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WHEREFORE, the ORDERS, dated December 6, 1993 and August 1, 1994, of the Court of Appeals are REVERSED, and this case is REMANDED to the trial court for further proceedings in accordance with law.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 126751. March 28, 2001]

SAFIC ALCAN & CIE, *petitioner, vs.* IMPERIAL VEGETABLE OIL CO., INC., *respondent.*

SYNOPSIS

Safic Alcan and Cie, a French corporation engaged in the international purchase, sale and trading of coconut oil, filed a complaint against Imperial Vegetable Oil Co., (IVO) before the Regional Trial Court of Manila which alleged that on July 1, 1986 and September 25, 1986, it placed purchase orders with IVO for 2,000 long tons of crude coconut oil valued at US $222.50 per ton to be delivered within the month of January 1987 which were covered by Purchase Contracts. However, IVO failed to deliver the said coconut oil and instead, it offered a "wash out" settlement, whereby coconut oil subject of the purchase contracts were to be sold back to IVO at the international market price at the time of wash out. Thus, IVO bound itself to pay to Safic the difference between the said prevailing price and the contract price which amounted to US $293,500.00. However, still IVO failed to pay it despite of repeated demands. Consequently, Safic also demanded that IVO will also make marginal deposits within forty eight hours on the eight purchase contracts executed between

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April 24, 1986 and October 31, 1986, in the aggregate amount of US $391,593.62 which is equivalent to the difference between the contract price and the market price of coconut oil. But still IVO failed to make the prescribed marginal deposits. Hence, Safic prayed that IVO be ordered to pay the above stated amounts plus attorney's fees and litigation expenses. In its answer, IVO raised, among others, that the subject contracts were speculative contracts entered into by IVO's previous President, Dominador Monteverde, in contravention of the prohibition by the Board of Directors against engaging in speculative paper trading. After trial, the trial court ruled that the subject contracts were *ultra vires* act of Dominador Monteverde, hence, it dismissed the foregoing complaint. It also rejected IVO's counterclaim. On appeal, the Court of Appeals affirmed *in toto* the decision of the lower court. Hence, this petition.

Under Article 1898 of the Civil Code, the acts of an agent beyond the scope of his authority do not bind the principal unless the latter ratifies the same expressly or impliedly. There was no such ratification in this case. When Monteverde entered into the speculative contracts with Safic, he did not secure the Board's approval. He also did not submit the contracts to the Board after their consummation so there was, in fact, no occasion at all for ratification. The contracts were not reported in IVO's export sales book and turn-out book. Neither were they reflected in other books and records of the corporation. It must be pointed out that the Board of Directors, not Monteverde, exercises corporate power. Clearly, Monteverde's speculative contracts with Safic never bound IVO and Safic can not therefore enforce those contracts against IVO. Furthermore, such agreements did not prove Safic's actual losses in the transactions in question. The fact was that Safic did not pay for the coconut oil that it supposedly ordered from IVO through Monteverde. Safic only claimed that, since it was ready to pay when IVO was not ready to deliver, Safic suffered damages to the extent that they had to but the same commodity from others at higher prices. The foregoing claim of petitioner was not, however, substantiated by the evidence.

The petition was DENIED for lack of merit.

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SYLLABUS

1. **MERCANTILE LAW; CORPORATION LAW; PRESIDENT OF THE CORPORATION HAD NO BLANKET AUTHORITY TO BIND THE CORPORATION TO ANY CONTRACT.**— Article III, Section 3 [g] of the By-Laws of IVO provides, among others, that – Section 3. *Powers and Duties of the President.* – The President shall be elected by the Board of Directors from their own number. He shall have the following duties: x x x [g] Have direct and active management of the business and operation of the corporation, conducting the same according to the orders, resolutions and instruction of the Board of Directors and according to his own discretion whenever and wherever the same is not expressly limited by such orders, resolutions and instructions. It can be clearly seen from the foregoing provision of IVO's By-laws that Monteverde had no blanket authority to bind IVO to any contract. He must act according to the instructions of the Board of Directors. Even in instances when he was authorized to act according to his discretion, that discretion must not conflict with prior Board orders, resolutions and instructions. The evidence shows that the IVO Board knew nothing of the 1986 contracts and that it did not authorize Monteverde to enter into speculative contracts. In fact, Monteverde had earlier proposed that the company engage in such transactions but the IVO Board rejected his proposal. Since the 1986 contracts marked a sharp departure from past IVO transactions, Safic should have obtained from Monteverde the prior authorization of the IVO Board.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; AGENCY; DOCTRINE OF IMPLIED AGENCY; NOT APPLICABLE IN CASE AT BAR.**— Safic can not rely on the doctrine of implied agency because before the controversial 1986 contracts, IVO did not enter into identical contracts with Safic. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. In the case of *Bacaltos Coal Mines v. Court of Appeals,* we elucidated the rule on dealing with an agent thus: Every person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such inquiry, he is chargeable with knowledge of the agent's authority, and his ignorance of that authority will

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not be any excuse. Persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal, to ascertain not only the fact of the agency but also the nature and extent of the authority, and in case either is controverted, the burden of proof is upon them to establish it. The most prudent thing petitioner should have done was to ascertain the extent of the authority of Dominador Monteverde. Being remiss in this regard, petitioner can not seek relief on the basis of a supposed agency.

