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THIRD DIVISION

[G.R. No. 163825. July 13, 2010]

VIOLETA TUDTUD BANATE, MARY MELGRID M. CORTEL, BONIFACIO CORTEL, ROSENDO MAGLASANG, and PATROCINIA MONILAR, *petitioners, vs.* **PHILIPPINE COUNTRYSIDE RURAL BANK (LILOAN, CEBU), INC. and TEOFILO SOON, JR.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; MORTGAGE; BLANKET MORTGAGE LAW; ELUCIDATED; CASE AT BAR.— As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if, from the four corners of the instrument, the *intent to secure future and other indebtedness* can be gathered. This stipulation is *valid and binding* between the parties and is known as the "*blanket mortgage clause*" (also known as the "dragnet clause)." In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "*such other loans or advances already obtained, or still to be obtained*." The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. After agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; CLASSIFICATION; EXTINCTIVE OR MODIFICATORY; ELUCIDATED.— Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains

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compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have **dual functions** – one to extinguish an existing obligation, the other to substitute a new one in its place – requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) *an agreement of all parties concerned to a new contract*; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. x x x Novation presupposes not only the extinguishment or modification of an existing obligation but, more importantly, the creation of a valid new obligation. For the consequent creation of a new contractual obligation, consent of both parties is, thus, required. As a general rule, no form of words or writing is necessary to give effect to a novation. Nevertheless, where either or both parties involved are juridical entities, proof that the second contract was executed by persons with the proper authority to bind their respective principals is necessary.

3. COMMERCIAL LAW; CORPORATION LAW; BOARD OF DIRECTORS; POWER TO ENTER INTO A CONTRACT; VALID DELEGATION THEREOF.— Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.

4. ID.; ID.; ID.; ID.; ID.; DELEGATED POWER MAY BE ACTUAL OR APPARENT.— The authority of a corporate officer or agent in dealing with third persons may be actual or apparent.

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Actual authority is either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through: 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised without any objection from its board or shareholders.

5. ID.; ID.; ID.; ID.; ID.; ID.; DOCTRINE OF APPARENT AUTHORITY.— Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent. There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; APPARENT AUTHORITY OF BRANCH MANAGER TO NULLIFY SOLEMN AGREEMENTS VALIDLY ENTERED INTO, NOT APPRECIATED.— We would be unduly stretching the doctrine of apparent authority were we to consider the power to undo or nullify solemn agreements validly entered into as within the doctrine's ambit. Although a branch manager, within his

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field and as to third persons, is the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof, yet the power to modify or nullify corporate contracts remains generally in the board of directors. Being a mere branch manager *alone* is insufficient to support the conclusion that Mondigo has been clothed with "apparent authority" to verbally alter terms of written contracts, especially when viewed against the telling circumstances of this case: the unequivocal provision in the mortgage contract; PCRB's vigorous denial that any agreement to release the mortgage was ever entered into by it; and, the fact that the purported agreement was not even reduced into writing considering its legal effects on the parties' interests. To put it simply, the burden of proving the authority of Mondigo to alter or novate the mortgage contract has not been established. It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agent's authority, and in case either is controverted, the burden of proof is upon them to establish it.

APPEARANCES OF COUNSEL

Ma. Antonnette Brillantes-Bolivar and *Gilroy V. Billones* for PCRB.

D E C I S I O N

BRION,[*] *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the December 19, 2003 decision[2] and the May 5,

[*] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Eubulo G. Verzola and Associate Justice Edgardo F. Sundiam concurring; *rollo*, pp. 23-36.

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2004 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 74332. The CA decision reversed the Regional Trial Court (*RTC*) decision[4] of June 27, 2001 granting the petitioners' complaint for specific performance and damages against the respondent Philippine Countryside Rural Bank, Inc. (*PCRB*).[5]

THE FACTUAL ANTECEDENTS

On July 22, 1997, petitioner spouses Rosendo Maglasang and Patrocinia Monilar (*spouses Maglasang*) obtained a loan (*subject loan*) from PCRB for ₱1,070,000.00. The subject loan was evidenced by a promissory note and was payable on January 18, 1998. To secure the payment of the subject loan, the spouses Maglasang executed, in favor of PCRB a real estate mortgage over their property, Lot 12868-H-3-C, [6] including the house constructed thereon (collectively referred to as *subject properties*), owned by petitioners Mary Melgrid and Bonifacio Cortel (*spouses Cortel*), the spouses Maglasang's daughter and son-in-law, respectively. Aside from the subject loan, the spouses Maglasang obtained two other loans from PCRB which were covered by separate promissory notes[7] and secured by mortgages on their other properties.

