Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FERRO CHEMICALS, INC., **G.R. No. 168134**
Petitioner,

- versus -

ANTONIO M. GARCIA,
ROLANDO NAVARRO,
JAIME Y. GONZALES and
CHEMICAL INDUSTRIES
OF THE PHILIPPINES, INC.,
Respondents.
x----------x

JAIME Y. GONZALES, **G.R. No. 168183**
Petitioner,

- versus -

HON. COURT OF APPEALS
and FERRO CHEMICALS, INC.,
Respondents.

x----------x

ANTONIO M. GARCIA,
Petitioner,

-versus -

FERRO CHEMICALS, INC.,
Respondent.

G.R. No. 168196

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

October 5, 2016

x ---------- x

DECISION

PEREZ, *J.:*

Before us are three consolidated Petitions for Review on *Certiorari* assailing the 3 March 2004 Decision[1] and the 17 May 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 69970, which affirmed with modification the 4 September 2000 Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 61. The RTC found Antonio M. Garcia, Jaime Y. Gonzales, Rolando Navarro and Chemical Industries of the Philippines, Inc. solidarily liable for the amount of ₱256,255,537.41, representing the value of the shares of stocks here in question. In its assailed Decision and Resolution, the CA absolved Rolando Navarro and Chemical Industries of the Philippines, Inc. from liability, reduced the amount of attorney's fees from ₱1,000,000.00 to ₱500,000.00, and deleted the additional 10% of the value of the shares to the amount of attorney's fees that was awarded. The dispositive portion of the CA Decision reads:

> "WHEREFORE, the appeal is hereby ***PARTIALLY GRANTED***. The appealed Decision, dated 04 September 2000, rendered by Hon. Judge Fernando V. Gorospe, Jr., of the Regional Trial Court of Makati, Branch 61, is ***MODIFIED***, in that:

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1 *Rollo* (G.R. No. 168134), pp. 52-70; penned by Associate Justice Perlita J. Tria-Tirona with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente, concurring.

2 Id. at 72-74.

3 RTC records, Vol. V, pp. 2153-2192; penned by Judge Fernando V. Gorospe, Jr.

1. **[CHEMICAL INDUSTRIES OF THE PHILIPPINES]** and **ROLANDO NAVARRO** are hereby **EXONERATED** from any liability in this case.

2. **ANTONIO M. GARCIA** and **JAIME GONZALES** are hereby **ORDERED**, jointly and severally, to pay **FERRO CHEMICALS, INC.**, the following:

   a.) ₱256,255,537.41, which is the value of the lost shares minus the balance of the purchase price;
   b.) ₱100,000.00, as exemplary damages.
   c.) ₱500,000.00 as attorney's fees; and
   d.) Costs of the suit.

3. The award of ₱12,000,000.00, which is the cost of suit and expenses of litigation in the case against the Consortium is hereby **DELETED** for lack of factual basis.

SO ORDERED."[4]

The Facts

Ferro Chemicals Incorporated (Ferro Chemicals), is a domestic corporation duly authorized by existing law to engage in business in the Philippines. It is represented in this action by its President, Ramon M. Garcia.

Chemical Industries of the Philippines Inc. (Chemical Industries), on the other hand, is also a domestic corporation duly organized and existing by virtue of Philippine laws. Antonio Garcia, one of the parties in the instant case, is the Chairman of the Board of Directors (BOD) of Chemical Industries and a brother of Ferro Chemical's President, Ramon Garcia. Rolando Navarro is the Corporate Secretary of Chemical Industries while Jaime Gonzales is a close financial advisor of Antonio Garcia.

The Deed of Absolute Sale and Purchase of Shares of Stock

On 15 July 1988, Antonio Garcia and Ferro Chemicals entered into a *Deed of Absolute Sale and Purchase of Shares of Stock*[5] over 1,717,678 shares of capital stock of Chemical Industries registered under the name of

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4 *Rollo* (G.R. No. 168134), pp. 68-69.
5 RTC records, Vol. IV, pp. 1426-1429.

Antonio Garcia for a consideration of ₱79,207,331.28 (subject shares). Included as subjects of the sale were Antonio Garcia's 371,697 shares of stocks in Vision Insurance Consultants, Inc., (VIC) and his proprietary membership in Alabang Country Club and Manila Polo Club. Under the sale agreement, Antonio Garcia warranted the following:

> (1) That the subject shares are free from the liens and encumbrances except the ones under the Security Bank and Trust Company (Security Bank) and the Insular Bank of Asia and America (Insular Bank);
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> (2) That the seller undertakes to defend the sale contract and defray the litigation cost should its validity be assailed, and, to reimburse Ferro Chemicals the amount of the purchase price
>
> (3) That in the event that the sale is invalidated, the seller will reimburse the buyer the amount of the purchase price.

The parties also stipulated in the agreement that Ferro Chemicals will deliver a part of the purchase price to Security Bank in satisfaction of Antonio Garcia's obligation as judgment obligor with Security Bank.

Pursuant to the sale contract, Ferro Chemicals remitted the amount of ₱35,462,869.92 to Security Bank and Trust Co. (SBTC) in the form of a check drawn against its account with Bank of America. On the ground that the amount tendered was insufficient to satisfy Antonio Garcia's obligation, the payment was not accepted by Security Bank, leaving the obligor with no recourse but to consign the check to the court which adjudicated his liability. *(Security Bank Case)* On 19 June 1990, the CA approved the consignation effected by Antonio Garcia and held that the amount tendered is sufficient to discharge his liability. In a Resolution dated 21 November 1990 the Court affirmed the final settlement of Antonio Garcia's liability with the bank. This settled the *Security Bank Case* with finality.

The Compromise Agreement

On 17 January 1989, Antonio Garcia entered into a *Compromise Agreement*[6] with Philippine Investments System Organization (PISO), Bank of the Philippine Islands (BPI), Philippine Commercial International Bank (PCIB), Rizal Commercial Banking Corporation (RCBC) and Land Bank of the Philippines (LBP) (collectively known as Consortium Banks). The settlement was entered in connection with the Surety Agreements previously contracted by Antonio Garcia and Dynetics Corporation with the Consortium Banks.

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6 RTC records, Vol. III, pp. 996-999.

The First Consortium Case

The 17 January 1989 *Compromise Agreement* sprang from *Civil Case No. 8527,* filed by Antonio Garcia and Dynetics, Inc. before the RTC of Makati City, seeking to enjoin the Consortium Banks from collecting the amount of ₱117,800,000.00, excluding interests, penalties and attorney's fees, purportedly representing their liability under surety contracts.

The RTC, upon application therefor by the Consortium Banks, issued a *Notice of Garnishment*[7] dated 19 July 1985 over the 1,717,678 shares of stocks of Antonio Garcia in Chemical Industries to secure any contingent claims that may be awarded in favor of the banks. On the ground that only absolute transfers of shares are required to be on the corporation's stock and transfer books, the Corporate Secretary did not annotate the banks' claims on Chemical Industries' books.

Subsequently, the RTC issued Orders dated 25 March 1988 and 20 May 1988 dismissing *Civil Case No. 8527.* In effect, the causes of action of the plaintiffs and the counterclaims of the defendants were all denied. Insisting on their right to enforce the surety contracts, the Consortium Banks assailed the dismissal of *Civil Case No. 8527* before the appellate court. During the pendency of the appeal docketed as *CA-G.R. No. 20467*, the parties agreed to amicably settle the case, and thus, the creditors accepted the offer of the debtors to immediately pay the obligation in exchange for the waiver of interests, penalties and attorney's fees. The compromise agreement, which required Antonio Garcia and Dynetics to pay the Consortium Banks the amount of ₱145,000,000.00, was consequently approved by the CA in a Judgment dated 22 May 1989.

The Deed of Right to Repurchase

After the parties in the *First Consortium Case* forged a Compromise Agreement, Antonio Garcia and Ferro Chemicals entered into a *Deed of Right to Repurchase*[8] dated 3 March 1989. Under the repurchase contract, Ferro Chemicals stipulated to sell back the subject shares to Antonio Garcia within 180 days from its execution or until 30 August 1989 subject to the foregoing terms:

> (1) That the consideration for the repurchase shall either be equivalent to the amount actually paid by the buyer for the sale or the sum of ₱79,207,331.28, whichever is lesser, plus interest charges, bank

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7 RTC records, Vol. III, p.1061.

