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this Court of the action taken hereon within ten (10) days from finality.

No costs.

SO ORDERED.

Puno, Kapunan, and *Ynares-Santiago, JJ.*, concur.

Davide, Jr., C.J., votes to refer this case to the RTC, instead of ordering its dismissal thereof.

THIRD DIVISION

[G.R. No. 137686. February 8, 2000]

RURAL BANK OF MILAOR (CAMARINES SUR), *petitioner, vs.* **FRANCISCA OCFEMIA, ROWENA BARROGO, MARIFE O. NIÑO, FELICISIMO OCFEMIA, RENATO OCFEMIA JR., and WINSTON OCFEMIA,** *respondents.*

SYNOPSIS

The action is for *mandamus* with damages where petitioner bank was declared in default for failure to file an answer within the reglementary period. And when the case was set for hearing, petitioner did not file any opposition thereto. Allegedly, there are five parcels of land located in Camarines Sur which were sold by the bank to the parents of respondent Marife but the same had not been transferred to the latter because it was required that the document of sale be registered with the Register of Deeds. The Register of Deeds, however, required a board resolution from the bank confirming the Deed of Sale. The bank refused the request for board resolution after many alibis and, thus, the action for *mandamus* which the trial court granted and the Court of Appeals affirmed.

Petitioner questioned the jurisdiction of the RTC because the value of the real property is less than ₱20,000. The Court ruled

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that the RTC had jurisdiction over the action because respondents did not raise any question involving the title to the property. The issue was the respondent's right to compel the bank to issue the required board resolution. And whether the board of directors may be compelled to make a resolution when the alleged sale was executed by the bank manager without prior authority, the Court noted that respondents based their action on the Deed of Sale executed with one Fe S. Tena as the representative of the bank. Petitioner failed to specifically deny under oath the allegations in that contract. Thus, it is an admission of the due execution of the contract of sale and acknowledgment of Tena's authority to sign the Deed of Sale on behalf of the bank. A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like manager Tena, even though such agent was abusing her authority. The bank has a clear legal duty to issue the board resolution sought by respondents.

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT; CASE AT BAR.**— The well-settled rule is that jurisdiction is determined by the allegations of the complaint. In the present case, the Petition for *Mandamus* filed by respondents before the trial court prayed that petitioner-bank be compelled to issue a board resolution confirming the Deed of Sale covering five parcels of unregistered land, which the bank manager had executed in their favor. The RTC has jurisdiction over such action pursuant to Section 21 of BP 129, which provides: "SEC 21. *Original jurisdiction in other cases.* — Regional Trial Courts shall exercise original jurisdiction: (1) in the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions; and (2) In actions affecting ambassadors and other public ministers and consuls." Respondents did not raise any question involving the title to the property; hence, the issue therein was not the title to the property. It was respondents' right to compel the bank to issue a board resolution confirming the Deed of Sale.

2. **ID.; CIVIL PROCEDURE; ALLEGATIONS IN PLEADINGS; ACTION BASED ON DOCUMENT; FAILURE TO CONTEST GENUINENESS THEREOF.**— Respondents based

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their action before the trial court on the Deed of Sale, the substance of which was alleged in and a copy thereof was attached to the Petition for *Mandamus*. The Deed named Fe S. Tena as the representative of the bank. Petitioner, however, failed to specifically deny under oath the allegations in that contract. In fact, it filed no answer at all, for which reason it was declared in default. Pertinent provisions of the Rules of Court read: "SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. "SEC. 8. *How to contest genuineness of such documents.* — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused." In failing to file its answer specifically denying under oath the Deed of Sale, the bank admitted the due execution of the said contract. Such admission means that it acknowledged that Tena was authorized to sign the Deed of Sale on its behalf. Thus, defenses that are inconsistent with the due execution and the genuineness of the written instrument are cut off by an admission implied from a failure to make a verified specific denial.

3. **CIVIL LAW; DAMAGES; A BANK IS LIABLE TO INNOCENT THIRD PERSONS WHERE REPRESENTATION IS MADE IN COURSE OF ITS NORMAL BUSINESS BY ITS AGENT.**— A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like Manager Tena, even though such agent is abusing her authority. Clearly, persons dealing with her could not be blamed for believing that she was authorized to transact business for and on behalf of the bank. Notwithstanding the putative authority of the manager to bind the bank in the Deed of Sale, petitioner has failed to file an answer to the Petition below within the reglementary period, let alone present evidence controverting such authority. Indeed, when one of herein respondents went to the bank to ask

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for the board resolution, she was merely told to bring the receipts. The bank failed to categorically declare that Tena had no authority. The bank is estopped from questioning the authority of the bank manager to enter into the contract of sale. If a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds the agent out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

VITUG, *J., concurring opinion*:

1. **CIVIL LAW; CIVIL CODE SUPPLETORY TO SPECIAL LAWS.**— The Civil Code, being a law of general application, can be suppletory to special laws and certainly not preclusive of those that govern commercial transactions. Indeed, in its generic sense, civil law can rightly be said to encompass commercial law. *Jus civile,* in ancient Rome, was merely used to distinguish it from *jus gentium* or the law common to all the nations within the empire and, at some time later, only in contrast to international law. In more recent times, civil law is so referred to as private law in distinction from public law and criminal law. Today, it may not be totally inaccurate to consider commercial law, among some other special laws, as being a branch of civil law.

2. **COMMERCIAL LAW; CORPORATION LAW; *ULTRA VIRES* ACTS OF CORPORATIONS; ELUCIDATED.**— Section 45 of the Corporation Code provides: "Sec. 45. *Ultra vires acts of corporations.* — No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred." The language of the Code appears to confine the term *ultra vires* to an act outside or beyond express, implied and incidental corporate powers. Nevertheless, the concept can also include those acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal. In general, although perhaps loosely, *ultra vires* has also been used to designate those acts of the board of directors or of corporate officers when acting beyond their respective spheres of authority. In the context that the law has used the term in Article 45 of the Corporation Code,

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an *ultra vires* act would be void and not susceptible to ratification. In determining whether or not a corporation may perform an act, one considers the logical and necessary relation between the act assailed and the corporate purpose expressed by the law or in the charter. For if the act were one which is lawful in itself or not otherwise prohibited and done for the purpose of serving corporate ends or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly considered within corporate powers.

3. **ID.; ID.; BOARD OF DIRECTORS; WHEN ACT OF THE BOARD DONE WITHOUT THE REQUIRED CONCURRENCE OF THE SHAREHOLDERS; ELUCIDATED.**— Section 23 of the Corporation Code states that the corporate powers are to be exercised, all business conducted, and all property of corporations controlled and held, by the Board of Directors. When the act of the board is within corporate powers but it is done without the concurrence of the shareholders as and when such approval is required by law or when the act is beyond its competence to do, the act has been described as void or, as unenforceable, or as ineffective and not legally binding. These holdings notwithstanding, the act cannot accurately be likened to an *ultra vires* act of the corporation itself defined in Section 45 of the Code. Where the act is within corporate powers but the board has acted without being competent to independently do so, the action is not necessarily and totally devoid of effects, and it may generally be ratified expressly or impliedly. Thus, an acceptance of benefits derived by the shareholders from an outside investment made by the board without the required concurrence of the stockholders may, nonetheless, be so considered as an effective investment. It may be said, however, that when the board resolution is yet executory, the act should aptly be deemed inoperative and specific performance cannot be validly demanded but, if for any reason, the contemplated action is carried out, such principles as ratification or prescription when applicable, normally unknown in void contracts, can serve to negate a claim for the total nullity thereof.

4. **ID.; ID.; CORPORATE OFFICERS; ACTS THAT BIND THE COMPANY.**— Corporate officers, in their case, may act on such matters as may be authorized either expressly by the By-laws or Board Resolutions or impliedly such as by general practice or policy or as are implied by express powers. When officers are

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allowed to act in certain particular cases, their acts conformably therewith can bind the company. Hence, a corporate officer entrusted with general management and control of the business has the implied authority to act or contract for the corporation which may be necessary or appropriate to conduct the ordinary business. If the act of corporate officers comes within corporate powers but it is done without any express or implied authority therefor from the by-laws, board resolutions or corporate practices, such an act does not bind the corporation. The Board, however, acting within its competence, may ratify the unauthorized act of the corporate officer. So, too, a corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority.

5. **ID.; ID.; ON ILLEGAL ACT OF CORPORATION; APPLICABLE RULES.**— The Corporation Code itself has not been that explicit with respect to the consequences of *ultra vires* acts; hence, the varied ascriptions to its effects heretofore expressed. It may well be to consider futile any further attempt to have these situations bear any exact equivalence to the civil law precepts of defective contracts. Nevertheless, general statements could be made. Here reiterated, while an act of the corporation which is either illegal or outside of express, implied or incidental powers as so provided by law or the charter would be void under Article 5 of the Civil Code, and the act is not susceptible to ratification, an unauthorized act (if within corporate powers) of the board or a corporate officer, however, would only be unenforceable conformably with Article 1403 of the Civil Code but, if the party with whom the agent has contracted is aware of the latter's limits of powers, the unauthorized act is declared void by Article 1898 of the same Code, although still susceptible thereunder to ratification by the principal. Any person dealing with corporate boards and officers may be said to be charged with the knowledge that the latter can only act within their respective limits of power, and he is put to notice accordingly. Thus, it would generally behoove such a person to look into the extent of the authority of corporate agents since the *onus* would ordinarily be with him.

APPEARANCES OF COUNSEL

David C. Naval for petitioner.
Eustaquio S. Beltran for respondent.

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DECISION

PANGANIBAN, *J.*:

When a bank, by its acts and failure to act, has clearly clothed its manager with apparent authority to sell an acquired asset in the normal course of business, it is legally obliged to confirm the transaction by issuing a board resolution to enable the buyers to register the property in their names. It has a duty to perform necessary and lawful acts to enable the other parties to enjoy all benefits of the contract which it had authorized.

The Case

Before this Court is a Petition for Review on *Certiorari* challenging the December 18, 1998 Decision of the Court of Appeals[1] (CA) in CA-GR SP No. 46246, which affirmed the May 20, 1997 Decision[2] of the Regional Trial Court (RTC) of Naga City (Branch 28). The CA disposed as follows:

"Wherefore, premises considered, the Judgment appealed from is hereby AFFIRMED. Costs against the respondent-appellant."[3]

The dispositive portion of the judgment affirmed by the CA ruled in this wise:

"WHEREFORE, in view of all the foregoing findings, decision is hereby rendered whereby the [petitioner] Rural Bank of Milaor (Camarines Sur), Inc. through its Board of Directors is hereby ordered to immediately issue a Board Resolution confirming the Deed of Sale it executed in favor of Renato Ocfemia marked Exhibits C, C-1 and C-2); to pay [respondents] the sum of FIVE HUNDRED (₱500.00) PESOS as actual damages; TEN THOUSAND (₱10,000.00) PESOS as attorney's fees; THIRTY THOUSAND (₱30,000.00) PESOS as moral damages;

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[1] Special Thirteenth Division composed of *J.* Renato C. Dacudao, *ponente*; and *JJ.* Salvador J. Valdez Jr. (chairman) and Roberto A. Barrios (member), both concurring.

[2] Penned by Judge Antonio N. Gerona.

[3] CA Decision, p. 9; *rollo*, p. 25.

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THIRTY THOUSAND (₱30,000.00) PESOS as exemplary damages; and to pay the costs."[4]

Also assailed is the February 26, 1999 CA Resolution[5] which denied petitioner's Motion for Reconsideration.

The Facts

The trial court's summary of the undisputed facts was reproduced in the CA Decision as follows:

"This is an action for *mandamus* with damages. On April 10, 1996, [herein petitioner] was declared in default on motion of the [respondents] for failure to file an answer within the reglementary period after it was duly served with summons. On April 26, 1996, [herein petitioner] filed a motion to set aside the order of default with objection thereto filed by [herein respondents].

"On June 17, 1996, an order was issued denying [petitioner's] motion to set aside the order of default. On July 10, 1996, the defendant filed a motion for reconsideration of the order of June 17, 1996 with objection thereto by [respondents]. On July 12, 1996, an order was issued denying [petitioner's] motion for reconsideration. On July 31, 1996, [respondents] filed a motion to set case for hearing. A copy thereof was duly furnished the [petitioner] but the latter did not file any opposition and so [respondents] were allowed to present their evidence *ex-parte*. A *certiorari* case was filed by the [petitioner] with the Court of Appeals docketed as CA GR No. 41497-SP but the petition was denied in a decision rendered on March 31, 1997 and the same is now final.

"The evidence presented by the [respondents] through the testimony of Marife O. Niño, one of the [respondents] in this case, show[s] that she is the daughter of Francisca Ocfemia, a co-[respondent] in this case, and the late Renato Ocfemia who died on July 23, 1994. The parents of her father, Renato Ocfemia, were Juanita Arellano Ocfemia and Felicisimo Ocfemia. Her other co-[respondents] Rowena O. Barrogo, Felicisimo Ocfemia, Renato Ocfemia, Jr. and Winston Ocfemia are her brothers and sisters.

"Marife O. Niño knows the five (5) parcels of land described in paragraph 6 of the petition which are located in Bombon, Camarines Sur and that they are the ones possessing them which [were] originally

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[4] RTC Decision, p. 6; *rollo*, p. 49.

[5] *Rollo*, pp. 36-37.

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owned by her grandparents, Juanita Arellano Ocfemia and Felicisimo Ocfemia. During the lifetime of her grandparents, [respondents] mortgaged the said five (5) parcels of land and two (2) others to the [petitioner] Rural Bank of Milaor as shown by the Deed of Real Estate Mortgage (Exhs. A and A-1) and the Promissory Note (Exh. B).

"The spouses Felicisimo Ocfemia and Juanita Arellano Ocfemia were not able to redeem the mortgaged properties consisting of seven (7) parcels of land and so the mortgage was foreclosed and thereafter ownership thereof was transferred to the [petitioner] bank. Out of the seven (7) parcels that were foreclosed, five (5) of them are in the possession of the [respondents] because these five (5) parcels of land described in paragraph 6 of the petition were sold by the [petitioner] bank to the parents of Marife O. Niño as evidenced by a Deed of Sale executed in January 1988 (Exhs. C, C-1 and C-2).

"The aforementioned five (5) parcels of land subject of the deed of sale (Exh. C), have not been, however transferred in the name of the parents of Merife O. Niño after they were sold to her parents by the [petitioner] bank because according to the Assessor's Office the five (5) parcels of land, subject of the sale, cannot be transferred in the name of the buyers as there is a need to have the document of sale registered with the Register of Deeds of Camarines Sur.

"In view of the foregoing, Marife O. Niño went to the Register of Deeds of Camarines Sur with the Deed of Sale (Exh. C) in order to have the same registered. The Register of Deeds, however, informed her that the document of sale cannot be registered without a board resolution of the [petitioner] Bank. Marife Niño then went to the bank, showed to it the Deed of Sale (Exh. C), the tax declaration and receipt of tax payments and requested the [petitioner] for a board resolution so that the property can be transferred to the name of Renato Ocfemia the husband of petitioner Francisca Ocfemia and the father of the other [respondents] having died already.

"The [petitioner] bank refused her request for a board resolution and made many alibi[s]. She was told that the [petitioner] bank ha[d] a new manager and it had no record of the sale. She was asked and she complied with the request of the [petitioner] for a copy of the deed of sale and receipt of payment. The president of the [petitioner] bank told her to get an authority from her parents and other [respondents] and receipts evidencing payment of the consideration appearing in the deed of sale. She complied with said requirements and after she gave all these documents, Marife O. Niño was again told to wait for two (2) weeks because the [petitioner] bank would still study the matter.

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"After two (2) weeks, Marife O. Niño returned to the [petitioner] bank and she was told that the resolution of the board would not be released because the [petitioner] bank ha[d] no records from the old manager. Because of this, Marife O. Niño brought the matter to her lawyer and the latter wrote a letter on December 22, 1995 to the [petitioner] bank inquiring why no action was taken by the board of the request for the issuance of the resolution considering that the bank was already fully paid [for] the consideration of the sale since January 1988 as shown by the deed of sale itself (Exhs. D and D-1).

"On January 15, 1996 the [petitioner] bank answered [respondents'] lawyer's letter (Exhs. D and D-1) informing the latter that the request for board resolution ha[d] already been referred to the board of directors of the [petitioner] bank with another request that the latter should be furnished with a certified machine copy of the receipt of payment covering the sale between the [respondents] and the [petitioner] (Exh. E). This request of the [petitioner] bank was already complied [with] by Marife O. Niño even before she brought the matter to her lawyer.

"On January 23, 1996 [respondents'] lawyer wrote back the branch manager of the [petitioner] bank informing the latter that they were already furnished the receipts the bank was asking [for] and that the [respondents] want[ed] already to know the stand of the bank whether the board [would] issue the required board resolution as the deed of sale itself already show[ed] that the [respondents were] clearly entitled to the land subject of the sale (Exh. F). The manager of the [petitioner] bank received the letter which was served personally to him and the latter told Marife O. Niño that since he was the one himself who received the letter he would not sign anymore a copy showing him as having already received said letter (Exh. F).

"After several days from receipt of the letter (Exh. F) when Marife O. Niño went to the [petitioner] again and reiterated her request, the manager of the [petitioner] bank told her that they could not issue the required board resolution as the [petitioner] bank ha[d] no records of the sale. Because of this Merife O. Niño already went to their lawyer and ha[d] this petition filed.

"The [respondents] are interested in having the property described in paragraph 6 of the petition transferred to their names because their mother and co-petitioner, Francisca Ocfemia, is very sickly and they want to mortgage the property for the medical expenses of Francisca Ocfemia. The illness of Francisca Ocfemia beg[a]n after her husband

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died and her suffering from arthritis and pulmonary disease already became serious before December 1995.

"Marife O. Niño declared that her mother is now in serious condition and they could not have her hospitalized for treatment as they do not have any money and this is causing the family sleepless nights and mental anguish, thinking that their mother may die because they could not submit her for medication as they do not have money."[6]

The trial court granted the Petition. As noted earlier, the CA affirmed the RTC Decision.

Hence, this recourse.[7] In a Resolution dated June 23, 1999, this Court issued a Temporary Restraining Order directing the trial court "to refrain and desist from executing [pending appeal] the decision dated May 20, 1997 in Civil Case No. RTC-96-3513, effective immediately until further orders from this Court."[8]

Ruling of the Court of Appeals

The CA held that herein respondents were "able to prove their present cause of action" against petitioner. It ruled that the RTC had jurisdiction over the case, because (1) the Petition involved a matter incapable of pecuniary estimation; (2) *mandamus* fell within the jurisdiction of RTC; and (3) assuming that the action was for specific performance as argued by the petitioner, it was still cognizable by the said court.

Issues

In its Memorandum,[9] the bank posed the following questions:

"1. *Question of Jurisdiction of the Regional Trial Court.* — Has a Regional Trial Court original jurisdiction over an action involving title to real property with a total assessed value of less than ₱20,000.00?

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[6] RTC Decision, pp. 1-3; *rollo*, pp. 44-46.

[7] The case was deemed submitted for resolution on October 27, 1999, upon receipt by this Court of the respective Memoranda of the petitioner and the respondents. The Memorandum of Petitioner was signed by Atty. David C. Naval, while that of respondents was signed by Atty. Eustaquio S. Beltran.

[8] *Rollo*, p. 117.

[9] *Rollo*, pp. 153-160.

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"2. *Question of Law.* — May the board of directors of a rural banking corporation be compelled to confirm a deed of absolute sale of real property owned by the corporation which deed of sale was executed by the bank manager without prior authority of the board of directors of the rural banking corporation?"[10]

This Court's Ruling

The present Petition has no merit.

First Issue:
Jurisdiction of the Regional Trial Court

Petitioner submits that the RTC had no jurisdiction over the case. Disputing the ruling of the appellate court that the present action was incapable of pecuniary estimation, petitioner argues that the matter in fact involved title to real property worth less than ₱20,000. Thus, under RA 7691, the case should have been filed before a metropolitan trial court, a municipal trial court or a municipal circuit trial court.

We disagree. The well-settled rule is that jurisdiction is determined by the allegations of the complaint.[11] In the present case, the Petition for *Mandamus* filed by respondents before the trial court prayed that petitioner-bank be compelled to issue a board resolution confirming the Deed of Sale covering five parcels of unregistered land, which the bank manager had executed in their favor. The RTC has jurisdiction over such action pursuant to Section 21 of BP 129, which provides:

"SEC. 21. *Original jurisdiction in other cases.* — Regional Trial Courts shall exercise original jurisdiction:

(1) in the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions; and

(2) in actions affecting ambassadors and other public ministers and consuls."

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[10] *Ibid.*, p. 154.

[11] *Santiago v. Guingona*, 298 SCRA 756, 776, November 18, 1998; *Bernate v. CA*, 263 SCRA 323, October 18, 1996; *Sandel v. CA*, 262 SCRA 101, September 19, 1996.

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A perusal of the Petition shows that the respondents did not raise any question involving the title to the property, but merely asked that petitioner's board of directors be directed to issue the subject resolution. Moreover, the bank did not controvert the allegations in the said Petition. To repeat, the issue therein was not the title to the property; it was respondents' right to compel the bank to issue a board resolution confirming the Deed of Sale.

Second Issue:
Authority of the Bank Manager

Respondents initiated the present proceedings, so that they could transfer to their names the subject five parcels of land; and subsequently, to mortgage said lots and to use the loan proceeds for the medical expenses of their ailing mother. For the property to be transferred in their names, however, the register of deeds required the submission of a board resolution from the bank confirming both the Deed of Sale and the authority of the bank manager, Fe S. Tena, to enter into such transaction. Petitioner refused. After being given the runaround by the bank, respondents sued in exasperation.

Allegations in the Petition for Mandamus Deemed Admitted

Respondents based their action before the trial court on the Deed of Sale, the substance of which was alleged in and a copy thereof was attached to the Petition for *Mandamus*. The Deed named Fe S. Tena as the representative of the bank. Petitioner, however, failed to specifically deny under oath the allegations in that contract. In fact, it filed no answer at all, for which reason it was declared in default. Pertinent provisions of the Rules of Court read:

"SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

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"SEC. 8. *How to contest genuineness of such documents.* — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused."[12]

In failing to file its answer specifically denying under oath the Deed of Sale, the bank admitted the due execution of the said contract. Such admission means that it acknowledged that Tena was authorized to sign the Deed of Sale on its behalf.[13] Thus, defenses that are inconsistent with the due execution and the genuineness of the written instrument are cut off by an admission implied from a failure to make a verified specific denial.

Other Acts of the Bank

In any event, the bank acknowledged, by its own acts or failure to act, the authority of Fe S. Tena to enter into binding contracts. After the execution of the Deed of Sale, respondents occupied the properties in dispute and paid the real estate taxes due thereon. If the bank management believed that it had title to the property, it should have taken some measures to prevent the infringement or invasion of its title thereto and possession thereof.

Likewise, Tena had previously transacted business on behalf of the bank, and the latter had acknowledged her authority. A bank is liable to innocent third persons where representation is made in the course of its normal business by an agent like Manager Tena, even though such agent is abusing her authority.[14] Clearly, persons dealing with her could not be blamed for believing that she was authorized to transact business for and on behalf of the bank. Thus, this Court has ruled in *Board of Liquidators v. Kalaw*:[15]

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[12] Rule 8 of the Rules of Court.

[13] *Imperial Textile Mills, Inc. v. CA*, 183 SCRA 1, March 22, 1990.

[14] *First Philippine International Bank v. CA, infra*, note 17.

[15] 20 SCRA 987, 1005, August 14, 1967, per Sanchez, *J.*

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"Settled jurisprudence has it that where similar acts have been approved by the directors as a matter of general practice, custom, and policy, the general manager may bind the company without formal authorization of the board of directors. In varying language, existence of such authority is established, by proof of the *course of business*, the *usages and practices* of the company and by the *knowledge* which the board of directors has, or must be *presumed* to have, of acts and doings of its subordinates in and about the affairs of the corporation. So also,

"'x x x authority to act for and bind a corporation may be presumed from acts of recognition in other instances where the power was in fact exercised.'

"'x x x Thus, when, in the usual course of business of a corporation, an officer has been allowed in his official capacity to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to manage its business.' "

Notwithstanding the putative authority of the manager to bind the bank in the Deed of Sale, petitioner has failed to file an answer to the Petition below within the reglementary period, let alone present evidence controverting such authority. Indeed, when one of herein respondents, Marife S. Nino, went to the bank to ask for the board resolution, she was merely told to bring the receipts. The bank failed to categorically declare that Tena had no authority. This Court stresses the following:

"x x x Corporate transactions would speedily come to a standstill were every person dealing with a corporation held duty-bound to disbelieve every act of its responsible officers, no matter how regular they should appear on their face. This Court has observed in *Ramirez vs. Orientalist Co.*, 38 Phil. 634, 654-655, that —

> 'In passing upon the liability of a corporation in cases of this kind it is always well to keep in mind the situation as it presents itself to the third party with whom the contract is made. Naturally he can have little or no information as to what occurs in corporate meetings; and he must necessarily rely upon the external manifestation of corporate consent. The integrity of commercial transactions can only be maintained by holding the corporation strictly to the liability fixed upon it by its agents in accordance with law; and we would be sorry to announce a doctrine which would permit the property of man in the city of Paris to be whisked

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> out of his hands and carried into a remote quarter of the earth without recourse against the corporation whose name and authority had been used in the manner disclosed in this case. As already observed, it is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to do acts within the scope of an apparent authority, and thus holds him out to the public as possessing power to do those acts, the corporation will, as against any one who has in good faith dealt with the corporation through such agent, be estopped from denying his authority; and where it is said "if the corporation permits this means the same as 'if the thing is permitted by the directing power of the corporation.'"[16]

In this light, the bank is estopped from questioning the authority of the bank manager to enter into the contract of sale. If a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds the agent out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.[17]

Unquestionably, petitioner has authorized Tena to enter into the Deed of Sale. Accordingly, it has a clear legal duty to issue the board resolution sought by respondents. Having authorized her to sell the property, it behooves the bank to confirm the Deed of Sale so that the buyers may enjoy its full use.

The board resolution is, in fact, mere paper work. Nonetheless, it is paper work necessary in the orderly operations of the register of deeds and the full enjoyment of respondents' rights. Petitioner-bank persistently and unjustifiably refused to perform its legal duty. Worse, it was less than candid in dealing with respondents regarding this matter. In this light, the Court finds it proper to assess the bank treble costs, in addition to the award of damages.

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[16] *Francisco v. GSIS,* 7 SCRA 577; 583-584, March 30, 1963, per Reyes, J.B.L., *J.*

[17] *First International Bank v. CA,* 252 SCRA 259, January 24, 1996; *People's Aircargo and Warehousing Co., Inc. v. CA,* 297 SCRA 170, 184-185, October 7, 1998.

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WHEREFORE, the Petition is hereby *DENIED* and the assailed Decision and Resolution *AFFIRMED*. The Temporary Restraining Order issued by this Court is hereby *LIFTED*. Treble costs against petitioner.

SO ORDERED.

Melo (Chairman), Purisima, and *Gonzaga-Reyes, JJ.*, concur.

Vitug, J., see concurring opinion.

VITUG, *J., concurring opinion:*

I share the views expressed in the *ponencia* written for the Court by our esteemed colleague Mr. Justice Artemio V. Panganiban. There is just a brief clarificatory statement that I thought could be made.

The Civil Code, being a law of general application, can be suppletory to special laws and certainly not preclusive of those that govern commercial transactions. Indeed, in its generic sense, civil law can rightly be said to encompass commercial law. *Jus civile,* in ancient Rome, was merely used to distinguish it from *jus gentium* or the law common to all the nations within the empire and, at some time later, only in contrast to international law. In more recent times, civil law is so referred to as private law in distinction from public law and criminal law. Today, it may not be totally inaccurate to consider commercial law, among some other special laws, as being a branch of civil law.

Section 45 of the Corporation Code provides:

"Sec. 45. *Ultra vires acts of corporations.* — No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

The language of the Code appears to confine the term *ultra vires* to an act outside or beyond express, implied and incidental corporate powers. Nevertheless, the concept can also include those acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal. In general, although perhaps loosely, *ultra vires* has also been used to designate

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those acts of the board of directors or of corporate officers when acting beyond their respective spheres of authority. In the context that the law has used the term in Article 45 of the Corporation Code, an *ultra vires* act would be void and not susceptible to ratification.[1] In determining whether or not a corporation may perform an act, one considers the logical and necessary relation between the act assailed and the corporate purpose expressed by the law or in the charter. For if the act were one which is lawful in itself or not otherwise prohibited and done for the purpose of serving corporate ends or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly considered within corporate powers.[2]

Section 23 of the Corporation Code states that the corporate powers are to be exercised, all business conducted, and all property of corporations controlled and held, by the Board of Directors. When the act of the board is within corporate powers but it is done without the concurrence of the shareholders as and when such approval is required by law[3] or when the act is beyond its competence to do,[4] the act has been described as void[5] or, as unenforceable,[6] or as ineffective and not legally binding.[7] These holdings notwithstanding, the act cannot accurately be likened to an *ultra vires* act of the corporation itself defined in Section 45 of the Code. Where the act is within corporate powers but the board has acted without being competent to independently do so, the

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[1] *Republic vs. Acoje Mining Co., Inc.*, 7 SCRA 361. Although in this case the Supreme Court held that the opening of a post office branch by a corporation falls under its implied powers and, therefore, not an *ultra vires* act, since said facility is needed for the convenience of its personnel and employees.

