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While we have ruled that delay in the filing of a notice of appeal does not justify the dismissal of the appeal, however, the petitioner has not shown any exceptional circumstances justifying a reversal of the assailed order of the trial court and the reinstatement of his appeal.

IN LIGHT OF ALL THE FOREGOING, the petition is **DENIED** for lack of merit.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.,* concur.

SECOND DIVISION

[G.R. No. 140667. August 12, 2004]

WOODCHILD HOLDINGS, INC., *petitioner, vs.* **ROXAS ELECTRIC AND CONSTRUCTION COMPANY, INC.,** *respondent.*

SYNOPSIS

At a special meeting on May 17, 1991, the respondent company's Board of Directors approved a resolution authorizing the corporation, through its then president, Roberto B. Roxas, to sell Lot No. 491-A-3-B-2, covered by TCT No. 78086. Petitioner, vendee of said lot, subsequent filed a complaint for specific performance and damages against the respondent company, when it refused to sell a portion of the adjacent Lot No. 491-A-3-B-1 covered by TCT No. 78085, for the beneficial use of the petitioner as right of way, or create a lien or burden thereon, as provided in the deed of sale. Respondent company claimed that the Resolution approved on May 17, 1991, merely authorized Roxas to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086. As such, the grant of a right of way and the agreement

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to sell a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085 in the deed of sale are *ultra vires*.

The trial court rendered judgment in favor of the petitioner. On appeal, the Court of Appeals reversed the trial court's decision and ordered the dismissal of the complaint.

In affirming the decision of the Court of Appeals with modification, the Supreme Court held that evidently, under the resolution, the authority of Roxas to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086 did not include the authority to sell a portion of the adjacent lot, Lot No. 491- A-3-B-1, or to grant a right of way in favor of the petitioner on a portion of said lot. Paragraph 12, Article 1878 of the New Civil Code, requires a special power of attorney to convey real rights over immovable property. Article 1358 of the New Civil Code also requires that contracts which create real rights over immovable property must appear in a public document. The rule is that if the act of the agent is one which requires authority in writing, those dealing with him are charged with notice of that fact. The petitioner cannot feign ignorance of the need for Roxas to have been specifically authorized in writing by the Board of Directors to be able to validly grant a right of way and agree to sell a portion of an adjacent lot. The Supreme Court also held that there was no evidence on record of specific acts made by the respondent showing that it had full knowledge of the representations made by Roxas to the petitioner that the respondent had authorized Roxas to grant to the petitioner an option to buy the adjacent lot or to create a burden thereon.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; AGENCY; ACTS OF CORPORATE OFFICERS BEYOND THE SCOPE OF AUTHORITY ARE UNENFORCEABLE AGAINST THE CORPORATION; EXCEPTIONS; CASE AT BAR. —** Generally, the acts of the corporate officers within the scope of their authority are binding on the corporation. However, under Article 1910 of the New Civil Code, acts done by such officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or tacitly, or is estopped from denying them. In this case, the respondent denied authorizing its then president Roberto B. Roxas to sell a portion of Lot No. 491-

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A-3-B-1 covered by TCT No. 78085, and to create a lien or burden thereon. . . . Evidently, under the May 17, 1991 Resolution of the Board of Director of the respondents Roxas was not specifically authorized under the said resolution to grant a right of way in favor of the petitioner on a portion of Lot No. 491-A-3-B-1 or to agree to sell to the petitioner a portion thereof. The authority of Roxas, under the resolution, to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086 did not include the authority to sell a portion of the adjacent lot, Lot No. 491-A-3-B-1, or to create or convey real rights thereon. Neither may such authority be implied from the authority granted to Roxas to sell Lot No. 491-A-3-B-2 to the petitioner "on such terms and conditions which he deems most reasonable and advantageous."

2. ID.; ID.; ID.; SPECIAL POWER OF ATTORNEY IS REQUIRED TO CONVEY REAL RIGHTS OVER IMMOVABLE PROPERTY; CASE AT BAR. — Under paragraph 12, Article 1878 of the New Civil Code, a special power of attorney is required to convey real rights over immovable property. Article 1358 of the New Civil Code requires that contracts which have for their object the creation of real rights over immovable property must appear in a public document. The petitioner cannot feign ignorance of the need for Roxas to have been specifically authorized in writing by the Board of Directors to be able to validly grant a right of way and agree to sell a portion of Lot No. 491-A-3-B-1. The rule is that if the act of the agent is one which requires authority in writing, those dealing with him are charged with notice of that fact.