8 Id. at 1086-1089.

charges, broker's commission, transfer taxes and documentary stamp tax;

(2) Should the tender of the repurchase price be effected 90 days after 3 March 1989, the seller, shall, in addition to the payment of the above stated amount, shall pay a surcharge equivalent to 5% over and above the actual cost of the buyer in holding the shares.

Desirous to reacquire the ownership of the subject shares, Antonio Garcia, on 12 July 1989, notified Ferro Chemicals of his intention to exercise his right under the repurchase deed. On 31 July 1989, Antonio Garcia reiterated his intent to reacquire the subject shares by sending another notice to Ferro Chemicals and tendering the amount of the agreed repurchase price. On the ground that the taxes and the interests due were not included in the consideration for repurchase price tendered by Antonio Garcia, Ferro Chemicals refused to sell back the shares to him. Instead, Ferro Chemicals opted to cede its rights over the subject shares to Chemphil Export and Import Corporation *(Chemphil Export)* by virtue of an *Agreement*[9] dated 26 June 1989.

First and Second Repurchase Cases

The assignment effected by Ferro Chemicals to a third party did not deter Antonio Garcia's efforts to recover the subject shares. On 21 August 1989, he initiated an action for Specific Performance before the RTC of Makati City. The case, which was raffled to Branch 145 and docketed as *Civil Case No. 89-4837,* sought for the enforcement of the seller's right under the repurchase agreement and prayed that the buyer be ordered to reconvey the subject shares to him. Finding that the issues raised involved an intra-corporate dispute cognizable by the Securities and Exchange Commission (SEC), the RTC dismissed *Civil Case No. 89-4837.*

Undeterred, Antonio Garcia filed a *Second Repurchase Case* before the SEC which was docketed as SEC Case No. 04303. In his Complaint, the seller cited the unjustified refusal of the buyer to comply with the terms of the agreement and reiterated his prayer in the *First Repurchase Case* that the buyer be enjoined to observe its obligation under the repurchase agreement.

Enforcement of the First Consortium Case

With Antonio Garcia and Dynetics' failure to comply with the compromise agreement, the Consortium Banks, on 18 July 1989, filed a

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9 RTC records, Vol. III, pp. 1050-1052.

Motion for Execution.[10] Thus, the RTC, issued a Writ of Execution[11] on 11 August 1989, to enforce the court-approved compromise against Antonio Garcia and Dynetics.

Pursuant to the writ of execution, the sheriff levied the 1,717,678 shares of capital stocks in Chemical Industries that were previously attached on the strength of the 19 July 1985 RTC Order[12] in the *First Consortium Case.* After the notice and the publication requirements were complied with, a public auction was conducted whereby the Consortium Banks were declared as the highest bidders as shown in the Certificate of Sale.[13]

The RTC, upon application of the Consortium Banks, issued an Order[14] dated 4 September 1989, directing the Corporate Secretary of Chemical Industries to enter the sheriff's certificate of sale in the company's stock and transfer books. In effect, the corporate secretary was enjoined to cancel the certificates of shares of stocks under the name of Antonio Garcia and all those claiming rights under him and issue new ones in favor of the Consortium Banks.

The Second Consortium Case

Before the corporate secretary could carry out the foregoing directive, Chemphil Export filed an Urgent Motion[15] opposing the 4 September 1989 RTC Order. Tracing back its ownership to Ferro Chemicals, which in turn, came into ownership of the disputed shares as early as 15 July 1988, the intervenor propounded that it has superior right as against the Consortium Banks.

On 27 September 1989, the RTC issued an Order,[16] allowing the intervention. On the belief that there is a necessity of resolving first the question of which between Chemphil Export on the one hand, and the Consortium Banks on the other, is rightfully entitled to the ownership of the disputed shares, the RTC recalled its 4 September 1989 Order. For Chemphil Export, the garnishment effected by the Sheriff on 19 July 1985 is not binding on third persons because it was not recorded on the stock and transfer book of the corporation.

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10 RTC records, Vol. IV, pp. 1452-1455.
11 Id. at 1457.
12 RTC records, Vol. III, p. 1061.
13 Id. at 1084-1085
14 Id. at 1075.
15 Id. at 1076-1082.
16 RTC records, Vol. IV, pp. 1468-1474.

The *Second Consortium Case* was litigated all the way up to this Court in *G.R. Nos. 112438-39 and 113394.* In a Decision dated 12 December 1995, the Court ruled in favor of the Consortium Banks and declared that the attachment lien they previously acquired is valid and effective even though it was not annotated in the corporation's stock and transfer books. The chief purpose of the remedy of attachment is to secure a contingent lien on the defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction.[17] For this reason, the Court adjudged the Consortium Banks as the rightful owners of the disputed shares. This decision settled with finality the *Second Consortium Case.*[18]

The Ferro Chemicals Case

After losing the disputed shares to the Consortium Banks, Chemphil Export proceeded to demand from Ferro Chemicals the value of the lost shares in the amount of ₱100,000,000.00. In payment thereof, Ferro Chemicals ceded its rights over its chrome plant in Misamis Oriental in favor of the former.[19]

In the interregnum, Consortium Banks also assigned their rights over the disputed shares to Jaime Gonzales by executing a *Deed of Assignment of Credit Without Recourse*[20] on 7 July 1993.

On the belief that it is aggrieved by the turn of events, Ferro Chemicals initiated several civil and criminal cases against Chemical Industries, Antonio Garcia, Rolando Navarro, Jaime Gonzales and a certain Atty. Virgilio Gesmundo before different courts and judicial bodies.

On 3 December 1996, Ferro Chemicals filed an action for damages before the RTC of Makati, seeking for the recovery of the amount of the shares that was lost by Chemphil Export to the Consortium Banks in the *Second Consortium Case.*

In its Complaint[21] docketed as *Civil Case No. 96-1964*, Ferro Chemicals claimed that defendants conspired and abetted to fraudulently induce the buyer to purchase Antonio Garcia's shares by falsely warranting that these shares are free from liens and encumbrances. These

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17 *Chemphil Export and Import Corp. v. Court of Appeals, et al.*, 321 Phil. 619 (1995)
18 RTC records, Vol. IV, p. 1446.
19 RTC records, Vol. III, pp. 1054-1056.
20 RTC records, Vol. IV, pp. 1475-1480.
21 RTC records, Vol. I, pp. 1-10.

representations were made despite their knowledge that the subject shares were previously garnished by Consortium Banks. Relying on defendants' warranty, Ferro Chemicals parted with the amount of ₱35,462,868.69 as payment for those shares only to lose the said shares to prior lienholders after a protracted legal battle which reached all the way up to this Court. It was alleged that the fraudulent scheme was perpetuated by Antonio Garcia, together with his co-defendants, Jaime Gonzales and Rolando Navarro, who conspired with him in enticing Ferro Chemicals to purchase the subject shares.

In refuting liability, defendants Chemical Industries and Antonio Garcia averred that there is no truth to the claim of Ferro Chemicals that it was not made aware of the prior attachment of the Consortium Banks. They insisted that, all the outstanding claims against the subject shares, were fully disclosed to Ferro Chemicals' President, Ramon Garcia, during the negotiation of the sale which took almost a year before the parties finally decided to sign the transfer deed. While the subject lien was not mentioned in the purchase agreement, Ramon Garcia, however, was wholly apprised of the status of the encumbrance who went to the extent of inserting the *"reimbursement clause"* and *"the obligation to defend the sale clause"* in the agreement in order to protect Ferro Chemicals' rights in the event that prior lienholders will exercise their right over the subject properties. The reason why the said lien was not expressly stated, defendants argued, was because at the time the contract was perfected, the *First Consortium Case* was ordered dismissed by the RTC.[22]

To expose the frailty of the case, defendants Chemical Industries and Antonio Garcia punctuated Ferro Chemical's unjustified refusal to sell back the shares to Antonio Garcia and the latter's unrelenting efforts to reacquire the shares at the price stipulated in the *Deed of Right to Repurchase*. It was postulated that had it been the intention of the defendants to deprive plaintiff of the subject shares, an offer to repurchase made in good faith, coupled with the tender of the agreed consideration, would not have been made.[23]

By its obstinate refusal to divest its ownership over the shares, it was argued that plaintiff obviously chose to profit from the shares even at the risk of losing it to third persons. After it was finally divested of its right to receive dividends, defendants pointed out, Ferro Chemicals turned to Antonio Garcia for the value of the lost shares trumpeting all sorts of specious claims against him and other defendants.[24]

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22 RTC records, Vol. II, pp. 761-786.
23 Id.
24 Id.