Sometime in November 1997 (before the subject loan became due), the spouses Maglasang and the spouses Cortel asked PCRB's permission to sell the subject properties. They likewise requested that the subject properties be released from the mortgage since the two other loans were adequately secured by the other mortgages. The spouses Maglasang and the spouses Cortel

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[3] *Id.* at 37-38.

[4] Penned by Judge Ulric R. Cañete; *id.* at 69-75.

[5] On December 12, 2008, the Monetary Board of the *Bangko Sentral ng Pilipinas* ordered the closure of PCRB, and placed it under the receivership of the Philippine Deposit Insurance Corporation.

[6] Registered under Transfer Certificate of Title No. 82746, with an area of 275 square meters and situated in *Barangay* Pitogo, Consolacion, Cebu City.

[7] Promissory notes dated December 19, 1997 and July 22, 1997.

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claimed that the PCRB, acting through its Branch Manager, Pancrasio Mondigo, verbally agreed to their request but required first the full payment of the subject loan. The spouses Maglasang and the spouses Cortel thereafter sold to petitioner Violeta Banate the subject properties for ₱1,750,000.00. The spouses Magsalang and the spouses Cortel used the amount to pay the subject loan with PCRB. After settling the subject loan, PCRB gave the owner's duplicate certificate of title of Lot 12868-H-3-C to Banate, who was able to secure a new title in her name. The title, however, carried the mortgage lien in favor of PCRB, prompting the petitioners to request from PCRB a Deed of Release of Mortgage. As PCRB refused to comply with the petitioners' request, the petitioners instituted an action for specific performance before the RTC to compel PCRB to execute the release deed.

The petitioners additionally sought payment of damages from PCRB, which, they claimed, caused the publication of a news report stating that they "surreptitiously" caused the transfer of ownership of Lot 12868-H-3-C. The petitioners considered the news report false and malicious, as PCRB knew of the sale of the subject properties and, in fact, consented thereto.

PCRB countered the petitioners' allegations by invoking the cross-collateral stipulation in the mortgage deed which states:

> 1. That **as security for the payment of the loan** or advance in principal sum of one million seventy thousand pesos only (₱1,070,000.00) **and such other loans or advances already obtained, or still to be obtained** by the MORTGAGOR(s) as MAKER(s), CO-MAKER(s) or GUARANTOR(s) from the MORTGAGEE plus interest at the rate of _____ per annum and penalty and litigation charges payable on the dates mentioned in the corresponding promissory notes, the MORTGAGOR(s) hereby transfer(s) and convey(s) to MORTGAGEE by way of first mortgage the parcel(s) of land described hereunder, together with the improvements now existing for which may hereafter be made thereon, of which MORTGAGOR(s) represent(s) and warrant(s) that MORTGAGOR(s) is/are the absolute owner(s) and that the same is/are free from all liens and encumbrances;
>
> TRANSFER CERTIFICATE OF TITLE NO. 82746[8]

[8] *Rollo*, p. 62.

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Accordingly, PCRB claimed that full payment of the three loans, obtained by the spouses Maglasang, was necessary before any of the mortgages could be released; the settlement of the subject loan merely constituted partial payment of the total obligation. Thus, the payment does not authorize the release of the subject properties from the mortgage lien.

PCRB considered Banate as a buyer in bad faith as she was fully aware of the existing mortgage in its favor when she purchased the subject properties from the spouses Maglasang and the spouses Cortel. It explained that it allowed the release of the owner's duplicate certificate of title to Banate only to enable her to annotate the sale. PCRB claimed that the release of the title should not indicate the corresponding release of the subject properties from the mortgage constituted thereon.

