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Judge Calica optionally retired on 16 June 1991 he ceased to be a judge of the court where he sat in judgment. Consequently, with him also "retired" all his authority to decide any case, *i.e.*, to write, sign and promulgate the decision thereon. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement.

WHEREFORE, the decision of Judge Florentino F. Calica in Crim. Case No XI-202-T is declared null and void having been issued and promulgated after his retirement. This case is ordered remanded to the court of origin for adjudication and promulgation of a new decision.

SO ORDERED.

Cruz (Chairman), Griño-Aquino, and *Quiason, JJ.,* concur.

SECOND DIVISION

[G.R. No. 68555. March 19, 1993]

PRIME WHITE CEMENT CORPORATION, *petitioner, vs.* **HONORABLE INTERMEDIATE APPELLATE COURT and ALEJANDRO TE,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; GENERALLY CORPORATE POWERS SHALL BE EXERCISED BY THE BOARD OF DIRECTORS; EXCEPTIONS. — Under the Corporation Law, which was then in force at the time this case arose, as well as under the present Corporation Code, all corporate powers shall be exercised by the Board of Directors, except as otherwise provided by law. Although it cannot completely abdicate its power and responsibility to act for the juridical entity, the Board may expressly delegate specific powers

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to its President or any of its officers. In the absence of such express delegation, a contract entered into by its President, on behalf of the corporation, may still bind the corporation if the board should ratify the same expressly or impliedly. Implied ratification may take various forms — like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom. Furthermore, even in the absence of express or implied authority by ratification, the President as such may, as a general rule, bind the corporation by a contract in the ordinary course of business, provided the same is reasonable under the circumstances. These rules are basic, but are all *general* and thus quite flexible. They apply where the President or other officer, purportedly acting for the corporation, is dealing with a *third person*, *i.e.*, person *outside* the corporation.

2. ID.; ID.; BOARD OF DIRECTORS; RULE IN CASE OF CONFLICT OF INTEREST. — A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation. In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit. As corporate managers, directors are committed to seek the maximum amount of profits for the corporation. This trust relationship "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders." In the case of *Gokongwei v. Securities and Exchange Commission*, this Court quoted with favor from *Pepper v. Litton*, (89 SCRA 336) thus: "x x x He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters x x x He cannot utilize his inside information and his strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the *cestuis* x x x."

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3. ID.; ID.; DEALINGS OF DIRECTORS, TRUSTEES OR OFFICERS WITH THE CORPORATION; RULE. — A director's contract with his corporation is not in all instances void or voidable. If the contract is fair and reasonable under the circumstances, it may be ratified by the stockholders provided a full disclosure of his adverse interest is made as provided in Section 32 of the Corporation Code.

D E C I S I O N

CAMPOS, JR., *J.*:

Before Us is a Petition for Review on *Certiorari* filed by petitioner Prime White Cement Corporation seeking the reversal of the decision* of the then Intermediate Appellate Court, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, the judgment appealed from is hereby affirmed *in toto*."[1]

The facts, as found by the trial court and as adopted by the respondent Court are hereby quoted, to wit:

"On or about the 16th day of July, 1969, plaintiff and defendant corporation thru its President, Mr. Zosimo Falcon and Justo C. Trazo, as Chairman of the Board, entered into a dealership agreement (Exhibit A) whereby said plaintiff was obligated to act as the exclusive dealer and/or distributor of the said defendant corporation of its cement products in the entire Mindanao area for a term of five (5) years and proving (sic) among others that:

"a. The corporation shall, commencing September, 1970, sell to and supply the plaintiff, as dealer with 20,000 bags (94 lbs/bag) of white cement per month;

"b. The plaintiff shall pay the defendant corporation ₱9.70, Philippine Currency, per bag of white cement, FOB Davao and Cagayan de Oro ports;

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* AC-G.R. No. CV-69947-R, March 30, 1984; penned by Associate Justice Marcelino R. Veloso, concurred in by Associate Justices Porfirio V. Sison, Abdulwahid A. Bidin, and Desiderio P. Jurado.

[1] *Rollo*, p. 58.

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"c. The plaintiff shall every time the defendant corporation is ready to deliver the good, open with any bank or banking institution a confirmed, unconditional, and irrevocable letter of credit in favor of the corporation and that upon certification by the boat captain on the bill of lading that the goods have been loaded on board the vessel bound for Davao the said bank or banking institution shall release the corresponding amount as payment of the goods so shipped."