3. ID.; ID.; ID.; ID.; POWERS OF ATTORNEY ARE GENERALLY CONSTRUED STRICTLY; CASE AT BAR. — Powers of attorney are generally construed strictly and courts will not infer or presume broad powers from deeds which do not sufficiently include property or subject under which the agents to deal. The general rule is that the power of attorney must be pursued within legal strictures, and the agent can neither go beyond it; nor beside it. The act done must be legally identical with that authorized to be done. In sum, then, the consent of the respondent to the assailed provisions in the deed of absolute sale was not obtained; hence, the assailed provisions are not binding on it.

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4. ID.; ID.; ID.; ID.; ID.; ESTOPPEL NOT PRESENT IN CASE AT BAR. — It bears stressing that apparent authority is based on estoppel and can arise from two instances: first, the principal may knowingly permit the agent to so hold himself out as having such authority, and in this way, the principal becomes estopped to claim that the agent does not have such authority; second, the principal may so clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that he actually has such authority. . . . For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence. In this case, there is no evidence on record of specific acts made by the respondent showing or indicating that it had full knowledge of any representations made by Roxas to the petitioner that the respondent had authorized him to grant to the respondent an option to buy a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085, or to create a burden of lien thereon, or that the respondent allowed him to do so.

APPEARANCES OF COUNSEL

Castro & Associates for petitioner.
J.O. Villanueva Law Office for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 56125 reversing the Decision[2] of the Regional Trial Court of Makati, Branch 57, which ruled in favor of the petitioner.

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[1] Penned by Associate Justice Salome A. Montoya, with Associate Justices Conrado M. Vasquez, Jr. and Teodoro P. Regino, concurring.

[2] Penned by Judge Francisco X. Velez.

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The Antecedents

The respondent Roxas Electric and Construction Company, Inc. (RECCI), formerly the Roxas Electric and Construction Company, was the owner of two parcels of land, identified as Lot No. 491-A-3-B-1 covered by Transfer Certificate of Title (TCT) No. 78085 and Lot No. 491-A-3-B-2 covered by TCT No. 78086. A portion of Lot No. 491-A-3-B-1 which abutted Lot No. 491-A-3-B-2 was a dirt road accessing to the Sumulong Highway, Antipolo, Rizal.

At a special meeting on May 17, 1991, the respondent's Board of Directors approved a resolution authorizing the corporation, through its president, Roberto B. Roxas, to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086, with an area of 7,213 square meters, at a price and under such terms and conditions which he deemed most reasonable and advantageous to the corporation; and to execute, sign and deliver the pertinent sales documents and receive the proceeds of the sale for and on behalf of the company.[3]

Petitioner Woodchild Holdings, Inc. (WHI) wanted to buy Lot No. 491-A-3-B-2 covered by TCT No. 78086 on which it planned to construct its warehouse building, and a portion of the adjoining lot, Lot No. 491-A-3-B-1, so that its 45-foot container van would be able to readily enter or leave the property. In a Letter to Roxas dated June 21, 1991, WHI President Jonathan Y. Dy offered to buy Lot No. 491-A-3-B-2 under stated terms and conditions for ₱1,000 per square meter or at the price of ₱7,213,000.[4] One of the terms incorporated in Dy's offer was the following provision:

> 5. This Offer to Purchase is made on the representation and warranty of the OWNER/SELLER, that he holds a good and registrable title to the property, which shall be conveyed CLEAR and FREE of all liens and encumbrances, and that the area of 7,213 square meters of the subject property already includes the area on which the right of way traverses from the main lot

[3] Exhibit "L", Records, p. 213.

[4] Exhibit "M", *Id.* at 214.

