Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

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| **CAPTAIN RAMON R. VERGA, JR.,** | **G.R. No. 261323** |
| *Petitioner*, | Present: |
| *- versus -* | CAGUIOA, *J.*, *Chairperson*,<br>INTING,<br>GAERLAN,<br>DIMAAMPAO, and<br>SINGH,* *JJ.* |
| **HARBOR STAR SHIPPING SERVICES, INC.,** | Promulgated: |
| *Respondent.* | November 27, 2024<br>MICROCHIP |

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## D E C I S I O N

**INTING, *J.*:**

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated October 28, 2021, and the Resolution[3] dated June 6, 2022, of the Court of Appeals (CA) in CA-G.R. CV No. 109255. The CA denied the appeal of petitioner Captain Ramon R. Verga, Jr. (Verga) and affirmed with modification the Decision[4] dated November 17, 2016, of Branch 66, Regional Trial Court (RTC), Makati City in Civil Case No. 12-298 that granted the Complaint for Sum of Money and Damages (Complaint) filed by respondent Harbor Star Shipping Services, Inc. (Harbor Star) against Verga.

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* On official business, but left concurring vote.

1 *Rollo*, pp. 3–47.

2 *Id.* at 52–72. Penned by Associate Justice Pablito A. Perez and concurred in by Associate Justices Ramon M. Bato, Jr. and Raymond Reynold R. Lauigan of the Fourth Division, Court of Appeals, Manila.

3 *Id.* at 75–79. Penned by Associate Justice Pablito A. Perez and concurred in by Associate Justices Ramon M. Bato, Jr. and Raymond Reynold R. Lauigan of the Former Fourth Division, Court of Appeals, Manila.

4 *Id.* at 447–462. Penned by Presiding Judge Joselito C. Villarosa.

In its Resolution, the CA denied the Motion for Reconsideration[5] of Verga for lack of merit.

*The Antecedents*

Harbor Star is a domestic corporation duly incorporated in accordance with the laws of the Republic of the Philippines.[6] It is primarily engaged in the business of providing harbor assistance, towing services, salvage, repairs, dry dock, and other related services to foreign and domestic sea-going vessels.[7]

On the other hand, Verga was a shareholder of Davao Tugboat and Allied Services, Inc. (DATASI) and Davtug Multi-Purpose Cooperative (DAVTUG) which are both engaged in businesses similar to Harbor Star's.[8] Particularly, DATASI was a domestic corporation involved in the tug and towage business in the district port of Davao.[9] It was managed by Verga and two other pilots, Captain Vicente Lagura (Lagura) and Captain Edgardo Alaan (Alaan).[10] In the course of its business, DATASI's principal shareholders organized a cooperative, DAVTUG, on March 7, 2006 to acquire more tugboats under the benefit of Republic Act No. 9520,[11] or the Philippine Cooperative Code of 2008. According to Verga, DATASI has been dominating the tugboat business in Davao as early as 2006.[12]

On several occasions between November 2006 to May 2008, Harbor Star wrote to DATASI, requesting business meetings for the parties to collaborate and work synergistically despite being competitors in the tugboat and towage business.[13] Notably, Harbor Star proposed several schemes through which it and DATASI may jointly conduct tugboat operations in Davao, including, among others, merger, partnership, and a joint venture with assignment of area operations.[14]

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5 *Id.* at 81–93.
6 *Id.* at 3, Petition.
7 *Id.* at 52, CA Decision; *id.* at 251, Comment.
8 *Id.* at 52-53, CA Decision.
9 *Id.* at 4, Petition; *id.* at 251, Comment.
10 *Id.*
11 Titled, "An Act Amending the Cooperative Code of the Philippines to be Known as the "Philippine Cooperative Code of 2008." Approved on February 17, 2009.
12 *Rollo*, p. 4, Petition.
13 *Id.* at 101, Letter dated November 21, 2006 addressed to Lagura; *id.* at 128, Letter dated May 15, 2008 addressed to Captain Jose Orge, President of DATASI; *id.* at 130, Letter dated May 23, 2008 addressed to Capt. Edward F. Ranada (Ranada), Vice-President of DATASI.
14 *Id. See also id.* at 136, Letter dated June 3, 2008 addressed to Ranada.

Harbor Star alleged that sometime during the second semester of 2008, it eventually persuaded Verga, as well as Lagura and Alaan, to sell their shares of stock in DATASI, with the understanding that after the final audit of the books of the two entities, and after receipt of more than 50% of the agreed valuation of the shares, they will comply with their obligation to execute the pertinent documents for the transfer of their shares of stock in DATASI to Harbor Star.[15] Supposedly, the parties agreed in principle to the PHP 6,000,000.00 valuation of Verga's shares, which shall be adjusted depending on the outcome of the final audit.[16] Although a Memorandum of Agreement[17] was prepared by Harbor Star in connection with the transaction, the draft was not executed by the parties and their agreement was not reduced in writing.[18]

Thereafter, from September 2008 to July 2009, Harbor Star made several installment payments to Verga, for a total amount of PHP 4,000,000.00.[19]

Later, in 2012, Harbor Star found out that after its initial payment to Verga, the latter divested his shares in DATASI, thereby making it impossible for him to transfer his DATASI shares to Harbor Star.[20] In a Letter[21] dated February 21, 2012, Harbor Star demanded Verga to return the sums of money that he received as payment for his shares in DATASI. Instead of returning the money, Verga demanded an additional amount of PHP 2,000,000.00 from Harbor Star for the latter to purportedly complete the payment of the PHP 6,000,000.00 due under their agreement.[22]

Thus, on April 12, 2012, Harbor Star filed a Complaint against Verga, praying that he be ordered to return the PHP 4,000,000.00 that he received from Harbor Star.[23] It averred that: *one*, it orally entered into an agreement for the sale of Verga's shares in DATASI and DAVTUG; and *two*, by divesting his interests in DATASI, Verga made it impossible for him to comply with his obligation to transfer his DATASI shares to Harbor Star. Thus, Harbor Star argued that Verga should return the sums of money that he received for the said shares.

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15 *Id.* at 251, Comment; *id.* at 304, Judicial Affidavit of Rodrigo P. Bella (Bella), Chief Operating Officer of Harbor Star.
16 *Id.* at 305, Judicial Affidavit of Bella.
17 *Id.* at 138–140.
18 *Id.* at 251, Comment; *id.* at 304-306, Judicial Affidavit of Bella.
19 *Id.* at 251, Comment; *id.* at 306-307, Judicial Affidavit of Bella; *id.* at 335–336, TSN, Bella, August 13, 2014.
20 *Id.* at 252, Comment.
21 *Id.* at 234–235, Letter dated February 21, 2012.
22 *Id.* at 252, Comment.
23 *Id.* at 251, Comment. A copy of the Complaint is not attached to the records.