3. **ID.; ID.; ID.; ACTS OF AN AGENT BEYOND THE SCOPE OF HIS AUTHORITY DO NOT BIND THE PRINCIPAL UNLESS THE LATTER RATIFIES THE SAME.**— Under Article 1898 of the Civil Code, the acts of an agent beyond the scope of his authority do not bind the principal unless the latter ratifies the same expressly or impliedly. It also bears emphasizing that when the third person knows that the agent was acting beyond his power or authority, the principal can not be held liable for the acts of the agent. If the said third person is aware of such limits of authority, he is to blame, and is not entitled to recover damages from the agent, unless the latter undertook to secure the principal's ratification.

4. **ID.; ID.; ID.; CASE AT BAR.**— There was no such ratification in this case. When Monteverde entered into the speculative contracts with Safic, he did not secure the Board's approval. He also did not submit the contracts to the Board after their consummation so there was, in fact, no occasion at all for ratification. The contracts were not reported in IVO's export sales book and turn-out book. Neither were they reflected in other books and records of the corporation. It must be pointed out that the Board of Directors, not Monteverde, exercises corporate power. Clearly, Monteverde's speculative contracts with Safic never bound IVO and Safic can not therefore enforce those contracts against IVO.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ISSUES CAN NOT BE RAISED FOR THE FIRST TIME THEREON.**— It must be borne in mind x x x that a question that was never raised in the courts below can not be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process. Such an issue was not brought to the fore either in the trial court or the appellate court, and would have been disregarded by the latter tribunal

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for the reasons previously stated. With more reason, the same does not deserve consideration by this Court.

6. **MERCANTILE LAW; CORPORATION LAW; BOARD OF DIRECTORS HAD SET DOWN THE POLICY OF ENGAGING IN PURELY PHYSICAL TRADINGS.**— Safic's belated contention that the IVO Board of Directors did not set limitations on Monteverde's authority to sell coconut oil is belied by what appears on the record. Rodrigo Monteverde, who succeeded Dominador Monteverde as IVO President, testified that the IVO Board had set down the policy of engaging in purely physical trading[.]

7. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; *ULTRA VIRES* "WASH OUT" AGREEMENT DID NOT PROVE ACTUAL LOSSES IN THE TRANSACTIONS; CASE AT BAR.**— The so-called "wash out" agreements are clearly *ultra vires* and not binding on IVO. Furthermore, such agreements did not prove Safic's actual losses in the transactions in question. The fact is that Safic did not pay for the coconut oil that it supposedly ordered from IVO through Monteverde. Safic only claims that, since it was ready to pay when IVO was not ready to deliver, Safic suffered damages to the extent that they had to buy the same commodity from others at higher prices. The foregoing claim of petitioner is not, however, substantiated by the evidence and only raises several questions, to wit: 1.] Did Safic commit to deliver the quantity of oil covered by the 1986 contracts to its own buyers? Who were these buyers? What were the terms of those contracts with respect to quantity, price and date of delivery? 2.] Did Safic pay damages to its buyers? Where were the receipts? Did Safic have to procure the equivalent oil from other sources? If so, who were these sources? Where were their contracts and what were the terms of these contracts as to quantity, price and date of delivery?

8. **ID.; ID.; ID.; ITS BASIS CANNOT BE LEFT TO SPECULATION AND CONJECTURE.**— The records disclose that during the course of the proceedings in the trial court, IVO filed an amended motion for production and inspection of the following documents: a.] contracts of resale of coconut oil that Safic bought from IVO; b.] the records of the pooling and sales contracts covering the oil from such pooling, if the coconut oil has been pooled and sold as general oil; c.] the contracts of the

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purchase of oil that, according to Safic, it had to resort to in order to fill up alleged undelivered commitments of IVO; d.] all other contracts, confirmations, invoices, wash out agreements and other documents of sale related to (a), (b) and (c). This amended motion was opposed by Safic. The trial court, however, in its September 16, 1988 Order, ruled that: From the analysis of the parties' respective positions, conclusion can easily be drawn therefrom that there is materiality in the defendant's move: firstly, plaintiff seeks to recover damages from the defendant and these are intimately related to plaintiff's alleged losses which it attributes to the default of the defendant in its contractual commitments; secondly, the documents are specified in the amended motion. As such, plaintiff would entertain no confusion as to what, which documents to locate and produce considering plaintiff to be (without doubt) a reputable going concern in the management of the affairs which is serviced by competent, industrious, hardworking and diligent personnel; thirdly, the desired production and inspection of the documents was precipitated by the testimony of plaintiff's witness (Donald O'Meara) who admitted, in open court, that they are available. If the said witness represented that the documents, as generally described, are available, reason there would be none for the same witness to say later that they could not be produced, even after they have been clearly described. Besides, if the Court may additionally dwell on the issue of damages, the production and inspection of the desired documents would be of tremendous help in the ultimate resolution thereof. Plaintiff claims for the award of liquidated or actual damages to the tune of US$391,593.62 which, certainly, is a huge amount in terms of pesos, and which defendant disputes. As the defendant cannot be precluded in taking exceptions to the correctness and validity of such claim which plaintiff's witness (Donald O'Meara) testified to, and as, by this nature of the plaintiff's claim for damages, proof thereof is a must which can be better served, if not amply ascertained by examining the records of the related sales admitted to be in plaintiff's possession, the amended motion for production and inspection of the defendant is in order. The interest of justice will be served best, if there would be a full disclosure by the parties on both sides of all documents related to the transactions in litigation. Notwithstanding the foregoing ruling of the trial court, Safic did not produce the required documents, prompting the court *a quo* to assume that if produced, the documents would