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> (area) towards the exit to the Sumulong Highway as shown in the location plan furnished by the Owner/Seller to the buyer. Furthermore, in the event that the right of way is insufficient for the buyer's purposes (example: entry of a 45-foot container), the seller agrees to sell additional square meter from his current adjacent property to allow the buyer to full access and full use of the property.[5]

Roxas indicated his acceptance of the offer on page 2 of the deed. Less than a month later or on July 1, 1991, Roxas, as President of RECCI, as vendor, and Dy, as President of WHI, as vendee, executed a contract to sell in which RECCI bound and obliged itself to sell to Dy Lot No. 491-A-3-B-2 covered by TCT No. 78086 for ₱7,213,000.[6] On September 5, 1991, a Deed of Absolute Sale[7] in favor of WHI was issued, under which Lot No. 491-A-3-B-2 covered by TCT No. 78086 was sold for ₱5,000,000, receipt of which was acknowledged by Roxas under the following terms and conditions:

> The Vendor agree (*sic*), as it hereby agrees and binds itself to give Vendee the beneficial use of and a right of way from Sumulong Highway to the property herein conveyed consists of 25 square meters wide to be used as the latter's egress from and ingress to and an additional 25 square meters in the corner of Lot No. 491-A-3-B-1, as turning and/or maneuvering area for Vendee's vehicles.
>
> The Vendor agrees that in the event that the right of way is insufficient for the Vendee's use (ex entry of a 45-foot container) the Vendor agrees to sell additional square meters from its current adjacent property to allow the Vendee full access and full use of the property.
>
> x x x x x x x x x
>
> The Vendor hereby undertakes and agrees, at its account, to defend the title of the Vendee to the parcel of land and improvements herein conveyed, against all claims of any and all persons or entities, and that the Vendor hereby warrants the right of the Vendee to possess

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[5] *Ibid.*

[6] Exhibit "N", *Id.* at 216.

[7] Exhibit "C", *Id.* at 192-195.

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and own the said parcel of land and improvements thereon and will defend the Vendee against all present and future claims and/or action in relation thereto, judicial and/or administrative. In particular, the Vendor shall eject all existing squatters and occupants of the premises within two (2) weeks from the signing hereof. In case of failure on the part of the Vendor to eject all occupants and squatters within the two-week period or breach of any of the stipulations, covenants and terms and conditions herein provided and that of contract to sell dated 1 July 1991, the Vendee shall have the right to cancel the sale and demand reimbursement for all payments made to the Vendor with interest thereon at 36% per annum.[8]

On September 10, 1991, the Wimbeco Builder's, Inc. (WBI) submitted its quotation for ₱8,649,000 to WHI for the construction of the warehouse building on a portion of the property with an area of 5,088 square meters.[9] WBI proposed to start the project on October 1, 1991 and to turn over the building to WHI on February 29, 1992.[10]

In a Letter dated September 16, 1991, Ponderosa Leather Goods Company, Inc. confirmed its lease agreement with WHI of a 5,000-square-meter portion of the warehouse yet to be constructed at the rental rate of ₱65 per square meter. Ponderosa emphasized the need for the warehouse to be ready for occupancy before April 1, 1992.[11] WHI accepted the offer. However, WBI failed to commence the construction of the warehouse in October 1, 1991 as planned because of the presence of squatters in the property and suggested a renegotiation of the contract after the squatters shall have been evicted.[12] Subsequently, the squatters were evicted from the property.

On March 31, 1992, WHI and WBI executed a Letter-Contract for the construction of the warehouse building for ₱11,804,160.[13]

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[8] *Id*. at 193-194.

[9] Exhibit "D", *Id*. at 196.

[10] Exhibit "D-1", *Id*. at 197.

[11] Exhibit "G", *Id*. at 201.

[12] Exhibit "E", *Id*. at 198.

[13] Exhibit "F", *Id*. at 199.

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The contractor started construction in April 1992 even before the building officials of Antipolo City issued a building permit on May 28, 1992. After the warehouse was finished, WHI issued on March 21, 1993 a certificate of occupancy by the building official. Earlier, or on March 18, 1993, WHI, as lessor, and Ponderosa, as lessee, executed a contract of lease over a portion of the property for a monthly rental of ₱300,000 for a period of three years from March 1, 1993 up to February 28, 1996.[14]

In the meantime, WHI complained to Roberto Roxas that the vehicles of RECCI were parked on a portion of the property over which WHI had been granted a right of way. Roxas promised to look into the matter. Dy and Roxas discussed the need of the WHI to buy a 500-square-meter portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085 as provided for in the deed of absolute sale. However, Roxas died soon thereafter. On April 15, 1992, the WHI wrote the RECCI, reiterating its verbal requests to purchase a portion of the said lot as provided for in the deed of absolute sale, and complained about the latter's failure to eject the squatters within the three-month period agreed upon in the said deed.