In his defense, Verga denied the purported oral contract of sale over his DATASI and DAVTUG shares to Harbor Star. He narrated that there were several negotiations for Harbor Star to buyout the shares of the members of DAVTUG. However, Harbor Star spread a rumor among the cooperative members that Verga, Lagura, and Alaan will receive commissions from the buyouts, resulting in dissension among the members. Harbor Star then took advantage of the situation and tricked Verga, Lagura, and Alaan to resign from DAVTUG and DATASI in exchange for PHP 6,000,000.00. Supposedly, their resignation will serve as a marketing tool for Harbor Star to entice ship owners and agents to avail themselves of Harbor Star's services instead of DATASI's and DAVTUG's.[24]

Verga further alleged that in pursuit of their agreement, he resigned from DAVTUG on July 11, 2009, after he received a total of PHP 4,000,000.00 from Harbor Star.[25] However, Harbor Star reneged on its obligation by refusing to pay the remaining PHP 2,000,000.00 balance of the resignation incentive. He thus filed his counterclaim against Harbor Star in the amount of PHP 2,000,000.00, representing the unpaid balance of the resignation incentive.

Finally, Verga argued that Harbor Star could not have validly entered into an oral contract for the acquisition of his DATASI and DAVTUG shares in the absence of the approval of a majority of the board of directors (Board) of Harbor Star and ratification by the shareholders representing at least 2/3 of the outstanding capital stock of the corporation, in accordance with Section 42[26] of Batas Pambansa Blg. 68,[27] or the Corporation Code.[28] He insisted that the alleged agreement with Harbor Star for the sale of his DATASI and DAVTUG shares was unenforceable under the Statute of Frauds,[29] as provided in Article 1403(2)(d)[30] of the Civil Code.

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24 *Id.* at 6, Petition; *id.* at 448–449, 451–452, RTC Decision.

25 *Id.*

26 Corporation Code, Section 42 reads:
Section 42. *Power to invest corporate funds in another corporation or business or for any other purpose.* – Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the primary purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of non-stock corporations, at a stockholder's or member's meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder shall have appraisal right as provided in this Code: Provided, however, That where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.

27 Approved on May 1, 1980.

28 *Rollo,* pp. 457–458, RTC Decision.

29 *Id.* at 461–462, RTC Decision.

30 CIVIL CODE, Article 1403(2)(d) states:
ART. 1403. The following contracts are unenforceable, unless they are ratified:

*Ruling of the RTC*

In its Decision,[31] the RTC granted Harbor Star's Complaint, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendant [Verga] to:
>
> 1) RETURN the Php4,000,000.00 representing actual damages in favor of the Plaintiff [Harbor Star];
>
> 2) PAY attorney's fees equivalent to 5% of the amount due; and
>
> 3) PAY legal interest at 12% from demand and cost of suit.
>
> Defendant's claim for actual, moral and exemplary damages, together with legal interest, attorney's fees and costs of suit are hereby DISMISSED for utter lack of merit.
>
> SO ORDERED.[32]

The RTC ruled that based on the evidence, Harbor Star entered into an oral contract with Verga for the acquisition of his shares in DATASI. It relied on the testimony of Rodrigo P. Bella (Bella), the Chief Operating Officer of Harbor Star, who testified on the oral contract for the sale of Verga's shares in DATASI, as well as the vouchers that Harbor Star issued as proof of the partial payments that it remitted to Verga for the shares. Moreover, the RTC determined that Verga's allegation on the purported incentive for his resignation and the intrigue that Harbor Star supposedly spread among DAVTUG's members were based on his mere say-so.[33]

As to Verga's argument on Harbor Star's alleged noncompliance with

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. . . .

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

. . . .

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

31 *Rollo*, pp. 447–462.

32 *Id.* at 462.

33 *Id.* at 455-457.

Section 42 of the Corporation Code, the RTC found it to be unmeritorious. It considered Harbor Star's evidence, which showed that during an annual stockholder's meeting held on June 3, 2009, Harbor Star's shareholders approved and ratified the transaction with Verga.[34]

The RTC also found the Statute of Frauds to be inapplicable because the contract has been partially executed in view of Harbor Star's partial payment of PHP 4,000,000.00 to Verga for his DATASI shares. It further emphasized Verga's admission that he has sold back to DATASI his shares in the corporation, thereby making it impossible for him to comply with his agreement with Harbor Star. Thus, the RTC concluded that Verga must be directed to return to Harbor Star the PHP 4,000,000.00 that he received.[35]

Aggrieved, Verga appealed the RTC Decision to the CA, which docketed the appeal as CA-G.R. CV No. 109255.[36]

*Ruling of the CA*

In its Decision,[37] the CA denied the appeal and affirmed the RTC Decision with modification as follows:

> WHEREFORE, premises considered, the appeal of defendant-appellant Captain Ramon R. Verga, Jr. is DENIED.
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> The *Decision* dated November 17, 2016 of the Regional Trial Court of Makati City, Branch 66, in Civil Case No. 12-298 is AFFIRMED with the following MODIFICATIONS:
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> 1. The award of attorney's fees payable by defendant-appellant to plaintiff-appellee [Harbor Star] is hereby reduced to P 100,000.00.
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> 2. The amount awarded shall earn legal interest at the rate of TWELVE PER CENT (12%) per annum from the date of judicial demand on April 12, 2012 until June 30, 2013, and thereafter SIX PERCENT (6%) per annum from July 1, 2013 until full payment.
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> 3. The amounts awarded shall likewise earn legal interest at the rate of SIX PERCENT (6%) per annum from finality of this Decision until full payment of the judgment.
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> SO ORDERED.[38]

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34 *Id.* at 457–458.
35 *Id.* at 461–462.
36 *Id.* at 52, CA Decision.
37 *Id.* at 52–72.
38 *Id.* at 71.

The CA ruled that the parties entered into an oral contract to sell, not a contract of sale, wherein Verga agreed to sell to Harbor Star his shares in DATASI and DAVTUG in exchange for a sum of money. It stated that Harbor Star and Verga had agreed on an initial valuation of the shareholdings to be acquired, subject to the conduct by the buyer of due diligence and their agreement on a final valuation after the completion of a final audit. Verga was to execute an absolute deed of sale of the shares upon completion of the audit and payment of at least half of the agreed valuation.[39]

The CA pointed out that the foregoing contract was binding between the parties even in the absence of a written agreement. Like the RTC, the CA gave credence to Bella's testimony on the nature of the agreement between the parties. It also relied on the vouchers and checks issued by Harbor Star which indicated that the sums of money remitted to Verga were partial payments for his shares in DATASI.[40]

The CA concluded that Verga's divestment of his interests in DATASI made it impossible for him to comply with his obligations under the contract to sell with Harbor Star; hence, he should return the sums of money that he received from Harbor Star as partial payment for his DATASI shares.[41]

However, the CA reduced the amount of attorney's fees that the RTC awarded to Harbor Star. Although it determined that the award of attorney's fees was justified because Harbor Star was constrained to litigate to pursue its claims against Verga, the CA ruled that the amount of PHP 100,000.00 was more reasonable.[42]

As to the award of legal interest, the CA modified the RTC Decision to make it conform to *Lara's Gift and Decors, Inc. v. Midtown Industrial Sales, Inc.*[43] It characterized Verga's obligation to return PHP 4,000,000.00 to Harbor Star as an obligation not constituting a loan or forbearance of money, goods, or credit, wherein interest on the amount of damages may be awarded in the discretion of the court pursuant to Article 2210[44] of the Civil Code.[45]

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39 *Id.* at 60–61 and 63, CA Decision
40 *Id.* at 61 and 65–67.
41 *Id.* at 65.
42 *Id.* at 71.
43 860 Phil. 744 (2019).
44 CIVIL CODE, Article 2210 reads:
ART. 2210. Interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract.
45 *Rollo,* pp. 68–69.