For his part, defendant Jaime Gonzales claimed that he is not a party to the agreement which was merely between the brothers Ramon Garcia and Antonio Garcia and their respective corporations, Ferro Chemicals and Chemical Industries.[25] Contrary to the claim of Ferro Chemicals, Jaime Gonzales maintained that Ramon Garcia was well aware of the levy of Consortium Banks against the shares of Antonio Garcia as this issue was fully discussed to him in the presence of Jaime Gonzales during the negotiation of the agreement. He invited the attention of the trial court to the peculiar provisions in the transfer deed which stipulates *"the seller undertook to defend the validity of the sale and defray the cost of litigation and reimburse the buyer of the payments made should the sale be invalidated"* that were inserted for the precise reason that the parties wanted to protect the interest of Ferro Chemicals from the claims of the Consortium Banks. In any case, Jaime Gonzales claimed that there is no proof that he conspired with his co-defendants to carry out the sinister design alleged by the plaintiff.[26]

Defendant Rolando Navarro also denied liability by pointing out that he was neither a party nor a privy to the contract in question and his participation in the transaction was limited to his signing of the deed as an instrumental witness thereof. It was Atty. Virgilio Gesmundo who was consulted by Antonio Garcia during the negotiation of the agreement and was the one who also prepared the draft of the contract in accordance with the terms agreed upon by parties. Not being a party nor a privy, Rolando Navarro posited that he was not in a position to make any representation or warranty with respect to the subject shares.

After the Pre-Trial Conference, trial on the merits ensued. During the trial, parties adduced their respective testimonial and documentary evidence to support their case.

The RTC Decision

On 4 September 2000, the RTC rendered a Decision[27] in favor of Ferro Chemicals and found Chemical Industries, Antonio Garcia, Jaime Gonzales and Rolando Navarro solidarily liable for the total amount of ₱269,355,537.41, representing the value of the lost shares, costs of litigation, attorney's fees and exemplary damages.

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25 RTC records, Vol. I, pp. 155-162, 462-470.
26 Id.
27 RTC records, Vol. V, pp. 2153-2192.

In finding Antonio Garcia liable, the RTC harbored the belief that no reasonable businessman would assume the risk of buying the shares for ₱79,207,331.28 and then end up answering liabilities to its prior lienholders in the amount of ₱145,000,000.00. To find flawed Antonio Garcia's defense, the court *a quo* went on to declare that it would be an unwise business decision for Ferro Chemicals to purchase shares of stocks that were already attached to answer for contingent claims, *viz*:

> "Verily, Antonio Garcia has more reason not to disclose the lien/claim of the consortium since the consummation of the sale is more to his benefit. Ramon Garcia's testimony that Antonio Garcia's [Chemical Industries] shares which have been garnished by [Security Bank] have been the subject of attempts by the latter to sell the same at public auction which will result in its disposal at a much lower price as is always the case in such sales, and acquisition thereof by the bank itself, an adverse party is undisputed. xxx.
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> xxxx
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> In fine, Antonio Garcia entered into an agreement with [Ferro Chemicals] for the sale and purchase of his [Chemical Industries] shares, among others, covered by Deed of Absolute Sale and Purchase of Shares of Stock. He falsely represented and warranted that the same is free from all liens and encumbrances except that of [Security Bank] and [Insular Bank], despite his knowledge of the lien of the consortium. He, therefore, concealed [the] said lien from [Ferro Chemicals]. The [Chemical Industries] shares were subsequently lost when said shares were executed and sold at public auction to satisfy Antonio Garcia's liability with the consortium, the ownership of the latter having been declared by the Supreme Court."[28]

After having found that Antonio Garcia violated the terms of the purchase agreement by falsely representing to Ferro Chemicals that the subject shares were free from liens and encumbrances other than the ones mentioned in the agreement, the trial court found him liable under Article 1170 of the New Civil Code which states that "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."

With respect to acts imputed against Jaime Gonzales and Rolando Navarro, the RTC found that their conduct prior to, during and subsequent to the execution of the contract reflected a common design to aide Antonio Garcia to evade his contractual obligations with Ferro Chemicals. In effect, the lower court found Jaime Gonzales and Rolando Navarro liable for tortious interference for having perpetrated acts which are akin to the scenario wherein third persons induce a party to renege on or violate his

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[28] RTC records, Vol. V, pp. 2187 & 2189.

undertaking under the contract warranting relief therefrom. The RTC decreed that these acts of Jaime Gonzales and Rolando Navarro are indicative of their scheme to aide Antonio Garcia unjustly deprive Ferro Chemicals of its purchased shares, to wit:

> "Defendant Navarro is now estopped from disclaiming his active participation in the transaction involving the sale of Antonio Garcia's shares to [Ferro Chemicals]. The Court believes that he showed the stock and transfer book of [Chemical Industries] to Ramon Garcia confident that the garnishment of the corporation will not be revealed because as corporate secretary who had the duty to annotate the garnishment he did not respond to the call obviously because he was protecting the interest of Antonio Garcia whom he had been assisting regarding the former's shares and/or disposition thereof. Worse, defendant Navarro even cancelled the certificate of shares in the name of Antonio Garcia and issued new ones to [Ferro Chemicals]. This was followed by the issuance of new certificates of shares to [Chemphil Export]. What cannot be explained is the fact that he continuously did not record the consortium's garnishment despite being aware that the interests of Antonio Garcia over his [Chemical Industries] shares was already being transferred to third parties, whose interests are definitely affected.
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> Likewise, defendant Gonzales is also estopped from denying his participation in the transaction involving the sale of Antonio Garcia's [Chemical Industries] shares to [Ferro Chemicals] after previously admitting unconditionally his participation in his Affidavit of 30 May 1990. His subsequent qualification of such participation is unavailing. In fact, defendant Gonzales' interest being intertwined with that of Antonio Garcia personally, in business and in matters regarding the subject [Chemical Industries] shares of the latter is an understatement -- he is a financial officer and [a] business associate of Antonio Garcia; he was also [an] attorney-in-fact of Antonio Garcia in negotiating and entering into a compromise agreement with the consortium; and the subject [Chemical Industries] shares of Antonio Garcia were ultimately assigned ['] to his name['] by the said consortium."[29]

As to defendant Chemical Industries, the RTC made the corporation accountable for the acts of its Corporate Secretary, Rolando Navarro, which were carried out to the damage and prejudice of Ferro Chemicals.

Having laid the individual participation of each defendant to defraud the plaintiff, the RTC then found them jointly and severally liable for the purchase price of the subject shares, cost of litigation, attorney's fees and exemplary damages, *viz*:

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29 Id. at 2188-2189.

"WHEREFORE, premises above considered, and [Ferro Chemicals] having duly established its claim, judgement is hereby rendered in favor of [Ferro Chemicals] and as against [Chemical Industries, Antonio Garcia, Jaime Gonzales and Rolando Navarro], who are hereby ordered to pay [Ferro Chemicals], jointly and severally, as follows:

(1) ₱256,255,537.41, which is the value of the lost shares minus the balance of the purchase price;
(2) ₱12,000,000.00, which is the cost of suit and expenses of litigation in the case against the consortium and the instant case;
(3) ₱100,000.00 as exemplary damages[;]
(4) ₱1,000,000.00 plus additional 10% of the value of the shares as attorney's fees.

SO ORDERED."[30]

The Court of Appeals Decision

On 3 March 2004, the CA rendered a Decision affirming with modification the RTC Decision. Finding no sufficient evidence on record that Rolando Navarro actively participated in the fraud perpetrated by Antonio Garcia against Ferro Chemicals, the CA discharged him from liability. Underlying the ruling was the finding that Rolando Navarro's participation was limited to his failure to disclose the existence of lien in favor of Consortium Banks without any showing that he subsequently "abetted, actively participated or connived" with Antonio Garcia in breaching the latter's obligation under the agreement. Being a corporation with a personality separate and distinct from its officers and members, the CA held that Chemical Industries could not be held liable for the acts of the latter. Finally, the CA struck down the grant of "attorney's fees in the sum of ₱1,000,000.00 plus 10% of the value of the shares" for being reasonable and excessive and deleted the grant for reimbursement of litigation expenses for lack of proof.

In a Resolution dated 17 May 2005, the CA denied the Motions for Partial Reconsideration separately filed by Ferro Chemicals, Antonio Garcia and Jaime Gonzales for lack of merit.