After trial, the RTC ruled in favor of the petitioners. It noted that the petitioners, as "necessitous men," could not have bargained on equal footing with PCRB in executing the mortgage, and concluded that it was a contract of adhesion. Therefore, any obscurity in the mortgage contract should not benefit PCRB.[9]

The RTC observed that the official receipt issued by PCRB stated that the amount owed by the spouses Maglasang under the subject loan was only about ₱1.2 million; that Mary Melgrid Cortel paid the subject loan using the check which Banate issued as payment of the purchase price; and that PCRB authorized the release of the title further indicated that the subject loan had already been settled. Since the subject loan had been fully paid, the RTC considered the petitioners as rightfully entitled to a deed of release of mortgage, pursuant to the verbal agreement that the petitioners made with PCRB's branch manager, Mondigo. Thus, the RTC ordered PCRB to execute a deed of release of mortgage over the subject properties, and to pay the petitioners moral damages and attorney's fees.[10]

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[9] *Id.* at 73.

[10] *Id.* at 75.

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On appeal, the CA reversed the RTC's decision. The CA did not consider as valid the petitioners' new agreement with Mondigo, which would novate the original mortgage contract containing the cross-collateral stipulation. It ruled that Mondigo cannot orally amend the mortgage contract between PCRB, and the spouses Maglasang and the spouses Cortel; therefore, the claimed commitment allowing the release of the mortgage on the subject properties cannot bind PCRB. Since the cross-collateral stipulation in the mortgage contract (requiring full settlement of all three loans before the release of any of the mortgages) is clear, the parties must faithfully comply with its terms. The CA did not consider as material the release of the owner's duplicate copy of the title, as it was done merely to allow the annotation of the sale of the subject properties to Banate.[11]

Dismayed with the reversal by the CA of the RTC's ruling, the petitioners filed the present appeal by *certiorari*, claiming that the CA ruling is not in accord with established jurisprudence.

THE PETITION

The petitioners argue that their claims are consistent with their agreement with PCRB; they complied with the required full payment of the subject loan to allow the release of the subject properties from the mortgage. Having carried out their part of the bargain, the petitioners maintain that PCRB must honor its commitment to release the mortgage over the subject properties.

The petitioners disregard the cross-collateral stipulation in the mortgage contract, claiming that it had been novated by the subsequent agreement with Mondigo. Even assuming that the cross-collateral stipulation subsists for lack of authority on the part of Mondigo to novate the mortgage contract, the petitioners contend that PCRB should nevertheless return the amount paid to settle the subject loan since the new agreement should be deemed rescinded.

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[11] *Supra* note 2, at 35.

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The basic issues for the Court to resolve are as follows:

1. Whether the purported agreement between the petitioners and Mondigo novated the mortgage contract over the subject properties and is thus binding upon PCRB.
2. If the first issue is resolved negatively, whether Banate can demand restitution of the amount paid for the subject properties on the theory that the new agreement with Mondigo is deemed rescinded.

THE COURT'S RULING

We resolve to deny the petition.

The purported agreement did not novate the mortgage contract, particularly the cross-collateral stipulation thereon

Before we resolve the issues directly posed, we first dwell on the determination of the nature of the cross-collateral stipulation in the mortgage contract. As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if, from the four corners of the instrument, the *intent to secure future and other indebtedness* can be gathered. This stipulation is *valid and binding* between the parties and is known as the "*blanket mortgage clause*" (also known as the "dragnet clause)."[12]

In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "*such other loans or advances already obtained, or still to be obtained*." The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. After

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[12] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353.

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agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well.

The petitioners, however, claim that their agreement with Mondigo must be deemed to have novated the mortgage contract. They posit that the full payment of the subject loan extinguished their obligation arising from the mortgage contract, including the stipulated cross-collateral provision. Consequently, consistent with their theory of a novated agreement, the petitioners maintain that it devolves upon PCRB to execute the corresponding Deed of Release of Mortgage.