Right after the plaintiff entered into the aforesaid dealership agreement, he placed an advertisement in a national, circulating newspaper the fact of his being the exclusive dealer of the defendant corporation's white cement products in Mindanao area, more particularly, in the Manila Chronicle dated August 16, 1969 (Exhibits R and R-1) and was even congratulated by his business associates, so much so, he was asked by some of his businessmen friends and close associates if they can be his sub-dealer in the Mindanao area.

Relying heavily on the dealership agreement, plaintiff sometime in the months of September, October, and December, 1969, entered into a written agreement with several hardware stores dealing in buying and selling white cement in the Cities of Davao and Cagayan de Oro which would thus enable him to sell his allocation of 20,000 bags regular supply of the said commodity, by September, 1970 (Exhibits O, 0-1, 0-2, P, P-1, P-2, Q, Q-1 and Q-2). After the plaintiff was assured by his supposed buyer that his allocation of 20,000 bags of white cement can be disposed of, he informed the defendant corporation in his letter dated August 18, 1970 that he is making the necessary preparation for the opening of the requisite letter of credit to cover the price of the due initial delivery for the month of September, 1970 (Exhibit B), looking forward to the defendant corporation's duty to comply with the dealership agreement. In reply to the aforesaid letter of the plaintiff, the defendant corporation thru its corporate secretary, replied that the board of directors of the said defendant decided to impose the following conditions:

"a. Delivery of white cement shall commence at the end of November, 1970;

"b. Only 8,000 bags of white cement per month for only a period of three (3) months will be delivered;

"c. The price of white cement was priced at ₱13.30 per bag;

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"d. The price of white cement is subject to readjustment unilaterally on the part of the defendant;

"e. The place of delivery of white cement shall be Austurias (sic);

"f. The letter of credit may be opened only with the Prudential Bank, Makati Branch;

"g. Payment of white cement shall be made in advance and which payment shall be used by the defendant as guaranty in the opening of a foreign letter of credit to cover costs and expenses in the procurement of materials in the manufacture of white cement. (Exhibit C)."

x x x x x x x x x

Several demands to comply with the dealership agreement (Exhibits D, E, G, I, R, L, and N) were made by the plaintiff to the defendant, however, defendant refused to comply with the same, and plaintiff by force of circumstances was constrained to cancel his agreement for the supply of white cement with third parties, which were concluded in anticipation of, and pursuant to the said dealership agreement.

Notwithstanding that the dealership agreement between the plaintiff and defendant was in force and subsisting, the defendant corporation, in violation of, and with evident intention not to be bound by the terms and conditions thereof, entered into an exclusive dealership agreement with a certain Napoleon Co for the marketing of white cement in Mindanao (Exhibit T) hence, this suit." (Plaintiff's Record on Appeal, pp. 86-90)."[2]

After trial, the trial court adjudged the corporation liable to Alejandro Te in the amount of ₱3,302,400.00 as actual damages, ₱100,000.00 as moral damages, and ₱10,000.00 as and for attorney's fees and costs. The appellate court affirmed the said decision mainly on the following basis, and We quote:

"There is no dispute that when Zosimo R. Falcon and Justo B. Trazo signed the dealership agreement Exhibit "A", they were the President and Chairman of the Board, respectively, of defendant-appellant corporation. Neither is the genuineness of the said agreement contested. As a matter of fact, it appears on the face of the contract

[2] *Ibid*., pp. 47-51.

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itself that both officers were duly authorized to enter into the said agreement and signed the same for and in behalf of the corporation. When they, therefore, entered into the said transaction they created the impression that they were duly clothed with the authority to do so. It cannot now be said that the disputed agreement which possesses all the essential requisites of a valid contract was never intended to bind the corporation as this avoidance is barred by the principle of estoppel."[3]

In this petition for review, petitioner Prime White Cement Corporation made the following assignment of errors:[4]

I

"THE DECISION AND RESOLUTION OF THE INTERMEDIATE APPELLATE COURT ARE UNPRECEDENTED DEPARTURES FROM THE CODIFIED PRINCIPLE THAT CORPORATE OFFICERS COULD ENTER INTO CONTRACTS IN BEHALF OF THE CORPORATION ONLY WITH PRIOR APPROVAL OF THE BOARD OF DIRECTORS.

