COMMERCIAL LAW

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The year 1973 does not present us with any landmark decision in the field of Commercial Law. The few decided cases merely reiterate established principles. However, with the more widespread use of modern types of credit transactions such the credit card as well as letters of credit, especially on an international scale, focus may be made on solitary cases wherein the Philippine Supreme Court grapples with problems relating to the use of these business devises.

CREDIT TRANSACTIONS

Credit Card

The credit card is a modern development in credit transactions. Heretofore, no significant ruling had come up in this jurisdiction regarding the nature and use of credit cards, and the extent and limits of liability of credit card holders. Thus, the case of *American Express Company, Inc. v. Santiago,*[1] decided in 1973, is one of its kind in the Philippines.

The essential facts of the case were undisputed. The plaintiff was a foreign corporation with main office in New York City, and a branch office in the Philippines which was duly registered and licensed to transact business as a travel agent. As part of its business and for the convenience of its customers the plaintiff adopted a credit system known as the "American Express Credit Card." The plaintiff would issue a credit card upon application of a customer who would then enjoy charge privileges in listed establishments all over the world. The company would periodically issue a directory of establishments for the guidance of its card holders.

On November 6, 1959 the defendant applied for a credit card at the plaintiff's office in New York City. The corresponding American Express Credit Card was issued to him on June 20, 1961. Thereafter and before its expiration or cancellation, the defendant used the credit card in making purchases and obtaining services or credit in various foreign countries,[2]

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[1] G.R. No. L-27058, January 17, 1973, 49 SCRA 75 (1973).

[2] Hongkong, France, Switzerland, Germany, Spain, Italy, (1960-61).

obtaining credit charges amounting to a total of $15,297.53. In September of 1961, the plaintiff made demands for payment upon the defendant. After the latter refused to pay, the present suit for collection was filed.

The main defense raised was that the plaintiff had no cause of action because it was not the real party in interest. The credit card issued by the Company was merely to introduce the card holder to the different establishments from which he made purchases and obtained services on credit, these establishments should have properly brought the suit.

To resolve this issue, the Court examined the operations of the credit card system. It was undisputed that the stores or establishments which sold goods and services to the credit card holder would bill the American Express Company, which would settle the accounts directly and in turn bill the customers who possessed the credit cards. The holder could purchase on credit from any of the listed establisments, and he could do that because the purchases on credit were backed up by the American Express Company thru the credit card. The Company would pay for the purchases and the holder (defendant) would reimburse such payment to the owner (plaintiff) of the credit card. There was, therefore, no doubt that the plaintiff company was the creditor of the defendant credit card holder and was a proper party to file this suit for collection. Furthermore, there was no pretense that the defendant did not contract the indebtedness for the collection of which he was being sued or that the same had been paid. The defendant was therefore ordered to pay the amount due to the American Express Company.

Letter of Credit

Aside from procedural issues raised, the effect of issuance of letters of credit on the debtor's obligation to pay was involved in the case of *NAMARCO v. Federation of United NAMARCO Distributors, Inc.*[3]

NAMARCO filed a suit to collect payment of merchandise delivered to and not paid for by the defendant. To insure the payment of goods, the NAMARCO accepted letters of credit as security. The defense was that NAMARCO neither alleged nor proved that it had complied with the conditions contained in the three domestic letters of credit. Besides, the sight drafts drawn had to be presented to the Federation for acceptance before they could be honored by the bank. Failure to do this deprived NAMARCO of a cause of action against defendant Federation. The Supreme Court ruled, however, that this failure to comply was never invoked by the Federation in its motion to dismiss or answer, nor raised during the trial, hence,

[3] G.R. No. L-22578, January 31, 1973, 49 SCRA 238 (1973).

could not be raised for the first time on appeal. In any event, NAMARCO's action was not based on the domestic letters of credit but on its legal right to the payment of the cost of the goods delivered to the Federation, and the latter's correlative obligation to pay for the goods and its default or refusal to make such payments.

The mere delivery by the Federation of the domestic letters of credit to NAMARCO did not discharge the debt of the Federation. The three letters of credit were accepted only "to insure the payment of those goods by the Federation." They were given therefore as mere security for the payment of the merchandise. The delivery of promissory notes payable to order or bills of exchange or drafts or other mercantile documents produces the effect of payment only when realized or when by the fault of the creditor, the privileges inherent in their negotiable character have been impaired.[4] The clause of Article 1249 relating to the impairment of the negotiable character of the commercial paper due to the fault of the creditor is applicable only to instruments executed by third persons and delivered by the debtor to the creditor and does not apply to instruments executed by the debtor himself and delivered to the creditor.[5] In this case, it was not even pretended that the negotiable character of the sight drafts was impaired as a result of the fault of NAMARCO. The sight drafts were never taken in the first instance as payment and there was no agreement that they should be accepted as payment. The mere fact that NAMARCO proceeded in good faith to try to collect payments thereon, did not amount to an appropriation by the creditor of the amount mentioned in the sight drafts so as to release its claims against the Federation. A mere attempt to collect or enforce a bill or note from which no payment results is not an appropriation of the amount as to discharge the debt.[6]

On the point of interest payment, the Supreme Court found it an error for the lower court to impose interest at the legal rate on the amount due "from the date of delivery of the merchandise" and not "from the time of extra-judicial demand." The Court reiterated the rule that the obligor is considered in default from the time the obligee judicially or extra-judicially demands fulfillment of the obligation and interest is recoverable only from the time such demand is made.

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[4] ART. 1249 (NEW CIVIL CODE).

> * * * The delivery of promissory notes payable to order or bills of exchange of other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.
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> In the meantime, the action derived from the original obligation shall be held in abeyance.

[5] Citing Compañia General de Tabacos v. Molina, 5 Phil. 142 (1905).

[6] Citing Olymphant v. St. Louis Ore & Steel Co., 28 F. 729 (1886).

CHATTEL MORTGAGE

Another type of credit transaction is a chattel mortgage. The case of *Northern Motors, Inc. v. Herrera,*[7] involved an ₱18,623.75 promissory note, payment of which was secured by a chattel mortgage on a car purchased on installment. It was stipulated that upon default in the payment of any installment or interest due, the total principal amount remaining unpaid with accrued interest would at once become due and payable. The mortgaged car would, on demand, be delivered to the mortgagee; otherwise the mortgagee would take possession of the car with the following options: (a) sell the mortgaged property; (b) cancel the contract of sale with the mortgagor; (c) extra-judicially foreclose the mortgage; (d) judicially foreclose the mortgage; or (e) exact fulfillment of the mortgage obligation by ordinary civil action with attorney's fees.