The Petitions Before This Court

From the foregoing CA Decision and Resolution arose three separate Petitions for Review on *Certiorari*: (1) *G.R. No. 168134*, Ferro Chemicals,

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30 Id. at 2192.

Inc., v. Antonio M. Garcia, Rolando P. Navarro, Jaime Y. Gonzales and Chemical Industries of the Philippines, Inc.; (2) *G.R. No. 168183,* Jaime Y. Gonzales v. Hon. Court of Appeals and Ferro Chemicals, Inc.; and (3) *G.R. No. 168196*, Antonio M. Garcia v. Ferro Chemicals, Inc. For identity of the parties and similarity of the issues involved, the Court directed the consolidation of *G.R. Nos. 168196, 168134* and *168183.*

G.R. No. 168134

This is a petition filed by Ferro Chemicals assailing the CA ruling which discharged Rolando Navarro and Chemical Industries from liability. Ferro Chemicals likewise questioned in this petition the deletion of the reimbursement for the litigation costs expended by Chemphil Export in the Second Consortium Case in the amount of ₱12,000,000.00, and, the attorney's fees in the sum of ₱1,000,000.00 with the additional 10% of the value of the shares which were previously awarded by the RTC.

G.R. No. 168183

In *G.R. No. 168183,* Jaime Gonzales controverts the CA's finding which adjudged him liable for tortious interference under Article 1314 of the New Civil Code on account of participation in the negotiation of sale of the shares and his eventual acquisition of the same shares from the Consortium Banks.

G.R. No. 168196

For his part, Antonio Garcia initiated *G.R. No. 168196* seeking the nullity of the CA Decision and Resolution finding him guilty of fraud in the performance of his obligations and in failing to comply with his obligation to defend the sale. He questions the failure of the CA to deduct the dividends earned by the subject shares in its computation of the value of the shares lost including the value of Alabang Country Club, Inc. and Manila Polo Club, Inc. shares which were both transferred by Antonio Garcia to Ferro Chemicals thereby allowing Ferro Chemicals to unjustly enrich itself at his expense.

The Issues

I.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN EXONERATING RESPONDENT ROLANDO

NAVARRO FROM LIABILITY DESPITE HIS PARTICIPATION IN THE SINISTER PLAN TO DECEIVE [FERRO CHEMICALS]. HIS FAILURE TO COMPLY WITH HIS DUTIES AS CORPORATE SECRETARY AND INTERFERING AND OBSTRUCTING THE FAITHFUL FULFILLMENT OF [ANTONIO GARCIA'S] OBLIGATION UNDER THE CONTRACT BETWEEN [FERRO CHEMICALS] AND [ANTONIO GARCIA];

II.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN EXONERATING [CHEMICAL INDUSTRIES] FROM LIABILITY DESPITE THE TORTIOUS ACTS OF ITS RESPONSIBLE OFFICERS;

III.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN RULING THAT THERE IS NO EVIDENCE THAT [FERRO CHEMICALS] ASSUMED THE EXPENSES OF LITIGATION IN A CASE AGAINST THE CONSORTIUM BANKS IN THE AMOUNT OF ₱12,000,000.00;

IV.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN DISREGARDING THE UNCONTROVERTED EVIDENCE AND LEGAL JUSTIFICATION FOR THE AWARD OF ₱1,000,000.00 PLUS THE ADDITIONAL 10% OF THE VALUE OF THE SHARES AS ATTORNEY'S FEES IN FAVOR OF THE PETITIONERS.

V.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN FINDING JAIME GONZALES LIABLE FOR TORTIOUS INTERFERENCE FOR HIS PARTICIPATION IN THE NEGOTIATION OF THE PURCHASE AGREEMENT AND IN EVENTUALLY ACQUIRING THE SUBJECT SHARES FROM THE CONSORTIUM BANKS;

VI.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN FINDING ANTONIO GARCIA GUILTY OF FRAUD IN THE PERFORMANCE OF HIS OBLIGATION UNDER THE PURCHASE AGREEMENT IN FAILING TO COMPLY WITH HIS OBLIGATION TO DEFEND THE SALE UNDER THE SAID CONTRACT;

VII.

THE HONORABLE COURT OF APPEALS GRAVELY AND PALPABLY ERRED IN FAILING TO DEDUCT THE DIVIDENDS EARNED BY THE SUBJECT SHARES INCLUDING THE VALUE OF THE ALABANG GOLF CLUB AND MANILA POLO CLUB SHARES

IN ITS COMPUTATION OF THE VALUE OF FERRO CHEMICAL'S LOSS.

The Court's Ruling

On the liability of Antonio Garcia for fraud and breach of obligation

Resonating the RTC, the CA arrived at the conclusion that Antonio Garcia is guilty of fraud in the performance of his obligation, but the CA made its independent judgment pinning Antonio Garcia on the basis of the following assumptions:

1. That Ferro Chemicals would not have entered into the sale had it known that the subject shares were subject of the Consortium Banks' lien as to do so would be tantamount to *"committing financial suicide;"*

2. That if it were true that Ferro Chemicals was apprised of the pendency of the claims in question, that fact would have been embodied in the provisions of the contract. Under the Best Evidence Rule, defendants cannot be permitted to present evidence *aliunde;*

3. That defendants cannot impute negligence to Ramon Garcia for failing to uncover the subject attachment prior to the execution of the sale as it is the obligation of Antonio Garcia to fully disclose in good faith all existing claims against the disputed shares.

The CA endeavored to tie all the loose ends by declaring that Antonio Garcia's liability was hinged primarily not on his misrepresentations with respect to the sale contract, but on alleged fraudulent acts he perpetrated in connection with the *First Consortium Case.* For the CA, his acts subsequent to the consummation of the sale were not at arm's length and jeopardized the position of Ferro Chemicals in relation to Chemical Industries' shares. All these circumstances, taken together, led the CA to its conclusion that Antonio Garcia breached his obligation under the circumstances, to wit:

1. By recognizing his liability with the banks in the *Compromise Agreement,* Antonio Garcia placed the subject shares within the reach of his obligors knowing that these shares were previously attached to answer his obligation with them;

2. By failing to move for the lifting of the attachment effected by the Consortium Banks over the subject shares and to offer his other

properties as substitutes after he sold these shares to Ferro Chemicals;

3. By allowing the execution on sale to proceed without opposition on his part and by refusing to reimburse Ferro Chemicals of the amount of litigation expenses it incurred in its effort to defend its ownership of the subject shares;

The appellate court, in other words, saw that Antonio Garcia, all throughout the *First Consortium Case,* maintained a lackadaisical stance which paved the way for the Consortium Banks' enforcement of garnishment and the consequent sale of the attached shares at the public auction to the damage and prejudice of Ferro Chemicals.

We are not convinced.

The CA's lament, in every turn, that Antonio Garcia was guilty of bad faith from the inception of the sale contract until his compromise with the Consortium Banks is inexorably rebuked by the following chronology of factual incidents that governs the relationship of Antonio Garcia and Ferro Chemicals:

(1) On 15 July 1988, Antonio Garcia and Ferro Chemicals entered into a *Deed of Absolute Sale and Purchase of Shares of Stock;*[31]

(2) On 17 January 1989, Antonio Garcia and Consortium Banks entered into a *Compromise Agreement*[32] with respect to the *First Consortium Case;*

(3) On 3 March 1989, Antonio Garcia and Ferro Chemicals entered into a *Deed of Right to Repurchase;*[33]

(4) On 12 July 1989, Antonio Garcia notified Ferro Chemicals of his intention to exercise his right to buy back the sold shares under the repurchase deed;

(5) On 31 July 1989, Antonio Garcia reiterated his intent to reacquire the subject shares by sending another notice to Ferro Chemicals coupled with the tender of the amount of the agreed repurchase price;

(6) On 11 August 1989, the RTC of Makati, Branch 145, issued a *Writ of Execution*[34] to enforce the Judgment by Compromise in the First Consortium Case;

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31 RTC records, Vol. IV, pp. 1426-1429.
32 Supra note 6.
33 Supra note 8.
34 Supra note 11.