The WHI demanded that the RECCI sell a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085 for its beneficial use within 72 hours from notice thereof, otherwise the appropriate action would be filed against it. RECCI rejected the demand of WHI. WHI reiterated its demand in a Letter dated May 29, 1992. There was no response from RECCI.

On June 17, 1992, the WHI filed a complaint against the RECCI with the Regional Trial Court of Makati, for specific performance and damages, and alleged, *inter alia*, the following in its complaint:

> 5. The "current adjacent property" referred to in the aforequoted paragraph of the Deed of Absolute Sale pertains to the property covered by Transfer Certificate of Title No. N-78085 of the Registry of Deeds of Antipolo, Rizal, registered in the name of herein defendant Roxas Electric.

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[14] Exhibit "H", *Id*. at 202-206.

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6. Defendant Roxas Electric in patent violation of the express and valid terms of the Deed of Absolute Sale unjustifiably refused to deliver to Woodchild Holdings the stipulated beneficial use and right of way consisting of 25 square meters and 55 square meters to the prejudice of the plaintiff.

7. Similarly, in as much as the 25 square meters and 55 square meters allotted to Woodchild Holdings for its beneficial use is inadequate as turning and/or maneuvering area of its 45-foot container van, Woodchild Holdings manifested its intention pursuant to para. 5 of the Deed of Sale to purchase additional square meters from Roxas Electric to allow it full access and use of the purchased property, however, Roxas Electric refused and failed to merit Woodchild Holdings' request contrary to defendant Roxas Electric's obligation under the Deed of Absolute Sale (Annex "A").

8. Moreover, defendant, likewise, failed to eject all existing squatters and occupants of the premises within the stipulated time frame and as a consequence thereof, plaintiff's planned construction has been considerably delayed for seven (7) months due to the squatters who continue to trespass and obstruct the subject property, thereby Woodchild Holdings incurred substantial losses amounting to ₱3,560,000.00 occasioned by the increased cost of construction materials and labor.

9. Owing further to Roxas Electric's deliberate refusal to comply with its obligation under Annex "A", Woodchild Holdings suffered unrealized income of ₱300,000.00 a month or ₱2,100,000.00 supposed income from rentals of the subject property for seven (7) months.

10. On April 15, 1992, Woodchild Holdings made a final demand to Roxas Electric to comply with its obligations and warranties under the Deed of Absolute Sale but notwithstanding such demand, defendant Roxas Electric refused and failed and continue to refuse and fail to heed plaintiff's demand for compliance.

Copy of the demand letter dated April 15, 1992 is hereto attached as Annex "B" and made an integral part hereof.

11. Finally, on 29 May 1991, Woodchild Holdings made a letter request addressed to Roxas Electric to particularly annotate on Transfer Certificate of Title No. N-78085 the agreement under Annex "A" with respect to the beneficial use and right of way, however, Roxas Electric unjustifiably ignored and disregarded the same.

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Copy of the letter request dated 29 May 1992 is hereto attached as Annex "C" and made an integral part hereof.

12. By reason of Roxas Electric's continuous refusal and failure to comply with Woodchild Holdings' valid demand for compliance under Annex "A", the latter was constrained to litigate, thereby incurring damages as and by way of attorney's fees in the amount of ₱100,000.00 plus costs of suit and expenses of litigation.[15]

The WHI prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of Woodchild Holdings and ordering Roxas Electric the following:

a) to deliver to Woodchild Holdings the beneficial use of the stipulated 25 square meters and 55 square meters;

b) to sell to Woodchild Holdings additional 25 and 100 square meters to allow it full access and use of the purchased property pursuant to para. 5 of the Deed of Absolute Sale;

c) to cause annotation on Transfer Certificate of Title No. N-78085 the beneficial use and right of way granted to Woodchild Holdings under the Deed of Absolute Sale;

d) to pay Woodchild Holdings the amount of ₱5,660,000.00, representing actual damages and unrealized income;

e) to pay attorney's fees in the amount of ₱100,000.00; and

f) to pay the costs of suit.