The mortgagor defaulted and the plaintiff-mortgagee chose option (c), by extra-judicial foreclosure of the mortgage. When the mortgagor refused to deliver the car, the plaintiff filed a complaint with prayer for a writ of replevin. The writ was denied on the ground that the petition for such a writ requires "that an affidavit be submitted alleging that the plaintiff is the owner of the property claimed or that he is entitled to its possession". The lower court held that the mortgagee was not entitled to possession of the mortgaged property merely because the mortgagor failed to pay the account guaranteed by the mortgagee. The mortgagee may institute a replevin suit but only for the purpose of delivering the chattel to the public officer for foreclosure sale. The complaint did not allege that plaintiff mortgagee had asked or directed a public officer to foreclose the mortgage and that the mortgagor had refused to surrender the mortgaged chattel to said public officer.

The Supreme Court reversed the decision of the lower court. It held that persons having a special right of property in the goods sought to be recovered, such as a chattel mortgagee, may maintain an action for replevin. Where the mortgage contract authorizes the mortgagee to take possession of the property on default of the debtor, such mortgagee may maintain an action to recover possession of the mortgaged chattels from the mortgagor or from any person in whose hands he may find them. This is irrespective of whether the mortgage contemplates a summary extra-judicial sale of the property or foreclosure by court action. When the debtor defaults and the creditor desires to foreclose the mortgage the latter must necessarily take the mortgaged property in his hands. But when the debtor refuses to yield the possession of the property, the creditor must institute an action, either to effect a judicial foreclosure directly or to secure possession as a prelimi-

[7] G.R. No. L-32674, February 22, 1973, 49 SCRA 392 (1973).

nary to the sale contemplated under Section 14 of Act No. 1508, the Chattel Mortgage Law.

The right of the mortgagee to have possession of the mortgaged chattel after the condition of the mortgage is breached is well-settled. Section 2 of Rule 60[8] requires only that upon applying for writ of replevin, the plaintiff must show: (1) that he is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof; (2) that the property is wrongfully detained by the defendant with an allegation on the causes of detention; (3) that the same has not been taken for any tax assessment or fine levied pursuant to law nor seized under any execution or an attachment against the property of such plaintiff or if so seized, that it is exempt from seizure. The applicant must also state the actual value of the property. In determining the sufficiency of the application for a writ of replevin, the allegations as well as the recitals of the documents appended thereto and made a part thereof should be considered, especially where the allegations of the complaint have been, by reference, made part of plaintiff's affidavit of replevin.

The Rules do not require that in an action for replevin, the plaintiff should allege that the "mortgagee has asked or directed a public officer to foreclose the mortgage and that the mortgagor has refused to surrender the mortgaged chattel to such public officer". There is nothing in Section 14 of the Chattel Mortgage Law (Act 1508) that would justify the trial court's insistence that the mortgagee must first ask the sheriff to foreclose the mortgage, and that it is only when the mortgagor refuses to surrender the chattel to the sheriff that the action of replevin can be instituted. Section 14 of Act 1508 places upon a public officer the responsibility of conducting the sale of the mortgaged property. Where the right of possession is disputed the creditor must proceed by action in court. The basic reason

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[8] Citing Bachrach Motor Co. v. Summers, 42 Phil. 3 (1921). Rule 60 provides:

SEC. 2. *Affidavit and bond.* — Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:

a) That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof according to his best knowledge, information, and belief;

c) That it is has been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is exempt from such seizure; and

d) The actual value of the property.

The plaintiff must also give a bond, executed to the defendant in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the defendant if the return thereof be adjudged, and for the payment to the defendant of such sum as he may recover from the plaintiff in the action.

why the creditor should initiate such action is that the creditor's right of possession of the subject matter of the chattel mortgage, as a preliminary to an extra-judicial foreclosure proceeding, is conditioned upon the fact of actual default on the part of the principal obligor, and the existence of this fact may naturally be the subject of a controversy.[9] It would be futile for the mortgagee to first request or direct the sheriff to foreclose the mortgage or take possession of the property before filing an action in court to recover its possession. Such a procedure is completely unnecessary, not only because the sheriff has no duty or authority in the first instance to seize the mortgaged property, but also because whenever the sheriff proceeds under Section 14 of the Chattel Mortgage Law, he becomes *pro hac vice* the mere agent of the creditor. It is only upon receiving the order of the court requiring the sheriff to take the property into his custody that the duty of said officer to take possession of the mortaged chattel arises.

There is no violation of Article 1088 of the New Civil Code since the mortgagee in seeking replevin does not seek to appropriate the property given by way of mortgage. The issue of *pacto comisorio,* which is prohibited by Article 2088 of the Civil Code, is that ownership of the security will pass to the creditor by mere default of the debtor. In this case the exercise by the mortgagee of one of the options open under the chattel mortgage contract to foreclosure the mortgage extra-judicially necessitates a preliminary step which is to seek possession of the mortgaged property. No automatic revesting of title on the creditor is even contemplated, for the exercise of the remedy granted to the creditor by the deed of chattel mortgage or exacting the fulfillment of the obligation through court action is by its very nature anathema to the concept of *pacto comisorio.*

COMMON CARRIERS

The rules on liability and the extent of recovery of damages arising from accidents or misdeeds of commercial air carriers are again set forth in interesting cases decided in 1973.

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[9] Citing Bachrach Motor Co. v. Summers, *supra.* Rule 60 of the Rules of Court provides:

> SEC. 4. *Duty of the Officer.* — Upon receiving such order the officer must serve a copy thereof on the defendant together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the defendant or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or inclosure, the officer must publicly demand its delivery, and if it be not delivered, he must cause the building or inclosure to be broken open and take the property into his possession. When the officer has taken property as herein provided, he must keep it in a secure place and shall be responsible for it and ultimately deliver it to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.

