceptance was in effect a counter-offer, necessitating petitioner's acceptance in return.

The Ruling of the Court

The ruling of the appellate court that there was no perfected contract of sale between the parties on June 4, 1985 is correct.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[41] Under Article 1318 of the New Civil Code, there is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

Contracts are perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[42] Once perfected, they bind other contracting parties and the obligations arising therefrom have the form of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.[43]

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[41] NEW CIVIL CODE, ARTICLE 1305.

[42] *Gomez v. Court of Appeals,* 395 Phil. 115, 125-126 (2000).

[43] NEW CIVIL CODE, ARTICLE 1315.

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By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.[44] The absence of any of the essential elements will negate the existence of a perfected contract of sale. As the Court ruled in *Boston Bank of the Philippines v. Manalo*:[45]

> A definite agreement as to the price is an essential element of a binding agreement to sell personal or real property because it seriously affects the rights and obligations of the parties. Price is an essential element in the formation of a binding and enforceable contract of sale. The fixing of the price can never be left to the decision of one of the contracting parties. But a price fixed by one of the contracting parties, if accepted by the other, gives rise to a perfected sale.[46]

A contract of sale is consensual in nature and is perfected upon mere meeting of the minds. When there is merely an offer by one party without acceptance of the other, there is no contract.[47] When the contract of sale is not perfected, it cannot, as an independent source of obligation, serve as a binding juridical relation between the parties.[48]

In *San Miguel Properties Philippines, Inc. v. Huang*,[49] the Court ruled that the stages of a contract of sale are as follows: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale which are the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins

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[44] NEW CIVIL CODE, ARTICLE 1458.

[45] G.R. No. 158149, February 9, 2006, 482 SCRA 108.

[46] *Id.* at 129.

[47] *Palattao v. Court of Appeals*, 431 Phil. 438, 450 (2002).

[48] *Boston Bank of the Philippines v. Manalo, supra* note 48, at 129.

[49] 391 Phil. 636, 645 (2000).

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when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.

A negotiation is formally initiated by an offer, which, however, must be certain.[50] At any time prior to the perfection of the contract, either negotiating party may stop the negotiation. At this stage, the offer may be withdrawn; the withdrawal is effective immediately after its manifestation. To convert the offer into a contract, the acceptance must be absolute and must not qualify the terms of the offer; it must be plain, unequivocal, unconditional and without variance of any sort from the proposal. In *Adelfa Properties, Inc. v. Court of Appeals,*[51] the Court ruled that:

> x x x The rule is that except where a formal acceptance is so required, although the acceptance must be affirmatively and clearly made and must be evidenced by some acts or conduct communicated to the offeror, it may be shown by acts, conduct, or words of the accepting party that clearly manifest a present intention or determination to accept the offer to buy or sell. Thus, acceptance may be shown by the acts, conduct, or words of a party recognizing the existence of the contract of sale.[52]

A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis.[53] Consequently, when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer.[54] The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.

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[50] NEW CIVIL CODE, ARTICLE 1319.

[51] 310 Phil. 623 (1995).

[52] *Id.* at 642.

[53] *Logan v. Philippine Acetylene Company,* 33 Phil. 177, 183-184 (1916).

[54] *ABS-CBN Broadcasting Corporation v. Court of Appeals,* G.R. No. 128690, July 21, 1999, 361 SCRA 499, 520.

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In this case, petitioner had until February 17, 1984 within which to redeem the property. However, since it lacked the resources, it requested for more time to redeem/repurchase the property under such terms and conditions agreed upon by the parties.[55] The request, which was made through a letter dated August 25, 1983, was referred to the respondent's main branch for appropriate action.[56] Before respondent could act on the request, petitioner again wrote respondent as follows:

1. Upon approval of our request, we will pay your goodselves ONE HUNDRED & FIFTY THOUSAND PESOS (₱150,000.00);
2. Within six months from date of approval of our request, we will pay another FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00); and
3. The remaining balance together with the interest and other expenses that will be incurred will be paid within the last six months of the one year grave period requested for.[57]

When the petitioner was told that respondent did not allow **"partial redemption,"**[58] it sent a letter to respondent's President reiterating its offer to purchase the property.[59] There was no response to petitioner's letters dated February 10 and 15, 1984.

The statement of account prepared by the SAMD stating that the net claim of respondent as of June 25, 1984 was ₱1,574,560.47 cannot be considered an unqualified acceptance to petitioner's offer to purchase the property. The statement is but a computation of the amount which petitioner was obliged to pay in case respondent would later agree to sell the property, including interests, advances on insurance premium, advances on realty taxes, publication cost, registration expenses and miscellaneous expenses.

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[55] Exhibit "F", *rollo*, p. 69.

[56] Exhibit "F-1", *id.* at 68.

[57] Exhibit "F-2", Records, p. 27.

[58] Exhibit "F-4", *rollo*, p. 72.

[59] Exhibit "F-3", *id.* at 71.