Other reliefs just and equitable are prayed for.[16]

In its answer to the complaint, the RECCI alleged that it never authorized its former president, Roberto Roxas, to grant the beneficial use of any portion of Lot No. 491-A-3-B-1, nor agreed to sell any portion thereof or create a lien or burden thereon. It alleged that, under the Resolution approved on May 17, 1991, it merely authorized Roxas to sell Lot No. 491-A-3-

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[15] Records, pp. 2-4.

[16] *Id*. at 4-5.

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B-2 covered by TCT No. 78086. As such, the grant of a right of way and the agreement to sell a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085 in the said deed are *ultra vires*. The RECCI further alleged that the provision therein that it would sell a portion of Lot No. 491-A-3-B-1 to the WHI lacked the essential elements of a binding contract.[17]

In its amended answer to the complaint, the RECCI alleged that the delay in the construction of its warehouse building was due to the failure of the WHI's contractor to secure a building permit thereon.[18]

During the trial, Dy testified that he told Roxas that the petitioner was buying a portion of Lot No. 491-A-3-B-1 consisting of an area of 500 square meters, for the price of ₱1,000 per square meter.

On November 11, 1996, the trial court rendered judgment in favor of the WHI, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered directing defendant:

(1) To allow plaintiff the beneficial use of the existing right of way plus the stipulated 25 sq. m. and 55 sq. m.;

(2) To sell to plaintiff an additional area of 500 sq. m. priced at ₱1,000 per sq. m. to allow said plaintiff full access and use of the purchased property pursuant to Par. 5 of their Deed of Absolute Sale;

(3) To cause annotation on TCT No. N-78085 the beneficial use and right of way granted by their Deed of Absolute Sale;

(4) To pay plaintiff the amount of ₱5,568,000 representing actual damages and plaintiff's unrealized income;

(5) To pay plaintiff ₱100,000 representing attorney's fees; and

To pay the costs of suit.

SO ORDERED.[19]

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[17] *Id*. at 24-25.

[18] *Id*. at 247.

[19] *Id*. at 482.

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The trial court ruled that the RECCI was estopped from disowning the apparent authority of Roxas under the May 17, 1991 Resolution of its Board of Directors. The court reasoned that to do so would prejudice the WHI which transacted with Roxas in good faith, believing that he had the authority to bind the WHI relating to the easement of right of way, as well as the right to purchase a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085.

The RECCI appealed the decision to the CA, which rendered a decision on November 9, 1999 reversing that of the trial court, and ordering the dismissal of the complaint. The CA ruled that, under the resolution of the Board of Directors of the RECCI, Roxas was merely authorized to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086, but not to grant right of way in favor of the WHI over a portion of Lot No. 491-A-3-B-1, or to grant an option to the petitioner to buy a portion thereof. The appellate court also ruled that the grant of a right of way and an option to the respondent were so lopsided in favor of the respondent because the latter was authorized to fix the location as well as the price of the portion of its property to be sold to the respondent. Hence, such provisions contained in the deed of absolute sale were not binding on the RECCI. The appellate court ruled that the delay in the construction of WHI's warehouse was due to its fault.

The Present Petition

The petitioner now comes to this Court asserting that:

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF ABSOLUTE SALE (EXH. "C") IS *ULTRA VIRES*.

II.

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE RULING OF THE COURT *A QUO* ALLOWING THE PLAINTIFF-APPELLEE THE BENEFICIAL USE OF THE EXISTING RIGHT OF WAY PLUS THE STIPULATED 25 SQUARE METERS AND 55 SQUARE METERS BECAUSE THESE ARE VALID

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STIPULATIONS AGREED BY BOTH PARTIES TO THE DEED OF ABSOLUTE SALE (EXH. "C").

III.

THERE IS NO FACTUAL PROOF OR EVIDENCE FOR THE COURT OF APPEALS TO RULE THAT THE STIPULATIONS OF THE DEED OF ABSOLUTE SALE (EXH. "C") WERE DISADVANTAGEOUS TO THE APPELLEE, NOR WAS APPELLEE DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS.

IV.

IN FACT, IT WAS WOODCHILD WHO WAS DEPRIVED OF PROPERTY WITHOUT DUE PROCESS BY THE ASSAILED DECISION.

V.

THE DELAY IN THE CONSTRUCTION WAS DUE TO THE FAILURE OF THE APPELLANT TO EVICT THE SQUATTERS ON THE LAND AS AGREED IN THE DEED OF ABSOLUTE SALE (EXH. "C").