The case of *Zulueta v. Pan American World Airways, Inc.*[10] follows the same pattern as previously celebrated cases of discrimination against Filipino passengers by foreign airline companies. Fortunately for the airline company, the Supreme Court has laid down certain criteria to justify the award of damages, and has taken into consideration the actuations of claimants under the circumstances complained of so as to mitigate the otherwise astronomical liability of the airline for misdeeds of its employees or agents.

The 1973 *Zulueta* decision disposes of the motion for reconsideration by both parties of the Supreme Court decision promulgated on February 29, 1972.[11] Pan Am assailed the award of damages as excessive and questioned the plaintiff's right to recover moral or exemplary damages and attorney's fees. However, none of the cases cited to support this contention was considered in point. In these cases the passengers involved were merely constrained to take a tourist class accommodation despite the fact that they had first class tickets, although there was proof that the airline involved gave preference to a "white" passenger which motive was not disclosed until the trial in court.[12] In the *Zulueta* case, the airline captain attempted to humiliate Zulueta in the presence of the other passengers and the crew and even referred to the Zuluetas as "monkeys", a racial insult to which Zulueta retorted in tone and manner befitting the intemperate language and arrogant attitute of the captain. Mr. Zulueta was off-loaded not to protect the safety of the aircraft and its passengers but to retaliate and punish him for the embarrassment and loss of face suffered by the airline's agent. The intention in "off-loading" Mr. Zulueta in Wake Island was to keep him stranded for the period of one week, during which time no other plane headed for Manila was expected. However, Mr. Zulueta managed to board, days later, a plane that brought him to Hawaii from where he flew back to the Philippines via Japan.

There is a fundamental difference between the award of damages in criminal cases, where the convicts generally belong to the poorest class of society, and the case at bar, where Mr. Zulueta had a contract of carriage with the defendant, a common carrier. Under the contract of carriage, the airline was paid a substantial monetary consideration by the Zuluetas, not merely to transport them to Manila but also to do so with "extraordinary diligence" or "utmost diligence".[13] The responsibility of the common carrier

[10] G.R. No. L-28589, January 8, 1973, 49 SCRA 1 (1973).

[11] See Zulueta v. Pan American World Airways, Inc., G.R. No. L-28589, February 29, 1972, 43 SCRA 397 (1972).

[12] Lopez v. Pan American World Airways, Inc., G.R. No. L-22415, March 30, 1966, 16 SCRA 431 (1966); Air France v. Carrascoso,. GR. No. L-21438, September 28, 1966, 18 SCRA 155 (1966).

[13] NEW CIVIL CODE:

> ART. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the

as regards the passengers' safety affects the public interest so that it "cannot be dispensed with" or even "lessened by stipulation, by the posting of notices, by statements on tickets or otherwise."[14] In this case the common carrier not only failed to comply with its obligation to transport Mr. Zulueta to Manila but also acted in a manner calculated to humiliate him, to chastise him and cause him the greatest possible inconvenience by leaving him in a desolate island, expecting that he would be stranded there for a "minimum of one week". In addition he was charged $13.30 each day of his sojourn in Wake Island.

The off-loading at Wake Island under such circumstances was done with knowledge and evident bad faith. If "gross negligence" warrants the award of exemplary damages, with more reason is the imposition justified when the act performed is deliberate, malicious and tainted with bad faith. The rationale behind exemplary damages is to provide an example for public good. Breach of contracts in bad faith warrants an award of exemplary damages in addition to moral damages.[15] The award of exemplary damages is also justified by the fact that the airline's "agent had acted in a wanton, reckless and *oppressive manner*".[16] Where the act is both a breach of contract as well as a quasi-delict, the damage caused directly and intentionally by an employee or agent of the defendant, particularly where such act is impliedly ratified by the company, is recoverable against the airline.[17]

The fact that Mr. Zulueta did not show up at the scheduled departure of the plane does not amount to a violation of the contract of carriage.

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passengers transported by them, according to all the circumstances of each case.

ART. 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

[14] NEW CIVIL CODE:

ART. 1757. The responsibility of a common carrier for the safety of passengers as required in articles 1733 and 1755 cannot be dispensed with or lessened by stipulation, by the posting of notices, by statements on tickets, or otherwise.

[15] NEW CIVIL CODE:

ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

[16] Citing Northwest Airlines, Inc. v. Cuenca, G.R. No. L-22425, August 31, 1965, 14 SCRA 1063 (1965). In this case, Cuenca, over his objection, was compelled to transfer from first class to tourist class accommodation, under threat of otherwise leaving him in Okinawa, despite the fact that he had paid for first class and had been issued a first class ticket in Manila.

[17] Ratification by Pan-Am of the acts complained of was implied from the fact that although Mrs. Zulueta, upon arrival in the Philippines, reported her husband's predicament to defendant's local manager and asked him to forthwith have Mr. Zulueta brought to Manila, said manager refused to do so.

This might have some weight had defendant's plane taken off before Mr. Zulueta showed up. But the fact is that he was ready, willing and able to board the plane about two hours before it actually took off and that he was deliberately and maliciously off-loaded on account of his conduct toward the captain.

The responsibilities of an airline as a common carrier were also noted in the case of *Davila v. Philippine Air Lines*.[18] PAL was sued for damages arising from the death of passengers in an airplane crash. The issues involved violation of the contract of carriage and the amount of damages recoverable.

The evidence showed that the passenger plane did not comply with prescribed flight elevation, that the aircraft was drifted westwards by cross-winds, and that the pilot failed to make the necessary corrections in his flight to compensate for the drift. The Chairman of the CAA Investigating Committee in his testimony stated that it was navigational error to which several factors contributed, such as the not-so-good weather observation between Mt. Baco and Romblon and the malfunction of the aircraft's navigational instrument.[19] It was undisputed that the pilot did not follow the route prescribed for his flight between Romblon and Manila. Air-traffic rules were violated, to which, under the circumstances, the accident may be directly attributable. Absent a satisfactory explanation as to how and why the accident occurred, the presumption is that the airline was at fault under Article 1756 of the Civil Code.

On the question of amount of damages, the Supreme Court referred to Article 2206 (1)[20] of the Civil Code which makes defendant liable for the loss of earning capacity of the deceased, the indemnity to be paid to the heirs. Although this Article refers to damages for "death caused by a crime or quasi-delict," this is expressly made applicable by Article 1764 "to the death of a passenger caused by the breach of contract by a common carrier".[21]

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[18] G.R. No. L-28512, February 28, 1973, 49 SCRA 497 (1973).

