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nullification of the sale and the cancellation of the writ of possession under Section 8 of Act. No. 3135, which remedy the petitioner was aware of. In her petition for review, she averred that "[t]he said Act 3135 x x x does not however prohibit or negate the filing of a separate civil case for the nullification of loan indebtedness x x x or x x x mortgage contract[.]"[37] Thus, she cannot claim that she has been denied of due process merely on the basis of the *ex parte* nature of the respondent's petition.

WHEREFORE, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the decision dated September 23, 2005 and the resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82631 are **AFIRMED *in toto***.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174978. July 31, 2013]

SALLY YOSHIZAKI, *petitioner, vs.* **JOY TRAINING CENTER OF AURORA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; DISPUTES CONCERNING THE APPLICATION OF THE CIVIL CODE ARE PROPERLY COGNIZABLE BY COURTS OF GENERAL JURISDICTION.— Jurisdiction over the subject

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[37] *Rollo*, p. 13.

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matter is the power to hear and determine cases of the general class to which the proceedings before a court belong. It is conferred by law. The allegations in the complaint and the status or relationship of the parties determine which court has jurisdiction over the nature of an action. The same test applies in ascertaining whether a case involves an intra-corporate controversy. The CA correctly ruled that the RTC has jurisdiction over the present case. Joy Training seeks to nullify the sale of the real properties on the ground that there was no contract of agency between Joy Training and the spouses Johnson. This was beyond the ambit of the SEC's original and exclusive jurisdiction prior to the enactment of Republic Act No. 8799 which only took effect on August 3, 2000. The determination of the existence of a contract of agency and the validity of a contract of sale requires the application of the relevant provisions of the Civil Code. It is a well-settled rule that "[d]isputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction." Indeed, no special skill requiring the SEC's technical expertise is necessary for the disposition of this issue and of this case.

2. ID.; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT MAY REVIEW QUESTIONS OF FACT WHEN THE FINDINGS OF THE LOWER COURTS ARE CONFLICTING.— As a general rule, a petition for review on *certiorari* precludes this Court from entertaining factual issues; we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the lower courts. However, the present case falls under the recognized exception that a review of the facts is warranted when the findings of the lower courts are conflicting.

3. CIVIL LAW; CONTRACT OF AGENCY; DEFINED.— Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

4. ID.; ID.; CONTRACT OF AGENCY MUST BE WRITTEN FOR THE VALIDITY OF THE SALE OF A PIECE OF LAND

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OR ANY INTEREST THEREIN; SPECIAL POWER OF ATTORNEY, REQUIRED.— As a general rule, a contract of agency may be oral. However, it must be written when the law requires a specific form. Specifically, Article 1874 of the Civil Code provides that the contract of agency must be written for the validity of the sale of a piece of land or any interest therein. Otherwise, the sale shall be void. A related provision, Article 1878 of the Civil Code, states that special powers of attorney are necessary to convey real rights over immovable properties. The special power of attorney mandated by law **must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the authorized act.** We unequivocably declared in *Cosmic Lumber Corporation v. Court of Appeals* that a special power of attorney **must express the powers of the agent in clear and unmistakable language** for the principal to confer the right upon an agent to sell real estate**.** When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document. The purpose of the law in requiring a special power of attorney in the disposition of immovable property is to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another and to caution the buyer to assure himself of the specific authorization of the putative agent.

5. **REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; NO EVIDENCE IS ADMISSIBLE OTHER THAN THE ORIGINAL DOCUMENT ITSELF; APPLICATION IN CASE AT BAR.—** The lower courts should not have relied on the resolution and the certification in resolving the case. The spouses Yoshizaki did not produce the original documents during trial. They also failed to show that the production of pieces of secondary evidence falls under the exceptions enumerated in Section 3, Rule 130 of the Rules of Court. Thus, the general rule – that no evidence shall be admissible other than the original document itself when the subject of inquiry is the contents of a document – applies.

6. **CIVIL LAW; SALES; THE ABSENCE OF THE CONTRACT OF AGENCY RENDERS THE CONTRACT OF SALE UNENFORCEABLE; CLAIM AS BUYER IN GOOD FAITH, NOT APPLICABLE; CASE AT BAR.—** Necessarily, the absence of a contract of agency renders the contract of sale unenforceable; Joy Training effectively did not enter into a

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valid contract of sale with the spouses Yoshizaki. Sally cannot also claim that she was a buyer in good faith. She misapprehended the rule that persons dealing with a registered land have the legal right to rely on the face of the title and to dispense with the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry. This rule applies when the ownership of a parcel of land is disputed **and not when the fact of agency is contested.** At this point, we reiterate the established principle that persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent. Thus, Sally bought the real properties at her own risk; she bears the risk of injury occasioned by her transaction with the spouses Johnson.

