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FIRST DIVISION

[G.R. No. 146608. October 23, 2003]

SPOUSES CONSTANTE FIRME AND AZUCENA E. FIRME, *petitioners, vs.* BUKAL ENTERPRISES AND DEVELOPMENT CORPORATION, *respondent.*

SYNOPSIS

Renato de Castro, the vice president of Bukal Enterprises and Development Corporation, authorized his friend, Teodoro Aviles, to negotiate with Spouses Constante and Azucena Firme for the purchase of the Property located in Quezon City. Later, by claiming that the Spouses Firme reneged on their agreement to sell, Bukal Enterprises filed a complaint for specific performance and damages against them. After trial, the court *a quo* rendered judgment in favor of Spouses Firme. It ruled that there was no perfected contract of sale. Bukal Enterprises failed to establish that the Spouses Firme gave their consent to the sale of the property. Aviles had no valid authority to bind Bukal Enterprises in the sale transaction since he has no authority from the Board of Directors. However, on appeal, the said decision was reversed by the Court of Appeals. The latter ruled that the lack of a board resolution authorizing Aviles to act on behalf of Bukal Enterprises in the purchase of the Property was cured by ratification. Bukal Enterprises ratified the purchase when it filed the complaint for the enforcement of the sale. It also held that there was a perfected contract of sale. Spouses Firme revealed their intent to sell the Property when they met with Aviles twice and allowed Bukal Enterprises to exercise acts of ownership over the property when the latter introduced improvements on the Property and evicted the squatters.

The Court set aside the decision of the Court of Appeals. The Court agreed with the finding of the trial court that there was no perfected contract of sale. The Spouses Firme flatly rejected the offer of Aviles to buy the Property on behalf of Bukal Enterprises. There was, therefore, no concurrence of the offer and the acceptance on the subject matter, consideration

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and terms of payment as would result in a perfected contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds on the thing which is the object of the contract and on the price.

Further, there was no approval from the Board of Directors of Bukal Enterprises as would finalize any transaction with the Spouses Firme. Aviles did not have the proper authority to negotiate for Bukal Enterprises. Aviles testified that his friend, de Castro, had asked him to negotiate with the Spouses Firme to buy the Property. De Castro, as Bukal Enterprises' vice president, testified that he authorized Aviles to buy the Property. However, there is no Board Resolution authorizing Aviles to negotiate and purchase the Property on behalf of Bukal Enterprises. In the Corporation Code, the power to purchase real property is vested in the board of directors or trustees.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; WHEN THE FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT, THE SUPREME COURT HAS THE AUTHORITY TO REVIEW THE FINDINGS OF FACT.** — As a rule, only questions of law are appealable to this Court under Rule 45 of the Rules of Civil procedure. The findings of fact by the Court of Appeals are generally conclusive and binding on the parties and are not reviewable by this Court. However, when the factual findings of the Court of Appeals are contrary to those of the trial court or when the interference made is manifestly mistaken, this Court has the authority to review the findings of fact. Likewise, this Court may review findings of fact when the judgement of the Court of Appeals is premised on a misapprehension of facts. This is the situation in this case.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONSENT IS AN ESSENTIAL ELEMENT OF A VALID CONTRACT.** — Consent is one of the essential elements of a valid contract. The Civil Code provides: Art. 1318. There is no contract unless the following requirements concur; 1. Consent of the contracting parties; 2. Object certain which is the subject matter of the contract; 3. Cause of the obligation which is established. The absence of any of these essential elements will negate the

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existence of a perfected contract of sale. Thus, where there is a want of consent, the contract is non-existent. As held in *Salonga, et al. v. Farrales, et al.:* It is elementary that consent is an essential element for the existence of a contract, and where it is wanting, the contract is non-existent. *The essence of consent is the conformity of the parties on the terms of the contract, the acceptance by one of the offer made by the other.* The contract to sell is a bilateral contract. Where there is merely an offer by one party, without the acceptance of the other, there is no consent.

3. **ID.; SALE; PERFECTED AT THE MOMENT THERE IS A MEETING OF MINDS ON THE THING WHICH IS THE OBJECT OF THE CONTRACT AND ON THE PRICE; NOT PRESENT IN CASE AT BAR.** — The Spouses Firme flatly rejected the offer of Aviles to buy the property on behalf of Bukal Enterprises. There was therefore no concurrence of the offer and the acceptance on the subject matter, consideration and terms of payment as would result in a perfected contract of sale. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds on the thing which is the object of the contract and on the price. Another piece of evidence which supports the contention of the Spouses Firme that they did not consent to the contract of sale is the fact that they never signed any deed of sale. If the Spouses Firme were already agreeable to the offer of Bukal Enterprises as embodied in the Second Draft, then the Spouses Firme could have simply affixed their signatures on the deed of sale, but they did not. Even the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer. In this case, what were offered in evidence were mere unsigned deeds of sale which have no probative value. Bukal Enterprises failed to show the existence of a perfected contract of sale by competent proof.

4. **ID.; ID.; NOT PERFECTED SINCE THE ALLEGED AGENT HAS NO AUTHORITY FROM THE BOARD OF DIRECTORS TO NEGOTIATE AND PURCHASE PROPERTY ON BEHALF OF THE CORPORATION.** — There was no approval from the Board of Directors of Bukal Enterprises as would finalize any transaction with the Spouses Firme. Aviles did not have the

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proper authority to negotiate for Bukal Enterprises. Aviles testified that his friend, De Castro, had asked him to negotiate with the Spouses Firme to buy the Property. De Castro, as Bukal Enterprises' vice president, testified that he authorized Aviles to buy the Property. However, there is no Board Resolution authorizing Aviles to negotiate and purchase the Property on behalf of Bukal Enterprises. x x x In this case, Aviles, who negotiated the purchase of the Property, is neither an officer of Bukal Enterprises nor a member of the Board of Directors of Bukal Enterprises. There is no Board Resolution authorizing Aviles to negotiate and purchase the property for Bukal Enterprises. There is also no evidence to prove that Bukal Enterprises approved whatever transaction Aviles made with the Spouses Firme. In fact, the president of Bukal Enterprises did not sign any of the deeds of sale presented to the Spouses Firme. Even De Castro admitted that he had never met the Spouses Firme. Considering all these circumstances, it is highly improbable for Aviles to finalize any contract of sale with the Spouses Firme.

5. **MERCANTILE LAW; CORPORATION LAW; BOARD OF DIRECTORS OR TRUSTEES; VESTED WITH THE POWER TO PURCHASE REAL PROPERTY.**— [T]he power to purchase real property is vested in the board of directors or trustees. While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction. A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agent when authorized by a board resolution or its by-laws. As held in *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.*: Section 23 of the Corporation Code, expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. *Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation,*

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but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.

6. **ID.; ID.; ID.; EXERCISES THE POWER OF THE CORPORATION TO SUE AND BE SUED; NOT COMPLIED WITH IN CASE AT BAR.**— [T]he Court notes that in the Complaint filed by Bukal Enterprises with the trial court, Aviles signed the verification and certification of non-forum shopping. The verification and certification of non-forum shopping was not accompanied by proof that Bukal Enterprises authorized Aviles to file the complaint on behalf of Bukal Enterprises. The power of a corporation to sue and be sued is exercised by the board of directors. "The physical acts of the corporation. like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors." The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and that it is filed in good faith. True, this requirement is procedural and not jurisdictional. However, the trial court should ordered the correction of the complaint since Aviles was neither an officer of Bukal Enterprises nor authorized by its Board of Directors to act on behalf of Bukal Enterprises.

7. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; STATUTE OF FRAUDS; APPLICATION THEREOF PRESUPPOSES THE EXISTENCE OF A PERFECTED CONTRACT.**— The Court of Appeals held that partial performance of the contract of sale takes the oral contract out of the scope of the Statute of Frauds. This conclusion arose from the appellate court's erroneous finding that there was a perfected contract of sale. The records show that there was no perfected contract of sale. There is therefore no basis for the application of the Statute of Frauds. The application of the Statute of Frauds presupposes the existence of a perfected contract.

8. **ID.; PROPERTY; BUILDER IN BAD FAITH; ESTABLISHED IN CASE AT BAR.** — Bukal Enterprises is obviously a builder in bad faith. No deed of sale has been executed in this case. Despite the refusal of the Spouses Firme to sell the Property, Bukal Enterprises still proceeded to introduce improvements on the Property. Bukal Enterprises introduced improvements on the Property without the knowledge and consent of the

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Spouses Firme. When the Spouses Firme learned about the unauthorized constructions made by Bukal Enterprises on the Property, they advised the latter to desist from further acts of trespass on their Property.

9. **ID.; ID.; ID.; OPTIONS OF THE OWNER OF THE LAND.**— Under these provisions the Spouses Firme have the following options: (1) to appropriate what Bukal Enterprises has built without any obligation to pay indemnity; (2) to ask Bukal Enterprises to remove what it has built; or (3) to compel Bukal Enterprises to pay the value of the land. Since the Spouses Firme are undoubtedly not selling the Property to Bukal Enterprises, they may exercise any of the first two options. They may appropriate what has been built without paying indemnity or they may ask Bukal Enterprises to remove what it has built at Bukal Enterprises own expense.

10. **ID.; ID.; ID.; NOT ENTITLED TO REIMBURSEMENT FOR THE EXPENSES INCURRED IN RELOCATING THE SQUATTERS.**— Bukal Enterprises is not entitled to reimbursement for the expenses incurred in relocating the squatters. Bukal Enterprises spent for the relocation of the squatters even after learning that the Spouses Firme were no longer interested in selling the Property. De Castro testified that even though the Spouses Firme did not require them to remove the squatters, they chose to spend for the relocation of the squatters since they were interested in purchasing the Property.

11. **ID.; DAMAGES; ACTUAL DAMAGES; EXPENSES FOR THE ROUNDTRIP TICKETS COULD NOT BE ATTRIBUTED SOLELY FOR THE ATTENDANCE OF HEARINGS; CASE AT BAR.** — The Court agrees with the Court of Appeals to delete the award for compensatory and moral damages. In awarding actual damages, the trial court took into account the traveling expenses incurred by the Spouses Firme who are already residing in the United States. However, the trial court failed to consider the testimony of Dr. Firme that they normally travel to the Philippines more than once a year to visit their children. Thus, the expenses for the roundtrip tickets dated 1996-1997 could not be attributed solely for the attendance of hearings in the case.

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12. ID.; ID.; AWARD OF NOMINAL DAMAGES, WARRANTED. — [A]n award of nominal damages of ₱30,000 is warranted since Bukal Enterprises violated the property rights of the Spouses Firme.

13. ID.; ID.; LANDOWNER IS ENTITLED THERETO FROM THE BUILDER IN BAD FAITH. — The award of damages is also in accordance with Article 451 of the Civil Code which states that the landowner is entitled to damages from the builder in bad faith.

APPEARANCES OF COUNSEL

Santiago Corpuz & Ejercito for petitioners.
De Castro Cagampang Law Offices and *Roberto C. Diokno* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* of the Decision[1] dated 3 January 2001 of the Court of Appeals in CA-G.R. CV No. 60747. The Court of Appeals reversed the Decision[2] of the Regional Trial Court, Branch 223, Quezon City ("trial court"), which held that there was no perfected contract of sale since there was no consent on the part of the seller.

The Facts

Petitioner Spouses Constante and Azucena Firme ("Spouses Firme") are the registered owners of a parcel of land[3] ("Property") located on Dahlia Avenue, Fairview Park, Quezon City. Renato de Castro ("De Castro"), the vice president of Bukal Enterprises and Development Corporation ("Bukal Enterprises") authorized his friend, Teodoro Aviles ("Aviles"), a broker, to negotiate with the Spouses Firme for the purchase of the Property.

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[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga concurring.

[2] Penned by Judge Victorino P. Evangelista.

[3] Covered by TCT No. 264243.

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On 28 March 1995, Bukal Enterprises filed a complaint for specific performance and damages with the trial court, alleging that the Spouses Firme reneged on their agreement to sell the Property. The complaint asked the trial court to order the Spouses Firme to execute the deed of sale and to deliver the title to the Property to Bukal Enterprises upon payment of the agreed purchase price.

During trial, Bukal Enterprises presented five witnesses, namely, Aviles, De Castro, Antonio Moreno, Jocelyn Napa and Antonio Ancheta.

Aviles testified that De Castro authorized him to negotiate on behalf of Bukal Enterprises for the purchase of the Property. According to Aviles, he met with the Spouses Firme on 23 January 1995 and he presented them with a draft deed of sale[4] ("First Draft") dated February 1995. The First Draft of the deed of sale provides:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF ABSOLUTE SALE made and executed by and between the Spouses CONSTANTE FIRME and AZUCENA E. FIRME, both of legal age, Filipino citizens and with postal address at No. 1450 Union, Paco, City of Manila, hereinafter called the VENDOR, and

BUKAL ENTERPRISES and DEVELOPMENT CORPORATION, a corporation duly organized and registered in accordance with Philippine Laws, with business address at Dahlia Avenue, Fairview Park, Quezon City, herein represented by its PRESIDENT, MRS. ZENAIDA A. DE CASTRO, hereinafter called the VENDEE.

WITNESSETH:

That the VENDOR is the absolute and registered owner of a certain parcel of land located at Fairview Park, Quezon City, and more particularly described as follows:

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[4] Exh. "C", *Rollo*, pp. 363-364.

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A parcel of land (Lot 4, Block 33 of the consolidation-subdivision plan (LRC) Pcs-8124, Sheet No. I, being a portion of the consolidation of Lots 41-B-2-A and 41-B-2-C, Psd-1136 and Lot (LRC) Pcs-2665, (LRC) GLRO) Record No. 1037), situated in Quezon City, Island of Luzon. Bounded on the NE., points 2 to 5 by Road Lot 24, of the consolidation-subdivision plan. Beginning at a point marked "1" on plan, being S. 67 deg. 23'W., 9288.80 m. from BLLM I, Mp of Montalban, Rizal; thence N. 85 deg. 35'E., 17.39 m. to point 2; thence S. 54 deg. 22'E., 4.00 m. to point 3; thence S. 14 deg. 21'E., 17.87 m. to point 4; thence 3 deg. 56'E., 17.92 m. to point 5; thence N. 85 deg. 12' W., 23.38 m. to point 6; thence N. 4 deg. 55'W., 34.35 m. to the point of beginning; containing an area of EIGHT HUNDRED AND SIX (806) SQUARE METERS, more or less.

VENDOR'S title thereto being evidenced by Transfer Certificate of Title No. 264243 issued by the Register of Deeds of Quezon City;

That the VENDOR, for and in consideration of the sum of THREE MILLION TWO HUNDRED TWENTY FOUR THOUSAND PESOS (₱3,224,000.00) Philippine Currency, to them in hand paid and receipt whereof is hereby acknowledged, do hereby SELL, TRANSFER and CONVEY unto the said VENDEE, its assigns, transferees and successors in interest the above described property, free from all liens and encumbrances whatsoever;

It is hereby mutually agreed that the VENDEE shall bear all the expenses for the capital gains tax, documentary stamps, documentation, notarization, removal and relocation of the squatters, registration, transfer tax and other fees as may be required by law;

That the VENDOR shall pay the real estate tax for the current year and back real estate taxes, charges and penalties if there are any.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this _____ day of February, 1995, at Quezon City, Philippines.

CONSTANTE FIRME	BUKAL ENTERPRISES AND DEVELOPMENT CORP. BY:
AZUCENA E. FIRME VENDOR	ZENAIDA A. DE CASTRO President
x x x	x x x x x x

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The Spouses Firme rejected this First Draft because of several objectionable conditions, including the payment of capital gains and other government taxes by the seller and the relocation of the squatters at the seller's expense. During their second meeting, Aviles presented to the Spouses Firme another draft deed of sale[5] ("Second Draft") dated March 1995. The Spouses Firme allegedly accepted the Second Draft in view of the deletion of the objectionable conditions contained in the First Draft. According to Aviles, the Spouses Firme were willing to sell the Property at ₱4,000 per square meter. They then agreed that payment would be made at the Far East Bank and Trust Company ("FEBTC"), Padre Faura Branch, Manila. However, the scheduled payment had to be postponed due to problems in the transfer of funds. The Spouses Firme later informed Aviles that they were no longer interested in selling the Property.[6]

De Castro testified that he authorized Aviles to negotiate for Bukal Enterprises the purchase of the Property owned by the Spouses Firme. The Property was located beside the Dahlia Commercial Complex owned by Bukal Enterprises. Aviles informed him that the Spouses Firme agreed to sell the Property at ₱4,000 per square meter, payable in cash for a lump sum of ₱3,224,000. Furthermore, Bukal Enterprises agreed to pay the taxes due and to undertake the relocation of the squatters on the Property. For this purpose, Bukal Enterprises applied for a loan of ₱4,500,000 which FEBTC granted. Bukal Enterprises then relocated the four families squatting on the Property at a cost of ₱60,000 per family. After the squatters vacated the Property, Bukal Enterprises fenced the area, covered it with filling materials, and constructed posts and riprap. Bukal Enterprises spent approximately ₱300,000 for these improvements. In a letter[7] dated 7 March 1995, Bukal Enterprises offered to pay the purchase price of ₱3,224,000 to the Spouses Firme upon execution of the transfer documents and delivery of the owner's duplicate copy of TCT No. 264243. The Spouses Firme did not accept this offer but instead sent Bukal Enterprises

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[5] Exh. "C-1", *Rollo*, pp. 366-367.

[6] TSN, 26 March 1996, pp. 15-35, TSN, 25 April 1996, pp. 37-39.

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a letter demanding that its workers vacate the Property. Bukal Enterprises then filed a complaint for specific performance and damages.[8]

Antonio Moreno, one of the alleged squatters on the Property, testified that he constructed his house on the Property sometime in 1982. On 26 February 1995, he was summoned together with the other squatters to a meeting with Aviles regarding their relocation. They agreed to relocate provided they would be given financial assistance of ₱60,000 per family. Thus, on 6 March 1995, the squatter families were each paid ₱60,000 in the presence of De Castro and Aviles. Thereafter, they voluntarily demolished their houses and vacated the Property.[9]

Jocelyn Mapa, the manager of FEBTC, Padre Faura Branch, testified that Bukal Enterprises has been their client since 1994. According to her, Bukal Enterprises applied for a loan of ₱4,500,000 on the third week of February 1995 allegedly to buy a lot in Fairview. FEBTC approved the loan on the last week of February and released the proceeds on the first week of March.[10]

Antonio Ancheta ("Ancheta"), *barangay* captain of Barangay Fairview, testified that he was present when one of the officers of Bukal Enterprises, a certain Renato, paid each of the four squatter families around ₱60,000 to ₱100,000. Ancheta informed Dr. Constante Firme that he told the squatters to leave considering that they already received payment for their relocation. According to Ancheta, Dr. Constante Firme must have misunderstood him and thought that the squatters left through Ancheta's own efforts.[11]

On the other hand, Dr. Constante Firme ("Dr. Firme") was the sole witness for the defendant spouses.

Dr. Firme testified that on 30 January 1995, he and his wife met with Aviles at the Aristocrat Restaurant in Quezon City. Aviles

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[7] Exh. "B", *Rollo*, p. 358.

[8] TSN, 19 September 1996, pp. 5-23; TSN, 7 November 1996, pp. 3-4.

[9] TSN, 21 May 1996, pp. 3-16.

[10] TSN, 20 May 1997, pp. 6-16.

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arranged the meeting with the Spouses Firme involving their Property in Fairview. Aviles offered to buy the Property at ₱2,500 per square meter. The Spouses Firme did not accept the offer because they were reserving the Property for their children. On 6 February 1995, the Spouses Firme met again with Aviles upon the latter's insistence. Aviles showed the Spouses Firme a copy of a draft deed of sale[12] ("Third Draft") which Aviles prepared. The Third Draft of the deed of sale provides:

CONTRACT OF SALE

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT, executed this ___ day of February, 1995, by and between the Spouses CONSTANTE FIRME and AZUCENA E. FIRME, both of legal age, Filipino citizen and with postal address at _____, Quezon City, hereinafter referred to as the VENDORS, and BUKAL ENTERPRISES and DEVELOPMENT CORPORATION, a corporation duly organized and registered in accordance with Philippine Laws, with postal address at Fairview Park, Quezon City, herein represented by its President and Chief Executive Officer, hereinafter referred to as the VENDEE.

WITNESSETH:

That for and in consideration of the sum of THREE MILLION TWO HUNDRED TWENTY FOUR THOUSAND PESOS (₱3,224,000.00), Philippine Currency, payable in the form hereinafter expressed, agreed to sell to the VENDEE and the VENDEE has agreed to buy from the VENDORS, a parcel of land situated at Dahlia Avenue corner Rolex Street, Fairview Park, Quezon City, containing an area of 806 Square Meters more or less, of which the VENDORS are the absolute registered owners in accordance with the Land Registration Act, as evidenced by Transfer Certificate of Title No. 264243 issued by the Register of Deeds of Quezon City, more particularly described and bounded as follows:

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[11] TSN, 14 April 1998, pp. 8-13, 16-17.

[12] Exh. "5", Exh. "L", *Rollo*, pp. 359-360.

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(DESCRIPTION AND BOUNDARIES OF PROPERTY)

THE FURTHER TERMS AND CONDITIONS OF THE CONTRACT ARE AS FOLLOWS:

1. The VENDEE agrees to pay the VENDORS upon execution of this Contract the sum of ONE MILLION PESOS (₱1,000,000.00), Philippine Currency, as downpayment and agrees to pay the balance of TWO MILLION TWO HUNDRED TWENTY FOUR THOUSAND PESOS (₱2,224,000.00) at the post office address of the VENDORS in Quezon City, or such other place or Office as the VENDORS may designate within a period of sixty (60) days counted from the date of this Contract;

2. The VENDORS have hereunto authorized the VENDEE to mortgage the property and submit this Contract, together with a certified true copy of the TCT, Tax Declaration, Tax Clearance and Vicinity/Lot Plan, with their Lending Bank. The proceeds of the VENDEE'S Loan shall directly be paid and remitted by the Bank to the VENDORS;

3. The said parcel of land shall remain in the name of the VENDORS until the Lending Bank of the VENDEE shall have issued a Letter Guaranty Payment in favor of the VENDORS, at which time the VENDORS agree to execute a Deed of Absolute Sale in favor of the VENDEE and cause the issuance of the Certificate of Title in the name of the latter. The Capital Gains Tax and Documentary Stamps shall be charged from the VENDORS in accordance with law;

4. The payment of the balance of ₱2,224,000.00 by the VENDEE to the VENDORS shall be within a period of sixty (60) days effective from the date of this Contract. After the lapse of 60 days and the loan has not yet been released due to fortuitous events the VENDEE shall pay an interest of the balance a monthly interest based on existing bank rate until said fortuitous event is no longer present;

5. The VENDEE shall remove and relocate the Squatters, however, such actual, reasonable and necessary expenses shall be charged to the VENDORS upon presentation of receipts and documents to support the act;

6. The VENDEE shall be allowed for all legal purposes to take possession of the parcel of land after the execution of this Contract and payment of the downpayment;

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7. The VENDEE shall shoulder all expenses like the documentation, registration, transfer tax and relocation of the property.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this ____ day of February, 1995, at Quezon City, Philippines.

CONSTANTE E. FIRME VENDOR	BUKAL ENTERPRISES DEV. CORP. VENDEE
AZUCENA E. FIRME VENDOR	BY: _____ President & Chief Executive Officer

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The Spouses Firme did not accept the Third Draft because they found its provisions one-sided. The Spouses Firme particularly opposed the provision on the delivery of the Property's title to Bukal Enterprises for the latter to obtain a loan from the bank and use the proceeds to pay for the Property. The Spouses Firme repeatedly told Aviles that the Property was not for sale when Aviles called on 2 and 4 March 1995 regarding the Property. On 6 March 1995, the Spouses Firme visited their Property and discovered that there was a hollow block fence on one side, concrete posts on another side and bunkers occupied by workers of a certain Florante de Castro. On 11 March 1995, Spouses Firme visited the Property again with a surveyor. Dr. Firme talked with Ancheta who told him that the squatters had voluntarily demolished their shanties. The Spouses Firme sent a letter[13] dated 20 March 1995 to Bukal Enterprises demanding removal of the bunkers and vacation by the occupants of the Property. On 22 March 1995, the Spouses Firme received a letter[14] dated 7 March 1995 from Bukal Enterprises demanding that they sell the Property.[15]

On 7 August 1998, the trial court rendered judgment against Bukal Enterprises as follows:

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[13] Exh. "6", *Rollo*, p. 365.

[14] Exh "B", *Rollo*, p. 358.

[15] TSN, 5 August 1997, pp. 3-20; TSN, 12 August 1997, pp. 6-7, 21.

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WHEREFORE, in the light of the foregoing premises, the above-entitled case [is] hereby DISMISSED and plaintiff BUKAL ENTERPRISES DEVELOPMENT CORPORATION is hereby ordered to pay the defendants Spouses Constante and Azucena Firme:

1. the sum of Three Hundred Thirty Five Thousand Nine Hundred Sixty Four and 90/100 (₱335,964.90) as and by way of actual and compensatory damages;
2. the sum of Five Hundred Thousand Pesos (₱500,000.00) as and by way of moral damages;
3. the sum of One Hundred Thousand Pesos (₱100,000.00) as and by way of attorney's fees; and
4. the costs of the suit.

SO ORDERED.[16]

Bukal Enterprises appealed to the Court of Appeals, which reversed and set aside the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Decision, dated August 7, 1998, is hereby REVERSED and SET ASIDE. The complaint is granted and the appellees are directed to henceforth execute the Deed of Absolute Sale transferring the ownership of the subject property to the appellant immediately upon receipt of the purchase price of ₱3,224,000.00 and to perform all such acts necessary and proper to effect the transfer of the property covered by TCT No. 264243 to appellant. Appellant is directed to deliver the payment of the purchase price of the property within sixty days from the finality of this judgment. Costs against appellees.

SO ORDERED.[17]

Hence, the instant petition.

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[16] *Rollo*, p. 85.

[17] *Ibid.*, p. 74.

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The Ruling of the Trial Court

The trial court held there was no perfected contract of sale. Bukal Enterprises failed to establish that the Spouses Firme gave their consent to the sale of the Property. The parties did not go beyond the negotiation stage and there was no evidence of meeting of the minds between the parties. Furthermore, Aviles had no valid authority to bind Bukal Enterprises in the sale transaction. Under Sections 23 and 36 (No. 7) of the Corporation Code, the corporate power to purchase a specific property is exercised by the Board of Directors of the corporation. Without an authorization from the Board of Directors, Aviles could not validly finalize the purchase of the Property on behalf of Bukal Enterprises. There is no basis to apply the Statute of Frauds since there was no perfected contract of sale.

The Ruling of the Court of Appeals

The Court of Appeals held that the lack of a board resolution authorizing Aviles to act on behalf of Bukal Enterprises in the purchase of the Property was cured by ratification. Bukal Enterprises ratified the purchase when it filed the complaint for the enforcement of the sale.

The Court of Appeals also held there was a perfected contract of sale. The appellate court ruled that the Spouses Firme revealed their intent to sell the Property when they met with Aviles twice. The Spouses Firme rejected the First Draft because they considered the terms unacceptable. When Aviles presented the Second Draft without the objectionable provisions, the Spouses Firme no longer had any cause for refusing to sell the Property. On the other hand, the acts of Bukal Enterprises in fencing the Property, constructing posts, relocating the squatters and obtaining a loan to purchase the Property are circumstances supporting their claim that there was a perfected contract of sale.

The Spouses Firme allowed Bukal Enterprises to exercise acts of ownership over the Property when the latter introduced improvements on the Property and evicted the squatters. These

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acts constitute partial performance of the contract of sale that takes the oral contract out of the scope of the Statute of Frauds.

The Issues

The Spouses Firme raise the following issues:

1. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS A PERFECTED CONTRACT OF SALE BETWEEN PETITIONERS AND RESPONDENT DESPITE THE ADDUCED EVIDENCE PATENTLY TO THE CONTRARY;
2. WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE ALLEGED CONTRACT OF SALE IS ENFORCEABLE DESPITE THE FACT THAT THE SAME IS COVERED BY THE STATUTE OF FRAUDS;
3. WHETHER THE COURT OF APPEALS ERRED IN DISREGARDING THE FACT THAT IT WAS NOT LEGALLY AND FACTUALLY POSSIBLE FOR RESPONDENT TO PERFECT A CONTRACT OF SALE; AND
4. THE COURT OF APPEALS ERRED IN RULING THAT THE AWARD BY THE TRIAL COURT OF MORAL AND COMPENSATORY DAMAGES TO PETITIONERS IS IMPROPER.[18]

The Ruling of the Court

The petition is meritorious.

The fundamental question for resolution is whether there was a perfected contract of sale between the Spouses Firme and Bukal Enterprises. This requires a review of the factual and legal issues of this case. As a rule, only questions of law are appealable to this Court under Rule 45[19] of the Rules of Civil Procedure. The findings

[18] *Rollo*, pp. 17-18.

[19] *Section* 1, Rule 45 reads:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall ***raise only questions of law*** which must be distinctly set forth. (Italics supplied)

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of fact by the Court of Appeals are generally conclusive and binding on the parties and are not reviewable by this Court.[20] However, when the factual findings of the Court of Appeals are contrary to those of the trial court or when the inference made is manifestly mistaken, this Court has the authority to review the findings of fact.[21] Likewise, this Court may review findings of fact when the judgment of the Court of Appeals is premised on a misapprehension of facts.[22] This is the situation in this case.

Whether there was a perfected contract of sale

We agree with the finding of the trial court that there was no perfected contract of sale. Clearly, the Court of Appeals misapprehended the facts of the case in ruling otherwise.

First, the records indubitably show that there was no consent on the part of the Spouses Firme. Aviles did not present any draft deed of sale during his first meeting with the Spouses Firme on 30 January 1995.[23] Dr. Firme was consistent in his testimony that he and his wife rejected the provisions of the Third Draft presented by Aviles during their second meeting on 6 February 1995. The Spouses Firme found the terms and conditions unacceptable and told Aviles that they would not sell the property.[24] Aviles showed them only one draft deed of sale (Third Draft) during their second and last meeting on 6 February 1995.[25] When shown a copy of the First Draft, Dr.

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[20] *Rizal Surety & Insurance Company v. Court of Appeals*, G.R. No. 112360, 18 July 2000, 336 SCRA 12; *Food Terminal Incorporated v. Court of Appeals*, G.R. No. 108397, 21 June 2000, 334 SCRA 156.

[21] *Manongsong v. Estimo*, G.R. No. 136773, 25 June 2003; *Si v. Court of Appeals*, G.R. No. 122047, 12 October 2000, 342 SCRA 653; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, 18 July 2000, 336 SCRA 97.

[22] *Peñalosa v. Santos*, 416 Phil. 12 (2001); *Romago Electric Co., Inc. v. Court of Appeals*, G.R. No. 125997, 8 June 2000, 333 SCRA 291.

[23] TSN, 9 September 1997, p. 10.

[24] TSN, 5 August 1997, pp. 9-12; TSN, 12 August 1997, p. 25; TSN, 9 September 1997, pp. 7-8.

[25] TSN, 9 September 1997, p. 11.

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Firme testified that it was not the deed of sale shown to them by Aviles during their second meeting[26] and that the Third Draft was completely different from the First Draft.[27]

On the other hand, Aviles gave conflicting testimony as to what transpired during the two meetings with the Spouses Firme. In his direct examination, Aviles testified that during his first meeting with the Spouses Firme on 23 January 1995, he showed them the First Draft which the Spouses Firme rejected.[28] On their second meeting, Aviles showed the Spouses Firme the Second Draft, which the Spouses Firme allegedly approved because the objectionable conditions contained in the First Draft were already deleted. However, a perusal of the First Draft and the Second Draft would show that both deeds of sale contain exactly the same provisions. The only difference is that the date of the First Draft is February 1995 while that of the Second Draft is March 1995.

When Aviles testified again as rebuttal witness, his testimony became more confusing. Aviles testified that during his first meeting with the Spouses Firme on 30 January 1995, he showed them the Third Draft, which was not acceptable to the latter.[29] However, upon further questioning by his counsel, Aviles concurred with Dr. Firme's testimony that he presented the Third Draft (Exh. "5"; Exh. "L") to the Spouses Firme only during their second meeting. He also stated that he prepared and presented to the Spouses Firme the First Draft (Exh. "C") and the Second Draft (Exh. "C-1") during their first or second meeting. He testified:

ATTY. MARQUEDA:

Q: On page 11 of the tsn dated August 5, 1997 a question was posed "How did you find this draft the Contract of Sale which was presented to you by Mr. Aviles on the second meeting?" The answer is "On the first meeting(*sic*), we find it totally

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[26] TSN, 12 August 1997, p. 27.

[27] TSN, 9 September 1997, p. 6.

[28] TSN, 26 March 1996, pp. 19, 22-23.

[29] TSN, 12 February 1998, pp. 14-16, 28-29.

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unacceptable, sir."[30] What can you say on this? Before that, Mr. Witness, what is this Contract of Sale that you presented to Mr. Aviles on the second meeting? Is this different from the Contract of Sale that was marked as Exhibit "5-L"?

Q: May I see the document ***Exhibit 5-L***?[31]

INTERPRETER:

Witness going over the record.

ATTY. MARQUEDA:

Q: ***Is that the same document that was presented by you to Mr. Firme on the second meeting or there is a different contract?***

A: ***This is the same document — draft of the document that I submitted to them during our second meeting. That was February. This was the draft.***

Q: What about Exhibit C and C-1 [which] were identified by you. When was this presented to Dr. Firme?

A: This is the same.

Q: Exhibit C and C-1?

A: Yes because I prepared two documents during our meeting. One already with notarial, the one without notarial page and the other one with notarial page already, so I prepared two documents but with the same contents both were dated February of 1995.[32]

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[30] Atty. Marqueda misread page 11 of TSN dated 5 August 1997. The portion referred to actually reads:

Q How did you find this draft of a contract of sale which was presented to you by Mr. Aviles on the second meeting?

A We found it totally unacceptable, sir.

[31] The Third Draft is marked as Exh. "5" and also Exh. "L" in the Records.

[32] The First Draft (Exh. "C") and the Second Draft (Exh. "C-1") have exactly the same contents except for the date. Both have "notarial page." Only the First Draft is dated February 1995 while the Second Draft is dated March 1995.

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Q: So, you are referring now to Exhibit C and C-1 for the plaintiff?
A: C-1 is already in the final form because we agreed already as to the date of the payment, so I prepared already another document which is dated March 1995.[33] (Italics supplied)

In his cross-examination, Aviles again changed his testimony. According to him, he presented the Third Draft to the Spouses Firme during their first meeting.[34] However, when he went over the records, he again changed his answer and stated that he presented the Third Draft during their second meeting.[35]

In his re-direct examination, Aviles gave another version of what he presented to the Spouses Firme during the two meetings. According to him, he presented the Third Draft during the first meeting. On their second meeting, he presented the First and the Second Drafts to the Spouses Firme.[36]

Furthermore, Aviles admitted that the first proposal of Bukal Enterprises was at ₱2,500 per square meter for the Property.[37] But the First, Second and Third Drafts of the deed of sale prepared by Aviles all indicated a purchase price of ₱4,000 per square meter or a lump sum of ₱3,224,000 (₱4,000 per sq.m. x 806 sq.m. = ₱3,224,000) for the Property. Hence, Aviles could not have presented any of these draft deeds of sale to the Spouses Firme during their first meeting.

Considering the glaring inconsistencies in Aviles' testimony, it was proper for the trial court to give more credence to the testimony of Dr. Firme.

Even after the two meetings with Aviles, the Spouses Firme were firm in their decision not to sell the Property. Aviles called the Spouses Firme twice after their last meeting. The Spouses Firme informed Aviles that they were not selling the Property.[38] Aviles himself admitted this during his testimony, thus:

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[33] TSN, 12 February 1998, pp. 30-33.
[34] *Ibid.*, pp. 44-47.
[35] *Ibid.*, pp. 48-49.
[36] *Ibid.*, p. 59.
[37] *Ibid.*, p. 42.
[38] TSN, 5 August 1997, pp. 12-13.

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Q. Now, the next question which states: "But did you not have any occasion to talk to him after that second meeting?" and the answer of Dr. Firme is "He called up a month after, that's March 2, 1995." What can you say on this?
A. I called him to inform him that the loan was already transferred from Makati to Padre Faura Branch of the Far East Bank, so I scheduled already the payment of their property.

Q. When?
A. On March 4, 1995.

Q. And then the next question which also states: "What did you talked (*sic*) about over the telephone?" The answer of Dr. Firme was "When I found out that he was calling, I told him that the property is not for sale." What can you say on this?
A. ***He mentioned that they are no longer interested to sell their property***, perhaps they would like a higher price of the property. They did not mention to me. I do not know what was their reason.

Q. The next question "So, what happened next?" The answer is "He called up two days later, March 4 and my wife answered the telephone and told him that the property is not for sale, sir." What can you say on this?
A. ***That is true. That is what Mrs. Firme told me during our conversation on the telephone that they are no longer interested to sell the property for obvious reason.***

Q. When was that?
A. March 4, 1995, your honor.[39] (Italics supplied)

Significantly, De Castro also admitted that he was aware of the Spouses Firme's refusal to sell the Property.[40]

The confusing testimony of Aviles taken together with De Castro's admission that he was aware of the Spouses Firme's refusal to sell the Property reinforces Dr. Firme's testimony that he and his wife never consented to sell the Property.

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[39] TSN, 12 February 1998, pp. 39-41.
[40] TN, 7 November 1996, p. 28.

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Consent is one of the essential elements of a valid contract. The Civil Code provides:

Art. 1318. There is no contract unless the following requisites concur:

1. Consent of the contracting parties;
2. Object certain which is the subject matter of the contract;
3. Cause of the obligation which is established.

The absence of any of these essential elements will negate the existence of a perfected contract of sale.[41] Thus, where there is want of consent, the contract is non-existent.[42] As held in ***Salonga, et al. v. Farrales, et al.***:[43]

It is elementary that consent is an essential element for the existence of a contract, and where it is wanting, the contract is non-existent. ***The essence of consent is the conformity of the parties on the terms of the contract, the acceptance by one of the offer made by the other.*** The contract to sell is a bilateral contract. Where there is merely an offer by one party, without the acceptance of the other, there is no consent. (Italics supplied)

In this case, the Spouses Firme flatly rejected the offer of Aviles to buy the Property on behalf of Bukal Enterprises. There was therefore no concurrence of the offer and the acceptance on the subject matter, consideration and terms of payment as would result in a perfected contract of sale.[44] Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds on the thing which is the object of the contract and on the price.

Another piece of evidence which supports the contention of the Spouses Firme that they did not consent to the contract of sale is the fact they never signed any deed of sale. If the Spouses

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[41] *Dizon v. CA*, 361 Phil. 963 (1999).

[42] *Islamic Directorate of the Philippines v. CA*, 338 Phil. 970 (1997).

[43] 192 Phil. 614, 622-623 (1981).

[44] *Palattao v. Court of Appeals*, G.R. No. 131726, 7 May 2002; *Uy v. Hon. Evangelista*, 413 Phil. 403 (2001); *Pua v. Court of Appeals*, G.R. No. 134992, 20 November 2000, 345 SCRA 233.

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Firme were already agreeable to the offer of Bukal Enterprises as embodied in the Second Draft, then the Spouses Firme could have simply affixed their signatures on the deed of sale, but they did not.

Even the existence of a signed document purporting to be a contract of sale does not preclude a finding that the contract is invalid when the evidence shows that there was no meeting of the minds between the seller and buyer.[45] In this case, what were offered in evidence were mere unsigned deeds of sale which have no probative value.[46] Bukal Enterprises failed to show the existence of a perfected contract of sale by competent proof.

Second, there was no approval from the Board of Directors of Bukal Enterprises as would finalize any transaction with the Spouses Firme. Aviles did not have the proper authority to negotiate for Bukal Enterprises. Aviles testified that his friend, De Castro, had asked him to negotiate with the Spouses Firme to buy the Property.[47] De Castro, as Bukal Enterprises' vice president, testified that he authorized Aviles to buy the Property.[48] However, there is no Board Resolution authorizing Aviles to negotiate and purchase the Property on behalf of Bukal Enterprises.[49]

It is the board of directors or trustees which exercises almost all the corporate powers in a corporation. Thus, the Corporation Code provides:

SEC. 23. *The board of directors or trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of

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[45] *Santos v. Heirs of Jose P. Mariano & Erlinda Mariano-Villanueva*, G.R. 143325, 24 October 2000, 344 SCRA 284.

[46] See *Villanueva v. Court of Appeals*, G.R. No. 107624, 28 January 1997, 267 SCRA 89.

[47] TSN, 25 April 1996, pp. 7-8.

[48] TSN, 19 September 1996, pp. 6-7.

[49] TSN, 25 April 1996, pp. 8-10.

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directors or trustees to be elected from among the holders of stock, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified. x x x

SEC. 36. *Corporate powers and capacity.* — Every corporation incorporated under this Code has the power and capacity:

x x x x x x x x x

7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of a lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by the law and the Constitution.

x x x x x x x x xx

Under these provisions, the power to purchase real property is vested in the board of directors or trustees. While a corporation may appoint agents to negotiate for the purchase of real property needed by the corporation, the final say will have to be with the board, whose approval will finalize the transaction.[50] A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws.[51] As held in ***AF Realty & Development, Inc. v. Dieselman Freight Services, Co.***:[52]

Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. ***Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the***

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[50] 1 JOSE CAMPOS, JR. & MARIA CLARA L. CAMPOS, *THE CORPORATION CODE* 388 (1990).

[51] *De Liano v. Court of Appeals*, G.R. No. 142316, 22 November 2001, 370 SCRA 349.

[52] G.R. No. 111448, 16 January 2002, 373 SCRA 385.

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board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation. (Italics supplied)

In this case, Aviles, who negotiated the purchase of the Property, is neither an officer of Bukal Enterprises nor a member of the Board of Directors of Bukal Enterprises. There is no Board Resolution authorizing Aviles to negotiate and purchase the Property for Bukal Enterprises. There is also no evidence to prove that Bukal Enterprises approved whatever transaction Aviles made with the Spouses Firme. In fact, the president of Bukal Enterprises did not sign any of the deeds of sale presented to the Spouses Firme. Even De Castro admitted that he had never met the Spouses Firme.[53] Considering all these circumstances, it is highly improbable for Aviles to finalize any contract of sale with the Spouses Firme.

Furthermore, the Court notes that in the Complaint filed by Bukal Enterprises with the trial court, Aviles signed[54] the verification and certification of non-forum shopping.[55] The verification and certification of non-forum shopping was not accompanied by proof that Bukal Enterprises authorized Aviles to file the complaint on behalf of Bukal Enterprises.

The power of a corporation to sue and be sued is exercised by the board of directors. "The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors."[56]

The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and that it is filed

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[53] TSN, 19 September 1996, p. 7.

[54] De Castro even testified that he did not read the complaint before it was filed and that it was Aviles who verified the complaint. TSN, 7 November 1996, pp. 26-27.

[55] Records, pp. 4-5.

[56] *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, 20 February 2001, 352 SCRA 334.

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in good faith.[57] True, this requirement is procedural and not jurisdictional. However, the trial court should have ordered the correction of the complaint since Aviles was neither an officer of Bukal Enterprises nor authorized by its Board of Directors to act on behalf of Bukal Enterprises.

Whether the Statute of Frauds is applicable

The Court of Appeals held that partial performance of the contract of sale takes the oral contract out of the scope of the Statute of Frauds. This conclusion arose from the appellate court's erroneous finding that there was a perfected contract of sale. The records show that there was no perfected contract of sale. There is therefore no basis for the application of the Statute of Frauds. The application of the Statute of Frauds presupposes the existence of a perfected contract.[58] Article 1403 of the Civil Code provides:

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 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:

x x x x x x x x x

(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;

x x x x x x x x x

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[57] *Ibid.*

[58] *Rosencor Development Corporation v. Inquing*, G.R. No. 140479, 8 March 2001, 354 SCRA 119.

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Whether Bukal Enterprises is a builder in good faith

Bukal Enterprises is not a builder in good faith. The Spouses Firme did not accept Aviles' offer to purchase the Property. Aviles testified that when he called the Spouses Firme on 2 March 1995, Dr. Firme informed him that they were no longer interested in selling the Property. On 4 March 1995, Aviles called again and this time Mrs. Firme told him that they were not selling the Property. Aviles informed De Castro of the refusal of the Spouses Firme to sell the Property. However, Bukal Enterprises still proceeded in relocating the squatters and constructing improvements on the Property. De Castro testified:

ATTY. EJERCITO:
Q: The truth of the matter, Mr. Witness, is that the post was constructed sometime late 1994. Is that not correct?
A: No, sir. It is not true.

Q: ***When was it constructed?***
A: That March.

Q: When in March?
A: 1995.

Q: When in March 1995?
A: ***From the period of March 2, 1995 or two (2) weeks after the removal of the squatters.***

Q: ***When were the squatters removed?***

WITNESS:
A: ***March 6 and 7 because there were four (4) squatters.***

ATTY. EJERCITO:
Q: When did you find out that the Spouses Firme did not want to sell the same?
A: First week of March 1995.

Q: In your Complaint you said you find out on March 3, 1995. Is that not correct?
A: I cannot exactly remember, sir.

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ATTY. MARQUEDA:

In the Complaint it does not state March 3. Maybe counsel was thinking of this Paragraph 6 which states, "When the property was rid of the squatters on March 2, 1995 for the documentation and payment of the sale, x x x,"

ATTY. EJERCITO:

Q: ***So, you found out on March 2, 1995 that the defendants were no longer interested in selling to you the property. Is that correct?***

A: ***Yes, sir, because Mr. Aviles relayed it to me.***

Q: ***Mr. Aviles relayed to you that the Spouses Firme were no longer interested in selling to you the property in March 2, 1995. Is that correct?***

A: ***Yes, sir. Mr. Aviles told me.***

Q: ***In so many words, Mr. Witness, you learned that the Spouses Firme were no longer interested in selling the property before you spent allegedly all the sum of money for the relocation of squatters for all this construction that you are telling this Court now?***

WITNESS:

A: ***The refusal to sell is not yet formal and the lawyer sent a letter tendering full payment of the purchase price.***

ATTY. EJERCITO:

Q: You mean to say that you did not believe Mr. Aviles when he told you that the Spouses Firme were no longer selling the property?

A: No, sir.

Q: ***Was there anything formal when you say the Spouses Firme agreed to sell the property?***

A: ***None, sir.***

Q: ***And yet that time you believe Mr. Aviles when he verbally told you that the Sps. Firme agreed to sell the property? At what point of the transaction with the Spouses Firme were you advised by your lawyer?***

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WITNESS:
A: ***At the time when they refused to sell the lot.***

ATTY. EJERCITO:
Q: ***Was that before the squatters were relocated allegedly by Bukal Enterprises?***
A: ***Yes, sir.***

Q: In fact, it was the lawyer who advised you to relocate the squatters. Is it not true?
A: No, sir.[59] (Italics supplied)

Bukal Enterprises is obviously a builder in bad faith. No deed of sale has been executed in this case. Despite the refusal of the Spouses Firme to sell the Property, Bukal Enterprises still proceeded to introduce improvements on the Property. Bukal Enterprises introduced improvements on the Property without the knowledge and consent of the Spouses Firme. When the Spouses Firme learned about the unauthorized constructions made by Bukal Enterprises on the Property, they advised the latter to desist from further acts of trespass on their Property.[60]

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[59] TSN, 1 April 1997, pp. 17-21.

[60] A letter was sent to Bukal Enterprises which states:
March 20, 1995

BUKAL ENTERPRISES
AND DEVELOPMENT CORPORATION
Fairview Park, Quezon City

Attention: Mr. Florante Castro

Gentlemen:

Our clients, Dr. & Mrs. Constante N. Firme and Azucena E. Firme, referred to us for appropriate action the matter of your having constructed a fence along the creek and sixteen (16) posts sometime in the middle of 1994 inside their property located at corner Rolex and Dahlia Streets, Fairview Park, Quezon City and more particularly described as Lot 4, Block 33. Aside from the said illegal structures, our clients informed us that you instructed your workers to squat on their property.

Needless to state, all of your aforesaid actions are illegal as they were done without our clients' prior knowledge and consent.

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The Civil Code provides:

Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity.

Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the owner the proper rent.

Under these provisions the Spouses Firme have the following options: (1) to appropriate what Bukal Enterprises has built without any obligation to pay indemnity; (2) to ask Bukal Enterprises to remove what it has built; or (3) to compel Bukal Enterprises to pay the value of the land.[61] Since the Spouses

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Kindly, therefore, desist from any other act of trespass inside our clients' property and instruct your workers to clean up their shanties and leave the said property immediately; otherwise, we shall be constrained to take legal action against you.

Truly yours,

CORPUZ & EJERCITO
LAW OFFICES

by: (signed)
GREGORIO S. EJERCITO, JR.

Barangay Captain Antonio A. Ancheta
Barangay Hall, Dahlia Street,
Fairview Park, Quezon City

[61] *Bugatti v. Court of Appeals,* G.R. No. 138113, 17 October 2000, 343 SCRA 335.

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Firme are undoubtedly not selling the Property to Bukal Enterprises, they may exercise any of the first two options. They may appropriate what has been built without paying indemnity or they may ask Bukal Enterprises to remove what it has built at Bukal Enterprises' own expense.

Bukal Enterprises is not entitled to reimbursement for the expenses incurred in relocating the squatters. Bukal Enterprises spent for the relocation of the squatters even after learning that the Spouses Firme were no longer interested in selling the Property. De Castro testified that even though the Spouses Firme did not require them to remove the squatters, they chose to spend for the relocation of the squatters since they were interested in purchasing the Property.[62]

Whether the Spouses Firme are entitled to compensatory and moral damages

The Court agrees with the Court of Appeals to delete the award for compensatory and moral damages. In awarding actual damages, the trial court took into account the traveling expenses incurred by the Spouses Firme who are already residing in the United States. However, the trial court failed to consider the testimony of Dr. Firme that they normally travel to the Philippines more than once a year to visit their children.[63] Thus, the expenses for the roundtrip tickets dated 1996-1997 could not be attributed solely for the attendance of hearings in the case.

Nevertheless, an award of nominal damages of ₱30,000 is warranted since Bukal Enterprises violated the property rights of the Spouses Firme.[64] The Civil Code provides:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant,

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[62] TSN, 1 April 1997, pp. 9-11.

[63] TSN, 5 August 1997, p. 22.

[64] *Cojuangco, Jr. v. Court of Appeals*, 369 Phil. 41 (1999); *Urquiaga v. CA*, 361 Phil. 660 (1999).

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may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Art. 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

The award of damages is also in accordance with Article 451 of the Civil Code which states that the landowner is entitled to damages from the builder in bad faith.[65]

WHEREFORE, we *SET ASIDE* the Decision of the Court of Appeals and *RENDER* a new one:

1. Declaring that there was no perfected contract of sale;
2. Ordering Bukal Enterprises to pay the Spouses Firme ₱30,000 as nominal damages.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Vitug, and *Azcuna, JJ.,* concur.

Ynares-Santiago, J., on official leave.

[65] *Heirs of Ramon Durano, Sr. v. Uy*, G.R. No. 136456, 24 October 2000, 344 SCRA 238; *De Vera v. Court of Appeals*, 365 Phil. 170 (1999).