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There is no evidence that the SAMD was authorized by respondent's Board of Directors to accept petitioner's offer and sell the property for ₱1,574,560.47. Any acceptance by the SAMD of petitioner's offer would not bind respondent. As this Court ruled in *AF Realty Development, Inc. vs. Diesehuan Freight Services, Inc.*:[60]

> Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. 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. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/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 held not binding on the corporation.

Thus, a corporation can only execute its powers and transact its business through its Board of Directors and through its officers and agents when authorized by a board resolution or its by-laws.[61]

It appears that the SAMD had prepared a recommendation for respondent to accept petitioner's offer to repurchase the property even beyond the one-year period; it recommended that petitioner be allowed to redeem the property and pay ₱1,574,560.00 as the purchase price. Respondent later approved the recommendation that the property be sold to petitioner. But instead of the ₱1,574,560.47 recommended by the SAMD and to which petitioner had previously conformed, respondent set the purchase price at ₱2,660,000.00. In fine, respondent's acceptance of petitioner's offer was qualified, hence can be at most considered as a counter-offer. If petitioner had accepted

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[60] 424 Phil. 446, 454 (2002).

[61] *Firme v. Bohol Enterprises and Development Corporation*, G.R. No. 146608, October 23, 2003, 414 SCRA 190.

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this counter-offer, a perfected contract of sale would have arisen; as it turns out, however, petitioner merely sought to have the counter-offer reconsidered. This request for reconsideration would later be rejected by respondent.

We do not agree with petitioner's contention that the ₱725,000.00 it had remitted to respondent was "earnest money" which could be considered as proof of the perfection of a contract of sale under Article 1482 of the New Civil Code. The provision reads:

ART. 1482. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract.

This contention is likewise negated by the stipulation of facts which the parties entered into in the trial court:

8. On June 8, 1984, the Special Assets Management Department (SAMD) of PNB prepared an updated Statement of Account showing MMCC's total liability to PNB as of June 25, 1984 to be ₱1,574,560.47 and recommended this amount as the repurchase price of the subject property.

9. On June 25, 1984, MMCC paid ₱725,000.00 to PNB as deposit to repurchase the property. ***The deposit of ₱725,000 was accepted by PNB on the condition that the purchase price is still subject to the approval of the PNB Board.***[62]

Thus, the ₱725,000.00 was merely a deposit to be applied as part of the purchase price of the property, in the event that respondent would approve the recommendation of SAMD for respondent to accept petitioner's offer to purchase the property for ₱1,574,560.47. Unless and until the respondent accepted the offer on these terms, no perfected contract of sale would arise. Absent proof of the concurrence of all the essential elements of a contract of sale, the giving of earnest money cannot establish the existence of a perfected contract of sale.[63]

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[62] Records, p. 258.

[63] *San Miguel Properties Philippines, Inc., v. Huang, supra* note 52, at 647.

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It appears that, per its letter to petitioner dated June 4, 1985, the respondent had decided to accept the offer to purchase the property for ₱1,931,389.53. However, this amounted to an amendment of respondent's qualified acceptance, or an amended counter-offer, because while the respondent lowered the purchase price, it still declared that its acceptance was subject to the following terms and conditions:

1. That the selling price shall be the total Bank's claim as of documentation date (pls. see attached statement of account as of 5-31-85), payable in cash (₱725,000.00 already deposited) within sixty (60) days from notice of approval;
2. The Bank sells only whatever rights, interests and participation it may have in the property and you are charged with full knowledge of the nature and extent of said rights, interests and participation and waive your right to warranty against eviction.
3. All taxes and other government imposts due or to become due on the property, as well as expenses including costs of documents and science stamps, transfer fees, *etc.*, to be incurred in connection with the execution and registration of all covering documents shall be borne by you;
4. That you shall undertake at your own expense and account the ejectment of the occupants of the property subject of the sale, if there are any;
5. That upon your failure to pay the balance of the purchase price within sixty (60) days from receipt of advice accepting your offer, your deposit shall be forfeited and the Bank is thenceforth authorized to sell the property to other interested parties.
6. That the sale shall be subject to such other terms and conditions that the Legal Department may impose to protect the interest of the Bank.[64]

It appears that although respondent requested petitioner to conform to its amended counter-offer, petitioner refused and

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[64] Records, pp. 37-38.

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instead requested respondent to reconsider its amended counter-offer. Petitioner's request was ultimately rejected and respondent offered to refund its ₱725,000.00 deposit.

In sum, then, there was no perfected contract of sale between petitioner and respondent over the subject property.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED*. The assailed decision is *AFFIRMED*. Costs against petitioner Manila Metal Container Corporation.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

Panganiban, C.J., retired as of December 7, 2006.

FIRST DIVISION

[G.R. No. 169251. December 20, 2006]

DEMIE L. URIARTE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; R.A. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); CORRUPT PRACTICES OF PUBLIC OFFICERS; CAUSING UNDUE INJURY OR GIVING UNWARRANTED ADVANTAGE; ELEMENTS. — Section 3(e), R.A. 3019 provides: Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful. x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any