APPEARANCES OF COUNSEL

Ariel Joseph B. Arias for petitioner.
Chu Fajardo Sasing & Ferrer for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Sally Yoshizaki to challenge the February 14, 2006 Decision[2] and the October 3, 2006 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 83773.

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[1] Dated November 20, 2006 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 36-68.

[2] *Id.* at 9-30; penned by Associate Justice Mariano C. del Castillo (now a Member of this Court), and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Magdangal M. de Leon.

[3] *Id.* at 31-32.

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The Factual Antecedents

Respondent Joy Training Center of Aurora, Inc. *(Joy Training)* is a non-stock, non-profit religious educational institution. It was the registered owner of a parcel of land and the building thereon *(real properties)* located in San Luis Extension, Purok No. 1, Barangay Buhangin, Baler, Aurora. The parcel of land was designated as Lot No. 125-L and was covered by Transfer Certificate of Title (*TCT*) No. T-25334.[4]

On November 10, 1998, the spouses Richard and Linda Johnson sold the real properties, a Wrangler jeep, and other personal properties in favor of the spouses Sally and Yoshio Yoshizaki. On the same date, a Deed of Absolute Sale[5] and a Deed of Sale of Motor Vehicle[6] were executed in favor of the spouses Yoshizaki. The spouses Johnson were members of Joy Training's board of trustees at the time of sale. On December 7, 1998, TCT No. T-25334 was cancelled and TCT No. T-26052[7] was issued in the name of the spouses Yoshizaki.

On December 8, 1998, Joy Training, represented by its Acting Chairperson Reuben V. Rubio, filed an action for the Cancellation of Sales and Damages with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the spouses Yoshizaki and the spouses Johnson before the Regional Trial Court of Baler, Aurora *(RTC)*.[8] On January 4, 1999, Joy Training filed a Motion to Amend Complaint with the attached Amended Complaint. The amended complaint impleaded Cecilia A. Abordo, officer-in-charge of the Register of Deeds of Baler, Aurora, as additional defendant. The RTC granted the motion on the same date.[9]

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[4] *Id.* at 99.

[5] *Id.* at 216.

[6] *Id.* at 101-102.

[7] *Id.* at 104.

[8] *Id.* at 10.

[9] *Id.* at 13-14.

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In the complaint, Joy Training alleged that the spouses Johnson sold its properties without the requisite authority from the board of directors.[10] It assailed the validity of a **board resolution dated September 1, 1998**[11] which purportedly granted the spouses Johnson the authority to sell its real properties. It averred that only a minority of the board, composed of the spouses Johnson and Alexander Abadayan, authorized the sale through the resolution. It highlighted that the Articles of Incorporation provides that the board of trustees consists of seven members, namely: the spouses Johnson, Reuben, Carmencita Isip, Dominador Isip, Miraflor Bolante, and Abelardo Aquino.[12]

Cecilia and the spouses Johnson were declared in default for their failure to file an Answer within the reglementary period.[13] On the other hand, the spouses Yoshizaki filed their Answer with Compulsory Counterclaims on June 23, 1999. They claimed that Joy Training authorized the spouses Johnson to sell the parcel of land. They asserted that a majority of the board of trustees approved the resolution. They maintained that the actual members of the board of trustees consist of five members, namely: the spouses Johnson, Reuben, Alexander, and Abelardo. Moreover, Connie Dayot, the corporate secretary, issued a **certification dated February 20, 1998**[14] authorizing the spouses Johnson to act on Joy Training's behalf. Furthermore, they highlighted that the Wrangler jeep and other personal properties were registered in the name of the spouses Johnson.[15] Lastly, they assailed the RTC's jurisdiction over the case. They posited that the case is an intra-corporate dispute cognizable by the Securities and Exchange Commission *(SEC)*.[16]

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[10] *Id.* at 12.

[11] *Id.* at 100.

[12] *Id.* at 21.

[13] *Id.* at 18.

[14] *Id.* at 98.

[15] *Id.* at 15-16.

[16] *Supra* note 13.