VI.

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE RULING OF THE COURT *A QUO* DIRECTING THE DEFENDANT TO PAY THE PLAINTIFF THE AMOUNT OF ₱5,568,000.00 REPRESENTING ACTUAL DAMAGES AND PLAINTIFF'S UNREALIZED INCOME AS WELL AS ATTORNEY'S FEES.[20]

The threshold issues for resolution are the following: (a) whether the respondent is bound by the provisions in the deed of absolute sale granting to the petitioner beneficial use and a right of way over a portion of Lot No. 491-A-3-B-1 accessing to the Sumulong Highway and granting the option to the petitioner to buy a portion thereof, and, if so, whether such agreement is enforceable against the respondent; (b) whether the respondent failed to eject the squatters on its property within two weeks from the execution of the deed of absolute sale; and, (c) whether the respondent is liable to the petitioner for damages.

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[20] *Rollo,* pp. 22-23.

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On the first issue, the petitioner avers that, under its Resolution of May 17, 1991, the respondent authorized Roxas, then its president, to grant a right of way over a portion of Lot No. 491-A-3-B-1 in favor of the petitioner, and an option for the respondent to buy a portion of the said property. The petitioner contends that when the respondent sold Lot No. 491-A-3-B-2 covered by TCT No. 78086, it (respondent) was well aware of its obligation to provide the petitioner with a means of ingress to or egress from the property to the Sumulong Highway, since the latter had no adequate outlet to the public highway. The petitioner asserts that it agreed to buy the property covered by TCT No. 78085 because of the grant by the respondent of a right of way and an option in its favor to buy a portion of the property covered by TCT No. 78085. It contends that the respondent never objected to Roxas' acceptance of its offer to purchase the property and the terms and conditions therein; the respondent even allowed Roxas to execute the deed of absolute sale in its behalf. The petitioner asserts that the respondent even received the purchase price of the property without any objection to the terms and conditions of the said deed of sale. The petitioner claims that it acted in good faith, and contends that after having been benefited by the said sale, the respondent is estopped from assailing its terms and conditions. The petitioner notes that the respondent's Board of Directors never approved any resolution rejecting the deed of absolute sale executed by Roxas for and in its behalf. As such, the respondent is obliged to sell a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085 with an area of 500 square meters at the price of ₱1,000 per square meter, based on its evidence and Articles 649 and 651 of the New Civil Code.

For its part, the respondent posits that Roxas was not so authorized under the May 17, 1991 Resolution of its Board of Directors to impose a burden or to grant a right of way in favor of the petitioner on Lot No. 491-A-3-B-1, much less convey a portion thereof to the petitioner. Hence, the respondent was not bound by such provisions contained in the deed of absolute sale. Besides, the respondent contends, the petitioner cannot enforce its right to buy a portion of the said property since

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there was no agreement in the deed of absolute sale on the price thereof as well as the specific portion and area to be purchased by the petitioner.

We agree with the respondent.

In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*,[21] we held that:

> A corporation is a juridical person separate and distinct from its stockholders or members. Accordingly, the property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without express authorization from the corporation's board of directors. Section 23 of BP 68, otherwise known as the Corporation Code of the Philippines, 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 directors or trustees to be elected from among the holders of stocks, 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."
>
> Indubitably, a corporation may act only through its board of directors or, when authorized either by its by-laws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, by-laws, or relevant provisions of law. . .[22]

Generally, the acts of the corporate officers within the scope of their authority are binding on the corporation. However, under Article 1910 of the New Civil Code, acts done by such officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or tacitly, or is estopped from denying them:

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[21] 296 SCRA 631 (1998).

[22] *Id*. at 644-645.

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Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

Thus, contracts entered into by corporate officers beyond the scope of authority are unenforceable against the corporation unless ratified by the corporation.[23]

In *BA Finance Corporation v. Court of Appeals*,[24] we also ruled that persons dealing with an assumed agency, whether the assumed agency be a general or special one, 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 authority, and in case either is controverted, the burden of proof is upon them to establish it.

In this case, the respondent denied authorizing its then president Roberto B. Roxas to sell a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085, and to create a lien or burden thereon. The petitioner was thus burdened to prove that the respondent so authorized Roxas to sell the same and to create a lien thereon.