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have been adverse to Safic's cause. In its efforts to bolster its claim for damages it purportedly sustained, Safic suggests a substitute mode of computing its damages by getting the average price it paid for certain quantities of coconut oil that it allegedly bought in 1987 and deducting this from the average price of the 1986 contracts. But this mode of computation is flawed because: 1.] it is conjectural since it rests on average prices not on actual prices multiplied by the actual volume of coconut oil per contract; and 2.] it is based on the unproven assumption that the 1987 contracts of purchase provided the coconut oil needed to make up for the failed 1986 contracts. There is also no evidence that Safic had contracted to supply third parties with coconut oil from the 1986 contracts and that Safic had to buy such oil from others to meet the requirement. Along the same vein, it is worthy to note that the quantities of oil covered by its 1987 contracts with third parties do not match the quantities of oil provided under the 1986 contracts. Had Safic produced the documents that the trial court required, a substantially correct determination of its actual damages would have been possible. This, unfortunately, was not the case. Suffice it to state in this regard that "[T]he power of the courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation and conjecture."

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Abad and Associates for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Petitioner Safic Alcan & Cie (hereinafter, "Safic") is a French corporation engaged in the international purchase, sale and trading of coconut oil. It filed with the Regional Trial Court of Manila, Branch XXV, a complaint dated February 26, 1987 against private respondent Imperial Vegetable Oil Co., Inc. (hereinafter, "IVO"), docketed as Civil Case No. 87-39597. Petitioner Safic alleged that on July 1, 1986 and September 25, 1986, it placed purchase orders with IVO for 2,000 long

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tons of crude coconut oil, valued at US$222.50 per ton, covered by Purchase Contract Nos. A601446 and A601655, respectively, to be delivered within the month of January 1987. Private respondent, however, failed to deliver the said coconut oil and, instead, offered a "wash out" settlement, whereby the coconut oil subject of the purchase contracts were to be "sold back" to IVO at the prevailing price in the international market at the time of wash out. Thus, IVO bound itself to pay to Safic the difference between the said prevailing price and the contract price of the 2,000 long tons of crude coconut oil, which amounted to US$293,500.00. IVO failed to pay this amount despite repeated oral and written demands.

Under its second cause of action, Safic alleged that on eight occasions between April 24, 1986 and October 31, 1986, it placed purchase orders with IVO for a total of 4,750 tons of crude coconut oil, covered by Purchase Contract Nos. A601297A/B, A601384, A601385, A601391, A601415, A601681, A601683 and A601770A/B/C/. When IVO failed to honor its obligation under the wash out settlement narrated above, Safic demanded that IVO make marginal deposits within forty-eight hours on the eight purchase contracts in amounts equivalent to the difference between the contract price and the market price of the coconut oil, to compensate it for the damages it suffered when it was forced to acquire coconut oil at a higher price. IVO failed to make the prescribed marginal deposits on the eight contracts, in the aggregate amount of US$391,593.62, despite written demand therefor:

The demand for marginal deposits was based on the customs of the trade, as governed by the provisions of the standard N.I.O.P. Contract and the FOSFA Contract, to wit:

N.I.O.P. Contract, Rule 54 — If the financial condition of either party to a contract subject to these rules becomes so impaired as to create a reasonable doubt as to the ability of such party to perform its obligations under the contract, *the other party may from time to time demand marginal deposits to be made within forty-eight (48) hours after receipt of such demand, such deposits not to exceed the difference between the contract price and the market price of the goods covered by the contract on the day upon which such demand*

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is made, such deposit to bear interest at the prime rate plus one percent (1%) per annum. Failure to make such deposit within the time specified shall constitute a breach of contract by the party upon whom demand for deposit is made, and all losses and expenses resulting from such breach shall be for the account of the party upon whom such demand is made. (Italics ours.)[1]

FOSFA Contract, Rule 54 — BANKRUPTCY/INSOLVENCY: If before the fulfillment of this contract either party shall suspend payment, commit an act of bankruptcy, notify any of his creditors that he is unable to meet his debts or that he has suspended payment or that he is about to suspend payment of his debts, convene, call or hold a meeting either of his creditors or to pass a resolution to go into liquidation (except for a voluntary winding up of a solvent company for the purpose of reconstruction or amalgamation) or shall apply for an official moratorium, have a petition presented for winding up or shall have a Receiver appointed, *the contract shall forthwith be closed, either at the market price then current for similar goods or, at the option of the other party at a price to be ascertained by repurchase or resale and the difference between the contract price and such closing-out price shall be the amount which the other party shall be entitled to claim* shall be liable to account for under this contract *(sic)*. Should either party be dissatisfied with the price, the matter shall be referred to arbitration. Where no such resale or repurchase takes place, the closing-out price shall be fixed by a Price Settlement Committee appointed by the Federation. (Italics ours.)[2]

Hence, Safic prayed that IVO be ordered to pay the sums of US$293,500.00 and US$391,593.62, plus attorney's fees and litigation expenses. The complaint also included an application for a writ of preliminary attachment against the properties of IVO.

Upon Safic's posting of the requisite bond, the trial court issued a writ of preliminary attachment. Subsequently, the trial court ordered that the assets of IVO be placed under receivership, in order to ensure the preservation of the same.