[19] The witness explained that "a cross-wind can drift the plane if the pilot will not make the necessary correction, if his navigational instrument is malfunctioning and the visual reference outside the aircraft could not make the necessary corrections."

[20] ART. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. *In addition:*

1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

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[21] ART. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

The Court defined the amount recoverable for loss of earnings to refer, not to the entire earnings, but only to that portion of the earnings which the beneficiary would have received. Only the net earnings, not the gross earnings, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.[22] In computing this loss of earning capacity the Court resorted to the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. This result was then used as the multiple of the net yearly income to arrive at the total amount recoverable for loss of earning capacity.

On the problem of moral damages, the Court relied on Article 2206,[23] in relation to Article 1764,[24] of the Civil Code which entitles the parents of the deceased to moral damages for mental anguish. The award of moral damages to the parents of the deceased was affirmed, considering the long period of uncertainty and suffering from the time of the plane crash to the time of confirmation of their son's death. However, the award of exemplary damages was eliminated. Article 2232[25] of the Civil Code allows exemplary damages in breach of contract and quasi-contract if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The failure of defendant to exercise extraordinary diligence as required by law did not amount to any one of the circumstances contemplated in Article 2232. Attorney's fees were also allowed and actual damages were granted on the basis of the evidence adduced.

The protection of public interest is the basis for more stringent administrative controls of common carriers. Measures to insure that liability for breach of contract of carriage is readily pin-pointed are an essential aspect of such protection, because one could easily escape responsibility through legal technicalities. The case of *Perez v. Gutierrez*[26] exemplifies this sitation.

In an action filed for breach of contract of carriage resulting in injuries to the complainant passenger because of the reckless negligence of the driver, the defendant operator of the common carrier averred that the responsibility should devolve on the person who was the actual owner by purchase of the passenger jeepney when the accident occurred and against whom the defendant filed a third party complaint. In the deed of sale, the vendee assumed all responsibilities arising as a consequence of or in the course of operation of the vehicle. In answer, the third-party - defendant disclaimed responsibility alleging that (a) the deed of sale was null and void because it had not been registered with the Public Service Commission

[22] Citing Villa Rey Transit. Inc. v. Court of Appeals, G.R. No. L-25499, February 18, 1970, 31 SCRA 511, 515 (1970).
[23] Article 2206, *supra*, note 20.
[24] Article 1764, *supra*, note 21.
[25] Article 2232, *supra*, note 15.
[26] G.R. No. L-30115, September 28, 1973, 53 SCRA 149 (1973).

despite repeated demands on the third party complainant to do so; and (b) the passenger jeepney remained in the control of the third party complainant who had been collecting rentals from him for the use of the vehicle; and (c) by express agreement, title to the vehicle remained with the third party complainant pending approval of the sale by the Public Service Commission.

The lower court found the driver guilty of reckless imprudence, and the third party defendant, being the actual owner by virtue of the deed of sale, was held responsible for the payment of damages. The appeal questioned the correctness of the decision adjudging the third party defendant, instead of the common-carrier operator, liable for payment of damages. The plaintiff (injured passenger) argued that the registered owner of the passenger jeepney should be the one held liable for damages resulting from a breach of contract of carriage by a common carrier.

The Supreme Court found the appeal meritorious. Reiterating the well-settled rule enunciated in several cases,[27] the Court declared that Section 20 (g) of the Public Service Act requires the approval of the Public Service Commission in order that a franchise or any privilege pertaining thereto may be sold or leased without infringing the certificate issued to the grantee. Since a franchise is personal in nature, any transfer or lease thereof should be submitted for the approval of the Public Service Commission so that the latter may take proper safeguards to protect the interest of the public. It follows that if the property covered by the franchise is transferred or leased to another without the requisite approval, the grantee continues to be responsible under the franchise in relation to the Commission and to the public for consequences incident to the operation of the vehicle. This doctrine is based on the principle that "in dealing with vehicles registered under the Public Service Law, the public has the right to assume or presume that the registered owner is the actual owner thereof, for it would be difficult for the public to enforce the actions that they may have for injuries caused to them by the vehicles being negligently operated if [they] should be required to prove who the actual owner is."[28] However, this does not imply that the registered owner may not recover whatever amount he has paid by virtue of his liability to third persons from the persons to whom he had actually sold, assigned or conveyed the vehicle.[29] Where the transferee was operating the vehicle when the passenger died, he is the one directly responsible for the accident and death and should in turn be made

[27] De Peralta v. Mangusang, G.R. No. L-18110, July 31, 1964, 11 SCRA 598 (1964); Montoya v. Ignacio, G.R. No. L-5868, December 29, 1953, 50 O.G. 108 (Jan., 1954), 94 Phil. 182 (1953); Vda. de Medina v. Cresencia, G.R. No. L-8194, July 11, 1956, 52 O.G. 4606 (Aug., 1956), 99 Phil. 506 (1956); Erezo v. Jepte, G.R. No. L-9605, September 30, 1957, 102 Phil. 103 (1957); Tamayo v. Aquino, G.R. Nos. L-12634 & L-12720, May 29, 1959, 56 O.G. 5617 (Sept., 1960), 105 Phil. 949 (1959).

[28] Erezo v. Jepte, 102 Phil. 103, 106 (1957).

[29] *Id.* at 106-107.

responsible to the registered owner for what the latter may be adjudged to pay to the passenger of the common carrier. In operating the vehicle without its transfer having been approved by the Public Service Commission, the transferee acts merely as agent of the registered owner and should be responsible to him (the registered owner) for any damage that he may cause the latter by his negligence.[30]

In the case at bar, the lower court erred in holding the transferee (3rd party defendant, the actual owner by a deed of sale unapproved by the PSC) rather than the common carrier operator (defendant and 3rd party complainant, the registered owner with the PSC) as the one directly liable to plaintiff passenger for the latter's injuries and the corresponding damages incurred. Accordingly, judgment was modified and the common carrier operator and the driver were adjudged directly and jointly and solidarily liable to plaintiff in accordance with Article 2184 in relation to Article 2180 of the New Civil Code,[31] while the transferee, as actual owner, was answerable to the transferor, the common-carrier operator.

