

## THIRD DIVISION

[ G.R. No. 115849, January 24, 1996 ]

**FIRST PHILIPPINE INTERNATIONAL BANK (FORMERLY PRODUCERS BANK OF THE PHILIPPINES) AND MERCURIO RIVERA, PETITIONERS, VS. COURT OF APPEALS, CARLOS EJERCITO, IN SUBSTITUTION OF DEMETRIO DEMETRIA, AND JOSE JANOLO, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

In the absence of a formal deed of sale, may commitments given by bank officers in an exchange of letters and/or in a meeting with the buyers constitute a perfected and enforceable contract of sale over 101 hectares of land in Sta. Rosa, Laguna? Does the doctrine of "apparent authority" apply in this case? If so, may the Central Bank-appointed conservator of Producers Bank (now First Philippine International Bank) repudiate such "apparent authority" after said contract has been deemed perfected? During the pendency of a suit for specific performance, does the filing of a "derivative suit" by the *majority* shareholders and directors of the distressed bank to prevent the enforcement or implementation of the sale violate the ban against forum-shopping?

Simply stated, these are the major questions brought before this Court in the instant Petition for review on certiorari under Rule 45 of the Rules of Court, to set aside the Decision promulgated January 14, 1994 of the respondent Court of Appeals<sup>[1]</sup> in CA-G.R. CV No. 35756 and the Resolution promulgated June 14, 1994 denying the motion for reconsideration. The dispositive portion of the said Decision reads:

"WHEREFORE, the decision of the lower court is MODIFIED by the elimination of the damages awarded under paragraphs 3, 4 and 6 of its dispositive portion and the reduction of the award in paragraph 5 thereof to P75,000.00, to be assessed against defendant bank. In all other aspects, said decision is hereby AFFIRMED.

"All references to the original plaintiffs in the decision and its dispositive portion are deemed, herein and hereafter, to legally refer to the plaintiff-appellee Carlos C. Ejercito.

"Costs against appellant bank."

The dispositive portion of the trial court's<sup>[2]</sup> decision dated July 10, 1991, on the other hand, is as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

"1. Declaring the existence of a perfected contract to buy and sell over the six (6) parcels of land situated at Don Jose, Sta. Rosa, Laguna with an area of 101 hectares, more or less, covered by and embraced in Transfer Certificates of Title Nos. T-106932 to T-106937, inclusive, of the Land Records of Laguna, between the plaintiffs as buyers and the defendant Producers Bank for an agreed price of Five and One Half Million (P5,500,000.00) Pesos;

"2. Ordering defendant Producers Bank of the Philippines, upon finality of this decision and receipt from the plaintiffs the amount of P5.5 Million, to execute in favor of said plaintiffs a deed of absolute sale over the aforementioned six (6) parcels of land, and to immediately deliver to the plaintiffs the owner's copies of T.C.T. Nos. T-106932 to T-106937, inclusive, for purposes of registration of the same deed and transfer of the six (6) titles in the names of the plaintiffs;

"3. Ordering the defendants, jointly and severally, to pay plaintiffs Jose A. Janolo and Demetrio Demetria the sums of P 200,000.00 each in moral damages;

"4. Ordering the defendants, jointly and severally, to pay plaintiffs the sum of P 100,000.00 as exemplary damages;

"5. Ordering the defendants, jointly and severally, to pay the plaintiffs the amount of P400,000.00 for and by way of attorney's fees;

"6. Ordering the defendants to pay the plaintiffs, jointly and severally, actual and moderate damages in the amount of P20,000.00;

"With costs against the defendants."

After the parties filed their comment, reply, rejoinder, sur-rejoinder and reply to sur-rejoinder, the petition was given due course in a Resolution dated January 18, 1995. Thence, the parties filed their respective memoranda and reply memoranda. The First Division transferred this case to the Third Division per resolution dated October 23, 1995. After carefully deliberating on the aforesaid submissions, the Court assigned the case to the undersigned ponente for the writing of this Decision.

### **The Parties**

Petitioner First Philippine International Bank (formerly Producers Bank of the Philippines; petitioner Bank, for brevity) is a banking institution organized and existing under the laws of the Republic of the Philippines. Petitioner Mercurio Rivera (petitioner Rivera, for brevity) is of legal age and was, at all times material to this case, Head Manager of the Property Management Department of the petitioner Bank.

Respondent Carlos Ejercito (respondent Ejercito, for brevity) is of legal age and is the assignee of original plaintiffs-appellees Demetrio Demetria and Jose Janolo.

Respondent Court of Appeals is the court which issued the Decision and Resolution sought to be set aside through this petition.

### **The Facts**

The facts of this case are summarized in the respondent Court's Decision,<sup>[3]</sup> as follows:

"(1) In the course of its banking operations, the defendant Producer Bank of the Philippines acquired six parcels of land with a total area of 101 hectares located at Don Jose, Sta. Rosa, Laguna, and covered by Transfer Certificates of Title Nos. T-106932 to T-106937. The property used to be owned by BYME Investment and Development Corporation which had them mortgaged with the bank as collateral for a loan. The original plaintiffs, Demetrio Demetria and Jose O. Janolo, wanted to purchase the property and thus initiated negotiations for that purpose.

"(2) In the early part of August 1987 said plaintiffs, upon the suggestion of BYME Investment's legal counsel, Jose Fajardo, met with defendant Mercurio Rivera, Manager of the Property Management Department of the defendant bank. The meeting was held pursuant to plaintiffs' plan to buy the property (TSN of Jan. 16, 1990, pp. 7-10). After the meeting, plaintiff Janolo, following the advice of defendant Rivera, made a formal purchase offer to the bank through a letter dated August 30, 1987 (Exh. "B"), as follows:

August 30, 1987

#### **The Producers Bank of the Philippines**

##### **Makati, Metro Manila**

Mr. Mercurio Q.  
Rivera

**Attn.**

Manager, Property  
Management Dept.

**Gentlemen:**

**I have the honor to submit my formal offer to purchase your properties covered by titles listed hereunder located at Sta. Rosa, Laguna, with a total area of 101 hectares, more or less.**

**TCT NO.**

**AREA**

**T-106932**

113,580 sq.m.

**T-106933**

70,899 sq.m.

**T-106934**

52,246 sq.m.

**T-106935**

96,768 sq.m.

**T-106936**

187,114 sq.m.

**T-106937**

481,481 sq.m.

My offer is for PESOS: THREE MILLION FIVE HUNDRED THOUSAND (P3,500,000.00) PESOS, in cash.

Kindly contact me at Telephone Number 921-1344.

"(3) On September 1, 1987, defendant Rivera made on behalf of the bank a formal reply by letter which is hereunder quoted (Exh. "C"):

September 1, 1987

J-P M-P GUTIERREZ ENTERPRISES

142 Charisma St., Doña Andres II

Rosario, Pasig, Metro Manila

Attention: JOSE O. JANOLO Dear Sir:

Dear Sir:

Thank you for your letter-offer to buy our six (6) parcels of acquired lots at Sta. Rosa, Laguna (formerly owned by Byme industrial Corp.). Please be informed however that the bank's counter-offer is at P5.5 million for more than 101 hectares on lot basis.

We shall be very glad to hear your position on the matter.

Best regards.

"(4)On September 17, 1987, plaintiff Janolo, responding to Rivera's aforequoted reply, wrote (Exh.

September 17, 1987

Producers Bank

Paseo de Roxas

Makati, Metro Manila

Attention: Mr. Mercurio Rivera

Gentlemen:

In reply to your letter regarding my proposal to purchase your 101-hectare lot located at Sta. Rosa Laguna, I would like to amend my previous offer and I now propose to buy the said lot at P4.250 million in CASH.

Hoping that this proposal meets your satisfaction.

"(5) There was no reply to Janolo's foregoing letter of September 17, 1987. What took place was a meeting on September 28, 1987 between the plaintiffs and Luis Co, the Senior Vice-President of defendant bank.

Rivera as well as Fajardo, the BYME lawyer, attended the meeting. Two days later, or on September 30, 1987, plaintiff Janolo sent to the bank, through Rivera, the following letter (Exh. "E"):

The Producers Bank of the Philippines

Paseo de Roxas, Makati

Metro Manila

Attention: Mr. Mercurio Rivera

Re: 101 Hectares of Land in Sta. Rosa, Laguna

Gentlemen:

Pursuant to our discussion last 28 September 1987, we are pleased to inform you that we are accepting your offer for us to purchase the property at Sta. Rosa, Laguna, formerly owned by Byme In-vestment, for a total price of PESOS: FIVE MILLION FIVE HUNDRED THOUSAND (P5,500,000.00).

Thank you.

"(6) On October 12, 1987, the conservator of the bank (which has been placed under conservatorship by the Central Bank since 1984) was replaced by an Acting Conservator in the person of defendant Leonida T. Encarnacion. On November 4, 1987, defendant Rivera wrote plaintiff Demetria the following letter (Exh. "F"):

Attention: Atty. Demetrio Demetria

Dear Sir:

Your proposal to buy the properties the bank foreclosed from Byme Investment Corp. located at Sta. Rosa, Laguna is under study yet as of this time by the newly created committee for submission to the newly designated Acting Conservator of the bank.

For your information.

"(7) What thereafter transpired was a series of demands by the plaintiffs for compliance by the bank with what plaintiff considered as a perfected contract of sale, which demands were in one form or another refused by the bank. As detailed by the trial court in its decision, on November 17, 1987, plaintiffs through a letter to defendant Rivera (Exhibit "G") tendered payment of the amount of P5.5 million "pursuant to (our) perfected sale agreement." Defendants refused to receive both the payment and the letter. Instead, the parcels of land involved in the transaction were advertised by the bank for sale to any interested buyer (Exhs. "H" and "H-1"). Plaintiffs demanded the execution by the bank of the documents on what was considered as a "perfected agreement."