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[1] Complaint; *Rollo*, p. 49.

[2] *Ibid.*, pp. 49-50.

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In its answer, IVO raised the following special affirmative defenses: Safic had no legal capacity to sue because it was doing business in the Philippines without the requisite license or authority; the subject contracts were speculative contracts entered into by IVO's then President, Dominador Monteverde, in contravention of the prohibition by the Board of Directors against engaging in speculative paper trading, and despite IVO's lack of the necessary license from Central Bank to engage in such kind of trading activity; and that under Article 2018 of the Civil Code, if a contract which purports to be for the delivery of goods, securities or shares of stock is entered into with the intention that the difference between the price stipulated and the exchange or market price at the time of the pretended delivery shall be paid by the loser to the winner, the transaction is null and void.

IVO set up counterclaims anchored on harassment, paralyzation of business, financial losses, rumor-mongering and oppressive action. Later, IVO filed a supplemental counterclaim alleging that it was unable to operate its business normally because of the arrest of most of its physical assets; that its suppliers were driven away; and that its major creditors have inundated it with claims for immediate payment of its debts, and China Banking Corporation had foreclosed its chattel and real estate mortgages.

During the trial, the lower court found that in 1985, prior to the date of the contracts sued upon, the parties had entered into and consummated a number of contracts for the sale of crude coconut oil. In those transactions, Safic placed several orders and IVO faithfully filled up those orders by shipping out the required crude coconut oil to Safic, totalling 3,500 metric tons. Anent the 1986 contracts being sued upon, the trial court refused to declare the same as gambling transactions, as defined in Article 2018 of the Civil Code, although they involved some degree of speculation. After all, the court noted, every business enterprise carries with it a certain measure of speculation or risk. However, the contracts performed in 1985, on one hand, and the 1986 contracts subject of this case, on the other hand,

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differed in that under the 1985 contracts, deliveries were to be made within two months. This, as alleged by Safic, was the time needed for milling and building up oil inventory. Meanwhile, the 1986 contracts stipulated that the coconut oil were to be delivered within period ranging from eight months to eleven to twelve months after the placing of orders. The coconuts that were supposed to be milled were in all likelihood not yet growing when Dominador Monteverde sold the crude coconut oil. As such, the 1986 contracts constituted trading in futures or in mere expectations.

The lower court further held that the subject contracts were *ultra vires* and were entered into by Dominador Monteverde without authority from the Board of Directors. It distinguished between the 1985 contracts, where Safic likewise dealt with Dominador Monteverde, who was presumably authorized to bind IVO, and the 1986 contracts, which were highly speculative in character. Moreover, the 1985 contracts were covered by letters of credit, while the 1986 contracts were payable by telegraphic transfers, which were nothing more than mere promises to pay once the shipments became ready. For these reasons, the lower court held that Safic cannot invoke the 1985 contracts as an implied corporate sanction for the high-risk 1986 contracts, which were evidently entered into by Monteverde for his personal benefit.

The trial court ruled that Safic failed to substantiate its claim for actual damages. Likewise, it rejected IVO's counterclaim and supplemental counterclaim.

Thus, on August 28, 1992, the trial court rendered judgment as follows:

> WHEREFORE, judgment is hereby rendered dismissing the complaint of plaintiff Safic Alcan & Cie, without prejudice to any action it might subsequently institute against Dominador Monteverde, the former President of Imperial Vegetable Oil Co., Inc., arising from the subject matter of this case. The counterclaim and supplemental counterclaim of the latter defendant are likewise hereby dismissed for lack of merit. No pronouncement as to costs.

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The writ of preliminary attachment issued in this case as well as the order placing Imperial Vegetable Oil Co., Inc. under receivership are hereby dissolved and set aside.[3]

Both IVO and Safic appealed to the Court of Appeals, jointly docketed as CA-G.R. CV No. 40820.

IVO raised only one assignment of error, *viz*:

THE TRIAL COURT ERRED IN HOLDING THAT THE ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT WAS NOT THE MAIN CAUSE OF THE DAMAGES SUFFERED BY DEFENDANT AND IN NOT AWARDING DEFENDANT-APPELLANT SUCH DAMAGES.

For its part, Safic argued that:

THE TRIAL COURT ERRED IN HOLDING THAT IVO'S PRESIDENT, DOMINADOR MONTEVERDE, ENTERED INTO CONTRACTS WHICH WERE *ULTRA VIRES* AND WHICH DID NOT BIND OR MAKE IVO LIABLE.

THE TRIAL COURT ERRED IN HOLDING THAT SAFIC WAS UNABLE TO PROVE THE DAMAGES SUFFERED BY IT AND IN NOT AWARDING SUCH DAMAGES.

THE TRIAL COURT ERRED IN NOT HOLDING THAT IVO IS LIABLE UNDER THE WASH OUT CONTRACTS.

On September 12, 1996, the Court of Appeals rendered the assailed Decision dismissing the appeals and affirming the judgment appealed from *in toto*.[4]

Hence, Safic filed the instant petition for review with this Court, substantially reiterating the errors it raised before the Court of Appeals and maintaining that the Court of Appeals grievously erred when:

a. it declared that the 1986 forward contracts (*i.e.*, Contracts Nos. A601446 and A60155 (sic) involving 2,000 long tons of crude coconut

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[3] *Rollo*, p. 99: penned by Judge Leonardo I. Cruz.