The requirement of approval of transfer of public service franchises also affords an opportunity for administrative verification of the existence of the franchise. In these instances, official records of the PSC must necessarily prevail over bare and undocumented claims. Thus, in the case of *Cabudil v. Pañganiban*,[32] the petition for approval of a purported sale of a five-unit franchise was denied when it appeared that the franchise, which was allegedly sold and provisionally approved, was a non-existent line and no record thereof could be found with the PSC. The actual line held by the vendors (petitioners) which was a line different from the one involved in the petition had already been sold by the petitioner to third parties, hence there was nothing to be sold by petitioners Cabudil and Reyes to Ramirez and no sale for the Commission to approve.

The Court upheld the PSC order of denial and ruled that the official records of the Commission must necessarily prevail. Aside from the fact that no records of the alleged transactions could be found with the Commission, the petitioners appear to have been negligent by failing to exercise their right to ask for the final approval of the sale and transfer. It was only in 1965 or after a lapse of six (6) years that they took the initiative to have their application for the approval of sale and transfer acted upon by the Commission. There could not be lack of due process where petitioners had every opportunity at the hearing to document their claims both in the Commission and before the Supreme Court. No copy of the alleged franchise of Cabudil and Reyes, which must have been secured

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[30] Tamayo v. Aquino, G.R. Nos. L-12634 & L-12720, May 29, 1959, 105. Phil. 949, 953 (1959).

[31] Viluan v. Court of Appeals, G.R. Nos. L-21477-81, April 29, 1966, 16 SCRA 742 (1966).

[32] G.R. No. L-26132, August 27, 1973, 52 SCRA 302 (1973).

prior to the purported sale on August 25, 1959 and which petitioner would have certainly kept as a valuable document, was ever presented. No explanation was made for the delay in seeking such approval.

Lack of due process was again raised in the case of *Dizon v. Public Service Commission.*[83] The issue raised was whether the finding of abandonment on the part of a public service operator was warranted even before petitioner had an opportunity to present evidence.

Private respondent Rodriguez applied for authority to appropriate the right to operate five (5) units the two certificates of public convenience in the names of Ganzon and petitioner Dizon. The certificates authorized the operation of a taxi-automobile service within Baguio City to any point in Luzon. The alleged reason for appropriation was that the ten units authorized under the certificates in question were not registered during the whole year of 1970 up to the time the application for authority to appropriate was filed and that therefore these should be considered abandoned. The case was heard and decided on the basis of the proof offered by respondent applicant Rodriguez. After the applicant had rested her case, Dizon, (herein petitioner) and Ganzon, oppositors and owners of the certificate of public convenience, filed a motion to dismiss on the ground that since they had already registered the units they were authorized to operate under the certificate, the application must be dismissed. However, the Public Service Commission decided in favor of the applicant on the basis of the record showing the opposition had, for a long period, defaulted in their duty to fulfill a public need, to the prejudice of the public. The petition to appropriate the franchise was filed precisely to fill the void which oppositors-pettioners had created.

The argument that there was no opportunity on the part of the oppositor (petitioner herein) to present her evidence could not stand. Her units were not yet registered at the time evidence of abandonment was adduced. It was incontrovertible that there was factual basis for the finding of abandonment. It was also clear that no additional evidence could even be offered by the oppositor to disprove the fact of abandonment or to remedy such an admitted failure to comply with her obligation. A hearing would have been fruitless. Thus, a case for denial of due process could not be made out.

The Court explained that the case does not in any way modify the basic requirements of due process established by precedents. The rules of pleading and practice which in general govern proceedings in court are not rigidly applied to proceedings of the Public Service Commission. However, a public utility should be duly and fully notified of the act or omission of which it is charged; further, that charge alone should be made the subject-matter of the investigation, and of the orders made in consequence thereof.

[83] G.R. No. L-34820, April 30, 1973, 50 SCRA 500 (1973).

It is not due process of law to investigate a particular subject in a given proceeding and then make an order which relates to an entirely different subject.[34] Proceedings in the Commission, "while not hampered by the trammels of technical procedure, should yet have the security incident to review in the Supreme Court", so that before finally promulgating an order, the Commission should order a hearing wherein the parties-in-interest may submit their proof if they desire.[35] An act of the Commission granting an application without allowing the parties affected the opportunity to intervene, oppose, or prove better rights against it is not only a deprivation of rights without due process but seems calculated to render ineffectual and nugatory the franchise granted and frustrate the will of the legislature, and amounts to a grave abuse of discretion on the part of the Commission, and an overstepping of the powers and jurisdiction conferred upon it by the law.[36] Although Act No. 3108, as amended, does not expressly provide for such notice and hearing, this can be inferred from its provisions for Section 15 requires such notice and hearing in order to make a holder of a certificate of public utility and convenience comply with his duties. If the law demands this condition for lesser things, it should be understood to demand it for greater ones (like cancellation of a franchise or certificate) for the requirement that a duty be complied with is less serious than the deprivation of a right.[37]

In the instant case the oppositor-petitioner should have been allowed to present evidence after denial of her motion to dismiss were it not for the crucial fact that the petitioner had *admitted* that prior to the filing of the respondent's application she failed to register her units. No introduction of evidence could have cured such a factual infirmity. Hearing would be a useless formality. The result would not be any different, since "what due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount, an allegation based solely on the lack of opportunity to be heard without notice does not *per se* merit unconditional approval."[38]

The Public Service Commission is the entity vested with the power to authorize the operation of public service and to issue certificates of public convenience. In the exercise of this power, the Commission must be guided by public necessity and convenience as the primary consideration in

[34] Justice Moreland in Yangco v. Board of Public Utility Commissioners, G.R. No. 11203, January 23, 1917, 36 Phil. 116, 124 (1917); Manila Electric Co. v. Public Service Commission, G.R. No. 44583, March 31, 1936, 63 Phil. 107 (1936).

[35] Philippine Manufacturing Co. v. Board of Public Utility Commissioners, G.R. No. 15744, October 20, 1919, 40 Phil. 285, 306 (1919).

[36] Calalang v. Intestate Estate of Tanjangco, G.R. No. L-16068, November 29, 1960, 110 Phil. 270 (1960).

[37] Bohol Land Transportation Co. v. Jureidini, G.R. No. 31244, September 23, 1929, 53 Phil. 560, 567 (1929); Vda. de Cruz v. Marcelo, G.R. Nos. L-15301-02, March 30, 1962, 4 SCRA 694 (1962).

[38] Caltex (Phil.), Inc. v. Castillo, G.R. No. L-24657, November 27, 1967, 21 SCRA 1071, 1079 (1967)

the granting or refusing of a certificate of public convenience.[39] In the absence of showing of manifest abuse of discretion and indication of arbitrariness in the exercise of its power, the discretion exercised by the Public Service Commission in determining whether the applicant or the opositor is to be granted the right to operate certain units because of abandonment is not to be interfered with by the Court.

BANKING

The scope of secrecy of bank deposits under Republic Act No. 1405 was delineated in the case of *China Banking Corporation v. Ortega.*[40] The problem was whether or not a banking institution may validly refuse to comply with a court process garnishing the bank deposit of a judgment debtor by invoking the provisions of Republic Act No. 1405. In deciding this issue, the Supreme Court examined the conference committee report on Senate Bill No. 351 and House Bill No. 3977, which later became Republic Act No. 1405.

The facts show that to satisfy the judgment in his favor, the plaintiff sought the garnishment of the bank deposit of the defendant, B & B Forest Development Corporation, with the China Banking Corporation. Accordingly, a notice of garnishment was issued by the trial court and served on the bank through its cashier by the Deputy Sheriff. The order required the cashier to inform the court whether or not defendant B & B Forest Development Corporation had a deposit in the China Banking Corporation only for purpose of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further orders from the court. In reply, the bank's cashier invited the attention of the Deputy Sheriff to the provisions of Republic Act No. 1405 which, it was alleged, prohibited the disclosure of any information relative to bank deposits. Thereupon the motion to cite the cashier for contempt of court was filed.

The pertinent provisions of Republic Act No. 1405 read:

> SEC. 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

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[39] *In re* Gregorio, G.R. No. L-550, January 30, 1947, 77 Phil. 906, 914 (1947) and cases cited therein.

[40] G.R. No. L-34964, January 31, 1973, 49 SCRA 355 (1973).

> SEC. 3. It shall be unlawful for any official or employee of a banking institution to disclose to any person other than those mentioned in Section two hereof any information concerning said deposits.

Violation of this law subjects the officer to certain penalties. The exceptions allowing disclosure appear to be exclusive and do not cover garnishment of bank deposits to satisfy a judgment debt. However, an examination of deliberations prior to the passage of the Act shows that it was not the intention of Congress to place bank deposits beyond the reach of the execution process to satisfy a final judgment. Thus, the court concluded, in such a case, if the existence of the deposit is disclosed, the disclosure is purely incidental to the execution process. "It is hard to conceive that it was ever within the intention of Congress to enable debtors to evade payment of their just debts, even if ordered by the Court, through the expedient of converting their assets into cash and depositing the same in a bank."

One will also note that the lower court did not order an examination of or inquiry into the deposit of B & B Forest Development Corporation, as contemplated in the law. The cashier was merely ordered to inform the court whether or not the corporation had a deposit in the bank so that the same could be held intact until further orders. Strictly speaking, therefore, this is not a case of disclosure, examination, or looking into the amount of deposit but only an inquiry into the existence of such a deposit account. The latter does not fall within the purview of Republic Act No. 1405.

INSURANCE

The issue of who is the real insurer-in-interest was raised in relation to a contract of reinsurance. By reinsurance the insurer procures a third person to insure him against loss or liability by reason of the original insurance.[41] The original insured has no interest in a contract of reinsurance.[42] It is a contract solely between the insurer and the reinsurer contemplating only an indemnity to the insurer against losses suffered by reason of the policies carried by him. It is presumed to be a contract of indemnity against liability, and not merely against damage.[43]

The above principles were reaffirmed in the case of *Artex Development Co., Inc. v. Wellington Insurance Co., Inc.*[44] It appeared that the defendant insurance company insured the buildings, stocks, and machinery of plaintiff-insured against loss or damage by fire or lightning. The property was damaged by fire and the defendant paid a partial amount, leaving an amount allegedly proportionate to the loss reinsured with Alexander and Alexander,

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[41] Act No. 2427 (1915), Sec. 88.
[42] Act No. 2427 (1915), Sec. 91.
[43] Act No. 2427 (1915), Sec. 90.
[44] G.R. No. L-29508, June 27, 1973. 51 SCRA 352 (1973).

Inc. of New York, U.S.A., which the defendant left the plaintiff to claim against the reinsurer, a foreign company.

The defendant insurance company argued that the plaintiff insured should have directed his claim against the reinsurers. On this sole issue of law raised by the defendant, the Supreme Court found that no single clause in the reinsurance contract had been cited that could justify a claim against the reinsurer. Nor did said contract contain a stipulation *pour atrui* in favor of the plaintiff-insured whereby the latter is deemed to have agreed to look solely to the reinsurers for indemnity in case of loss.

The Universal rule is that contracts "take effect only between the parties, their assigns and heirs, [the heir being] not liable beyond the value of the property he received from the decedent." The only exception relates to stipulations "*pour atrui*" or in favor of a third person not a party to the contract, as provided in Article 1311 of the Civil Code, to wit:

> "If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his accpetance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person".

The intent of the contracting parties to benefit a third party by means of a stipulation "*pour artui*" must be clearly expressed.[45] In this case, the insured not being a party or privy to the reinsurance contracts, he could not be deemed to have agreed to look solely to the reinsurers for indemnity in case of loss by the mere fact that the insurer had a ₱500,000 paid-up capital stock which was inadequate to cover the policy of ₱24 million. Assuming that the insured could avail itself of the reinsurance contract and directly sue the reinsurer for payment of the loss, such assumption would not in any way affect or cancel out the insurer's direct contractual liability to the insured under the policy to indemnify the latter for property losses. The right of the insured to sue the insurer directly and solely would not be affected or curtailed in any way, without prejudice to defendant-insurer's right in turn to file a third-party complaint or separate suit against its reinsurer.[46]

The insurance company which was then under liquidation, with the Insurance Commissioner appointed as receiver, was adjudged liable for the whole claim of the insured under the policy. This claim was to be satisfied in accordance with the rules of distribution of assets, priorities of payment of proven claims, etc., relative to companies under liquidation.

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[45] Uy Tam v. Leonard, G.R. No. 8312, March 29, 1915, 30 Phil. 471 (1915); Bonifacio Bros., Inc. v. Mora, G.R. No. L-20853, May 29, 1967, 20 SCRA 261 (1967).

[46] Naga Dev. Corp. v. Court of Appeals, G.R. No. L-28173, September 30, 1971, 41 SCRA 105 (1971).

BUSINESS ORGANIZATIONS

Partnerships

Partnership is one of the more common vehicles for doing business in the Philippines. As such, it is appropriate for study under the broader aspects of commercial law although it is governed mainly by provisions of the Civil Code.

Many problems in partnership arise from profit-sharing particularly where the enterprise has different types of participants, as in the case of *Evangelista & Co. v. Abad Santos.*[47] The suit arose when respondent Estrella Abad Santos was allegedly excluded from sharing in dividends to which she was entitled as an industrial partner. The defense denied the claimant's capacity as industrial partner. It was alleged that the participation of the claimant was merely in profits which might be realized only until the payment of the loan for which the claimant signed a promissory note as co-maker and mortgaged her own property as security.

The sole issue involved was whether Abad Santos was an industrial partner or merely a profit sharer of the net profit that may be realized by the partnership until the mortgage loan was fully paid.

The Supreme Court refused to disturb the findings of the Court of Appeals that respondent was an industrial partner. The Articles of Co-Partnership was not conclusive evidence of the relation but it was considered together with other factors. The following circumstances supported the findings of the Court. The genuineness and due execution of the Articles of Co-Partnership, which showed that respondent was an industrial partner, was admitted. For a period of eight years nothing was done to correct the alleged false agreement of the parties contained in the Articles. Although the law prohibits an industrial partner from engaging in business for himself in order to prevent any conflict of interest between the industrial partner and the partnership and to insure the full compliance by said partner with his prestation,[48] the right of exclusion of the industrial partner was exercised by the other partners only after nine years and after the filing of the suit on the ground that respondent had never contributed her industry to the partnership because she devoted her time to the performance of her duties as judge of the city courts of Manila, enjoying the privileges and emoluments pertaining to the office, which could hardly be considered a business.

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[47] G.R. No. L-31684, June 28, 1973, 51 SCRA 416 (1973).

[48] ART. 1789. An industrial partner cannot engage in business for himself, unless the partnership expressly permits him to do so; and if he should do so, the capitalist partners may either exclude him from the firm or avail themselves of the benefits which he may have obtained in violation of this provision, with a right to damages in either case.

Finding that the respondent was an industrial partner, the Court declared the respondent entitled to the rights under Article 1899 of the Civil Code, to wit:

> ART. 1809. Any partner shall have the right to a formal account as to partnership affairs:
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> 1) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners;
>
> 2) If the right exists under the terms of any agreement;
>
> 3) As provided by article 1807;
>
> 4) Whenever other circumstances render it just and reasonable.

Corporations

When a person acts for and in behalf of a juridical entity like a corporation, it is to the best interest of all parties concerned that the source and basis of the agent's authority be verified. It is a basic tenet of corporation law that authority to act as a representative of the corporation must be derived from the Board of Directors. The case of *Vicente v. Geraldez*[49] reiterates this principle.

The case started with private respondent Hi-Cement Corporation filing a complaint for injunction and damages against petitioner who allegedly prevented the company's workers from entering and exploring certain placer claims it owned and which were duly covered by lease contracts from the government. As the case progressed, counsels of the parties conferred among themselves on the possibility of terminating the case by compromise, the defendants having previously signified willingness to sell to the plaintiff their respective properties at reasonable prices. The compromise agreement was finalized and approved by the trial court. Pursuant to said agreement, the counsels of both parties submitted names of commissioners who would later make a report on the value of the property and recommend the purchase price of the property. The company's counsel made a commitment to abide by the decision of the court which was to be based on the reports of the commissioners. However, the President of the corporation noted in a letter that the Board of Directors could not waive its rights to appeal the valuation set by the Court and that since the compromise agreement was not approved by the Board of Directors, it was not binding on the company. This fact was stated in a manifestation filed by plaintiff's counsel and to which defendant objected on the ground that the plaintiff's counsel had been duly authorized and empowered to enter into a compromise agreement.

The lower court rendered a decision requiring the company to pay the fair and just compensation recommended by the commissioner pursuant to

[49] G.R. No. L-32473, July 31, 1973, 52 SCRA 210 (1973); Bernabe v. Hi-Cement Corp., G.R. No. L-32483, July 31, 1973, 52 SCRA 210 (1973).

the compromise agreement. When this judgment based on the compromise was to be executed, the company reiterated its objection based on lack of approval of said agreement by the Board of Directors, and lack of authority of counsel to bind the company. Finding that the company's lawyer and administrative officer who entered into the compromise had neither the special power of attorney required by Article 1878 of the Civil Code nor the special authority required by Section 23, Rule 138 of the Rules of Court, the lower court declared the judgment ineffective for lack of jurisdiction, because the same was based on a void compromise agreement.

The case went to the Supreme Court on *certiorari,* the issue being whether the lower court, in setting aside its decision and staying execution of said decision, acted without or in excess of its jurisdiction. The Supreme Court categorically ruled that a special power of attorney is necessary to compromise and to renounce the right to appeal from a judgment.[50] Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, in taking an appeal and in all matters of ordinary judicial procedure, but they cannot, without special authority, compromise their client's litigation or receive anything in discharge of their client's claim but the full amount in cash.[51]

In this case the compromise agreement was signed only by the lawyers of the company and the lawyers of defendant, herein petitioners. The lawyers of the corporation had not submitted to the court any written authority from their client to enter into a compromise. The Rules require a special authority for attorneys to compromise the litigation of their client. While it is not required that it be in writing, such authority must be duly established by evidence other than the self-serving assertion of counsel himself.[52] The law specifically requires that juridical persons may compromise only in the form and with the requisites which may be necessary to alienate their property.[53] Under the Corporation Law the

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[50] NEW CIVIL CODE:

ART. 1878. Special powers of attorney are necessary in the following Cases:

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(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;

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[51] RULES OF COURT, Rule 138:

SEC. 23. *Authority of attorneys to bind clients.* — Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

[52] Home Insurance Co. v. United States Lines Co., G.R. No. L-25593, November 15, 1967, 21 SCRA 863 (1967).

[53] NEW CIVIL CODE:

ART. 2033. Juridical persons may compromise only in the form and with the requisites which may be necessary to alienate their property.

power to compromise or settle claims in favor of or against the corporation is ordinarily and primarily committed to the Board of Directors. The right of the Directors "to compromise a disputed claim against the corporation rests upon their right to manage the affairs of the corporation according to their honest and informed judgment and discretion as to what is for the best interest of the corporation."[54] This power may however be delegated either expressly or impliedly to other corporate officials or agents. As a general rule, an officer or agent of the corporation has no power to compromise or settle a claim by or against the corporation, except to the extent that such power is given to him either expressly or by reasonable implication from the circumstances. It was therefore necessary to ascertain in this case whether from the facts it could be reasonably concluded that the Board of Directors of the corporation had authorized its lawyer to enter into the compromise in question.

The records did not show that the company lawyer represented that he was authorized to enter into a compromise. And even if he did so, such a self-serving assertion could not be the basis of the conclusion that the corporation had in fact authorized its lawyers to compromise the litigation. Neither could it be assumed that an administrative manager of the corporation had authority to bind the corporation or to compromise the case. Whatever authority the officers or agent of a corporation may have is derived from the Board of Directors unless it is conferred by the charter (Articles of Incorporation) of the corporation. A corporate officer's power as an agent of the corporation must therefore proceed from a statute, the charter, the by-laws, or a delegation of authority to such officer by the act of the Board of Directors formally expressed or implied from a habit or custom of doing business.[55] In the case at bar nothing existed that could warrant the inference that the administrative manager had authority to bind the corporation.

Likewise, in the absence of proof that the governing body of the corporation had knowledge, either actual or constructive, of the contents of the compromise agreement, even the appointment of the commissioner for and in behalf of the corporation could not be considered a ratification. In order to ratify the unauthorized act of an agent, and make it binding on the corporation, it must be shown that the governing body or officer with authority to ratify had full and complete knowledge of all the material facts connected with the transaction ratified. It cannot be assumed that an administrative officer has authority to ratify. Ratification can never be made "on the part of the corporation by the same persons who wrongfully assume the power to make the contract". Ratification must be by

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[54] 2 FLETCHER, CYCLOPEDIA ON CORPORATIONS, 572 (1969 Rev. Vol.).

[55] Board of Liquidators v. Kalaw, G.R. No. L-18805, August 14, 1967, 20 SCRA 987 (1967).

the officer or governing body having authority to make such contract and it must be done with full knowledge.

Nor could estoppel apply against the corporation for whatever false representation or concealment of material facts calculated to mislead the petitioners. In order that estoppel may apply, the act or conduct must be that for which the corporation, its governing body or authorized officers, are responsible and not that of the purported agent who is himself responsible for the misrepresentation.

ARRASTRE

Although an arrastre contract is not, strictly speaking, covered by maritime law, it is so related to commercial law as to warrant its inclusion in this survey, for it relates to the final transport and delivery of goods from the time of arrival and disembarcation at the port of entry.

The cases in past years touching on arrastre contracts invariably related to management contracts between the arrastre service operators and the Bureau of Customs. These being suits against the Republic, the issue of suability of the state necessarily came into play. In the absence of consent of the state to be sued, no recovery for loss or damage against the Bureau of Customs was allowed.

The case of *Virata v. Bocar*[66] decided in 1973, however, presented another picture. It involved the award of management contracts for the operation of the arrastre service at the different piers of the Manila Harbor for a specified period of time. In this case, it appeared that E. Razon, Inc. and the Bureau of Customs executed a Management Contract as early as May 1966. There were several provisions to this contract. In March 1971, the Bureau of Customs informed E. Razon, Inc. and Guacods, Inc. of a call for a new bidding for the operation of the arrastre service upon the expiration of the Revised Management Contract since E. Razon, Inc. had not made known its desire for extension of the contract. It seemed however, that E. Razon had knowledge of the invitation to bid even before March 9, 1971 and had prepared a petition for *certiorari,* prohibition, *mandamus* and injunction which was filed before respondent Judge Juan Bocar. A restraining order enjoining the Secretary of Finance and the Commissioner of Customs and members of the Bidding Committee from proceeding with the bid was issued by the lower court. The main ground for filing the petition with the CFI was that since E. Razon, Inc. had undertaken measures to form an efficient arrastre handling service and had invested about ₱3 million for the acquisition of equipment and machineries for said operation, an investment which it had not yet recovered, it was entitled as a matter of equity to an extension or renewal of the Revised Management Contract. The respondents went to the Supreme Court on *certiorari* and prohibition,

[66] G.R. Nos. L-33426 & L-35014, April 30, 1973, 50 SCRA 468 (1973).

with preliminary injunction. The preliminary injunction was modified by the Supreme Court, allowing petitioners Cesar Virata and the others to proceed with the public bidding for the operation of the arrastre service for all piers of the entire Manila South Harbor, without however making any final award until further orders from the Court. E. Razon, Inc. was allowed to participate in the public bidding.

The trial in the lower court proceeded and a partial decision was rendered maintaining the right of E. Razon, Inc. and directing the Secretary of Finance and Commissioner of Customs to renew the contract with E. Razon, Inc. for another five years under the same terms and conditions as provided in the Revised Management Contract. A public bidding was held and the findings and recommendations of the Arrastre Evaluation and Implementation Committee were approved by the Secretary of Finance. The Supreme Court found no fraud or arbitrariness in the assessment and evaluation which might vitiate the approval of the Secretary of Finance.

The Court ruled that the reservation of the right of the government to reject any bid, generally vests in the authorities a wide discretion in determining who is the best and most advantageous bidder. This involves inquiry, investigation, deliberation and decision, which are quasi-judicial functions and, when honestly exercised, may not be reviewed by the court. In such cases, there is no binding obligation to award the contract to any bidder. In the exercise of such discretion the award may be made validly to the best and most advantageous bidder. The Supreme Court, in the exercise of its superior power over inferior courts, has the authority to direct petitioners (government officials) to make the final award to the best and most advantageous bidder and implement the same to terminate, once and for all, cases involving the same subject matter, *viz.*, the integrated operation of the arrastre service of all piers, and thus administer swift justice. The final award to E. Razon, Inc. was thereby sustained.