Verga sought a reconsideration[46] of the CA Decision, but the CA denied the motion in its Resolution.[47]

Thus, the present Petition.[48]

*Petitioner's Arguments*

Verga maintains that Harbor Star was unable to prove, with a preponderance of evidence, its claim that it entered into an oral contract for the acquisition of his DATASI shares.[49] He argues that *Lao v. Lao*[50] is applicable to the present case, where the Court held that a written document proving the acquisition of shares should have been presented by the party claiming to be a shareholder.[51] Thus, he opines that without a written agreement, the contract between the parties is unenforceable under the Statute of Frauds.

While Verga admits having received PHP 4,000,000.00 from Harbor Star, he insists that it was given to him as an incentive for his resignation from DATASI and DAVTUG.[52] He further points out that the vouchers relied upon by the lower courts as proof of the alleged contract to sell do not indicate that the payments from Harbor Star were for investments; instead, the vouchers provide that the payments were for "trade payable" or "AP Trade."[53] He also casts doubt on the probative value of the vouchers due to alleged intercalations thereon.[54]

Verga likewise questions the validity of Harbor Star's purported buyout of his DATASI shares because, supposedly, there was no board resolution approving the agreement, in violation of Section 42 of the Corporation Code.[55] While he recognizes that Harbor Star presented a document wherein the shareholders ratified the Board's action, he maintains that a Board resolution for the buyout of his DATASI shares was necessary and in the absence thereof, the shareholders could not have ratified the alleged buyout.[56]

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46 *Id.* at 81–94.
47 *Id.* at 75–79.
48 *Id.* at 3–47.
49 *Id.* at 12-13.
50 588 Phil. 844 (2008).
51 *Rollo*, p. 14, Petition.
52 *Id.* at 12.
53 *Id.* at 13–14.
54 *Id.* at 35–39.
55 *Id.* at 22.
56 *Id.* at 22–23.

Verga further imputes error to the CA in awarding attorney's fees to Harbor Star because the award allegedly has no basis in fact or law.[57] In contrast to the CA's findings, he avers that he is entitled to moral damages, exemplary damages, and attorney's fees because the suit instituted by Harbor Star caused him great embarrassment in the community of Davao pilots.[58]

*Respondent's Arguments*

In its Comment,[59] Harbor Star argues that the Petition raises factual issues which are not proper under Rule 45 of the Rules of Court, especially in view of the uniform factual findings of the RTC and CA.[60] It maintains that the conclusions of the lower courts are supported by a preponderance of evidence, including the testimony of Bella and the payment vouchers that it presented during trial.[61] It refutes the applicability of *Lao* in the present case because a contract to sell is perfected by consent; hence, it need not be reduced in writing and may be proven through testimonies of witnesses and other documents, as what Harbor Star had done during trial.[62] It also denies the applicability of the Statute of Frauds to the present case because the agreement between the parties has already been partially executed, given that Harbor Star already paid PHP 4,000,000.00 to Verga.[63]

Harbor Star avers that the real reason why Verga resigned from DAVTUG was because he offered to sell his shares to the other members of the cooperative, but they refused the offer.[64] As to the ratification of the acquisition of Verga's DATASI shares, Harbor Star insists that the general ratification by the shareholders during the annual stockholder's meeting held on June 3, 2009, was sufficient compliance with Section 42 of the Corporation Code.[65]

*Issues*

The core issues before the Court are: *(1)* whether Verga received PHP 4,000,000.00 from Harbor Star as payment for his shareholdings in DATASI and/or DAVTUG; *(2)* whether Verga is liable to return the sum of money that he received from Harbor Star after he divested his interest in DATASI; *(3)*

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57 *Id.* at 34.
58 *Id.* at 42–44.
59 *Id.* at 248–300.
60 *Id.* at 258–260, Comment.
61 *Id.* at 269.
62 *Id.* at 274–276.
63 *Id.* at 276–278.
64 *Id.* at 284–285.
65 *Id.* at 283–284.

whether the vote of the shareholders of Harbor Star representing two-thirds of the outstanding capital stock of the corporation is necessary before it may validly agree to purchase Verga's interest in DATASI and/or DAVTUG; and *(4)* whether the CA correctly awarded attorney's fees to Harbor Star.

*The Court's Ruling*

The Petition is denied for lack of merit.

The Petition raises factual issues that are beyond the scope of a Rule 45 proceeding.[66] It is not the function of the Court to analyze or weigh all over again the evidence already considered and ruled upon by the RTC and the CA.[67] While there are recognized exceptions[68] to the rule, Verga has not shown that any of the exceptions apply to the present case.

At any rate, the Court finds no reversible error in the challenged rulings of the CA.

*I. The records establish that the parties entered into a contract of sale over Verga's DATASI shares to Harbor Star*

The CA determined that there is a preponderance of evidence showing that the parties entered into an oral *contract to sell* Verga's shares in DATASI and DAVTUG, and that Harbor Star made partial payments for the shares in the total amount of PHP 4,000,000.00. Given that Verga divested his interest in DATASI, the CA held that Verga made it legally impossible for him to transfer and deliver the DATASI shares to Harbor Star, thereby making him

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66 *Jayme v. Jayme*, 880 Phil. 406, 414 (2020).

67 *Id.*, citing *Miro v. Vda. De Erederos*, 721 Phil. 772, 785 (2013).

68 The exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion [*Umali v. Hobbywing Solutions, Inc.*, 828 Phil. 320, 330–331 (2018), citing *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 213 (2005)].

liable to return the money that he received from Harbor Star.[69]

Verga imputes error to the CA's conclusion upon the argument that he received PHP 4,000,000.00 from Harbor Star as incentive for him to resign from DATASI and DAVTUG and not as partial payment for his shareholdings.[70]

The Court partially agrees with the CA that based on the evidence on record, the parties entered into a contract for the buyout of Verga's shares. However, the Court finds that the agreement is an *oral contract of sale*, not a contract to sell. Further, the subject matter of the agreement pertained only to Verga's shares in DATASI and not in DAVTUG, given that the vouchers[71] evidencing Harbor Star's payment of PHP 4,000,000.00 to Verga referred only to the DATASI shares. The draft memorandum of agreement[72] attached to the record also indicates a sale of Verga's DATASI shares to Harbor Star.

Although the CA's finding as regards the nature of the contract between the parties as an oral contract to sell and not a contract of sale was unassigned, the Court finds it proper to review the same in determining the appropriate remedies available to Harbor Star.

A. The sum of money that Harbor Star paid to Verga was for the latter's shareholdings in DATASI

Article 1371 of the Civil Code states that "[i]n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered." Otherwise said, the decisive factor in determining the nature of a contract is the intention of the parties, as shown by their conduct, words, actions and deeds prior to, during, and immediately after the execution of the agreement.[73] As explained by the Court in *Javier v. Court of Appeals*:[74]

> It is settled that the previous and simultaneous and subsequent acts of the parties are properly cognizable *indicia* of their true intention. Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by

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69 *Rollo*, pp. 61–63.
70 *Id.* at 6.
71 *Id.* at 340–348.
72 *Id.* at 138–139.
73 *Spouses Romulo v. Spouses Layug, Jr.*, 532 Phil. 701, 708 (2006).
74 262 Phil. 188 (1990).

> the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time of contracting. The parties' practical construction of their contract has been characterized as a clue or index to, or as evidence of, their intention or meaning and as an important, significant, convincing, persuasive, or influential factor in determining the proper construction of the agreement.[75]

The previous, contemporaneous, and subsequent acts of the parties demonstrate that they entered into a *contract of sale*, wherein Verga, as seller, sold his DATASI shares to Harbor Star, as buyer, in exchange for a sum of money. The parties' conduct does not support Verga's contention that Harbor Star paid him PHP 4,000,000.00 only as an incentive for him to resign from DATASI and DAVTUG.

*First*, Verga testified that before he received a total of PHP 4,000,000.00 from Harbor Star supposedly as incentive for his resignation from DATASI and DAVTUG, Harbor Star presented to him a draft memorandum of agreement[76] to reflect its intention.[77] However, a reading of the draft memorandum reveals that it pertains to the sale of Verga's DATASI shares to Harbor Star, *not* to an agreement for Verga to resign from DAVTUG in exchange for a sum of money:

> The First Party [Harbor Star] acknowledges that the Second Party [Verga] is a stockholder of the present exclusive provider of pilotage services in Davao City. The Second Party [Verga] undertakes to protect the interests of the First Party [Harbor Star] to enable it to recover its *investments* in the tugboats.
>
> 2. CONSIDERATION – In consideration for this Agreement, the Second Party [Verga] *hereby sells all his interests in the tug company (DATASI) in the amount of PESOS: SIX MILLION (Php6,000,000)*, ONE MILLION PESOS (Php1,000,000) of which is hereby acknowledged by the Second Party as having been received by him as Advance Payment.[78] (Italics supplied)

Although the draft memorandum of agreement was not signed by the parties, it still provides an insight into the intent behind Harbor Star's payment of PHP 4,000,000.00 to Verga. Verily, the Court has considered prior drafts of an agreement to discover the intent of the contracting parties and the circumstances surrounding their contract.[79]

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75 *Id.* at 198. Citations omitted.
76 *Rollo*, pp. 138–140.
77 *Id.* at 533–534, Judicial Affidavit of Verga.
78 *Id.* at 138.
79 *Woodhouse v. Halili*, 93 Phil. 526 (1953).

*Second*, as correctly pointed out by the lower courts, several of the payment vouchers issued by Harbor Star indicate that the sums of money that it remitted to Verga referred to payments for his DATASI shares.[80] The Court particularly notes that one of the voucher receipts *signed* by Verga states that that he received PHP 250,000.00 from Harbor Star as "*Partial Payment for DATASI Shares*[.]"[81]

Notably, the Memorandum of Agreement and payment vouchers indicate that the subject of the agreement between the parties pertained only to Verga's shareholdings in DATASI and not in DAVTUG. Hence, in contrast to the lower courts' conclusions, the Court finds that the PHP 4,000,000.00 that Harbor Star paid to Verga was only for the latter's shares in DATASI, not DAVTUG.

Despite the payment vouchers, Verga denies receiving the money as payment for his DATASI shares because, allegedly, when he signed the receipt, it was blank and did not indicate the purpose for the payment. He avers that the phrase "Partial Payment for DATASI Shares" was merely intercalated.[82]

The Court cannot lend credence to Verga's insistence that the vouchers were intercalated because of the elementary principle that forgery or falsification is never presumed and must be proven by clear, positive, and convincing evidence.[83] Significantly, neither the RTC nor the CA made any finding of forgery as to the vouchers. Besides, as pointed out by the RTC, Verga's allegation lacks credibility because the voucher[84] itself states that the amount of PHP 250,000.00 was being remitted to him as partial payment for his DATASI shares, yet he did not refute the contents of the voucher.[85]

*Third*, prior to the oral contract of sale, the letters exchanged between Harbor Star and DATASI representatives reveal the former's intention to enter into a merger or partnership with DATASI.[86] The acquisition of Verga's shares in DATASI is more consistent with Harbor Star's previous offers of merger or partnership.

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80 *Id.* at 236, 238, and 240.
81 *Id.* at 240, voucher receipt dated March 27, 2009.
82 *Id.* at 35–39.
83 *People v. Palma Gil-Roflo*, 921 Phil. 364, 382 (2022), citing *Lamsen v. People*, 821 Phil. 651, 660 (2017); *Coro v. Nasayao*, 865 Phil. 1095, 1104 (2019).
84 *Rollo*, p. 240.
85 *Id.* at 457, RTC Decision.
86 *Id.* at 130, Letter dated May 23, 2008; *id.* at 134, Letter dated May 30, 2008; *id.* at 136, Letter dated June 3, 2008.

*Finally*, as pointed out by Harbor Star, Verga's resignation from DAVTUG does not appear to have been prompted by the PHP 4,000,000.00 that he received from Harbor Star. Based on the Letter[87] dated July 11, 2009, that Verga signed, he resigned from DAVTUG after the other members *refused* to buyout his shares in the cooperative:

> Last July 5, 2009 we offered to sell our shares to the cooperative or its members with a request that we be informed by July 10, 2009. We have not been favored with a reply. We view this as a refusal to buy our shares as determined by the auditor.
>
> We are therefore tendering our resignation as members of our cooperative effective on July 11, 2009.[88]

The foregoing circumstances reveal the intention of the parties to enter into a contract for Harbor Star to acquire Verga's shareholdings in DATASI. The CA was therefore correct in holding that Verga received PHP 4,000,000.00 from Harbor Star as payment for his shareholdings in DATASI.

B. The parties' agreement is not a contract to sell but a contract of sale, which is perfected by mere consent

Nonetheless, the Court disagrees with the CA that the agreement between the parties is a *contract to sell*. The phrases and words used in the Memorandum of Agreement indicate that Verga sold to Harbor Star all his interests in DATASI, which was *not* subject to any condition precedent on the full payment of purchase price. In this regard, it has been held that "[i]n a contract of sale, title passes to the vendee upon the delivery of the thing sold; whereas in a contract to sell, by agreement, the ownership is reserved in the vendor and is not to pass until the full payment of the price."[89] Thus, in contrast to the CA's conclusion, the Court finds that the agreement between the parties was a *contract of sale* over Verga's DATASI shares, not a contract to sell.

It appears that the CA's conclusion that the agreement between the parties is a contract to sell is anchored on Bella's testimony that the parties were to formalize the terms and conditions of the acquisition of Verga's shares after a final audit. The terms of the parties' oral agreement was

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87 *Id.* at 141.

88 *Id.*

89 *Agustin, et al. v. De Vera*, 851 Phil. 240, 253–254 (2019). Emphases omitted.

explained by Bella, as follows:

> *Q7: Atty. Chavez*: You said that there was a [an] oral agreement initially entered into between your company and the defendant Verga together with Capt. Lagura and Capt. Alaan, what is that initial agreement all about?
>
> *Witness*: It was on the initial valuation of their respective shares in DATASI comprising the tugboats owned by this company which was roughly around SIX MILLION PESOS (P6,000,000.00) each after negotiation. We also agreed that payment shall be in tranches in the meantime that the books of DATASI and DAVTUG are being worked out by the auditor of these two (2) entities, Sir. *The final audit will help us formalize the terms and conditions of the acquisition of their respective shares*, Sir.
>
> *Q8: Atty. Chavez*: How was the so called valuation of the respective shares of Capt. Verga, Capt. Lagura and Capt. Alaan been determined to that of P6,000,000.00 at the time of negotiation?
>
> *Witness*: As I said a while ago, the negotiation was based on utmost good faith and the rough estimate of the value of the tugboats owned by DATASI that they declared *subject to the final outcome of the audit* which according to them was being worked out already during the process of negotiation, Sir.
>
> . . . .
>
> *Q10*: *Atty. Chavez:* Can you please tell us what happened to the negotiation on the payment of the shares of the three (3) individual[s] with respect to acquisition of their shares in DATASI and DAVTUG.
>
> *Witness*: We agreed to implement the oral agreement in the meantime that the audit is being finalized, Sir.
>
> *Q11*: *Atty. Chavez:* Why did you agree to implement the oral agreement?
>
> *Witness*: It was a business judgment, Sir. Our primary intention was to penetrate the Davao tug services immediately and without delay so *we agree[d] in principle to the P6,000,000.00 valuation of their respective shares which shall be adjusted accordingly depending on the outcome of the due diligence being conducted by the auditor*, Sir.[90] (Italics supplied)

Contrary to the CA's conclusion, the Court finds that the evidence on record demonstrate that the parties' agreement was a contract of sale. A contract of sale is a reciprocal obligation, wherein the seller obligates itself to transfer ownership of and deliver a determinate thing, while the buyer obligates itself to pay therefor a price certain in money or its equivalent.[91]

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90 *Rollo*, pp. 304–305, Judicial Affidavit of Bella.

91 *Carrascoso, Jr. v. Court of Appeals*, 514 Phil. 48, 71–72 (2005), citing *Sps. Velarde v. Court of Appeals*, 413 Phil. 360, 372 (2001).

All the elements of a contract of sale are present in the case, i.e., *one*, the consent or meeting of the minds of the contracting parties, Harbor Star as buyer and Verga as seller, as regards the object and consideration of their agreement; *two*, the object certain or subject matter of the contract, referring to Verga's shareholdings in DATASI; and *three*, the consideration or the price certain to be paid by Harbor Star for Verga's shares based on the final audit.[92]

Although the final audit marks the time when the parties shall *formalize* their agreement, the same does not render the contract imperfect.[93] As pointed out by Justice Alfredo Benjamin C. Caguioa (Justice Caguioa), Article 1469 of the Civil Code allows the determination of the price to be left to the judgment of "special persons," such as auditors, to wit:

> ART. 1469. In order that the price may be considered certain, it shall be sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a special person or persons.
>
> Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.
>
> If the third person or persons acted in bad faith or by mistake, the courts may fix the price.
>
> Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be.

Pursuant to Article 1469 of the Civil Code, it is not necessary that the certainty of the price be actual or determined *at the time of execution of the contract*.[94] Instead, it is sufficient compliance with the law if the price can be determined based on the parties' contractual stipulations.[95] Thus, it has been held that a contract of sale of coal is perfected even if the price stated in the agreement is subject to *modification* by known factors, such as the quality of the material sold.[96] There is also a perfected contract for the sale

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92 *See Heirs of Spouses Intac v. Court of Appeals*, 697 Phil. 373 (2012); *Spouses Lequin v. Spouses Vizconde*, 618 Phil. 409 (2009); *Katipunan v. Katipunan, Jr.*, 425 Phil. 818 (2002).

93 *See*, in contrast, *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735 (2004), wherein the offer to pay for shares at an identified amount stated in a letter was considered as a mere offer to buy and condition for a final bid, as the letter contained words stating that amount ""is understood to be subject to adjustment on the basis of an audit of the assets, liabilities and net worth of Phimco and its subsidiaries and on the final negotiation between ourselves." There was no meeting of the minds with respect to the price.

94 *Majarabas, et al. v. Leonardo*, 11 Phil. 272, 273–274 (1908).

95 *Id.* at 274.

96 *Mitsui Bussan Kaisha v. Manila E.R.R & L. Co.*, 39 Phil. 624, 628 (1919).

of tobacco even when the price set therefor is not expressly stated in a specific currency but merely references invoices that indicate the previous selling price of the goods.[97] Likewise, in *Robles v. Lizarraga Hermanos*,[98] it was held that a contract of sale of a *hacienda* is binding upon the parties who agreed to fix the price therefor at a fair valuation to be made by *appraisers*, which obligates the parties to promote the fair valuation made in good faith:

> Upon the issue of fact thus made we are of the opinion that the preponderance of the evidence supports the contention of the plaintiff — and the finding of the trial court — to the effect that, in consideration of the shortening of the period of the lease by nearly two years, *the defendant undertook to pay for the improvements which the plaintiff had placed on the hacienda and take over at a fair valuation, to be made by appraisers,* the personal property, such as carabao, tools, and farming implements, which the plaintiff had placed upon the *hacienda* at his own personal expense. . .
>
> . . . .
>
> The appellant's third assignment of error has reference to the alleged suspensive condition annexed to the oral agreement. In this connection it is claimed that the true meaning of the proven verbal agreement is that, in case the parties should fail to agree upon the price, after an appraisal of the property, the agreement would not be binding; in other words, that the stipulation for appraisal and agreement as to the price was a suspensive condition in the contract: and since the parties have never arrived at any agreement on the price (except as to the carabao), it is contended that the obligation of the defendant has never become effective. We are of the opinion that the stipulation with respect to the appraisal of the property did not create a suspensive condition. *The true sense of the contract evidently was that the defendant would take over the movables and the improvements at an appraised valuation, and the defendant obligated itself to promote the appraisal in good faith. As the defendant partially frustrated the appraisal, it violated a term of the contract* and made itself liable for the true value of the things contracted about, as such value may be established in the usual course of proof...[99]
> (Italics supplied)

Applying the foregoing, it was not necessary for the parties in the present case to provide a definite sum of money or a specific currency as consideration for Verga's shares in DATASI. Instead, the contract of sale was perfected when the parties agreed to fix the price for the shareholdings at the initial valuation of PHP 6,000,000.00, subject to modification based on a final audit of DATASI. The present case is analogous to *Robles,* where the parties to a contract of sale are allowed to fix the consideration or purchase

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[97] *M'Cullough v. Aenlle & Co.*, 3 Phil. 285, 290 (1904).
[98] 50 Phil. 387 (1927).
[99] *Id.* at 393–398.

price for the property sold by reference to a valuation to be made by special third persons, i.e., the auditors tasked to conduct the final audit of DATASI. Hence, the contract of sale over Verga's shareholdings in DATASI is valid and binding between the parties.

In addition, it is well-established that a contract of sale is perfected by consent.[100] Thus, a *formal document* is *not* necessary for the contract of sale to be binding upon the parties.[101] The fact that the sale agreement between the parties will be "formalized" only after a final audit does not negate the perfection of the parties' contract of sale over Verga's shares in DATASI.[102]

Accordingly, the CA was correct in ruling that a written agreement is not indispensable for the perfection of the contract between the parties. Further, as aptly ruled by the RTC,[103] the Statute of Frauds does not apply to the agreement in question because it has already been partially executed in view of Harbor Star's partial payment of PHP 4,000,000.00 to Verga for his DATASI shares. Certainly, it is beyond dispute that "the Statute of Frauds is applicable only to executory contracts and not to partially or totally consummated ones, and the basis of this rule is the fact that in consummated contracts, there is already a ratification of the contract by acceptance of benefits within the meaning of Article 1405[104] [of the Civil Code]."[105]

*II. Verga is liable to return to the sums of money that he received from Harbor Star as partial payment for his DATASI shares*

"The defining characteristic of a contract of sale is the seller's obligation to transfer ownership of and deliver the subject matter of the contract."[106] Particularly with regard to the sale of corporate shareholdings, the *physical delivery* of the stock certificates is necessary to cause their

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100 *See* Article 1475 of the Civil Code, which states:
ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

101 *See Sps. Beltran v. Sps. Cangayda,* 838 Phil. 935, 947 (2018).

102 *Id.*

103 *Rollo,* pp. 461–462, RTC Decision.

104 CIVIL CODE, Art. 1405 reads:
ART. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

105 *Heirs of Corazon Villeza v. Aliangan,* 891 Phil. 443, 471–472 (2020). Citations omitted.

106 *Racelis v. Sps. Javier,* 824 Phil. 684, 699–700 (2018).

transfer to the buyer in accordance with Section 63[107] of Batas Pambansa Blg. 68 or the Corporation Code, the law then in force at the time material to the present case. The seller's failure to deliver the stock certificates to the buyer constitutes a *substantial breach*, which entitles the injured party to either specific performance *or* rescission and *refund* of the purchase price that had been paid for the shares, as was held in *Raquel-Santos, et al. v. Court of Appeals, et al.*,[108] to wit:

> In the sale of shares of stock, *physical delivery* of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. Section 63 of the Corporation Code provides thus:
>
> . . . .
>
> For a valid transfer of stocks, the requirements are as follows: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.
>
> *Clearly, Finvest's failure to deliver the stock certificates representing the shares of stock purchased by TMEI and Garcia amounted to a substantial breach of their contract which gave rise to a right to rescind the sale.*
>
> Rescission creates the obligation to return the object of the contract. This is evident from Article 1385 of the Civil Code which provides:
>
> > ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.
> >
> > Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

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[107] CORP. CODE, Sec. 63 reads:
SEC. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred *by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer.* No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (Emphasis supplied)

[108] 609 Phil. 630 (2009).

> In this case, indemnity for damages may be demanded from the person causing the loss.
>
> To rescind is to declare a contract void at its inception and to put an end to it as though it never was. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made.
>
> *Mutual restitution entails the return of the benefits that each party may have received as a result of the contract. In this case, it is the purchase price that Finvest must return.* The amount paid was sufficiently proven by the buy confirmation receipts, vouchers, and official/provisional receipts that respondents presented in evidence. In addition, the law awards damages to the injured party, which could be in the form of interest on the price paid, as the trial court did in this case.[109] (Italics supplied)

The ruling in *Raquel-Santos* finds application in the case at bench. Verily, it is *undisputed* that Harbor Star had paid a total of PHP 4,000,000.00 to Verga.[110] An Audited Financial Statement on DATASI had also been secured by Harbor Star,[111] thereby making it possible for the parties to formalize their agreement over Verga's shareholdings in DATASI. However, Verga divested his shareholdings in DATASI and sold back his shares to the corporation.[112]

Verga's divestment of his interest in DATASI and the sell-back of his shares to the corporation would ultimately lead to the cancellation of the stock certificates issued in his name by DATASI, which, in turn, would render it impossible for him to comply with his obligation to physically deliver the stock certificates to Harbor Star in accordance with Section 63 of the Corporation Code. As noted by the RTC, Verga himself stated during trial that he cannot transfer his shares of stock in DATASI in favor of Harbor Star.[113]

Clearly, Verga committed a *substantial breach* of the contract when he did not deliver his stock certificates to Harbor Star and when he failed to cause the transfer of his DATASI shareholdings to Harbor Star. This gives rise to the alternative remedies of Harbor Star under Article 1191[114] of the

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109 *Id.* at 657–659. Citations omitted.

110 *Rollo*, p. 6, Petition.

111 *Id.* at 309, Judicial Affidavit of Bella.

112 *Id.* at 462, RTC Decision.

113 *Id.* at 461.

114 CIVIL CODE, Art. 1191 reads:
Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

Civil Code to rescind or enforce the fulfillment of the contract, with damages in either case if Verga does not comply with what is incumbent upon him.[115]

Harbor Star elected to *rescind* the contract when it filed its Complaint for Sum of Money and Damages with the RTC, wherein it prayed for a court order directing Verga to pay actual damages in the amount of PHP 4,000,000.00, representing the sum of money that it remitted to Verga as partial payment for his DATASI shares.[116] As aptly illustrated in *Raquel-Santos*, rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the *price* with its interest.[117] Accordingly, the RTC and CA correctly decreed that Verga must refund to Harbor Star the PHP 4,000,000.00 that he received as partial payment for his shareholdings in DATASI.

*III. Harbor Star's purchase of the DATASI shares has met the required approval of its Board of Directors*

Verga insists that Harbor Star could not have validly entered into a contract for the acquisition of his DATASI shares because Harbor Star failed to comply with Section 42 of the Corporation Code. The argument does not persuade the Court.

The Court ruled in *De la Rama, et al. v. Ma-Ao Sugar Central Co., Inc., et al.*[118] that when a corporation purchases shares in pursuance of its primary purpose, only the approval of the board of directors or trustees is needed, and the approval of the stockholders need not be secured. Otherwise said, *when the investment is necessary to accomplish the corporation's primary purpose as stated in its articles of incorporation, board approval is enough, and the approval of the stockholders is not necessary.*[119]

In the case at bench, Harbor Star and DATASI are engaged in the same business and are even competitors. Clearly, the investment in Verga's DATASI shares was in pursuit of Harbor Star's primary purpose, i.e., the

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The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

115 *Spouses Pangilinan v. Court of Appeals*, 345 Phil. 93 (1997).

116 *Rollo*, p. 8, Petition.

117 Civil Code, Article 1385. *See also Phil. Economic Zone Authority v. Pilhino Sales Corp.*, 796 Phil. 79, 89 (2016).

118 136 Phil. 418 (1969).

119 *Id.* at 432.

business of providing harbor assistance, towing services, salvage, repairs, dry dock, and other related services to foreign and domestic sea-going vessels. Thus, Section 42 of the Corporation Code is not applicable and only the approval of the Board of Directors of Harbor Star is necessary.

Pertinently, the approval by Harbor Star's Board for the purchase of DATASI's shares was explained by Atty. Ignatius A. Rodriguez (Rodriguez), Harbor Star's corporate secretary, director, and minority shareholder,[120] as follows:

> ATTY. MARASIGAN [on re-direct examination]:
>
> Q: Mr. Witness, you were asked about this Secretary's Certificate or Board resolution on the acquisition of the shares of defendant together with Mr. Lagura and Mr. Alaan wherein you did not attach this corresponding Secretary's Certificate, what then is the available document you have as a Corporate Secretary showing proof that indeed the company has acquired the share of the defendant from DATASI?
>
> WITNESS:
>
> A: If I may explain, sir, admittedly the authority of the acquisition was not limited, however *the deal was done by the President and the President being the majority stockholder he has apparent authority to do anything*, and usually this is how we do business, you know, at the time because we are still a small company and during the subsequent stockholders meetings, all the acts, corporate acts of management is ratified.[121] (Italics supplied)

From the foregoing, it is evident that the purchase of DATASI shares obtained the approval of the Board of Directors, given that Harbor Star's President, who approved of the transaction, was the majority shareholder. Relevantly, the Court has held that the acts of the president of a corporation, who holds majority of the shares of the corporation and manages its business, is *binding* on the corporation. As applied by the Court in *Zamboanga Transportation Co. v. Bachrach Motor Co.*,[122] citing *Halley First National Bank v. G. V. B. Min. Co.*:[123]

> *Where the chief officers of a corporation are in reality its owners, holding nearly all of its stock, and are permitted to manage the business by the directors,* who are only interested nominally or to a small extent,

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120 *Rollo*, p. 450, RTC Decision.
121 *Id.* at 381-382, TSN, Atty. Ignatius A. Rodriguez, May 28, 2014.
122 52 Phil. 244 (1928).
123 89 Fed., 439.

> and are controlled entirely by the officers, *the acts of such officers are binding on the corporation*, which cannot escape liability as to third persons dealing with it in good faith on the pretense that such acts were ultra vires.[124] (Italics supplied)

Even if the Court applies Section 42 of the Corporation Code, Harbor Star's purchase of Verga's shares in DATASI has been duly ratified by the shareholders of Harbor Star, as correctly found by the RTC. This was testified on by Atty. Rodriguez:

> ATTY. MARASIGAN:
>
> Q: And what corresponding document do you have to show that indeed there was a ratification?
>
> WITNESS:
>
> A: Yes, I brought with me a Minutes.
>
> . . . .
>
> ATTY. MARASIGAN:
>
> Witness is handing to this representation, Your Honor, a Minute of the Annual Stockholders Meeting of Harbor Star Shipping Services Inc. held on 3 June 2009 at Makati City.
>
> Q: Can you please tell us, Mr. Witness, where in this particular document which you have to your counsel that particular act of ratification which you said a while ago?
>
> WITNESS:
>
> A: In page 2, Section 5.
>
> . . . .
>
> Yes, Section 5 entitled Ratification of Corporate Acts. *Upon motion duly made and seconded, the following resolution was unanimously approved: "RESOLVED, That all the corporate acts and resolutions of the Corporation's Board of Directors and Management from 24 June 2008 to2 June 2009 be, as they are hereby approved, confirmed and ratified."*[125] (Italics in the original and supplied)

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124 *Zamboanga Transportation Co. v. Bachrach Motor Co.*, 52 Phil. 244, 259 (1928).

125 *Rollo*, pp. 383–385, TSN, Atty. Ignatius A. Rodriguez, May 28, 2014.

Besides, it is elementary that a party cannot setup the defense that a contract was *ultra vires* and still retain benefits thereunder.[126] Verily, a party to a contract cannot deny its validity after enjoying benefits from the contract, without outrage to one's sense of justice and fairness.[127] Thus, even assuming that the contract of sale between the parties lacked the requisite approval by Harbor Star's Board and shareholders, Verga is not allowed to retain the sums of money that he received from Harbor Star and must instead be directed to return it.

*IV. The award of attorney's fees has basis in fact and law*

The Court likewise finds no reason to reverse the CA's conclusion on the award of attorney's fees to Harbor Star. As correctly explained by the CA, the award of attorney's fees is based on Article 2208[128] of the Civil Code, which allows courts to grant attorney's fees "[i]n any other case where the court deems it just and equitable[.]"

In this regard, the Court has previously ruled that lower courts have jurisdiction to award attorney's fees when the winning party was constrained to litigate to protect its interest due to the unwarranted, unjustified, or stubborn refusal of the losing party to comply with the valid demands of the prevailing party.[129] Thus, in a case where the petitioner, as putative buyer of shares of stock, refused to return the stock certificates in its possession despite knowing that the respondent, as putative seller, can no longer comply

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126 *Province of Cebu v. Intermediate Appellate Court,* 231 Phil. 397, 410 (1987).

127 *Philippine National Bank v. Sps. Reblando,* 694 Phil. 669, 686–687 (2012), citing *Toledo v. Hyden,* 652 Phil. 70, 83 (2010), further citing *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35, 45 (2002).

128 CIVIL CODE, Art. 2208 states:
ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.
In all cases, the attorney's fees and expenses of litigation must be reasonable.

129 *See Sulpicio Lines, Inc. v. Court of Appeals,* 365 Phil. 21, 33–34 (1999); *Torbela, et al. v. Spouses Rosario, et al.*, 678 Phil. 1, 59 (2011); *Antioquia Dev't. Corp., et al. v. Rabacal, et al.*, 694 Phil. 223, 238 (2012); *Litex Glass and Aluminum Supply, et al. v. Sanchez*, 759 Phil. 186, 200 (2015).

with the conditions of their contract, the Court awarded attorney's fees to the respondent because the petitioner's conduct was indicative of bad faith.[130]

The foregoing situation obtains in the present case because Harbor Star was constrained to litigate to recover what it has paid to Verga, who unjustifiably and stubbornly refused to satisfy Harbor Star's valid claims.[131] Indeed, the records reveal that on February 21, 2012, after Harbor Star found out that Verga had divested his interests in DATASI, it wrote to Verga and demanded that he return the PHP 4,000,000.00 that he received from Harbor Star considering that he could no longer comply with his obligation under their contract of sale.[132] However, the demand was unheeded and Verga even demanded PHP 2,000,000.00 for the supposed balance of the PHP 6,000,000.00 "incentive" for his resignation.[133] Verga's divestment of his interests in DATASI pending Harbor Star's full payment of the purchase price should have prompted him to return to Harbor Star the partial payments that he received for the shares.[134] Verga's stubborn refusal to do so indicates bad faith on his part. Thus, no error may be imputed to the CA in awarding attorney's fees.

Finally, as pointed out by Justice Caguioa, the interest imposed by the CA on the monetary award to Harbor Star warrants correction. While the error was unassigned, the Court finds it proper to correct it as the same is closely related to and is dependent on the issue of whether Verga may be directed to return the PHP 4,000,000.00 that he received from Harbor Star.[135]

The CA ruled that the award of PHP 4,000,000.00 to Harbor Star is subject to the compensatory interest of 12% per annum from the date of judicial demand on April 12, 2012 until June 30, 2013, and thereafter 6% per annum from July 1, 2013 until full payment. It appears that the CA considered the monetary obligation of Verga as a forbearance of money, where compensatory interest due should be related to the Usury Law and the prevailing legal interest rate prescribed by the Bangko Sentral ng Pilipinas (BSP), as was held in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*[136]

However, the monetary award to Harbor Star does not arise from a

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130 *See Development Bank of the Phils. v. Medrano, et al.*, 656 Phil. 575, 588 (2011).
131 *Rollo*, p. 71, CA Decision.
132 *Id.* at 234–235, Letter dated February 21, 2012.
133 *Id.* at 448–449, RTC Decision.
134 *Development Bank of the Phils. v. Medrano, et al.*, *supra* at 586.
135 *See Tolentino-Prieto v. Elvas*, 799 Phil. 97 (2016); *Vidad, Sr. v. Spouses Tayamen*, 557 Phil. 690 (2007); *Villaflores v. Ram System Services, Inc.*, 530 Phil. 749 (2006).
136 860 Phil. 744 (2019); 929 Phil. 754 (2022).

loan or *forbearance* of money, goods, or credits, which refers to "arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions."[137] Instead, the award to Harbor Star arose from the *rescission* of the contract of sale between the parties, which obligates Verga to refund the PHP 4,000,000.00 that Harbor Star remitted to him as partial payment for his shareholdings in DATASI.

In this regard, it has been held that "when an obligation arises from 'a contract of purchase and sale and *not* from a contract of loan or *mutuum*,' the applicable rate is '6% per annum, as provided in Article 2209 of the [Civil Code] and not the rate of 12% per annum as provided in [Central Bank Circular no. 416].'"[138] The monetary award representing the refund of the sum of money paid under a contract of sale is not within the contemplation of the Usury Law.[139] Hence, instead of the legal interest prescribed by the BSP, the compensatory interest due on the monetary award to Harbor Star must be modified to 6% per annum in accordance with Article 2209[140] of the Civil Code.

The reckoning period for the imposition of the foregoing compensatory interest should also be modified from the date of judicial demand to the date of *extrajudicial* demand made by Harbor Star to Verga, in accordance with Article 1169[141] of the Civil Code and *Lara's Gifts*.

The records bear that Harbor Star sent to Verga the Letter dated February 21, 2012, demanding that he return the PHP 4,000,000.00 partial payment for his shareholdings in DATASI.[142] The Letter was delivered to Verga on March 22, 2012,[143] and he admitted receipt thereof in his Petition.[144] Thus, the compensatory interest should be reckoned from the date of extrajudicial demand on March 22, 2012.

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137 *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, 860 Phil. 744, 772 (2019).

138 *See Philippine National Bank v. Court of Appeals*, 331 Phil. 1079 (1996).

139 *See Philippine Virginia Tobacco Administration v. Tensuan*, 266 Phil. 687 (1990).

140 CIVIL CODE, Art. 2209 reads:
ART. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

141 CIVIL CODE, Art. 1169 reads:
ART. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
. . . .

142 *Rollo*, pp. 234–235.

143 *Id.* at 235, Registry Return Receipt.

144 *Id.* at 8, Petition.

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The Decision dated October 28, 2021, and the Resolution dated June 6, 2022, of the Court of Appeals in CA-G.R. CV No. 109255 are hereby **AFFIRMED with MODIFICATION**, in that petitioner Captain Ramon R. Verga, Jr. is **ORDERED** to:

1) **RETURN** to Harbor Star Shipping Services, Inc. the amount of PHP 4,000,000.00;

2) **PAY** compensatory interest due on the PHP 4,000,000.00 at the rate of 6% per annum from the date of extrajudicial demand on March 22, 2012, until full payment; and

3) **PAY** attorney's fees in the amount of PHP 100,000.00 to Harbor Star Shipping Services, Inc.

All amounts awarded shall likewise earn legal interest at the rate of 6% per annum from the date of its finality of this Decision until full payment.

**SO ORDERED.**

**HENRI JEAN PAUL B. INTING**
*Associate Justice*

WE CONCUR:

**ALFREDO BENJAMIN S. CAGUIOA**
*Associate Justice*

**SAMUEL H. GAERLAN**
*Associate Justice*

**JAPAR B. DIMAAMPAO**
*Associate Justice*

(On official business
but left concurring vote)

**MARIA FILOMENA D. SINGH**
*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.

**ALFREDO BENJAMIN S. CAGUIOA**
*Associate Justice*
*Chairperson, Third Division*

## CERTIFICATION

Pursuant to Article VIII, Section 13 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.

**ALEXANDER G. GESMUNDO**
*Chief Justice*