(7) On 22 August 1989, the Consortium Banks were declared as the highest bidders of the levied shares at the public auction;[35]

(8) On 26 September 1989, Ferro Chemicals (thru Chemphil Export) successor-in-interest, opposed the consolidation of ownership of the subject shares in the names of the Consortium Banks;[36]

(9) From 26 September 1989 up to 12 December 1995, the *Second Consortium Case* was under litigation;

(10) On 1 April 1996, Ferro Chemicals lost the *Second Consortium Case* with finality;[37]

(11) On 3 December 1996, Ferro Chemicals initiated the *Ferro Chemicals Case* for the payment of damages based on fraud.[38] (Emphasis supplied)

While the factual milieu of this case is seemingly mazy because of the number of cases and legal issues that stemmed from a simple transfer of shares contract, there are two clearly crucial evidentiary matters that were without warrant overlooked by the lower tribunals: (1) the execution by Ferro Chemicals and Antonio Garcia of the ***Deed of Right to Repurchase*** on 3 March 1989; and (2) that on two separate occasions, **Antonio Garcia conveyed in writing his intent to buy back the shares** in accordance with the terms of the repurchase deed. These pieces of evidence, if appreciated in light of the allegation of fraud, would overthrow the very foundation upon which the *Ferro Chemicals* rested its case.

Notably, Antonio Garcia's right to repurchase the subject shares, his attempts to exercise that right and Ferro Chemicals' refusal to honor it, as well as the legal actions taken by Antonio Garcia against Ferro Chemicals, were duly pleaded as affirmative allegations in Antonio Garcia's Answer,[39] in *Civil Case No. 96-1964* to wit:

"3.7 On 3 March 1989, [Antonio Garcia] and [Ferro Chemicals] entered into a Deed of Right to Repurchase (the "Repurchase Deed", hereafter) covering the shares subject matter of the Deed of Sale, including the CIP Shares, confirming earlier verbal agreement between the brothers, Ramon M. Garcia and [Antonio Garcia], that the latter could repurchase the said shares from [Ferro Chemicals]. Under the Repurchase Deed, defendant Garcia had until 30 August 1989 to exercise his right to repurchase the shares.

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35 Supra note 13.
36 RTC records, Vol. III, pp. 1076-1082.
37 RTC records, Vol. IV, p. 1446.
38 RTC records, Vol. I, pp. 1-10; Complaint.
39 *Rollo* (G.R. No. 168134), pp. 100-125.

> 3.7.1 On July 1989, or long before the expiration of his right to repurchase the shares, Antonio Garcia informed [Ferro Chemicals] that it was going to exercise said right. This notice was reiterated on 31 July 1989 with a tender of the repurchase price as stipulated in the Repurchase Deed;
>
> 3.7.2 [Ferro Chemicals] refused to honor [Antonio Garcia's] right under the Repurchase Deed alleging that the amount tendered was insufficient in that interest for one day and the broker's commission were not included in said amount. [Antonio Garcia] offered to pay the interest for one day but refused to pay the broker's commission because the sale of the shares was not coursed through the stock exchange. [Ferro Chemicals] still refused to honor [Antonio Garcia's] right under the Repurchase Agreement. Worse, [Ferro Chemicals] assigned its rights over the [Chemical Industries] Shares to [Chemphil Export] supposedly on 26 June 1989;
>
> 3.7.3 Accordingly, on 21 August 1989, Antonio Garcia filed a complaint for specific performance and annulment of transfer of shares against [Ferro Chemicals] and [Chemphil Export] entitled ['']Antonio M. Garcia v. Ferro Chemicals, Inc., et al.,['] docketed as Civil Case No. 89-4837, with the Regional Trial Court of Makati, which was raffled to Branch 145 (the "First Repurchase Case", hereafter). [Antonio Garcia] sought, among other reliefs, the reconveyance of the shares, including the [Chemical Industries] Shares from [Ferro Chemicals] and [Chemphil Export]. This case was, however, ordered dismissed by the Court of Appeals based on its finding that the Repurchase Case involved an intra-corporate dispute over which the Securities and Exchange Commission ("SEC") has exclusive jurisdiction;
>
> 3.7.4 Pursuant to the Court of Appeals decision, [Antonio Garcia], on 26 August 1992, filed with the SEC a complaint for specific performance and/or rescission, with damages against Ramon M. Garcia, [Chemphil Export] and [Ferro Chemicals]', docketed as SEC Case No. 04303 (the "Second Repurchase Case", hereafter). In the Second Repurchase Case, [Antonio Garcia] again sought, among other relief, the reconveyance of the [Chemical Industries] shares. As in the First Reconveyance Case, Ramon M. Garcia, [Chemphil Export] and [Ferro Chemicals] again vigorously opposed [Antonio Garcia's] action to recover the shares subject matter of the Deed of Sale, including the [Chemical Industries] Shares. The Second Repurchase Case is still pending with the SEC."[40]

Antonio Garcia attached a copy of the Deed of Right to Repurchase as Annex 1 of his Answer and argued, as one of his affirmative defenses, that Ferro Chemicals does not have a cause of action against him because:

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40 Id. at 111-113.

> "4.1.3 Despite its full knowledge of the Bank Consortium's claim on the [Chemical Industries] shares, Ferro Chemicals refused and opposed all offers and efforts of Antonio Garcia to repurchase the [Chemical Industries] shares."[41]

Harping on the infallibility of the lower tribunals' factual findings, Ferro Chemicals impresses upon this Court that Antonio Garcia, driven by the desire to profit from the disposal of his shares and to satisfy his obligations with his creditors at the same time, employed deceptive schemes to lure Ramon Garcia to purchase the subject shares by concealing the lien of the Consortium Banks. The non-disclosure of the subject lien, Ferro Chemicals claimed and the RTC and CA believed, is constitutive of an actionable fraud warranting the award of damages. In no uncertain terms both tribunals pronounced that the non-mention of the lien in the transfer contract was intentionally and deceptively done by Antonio Garcia in bad faith and with intent to defraud. For the lower courts, the testimonial evidence sought to be introduced by Antonio Garcia, which modifies the express terms of the purchase agreement to suggest that the subject lien was purportedly contemplated by the parties in the contract, is not permissible under the Parole Evidence Rule.

We do not agree.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another, or by which an undue and unconscionable advantage is taken of another. It is a question of fact and the circumstances constituting it must be alleged and proved in the court below.[42]

In the case of *Tankeh v. DBP, et al.*,[43] this Court reviewed the doctrines of fraud in relation to contractual relations and the quantum of proof necessary to prove fraud and establish liability therefor:

> "Fraud is defined in Article 1338 of the Civil Code as:
>
> > x x x fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

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41 Id. at 118.

42 *Republic of the Philippines v. Pilipinas Shell Petroleum Corp.*, G.R. No. 209324, December 9, 2015.

43 720 Phil. 641, 669 (2013)

This is followed by the articles which provide legal examples and illustrations of fraud.

> Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)
>
> Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)
>
> Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)
>
> Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual. (n)
>
> Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

"The distinction between fraud as a ground for rendering a contract voidable or as basis for an award of damages is provided in Article 1344:

> In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.
>
> Incidental fraud only obliges the person employing it to pay damages. (1270)

"There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable.

In *Geraldez v. Court of Appeals*, this Court held that:

> This fraud or dolo which is present or employed at the time of birth or perfection of a contract may either be *dolo causante* or *dolo incidente*. The first, or causal fraud referred to in Article 1338, are those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract. *Dolo incidente*, or incidental fraud which is referred to in Article 1344, are those which are not serious in character and without which the other party would still have entered into the contract. *Dolo causante* determines or is the essential cause of the consent, while *dolo incidente* refers only to some particular or accident of the obligation. The effects of *dolo causante* are the nullity of the contract and the indemnification of damages, and

> *dolo incidente* also obliges the person employing it to pay damages.

"In *Solidbank Corporation v. Mindanao Ferroalloy Corporation, et al.,* this Court elaborated on the distinction between *dolo causante* and *dolo incidente*:

> Fraud refers to all kinds of deception -- whether through insidious machination, manipulation, concealment or misrepresentation -- that would lead an ordinarily prudent person into error after taking the circumstances into account. In contracts, a fraud known as *dolo causante* or causal fraud is basically a deception used by one party prior to or simultaneous with the contract, in order to secure the consent of the other. Needless to say, the deceit employed must be serious. In contradistinction, only some particular or accident of the obligation is referred to by incidental fraud or *dolo incidente*, or that which is not serious in character and without which the other party would have entered into the contract anyway.