We find the petitioners' argument unpersuasive. Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have **dual functions** – one to extinguish an existing obligation, the other to substitute a new one in its place – requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) *an agreement of all parties concerned to a new contract*; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.[13]

The second requisite is lacking in this case. Novation presupposes not only the extinguishment or modification of an existing obligation but, more importantly, the creation of a valid new obligation.[14] For the consequent creation of a new contractual

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[13] *Fabrigas v. San Francisco Del Monte, Inc.*, G.R. No. 152346, November 25, 2005, 476 SCRA 253.

[14] Art. 1292 of the Civil Code states:

In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

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obligation, consent of both parties is, thus, required. As a general rule, no form of words or writing is necessary to give effect to a novation. Nevertheless, where either or both parties involved are juridical entities, proof that the second contract was executed by persons with the proper authority to bind their respective principals is necessary.[15]

Section 23 of the Corporation Code[16] expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[17]

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is

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[15] De Leon and De Leon, Jr., *Comments and Cases on Obligations and Contracts* (2003 ed.), p. 431, citing *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, November 20, 1990, 191 SCRA 493.

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

[17] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170.

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either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal.[18] The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:

> 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or
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> 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised without any objection from its board or shareholders.[19]

Notably, the petitioners' action for specific performance is premised on the supposed actual or apparent authority of the branch manager, Mondigo, to release the subject properties from the mortgage, although the other obligations remain unpaid. In light of our discussion above, proof of the branch manager's authority becomes indispensable to support the petitioners' contention. The petitioners make no claim that Mondigo had actual authority from PCRB, whether express or implied. Rather, adopting the trial court's observation, the petitioners posited that PCRB should be held liable for Mondigo's commitment, on the basis of the latter's apparent authority.

We disagree with this position.

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[18] 19 C.J.S. § 994.

[19] *Associated Bank v. Spouses Rafael and Monaliza Pronstroller*, G.R. No. 148444, July 14, 2008, 558 SCRA 113.

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Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal.[20] The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent.[21] There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment.[22]

In the present case, the decision of the trial court was utterly silent on the manner by which PCRB, as supposed principal, has "clothed" or "held out" its branch manager as having the power to enter into an agreement, as claimed by petitioners. No proof of the course of business, usages and practices of the bank about, or knowledge that the board had or is presumed to have of, its responsible officers' acts regarding bank branch affairs, was ever adduced to establish the branch manager's apparent authority to verbally alter the terms of mortgage contracts.[23] Neither was there any allegation, much less proof, that PCRB ratified Mondigo's act or is estopped to make a contrary claim.[24]

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[20] 2 Am. Jur. §102.

[21] 3 Am. Jur. 2d §79.

[22] *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, G.R. No. 163553, December 11, 2009.

[23] *Board of Liquidators v. Kalaw*, August 14, 1967, No. L-18805, 20 SCRA 987.

[24] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, G.R. No. 137686, February 8, 2000, 325 SCRA 99.

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Further, we would be unduly stretching the doctrine of apparent authority were we to consider the power to undo or nullify solemn agreements validly entered into as within the doctrine's ambit. Although a branch manager, within his field and as to third persons, is the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof,[25] yet the power to modify or nullify corporate contracts remains generally in the board of directors.[26] Being a mere branch manager *alone* is insufficient to support the conclusion that Mondigo has been clothed with "apparent authority" to verbally alter terms of written contracts, especially when viewed against the telling circumstances of this case: the unequivocal provision in the mortgage contract; PCRB's vigorous denial that any agreement to release the mortgage was ever entered into by it; and, the fact that the purported agreement was not even reduced into writing considering its legal effects on the parties' interests. To put it simply, the burden of proving the authority of Mondigo to alter or novate the mortgage contract has not been established.[27]

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agent's authority, and in case either is controverted, the burden of proof is upon them to establish it.[28] As parties to the mortgage contract, the petitioners are expected to abide by its terms. The subsequent purported agreement is of no moment,

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[25] 19 C.J.S. § 1002.

[26] No other officer or agent can make such modification even though he has the power to make the contract, unless authority in this respect has been specially conferred on him (19 C.J.S. 1044).

[27] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, G.R. No. 129459, September 29, 1998, 296 SCRA 631.

[28] *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377.

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and cannot prejudice PCRB, as it is beyond Mondigo's actual or apparent authority, as above discussed.