Central to the issue at hand is the May 17, 1991 Resolution of the Board of Directors of the respondent, which is worded as follows:

RESOLVED, as it is hereby resolved, that the corporation, thru the President, sell to any interested buyer, its 7,213-sq.-meter property at the Sumulong Highway, Antipolo, Rizal, covered by Transfer Certificate of Title No. N-78086, at a price and on terms and conditions which he deems most reasonable and advantageous to the corporation;

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[23] 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.

[24] 211 SCRA 112 (1992).

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FURTHER RESOLVED, that Mr. ROBERTO B. ROXAS, President of the corporation, be, as he is hereby authorized to execute, sign and deliver the pertinent sales documents and receive the proceeds of sale for and on behalf of the company.[25]

Evidently, Roxas was not specifically authorized under the said resolution to grant a right of way in favor of the petitioner on a portion of Lot No. 491-A-3-B-1 or to agree to sell to the petitioner a portion thereof. The authority of Roxas, under the resolution, to sell Lot No. 491-A-3-B-2 covered by TCT No. 78086 did not include the authority to sell a portion of the adjacent lot, Lot No. 491-A-3-B-1, or to create or convey real rights thereon. Neither may such authority be implied from the authority granted to Roxas to sell Lot No. 491-A-3-B-2 to the petitioner "on such terms and conditions which he deems most reasonable and advantageous." Under paragraph 12, Article 1878 of the New Civil Code, a special power of attorney is required to convey real rights over immovable property.[26] Article 1358 of the New Civil Code requires that contracts which have for their object the creation of real rights over immovable property must appear in a public document.[27] The petitioner cannot feign

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[25] Records, p. 213.

[26] Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x x x x x x

(12) To create or convey real rights over immovable property;

x x x x x x x x x

(14) To ratify or recognize obligations contracted before the agency;

(15) Any other act of strict dominion.

[27] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405;

x x x x x x x x x

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ignorance of the need for Roxas to have been specifically authorized in writing by the Board of Directors to be able to validly grant a right of way and agree to sell a portion of Lot No. 491-A-3-B-1. The rule is that if the act of the agent is one which requires authority in writing, those dealing with him are charged with notice of that fact.[28]

Powers of attorney are generally construed strictly and courts will not infer or presume broad powers from deeds which do not sufficiently include property or subject under which the agent is to deal.[29] The general rule is that the power of attorney must be pursued within legal strictures, and the agent can neither go beyond it; nor beside it. The act done must be legally identical with that authorized to be done.[30] In sum, then, the consent of the respondent to the assailed provisions in the deed of absolute sale was not obtained; hence, the assailed provisions are not binding on it.

We reject the petitioner's submission that, in allowing Roxas to execute the contract to sell and the deed of absolute sale and failing to reject or disapprove the same, the respondent thereby gave him apparent authority to grant a right of way over Lot No. 491-A-3-B-1 and to grant an option for the respondent to sell a portion thereof to the petitioner. Absent estoppel or ratification, apparent authority cannot remedy the lack of the written power required under the statement of frauds.[31] In addition, the petitioner's fallacy is its wrong assumption of the unproved premise that the respondent had full knowledge of all the terms

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(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

[28] *State v. Sellers and Resolute Insurance Company*, 258 N.W.2d 292 (1977).

[29] *Prior v. Hager*, 440 S.W.2d 167 (1969).

[30] *Lang v. Bair*, 36 Mo. 85, *id*.

[31] *Union Camp Corporation v. Dyal, Jr.*, 460 F.2d 678 (1972).

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and conditions contained in the deed of absolute sale when Roxas executed it.

It bears stressing that apparent authority is based on estoppel and can arise from two instances: first, the principal may knowingly permit the agent to so hold himself out as having such authority, and in this way, the principal becomes estopped to claim that the agent does not have such authority; second, the principal may so clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that he actually has such authority.[32] There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant and such must have produced a change of position to its detriment. The apparent power of an agent is to be determined by the acts of the principal and not by the acts of the agent.[33]

For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence.[34] In this case, there is no evidence on record of specific acts made by the respondent[35] showing or indicating that it had full knowledge of any representations made by Roxas to the petitioner that the respondent had authorized him to grant to the respondent an option to buy a portion of Lot No. 491-A-3-B-1 covered by TCT No. 78085, or to create a burden or lien thereon, or that the respondent allowed him to do so.

The petitioner's contention that by receiving and retaining the ₱5,000,000 purchase price of Lot No. 491-A-3-B-2, the

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[32] *Banker's Protective Life Insurance Co. v. Addison*, 273 S.W.2d 694 (1951).

[33] *Id.* at 696.

[34] *Residon v. Miller Distributors Co., Inc.*, 139 N.W.2d 12 (1966).

[35] See *Wells Fargo Business v. Kozoff*, 695 F.2d 940 (1983).

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respondent effectively and impliedly ratified the grant of a right of way on the adjacent lot, Lot No. 491-A-3-B-1, and to grant to the petitioner an option to sell a portion thereof, is barren of merit. It bears stressing that the respondent sold Lot No. 491-A-3-B-2 to the petitioner, and the latter had taken possession of the property. As such, the respondent had the right to retain the ₱5,000,000, the purchase price of the property it had sold to the petitioner. For an act of the principal to be considered as an implied ratification of an unauthorized act of an agent, such act must be inconsistent with any other hypothesis than that he approved and intended to adopt what had been done in his name.[36] Ratification is based on waiver — the intentional relinquishment of a known right. Ratification cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent. Moreover, if a writing is required to grant an authority to do a particular act, ratification of that act must also be in writing.[37] Since the respondent had not ratified the unauthorized acts of Roxas, the same are unenforceable.[38] Hence, by the respondent's retention of the amount, it cannot thereby be implied that it had ratified the unauthorized acts of its agent, Roberto Roxas.

On the last issue, the petitioner contends that the CA erred in dismissing its complaint for damages against the respondent on its finding that the delay in the construction of its warehouse was due to its (petitioner's) fault. The petitioner asserts that the CA should have affirmed the ruling of the trial court that the respondent failed to cause the eviction of the squatters from the property on or before September 29, 1991; hence, was liable for ₱5,660,000. The respondent, for its part, asserts that the delay in the construction of the petitioner's warehouse was

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[36] *The Board of Supervisors v. Schack*, 18 L.E.2d 556 (1897); *American Food Corporation v. Central Carolina Bank & Trust Company*, 291 S.W.2d 892.

[37] Reuschlin and Gregory, *The Law of Agency and Partnership*, 2nd ed., p. 75.

[38] Article 1403, New Civil Code (*infra*).

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due to its late filing of an application for a building permit, only on May 28, 1992.

The petitioner's contention is meritorious. The respondent does not deny that it failed to cause the eviction of the squatters on or before September 29, 1991. Indeed, the respondent does not deny the fact that when the petitioner wrote the respondent demanding that the latter cause the eviction of the squatters on April 15, 1992, the latter were still in the premises. It was only after receiving the said letter in April 1992 that the respondent caused the eviction of the squatters, which thus cleared the way for the petitioner's contractor to commence the construction of its warehouse and secure the appropriate building permit therefor.

The petitioner could not be expected to file its application for a building permit before April 1992 because the squatters were still occupying the property. Because of the respondent's failure to cause their eviction as agreed upon, the petitioner's contractor failed to commence the construction of the warehouse in October 1991 for the agreed price of ₱8,649,000. In the meantime, costs of construction materials spiraled. Under the construction contract entered into between the petitioner and the contractor, the petitioner was obliged to pay ₱11,804,160,[39] including the additional work costing ₱1,441,500, or a net increase of ₱1,712,980.[40] The respondent is liable for the difference between the original cost of construction and the increase thereon, conformably to Article 1170 of the New Civil Code, which reads:

> Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.

The petitioner, likewise, lost the amount of ₱3,900,000 by way of unearned income from the lease of the property to the Ponderosa Leather Goods Company. The respondent is, thus,

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[39] Exhibit "F", Records, p. 199.

[40] TSN, 30 September 1993, p. 13.

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liable to the petitioner for the said amount, under Articles 2200 and 2201 of the New Civil Code:

> Art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.
>
> Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.
>
> In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In sum, we affirm the trial court's award of damages and attorney's fees to the petitioner.

IN LIGHT OF ALL THE FOREGOING, judgment is hereby rendered *AFFIRMING* the assailed Decision of the Court of Appeals *WITH MODIFICATION*. The respondent is ordered to pay to the petitioner the amount of ₱5,612,980 by way of actual damages and ₱100,000 by way of attorney's fees. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.,* concur.