"Under Article 1344, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract. In the recent case of *Spouses Carmen S. Tongson and Jose C. Tongson, et al., v. Emergency Pawnshop Bula, Inc.,* this Court provided some examples of what constituted *dolo causante* or causal fraud:

> Some of the instances where this Court found the existence of causal fraud include: (1) when the seller, who had no intention to part with her property, was "tricked into believing" that what she signed were papers pertinent to her application for the reconstitution of her burned certificate of title, not a deed of sale; (2) when the signature of the authorized corporate officer was forged; or (3) when the seller was seriously ill, and died a week after signing the deed of sale raising doubts on whether the seller could have read, or fully understood, the contents of the documents he signed or of the consequences of his act. (Citations omitted)

"However, Article 1344 also provides that if fraud is incidental, it follows that this type of fraud is not serious enough so as to render the original contract voidable.

"A classic example of *dolo incidente* is *Woodhouse v. Halili.* In this case, the plaintiff Charles Woodhouse entered into a written agreement with the defendant Fortunato Halili to organize a partnership for the bottling and distribution of soft drinks. However, the partnership did not come into fruition, and the plaintiff filed a Complaint in order to execute the partnership. The defendant filed a Counterclaim, alleging that the plaintiff had defrauded him because the latter was not actually the owner of the franchise of a soft drink bottling operation. Thus, defendant

sought the nullification of the contract to enter into the partnership. This Court concluded that:

> x x x from all the foregoing x x x plaintiff did actually represent to defendant that he was the holder of the exclusive franchise. The defendant was made to believe, and he actually believed, that plaintiff had the exclusive franchise. x x x The record abounds with circumstances indicative that the fact that the principal consideration, the main cause that induced defendant to enter into the partnership agreement with plaintiff, was the ability of plaintiff to get the exclusive franchise to bottle and distribute for the defendant or for the partnership. x x x The defendant was, therefore, led to the belief that plaintiff had the exclusive franchise, but that the same was to be secured for or transferred to the partnership. The plaintiff no longer had the exclusive franchise, or the option thereto, at the time the contract was perfected. But while he had already lost his option thereto (when the contract was entered into), the principal obligation that he assumed or undertook was to secure said franchise for the partnership, as the bottler and distributor for the Mission Dry Corporation. We declare, therefore, that if he was guilty of a false representation, this was not the causal consideration, or the principal inducement, that led plaintiff to enter into the partnership agreement.
>
> But, on the other hand, this supposed ownership of an exclusive franchise was actually the consideration or price plaintiff gave in exchange for the share of 30 percent granted him in the net profits of the partnership business. Defendant agreed to give plaintiff 30 per cent share in the net profits because he was transferring his exclusive franchise to the partnership. x x x.
>
> Plaintiff had never been a bottler or a chemist; he never had experience in the production or distribution of beverages. As a matter of fact, when the bottling plant being built, all that he suggested was about the toilet facilities for the laborers.
>
> We conclude from the above that while the representation that plaintiff had the exclusive franchise did not vitiate defendant's consent to the contract, it was used by plaintiff to get from defendant a share of 30 per cent of the net profits; in other words, by pretending that he had the exclusive franchise and promising to transfer it to defendant, he obtained the consent of the latter to give him (plaintiff) a big slice in the net profits. This is the *dolo incidente* defined in article 1270 of the Spanish Civil Code, because it was used to get the other party's consent to a big share in the profits, an incidental matter in the agreement.

> "Thus, this Court held that the original agreement may not be declared null and void. This Court also said that the plaintiff had been entitled to damages because of the refusal of the defendant to enter into the partnership. However, the plaintiff was also held liable for damages to the defendant for the misrepresentation that the former had the exclusive franchise to soft drink bottling operations.
>
> To summarize, if there is fraud in the performance of the contract, then this fraud will give rise to damages. If the fraud did not compel the imputing party to give his or her consent, it may not serve as the basis to annul the contract, which exhibits *dolo causante*. However, the party alleging the existence of fraud may prove the existence of *dolo incidente*. This may make the party against whom fraud is alleged liable for damages."[44]

Applying the foregoing precepts in this case, we find it hard to believe that Antonio Garcia, in view of his impassioned efforts to buy back the disputed shares way before the *Second Consortium Case* commenced and even after the shares were assigned already to Chemphil Export, could be motivated by his fraudulent desire to extract money and then ease out Ferro Chemicals from its ownership of the subject shares. The flagrancy of the *Deed of the Right to Repurchase* ought to have caused the lower courts to delve into the repurchase issue since this could have very well dispelled the fraud alleged to have attended the acts of Antonio Garcia. By disregarding the repurchase contract and Antonio Garcia's intent in good faith to buy back the shares, the lower tribunals fell prey into the skewed representations of Ferro Chemicals of the factual incidents of this case. Indeed, both the contractual agreement on Antonio Garcia's right to repurchase and Antonio Garcia's actual earnest attempts at repurchase were central to the cause of Antonio Garcia in the proceedings below.

Though it fashioned itself as the vulnerable party, who was lured into buying shares of stocks that later turned out to be overburdened by liens, the fact is that Ramon Garcia is the President of Ferro Chemicals and the brother of Antonio Garcia of Chemical Industries which, like Ferro Chemicals, is into initiated business ventures. The transactions that Ramon and Antonio Garcia had with each other were between brothers about their businesses. Ramon Garcia, both in buying the subject shares from Antonio Garcia, and later on, in refusing to sell back the shares to Antonio Garcia did so in furtherance of his interests. It would be rash judgment to say it was not so and hold that business dealings in multimillions were done without conducting due diligence on the subject of the contract.

Indeed, the allegation that Antonio Garcia employed fraudulent machinations to hide the subject lien to facilitate the disposal of his shares

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[44] Id. at 669-674.

and to lure Ferro Chemicals to part with its money is diametrically opposed to Antonio Garcia's subsequent offers to repurchase the shares and tender of the repurchase price. On the other hand, Ferro Chemicals' explanation that the reason why it did not agree to the reacquisition was because the repurchase price tendered did not include the amount of taxes and interest due,[45] is flimsy and unacceptable under the circumstances. It must be pointed out that no negotiation in good faith between the parties as to the correct amount of taxes and interests should be paid took place since Ferro Chemicals at the outset flatly refused the offer to buy. As a matter of fact, Antonio Garcia was constrained to initiate two repurchase cases in his effort to reacquire the property.

The succession of events shows that Ferro Chemical's refusal to sell back the shares to Antonio Garcia was a calculated move by Ramon Garcia who measured the risk of losing the subject shares to the Consortium Banks against the visible returns on the shares during the pendency of the Consortium Bank Case. Between the time of the initial offer of Antonio Garcia to buy back the shares on 31 July 1989 up to the finality of the Court's decision in the *Second Consortium Case* on 12 December 1995, Ferro Chemicals thru Chemphil Export, profited from the Chemical Industries' shares. It was only after it had lost the shares to the Consortium Banks by the decision of the Court that Ferro Chemicals went back to Antonio Garcia and his co-defendants for the enforcement of the sale contract asking for the reimbursement of the amount of the shares that was lost. The buying and selling of stocks and the subsequent agreement on reversed activities were in the exercise of business judgment.

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given. These are allegations of fact that demand clear and convincing proof. They are serious accusations that can be so conveniently and casually invoked, and that is why they are never presumed.[46] Applying the doctrines to the case at bar, a judgment on fraud requires allegation and proof of facts and circumstances by which undue and unconscionable advantage is taken by Antonio Garcia. Ramon Garcia failed in this regard. In contrast, the succession of transaction between Antonio and Ramon Garcia indicated that Ramon Garcia wanted to have a way out of his failed business decision of holding on to his shares instead of selling it back to Antonio Garcia when he had the opportunity to do so. He saw that it

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45 *Rollo* (G.R. No. 168196), p. 166; Ferro Chemicals' Comment.

46 *R.S. Tomas, Inc. v. Rizal Cement Company, Inc.*, 685 Phil. 49, 62 (2012).

was better to hold on to the shares he bought from Antonio Garcia. The Court cannot save him from the fall that came from his own choice.