[4] Penned by Associate Justice Artemio G. Tuquero, with Associate Justices Cancio C. Garcia and Eugenio S. Labitoria concurring.

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oil, and Contracts Nos. A601297A/B, A601385, A601391, A601415, A601681. A601683 and A601770A/B/C involving 4,500 tons of crude coconut oil) were unauthorized acts of Dominador Monteverde which do not bind IVO in whose name they were entered into. In this connection, the Court of Appeals erred when (i) it ignored its own finding that (a) Dominador Monteverde, as IVO's President, had "an implied authority to make any contract necessary or appropriate to the contract of the ordinary business of the company"; and (b) Dominador Monteverde had validly entered into similar forward contracts for and on behalf of IVO in 1985; (ii) it distinguished between the 1986 forward contracts despite the fact that the Manila RTC has struck down IVO's objection to the 1986 forward contracts (*i.e.* that they were highly speculative paper trading which the IVO Board of Directors had prohibited Dominador Monteverde from engaging in because it is a form of gambling where the parties do not intend actual delivery of the coconut oil sold) and instead found that the 1986 forward contracts were not gambling; (iii) it relied on the testimony of Mr. Rodrigo Monteverde in concluding that the IVO Board of Directors did not authorize its President, Dominador Monteverde, to enter into the 1986 forward contracts; and (iv) it did not find IVO, in any case, estopped from denying responsibility for, and liability under, the 1986 forward contracts because IVO had recognized itself bound to similar forward contracts which Dominador Monteverde entered into (for and on behalf of IVO) with Safic in 1985 notwithstanding that Dominador Monteverde was (like in the 1986 forward contracts) not expressly authorized by the IVO Board of Directors to enter into such forward contracts;

b. it declared that Safic was not able to prove damages suffered by it, despite the fact that Safic had presented not only testimonial, but also documentary, evidence which proved the higher amount it had to pay for crude coconut oil (*vis-à-vis* the contract price it was to pay to IVO) when IVO refused to deliver the crude coconut oil bought by Safic under the 1986 forward contracts; and

c. it failed to resolve the issue of whether or not IVO is liable to Safic under the wash out contracts involving Contracts Nos. A601446 and A60155 (sic), despite the fact that Safic had properly raised the issue on its appeal, and the evidence and the law support Safic's position that IVO is so liable to Safic.

In fine, Safic insists that the appellate court grievously erred when it did not declare that IVO's President, Dominador

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Monteverde, validly entered into the 1986 contracts for and on behalf of IVO.

We disagree.

Article III, Section 3 [g] of the By-Laws[5] of IVO provides, among others, that —

> Section 3. *Powers and Duties of the President.* — The President shall be elected by the Board of Directors from their own number.
>
> He shall have the following duties:
>
> x x x x x x x x x
>
> [g] Have direct and active management of the business and operation of the corporation, conducting the same according to the orders, resolutions and instruction of the Board of Directors and according to his own discretion whenever and wherever the same is not expressly limited by such orders, resolutions and instructions.

It can be clearly seen from the foregoing provision of IVO's By-laws that Monteverde had no blanket authority to bind IVO to any contract. He must act according to the instructions of the Board of Directors. Even in instances when he was authorized to act according to his discretion, that discretion must not conflict with prior Board orders, resolutions and instructions. The evidence shows that the IVO Board knew nothing of the 1986 contracts[6] and that it did not authorize Monteverde to enter into speculative contracts.[7] In fact, Monteverde had earlier proposed that the company engage in such transactions but the IVO Board rejected his proposal.[8] Since the 1986 contracts marked a sharp departure from past IVO transactions, Safic should have obtained from Monteverde the prior authorization of the IVO Board. Safic can not rely on the doctrine of implied agency because before the controversial 1986 contracts, IVO

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[5] Exhibit 5: Record. p. 764.

[6] TSN. 23 June 1990. p. 18.

[7] *Ibid.*, pp. 5. 7. 8 and 18.

[8] *Id.*, p. 7.

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did not enter into identical contracts with Safic. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent.[9] In the case of *Bacaltos Coal Mines v. Court of Appeals*,[10] we elucidated the rule on dealing with an agent thus:

> Every person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such inquiry, he is chargeable with knowledge of the agent's authority, and his ignorance of that authority will not be any excuse. Persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal, to ascertain not only the fact of the agency but also the nature and extent of the authority, and in case either is controverted, the burden of proof is upon them to establish it.[11]

The most prudent thing petitioner should have done was to ascertain the extent of the authority of Dominador Monteverde. Being remiss in this regard, petitioner can not seek relief on the basis of a supposed agency.

Under Article 1898[12] of the Civil Code, the acts of an agent beyond the scope of his authority do not bind the principal unless the latter ratifies the same expressly or impliedly. It also bears emphasizing that when the third person knows that the agent was acting beyond his power or authority, the principal can not be held liable for the acts of the agent. If the said third

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[9] *Dizon v. Court of Appeals*, 302 SCRA 288 [1999], citing Article 1868, Civil Code and *Bordador v. Luz*, 283 SCRA 374 [1997].

[10] 245 SCRA 460 [1995].