After the presentation of their testimonial evidence, the spouses Yoshizaki formally offered in evidence photocopies of the resolution and certification, among others.[17] Joy Training objected to the formal offer of the photocopied resolution and certification on the ground that they were not the best evidence of their contents.[18] In an Order[19] dated May 18, 2004, the RTC denied the admission of the offered copies.

The RTC Ruling

The RTC ruled in favor of the spouses Yoshizaki. It found that Joy Training owned the real properties. However, it held that the sale was valid because Joy Training authorized the spouses Johnson to sell the real properties. It recognized that there were only five actual members of the board of trustees; consequently, a majority of the board of trustees validly authorized the sale. It also ruled that the sale of personal properties was valid because they were registered in the spouses Johnson's name.[20]

Joy Training appealed the RTC decision to the CA.

The CA Ruling

The CA upheld the RTC's jurisdiction over the case but reversed its ruling with respect to the sale of real properties. It maintained that the present action is cognizable by the RTC because it involves recovery of ownership from third parties.

It also ruled that the resolution is void because it was not approved by a majority of the board of trustees. It stated that under Section 25 of the Corporation Code, the basis for determining the composition of the board of trustees is the list fixed in the articles of incorporation. Furthermore, Section 23 of the

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[17] *Id.* at 204-208.

[18] *Id.* at 213.

[19] *Id.* at 215.

[20] *Id.* at 119-156.

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Corporation Code provides that the board of trustees shall hold office for one year and until their successors are elected and qualified. Seven trustees constitute the board since Joy Training did not hold an election after its incorporation.

The CA did not also give any probative value to the certification. It stated that the certification failed to indicate the date and the names of the trustees present in the meeting. Moreover, the spouses Yoshizaki did not present the minutes that would prove that the certification had been issued pursuant to a board resolution.[21] The CA also denied[22] the spouses Yoshizaki's motion for reconsideration, prompting Sally[23] to file the present petition.

The Petition

Sally avers that the RTC has no jurisdiction over the case. She points out that the complaint was principally for the nullification of a corporate act. The transfer of the SEC's original and exclusive jurisdiction to the RTC[24] does not have any retroactive application because jurisdiction is a substantive matter.

She argues that the spouses Johnson were authorized to sell the parcel of land and that she was a buyer in good faith because she merely relied on **TCT No. T-25334**. The title states that the spouses Johnson are Joy Training's representatives.

She also argues that it is a basic principle that a party dealing with a registered land need not go beyond the certificate of title to determine the condition of the property. In fact, the resolution and the certification are mere reiterations of the spouses Johnson's authority in the title to sell the real properties. She further claims that the resolution and the certification are not even necessary to clothe the spouses Johnson with the authority to sell the

[21] *Supra* note 2.

[22] *Supra* note 3.

[23] Yoshio was not included as a petitioner because he died prior to the filing of the petition for review on *certiorari* before the Supreme Court.

[24] Section 5.2 of Republic Act No. 8799.

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disputed properties. Furthermore, the contract of agency was subsisting at the time of sale because Section 108 of Presidential Decree No. (*PD*) 1529 requires that the revocation of authority must be approved by a court of competent jurisdiction and no revocation was reflected in the certificate of title.[25]

The Case for the Respondent

In its *Comment*[26] and *Memorandum*,[27] Joy Training takes the opposite view that the RTC has jurisdiction over the case. It posits that the action is essentially for recovery of property and is therefore a case cognizable by the RTC. Furthermore, Sally is estopped from questioning the RTC's jurisdiction because she seeks to reinstate the RTC ruling in the present case.

Joy Training maintains that it did not authorize the spouses Johnson to sell its real properties. TCT No. T-25334 does not specifically grant the authority to sell the parcel of land to the spouses Johnson. It further asserts that the resolution and the certification should not be given any probative value because they were not admitted in evidence by the RTC. It argues that the resolution is void for failure to comply with the voting requirements under Section 40 of the Corporation Code. It also posits that the certification is void because it lacks material particulars.

The Issues

The case comes to us with the following issues:

1) Whether or not the RTC has jurisdiction over the present case; and

2) Whether or not there was a contract of agency to sell the real properties between Joy Training and the spouses Johnson.

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[25] *Supra* note 1.

[26] *Rollo,* pp. 177-185.

[27] *Id.* at 296-316.

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3) As a consequence of the second issue, whether or not there was a valid contract of sale of the real properties between Joy Training and the spouses Yoshizaki.

Our Ruling

We find the petition unmeritorious.

The RTC has jurisdiction over disputes concerning the application of the Civil Code

Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings before a court belong.[28] It is conferred by law. The allegations in the complaint and the status or relationship of the parties determine which court has jurisdiction over the nature of an action.[29] The same test applies in ascertaining whether a case involves an intra-corporate controversy.[30]

The CA correctly ruled that the RTC has jurisdiction over the present case. Joy Training seeks to nullify the sale of the real properties on the ground that there was no contract of agency between Joy Training and the spouses Johnson. This was beyond the ambit of the SEC's original and exclusive jurisdiction prior to the enactment of Republic Act No. 8799 which only took effect on August 3, 2000. The determination of the existence of a contract of agency and the validity of a contract of sale requires the application of the relevant provisions of the Civil Code. It is a well-settled rule that "[d]isputes concerning the application of the Civil Code are properly cognizable by courts of general jurisdiction."[31] Indeed, no special

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[28] *Reyes v. Diaz,* 73 Phil. 484, 486 (1941).

[29] *Ty v. Court of Appeals,* 408 Phil. 792, 798 (2001); and *Viray v. Court of Appeals,* G.R. No. 92481, November 9, 1990, 191 SCRA 308, 321, citing *Republic v. Sebastian,* No. L-35621, July 30, 1976, 72 SCRA 222.

[30] *Vitaliano N. Aguirre II, et al. v. FQB+7, Inc., et al.,* G.R. No. 170770, January 9, 2013.

[31] *Nautica Canning Corporation v. Yumul,* 510 Phil. 197, 209 (2005).

skill requiring the SEC's technical expertise is necessary for the disposition of this issue and of this case.

The Supreme Court may review questions of fact in a petition for review on certiorari when the findings of fact by the lower courts are conflicting

We are aware that the issues at hand require us to review the pieces of evidence presented by the parties before the lower courts. As a general rule, a petition for review on *certiorari* precludes this Court from entertaining factual issues; we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the lower courts. However, the present case falls under the recognized exception that a review of the facts is warranted when the findings of the lower courts are conflicting.[32] Accordingly, we will examine the relevant pieces of evidence presented to the lower court.

There is no contract of agency between Joy Training and the spouses Johnson to sell the parcel of land with its improvements

Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

As a general rule, a contract of agency may be oral. However, it must be written when the law requires a specific form.[33]

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[32] *Medina v. Asistio, Jr.,* G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224.

[33] CIVIL CODE, Article 1869.

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Specifically, Article 1874 of the Civil Code provides that the contract of agency must be written for the validity of the sale of a piece of land or any interest therein. Otherwise, the sale shall be void. A related provision, Article 1878 of the Civil Code, states that special powers of attorney are necessary to convey real rights over immovable properties.

The special power of attorney mandated by law **must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the authorized act.** We unequivocably declared in *Cosmic Lumber Corporation v. Court of Appeals*[34] that a special power of attorney **must express the powers of the agent in clear and unmistakable language** for the principal to confer the right upon an agent to sell real estate. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document. The purpose of the law in requiring a special power of attorney in the disposition of immovable property is to protect the interest of an unsuspecting owner from being prejudiced by the unwarranted act of another and to caution the buyer to assure himself of the specific authorization of the putative agent.[35]

In the present case, Sally presents three pieces of evidence which allegedly prove that Joy Training specially authorized the spouses Johnson to sell the real properties: **(1) TCT No. T-25334, (2) the resolution, (3) and the certification.** We quote the pertinent portions of these documents for a thorough examination of Sally's claim. TCT No. T-25334, entered in the Registry of Deeds on March 5, 1998, states:

> A parcel of land x x x is registered in accordance with the provisions of the Property Registration Decree in the name of JOY TRAINING CENTER OF AURORA, INC., **Rep. by Sps. RICHARD A. JOHNSON**

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[34] G.R. No. 114311, November 29, 1996, 265 SCRA 168, 176.

[35] *Pahud v. Court of Appeals,* G.R. No. 160346, August 25, 2009, 597 SCRA 13, 22.

and LINDA S. JOHNSON, both of legal age, U.S. Citizen, and residents of P.O. Box 3246, Shawnee, Ks 66203, U.S.A.[36] (emphasis ours)

On the other hand, the fifth paragraph of the certification provides:

Further, Richard A. and Linda J[.] Johnson were given **FULL AUTHORITY for ALL SIGNATORY purposes for the corporation on ANY and all matters and decisions regarding the property and ministry here.** They will follow guidelines set forth according to their appointment and ministerial and missionary training and in that, they will formulate and come up with by-laws which will address and serve as governing papers over the center and corporation. They are to issue monthly and quarterly statements to all members of the corporation.[37] (emphasis ours)

The resolution states:

We, the undersigned Board of Trustees (in majority) **have authorized the sale of land and building owned by spouses Richard A. and Linda J[.] Johnson** (as described in the title SN No. 5102156 filed with the Province of Aurora last 5th day of March, 1998. These proceeds are going to pay outstanding loans against the project and the dissolution of the corporation shall follow the sale. This is a religious, non-profit corporation and no profits or stocks are issued.[38] (emphasis ours)

The above documents do not convince us of the existence of the contract of agency to sell the real properties. TCT No. T-25334 merely states that Joy Training is represented by the spouses Johnson. The title does not explicitly confer to the spouses Johnson the authority to sell the parcel of land and the building thereon. Moreover, the phrase "Rep. by Sps. RICHARD A. JOHNSON and LINDA S. JOHNSON"[39] only means that the spouses Johnson represented Joy Training in land registration.

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[36] *Supra* note 4.

[37] *Supra* note 14.

[38] *Supra* note 11.

[39] *Supra* note 14.

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The lower courts should not have relied on the resolution and the certification in resolving the case. The spouses Yoshizaki did not produce the original documents during trial. They also failed to show that the production of pieces of secondary evidence falls under the exceptions enumerated in Section 3, Rule 130 of the Rules of Court.[40] Thus, the general rule – that no evidence shall be admissible other than the original document itself when the subject of inquiry is the contents of a document – applies.[41]

Nonetheless, if only to erase doubts on the issues surrounding this case, we declare that even if we consider the photocopied resolution and certification, this Court will still arrive at the same conclusion.

The resolution which purportedly grants the spouses Johnson a special power of attorney is negated by the phrase "land and building **owned by spouses Richard A. and Linda J[.] Johnson**."[42] Even if we disregard such phrase, the resolution must be given scant consideration. We adhere to the CA's position that the basis for determining the board of trustees' composition is the trustees as fixed in the articles of incorporation and not the actual members of the board. The second paragraph of

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[40] RULES OF COURT, Rule 130, Section 3 provides:

Original document must be produced; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. [italics supplied]

[41] *Ibid.*

[42] *Supra* note 11.

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Section 25[43] of the Corporation Code expressly provides that a majority of the number of trustees **as fixed in the articles of incorporation** shall constitute a quorum for the transaction of corporate business.

Moreover, the certification is a mere general power of attorney which comprises all of Joy Training's business.[44] Article 1877 of the Civil Code clearly states that "[a]n agency couched in general terms comprises only acts of administration, **even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management.**"[45]

The contract of sale is unenforceable

Necessarily, the absence of a contract of agency renders the contract of sale unenforceable;[46] Joy Training effectively did not enter into a valid contract of sale with the spouses Yoshizaki. Sally cannot also claim that she was a buyer in good faith. She misapprehended the rule that persons dealing with a registered land have the legal right to rely on the face of the title and to dispense with the need to inquire further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such

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[43] Section 25 of the Corporation Code provides:

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

[44] CIVIL CODE, Article 1876.

[45] CIVIL CODE, Article 1877.

[46] CIVIL CODE, Article 1403.

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inquiry.[47] This rule applies when the ownership of a parcel of land is disputed **and not when the fact of agency is contested.**

At this point, we reiterate the established principle that persons dealing with an agent must ascertain not only the fact of agency, but also the nature and extent of the agent's authority.[48] A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency.[49] The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover on his own peril the authority of the agent.[50] Thus, Sally bought the real properties at her own risk; she bears the risk of injury occasioned by her transaction with the spouses Johnson.

WHEREFORE, premises considered, the assailed Decision dated February 14, 2006 and Resolution dated October 3, 2006 of the Court of Appeals are hereby **AFFIRMED** and the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[*] and *Perlas-Bernabe, JJ.,* concur.

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[47] *Naawan Community Rural Bank, Inc. v. Court of Appeals,* 443 Phil. 56, 65-66 (2003).

[48] *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard,* G.R. No. 166044, June 18, 2012, 673 SCRA 427, 451.

[49] CIVIL CODE, Article 1902.

[50] CIVIL CODE, Article 1403.

[*] In lieu of Associate Justice Mariano C. del Castillo per Raffle dated July 31, 2013.