On the liability of Rolando Navarro and Jaime Gonzales for tortious interference

In imputing liability to Rolando Navarro, Ferro Chemicals harps on the following acts found by the trial court to be demonstrative of his malicious intention to interfere with the contract between Antonio Garcia and Ferro Chemicals:

> (1) He facilitated in the execution of the Deed by showing the Stock and Transfer Book of [Chemical Industries] to [Ferro Chemicals] thru [Ramon Garcia] to assure the latter that the disputed shares had no lien other than those in the Stock and Transfer Book and in order to conceal the [Consortium Bank's] lien;
>
> (2) He, together with Atty. Virgilio Gesmundo, also drafted in the boardroom of the [Chemical Industries] the Deed which embodied the basic terms and conditions of the sale as agreed upon by the parties;
>
> (3) He also signed as instrumental witness in the Deed;
>
> (4) Upon examination of the Deed and despite knowledge of the irregularity of the sale, he, acting as corporate secretary of [Chemical Industries], transferred the disputed shares in the name of [Ferro Chemicals] and issued the corresponding certificates of stock;
>
> (5) He drafted the Deed of Right to Repurchase under which [Antonio Garcia] was given the right to redeem the shares sold to [Ferro Chemicals] within 180 days from signing of the said deed and subject to other conditions stated therein;
>
> (6) He, as the corporate secretary of [Chemical Industries], again made the transfer of the said shares in the Stock and Transfer Book of [Chemical Industries] this time with respect to the 4,119,614 shares (which included the disputed shares) assigned by [Ferro Chemicals] to [Chemphil Export].

In essence, Ferro Chemicals contends that while Rolando Navaro is not privy to the contract, his individual acts form part of the bigger scheme to defraud the corporation.

In his Comment,[47] Rolando Navarro denies liability by arguing that not being a party to the contract, he cannot be held liable for breach thereof under Article 1311 of the New Civil Code. He underscores that Ferro Chemical's complaint was for breach of contract, *i.e.* for failure to deliver the clean title of the subject shares, which obligation befalls on the buyer alone. As an instrumental witness to the deed, it is absurd to hold him liable for failure of the buyer to make good his warranty under the agreement. Invoking that only absolute transfers of shares of stocks are required to be recorded in the corporation's stock and transfer book, Rolando Navarro insists that he cannot be held liable for failing to record the claim of the Consortium Banks since it is merely an attachment. Finally, he asserts that none of the conduct imputed against him constitute tortious interference under Article 1314 of the New Civil Code because these acts, *i.e.,* transfer the certificate of title of the said shares and preparing a draft of contracts, were mainly part of his primary duty as the Corporate Secretary of the Chemical Industries.

We affirm the ruling of the Court of Appeals in favor of Rolando Navarro.

The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[48] Where there is no privity of contract, there is likewise no obligation or liability to speak about.[49] Article 1311 of the New Civil Code provides:

> Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

The obligation of contracts is limited to the parties making them and, ordinarily, only those who are parties to contracts are liable for their breach. Parties to a contract cannot thereby impose any liability on one who, under its terms, is a stranger to the contract, and, in any event, in order to bind a third person contractually, an expression of assent by such person is necessary.[50]

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47 *Rollo (*G.R. No. 168134), pp. 827-841.

48 *Philippine National Bank v. Dee, et al.*, 727 Phil. 473, 480 (2014).

49 Id.

50 *Ouano v. Court of Appeals*, G.R. No. 95900, 23 July 1992, 211 SCRA 740, 748.

Under Article 1314 of the New Civil Code, however, any third person who induces another to violate his contract shall be liable for damages to the other contracting party. The tort recognized in that provision is known as interference with contractual relations. The interference is penalized because it violates the property right of a party in a contract to reap the benefits that should result therefrom.[51]

The Court, in the case of *So Ping Bun v. Court of Appeals, et al.,*[52] laid down the elements of tortious interference with contractual relations: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of the contract and (3) interference on the part of the third person without legal justification or excuse.[53]

A duty which the law of torts is concerned with is respect for property of others, and cause of action *ex delicto* may be predicated by an unlawful interference by any person of the enjoyment of the other of his private property. This may pertain to a situation where a third person induces a person to renege on or violate his undertaking under a contract.[54]

A perusal of the allegations proffered against Rolando Navarro would show that none of his conduct prior or even subsequent to the execution of the subject deed, which was primarily done in furtherance of his duties as corporate secretary, constitutes tortious interference. To imply that by preparing a draft of a contract, signing as instrumental witness of the deed and recording of transfer of shares on the corporate books, Rolando Navarro can now be held liable for tortious interference, is incredulous. Nothing from his acts as found by the trial court, which were clearly carried out within the bounds of his office devoid of malice and bad faith, would suggest involvement in the sinister design to deprive Ferro Chemicals of its property right over the disputed shares. As the Corporate Secretary of Chemical Industries, Rolando Navarro is under obligation to record in the stock and transfer book any and all alienation involving the shares of stocks of the corporation as mandated by Section 74 of the Corporation Code which states:

> **Sec. 74.** ***Books to be kept; stock transfer agent.*** — xxx
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> xxxx
>
> Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in

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51 *Lagon v. Court of Appeals, et al.,* 493 Phil. 739, 746 (2005).
52 373 Phil. 532, 540 (1999) as cited in *Lagon v. Court of Appeals, et al.*, supra note 51 at 747.
53 *Lagon v. Court of Appeals, et al.*, supra note 52.
54 Supra note 52.

> the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.

Clearly, the transfer of the certificates of stocks covering the subject shares in favor of Ferro Chemicals effected on the strength of a valid deed of sale cannot be taken as an actionable tortious conduct, whether such action is viewed in isolation or in connection with conduct of his co-defendants. The Court, in *So Ping Bun v. Court of Appeals, et al.,*[55] defined what constitutes an unlawful interference with contract:

> "The foregoing issues involve, essentially, the correct interpretation of the applicable law on tortuous conduct, particularly unlawful interference with contract. We have to begin, obviously, with certain fundamental principles on torts and damages.
>
> Damage is the loss, hurt, or harm which results from injury, and damages are the recompense or compensation awarded for the damage suffered. One becomes liable in an action for damages for a nontrespassory invasion of another's interest in the private use and enjoyment of asset if (a) the other has property rights and privileges with respect to the use or enjoyment interfered with, (b) the invasion is substantial, (c) the defendant's conduct is a legal cause of the invasion, and (d) the invasion is either intentional and unreasonable or unintentional and actionable under general negligence rules."

For sure, Rolando Navarro has transgressed no right of Ferro Chemicals while performing his obligation as an officer of Chemical Industries. There is absolutely no proof other than the weak indicia which, the plaintiff contends, show the existence thereof. Even if we lend credence to the graver allegation that Rolando Navarro showed the stock and transfer books of the corporation to Ramon Garcia which bore no record of the Consortium Banks' lien, still he could not be faulted in the absence of showing that he acted in bad faith with the intention to lure the buyer to believe that the subject shares were lien-free. As the Corporate Secretary of Chemical Industries, he is under no obligation to record the attachment of the Consortium Banks, not being a transfer of ownership but merely a burden on the title of the owner. **Only absolute transfers of shares of stock are required to be recorded in the corporation's stock and transfer book in order to have "force and effect as against third**

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55 Id.

persons."[56] In *Chemphil Export and Import Corporation v. Court of Appeals, et al.,*[57] the Court enunciated the rule that attachments of shares are not considered "transfer" and need not be recorded in the corporations' stock and transfer book, *viz:*

> '"**Are attachments of shares of stock included in the term "transfer" as provided in Sec. 63 of the Corporation Code? We rule in the negative.** As succinctly declared in the case of *Monserrat v. Ceron,* chattel mortgage over shares of stock need not be registered in the corporation's stock and transfer book inasmuch as chattel mortgage over shares of stock does not involve a "transfer of shares," and that only absolute transfers of shares of stock are required to be recorded in the corporation's stock and transfer book in order to have "force and effect as against third persons."
>
> xxxx
>
> "A 'transfer' is the act by which the owner of a thing delivers it to another with the intent of passing the rights which he has in it to the latter, and a chattel mortgage is not within the meaning of such term.
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> xxxx
>
> **Although the Monserrat case refers to a chattel mortgage over shares of stock, the same may be applied to the attachment of the disputed shares of stock in the present controversy since an attachment does not constitute an absolute conveyance of property but is primarily used as a means "to seize the debtor's property in order to secure the debt or claim of the creditor in the event that a judgment is rendered."**
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> Known commentators on the Corporation Code expound, thus:
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> xxxx
>
> Shares of stock being personal property, may be the subject matter of pledge and chattel mortgage. Such collateral transfers are however not covered by the registration requirement of Section 63, since our Supreme Court has held that such provision applies only to absolute transfers thus, the registration in the corporate books of pledges and chattel mortgages of share cannot have any legal effect.
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> xxxx
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> **The requirement that the transfer shall be recorded in the books of the corporation to be valid as against third persons has**

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56 *Monserrat v. Ceron, et al.,* 58 Phil. 469 (1933) as cited in *Chemphil Export and Import Corp. v. Court of Appeals, et al.*, supra note 17 at 647.