[11] Citing *Pineda v. Court of Appeals*, 226 SCRA 754 [1993]; *Veloso v. La Urbana*, 58 Phil. 681 [1933]; *Harry E. Keller Electric Co. v. Rodriguez*, 44 Phil. 19 [1922]; *Deen v. Pacific Commercial Co.*, 42 Phil. 738 [1922] and *Strong v. Repide*, 6 Phil. 680 [1906].

[12] *ART. 1898.* If the agent contracts in the name of the principal, extending 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.

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person is aware of such limits of authority, he is to blame, and is not entitled to recover damages from the agent, unless the latter undertook to secure the principal's ratification.[13]

There was no such ratification in this case. When Monteverde entered into the speculative contracts with Safic, he did not secure the Board's approval.[14] He also did not submit the contracts to the Board after their consummation so there was, in fact, no occasion at all for ratification. The contracts were not reported in IVO's export sales book and turn-out book.[15] Neither were they reflected in other books and records of the corporation.[16] It must be pointed out that the Board of Directors, not Monteverde, exercises corporate power.[17] Clearly, Monteverde's speculative contracts with Safic never bound IVO and Safic can not therefore enforce those contracts against IVO.

To bolster its cause, Safic raises the novel point that the IVO Board of Directors did not set limitations on the extent of Monteverde's authority to sell coconut oil. It must be borne in mind in this regard that a question that was never raised in the courts below can not be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.[18] Such an issue was not brought to the fore either in the trial court or the appellate court, and would have been disregarded by the latter tribunal for the reasons previously stated. With more reason, the same does not deserve consideration by this Court.

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[13] *Cervantes v. Court of Appeals*, 304 SCRA 25 [1999].

[14] *Id.*, p. 18.

[15] TSN, 16 August 1990, pp. 3-6.

[16] *Ibid.*, pp. 7-9.

[17] Section 23, Corporation Code.

[18] *Ysmael v. Court of Appeals*, 318 SCRA 215 [1999], citing *Medida v. Court of Appeals*, 208 SCRA 887 [1992]; see also *Sumbad v. Court of Appeals*, 308 SCRA 575 [1999]; *Buñag v. Court of Appeals*, 303 SCRA 591 [1999]; *Reburiano v. Court of Appeals*, 301 SCRA 342 [1999]; *Spouses Jimenez v. Patricia, Inc.*, G.R. No. 134651, 18 September 2000.

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Be that as it may, Safic's belated contention that the IVO Board of Directors did not set limitations on Monteverde's authority to sell coconut oil is belied by what appears on the record. Rodrigo Monteverde, who succeeded Dominador Monteverde as IVO President, testified that the IVO Board had set down the policy of engaging in purely physical trading thus:

Q. Now you said that IVO is engaged in trading. With whom does it usually trade its oil?
A. I am not too familiar with trading because as of March 1987, I was not yet an officer of the corporation, although I was at the time already a stockholder, I think IVO is engaged in trading oil.

Q. As far as you know, what kind of trading was IVO engaged with?
A. It was purely on physical trading.

Q. How did you know this?
A. As a stockholder, rather as member of [the] Board of Directors, I frequently visited the plant and from my observation, as I have to supervise and monitor purchases of copras and also the sale of the same, I observed that the policy of the corporation is for the company to engaged (sic) or to purely engaged (sic)in physical trading.

Q. What do you mean by physical trading?
A. Physical Trading means — we buy and sell copras that are only available to us. We only have to sell the available stocks in our inventory.

Q. And what is the other form of trading?

Atty. Fernando

No basis, your Honor.

Atty. Abad

Well, the witness said they are engaged in physical trading and what I am saying [is] if there are any other kind or form of trading.

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Court

Witness may answer if he knows.

Witness

A. Trading future[s] contracts wherein the trader commits a price and to deliver coconut oil in the future in which he is yet to acquire the stocks in the future.

Atty. Abad

Q. Who established the so-called physical trading in IVO?
A. The Board of Directors, sir.

Atty. Abad

Q. How did you know that?
A. There was a meeting held in the office at the factory and it was brought out and suggested by our former president, Dominador Monteverde, that the company should engaged (sic) in future[s] contract[s] but it was rejected by the Board of Directors. It was only Ador Monteverde who then wanted to engaged (sic) in this future[s] contract[s].

Q. Do you know where this meeting took place?
A. As far as I know it was sometime in 1985.

Q. Do you know why the Board of Directors rejected the proposal of Dominador Monteverde that the company should engaged (sic) in future[s] contracts?

Atty. Fernando

Objection, your Honor, no basis.

Court

Why don't you lay the basis?

Atty. Abad

Q. Were you a member of the board at the time?
A. In 1975, I am already a stockholder and a member.

Q. Then would [you] now answer my question?

Atty. Fernando

No basis, your Honor. What we are talking is about 1985.

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Atty. Abad

Q. When you mentioned about the meeting in 1985 wherein the Board of Directors rejected the future[s] contract[s], were you already a member of the Board of Directors at that time?
A. Yes, sir.

Q. Do you know the reason why the said proposal of Mr. Dominador Monteverde to engage in future[s] contract[s] was rejected by the Board of Directors?
A. Because this future[s] contract is too risky and it partakes of gambling.

Q. Do you keep records of the Board meetings of the company?
A. Yes, sir.

Q. Do you have a copy of the minutes of your meeting in 1985?
A. Incidentally our Secretary of the Board of Directors, Mr. Elfren Sarte, died in 1987 or 1988, and despite [the] request of our office for us to be furnished a copy he was not able to furnish us a copy.[19]

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Atty. Abad

Q. You said the Board of Directors were against the company engaging in future[s] contracts. As far as you know, has this policy of the Board of Directors been observed or followed?

Witness

A. Yes, sir.

Q. How far has this Dominador Monteverde been using the name of I.V.O. in selling future contracts without the proper authority and consent of the company's Board of Directors?
A. Dominador Monteverde never records those transactions he entered into in connection with these future[s] contracts in the company's books of accounts.

Atty. Abad

Q. What do you mean by that the future[s] contracts were not entered into the books of accounts of the company?

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[19] TSN. 21 June 1990, pp. 4-8.

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Witness

A. Those were not recorded at all in the books of accounts of the company, sir.[20]

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Q. What did you do when you discovered these transactions?
A. There was again a meeting by the Board of Directors of the corporation and that we agreed to remove the president and then I was made to replace him as president.

Q. What else?
A. And a resolution was passed disowning the illegal activities of the former president.[21]

Petitioner next argues that there was actually no difference between the 1985 physical contracts and the 1986 futures contracts.

The contention is unpersuasive for, as aptly pointed out by the trial court and sustained by the appellate court —

Rejecting IVO's position, SAFIC claims that there is no distinction between the 1985 and 1986 contracts, both of which groups of contracts were signed or authorized by IVO's President, Dominador Monteverde. The 1986 contracts, SAFIC would bewail, were similarly with their 1985 predecessors, forward sales contracts in which IVO had undertaken to deliver the crude coconut oil months after such contracts were entered into. The lead time between the closing of the deal and the delivery of the oil supposedly allowed the seller to accumulate enough copra to mill and to build up its inventory and so meet its delivery commitment to its foreign buyers. SAFIC concludes that the 1986 contracts were equally binding, as the 1985 contracts were, on IVO.

Subjecting the evidence on both sides to close scrutiny, the Court has found some remarkable distinctions between the 1985 and 1986 contracts. x x x

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[20] *Ibid.*, pp. 12-13.

[21] *Id.*, p. 18.

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1. The 1985 contracts were performed within an average of two months from the date of the sale. On the other hand, the 1986 contracts were to be performed within an average of eight and a half months from the dates of the sale. All the supposed performances fell in 1987. Indeed, the contract covered by Exhibit J was to be performed 11 to 12 months from the execution of the contract. These pattern (sic) belies plaintiff's contention that the lead time merely allowed for milling and building up of oil inventory. It is evident that the 1986 contracts constituted trading in futures or in mere expectations. In all likelihood, the coconuts that were supposed to be milled for oil were not yet on their trees when Dominador Monteverde sold the crude oil to SAFIC.

2. The mode of payment agreed on by the parties in their 1985 contracts was uniformly thru the opening of a letter of credit LC by SAFIC in favor of IVO. Since the buyer's letter of credit guarantees payment to the seller as soon as the latter is able to present the shipping documents covering the cargo, its opening usually mark[s] the fact that the transaction would be consummated. On the other hand, seven out of the ten 1986 contracts were to be paid by telegraphic transfer upon presentation of the shipping documents. Unlike the letter of credit, a mere promise to pay by telegraphic transfer gives no assurance of [the] buyer's compliance with its contracts. This fact lends an uncertain element in the 1986 contracts.

3. Apart from the above, it is not disputed that with respect to the 1985 contracts, IVO faithfully complied with Central Bank Circular No. 151 dated April 1, 1963, requiring a coconut oil exporter to submit a Report of Foreign Sales within twenty-four (24) hours "after the closing of the relative sales contract" with a foreign buyer of coconut oil. But with respect to the disputed 1986 contracts, the parties stipulated during the hearing that none of these contracts were ever reported to the Central Bank, in violation of its above requirement. (See Stipulation of Facts dated June 13, 1990). The 1986 sales were, therefore suspect.

4. It is not disputed that, unlike the 1985 contacts, the 1986 contracts were never recorded either in the 1986 accounting books of IVO or in its annual financial statement for 1986, a document that was prepared prior to the controversy. (Exhibits 6 to 6-0 and 7 to 7-I). Emelita Ortega, formerly an assistant of Dominador Monteverde, testified that they were strange goings-on about the 1986 contract. They were neither recorded in the books nor reported to the Central Bank. What is more, in those unreported cases where profits were made, such

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profits were ordered remitted to unknown accounts in California, U.S.A., by Dominador Monteverde.

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Evidently, Dominador Monteverde made business for himself, using the name of IVO but concealing from it his speculative transactions.

Petitioner further contends that both the trial and appellate courts erred in concluding that Safic was not able to prove its claim for damages. Petitioner first points out that its wash out agreements with Monteverde where IVO allegedly agreed to pay US$293,500.00 for some of the failed contracts was proof enough and, second, that it presented purchases of coconut oil it made from others during the period of IVO's default.

We remain unconvinced. The so-called "wash out" agreements are clearly *ultra vires* and not binding on IVO. Furthermore, such agreements did not prove Safic's actual losses in the transactions in question. The fact is that Safic did not pay for the coconut oil that it supposedly ordered from IVO through Monteverde. Safic only claims that, since it was ready to pay when IVO was not ready to deliver, Safic suffered damages to the extent that they had to buy the same commodity from others at higher prices.

The foregoing claim of petitioner is not, however, substantiated by the evidence and only raises several questions, to wit: 1.] Did Safic commit to deliver the quantity of oil covered by the 1986 contracts to its own buyers? Who were these buyers? What were the terms of those contracts with respect to quantity, price and date of delivery? 2.] Did Safic pay damages to its buyers? Where were the receipts? Did Safic have to procure the equivalent oil from other sources? If so, who were these sources? Where were their contracts and what were the terms of these contracts as to quantity, price and date of delivery?

The records disclose that during the course of the proceedings in the trial court, IVO filed an amended motion[22] for production

[22] Record, pp. 494-497.

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and inspection of the following documents: a.] contracts of resale of coconut oil that Safic bought from IVO; b.] the records of the pooling and sales contracts covering the oil from such pooling, if the coconut oil has been pooled and sold as general oil; c.] the contracts of the purchase of oil that, according to Safic, it had to resort to in order to fill up alleged undelivered commitments of IVO; d.] all other contracts, confirmations, invoices, wash out agreements and other documents of sale related to (a), (b) and (c). This amended motion was opposed by Safic.[23] The trial court, however, in its September 16, 1988 Order,[24] ruled that:

> From the analysis of the parties' respective positions, conclusion can easily be drawn therefrom that there is materiality in the defendant's move: firstly, plaintiff seeks to recover damages from the defendant and these are intimately related to plaintiff's alleged losses which it attributes to the default of the defendant in its contractual commitments; secondly, the documents are specified in the amended motion. As such, plaintiff would entertain no confusion as to what, which documents to locate and produce considering plaintiff to be (without doubt) a reputable going concern in the management of the affairs which is serviced by competent, industrious, hardworking and diligent personnel; thirdly, the desired production and inspection of the documents was precipitated by the testimony of plaintiff's witness (Donald O'Meara) who admitted, in open court, that they are available. If the said witness represented that the documents, as generally described, are available, reason there would be none for the same witness to say later that they could not be produced, even after they have been clearly described.
>
> Besides, if the Court may additionally dwell on the issue of damages, the production and inspection of the desired documents would be of tremendous help in the ultimate resolution thereof. Plaintiff claims for the award of liquidated or actual damages to the tune of US$391,593.62 which, certainly, is a huge amount in terms of pesos, and which defendant disputes. As the defendant cannot be precluded in taking exceptions to the correctness and validity of such claim which plaintiff's witness (Donald O'Meara) testified to, and as, by this nature of the plaintiff's claim for damages, proof thereof is a

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[23] *Ibid.*, pp. 498-501.

[24] *Id.*, pp. 502-505.

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must which can be better served, if not amply ascertained by examining the records of the related sales admitted to be in plaintiff's possession, the amended motion for production and inspection of the defendant is in order.

The interest of justice will be served best, if there would be a full disclosure by the parties on both sides of all documents related to the transactions in litigation.

Notwithstanding the foregoing ruling of the trial court, Safic did not produce the required documents, prompting the court *a quo* to assume that if produced, the documents would have been adverse to Safic's cause. In its efforts to bolster its claim for damages it purportedly sustained, Safic suggests a substitute mode of computing its damages by getting the average price it paid for certain quantities of coconut oil that it allegedly bought in 1987 and deducting this from the average price of the 1986 contracts. But this mode of computation is flawed because: 1.] it is conjectural since it rests on average prices not on actual prices multiplied by the actual volume of coconut oil per contract; and 2.] it is based on the unproven assumption that the 1987 contracts of purchase provided the coconut oil needed to make up for the failed 1986 contracts. There is also no evidence that Safic had contracted to supply third parties with coconut oil from the 1986 contracts and that Safic had to buy such oil from others to meet the requirement.

Along the same vein, it is worthy to note that the quantities of oil covered by its 1987 contracts with third parties do not match the quantities of oil provided under the 1986 contracts. Had Safic produced the documents that the trial court required, a substantially correct determination of its actual damages would have been possible. This, unfortunately, was not the case. Suffice it to state in this regard that "[T]he power of the courts to grant damages and attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation and conjecture."[25]

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[25] *Ranola v. Court of Appeals,* 322 SCRA 1 [2000], citing *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals,* 242 SCRA 393 [1995]: *People v. Castro,* 282 SCRA 212 [1997].

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WHEREFORE, in view of all the foregoing, the petition is *DENIED* for lack of merit.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, and *Pardo, JJ.,* concur.

Puno, J., on official leave.

FIRST DIVISION

[G.R. No. 126959. March 28, 2001]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SERVANDO SATURNO, ARMAN SOLIMAN, ABRAHAM RODRIGUEZ, BENIGNO ANDRES and DELFIN GREGORIO,** *accused.* **SERVANDO SATURNO, ABRAHAM RODRIGUEZ and BENIGNO ANDRES,** *accused-appellants.*

SYNOPSIS

The Regional Trial Court, Branch 39, San Jose City, Nueva Ecija convicted accused-appellant Servando Saturno, Abraham Rodriguez and Benigno Andres of the crime of multiple murder. In this appeal, the accused-appellants contended that prosecution witness Lucila Valdez was not able to positively identify them.

The Court ruled that witness Lucila's testimony regarding the identity of the accused was too general to deserve consideration. On the other hand, accused-appellants were able to present convincing evidence that they could not possibly be at the scene of the crime at the time of its commission. The prosecution was able to establish the fact of the killing; however, it failed to prove that appellants perpetrated the crime. Where