II

THE DECISION AND RESOLUTION OF THE INTERMEDIATE APPELLATE COURT ARE CONTRARY T0 THE ESTABLISHED JURISPRUDENCE, PRINCIPLE AND RULE ON FIDUCIARY DUTY OF DIRECTORS AND OFFICERS OF THE CORPORATION.

III

THE DECISION AND RESOLUTION OF THE INTERMEDIATE APPELLATE COURT DISREGARDED THE PRINCIPLE AND JURISPRUDENCE, PRINCIPLE AND RULE ON UNENFORCEABLE CONTRACTS AS PROVIDED IN ARTICLE 1317 OF THE NEW CIVIL CODE.

IV

THE DECISION AND RESOLUTION OF THE INTERMEDIATE APPELLATE COURT DISREGARDED THE PRINCIPLE AND JURISPRUDENCE AS TO WHEN AWARD OF ACTUAL AND MORAL DAMAGES IS PROPER.

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[3] *Ibid*., p. 54.

[4] Petition, pp. 14-15; *Rollo*, pp. 19-20.

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V

IN NOT AWARDING PETITIONER'S CAUSE OF ACTION AS STATED IN ITS ANSWER WITH SPECIAL AND AFFIRMATIVE DEFENSES WITH COUNTERCLAIM THE INTERMEDIATE APPELLATE COURT HAS CLEARLY DEPARTED FROM THE ACCEPTED USUAL COURSE OF JUDICIAL PROCEEDINGS."

There is only one legal issue to be resolved by this Court: whether or not the "dealership agreement" referred by the President and Chairman of the Board of petitioner corporation is a valid and enforceable contract. We do not agree with the conclusion of the respondent Court that it is.

Under the Corporation Law, which was then in force at the time this case arose,[5] as well as under the present Corporation Code, all corporate powers shall be exercised by the Board of Directors, except as otherwise provided by law.[6] Although it cannot completely abdicate its power and responsibility to act for the juridical entity, the Board may expressly delegate specific powers to its President or any of its officers. In the absence of such express delegation, a contract entered into by its President, on behalf of the corporation, may still bind the corporation if the board should ratify the same expressly or impliedly. Implied ratification may take various forms — like silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[7] Furthermore, even in the absence of express or implied authority by ratification, the President as such may, as a general rule, bind the corporation by a contract in the ordinary course of business, provided the same is reasonable under the circumstances.[8] These rules are basic, but are all *general* and

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[5] The Corporation Code (B.P. Blg. 68) replaced the Corporation Law (Act 1459) and took effect on May 1, 1980.

[6] CORPORATION LAW, Sec. 28; CORPORATION CODE, Sec. 23.

[7] *Acuña vs. Batac Producers Cooperative Marketing Association, Inc.,* 20 SCRA 526 (1967).

[8] *Yu Chuck vs. "Kong Li Po,"* 46 Phil. 608 (1924).

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thus quite flexible. They apply where the President or other officer, purportedly acting for the corporations, is dealing with a *third person, i.e.*, a person *outside* the corporation.

The situation is quite different where a director or officer is dealing with his own corporation. In the instant case respondent Te was not an ordinary stockholder; he was a member of the Board of Directors and Auditor of the corporation as well. He was what is often referred to as a "self-dealing" director.

A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation.[9] In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit. As corporate managers, directors are committed to seek the maximum amount of profits for the corporation. This trust relationship "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders."[10] In the case of *Gokongwei v. Securities and Exchange Commission*, this Court quoted with favor from *Pepper v. Litton*,[11] thus:

"x x x He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters x x x. He cannot utilize his inside information and his strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the *cestuis*. x x x"

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[9] *Gokongwei vs. Securities and Exchange Commission*, 89 SCRA 336 (1979), and cases cited therein.

[10] *Ibid*.

[11] 308 U.S. 295-313, 84 L. Ed. 281, 291-292 (1939).

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On the other hand, a director's contract with his corporation is not in all instances void or voidable. If the contract is fair and reasonable under the circumstances, it may be ratified by the stockholders provided a full disclosure of his adverse interest is made. Section 32 of the Corporation Code provides, thus:

"SEC. 32. Dealings of directors, trustees or officers with the corporation. — A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the following conditions are present:

1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;

2. That the vote of such director or trustee was not necessary for the approval of the contract;

3. That the contract is fair and reasonable under the circumstances; and

4. That in the case of an officer, the contract with the officer has been previously authorized by the Board of Directors.

Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or of two-thirds (2/3) of the members in a meeting called for the purpose: Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances."

Although the old Corporation Law which governs the instant case did not contain a similar provision, yet the cited provision substantially incorporates well-settled principles in corporate law.[12]

Granting *arguendo* that the "dealership agreement" involved here would be valid and enforceable if entered into with a person other than a director or officer of the corporation, the fact that

[12] Ballantine on Corporations, pp. 167-178.

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the other party to the contract was a Director and Auditor of the petitioner corporation changes the whole situation. First of all, We believe that the contract was neither fair nor reasonable. The "dealership agreement" entered into in July, 1969, was to sell and supply to respondent Te 20,000 bags of white cement per month, for five years starting September, 1970, at the *fixed price* of ₱9.70 per bag. Respondent Te is a businessman himself and must have known, or at least must be presumed to know, that at that time, prices of commodities in general, and white cement in particular, were not stable and were expected to rise. At the time of the contract, petitioner corporation had not even commenced the manufacture of white cement, the reason why delivery was not to begin until 14 months later. He must have known that within that period of six years, there would be a considerable rise in the price of white cement. In fact, respondent Te's own Memorandum shows that in September, 1970, the price per bag was ₱14.50, and by the middle of 1975, it was already ₱37.50 per bag. Despite this, no provision was made in the "dealership agreement" to allow for an increase in price mutually acceptable to the parties. Instead, the price was pegged at ₱9.70 per bag for the whole five years of the contract. Fairness on his part as a director of the corporation from whom he was to buy the cement, would require such a provision. In fact, this unfairness in the contract is also a basis which renders a contract entered into by the President, without authority from the Board of Directors, void or voidable, although it may have been in the ordinary course of business. We believe that the fixed price of ₱9.70 per bag for a period of five years was not fair and reasonable. Respondent Te, himself, when he subsequently entered into contracts to resell the cement to his "new dealers" Henry Wee[13] and Gaudencio Galang[14] stipulated as follows:

"The price of white cement shall be mutually determined by us but in no case shall the same be less than ₱14.00 per bag (94 lbs)."

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[13] Annex "B" to the Complaint; Record on Appeal, p. 11.

[14] Annex "C" to the Complaint; Record on Appeal, pp. 11-12.

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The contract with Henry Wee was on September 15, 1969, and that with Gaudencio Galang, on October 13, 1967. A similar contract with Prudencio Lim was made on December 29, 1969.[15] All of these contracts were entered into soon after his "dealership agreement" with petitioner corporation, and in each one of them he protected himself from any increase in the market price of white cement. Yet, except for the contract with Henry Wee, the contracts were for only two years from October, 1970. Why did he not protect the corporation in the same manner when he entered into the "dealership agreement"? For that matter, why did the President and the Chairman of the Board not do so either? As director, specially since he was the other party in interest, respondent Te's bounden duty was to act in such manner as not to unduly prejudice the corporation. In the light of the circumstances of this case, it is to Us quite clear that he was guilty of disloyalty to the corporation; he was attempting in effect, to enrich himself at the expense of the corporation. There is no showing that the stockholders ratified the "dealership agreement" or that they were fully aware of its provisions. The contract was therefore not valid and this Court cannot allow him to reap the fruits of his disloyalty.

As a result of this action which has been proven to be without legal basis, petitioner corporation's reputation and goodwill have been prejudiced. However, there can be no award for moral damages under Article 2217 and succeeding articles on Section 1 of Chapter 3 of Title XVIII of the Civil Code in favor of a corporation.

In view of the foregoing, the Decision and Resolution of the Intermediate Appellate Court dated March 30, 1984 and August 6, 1984, respectively, are hereby *SET ASIDE*. Private respondent Alejandro Te is hereby ordered to pay petitioner corporation the sum of ₱20,000.00 for attorney's fees, plus the cost of suit and expenses of litigation.

SO ORDERED.

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

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[15] Annex "D" to the Complaint; Record on Appeal, pp. 12-13.