Rescission has no legal basis; there can be no restitution of the amount paid

The petitioners, nonetheless, invoke equity and alternatively pray for the restitution of the amount paid, on the rationale that if PCRB's branch manager was not authorized to accept payment in consideration of separately releasing the mortgage, then the agreement should be deemed rescinded, and the amount paid by them returned.

PCRB, on the other hand, counters that the petitioners' alternative prayer has no legal and factual basis, and insists that the clear agreement of the parties was for the full payment of the subject loan, and in return, PCRB would deliver the title to the subject properties to the buyer, only to enable the latter to obtain a transfer of title in her own name.

We agree with PCRB. Even if we were to assume that the purported agreement has been sufficiently established, since it is not binding on the bank for lack of authority of PCRB's branch manager, then the prayer for restitution of the amount paid would have no legal basis. Of course, it will be asked: what then is the legal significance of the payment made by Banate? Article 2154 of the Civil Code reads:

> Art 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Notwithstanding the payment made by Banate, she is not entitled to recover anything *from PCRB* under Article 2154. There could not have been any payment by mistake *to PCRB*, as the check which Banate issued as payment was to her co-petitioner Mary Melgrid Cortel (the payee), and not to PCRB. The same check was simply endorsed by the payee to PCRB in payment of the subject loan that the Maglasangs owed PCRB.[29]

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[29] *Rollo*, p. 71.

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The mistake, if any, was in the perception of the authority of Mondigo, as branch manager, to verbally alter the mortgage contract, and not as to whether the Cortels, as sellers, were entitled to payment. This mistake (on Mondigo's lack of authority to alter the mortgage) did not affect the validity of the payment made to the bank as the existence of the loan was never disputed. The dispute was merely on the effect of the payment on the security given.[30]

Consequently, no right to recover accrues in Banate's favor as PCRB never dealt with her. The borrowers-mortgagors, on the other hand, merely paid what was really owed. Parenthetically, the subject loan was due on January 18, 1998, but was paid sometime in November 1997. It appears, however, that at the time the complaint was filed, the subject loan had already matured. Consequently, recovery of the amount paid, even under a claim of premature payment, will not prosper.

In light of these conclusions, the claim for moral damages must necessarily fail. On the alleged injurious publication, we quote with approval the CA's ruling on the matter, *viz*:

> Consequently, there is no reason to hold [respondent] PCRB liable to [petitioners] for damages. x x x [Petitioner] Maglasang cannot hold [respondent] PCRB liable for the publication of the extra-judicial sale. There was no evidence submitted to prove that [respondent] PCRB authored the words "Mortgagors surreptitiously caused the transfer of ownership of Lot 12868-H-3-C x x x" contained in the publication since at the bottom was x x x Sheriff Teofilo C. Soon, Jr.'s name. Moreover, there was not even an iota of proof which shows damage on the part of [petitioner] Mary Melgrid M. Cortel.[31]

WHEREFORE, we *DENY* the petitioners' petition for review on *certiorari* for lack of merit, and *AFFIRM* the decision of

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[30] It is necessary that payment be in accordance with the obligation; the person paying as well as the one receiving payment should have the requisite capacity; it should be made by the debtor to the creditor; and at the right time and place. (Tolentino, *Civil Code of the Philippines*, Vol. IV (1991 ed.), p. 274.)

[31] *Rollo*, p. 35.

the Court of Appeals dated December 19, 2003 and its resolution dated May 5, 2004 in CA-G.R. CV No. 74332. No pronouncement as to costs.

SO ORDERED.

Carpio,[**] *Abad,*[***] *Villarama, Jr.* and *Mendoza,*[****] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 171565. July 13, 2010]

ANTONIO B. RAMOS (Deceased), Substituted by his Surviving Heirs, namely, MA. MARGARITA A. RAMOS, ANTONIO A. RAMOS, MA. REGINA RAMOS DE DIOS, JOSE VICENTE A. RAMOS, MA. POMONA RAMOS KO TEH and OSCAR EMERITO A. RAMOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and ROGERIO H. ESCOBAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS IN CASES DECIDED BY THE

[**] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

[***] Designated additional Member of the Third Division, in view of the retirement of Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[****] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010.