[2] *National Power Corporation vs. Judge Vera*, 170 SCRA 721.

[3] Such as in the sale of all or substantially all of the corporate assets or an investment in another corporation outside corporate purposes.

[4] Like the removal of a director.

[5] *Peña vs. Court of Appeals*, 193 SCRA 717.

[6] *Ricafort vs. Moya*, 195 SCRA 247.

[7] *Natino vs. Intermediate Appellate Court*, 197 SCRA 323.

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action is not necessarily and totally devoid of effects, and it may generally be ratified expressly or impliedly. Thus, an acceptance of benefits derived by the shareholders from an outside investment made by the board without the required concurrence of the stockholders may, nonetheless, be so considered as an effective investment.[8] It may be said, however, that when the board resolution is yet executory, the act should aptly be deemed inoperative and specific performance cannot be validly demanded but, if for any reason, the contemplated action is carried out, such principles as ratification or prescription when applicable, normally unknown in void contracts, can serve to negate a claim for the total nullity thereof.

Corporate officers, in their case, may act on such matters as may be authorized either expressly by the By-laws or Board Resolutions or impliedly such as by general practice or policy or as are implied by express powers. When officers are allowed to act in certain particular cases, their acts conformably therewith can bind the company. Hence, a corporate officer entrusted with general management and control of the business has the implied authority to act or contract for the corporation which may be necessary or appropriate to conduct the ordinary business.[9] If the act of corporate officers comes within corporate powers but it is done without any express or implied authority therefor from the by-laws, board resolutions or corporate practices, such an act does not bind the corporation. The Board, however, acting within its competence, may ratify the unauthorized act of the corporate officer. So, too, a corporation may be held in estoppel from denying as against innocent third persons the authority of its officers or agents who have been clothed by it with ostensible or apparent authority.[10]

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[8] *Gokongwei, Jr. vs. Securities & Exchange Commission*, 89 SCRA 336; 97 SCRA 78.

[9] *Board of Liquidators vs. Heirs of Kalaw*, 20 SCRA 987.

[10] In *Yao Ka Sin Trading vs. Court of Appeals*, the Court said: The rule is, of course, settled that although an officer or agent acts without, or in excess of, his actual authority, however, if he acts within the scope of an apparent authority with which the corporation has clothed him by holding him out or permitting

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The Corporation Code itself has not been that explicit with respect to the consequences of *ultra vires* acts; hence, the varied ascriptions to its effects heretofore expressed. It may well be to consider futile any further attempt to have these situations bear any exact equivalence to the civil law precepts of defective contracts. Nevertheless, general statements could be made. Here reiterated, while an act of the corporation which is either illegal or outside of express, implied or incidental powers as so provided by law or the charter would be void under Article 5[11] of the Civil Code, and the act is not susceptible to ratification, an unauthorized act (if within corporate powers) of the board or a corporate officer, however, would only be unenforceable conformably with Article 1403[12] of the Civil Code but, if the party with whom the agent has contracted is aware of the latter's limits of powers, the

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him to appear as having such authority, the corporation is bound thereby in favor of a person who deals with him in good faith in reliance on that apparent authority, as where an officer is allowed to exercise a particular authority with respect to the business, or a particular branch of it, continuously and publicly, for a considerable time. Also, "if a private corporation intentionally or negligently clothes its officers or agent with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents." (*Fletcher, op. cit.* 340) This "apparent authority may result from (1) the general manner by which the corporation holds out an officer or agent as having power to act or, in other words, the apparent authority with which it clothes him to act in general, or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or without the scope of his ordinary powers."

[11] Art. 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void except when the law itself authorizes their validity.

[12] Art. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed and by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

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unauthorized act is declared void by Article 1898[13] of the same Code, although still susceptible thereunder to ratification by the principal. Any person dealing with corporate boards and officers may be said to be charged with the knowledge that the latter can only act within their respective limits of power, and he is put to notice accordingly. Thus, it would generally behoove such a person to look into the extent of the authority of corporate agents since the *onus* would ordinarily be with him.

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

[13] If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.