57 Supra note 17 at 646-647.

reference only to absolute transfers or absolute conveyance of the ownership or title to a share."[58] [Emphasis supplied]

Veritably, the facts, statutes and jurisprudence do not support Ferro Chemical's imputation of fraud to Rolando Navarro. The accusations of fraud directed to him upon which Ferro Chemicals rests its case are unsubstantiated, no direct evidence of it exists; it was clutching at straws pointing out to a remote participation of the defendant who carried out the imputed acts within the bounds of his office. Fraud cannot be presumed but must be proved by clear and convincing evidence.[59] Whoever alleges fraud affecting a transaction must substantiate his allegation, because a person is always presumed to take ordinary care of his concerns, and private transactions are similarly presumed to have been fair and regular.[60] To be remembered is that mere allegation is definitely not evidence; hence, it must be proved by sufficient evidence.[61]

Be that as it may, undisputed is the fact that Rolando Navarro derived no financial gains from the breach of Antonio Garcia's obligation to Ferro Chemicals watering down the allusion that his acts were impelled by economic motive.

Even if Jaime Gonzales, on other hand, eventually became the assignee of the subject shares, he cannot, for that reason alone, be held liable for tortious interference as the elements of this act are clearly wanting in this case. Jaime Gonzales did nothing more than act as instrumental witness of the deed of sale and give Antonio Garcia financial advice on the matter. None of these acts is actionable tort.

In any case, the allegations against Rolando Navarro and Jaime Gonzales have no more leg to stand on as we have ruled that fraud never attended the transaction and that Ferro Chemicals entered the contract subject of this case with the full knowledge and discretion of the existence of any and all liens.

On the liability of Chemical Industries for the acts of its responsible officers

On the premise that Chemical Industries afforded plenary powers to its officers to make certain representations to third persons, Ferro Chemicals

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58 Id. at 646-648.

59 *Metropolitan Fabrics Inc., et al. v. Prosperity Credit Resources Inc., et al.*, 729 Phil. 598, 618 (2014).

60 Id.

61 Id.

faults the ruling of the appellate court absolving Chemical Industries from liability by arguing that the corporation is liable for the tortious and wrongful acts of its corporate officers, Antonio Garcia and Rolando Navarro, under the principle of agency.

Chemical Industries, however, argues otherwise. It submits that Ferro Chemical's reliance on the doctrine of apparent authority is misplaced. Citing the findings of the appellate court, it posits that the sale of Antonio Garcia's shares was a purely personal transaction between him and Ferro Chemicals which requires no "express direction or authority" from Chemical Industries.

Having settled that Rolando Navarro committed no tortious acts generative of liability, we now limit our discussion on whether Chemical Industries can be held liable supposedly for the fraud and breach of contract perpetrated by Antonio Garcia.

We rule in the negative.

A corporation, upon coming to existence, is invested by law with a personality separate and distinct from those of the persons composing it. Ownership by a single or a small group of stockholders of nearly all of the capital stock of the corporation is not, without more, sufficient to disregard the fiction of separate corporate personality. Thus, obligations incurred by corporate officers, acting as corporate agents, are not theirs, but direct accountabilities of the corporation they represent. Solidary liability on the part of corporate officers may at times attach, but only under exceptional circumstances, such as when they act with malice or in bad faith. Also, in appropriate cases, the veil of corporate fiction shall be disregarded when the separate juridical personality of a corporation is abused or used to commit fraud and perpetrate a social injustice, or used as a vehicle to evade obligations.[62]

It must be stressed at the onset that the sale contract was entered by Antonio Garcia in his personal capacity and not as the President of Chemical Industries. As aptly found by the CA:

> "xxx. As can be gleaned from the Deed of Sale, [Antonio Garcia] sold the disputed shares in his private capacity as owner thereof and not as responsible officer or representative of [Chemical Industries]. Moreover, the disputed shares constitute merely 20% of [Chemical Industries'] outstanding capital stocks. As such, the corporation's consent in the

62 *Edsa Shangri-La Hotel and Resort Inc., et al. v. BF Corporation*, 578 Phil. 588, 606 (2008).

> disposition is not required. Neither does its conveyance require any action on the part of the corporation, except the ministerial duty of recording the same in its stock and transfer book.
>
> Considering the nature of the transaction involved, whatever obligation [Antonio Garcia] incurred, it was incurred in his personal capacity. xxx"[63]

Even if Antonio Garcia was selling his shares of stocks in the Chemical Industries, the corporation was neither made a party to the contract nor did the sale redound to its benefit. As a matter of fact, the subject of the purchase agreement was not limited to Antonio Garcia's shares in Chemical Industries, but likewise included his shares in Vision Insurance Consultants, Inc., Alabang Country Club, Inc. and Manila Polo Club, Inc.[64] His shares of capital stocks with Chemical Industries became the subject of controversy because of the allegation that he intentionally withheld the information from Ferro Chemicals that these shares were subject of the Consortium Banks' claim. Notably, the purported misrepresentation was not alleged to have been authorized or abetted by the corporation. It was a purely personal act of the seller desirous to dispose conveniently his shares in the corporation. It bears underscoring that a corporation has a personality separate and distinct from that of each stockholder. It has the right of continuity or perpetual succession,[65] that is, its existence is not extinguished by the transfer of ownership of its shares of capital stock from one shareholder to another.

Needless to say, the imputation of liability Chemical Industries for the acts of its corporate officer and the consequent shedding of corporate shroud cannot rest on flimsy grounds. The application of the doctrine of piercing the veil of corporate fiction is frowned upon.[66] It can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.[67] As explained by the Court in *Philippine National Bank v. Andrada Electric & Engineering Company:*[68]

> "Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an

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63 *Rollo* (G.R. No. 168134), p. 66.

64 RTC records, Vol. I, pp. 11-14; Deed of Absolute Sale and Purchase of Shares of Stock.

65 *PLDT v. NTC, et al.*, 268 Phil. 784, 800 (1990).

66 *Rosales, et al. v. New A.N.J.H. Enterprises & N.H. Oil Mill Corp., et al.*, G.R. No. 203355, August 18, 2015.

67 *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 489 (2013).

68 430 Phil. 882 (2002) as cited at note 67 at 487.

> injustice that was never unintended may result from an erroneous application."

In the case at bar, Ferro Chemicals failed to adduce satisfactory evidence to prove that Chemical Industries' separate corporate personality was being used by Antonio Garcia to protect fraud or perpetrate deception warranting the shedding of its veil and the consequent imposition of solidary liability upon it.

On Ferro Chemical's claim for reimbursement of litigation expenses in the amount of ₱12,000,000.00, as payment of attorney's fees

The award of litigation expenses in the amount of ₱12,000,000.00 is not proper because Ferro Chemicals failed to justify satisfactorily its claim, and the trial court failed to state explicitly in its decision the rationale for the award. Likewise, We agree with the CA's finding that the award of attorney's fees in the sum of ₱1,000,000.00 plus additional 10% of the value of the shares is unreasonable and excessive. Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in any event, it must be reasonable, just and equitable.[69] Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant.[70] They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the rule.[71] As such, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of such award.[72]

For lack of factual basis, we cannot likewise lend credence to Antonio Garcia's claim that the dividends earned from Alabang Country Club, Inc. and Manila Polo Club, Inc. shares should be deducted from the cost of the lost shares.

WHEREFORE, premises considered, the petition of Ferro Chemicals, Inc. in G.R. No. 168134 is hereby **DENIED** while the petitions of Jaime Y. Gonzales in G.R. No. 168183 and Antonio M. Garcia in G.R. No. 168196 are hereby **GRANTED.** Consequently, the Decision of the Court of Appeals is modified to read:

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69 *Ferrer v. People*, 518 Phil. 196, 221 (2006).
70 Id. at 222.
71 Id.
72 Id.

1) Chemical Industries of the Philippines, Inc. and Rolando Navarro are hereby exonerated from liabilities;

2) Antonio M. Garcia and Jaime Y. Gonzales are likewise discharged from liabilities;

3) The award of ₱12,000,000.00, representing the cost of the suit and expenses of litigation in the Consortium Case is deleted.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice